



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Randall I. Dorn  
Superintendent of Public Instruction  
Washington Department of Public Instruction  
Old Capitol Building  
600 Washington St. SE  
Olympia, WA 98504

Dear Superintendent Dorn:

I am writing to follow up on a discussion that members of my staff had with your staff regarding participation on your State assessments during the 2014–2015 school year. Based on the information Washington recently released, the U.S. Department of Education (ED) is concerned that Washington's participation rate did not meet requirements of the Elementary and Secondary Education Act of 1965, as amended (ESEA). I am asking for information about how Washington is addressing this problem.

Please let me emphasize the importance of a high-quality, annual Statewide assessment system that includes all students so that local leaders and educators have the information they need to help every student succeed and ensure equity by holding all students to the same high expectations. Such an assessment system provides information on *all* students so that educators, with the support of parents, can keep students on track for success in school and life, provide extra support to the students who are behind, and close achievement gaps among subgroups of historically underserved students.

Section 1111(b)(3) 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)(D) 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 rule that *all* students in the tested grades must be assessed. To the extent the statute permits flexibility, an LEA or school may be designated as making adequate yearly progress if it assesses at least 95 percent of its students. (ESEA section 1111(b)(2)(i)(ii)).

If an SEA fails to comply with the assessment requirements in the ESEA, ED has a range of enforcement actions at its disposal. These include sending a written request to the SEA that it come into compliance, increasing monitoring, placing a condition on the SEA's Title I, Part A grant award, placing the SEA on high-risk status, issuing a cease and desist order, entering into a compliance agreement with

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the SEA to secure compliance, withholding all or a portion of the SEA's Title I, Part A administrative funds, and suspending, and then withholding, all or a portion of the State's Title I, Part A programmatic funds.

An SEA has similar enforcement actions available to it with respect to noncompliance by an LEA, including withholding an LEA's Title I, Part A funds. *See, e.g.*, section 440 of the General Education Provisions Act. In addition, the SEA or LEA could find itself out of compliance with a wide range of additional Federal programs that rely on Statewide assessment results, putting additional funds at risk. These additional programs include those targeting students most at risk including, but not limited to: the School Improvement Grants (SIG) program; ESEA Title III: Part B of the Individuals with Disabilities Education Act (IDEA); programs for rural schools under ESEA Title VI; migrant education under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

In applying for funds under Title I, Part A of the ESEA, Washington 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 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)).

Washington has publically released participation rate data indicating that, for the 2014–2015 school year: (1) the “all students” group [or individual ESEA subgroup(s)] at the State level did not assess at least 95 percent of its students in mathematics and/or reading/language arts and/or, (2) at least one LEA did not assess at least 95 of all students in mathematics and/or reading/language arts. I am writing to request information about the actions the SEA is taking to meet its assessment obligations under the ESEA.

In its response, the SEA should demonstrate that it has taken or will take appropriate actions to enforce the requirements of the ESEA and describe how such actions will specifically address the problem that occurred in 2014–2015 and ensure that all students participate in Statewide assessments during the 2015–2016 school year and each year thereafter. Depending on the extent of the non-participation and other relevant factors, examples of such actions could include some combination of:

- 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 plan to review and monitor such plans.
- Requiring an LEA or school to implement additional interventions aligned with the reason for inadequate 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 clear explanations for the implications of such a designation.
- Withholding or directing use of State aid and/or funding flexibility.

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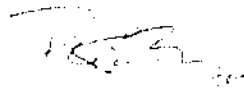
Washington must submit its response to Diane Bragdon at: [OSS.Washington@ed.gov](mailto:OSS.Washington@ed.gov) no later than December 2, 2015. Please note that there may be additional follow up depending on the quality of the plan and its implementation during the 2015–2016 school year.

I 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.

If you need additional information or clarification, please do not hesitate to contact Diane Bragdon or Ashlee Schmidt of my staff at: [OSS.Washington@ed.gov](mailto:OSS.Washington@ed.gov).

Thank you for your continued commitment to enhancing education for all of Washington's students.

