



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

GEN-11-08

MAR 25 2011

Subject: Ability-to-Benefit (ATB) Provisions published in Final Regulations on October 29, 2010 (75 FR 66832).

Summary: This letter provides guidance for institutions utilizing ATB testing under current and new regulations for students for whom English is not their native language, and who are enrolled in a program taught in their native language.

Dear Colleague:

Since publication of these regulations, the Department has been made aware of difficulties that may be faced in the upcoming 2011-2012 award year by Spanish-speaking students enrolled in a program taught in Spanish because there is no Spanish language test currently approved by the Department for ATB determinations.

Under the current regulations in 34 C.F.R. 668.149, if there is no test reasonably available for students whose native language is not English, and who are not fluent in English, any test in the student's native language may be considered to be an approved examination as long as the test has not been rejected previously by the Department, the test measures basic verbal and quantitative skills at the secondary school level, and the passing scores and method of determining the passing scores are fully documented. The new regulations, effective July 1, 2011, require that students who are non-native speakers of English, and who are enrolled in a program taught in their native language, pass an independently administered examination that has been approved under §668.148(a)(1).

Because of the time necessary for test publishers to submit new ATB tests for approval by the Department under the new regulations, and for the Department to evaluate those submissions, we do not expect there to be an approved Spanish-language test by July 1, 2011, the effective date of the new regulations. This is a unique situation during this period of transition to the new regulations. As Spanish-language tests are submitted for approval, the Department will take action to review them and render approval decisions within a reasonable period of time after the July 1, 2011, effective date. Until a Spanish-language test is approved, the Department will not enforce the new regulatory provision in §668.148(a)(1), and institutions may continue to use tests that would satisfy the standard in the current regulation to assess the ability-to-benefit of Spanish-speaking students. If you have any questions, please contact Dan Klock at (202) 377-4026 or Dan.Klock@ed.gov, or Carney McCullough at (202) 502-7639 or Carney.McCullough@ed.gov.

Sincerely,

Eduardo M. Ochoa

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