UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

APR 2 4 2015

The Honorable Sherri Ybarra
Superintendent
Idaho State Department of Education
650 West State Street
P.O. Box 83720
Boise, ID 83720

Dear Superintendent Ybarra:

This letter serves as a response to the e-mail from Marcia Beckman of your staff dated March 31, 2015, regarding requirements for State assessments under the Elementary and Secondary Education Act of 1965 (ESEA). To set the context for my response, ESEA section 1111(b)(3) (20 U.S.C. § 631 l (b)(3)) requires a State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality, yearly academic assessments that includes, at a minimum, assessments in mathematics, reading or language arts, and science. With respect to reading/language arts and mathematics, the assessments must be administered in each of grades 3 through 8 and not less than once in grades 10 through 12. With respect to science, the assessments must be administered not less than once during grades 3 through 5, grades 6 through 9, and grades 10 through 12.

Please let me emphasize the importance of these assessment requirements, which are focused on ensuring that parents and educators have the information they need to help every student be successful and on protecting equity for all students by maintaining a consistent measure of what students know and are able to do regardless of where they live. A high-quality, annual statewide assessment system is essential to providing critical information regarding student achievement to parents and educators at all levels. When that system is aligned with the academic content standards that establish what a State expects all children to know and be able to do and with the academic achievement standards that determine how well students are mastering the material in the content standards, it provides the road map for aligning instruction to the academic needs of students identified by the assessment system. High-quality, annual, Statewide assessments provide information on *all* students so that educators can improve educational outcomes, close achievement gaps between subgroups of historically underserved students and their more advantaged peers, increase equity, and improve instruction.

You asked if Idaho is required to administer the same assessments to all students. Under ESEA section 1111(b)(3)(C) (20 U.S.C. § 631 l(b)(3)(C)) and 34 C.F.R. § 200.2, the State assessments must –

- Be the same academic assessments used to measure the achievement of all children (§ 1111(b)(3)(C)(i); § 200.2(b)(l));
- Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and English Learners (§ 200.2(b)(2));

- Be aligned with the State's challenging academic content and achievement standards and provide coherent information about student attainment of the standards (§ 1111(b)(3)(C)(ii); § 200.2(b)(3));
- Be used for purposes for which they are valid and reliable and be consistent with relevant, nationally recognized professional and technical standards (§ 1111(b)(3)(C)(iii); § 200.2(b)(4));
- Be supported by evidence from the test publisher or other relevant sources that the assessment system is of adequate technical quality for each required purpose (§ 1111(b)(3)(C)(iv); § 200.2(b)(5));
- Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding, which may include single or multiple question formats that range in cognitive complexity within a single assessment and multiple assessments within a subject area (§ 1111(b)(3)(C)(vi); § 200.2(b)(7));
- Provide for the participation of all students in the tested grades, including students with disabilities, who must be provided reasonable accommodations, and English Learners, who must be assessed in a valid and reliable manner and provided reasonable accommodations including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved proficiency in English (§ 1111(b)(3)(C)(ix); §§ 200.2(b)(9), 200.6);
- Assess English Learners who have been in schools in the United States for three or more consecutive years in English on the reading/language arts assessments, except that, on a case-by-case basis, an LEA may assess those students in their native language for not more than two additional years (§ 1111 (b)(3)(C)(x));
- Produce individual student interpretive, descriptive, and diagnostic reports that allow parents, teachers, and principals to understand and address the specific academic needs of students (§ 1111(b)(3)(C)(xii); § 200.2(b)(11));
- Enable results to be disaggregated within each State, LEA, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged (§ 1111 (b)(3)(C)(xiii); § 200.2(b)(10));
- Be consistent with widely accepted professional testing standards, objectively measure academic achievement, knowledge, and skills, but do not measure personal or family beliefs or attitudes (§ 1111(b)(3)(C)(xiv); § 200.2(b)(8)); and
- Enable the production of itemized score analyses (§ 1111(b)(3)(C)(xv); § 200.2(b)(12)).

For each grade and subject assessed, a State's academic assessment system must -

- Address the depth and breadth of the State's academic content standards;
- Be valid, reliable, and of high technical quality;
- Express student results in terms of the State's academic achievement standards; and
- Be designed to provide a coherent system across grades and subjects.
- 34 C.F.R. § 200.3(a).

