

EVERY STUDENT SUCCEEDS ACT

Assessments under Title I, Part A & Title I, Part B: Summary of Final Regulations

High-quality assessments are essential to effectively educating students, measuring progress, and promoting equity. Done well and thoughtfully, they provide critical information for educators, families, the public, and students themselves and create the basis for improving outcomes for all learners. Done poorly, in excess, or without clear purpose, however, they take valuable time away from teaching and learning, and may drain creative approaches from our classrooms. In October 2015, President Obama announced a [Testing Action Plan](#) to restore balance to America’s classrooms by ensuring fewer, better, and fairer tests.

Consistent with the President’s plan, and as the U.S. Department of Education (Department) supports states in implementing the Every Student Succeeds Act (ESSA), we are focused on promoting a high-quality, well-rounded education for every student while ensuring critical protections and equity of opportunity for all students.

Today, the Department is releasing two Notices of Final Regulations (NFRs) that implement provisions of Title I of the ESSA, ensuring states administer high-quality, annual assessments that are worth taking and provide meaningful data about student success, while also encouraging states and districts to continue to push the field of assessment forward through innovation.

The [Title I, part A NFR](#) addresses annual statewide assessments, with the goals of clarifying new flexibilities for states and districts to reduce testing; maintaining effective protections to preserve students’ civil rights to ensure assessments are fair; and maximizing the positive impact of transparent, consistent information about student success and progress. The [Title I, part B NFR](#) outlines how States can leverage the new innovative assessment demonstration authority in the ESSA, which will enable up to seven states to re-think their testing systems and pilot new approaches—helping to develop the next generation of statewide assessments.

“High-quality assessments are a critical tool that can help educators, parents, and policymakers promote educational equity by highlighting achievement gaps, especially for our traditionally underserved students, and that can spur instructional improvements that benefit all our children. At the same time, where too much focus has been placed on testing, educators, parents, and students have rightly highlighted the need for more creativity and innovation,” said U.S. Secretary of Education John B. King Jr. “Our final regulations strike a balance by offering states flexibility to eliminate redundant testing and promote innovative assessments, while ensuring assessments continue to contribute to a well-rounded picture of how students and schools are doing.”

Background on ESSA’s Testing Provisions

Passage of the ESSA

Passed with bipartisan support and signed by President Obama in December 2015, the ESSA requires states and districts to ensure that all students, including children with disabilities, English learners, and other historically underserved groups, graduate high school ready for college or a career. To measure progress against that goal and maintain a critical focus on educational equity and excellence for all, the law maintains the requirement that states 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 for all students and annual English language proficiency assessments in grades K-12 for all English learners. The law also includes important protections to ensure that all students are tested, offered appropriate accommodations when needed, and held to the same high standards. The ESSA also provides several new flexibilities to help states develop innovative approaches to assessments and reduce duplicative, unnecessary testing.

Negotiated Rulemaking and Proposed Regulations

In March and April 2016, the Department conducted negotiated rulemaking sessions on Title I, part A assessment regulations, consistent with the requirements of the ESSA. Through that process, a team of negotiators, including teachers, principals, other school leaders, and paraprofessionals, parents, students, state and local education leaders, Tribal leaders, and the civil rights and business communities, developed and came to consensus on proposed regulations in order to support states, districts, and schools in implementing the ESSA's requirements for high-quality state assessment systems and the new flexibilities afforded in the law. The Department then published for public comment the proposed regulations consisting of the consensus-based language for assessments under Title I, part A.

At the same time, the Department also published proposed regulations regarding the innovative assessment demonstration authority under Title I, part B (which was not subject to negotiated rulemaking) clarifying the rules and expectations for states wishing to pilot new and innovative ways to measure student knowledge and abilities that will then be scaled statewide.

Final Regulations

Today, the Department announces final regulations regarding assessment provisions under both Title I, part A and Title I, part B. In response to public comments, the final regulations on Title I, part A include a number of changes, including:

- Streamlining the criteria for evaluating state requests for waivers to exceed the cap on the percentage of children with the most significant cognitive disabilities who take an alternate assessment aligned with alternate academic achievement standards;
- Clarifying the parameters for the use of Native American language assessments in a Native American language school or program.