Sincerely,



Monique M. Chism, Ph.D.  
Director  
Office of State Support

cc: Gayle Pauley, Assistant Superintendent, Special Programs and Federal Accountability



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**SUPERINTENDENT OF PUBLIC INSTRUCTION**

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Randy I. Dorn Old Capitol Building PO BOX 47200 Olympia, WA 98504-7200 · <http://www.k12.wa.us>

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December 2, 2015

Monique M. Chism  
Director, Office of State Support  
United States Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

Dear Director Chism:

This letter is in response to your request for information concerning the actions that the Office of Superintendent of Public Education (OSPI) has taken and will take to meet the 95 percent participation rate assessment obligation required in the Elementary and Secondary Education Act (ESEA).

The following actions must be implemented by districts and schools that had less than 95 percent of their students participating in the State's spring 2015 assessments:

1. State, district, and school assessment participation rates have been calculated and have been posted on the Washington State Report Card website. (<http://reportcard.ospi.k12.wa.us/summary.aspx?groupLevel=District&schoolid=1&reportLevel=State&year=2014-15>)

This information was distributed to all districts and schools through OSPI's website. All parent and community members must be notified and have access to this site.

2. Districts and schools with less than 95 percent assessment participation rate are not eligible for any of the State and/or ESEA Title Program awards. The state has removed any district or school that did not have 95 percent participation from receiving any type of recognition award. Awards impacted include: the Washington State Board of Education (WA Achievement Awards and English Language Acquisition Awards); and the Title I, Part A Distinguished Schools Awards.
3. Districts and schools that fall below the 95 percent assessment participation rate in one or more of the state-administered English language arts or Mathematics assessments are required to address the low participation rates as part of their District and/or School Improvement Plan. The plan must address the causes of the low participation rate and the actions the district and/or schools will take in response to the low participation rate.

Participation rates were provided to all districts and schools, as well as the requirements to address the reasons why the participation did not meet the requirement and to identify steps that will be taken to ensure this does not occur in the spring 2016 test period. The District and School Improvement Plans will be reviewed by OSPI staff in 2015–16 Consolidated Program Reviews. If the plans do not significantly address the issue, the districts will receive a compliance finding and will be required to work with OSPI staff to institute compliance.

4. OSPI's Office of Student and School Success require any district with a Priority or Focus school to address the issue of low participation rate in the school's Indistar Plan and will review these plans through the Consolidated Program Review process. If the Indistar plans do not significantly address the issue, the districts will receive a compliance finding and will be required to work with OSPI staff to institute compliance.
5. OSPI's Assessment and Student Information office will continue to provide information to low assessment participation rate schools and districts to share with their communities regarding the state assessments, which include information on the ESEA and State assessment requirements and how the results are used to determine impact on student success outcomes. OSPI's Assessment and Student Information office provides assessment information consistently across the school year. The information is provided to districts, schools and their communities on OSPI's website.  
(<http://www.k12.wa.us/assessment/StateTesting/default.aspx>)

In addition, OSPI has an assessment coordinator in each district. Information on the State's assessment system is provided to them monthly and will continue throughout the school year to focus on the federal participation rate requirement.  
(<http://www.k12.wa.us/TestAdministration/default.aspx>)

If you have any questions or need further clarification, please contact Gayle Pauley, Assistant Superintendent for Special Programs and Federal Accountability, at [gayle.pauley@k12.wa.us](mailto:gayle.pauley@k12.wa.us) or at 360-725-6170.

Sincerely,



Gayle Pauley  
Assistant Superintendent  
Special Programs and Federal Accountability



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OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Randall I. Dorn  
Superintendent of Public Instruction  
Washington Department of Public Instruction  
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600 Washington Street SE  
Olympia, WA 98504

Dear Secretary Dorn:

I am writing in regards to the plan the Washington Office of the Superintendent of Public Instruction (OSPI) submitted to the U.S. Department of Education (ED) on December 2, 2015, in response to the letter I sent to you regarding participation on your State assessments during the 2014–2015 school year. The Elementary and Secondary Education Act of 1965, as amended (ESEA) by both the No Child Left Behind Act of 2001 and the Every Student Succeeds Act, requires States to assess all students in mathematics and reading/language arts annually in grades 3 through 8 and at least once in high school.

Based on the information Washington released, ED was concerned that Washington did not assess all students, and therefore did not meet requirements of the ESEA. ED requested Washington provide our office with information to demonstrate that it has taken or will take appropriate actions to enforce the requirements of the ESEA. Specifically, Washington was to describe how such actions will address the problem that occurred in the 2014–2015 school year and ensure that all students participate in Statewide assessments during the 2015–2016 school year and each year thereafter.

