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P.O. Box 565 ♦ Marshall, Virginia 20116 ♦ Phone 540.364.0051 ♦ [www.AdvocacyInstitute.org](http://www.AdvocacyInstitute.org)

**September 7, 2016**

**Comments to Proposed Regulations to 34 CFR Part 200 Title I—Innovative Assessment Demonstration Authority**

**Docket ID ED–2016–OESE–0047**

Submitted via [www.regulations.gov](http://www.regulations.gov)

U.S. Dept. of Education  
Office of Elementary and Secondary Education

The Advocacy Institute offers the following comments regarding the proposed regulations governing the Innovative Assessment Demonstration Authority.

**§200.77 Demonstration authority application requirements**

- We recommend 200.77(a) be amended as follows:

(a) Consultation. Evidence **from the stakeholders listed below**, that the SEA or consortium has developed an innovative assessment system in **meaningful** collaboration, with partners, including —

(1) Experts in the planning, development, implementation, and evaluation of innovative assessment systems; and

(2) Affected stakeholders in the State, or in each State in the consortium, including—

(i) Those representing **organizations or parents who advocate for** the interests of children with disabilities, English learners, and other subgroups of students under section 1111(c)(2) of the Act;

While we appreciate the specific mention of those representing children with disabilities, experience with the stakeholder process for state plan development tells us that the regulations need to define collaboration with partners in a way that ensures stakeholder consultation is meaningful, continuous and includes external

partners, not just educators or administrators who work in special education departments.

Even though states often claim they have provided the disability community with input opportunities, these opportunities are often not publicized and are difficult to find out about, unless you know where to look. That is why there should be a requirement that the evidence of collaboration come from the stakeholders themselves.

- The narrative of the NPRM, at page 44964, states that: “We also note that an SEA or consortium may propose to develop and scale: (1) an innovative assessment to be used as its general assessment in reading/language arts, mathematics, or science; (2) an innovative alternate assessment to be used as its alternate assessment for students with the most significant cognitive disabilities in any of those subjects; or (3) both.”

However, this is not incorporated in the proposed language in §200.77. We request that the Department add language to §200.77 that clearly articulates the statement above.

- The requirements for the innovative assessment at §200.77(b)(1)(i)-(ii) make clear that the innovative assessment need not be administered to all students in the State nor administered in each of the grades required by the Act.

We strongly recommend that the Department make clear that the innovative assessment must be administered to all students and all student subgroups within the LEAs, or schools within an LEA, or specific grades and/or subject. In other words, a school, LEA or State may not administer an innovative assessment to only certain subgroups of students. The Department should ADD additional language to make this clear.

- The requirements at §200.77(b) (2-3) require that innovative assessment systems “align with the State academic content standards, including the full depth and breadth of such standards and express student results or competencies in terms consistent with the State’s academic achievement standards and identify which students are not making sufficient progress toward, and attaining, grade-level proficiency on such standards;”

We appreciate the clear articulation of these requirements, all of which are critical to maintaining full accountability of students with disabilities.

- We strongly support proposed language at §200.77(b)(5)-(7) requiring that the innovative assessment provide for the participation of, and be accessible for, all students, including children with disabilities and English learners, provide appropriate accommodations consistent with section 1111(b)(2) of the Act, and, as appropriate, incorporate the principles of universal design for learning; requiring that the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act

applies to the innovative assessment, and that the assessment must generate an annual summative determination for each student.

We appreciate the clear articulation of these requirements, all of which are critical to maintaining full accountability of students with disabilities. However, to “be accessible to all students” an assessment must conform to a set of nationally accepted accessibility standards such as WCAG 2.0 for digital content. This requirement should be added to the rules to ensure states understand their obligation under the ADA to create, purchase and provide accessible content.