ESEA section 1111(b)(3)(C)(i) (20 U.S.C. § 6311(b)(3)(C)(i)) requires State assessments to "be the same academic assessments used to measure the achievement of *all* children." With certain limited

exceptions not relevant to your question, the assessments an SEA administers must be the same for all students in the State. One reason for this requirement is to help ensure that all students in a State are held to the same high expectations, regardless of a student's race, ethnicity, socioeconomic status, or neighborhood. ESEA flexibility does not remove this requirement. Because the assessments must be the same for all students in the State, an SEA may not administer a different assessment to a student at his or her parent's request.

You also asked about participation requirements under the ESEA. Section 1111(b)(3)(C)(ix)(I) of the ESEA (20 U.S.C. § 6311(b)(3)(C)(ix)(I)), which requires an SEA and each LEA to provide for the participation of *all* students on the State assessments so that they can identify the learning progress of all students against the same high expectations. This requirement does not permit certain students or a specific percentage of students to be excluded from the State assessments, nor does it permit a State to exclude from its accountability system (and the ratings the system produces) students that decline to participate in the Statewide assessments. Rather, it sets out the rule that *all* students in the tested grades must be assessed. ESEA flexibility does not remove these requirements. (ESEA section 1111(b)(2)(I)(i) (20 U.S.C. § 6311(b)(2)(I)(i)), which pertains to accountability determinations, permits an LEA or school to make adequate yearly progress as long as it assesses at least 95 percent of its students.)

Finally, you asked about the consequences if an SEA or LEA fails to adhere to the Federal assessment requirements, including the requirement to provide for the participation of all students in the State's assessment system. If an SEA fails to comply with the assessment requirements in either ESEA or ESEA flexibility, the U.S. Department of Education (ED) has a range of enforcement actions it can take. These actions include -

- Sending a written request to the SEA that it come into compliance,
- Increasing monitoring,
- Placing a condition on the SEA's Title I, Part A grant award or its ESEA flexibility request,
- Placing the SEA on high-risk status (34 C.F.R. § 80.12),
- Issuing a cease and desist order (GEPA section 456 (20 U.S .C. § 1234e)),
- Terminating approval to implement ESEA flexibility (ESEA section 9401(f) (20 U.S.C. § 7861(f))),
- Entering into a compliance agreement with the SEA to secure compliance (GEPA 457 (20 U.S.C. § 1234f)),
- Withholding all or a portion of the SEA's Title I, Part A administrative funds (ESEA section 1111(g)(2) (20 U.S.C. § 63ll(g)(2))), and
- Suspending, and then withholding, all or a portion of the State's Title I, Part A programmatic funds (GEPA section 455 (20 U.S.C. § 1234d)).

An SEA has similar enforcement actions available to it with respect to noncompliance by an LEA, including withholding an LEA's Title I, Part A funds. See, *e.g.,* GEPA section 440 (20 U.S.C. § 1232c(b)).

The specific enforcement action(s) ED would take depends on the severity of noncompliance. For example, if an SEA has developed a Statewide assessment system but that system is not approvable because it fails to meet all statutory and regulatory requirements, ED might place a condition on the SEA's Title I, Part A grant award, place the SEA on high-risk status, enter into a compliance agreement, or withhold State administrative funds. ED has withheld Title I, Part A administrative funds under ESEA section 1111(g) (20 U.S.C. § 631l(g)) from a number of States for failure to comply with the

assessment requirements in ESEA section 1111(b)(3). If an SEA or LEA refuses to implement an assessment system that meets the statutory and regulatory requirements, ED might seek to withhold programmatic funds from the State and expect the SEA to withhold from the LEA. Clearly, if an SEA or LEA fails to comply with the assessment requirements in either the ESEA or ESEA flexibility, it could place its Title I, Part A funds in jeopardy.

It is important to note that the SEA or LEA could also find itself out of compliance with a wide range of additional Federal programs that rely on Statewide assessment results, putting additional funds at risk. These additional programs include those targeting students most at risk including, but not limited to: the School Improvement Grants (SIG) program; ESEA Title III; Part B of the Individuals with Disabilities Education Act (IDEA); programs for rural schools under ESEA Title VI; migrant education under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

Please note that an LEA may not avoid administering the State assessments required under ESEA section 1111(b)(3) by declining to accept Title I, Part A funds. As noted above, the assessment requirements are State-level requirements that apply to any SEA that accepts Title I, Part A funds. That SEA must then administer its assessments Statewide, including to students in LEAs that do not participate in Title I.

Please do not hesitate to contact me if you need additional information or clarification, or contact Karen Dorsey Hargrove at Karen.DorseyHargrove@ed.gov. Thank you for your continued commitment to enhancing education for all of Idaho's students.

Sincerely,

Deborah S. Delisle
Assistant Secretary