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MEMORANDUM

FROM: Penn Hill Group
DATE: December 15, 2016
TO: Interested Parties
SUBJECT: Final Regulations on the Title I Innovative Assessment and Accountability Demonstration Authority

On December 8, the U.S. Department of Education (ED) issued final regulations for the Innovative Assessment and Accountability Demonstration Authority authorized by section 1204 of the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA). The Federal Register notice announcing these regulations, the full text of which is available [here](#), revises and responds to public comment on the proposed regulations that ED published in a Notice of Proposed Rulemaking (NPRM) on July 11.

The purpose of this memorandum is to describe the final regulations. *In italicized text, we have identified places where the final language differs from the proposed rule.*

Overview of the Statutory Authority

Section 1204 of ESEA is a new authority that will allow ED to approve a small number of States (initially up to seven), acting individually or in consortium, to conduct demonstrations in which they establish, operate and evaluate an innovative assessment system, such as a system of competency-based assessments, in some or all of their local educational agencies (LEAs) and use it as part of their statewide ESEA Title I accountability systems. These demonstrations may last up to five years, although the time period can be extended for two years if a State needs additional time to scale up the system for statewide implementation. The goal would be for a State to use the innovative system for statewide Title I accountability purposes after the demonstration terminates. A consortium of States that receives approval to carry out a demonstration may have no more than four members.

As ED noted in the NPRM, the reauthorized ESEA gives States flexibility to use innovative assessment approaches under Title I without having to apply under this demonstration authority, so long as the same assessments are administered to all students. As a result, the new authority will be of interest and use only to States that wish to implement innovative assessment systems initially in only a subset of their LEAs or schools, without having to continue the regular State assessments in those LEAs or schools for Title I accountability and reporting purposes. The regulations also clarify that a demonstration could be carried out in a subset of schools within one or more of a State's LEAs; not all the schools operated by a participating LEA would need to be included. In addition, a State could use the demonstration authority to pilot innovative assessments in a subset of the grades and subjects required under Title I – for instance, in high school math, but not in reading/language arts or science or in the earlier grades.

Significant Elements of the Final Regulations

§200.104 Innovative assessment demonstration authority

This section of the final regulations:

- Provides that a State educational agency (SEA) must be ready to implement an operational innovative assessment system, in at least some LEAs, and use it for accountability and reporting purposes, in each year of its demonstration period. There could not be a planning period. Rather, States would be expected to complete the process of developing, piloting, and field-testing the system prior to applying for the demonstration authority;
- Provides examples of types of assessments (e.g. cumulative year-end assessments, competency-based assessments) that may be included in an innovative system, while clarifying that such a system may include any type of innovative assessment design so long as it provides, for each student, an annual summative determination of grade-level performance against the State's achievement standards (*or, in the case of a student with the most significant cognitive disabilities who is assessed with an alternate assessment aligned with alternate achievement standards, produces an alternate summative determination relative to those standards*). The final regulation also clarifies that an innovative assessment system may include any combination of general and alternate assessments;
- Describes, in a manner that basically restates the statute, the peer-review process that ED will conduct for consideration of State applications for the demonstration, including that the reviewers will include individuals with experience in developing and implementing innovative assessment and accountability systems and that they will review the extent to which each applicant State has met *or will meet* the application requirements and selection criteria.
- *Defines a "participating school" as a school in which a State's innovative assessment system is administered instead of (or in addition to) the State's regular assessments, and the results are used for Title I accountability and reporting;*
- *Defines a "participating LEA" as any LEA that has at least one participating school; and,*
- *Defines an "affiliate member of a consortium" as an SEA that is formally associated with a participating consortium of SEAs but will not use the consortium's innovative assessment system, during the demonstration period, for Title I accountability and reporting. As explained in the Federal Register notice, an affiliate member is likely to be a SEA that is interested in implementing an alternate assessment system but is not ready to do so during the demonstration period. It may participate in the consortium's planning and development efforts and it is not counted against the four-State cap on consortium membership.*