In response to public comments, the final regulations on Title I, part B include a number of changes, including:

- Clarifying that an innovative assessment may include items above or below a student's grade level so long as the State measures each student's academic proficiency based on the challenging State academic content standards for the grade in which the student is enrolled; t
- Providing additional information on how a state may demonstrate that the innovative assessments and state assessments provide comparable results;
- Clarifying that states need to ensure that districts and schools participating in the innovative assessment demonstration pilot are providing comparable results to one another. Together, we believe these changes in the final regulations help clarify provisions in the new law and will aid states and districts in implementing high-quality assessments.

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

General Statutory Requirements

- ESSA requires that states establish college- and career-ready standards and maintain high expectations when assessing all students against those standards. These regulations support innovation and flexibility while maintaining **a high bar for quality** of the tests states use to assess all students against state-developed college- and career-ready expectations.
- States must **assess all students**, including by offering appropriate accommodations for English learners and children with disabilities, and, to the extent practicable, must develop assessments using the principles of **universal design for learning**, which intentionally reduce barriers and improve flexibility in how students receive information or demonstrate knowledge.
- Tests must measure **higher-order thinking skills**, such as reasoning, analysis, complex problem solving, critical thinking, effective communication, and understanding of challenging content.

- States have **flexibility to develop new assessment designs**, which may include a series of multiple statewide interim assessments during the course of the academic year that result in a single summative assessment score (sometimes described as “modular” assessments).

Flexibility for locally selected, nationally recognized high school academic assessments

- Under ESSA and these regulations, **a state may permit districts to use a nationally recognized high school academic assessments** in place of the statewide high school assessment; a district using this flexibility, however, must use the same locally selected, nationally recognized assessment in all of its high schools.
- To ensure these tests are truly “nationally recognized,” the regulations clarify they must be given 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 the same benefits to all students – including English learners and children with disabilities.
- To ensure the assessment a district uses under this flexibility meets the needs of the community, districts requesting to use a locally selected, nationally recognized high school academic assessment must **consult with stakeholders and notify parents** of its plans.
- States will review tests that districts request to use as a nationally recognized assessment in order to ensure the tests are of strong **technical quality**. Assessments selected under this flexibility are also subject to assessment peer review, as are all statewide assessments under Title I, part A.

Eliminating unnecessary testing

- Consistent with flexibility in the ESSA, the regulations allow students taking **advanced mathematics courses in eighth grade** to avoid unnecessary, redundant testing by allowing those students to take the assessment typically administered to high school students enrolled in that course, if their state uses end-of-course tests in high school and the course taken in eighth grade is aligned with the tested high school course.
- To ensure opportunities are fairly distributed, 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.](#)

Assessing students with the most significant cognitive disabilities on alternate assessments aligned with alternate academic achievement standards

- To ensure that the vast majority of students take a state’s general assessment and **only students with the most significant cognitive disabilities take an alternate assessment aligned with alternate academic achievement standards**, the ESSA limits the number of students who may take such assessments to 1 percent of all tested students in a given subject. There is no cap on individual schools or districts.
- The law allows a state to request a **waiver of this 1 percent cap** and the regulations provide states greater clarity relating to the criteria for approving these requests to ensure that **waivers are reserved for exceptional situations**, in which states need to assess additional students with the most significant cognitive disabilities with such assessments and that waiver requests provide transparent state-level information on the number and percentage of students, including by subgroup, taking the alternate assessment.
- Recognizing that a state should do everything it can to ensure students are being held to the appropriate standards and that only students with the most significant cognitive disabilities should be taking the alternate assessment aligned with alternate achievement standards, and to ensure that it is making substantial progress toward reducing the percentage to fewer than 1 percent, the regulations require a state seeking a waiver to have a **plan of action** to meet the 1 percent limit in the future.

