



COMMONWEALTH of VIRGINIA

Steven R. Staples, Ed.D.
Superintendent of Public Instruction

DEPARTMENT OF EDUCATION
P.O. BOX 2120
Richmond, Virginia 23218-2120

Office: (804) 225-2023
Fax: (804) 371-2099

September 9, 2016

Ms. Meredith Miller
U.S. Department of Education
400 Maryland Avenue, SW, Room 3W107
Washington, DC 20202-2800

Docket ID: ED-2016-OESE-0053

Dear Ms. Miller:

This letter is written in response to the request for public comment on the proposed regulations for academic assessments under the *Every Student Succeeds Act of 2015* (ESSA). Many of the proposed rules clarify the statute, and as such will be helpful to states when implementing ESSA. The proposed regulation that is of concern to Virginia outlines requirements and procedures relating to the “1 percent cap.”

ESSA limits the total number of students with the most significant cognitive disabilities to whom the state may administer an alternate assessment aligned with alternate academic achievement standards in each assessed subject area to 1 percent of the total student population. The proposed rules explain that a state must not prohibit an LEA from assessing more than 1 percent of students with the alternate assessment; however, LEAs must justify the need to assess more than 1 percent of students using the alternate assessment. States that anticipate exceeding the 1 percent cap at the state level may submit a waiver request to waive the cap for the applicable subject area for one year. States that demonstrate substantial progress towards achieving the prior year’s plan components and timeline may request the waiver for a second year. A state’s waiver request must be submitted 90 days prior to the start of the state’s first testing window.

Virginia recommends that the regulations be revised to reflect more reasonable state waiver eligibility guidelines and a manageable timeline for waiver submission. While it is reasonable to expect states to provide appropriate information and assurances in waiver requests to exceed the 1 percent cap, states’ eligibility to be granted waiver requests should not be limited to one or two years. The requirement to demonstrate substantial progress towards achieving the

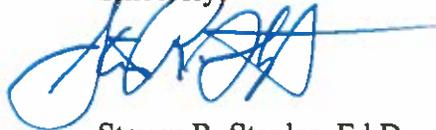
Ms. Meredith Miller
September 9, 2016
Page Two

prior year's plan components in order to be eligible to receive a waiver in the second year is not defined in the proposed regulations and is open to subjective interpretation. Virginia suggests that the requirement to demonstrate "substantial progress" be removed, and that instead a state that makes any measurable amount of progress towards achieving plan components be deemed eligible to receive a waiver in subsequent years.

The requirement to submit waiver requests 90 days prior to the start of the state's first testing window is problematic. Many states offer multiple testing windows (summer, fall, and spring) that begin at various times throughout the school year. In Virginia, the first testing window for spring student assessments typically begins in April. Requiring waiver requests 90 days prior to the start of this window would mean that assessment decisions would have to be made and documented in Individualized Education Programs (IEPs) very early in the school year. Virginia recommends adjusting the timeline for waiver requests from 90 days to 30 days prior to the start of the state's main testing window.

In closing, Virginia urges the U.S. Department of Education (USED) to adjust requirements and procedures related to waiving the 1 percent cap for states. States that demonstrate progress towards achieving plan components should be eligible to receive a waiver in subsequent years. Waiver requests should be accepted for consideration up to 30 days, not 90 days, prior to the start of the state's main testing window. Thank you for your consideration of these recommendations.

Sincerely,



Steven R. Staples, Ed.D.
Superintendent of Public Instruction

SRS/SLR/lis