The shift to digital assessments provided great promise for increased access for students with disabilities. Unfortunately, the reality of digital assessment deployment has not delivered on that promise. Unless digital assessments are developed consistent with nationally recognized accessibility standards, like the Web Content Accessibility Guidelines (WCAG) 2.0, they will not be accessible and will not be compatible or interoperable with assistive technology (AT) devices that students with disabilities routinely use for instruction.

Additionally, we ask that the Department strengthen the reference to universal design for learning in 200.77(b)(5) by removing the words “as appropriate.”

It is difficult to envision a situation where it would not be appropriate to incorporate the principles of universal design for learning in an innovative assessment.

- Proposed language at §200.77(d)(2) states, in part, “except that students with the most significant cognitive disabilities may be assessed with alternate assessments aligned to alternate academic achievement standards consistent with section 1111(b)(2)(D) of the Act, and receive the instructional support needed to meet such standards.”

There is a great deal of confusion in the field about the difference between content standards and achievement standards and the wording of this provision will only exacerbate that confusion. Therefore, it is critically important to revise this language to clarify that all students, including those who take alternate assessments must be assessed on and provided instruction and support to meet the challenging State academic content standards for the grade in which the student is enrolled.

We request that this language be revised to read (revision in **bold**): “except that students with the most significant cognitive disabilities may be assessed with alternate assessments aligned to alternate academic achievement standards consistent with section 1111(b)(2)(D) of the Act, and receive the instructional support needed to meet **the academic content standards for their enrolled grade.**”

- The requirement at proposed §200.77(d)(4) to “ensure that each LEA informs parents of students in participating schools about the innovative assessment consistent with section 1112 (e)(2)(B) of the Act at the beginning of each school year during which an innovative assessment will be implemented” should be expanded to

include a requirement that students with the most significant cognitive disabilities attending participating schools who will not participate in the innovative assessment be so informed and provided information on how such students will be assessed.

Parents need to be fully informed about how their students are participating, including when they are not included in the innovative assessment. Therefore, we request the addition of language to that effect.

**§200.78 Demonstration authority selection criteria.**

- We strongly support proposed §200.78(b)(ii)(A) “Effective supports and appropriate accommodations consistent with section 1111(b)(2) of the Act for administering innovative assessments to all students, including English learners and children with disabilities, which must include professional development for school staff on providing such accommodations;”

Research and lessons learned from assessment administration continue to note that students with disabilities do not receive needed accommodations, frequently due to a lack of trained personnel and/or administrative convenience. (See, for example, Lessons Learned About Assessment from Inclusion of Students with Disabilities in College and Career Ready Assessments at

<http://www.cehd.umn.edu/NCEO/OnlinePubs/LessonsLearnedAboutAssessment.pdf>

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Thus, it is critical that SEAs seeking innovative assessment demonstration authority be required to articulate how the SEA (or LEA) will provide effective supports and appropriate accommodations.

- We request that 200.78(b)(3) be amended as follows (changes in **BOLD**):

(3) The extent and depth of State and local support for the application for demonstration authority in each SEA, including each SEA in a consortium, as demonstrated by signatures from the following:

(i) Superintendents (or equivalent) of LEAs, including LEAs participating in the first year of the demonstration authority period.

(ii) Presidents of local school boards (or equivalent, where applicable), including within LEAs participating in the first year of the demonstration authority.

(iii) Local teacher organizations (including labor organizations, where applicable), including within LEAs participating in the first year of the demonstration authority.

(iv) Other affected stakeholders, ~~such as~~ **including** parent organizations, **disability organizations**, civil rights organizations, and business organizations.

The language regarding evidence of support from parents, disability and civil rights organizations should be as strongly worded as the provisions for educators and administrators.

Thank you for consideration of these comments.

Sincerely,

*Candace Cortiella*

Candace Cortiella

Director

The Advocacy Institute

[candace@advocacyinstitute.org](mailto:candace@advocacyinstitute.org)

[www.AdvocacyInstitute.org](http://www.AdvocacyInstitute.org)