

Creating Better, Smarter, Fairer Tests: Summary of ESSA Assessment Regulations

The U.S. Department of Education is issuing two Notices of Proposed Rulemaking to implement provisions of the new Every Student Succeeds Act (ESSA) regarding assessments. Passed with bipartisan support, ESSA requires all states and districts to ensure that all students, including students with disabilities, English learners, and other historically-underserved groups are ready for college and career. To measure progress against that goal and maintain a critical focus on educational equity and excellence for all, the law maintains provisions that require states to administer to all students annual statewide assessments in reading language/arts and mathematics in grades 3-8 and once in high school, as well as assessments once in each grade span in science, and includes important protections to ensure that all students are offered appropriate accommodations when needed, and that all students are held to the same high standards.

Earlier this year, the Department conducted negotiated rulemaking sessions on Title I, Part A assessment regulations. Through that process, a diverse team of negotiators came to a consensus on these proposed regulations in order to support states, districts and schools in implementing the law.

Today, the Department is announcing those proposed regulations, as well as proposed regulations on the ESSA innovative assessment demonstration authority under Title I, Part B. Together, these proposed regulations respond to significant feedback the Department has received from a wide and diverse group of stakeholders since ESSA's passage. This includes comments received following a request for information soliciting advice and recommendations from the public on the implementation of Title I of ESSA published in the *Federal Register* and two related public meetings with stakeholders. Further, the Department has held over 200 other meetings with education stakeholders and leaders across the country.

Supporting Flexibility for States and Districts and High Expectations for All Students: Title I, Part A

ESSA requires that states establish college- and career-ready standards and maintain high expectations when assessing all students against those standards. Through the negotiated rulemaking process, the Title I, Part A assessment proposal represents the consensus recommendations of a wide range of stakeholders, including representatives of federal, state and local administrators, Tribal leaders, parents and students, teachers, principals, other school leaders, paraprofessionals, and the civil rights and business communities. These proposed regulations aim to support innovation and flexibility while maintaining a high bar for states to assess all students against state-developed college- and career-ready standards.

Eliminating unnecessary testing: Consistent with the flexibility in ESSA, the proposed regulations allow students taking advanced mathematics courses in eighth grade in states that offer end-of-course tests in high school mathematics to avoid unnecessary, redundant testing by allowing those students to take the assessment typically administered to high school students enrolled in their course. To ensure opportunities are fair, states that choose to utilize this flexibility must describe strategies to provide [all students the opportunity to be prepared for and to take advanced mathematics coursework in middle school.](#)

The proposed regulations also build on ESSA's flexibility to allow states to permit a district to use a single, locally-selected, nationally recognized high school assessment across the district in place of the statewide high school assessment. Such an assessment must be administered in multiple states, be recognized by institutions of higher education for the purposes of entrance or placement into courses in postsecondary education or training programs, and provide all students – including English learners and students with disabilities – with the same opportunities. To ensure stakeholder engagement in the decision to use a different assessment, a district requesting to use a locally selected, nationally recognized high school academic assessment would need to consult with stakeholders and notify parents of its plans.

Both the eighth grade math exception and the flexibility to offer a locally-selected, nationally-recognized, high school assessment may reduce the amount of time students spend on assessments, allowing more time for teaching and learning.

Assessing students fairly: To ensure that alternate assessments aligned with alternate academic achievement standards are used only for students with the most significant cognitive disabilities, ESSA limits the number of such students who may take alternate assessments to 1 percent of all tested students. The law allows a state to request a waiver if the state believes it is necessary to assess more than 1 percent of all tested students on such an assessment, and the proposed regulations provide greater clarity to states around these waiver requests – to ensure waivers are reserved for states that can justify the need to assess additional students with alternate assessments.

Consistent with the IDEA, states must have guidelines for Individualized Education Program (IEP) teams to use in determining on a case-by-case basis whether a student with the most significant cognitive disabilities must take an alternate assessment aligned with alternate academic achievement standards.

