



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

JAN 16 2009

The Honorable Pat Wright
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218

Dear Superintendent Wright:

Thank you for submitting Virginia's science assessment materials for a technical assistance peer review under the standards and assessment requirements of Title 1 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). I appreciate the efforts that were required to prepare for the review, which occurred on May 17-18, 2008. The review brought to the Department's attention Virginia's use of multiple EOC assessments in science for high school students. Specifically, Virginia offers earth science, biology, and chemistry EOC assessments and requires that all high school students pass at least one EOC science assessment to graduate without specifying which EOC assessment students must take.

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 Virginia's use of multiple EOC assessments thus prevents Virginia 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 Virginia'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.

Toward that end, the Department is entering into this flexibility agreement with Virginia 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 Virginia to continue its practice of allowing students to select one science EOC assessment from among three options (earth science, biology, or chemistry). 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 Virginia has demonstrated that it:

- (1) Requires all high school students in the state to take at least one of the three science courses for which an EOC assessment is offered (earth science, biology, or chemistry) and pass the EOC assessment associated with that course;

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- (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, Virginia has agreed to provide data in order to inform our understanding of the appropriate use of multiple EOC assessments in state standards and assessment systems. Virginia will work with the Department to provide the following information, as available:

- (1) Evidence that all EOC assessments 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 assessments, including how the EOC assessments align with state graduation requirements;
- (3) Evidence of enrollment patterns for earth science, biology, and chemistry during the 2005–06 through the 2007–08 school years, in aggregate and disaggregated by:
 - o Each major racial and ethnic group;
 - o Economically disadvantaged students;
 - o Students with disabilities;
 - o Limited English proficient students;
 - o Gender;
 - o Migrant status; and
 - o 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.

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

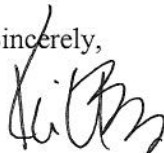
As required by section 9401(b)(3)(A) of the ESEA, within 30 days of the date of this letter, Virginia must provide all interested LEAs in the state with notice and a reasonable opportunity to comment on this flexibility agreement (ESEA section 9401(b)(3)(A)(i)), and must provide notice and information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

As you know, on December 18, 2007, the U.S. Department of Education (Department) fully approved Virginia's standards and assessment system, which included annual assessments in grades 3 through 8 and once in high school for reading/language arts and mathematics. Please note that, as stated above, this flexibility agreement waives only the requirements of sections 1111(b)(1)(B) and 1111(b)(3)(C)(i) of the ESEA and of 34 C.F.R. § 200.1(a)(1) with respect to Virginia's science standards and assessments. In order for Virginia's standards and assessment system to remain fully approved, Virginia must still submit, for the 2008–09 school year, additional evidence of its science standards and assessments demonstrating compliance with the other requirements of section 1111(b)(1) and (3) of the ESEA and its implementing

regulations, as listed in the enclosure to this letter. The next peer review is scheduled for March 23-27, 2009. Evidence for that review is due three weeks prior to the review.

I appreciate Virginia'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) or Abigail Rogers (Abigail.Rogers@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, Ph.D.

Enclosure

cc: Governor Tim Kaine
Shelly Loving-Ryder

SUMMARY OF ADDITIONAL EVIDENCE THAT VIRGINIA MUST SUBMIT TO MEET ESEA REQUIREMENTS FOR SCIENCE STANDARDS AND ASSESSMENTS

2.0 – ACADEMIC ACHIEVEMENT STANDARDS

1. Report, for 2007-08, of the number and percent of students with disabilities assessed in science on alternate assessments based on alternate achievement standards (VAAP), alternate assessments based on grade-level standards (VGLA and VSEP), and those included in the regular SOL science assessments with and without accommodations.

4.0 – TECHNICAL QUALITY

1. Documentation for VAAP validity and VGLA validity must be expanded to include test score correlations to internal or external variables.
2. Science SOL test score and high school EOC science subject-score reliability estimates for the economically disadvantaged subgroup.
3. Documentation for science VGLA and science VAAP consistency including reliability estimates, SEM and evidence of generalizability.
4. Evidence that accommodated science SOL test administration conditions (e.g., read aloud and audiotape accommodations) for limited English proficient (LEP) students and students with disabilities (SWD) allow for valid inferences about students' knowledge and skills, which can be combined meaningfully with scores from non-accommodated administration conditions.

5.0 – ALIGNMENT

1. Science SOL tests and science VGLA alignment studies, including evidence that science assessments measure higher-order thinking skills and student understanding of challenging content, and a plan to address the results.

6.0 – INCLUSION

1. 2007-08 science assessment reports confirming that all students, including LEP students, in grade 5 are included in the assessment system.

7.0 – REPORTING

1. Science EOC, SOL, VAAP, and VGLA parent reports including descriptors that describe what students know and can do at different performance levels.