

# ESSA Cheat Sheet: What's in the New Testing Regulations?

By [Alyson Klein](#) on April 21, 2016 9:43 AM

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School districts, state chiefs, advocates, and the U.S. Department of Education now have a better idea of how testing will work under the brand-new **Every Student Succeeds Act**. And it only took eight days of eye-glazing-and-occasionally-contentious debate, known inside the Beltway as "negotiated rulemaking."

A committee of educators, advocates, and experts charged with hashing out rules for ESSA wasn't able to reach agreement on something called **supplement-not-supplant** (a wonky spending provision), but they did come to accord on a number of important testing issues, including for English-language learners, and students in special education.

**Here are the highlights of what they agreed to, in plain English:**

## How Testing Is Supposed to Work in General

- States have to test students in grades 3 through 8 and once in high school, in math and reading, plus science in certain grade spans. If they want to test in other subjects, that's fine, as long as those tests are aligned to state-level academic standards.
- States have to report results separately for boys, girls, English-language learners, students in special education status, different racial groups, poor kids, homeless kids, foster kids, and military-connected kids. Those last three categories are brand new in ESSA. The regs define what it means to be a child in foster care, including any one in a foster home, group home, residential facility, pre-adoptive home, or emergency shelter.
- All students in the state have to take the same test in each grade, with a couple of exceptions. Those exceptions include districts participating in a local assessment pilot (up to seven states can apply for that) and in districts that choose to use a nationally recognized high school test instead of the state exam. (More on that below). Also, 8th graders who are taking advanced math classes—like Algebra or Geometry—can take a test at their level, instead of the regular state math test for 8th graders. (More below on that, too.)

- Tests have to be accessible to English-language learners and students in special education. So if they need accommodations, like extra time, they should get it. And tests should be aligned to standards that get kids ready for postsecondary education or the workplace.
- Tests don't have to be the fill-in-the-bubble tests everyone complains about. States can **include portfolios or big performance tasks as part of the picture**. And the tests don't have to be one big, summative test at the end of the year; they can be smaller interim assessments.

**Hotly debated?** Nah. Most of these provisions didn't elicit a ton of discussion during the negotiations. That's because they basically reiterate what's already in ESSA.

### **Computer-Adaptive Tests**

States can use these if they want in lieu of regular-old pen-and-paper tests. And the tests can include questions that are at or below a students' grade level, so schools can see how kids are growing academically. But the computer-adaptive tests also have to show whether or not a student is on grade level, for the grade they are actually enrolled in.

**Hotly debated?** Nope. This issue was probably the easiest one to negotiate.

### **Locally Selected, Nationally Recognized High School Tests**

ESSA includes a new twist on high school tests. Districts can use a locally-selected, nationally recognized high school test instead of the state exam, if they want to, as long as the state gives the OK.

**So what exactly is a nationally recognized test?** According to the new regs, it's any test for high school students that is administered in multiple states and is accepted by institutions of higher education in those or other states for college entrance or placement. That means SAT, ACT, PARCC, and Smarter Balanced count. And it would seem that Advanced Placement and International Baccalaureate are also kosher. NAEP, on the other hand, is almost certainly out because it's not a college or placement test. Importantly, these tests will still have to meet the standards of the federal peer review process.

**How do these tests get phased in?** The new regulations make it clear that if a district chooses to offer an alternative test, it has to use the same test with all its high schools. And it can't phase the new test in slowly. It's all at once or nothing. That's true whether the district is New York City Public Schools, which has over 500 high schools, or Farmingdale Public Schools

on Long Island, which has just one high school.

**Also:** ELLs and students in special education need to get the accommodations they need to take these tests, and the school district is responsible for making sure that happens.

And, importantly, ELLs and students in special education have to get the same benefits from taking the tests that other kids do. So if the test the district chooses is a college entrance test, like the SAT, all groups of kids need to be able to use it for college entrance, even if they use accommodations to take it. This has been a struggle for the ACT and SAT. [More in this great story from my colleague, Catherine.](#)

Districts can't just suddenly switch tests. Before they request the switch, they have to give parents a chance to provide input and explain to them how instruction might change. And if charters are going to be effected by the switch, the district needs to get their input. Plus, once a new test is adopted, the district has to let parents know.