The proposed regulations also highlight the critical state role in ensuring that general and special education teachers, paraprofessionals, and other appropriate staff receive necessary training so that they know how to administer alternate assessments and make use of appropriate accommodations to support students with disabilities.

Supporting English learners and Native American students: The proposed regulations clarify that the new law anticipates a single statewide English language proficiency assessment, consistent with existing state practice; and make clear that states must offer appropriate accommodations to English learners on content assessments, as well as accommodations on the ELP assessment for ELs with disabilities. The law also requires states to make every effort to make native language assessments available for all languages present “to a significant extent” in a state, and the regulations require that states define what it means for a language to be present “to a significant extent,” including that the most common language (besides English) be included in that definition. The regulations also permit states to administer assessments of reading/language arts in a Native American language for students enrolled in a Native American language school or program until the student is in grade 8.

Leveraging technology to improve assessments: The regulations clarify that states may develop computer-adaptive tests, which could provide a more precise estimate of a students’ ability with fewer questions than a traditional test; and require that such assessments report assessment results against grade-level academic achievement standards (or against the appropriate achievement standards if the computer-adaptive test is for students with the most significant cognitive disabilities), to ensure all students are held to the same standards.

Promoting Innovation and Next Generation of Assessments: Title I, Part B

The proposed regulations under Title I, Part B would support states in implementing the **new flexibility in ESSA to pilot innovative approaches to statewide assessments**. In the initial demonstration period, the authority allows the Department to allow up to seven states flexibility to administer an innovative assessment—in a subset of districts—instead of the statewide assessment, and use those results in the state’s accountability and reporting system as the state scales the new system up to all schools. By evaluating and making continuous improvements to their innovative assessments, these pilots can help states develop new models that can be used by other states, creating proof points for new and innovative assessments that provide more timely and useful feedback to students, families and educators.

Time to thoughtfully and successfully scale up: This new authority will give states the time and space they need to try out and learn from the implementation of innovative assessments as they expand these approaches to additional schools, until they can administer them statewide. Consistent with the statute, a state may request authority for up to five years, and may request an extension for up to two years if it needs more time to scale its new assessment system statewide. Recognizing the differences between school districts in size and capacity, the proposed regulations would allow districts to roll out a new assessment over multiple years, as long as the state ensures they are on-track for statewide implementation in all schools and districts by the end of its demonstration period. Consistent with the law, at the end of the pilot stage, states must submit their innovative assessments for federal peer review similar to other statewide assessments under Title I, Part A.

State context: A state has the ability to propose an innovative assessment in all required grades and subjects, or a subset of them (e.g., a middle school science assessment), depending on its priorities and goals – so long as the state continues to use its existing statewide test in all grades and subjects in which it is not developing an innovative one.

Key priorities to support state flexibility and student success: To ensure that selected states are likely to be successful in developing high-quality, viable and sustainable innovative assessment systems:

- The proposed regulations organize and clarify basic application requirements in the law, including: (1) evidence of consultation with technical experts and key stakeholders that will be affected by the new assessment system; (2) a demonstration of how the proposed innovative assessment system does, or will meet, statutory requirements for the alignment, quality, and fairness of the innovative assessment; (3) assurances related to standards and assessment requirements under the ESSA that remain in place under the authority; and (4) demographic and related information from participating school districts.
- ESSA requires states to ensure their innovative assessments produce results comparable to the statewide assessments; the proposed regulations provide states flexibility in how to demonstrate this, and the Department seeks additional feedback from the public in how states can best demonstrate comparability.
- States are required to describe their proposal for critical components of their innovative assessment system and implementation plan, including a rationale for the state's particular innovative approach; a plan for scoring the assessments to ensure validity and reliability and any past experiences with this work; stakeholder support for their proposal; the availability of technology, expertise and other essential resources and conditions.

Supporting ALL students: To ensure states are able to assess all students using a new assessment, states must describe their approach to scaling the innovative assessment statewide, including criteria for selecting participating districts and benchmarks toward achieving implementation in demographically representative districts over time.

Supporting educators and students: States participating in the pilot must provide supports for educators and students, including training, professional development, and other strategies for familiarizing students and teachers with the new assessments.