- Consistent with the Individuals with Disabilities Education Act (IDEA), **states must have guidelines** for Individualized Education Program (IEP) teams in determining on a case-by-case basis whether a student is most appropriately assessed with an alternate assessment aligned with alternate academic achievement standards.
- The regulations highlight the critical state role in ensuring that general and special education teachers, paraprofessionals, teachers of English learners, 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 regulations clarify that states must administer **a single statewide English language proficiency assessment to all English learners (ELs) in grades K-12**, consistent with existing state practice.
- States must ensure that English learners are included in academic instruction and statewide assessments by providing **appropriate accommodations** to all English learners.
- Consistent with the statutory requirement that states must **make every effort to make native language assessments available for all languages present “to a significant extent”** in a state, 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) is included in that definition.
- The regulations permit states to administer assessments in a Native American language to students enrolled in a **Native American language school or program** in any subject until the students are in high school, regardless of whether the students are identified as English learners.

Moving to high-quality, computer-adaptive assessments

- The law and regulations explain that **states may develop computer-adaptive tests**, which may provide a more precise estimate of a student’s ability with fewer questions than traditional tests.
- Even if computer-adaptive assessments include questions above or below a student’s grade level, such assessments must **measure and report assessment results against grade-level academic standards** to ensure all students are held to the same high standards.

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

General Statutory Requirements

- The final regulations under Title I, part B support states in implementing the **new flexibility in ESSA to pilot innovative approaches to assessments**.
- The Secretary has authority to grant flexibility to states to administer an innovative assessment in a subset of districts—instead of the statewide assessment—and to **use those results for the purposes of accountability and reporting** as the states scale the new systems to statewide use.
- Under Title I, part B, the Department may grant innovative assessment demonstration authority to **up to seven states during the initial demonstration period** of three years.

Application requirements

- The final regulations organize and **clarify the statutory application requirements for demonstration authority**, 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 ESEA that remain in place under the authority; and (4) details on demographic and related information from participating school districts.

- A state may **develop an innovative assessment in all required grades and subjects, or a subset of them.** The innovative assessment may, in any required grade or subject, include one or more types of innovative assessments and must produce an annual summative determination of each student’s mastery of grade-level content standards.
- To ensure states are able to assess all students using a new assessment, as required by the law, 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 and schools** over time.

Selection criteria

- Selection criteria in the final regulations, established from statutory requirements, explain how state applications will be evaluated by peer reviewers. **States are required to describe their plan for critical components of their system and their implementation plan**, including a rationale for the state’s particular innovative approach; a plan for scoring the assessments to ensure unbiased, valid, and reliable results; stakeholder support for their proposal; the availability of technology, expertise, and other essential resources and conditions.
- States must include a plan for how the State will sustain, or make progress, toward implementation in **demographically diverse districts and schools** throughout the demonstration period, with annual benchmarks for achieving a representative sample of participating schools that are, as a group, demographically similar to the state as a whole.
- States participating in the pilot must provide **supports for educators, parents, and students**, including training, professional development, and other strategies for familiarizing students, parents, and teachers with the new assessments.

Establishing comparability

- **States are required to ensure their innovative assessments produce results comparable to the statewide assessments** and must determine comparability between the statewide assessment and the innovative assessment annually. The final regulations provide states flexibility in how to establish comparability with four suggested methodologies or an equally rigorous, state-determined methodology.
- States must also ensure that results of the innovative assessment, including the annual summative determination, are **valid, reliable, and comparable for all students and for each subgroup of students and among participating schools and districts.**

Transition to statewide use

- Consistent with the statute, the final regulations **allow a state to request demonstration authority for up to five years**, and to request an extension for up to two years if the state needs more time to scale its new assessment system statewide.
- Recognizing the differences between school districts in size and capacity, the final regulations **allow districts to roll out the innovative assessment to their schools over multiple years**, as long as the state ensures statewide implementation in all schools and districts by the end of its demonstration period.
- At the end of the pilot stage, the law and final regulations require states to submit their innovative assessments for **assessment peer review, under Title I, part A, consistent with other statewide assessments.**