Charters that count as school districts can take advantage of this option, too. But they still have to abide by state charter laws. So if the state law says charters have to give the same test as the neighboring high schools, they have to stick with that test.

**Hotly debated?** It wasn't the most contentious part of negotiations, but it wasn't all puppies and kittens, either. The toughest issues were the definition of "nationally recognized test" and the question of whether districts could phase those tests in. Derrick Chau of the Los Angeles school board pushed for the phase-in, but got shot down by other negotiators, including the Education Department, which really put its foot down.

### **Advanced Math Test Exception**

Under ESSA, students who are taking advanced math courses in 8th grade, like say, Geometry, can take a math test on their own level, instead of the typical state test for 8th graders. In order to get this flexibility, though, states need to provide appropriate accommodations for students in special education and ELLs.

And in plans submitted to the department, states have to describe their strategy to provide all kids in the state with the opportunity to take and be ready for advanced middle school math. Essentially, states have to have a game plan, at least on paper, for giving every kid the opportunity to take the tougher math classes early.

**Hotly debated?** Sorta, it elicited more discussion than you might expect. The department

originally had stronger language, saying the state had to ensure all kids could take advanced math. Practitioners on the panel, especially the state chief and district leaders, convinced the rest of the negotiators that was a pretty heavy burden, and states might opt not to offer the advanced math test because of it. So the language was toned down.

## Testing Students in Special Education

**What ESSA says:** States can opt to **offer alternative tests to the 1 percent of students with the most severe cognitive disabilities**, or about 10 percent of students in special education, just like they could under the most recent regulations under the No Child Left Behind Act, which ESSA replaced. The 1 percent cap applies at the state level, but not at the district level. And states can ask for a waiver to exceed it. At one point, under NCLB, an additional 2 percent of students who had trouble meeting state standards could take alternate tests, but that exception was scrapped years ago. Still, most states are still struggling to get to below 1 percent, according to data distributed by the department.

**What the regs say:** The regulations attach a lot of new requirements for states here.

- **On those waivers from the 1 percent cap:** Waivers can only be given for one year at a time. And states have to provide data showing the number of kids in each subgroup that last year took, or are now slated to take, alternative tests. (That way advocates can see if, say, racial minorities are being disproportionately held to different standards.) The state also has to show that 95 percent of kids in special education, and 95 percent of all kids took tests. And states have to help districts that go over the cap, and make sure those districts are training school staff, especially IEP teams, appropriately when it comes to who has a severe cognitive disability and who doesn't. **Bottomline:** It looks like it could be very hard for many states to get the 1 percent cap waived, even for just one year.
- **Definition of "severe cognitive disability":** The feds don't get to define this, but states must. And they have to take into consideration both students' cognitive ability (academic potential) and their adaptive behavior (how well they handle being in school). Schools can't just look at low grades and decide, that yep, that kid has a severe cognitive disability.

**Hotly debated?** Very! This issue almost prevented an agreement on assessments. The biggest sticking points were those lists of requirements to get a waiver from the 1 percent cap—it's obviously going to be really hard for many states—and whether there should be one enforceable definition of "severe cognitive disabilities."

# Testing for English-Language Learners

States need to make every effort to provide students with tests in languages a significant number of students speak. Right now, very few states offer these tests. In deciding what languages to offer tests in, states should consider which languages are spoken by a significant number of kids in one or more districts, according to the new regs. And, importantly, they have to include the second-most common language spoken by students in the state, other than English.

Students who are in Native American language immersion programs can take an assessment in their ancestral tongue for accountability purposes, as long as that test has gone through the department's rigorous peer review process.

Under ESSA, states must include **progress towards English-language proficiency** as a factor for accountability. To measure that, states must create or pick a statewide assessment of English-language proficiency that includes reading, writing, speaking, and listening skills.

**Hotly debated?** Not really. This topic generated passionate discussion, but agreement was fairly easy.

**Are these regs finished?** Not exactly. They are technically tentative, but it's mostly spit and polish at this point. They will still need to be published in the Federal Register and commented on. They can still be tweaked before they are final.

**Negotiators, department officials, advocates, eduwonks, anyone else who slogged through eight days of listening to phrases like "romanette three"**—got something to add or tweak here? Email me at [aklein@epe.org](mailto:aklein@epe.org). We will flag any major changes to this explainer. **(UPDATE:** There have already been a few minor tweaks.)