



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable William Beardsley  
Acting Commissioner of Education  
Maine Department of Education  
23 State House Station  
Augusta, ME 04333

NOV 6 2015

Dear Acting Commissioner Beardsley:

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 Maine recently released, the U.S. Department of Education (ED) is concerned that Maine's participation rate did not meet requirements of the Elementary and Secondary Education Act of 1965, as amended (ESEA); thus, I am asking for information about how Maine 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)(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 rule that *all* students in the tested grades must be assessed. To the extent that 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 or its ESEA flexibility request, placing the SEA on high-risk status, issuing a cease and desist order, entering into a compliance agreement with the SEA to secure compliance, withholding all or a portion of the

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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, Maine 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)).

Maine has publicly released participation rate data indicating that, for the 2014–2015 school year: (1) the State level did not assess at least 95 percent of its students in the “all students” group in mathematics and reading/language arts; and (2) at least a few LEAs did not assess at least 95 percent of all students in mathematics 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.
- If the State has received ESEA flexibility, identifying a school that misses participation rate targets over multiple years as a priority or focus school.
- 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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Maine must submit its response to Tawanda Avery of my staff at: [OSS.Maine@ed.gov](mailto:OSS.Maine@ed.gov) no later than December 6, 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.

Please do not hesitate to contact Collette Roney or Tawanda Avery of my staff at: [OSS.Maine@ed.gov](mailto:OSS.Maine@ed.gov) if you need additional information or clarification. Thank you for your continued commitment to enhancing education for all of Maine's students.

Sincerely,

A handwritten signature in black ink, appearing to read "Monique M. Chism" with a small "for" written below it.

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

cc: Rochelle Tome, Chief Academic Officer



STATE OF MAINE  
DEPARTMENT OF EDUCATION  
23 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0023

PAUL R. LEPAGE  
GOVERNOR

WILLIAM H. BEARDSLEY  
ACTING COMMISSIONER

Monique M. Chism, Ph.D  
Director, Office of State Support  
Attn: Tawanda Avery  
U.S. Department of Education  
400 Maryland Ave, SW  
Washington, DC 20202

Dear Dr. Chism,

I am writing to provide the necessary information about the actions the Maine Department of Education (the Department) is taking to meet its assessment obligations under regulations of the Elementary Secondary Education Act (ESEA).

Maine shared with members from the Office of State Support during a recent telephone conference that Maine experienced a decline in state assessment participation that the Department attributes to the following:

- Legislative action to require withdrawal from the Smarter Balanced Assessment Consortium  
The Education and Cultural Affairs Legislative Committee voted to support a bill requiring the discontinuation of participation in the Smarter Balanced Assessment Consortium (SBAC) which led to Maine withdrawing from the consortium in the middle of the spring testing window. Districts reported that many parents opted their student out from the state assessment as a direct result.
- SAT test provisions  
Spring 2015 was the first year of implementation for the Smarter Balanced assessment for students in the 3<sup>rd</sup> year of high school. Maine Department of Education provided the SAT as an optional college readiness indicator during the transition. Many Maine parents were under the assumption that participation in the SAT constituted participation in the state assessment as it had done in the past and therefore did not ensure their student's participation in the new state assessment from Smarter Balanced. Other parents felt that between the SAT and SBAC assessment students were being over tested and opted for participation in one of the assessments, that being the SAT.
- High School participation rates  
As a result of parent confusion around SAT and Smarter Balanced assessment participation as noted above, the higher opt out rate from the state assessment at the high school level negatively impacted the overall state assessment participation rate. When the state assessment data is disaggregated between elementary and secondary education, it is clearly visible high school participation was significantly lower than in previous years and had a detrimental effect on overall participation rates.

A perceived cascade of testing created a new anti-testing population comprised of high achieving students and parents who found testing did nothing to enrich or increase their academic experience and college application process. The Department believes its new testing contract will greatly streamline the process without lowering quality and we will promote this better approach as soon as this contract is confirmed.