§200.105 Demonstration authority application requirements

The statute includes a list of descriptions that a State must include in its application to implement the demonstration authority, as well as other requirements related to the application. This section of the final regulations:

- Provides that a State's consultation on its application must include outreach to students; to experts in the planning, development, implementation and evaluation of innovative assessment systems (*which may include external partners*); and to representatives of *Indian tribes*, in addition to the stakeholders listed in the statute;
- Provides that an SEA or consortium seeking to implement the demonstration must submit an application at such time and in such manner as the Secretary may reasonably require (and, thus, the regulations do not establish an actual deadline for receipt of initial applications under this new authority);
- Clarifies that a participating State may implement a single innovative assessment system but not multiple systems;
- Clarifies that a participating State must continue to administer its regular reading/language arts, math, and science assessments, even though students in some schools will be taking an innovative assessment;
- Clarifies that an innovative assessment system need not be administered to all public school students during the demonstration period (or an extension) prior to statewide use, so long as the innovative assessment system is initially administered *to all students* in all participating schools and the State's statewide assessments are administered *to all students* in the State's other schools;
- Clarifies that an innovative assessment system must align with the depth and breadth of a State's academic standards, *but may include test items above or below a student's grade level so long as the State measures each student's grade-level proficiency*;
- Provides a number of application requirements intended to ensure that an innovative assessment system generates results that are valid, reliable and comparable to the results produced by the State's regular Title I assessments, including that the State have a plan for annual determination of comparability and that determinations of comparability must be based on *results that include annual summative determinations that are valid, reliable and comparable for all students and all subgroups among participating schools and LEAs*. The regulations also provide *five (revised from four) options* for determining comparability of results¹;

¹ Briefly, the five options are:

- (1) Administering full assessments from both the innovative and statewide assessment systems to all students enrolled in schools participating in the demonstration, such that at least once in each grade span and subject for which there is an innovative assessment, a statewide assessment in the same subject would also be administered to all participating students.
- (2) Administering full assessments from both the innovative and statewide assessment systems to a demographically representative sample of students and subgroups from among the schools participating in the demonstration, such that at least once in each grade span and subject for which there is an innovative assessment, a statewide assessment in the same subject would also be administered in the same school year to all students in the sample.
- (3) Including, as a significant portion of the innovative assessment systems in each grade and subject in which both assessments are administered, common items *or performance tasks* that, at a minimum, have been previously pilot-tested or field-tested for use in *the statewide assessment system*.
- (4) Including, as a significant portion of the statewide assessment system each grade and subject in which both assessments are administered, common items *or performance tasks* that, at a

- Provides, as under the statute, that a State’s innovative assessment system must generate, for each student in a participating school, an annual summative determination that describes the student’s mastery of the State’s academic content standards (or, as applicable, its alternate standards) using the data derived from the innovative assessment;
- Requires an SEA to assure, in its application, that each participating LEA will inform the parents of students in participating schools about the innovative assessment system, *including the grades and subjects in which innovative assessments will be administered*, at the beginning of each school year in which it will implement an innovative assessment;
- Reiterates and clarifies other statutory application requirements, such as the requirement that the application demonstrate how the innovative assessments will provide for the participation of all students, including English learners and students with disabilities (including by incorporating the principles of universal design for learning *to the extent practicable (rather than “as appropriate” in the proposed rule)*), and how participating schools will ensure the assessment of at least 95 percent of all students and 95 percent of students in each subgroup;
- Requires that applications include a number of assurances, such as that a participating State will report annually to the Secretary *(at such time and in such manner as the Secretary may reasonably require)* on its implementation of the demonstration authority *and that this annual reporting will include updated assurances from participating LEAs*;
- Further provide that the annual report must include disaggregated student performance data at the State, LEA and school level, *including academic achievement and participation data presented in a manner consistent with general Title I requirements*; and,
- Includes specific requirements applicable to States applying in consortia, such as that the application include a description of a consortium’s governing structure.

§200.106 Demonstration authority selection criteria

Under the statute, State applicants must be selected through a peer-review process. The regulations specify the criteria that peer reviewers will consider, in the areas of:

- The quality of the project narrative included in the proposal;
- Prior experience,

minimum, have been previously pilot-tested or field-tested for use in *the innovative assessment system*.