Washington submitted sufficient information to address ED's request. Washington reported that it is transitioning from its previous high school test, which is a graduation requirement in the State to Smarter Balanced, which is a graduation requirement for the class of 2019. As a result, many eleventh graders took the test they needed to pass to graduate. In addition, many tenth graders took Smarter Balanced, which, if passed, can be used for the graduation requirement. Washington anticipates that when it fully transitions to using the Smarter Balanced assessment as a graduation requirement (for the Class of 2019), rather than Washington's legacy assessments, this issue should be alleviated. The low participation rate in high school likely is to be resolved by spring 2018, when the Class of 2019 is in 11th grade, if not before.

In addition, Washington noted that its higher education partners have embraced the new State assessments in establishing a Memorandum of Understanding regarding the use of high school students' Smarter Balanced test scores. Colleges throughout Washington are using Smarter Balanced test scores as evidence that students are ready for college-level work. All thirty-four of Washington's public community and technical colleges, all six public baccalaureate institutions, and nine private independent colleges have agreed to consider Smarter Balanced test scores when deciding whether or not students

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need to take pre-college (remedial) courses. High school graduates who meet certain requirements can skip college placement tests and pre-college (remedial) courses, and enroll directly into entry-level college courses. This commitment by Washington's higher education partners will contribute to students' view of the Statewide tests as important to their planning for college enrollment and should have a positive effect on assessment participation rates in Washington's high schools.

Washington also reported that it has taken a strong stand on cases of parental refusal/opt-out of Statewide assessments by calling these instances "test refusal" and has increased public relations efforts to help parents understand the value and uses of these assessments. OSPI will continue to provide information to low assessment participation rate schools and districts to share with their communities regarding the state assessments, which include information on the ESEA and State assessment requirements, and how the results are used to determine impact on student success outcomes.

OSPI will require local educational agencies (LEAs) and schools that fall below the 95 percent assessment participation rate target in one or more of the State-administered reading/language arts or mathematics assessments to address the low participation rates as part of their LEA or School Improvement Plan. The plan must address the causes of the low participation rate and the actions the LEA or school will take in response to the low participation rate. Furthermore, LEAs and schools with participation rates less than 95 percent are not eligible for any of the State or ESEA Title Program awards or recognitions, including the WA Achievement Awards, English Language Acquisition Awards, and Title I, Part A Distinguished Schools Awards. OSPI's Office of Student and School Success will require any LEA with a Priority or Focus school with a participation rate less than 95 percent to address the issue in the school's Indistar Plan and will review these plans through the Consolidated Program Review process. If the Indistar plan does not significantly address the issue, the LEA will receive a compliance finding and will be required to work with OSPI staff to institute compliance. In addition, OSPI will continue to provide monthly information to each LEA's assessment coordinator and these coordinators will continue to focus on the participation rate requirement.

Please let me emphasize again the importance of a high-quality, annual Statewide assessment system that includes all students so that local leaders and educators have the information they need to help every student succeed and ensure equity by holding all students to the same high expectations. Such an assessment system provides information on *all* students so that educators, with the support of parents, can keep students on track for success in school and life, provide extra support to the students who are behind, and close achievement gaps among subgroups of historically underserved students.

ED will continue to monitor whether Washington is taking appropriate actions to enforce the requirements of the ESEA. As noted in the December 22, 2015, letter to chief State school officers from Ann Whalen, delegated the authority to perform the functions and duties of the Assistant Secretary for Elementary and Secondary Education, if a State with participation rates below 95 percent in the 2014–2015 school year fails to assess at least 95 percent 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. 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 actions that the SEA has taken with respect to any LEA noncompliance with the assessment requirements of the ESEA.

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I look forward to working with you to ensure that all students participate in Statewide assessments during 2015–2016 school year and each year thereafter. If you need additional information or clarification, please do not hesitate to contact Diane Bragdon or Ashlee Schmidt of my staff at: [OSS.Washington@ed.gov](mailto:OSS.Washington@ed.gov).

Thank you for your continued commitment to enhancing education for all of Washington's students.

Sincerely,

Patrick Rooney  
Acting Director  
Office of State Support

cc: Gayle Pauley, Assistant Superintendent, Special Programs and Federal Accountability  
Michael Merrin, Assistant Superintendent, Student and School Success  
Robin Munson, Assistant Superintendent, Assessment and Student Information