The Maine Department of Education has implemented the following:

- FY16 NCLB Consolidated Application: District Assurances  
As part of the annual assurances certification, districts agree to ensure that ALL students from ALL public schools will participate in the required Title I state assessments. The district is required to submit additional documentation if the following occur:
  - If participation rates are 95% or greater, no additional action is required;

- If participation rates are between 76-95% the district should provide a narrative of how they communicated the importance of participation and their plan moving forward to increase the participation rate; and
- If participation rates are below 75% the district had to provide the above narrative in addition to uploading evidence of parent communication. This may include but is not limited to newsletters, letters from the principal/superintendent, and meeting agendas and minutes.
- Annual State Assessments-Implementation of SAT as the State Assessment for High School  
Maine Department of Education will implement the new SAT assessment as the state assessment for students in the 3<sup>rd</sup> year of high school during SY 2015-16. All 3<sup>rd</sup> year high school students, as they have prior to 2015, will be required to participate in the SAT. As participation in the SAT is a familiar requirement for parents of high school students, Maine does not anticipate any further opposition regarding participation.
- The Maine Department of Education has increased its awareness of low participation rates across the State and is taking a proactive stance in identifying districts that may have a low participation rate.
- The Maine Department of Education will increase communication with the field and the general public regarding the importance of participation in the State assessment and the consequences for continued low participation rates.

Upon the review of SY 2015-16 state assessment participation rate data decisions regarding any further actions will be determined.

Maine is anticipating the proactive steps combined with clear and concise communication from the Department regarding the new state assessment the participation rate in the state assessment will significantly increase during SY 2015-16.

Should you require any further information, please do not hesitate to contact me.

Sincerely,



William Beardsley  
Acting Commissioner  
Maine Department of Education

Cc: Rachelle Tome, Chief Academic Officer  
Charlene Tucker, Director of Assessment & Accountability  
Janette Kirk, ESEA Director – Title I



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FEB 12 2016

The Honorable William Beardsley  
Acting Commissioner of Education  
Maine Department of Education  
23 State House Station  
Augusta, ME 04333

Dear Acting Commissioner Beardsley:

I am writing in regards to the plan the Maine Department of Education (MDE) submitted to the U.S. Department of Education (ED) on November 6, 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 Maine released, ED was concerned that Maine did not assess all students, and therefore did not meet the requirements of the ESEA. ED requested Maine provide our office with information to demonstrate that it has taken or will take appropriate actions to enforce the requirements of the ESEA. Specifically, Maine was to describe how such actions will address the problem that occurred in 2014–2015 school year and ensure that all students participate in Statewide assessments during the 2015–2016 school year and each year thereafter.

Maine submitted sufficient information to address ED's request. MDE will require local educational agencies (LEAs) to include in their consolidated applications for FY 2016 ESEA funds assurances that require each LEA to agree to ensure that all students participate in assessments required under Title I. MDE indicated that an analysis showed low participation rates concentrated at the high school level, and that the State will change its high school assessments for 2015–2016 and future years. MDE indicated it will work to proactively identify LEAs with low participation rates and take steps to increase communication with the field and public regarding the importance of participation in State assessments and the consequences for continued low participation rates.

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 Maine 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,

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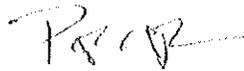
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Senior Advisor to the Secretary Delegated the Duties of Assistant Secretary for Elementary and Secondary Education, if a State with participation rates below 95 percent in the 2014–2015 school year fails to assess at least 95 percent of its students 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 State educational agency (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.

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 Collette Roney or Tawanda Avery of my staff at: [OSS.Maine@ed.gov](mailto:OSS.Maine@ed.gov).

Thank you for your continued commitment to enhancing education for all of Maine’s students.

Sincerely,



Patrick Rooney  
Acting Director  
Office of State Support

cc: Janette Kirk, ESEA Director, Title I