

Dear Parents,

Attached are two communications from the U.S. Office of Education and the New Mexico Public Education Department. These two letters explain the commitment each state and district has made regarding testing students.

The letters further explain the consequences for states or individual districts that fail to meet the criteria of having 95% or more of their students participating in state mandated testing.

As part of the No Child Left Behind Act of 2001 (ESEA) these requirements will remain in place for the 2015–2016 school year, and similar requirements are included in the recently signed reauthorization of the ESEA, known as the Every Student Succeeds Act (ESSA).

These acts require that all students participate in testing with the exception of students with medical waivers or other extenuating circumstances.

It is important that you consider these mandates and that you review the attached communications from the NM Public Education Department and the US Department of Education.

Date: February 23, 2016 at 3:26:31 PM MST

Subject: APS 95% status

Dear Superintendent,

This email serves as an official notification that in the 2014-15 school year, your district did not meet the requirement that at least 95% of all students in all subgroups participate in the statewide assessment. Specifically, your district's participation rate was as follows:

Reading	Math
Did not meet – 93.3%	Did not meet – 94%

I have reattached the recent guidance from the United States Department of Education that was shared by Secretary Skandera on February 12. Because your district failed to meet the participation rate requirement in 2014-15, please submit to PED the action your district plans to undertake now and during the assessment window to ensure required participation rates are met. This request is aligned with the guidance released by the United States Department of Education, specifically:

“Requiring an LEA or school to develop an improvement plan, or take corrective actions to ensure that all students participate in the statewide assessments in the future, and providing the SEA’s process to review and monitor such plans.”

PED staff will review the proposed action by your district and monitor participation of students during the assessment window. Upon completion of the 2015-16 school year, PED will review participation rates and determine if further action is needed in alignment with the United States Department of Education guidance. Please submit your action plans to Lisa Chandler, Director of Assessment, Accountability, and Evaluation at Lisa.Chandler@state.nm.us.

Should you have questions or need assistance, please contact Lisa as well.

Sincerely,
Leighann

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

DEC 2 2 2015

Dear Chief State School Officer:

Before the spring 2016 test administration, I would like to take this opportunity to remind you of key assessment requirements that exist under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA). These requirements will remain in place for the 2015–2016 school year, and similar requirements are included in the recently signed reauthorization of the ESEA, known as the Every Student Succeeds Act (ESSA).

A high-quality, annual statewide assessment system that includes all students is essential to provide local leaders, educators, and parents with the information they need to identify the resources and supports that are necessary to help every student succeed in school and in a career. Such a system also highlights the need for continued work toward equity and closing achievement gaps among subgroups of historically underserved students by holding all students to the same high expectations.

Section 1111(b)(3)¹ of the ESEA requires each State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality academic assessments that includes, at a minimum, assessments in mathematics and reading/language arts administered in each of grades 3 through 8 and not less than once during grades 10 through 12; and in science not less than once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. Furthermore, ESEA sections 1111(b)(3)(C)(i) and (ix)(I) require State assessments to “be the same academic assessments used to measure the achievement of *all* children” and “provide for the participation in such assessments of *all* students” (emphasis added). These requirements do not allow students to be excluded from statewide assessments. Rather, they set out the legal rule that all students in the tested grades must be assessed.

In applying for funds under Title I, Part A of the ESEA, your State assured that it would administer the Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9304(a)(1)). Similarly, each LEA that receives Title I, Part A funds in your State assured that it would administer its Title I, Part A program in accordance with all applicable statutes and regulations (*see* ESEA section 9306(a)(1)). Please note that the portions of the ESEA referenced above have not been waived for States, including States that received ESEA flexibility.

