



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

**JAN 16 2009**

The Honorable Patti Harrington, Ed.D.  
Superintendent of Public Instruction  
Utah State Office of Education  
PO Box 144200  
Salt Lake City, UT 84114-4200

Dear Superintendent Harrington:

As you know, on May 8, 2006, the U.S. Department of Education (Department) fully approved Utah's standards and assessment system under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, which includes standards and assessments in reading/language arts, mathematics, and science. However, it has recently come to the Department's attention that Utah uses multiple end-of-course (EOC) science assessments to fulfill the Title I requirements related to assessing high school students in science. Specifically, Utah offers earth science, biology, chemistry, and physics courses and an EOC assessment associated with each of these courses. Students graduating high school through the 2009–10 school year are required to take and pass courses and associated EOC assessments in any two of these science disciplines; students graduating high school in the 2010–11 school year and beyond are required to take and pass courses and associated EOC assessments in any three of these science disciplines.

The Department has concerns regarding this practice, given that not all students participate in the same assessment measuring the same academic content. The Department believes that Utah's use of multiple EOC assessments thus prevents Utah from being able to establish full compliance with the provisions of section 1111(b)(1)(B) of the ESEA and 34 C.F.R. § 200.1(a)(1) requiring that the state apply the same academic content and academic achievement standards to all public schools and public school children in the state, and section 1111(b)(3)(C)(i) of the ESEA requiring the state to use the same academic assessments to measure the achievement of all children.

Although the Department believes that Utah's current practice with respect to its science assessments conflicts with the above-referenced statutory and regulatory requirements, the Department recognizes that, typically, high school students customize their studies within the framework of state graduation requirements, choosing from among a wide range of courses based on different content. The Department further acknowledges that EOC assessments may be more closely related to the high school course curriculum and may provide a more direct link to course credits and progress toward graduation than do other assessments a state may use to meet the statutory requirement to test students once in high school. Therefore, the Department would like to explore the implications of allowing high school students to choose from among multiple EOC science assessments and evaluate possible safeguards to ensure all students are held to the highest possible standards in science.

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Toward that end, the Department is entering into this flexibility agreement with Utah under section 9401 of the ESEA to waive the requirements of sections 1111(b)(1)(B) and 1111(b)(3)(C)(i) of the ESEA and 34 C.F.R. § 200.1(a)(1) to permit Utah to continue its practice of allowing students to select science EOC assessments from among four options (earth science, biology, chemistry, or physics). This flexibility agreement is being entered into for the 2008–09 and 2009–10 school years. In entering into this flexibility agreement, the Department recognizes that Utah has demonstrated that it:

- (1) Requires all high school students in the state to take at least one of the four science courses for which an EOC assessment is offered (earth science, biology, chemistry, or physics) and pass the EOC assessment associated with that course;
- (2) Has content standards that clearly identify for each course with an EOC assessment what students who have taken the course must know and be able to do (e.g., a student who takes biology must know and be able to do x; a student who takes chemistry must know and be able to do y); and
- (3) Ensures that all students in the state have equal access to each course with an EOC assessment.

Further, as a condition of being approved for this flexibility agreement, Utah has agreed to provide data in order to inform the Department’s understanding of the appropriate use of multiple EOC assessments in state standards and assessment systems. Utah will work with the Department to provide the following information, as available:

- (1) Evidence that all EOC tests meet peer review criteria for academic achievement standards, technical quality, alignment, and inclusion (including an alternate assessment based on alternate academic achievement standards for each EOC assessment);
- (2) A rationale for the menu of EOC tests, including how the EOC assessments align with state graduation requirements;
- (3) Evidence of enrollment patterns for earth science, biology, chemistry, or physics during the 2005–06 through the 2007–08 school years, in the aggregate and disaggregated by:
  - Each major racial and ethnic group;
  - Economically disadvantaged students;
  - Students with disabilities;
  - Limited English proficient students;
  - Gender;
  - Migrant status; and
  - The achievement level of students on the middle school (grade 6-8) science assessment;
- (4) Evidence of course offerings by local education agency (LEA) demonstrating that no bias exists in options available to students; and
- (5) Evidence of state policies that indicate inclusion of all students and equal access to each of the science courses.

Utah must also submit a report under section 9401(e)(2) of the ESEA to the Department at the end of each school year this agreement is in effect that describes its implementation of this flexibility agreement. That report must include, at a minimum, evidence of enrollment patterns

for the four science courses for that school year in the aggregate and disaggregated by the subgroups identified above and evidence of course offerings by LEA for that school year.

As required by section 9401(b)(3)(A) of the ESEA, within 30 days of the date of this letter, Utah must provide all interested LEAs in the state with notice and a reasonable opportunity to comment on this flexibility agreement (ESEA section 9401(b)(3)(A)(i)), and must provide notice and information to the public regarding this flexibility agreement in the manner in which it customarily provides similar notice and information to the public (ESEA section 9401(b)(3)(A)(iii)). Within 30 days thereafter, Utah must submit all comments it receives from interested LEAs to the Department (ESEA section 9401(b)(3)(A)(ii)).

I appreciate Utah's efforts to raise the achievement of all students and hold all schools accountable. I wish you continued success in your school improvement efforts. If you have any questions, please do not hesitate to contact David Harmon ([David.Harmon@ed.gov](mailto:David.Harmon@ed.gov)) or Patrick Rooney ([Patrick.Rooney@ed.gov](mailto:Patrick.Rooney@ed.gov)) of my staff.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Briggs", written over the word "Sincerely,".

Kerri L. Briggs

cc: Governor Jon Huntsman, Jr.  
Judy Park