- (5) An alternative method that the SEA can demonstrate will provide for an equally rigorous and statistically valid comparison, including for each subgroup of students.

Options (4) and (5) are expansions of a single option included in the proposed regulations. The substantive change is the addition of a reference to performance tasks and authority for States to administer test items taken from the innovative assessment system to students taking the statewide assessments.

- Capacity and external support;
- Timeline and budget;
- Supports for educators, students, *and parents (including, among other things, the quality of the SEA’s plan to provide supports that can be delivered consistently at scale to educators, students and parents, and the extent to which training will develop teacher capacity to implement instruction that is informed by the innovative assessment system)*; and,
- Evaluation and continuous improvement.

The regulations do not assign specific points to each criterion; ED will do this later, in the notice requesting applications.

§200.79 Transition to statewide use

The statute permits a State, at the conclusion of the demonstration authority period (or after a two-year extension), to use its innovative assessment system for statewide Title I accountability and reporting purposes, if the SEA has scaled up the system to statewide use and has demonstrated that its system is of “high quality,” as determined through an ED peer-review process. Briefly, a system is considered to be of high quality if it meets all of the requirements of section 1204, the SEA has measured the effects of the innovative system on other measures of success included in its Title I accountability system, the innovative system provides coherent and timely information on student achievement against State standards, the SEA has solicited feedback on stakeholders’ satisfaction with the system, and the SEA has demonstrated that the innovative system was used to measure the achievement of all participating students and the achievement of not less than the percentage of students overall and in each subgroup as were assessed with the State’s regular academic assessments.

This section of the final regulations:

- Requires an SEA, in demonstrating that it has measured the effects of its innovative assessment system on its other accountability measures, to demonstrate that it has examined the statistical relationship between student performance on the innovative assessment in each subject area and on the other measures, and examined how the use of the innovative assessment will affect the State’s differentiation of schools; and,
- Requires that, in the case of a multi-State consortium that has implemented a demonstration, each member State submit evidence demonstrating that the system is of high quality, or the consortium may submit a combined submission demonstrating how each of its States meets the various criteria.

§200.108 Extension, waivers and withdrawal of authority

As noted earlier, the statute permits a State to extend its demonstration for an additional two years (beyond the initial five-year period) if it needs additional time to transition to statewide use of its innovative assessment system.

The statute also requires the Secretary to withdraw a State's authority to implement a demonstration (and then require the State to return to its regular Title I accountability system) if the State, at any time, cannot present evidence that its system: (1) meets the requirements for Title I assessments; (2) includes all students (including all subgroups) attending participating schools; (3) provides an unbiased, rational and consistent determination of progress toward the State's long-term goals under Title I (in a manner comparable to measures of achievement under the State's Title I accountability system); and (4) is comparable to the State's Title I assessment in content coverage, difficulty and quality. In addition, the SEA must be able to present evidence that it has a high-quality plan to transition to full, statewide use of the innovative assessment system by the end of the initial demonstration period or the two-year extension.

Finally, the statute permits an SEA to request and receive a delay of the Secretary's withdrawal of authority if, at the end of the two-year extension, the State is not yet ready to transition to full statewide implementation but continues to meet the other requirements for a demonstration.

The final regulations on these topics, among other things:

- Clarify that, in the case of a demonstration carried out by a consortium of States, the Secretary may provide the two-year extension to individual States or to the consortium as a whole. Similarly, the Secretary could withdraw approval (or provide a waiver of a withdrawal of approval) for an entire consortium or for individual member States;
- Require that a State's plan for the transition to full statewide implementation of the innovative assessment system be developed with input from stakeholders (and from the same categories of stakeholders as would be required to participate in development of the State's initial plan);
- Require that a State's demonstration that its innovative accountability system serves all students include evidence that it provides appropriate accommodations for students with disabilities and English learners; and
- Provide that a waiver of the Secretary's withdrawal of approval to implement a demonstration would be for a period of one year.