Over the last several months, many States have released 2014–2015 State assessment data. A few States did not assess at least 95 percent of students in the “all students” group or individual ESEA subgroup(s)

¹ Please note that all statutory citations in this letter refer to the Elementary and Secondary Education Act of 1965, as amended in 2001 by the No Child Left Behind Act. This law remains in effect during the remainder of the 2015-2016 school year and the requirements discussed in this letter continue under the ESSA.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

statewide. Additionally, in some states, LEAs within some States did not assess at least 95 percent of their students. ED has asked each of these States to submit information on the steps it is taking to immediately address this problem and meet its assessment obligations under the ESEA. Each SEA was provided 30 days to submit its response to the Office of State Support (OSS), and ED is currently reviewing information submitted by these SEAs. As additional States release assessment results, ED will request such information if the State or its LEAs do not assess at least 95 percent of their students. If a State’s response does not adequately address this problem and meet the State’s assessment obligations under the ESEA, ED may take enforcement action.

In each request for information, the SEA was asked to demonstrate that it has taken or will take appropriate actions to enforce the requirements of the ESEA, describe how such actions will specifically address the problem that occurred in 2014–2015, and ensure that all students will participate in statewide assessments during the 2015–2016 school year and each year thereafter, recognizing that the extent of the non-participation and other relevant factors should inform the SEA’s actions. Some examples of actions an SEA could take, alone or in combination, include:

- Lowering an LEA’s or school’s rating in the State’s accountability system or amending the system to flag an LEA or school with a low participation rate.
- Counting non-participants as non-proficient in accountability determinations.
- Requiring an LEA or school to develop an improvement plan, or take corrective actions to ensure that all students participate in the statewide assessments in the future, and providing the SEA’s process to review and monitor such plans.
- Requiring an LEA or school to implement additional interventions aligned with the reason for low student participation, even if the State’s accountability system does not officially designate schools for such interventions.
- Designating an LEA or school as “high risk,” or a comparable status under the State’s laws and regulations, with a clear explanation for the implications of such a designation.
- Withholding or directing use of State aid and/or funding flexibility.

Please
Note

In addition, an SEA has a range of other enforcement actions at its disposal with respect to noncompliance by an LEA, including placing a condition on an LEA’s Title I, Part A grant or withholding an LEA’s Title I, Part A funds (*see, e.g.,* section 440 of the General Education Provisions Act).

If a State with participation rates below 95% in the 2014–2015 school year fails to assess at least 95% of its students on the statewide assessment in the 2015–2016 school year, ED will take one or more of the following actions: (1) withhold Title I, Part A State administrative funds; (2) place the State’s Title I, Part A grant on high-risk status and direct the State to use a portion of its Title I State administrative funds to address low participation rates; or (3) withhold or redirect Title VI State assessment funds.

For all States, ED will consider the appropriate action to take for any State that does not assess at least 95 percent of its students in the 2015–2016 school year — overall and for each subgroup of students and among its LEAs. To determine what action is most appropriate, ED will consider SEA and LEA participation rate data for the 2015–2016 school year, as well as action the SEA has taken with respect to any LEA noncompliance with the assessment requirements of the ESEA.

We look forward to working with you to ensure that all students participate in statewide assessments during the 2015–2016 school year and each year thereafter, and in supporting implementation of the

Every Student Succeeds Act, which includes a new focus on auditing and reducing unnecessary State and local assessments and providing parents and families with better information about required testing. Additionally, States may find other useful information regarding assessments in the [Administration's Testing Action Plan](#), released in October 2015. As the Plan describes in greater detail, all tests should be worth taking, offer students an opportunity to learn while they take them, and allow them to apply real-world skills to meaningful problems. Tests must accommodate the needs of all students and measure student success in a fair, valid, and reliable way. In the coming months, ED will release additional resources and guidance to support your efforts to eliminate duplicative local or State assessments and continue to develop new and innovative approaches to using assessments effectively to support and inform classroom instruction.

Please do not hesitate to contact your State's program officer in the Office of State Support if you need additional information or clarification. Thank you for your continued commitment to enhancing education for all of your State's students.

Sincerely,

/s/

Ann Whalen
Delegated the authority to perform the functions
and duties of Assistant Secretary for Elementary
and Secondary Education

cc: State Title I Directors
State Assessment Directors