



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

Secretary of Education Arne Duncan
U.S. Department of Education
400 Maryland Avenue Southwest
Washington, DC 20202-0008

April 28, 2010

Dear Secretary Duncan,

We are writing to express our concerns regarding the Race to the Top (RTTT) Notice Inviting Applications (NIA) for Comprehensive Assessment Systems Grants published in the Federal Register Vol. 75, No. 68 on April 9, 2010. Specifically, our concerns pertain to the following:

1. The exclusion of students with disabilities who participate in state assessments via alternate assessment(s) on alternate academic achievement standards (AA-AAS) in the definition of students with disabilities for purposes of this grant program;
2. The lack of specificity regarding the development of alternate assessments on modified academic achievement standards (AA-MAS) under this grant program;
3. The lack of clarity regarding the use of out-of-level testing (OOLT) in summative assessment components required to be developed under this grant program.

We appreciate the USED's recognition that better assessments need to be developed and applaud the many important provisions in the NIA that will benefit students all students, including those with disabilities. Overall, we believe USED personnel listened to the concerns offered both in key meetings with USED and through our formal written comments submitted on December 1, 2009 (see RTTT Comments Attachment). Additionally, we appreciate the reference to universal design for learning (as defined in section 103(24) of the HEA) which will produce more accessible assessments and provide more meaningful results for all students. We also appreciate the amount of funding that is dedicated to assessment development through the RTTT assessment program and the General Supervision Enhancement Grants (GSEG) grants for AA-AAS.

We are writing about three major issues that need immediate attention within the context of the NIA. They are:

- 1. The exclusion of students with disabilities who participate in state assessments via alternate assessment(s) on alternate academic achievement standards (AA-AAS) in the definition of students with disabilities for purposes of this grant program.**

The NIA states that assessment systems developed with Comprehensive Assessment Systems grants must assess **all students**. However, the notice (at Page **18178**) defines “students with disabilities” as:

“Student with a disability means, for purposes of this competition, a student who has been identified as a student with a disability under the Individuals with Disabilities Education Act, as amended (IDEA), except for a student with a disability who is eligible to participate in alternate assessments based on alternate academic achievement standards consistent with 34 CFR 200.6(a)(2).”

This definition **systematically excludes** a segment of the student population from benefiting from the work to be conducted under this grant competition and sends a clear message that a “comprehensive assessment system” for U.S. public school children need not include all students with disabilities.

Responsibility for the excluded group falls instead to the Office of Special Education and Rehabilitative Services, (OSERS) as indicated by the statement found at Page **18173**:

“For students with the most significant cognitive disabilities, alternate assessments based on alternate academic achievement standards are critical components of a complete assessment system. It is the Department’s intent to support States in developing new alternate assessments based on alternate achievement standards, in coordination with this Race to the Top Assessment competition, through a separate competition that will be administered by the Department’s Office of Special Education and Rehabilitative Services; we intend to issue a notice inviting applications for this program later this year. “

OSERS’s has a statutory obligation to fund activities that promote academic achievement and improve results for children with disabilities through “improving the alignment, compatibility, and development of valid and reliable assessments and alternate assessments for assessing adequate yearly progress, as described under Section 1111 (b)(2)(B) of the Elementary and Secondary Education Act of 1065” (20 U.S.C. §1463 (b)(2)). A separate competition -- under the auspices of a separate office within USED for purposes of developing AA-AAS -- compromises the alignment critical to assessment systems based upon a common set of college and career ready standards.

Additional problems involving the exclusion of the development of AA-AAS arise from the requirements to aggregate data. The NIA indicates at Page 18178, footnote 14, that:

“Eligible applicants receiving funds under this competition must aggregate data using the student subgroups in section 1111(b)(3)(C)(xiii) of the ESEA (i.e., by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged, except that such aggregation is not required in a case in which the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student). When using the term “subgroup” throughout this notice, we mean these student subgroups.”

The NIA defines “data” as follows (at Page 18178):

Student achievement data means data regarding an individual student’s mastery of tested content standards. Student achievement data from summative assessment components must be reported in a way that can be reliably aggregated across multiple students at the subgroup, 14 classroom, school, LEA, and State levels.

Student growth data means data regarding the change in student achievement data (as defined in this notice) between two or more points in time. Student growth data from summative assessment components must be reported in a way that can be reliably aggregated across multiple students at the subgroup, classroom, school, LEA, and State levels and over a full academic year or course.

Excluding a segment of students with disabilities from the work of the grantees essentially guarantees that the performance data produced by the assessment systems designed under this competition will not include students with disabilities who are assessed using an AA-AAS, and, therefore, the aggregated data produced will not include the performance of these students. This approach is in direct conflict with the disaggregation requirement in ESEA. Under current law, the “students with disabilities” subgroup is defined as students who have been identified as students with a disability under the Individuals with Disabilities Education Act, as amended (IDEA). This definition does NOT exclude any portion of students with disabilities. **Therefore, to comply with the requirements of the competition, grantees must be required to consider all students in assessment design.**

See the “Notice Inviting Applications for the Race to the Top Assessment Programs and Alternate Assessments on Alternate Academic Achievement Standards” for additional discussion and recommendations at the end of this letter. We prepared this in consultation with Dr. Scott Marion and Rachel Quenemoen with respect to the technical and practice aspects of the recommendations.

Also, we urge you to continue to be vigilant as you speak publicly about providing a world class education to all students. However, most recently in your speech at the Council for Exceptional Children (CEC) you stated that we need to move toward assessments that allow ‘practically all’ students to take tests that report results tracking their progress toward college-or career-readiness. This statement sends the message that some students are not eligible for college and career ready standards. However, it has long been the rule that education for students with disabilities is based on the same content standards and curriculum used for all students, although a few may be assessed on a different achievement standard. The statement also sends the message that growth measures may not be required for all students.

We strongly urge the USED to reconsider the criteria in the NIA which does not promote a collaborative process for a comprehensive assessment system that fully includes all students with disabilities. USED should integrate the knowledge and expertise of the Technical Assistance Centers funded by OSERS relative to the assessment of students with disabilities into the requirements of the competition.

2. The lack of specificity regarding the development of alternate assessments on modified academic achievement standards (AA-MAS) under this grant program.

The USED must specify that the development of AA-MAS (as allowable under current ESEA regulations) is not allowable under this grant program. In several meetings with you, the Assistant Secretary of the Office of Special Education and Rehabilitative Services and key staff, there was

agreement that the AA-MAS would not be part of the investment in new and improved comprehensive assessment systems.

In fact, States have been given numerous opportunities to apply for and receive USED grant funds to assist in the development of such assessments (both Enhanced Assessment Grants under Title I and General Supervision Enhancement Grants under OSEP) as well as use of an interim policy for scoring adjustments during their development phase. USED reports show that more than half of the states did not develop an AA-MAS and for those that did, only two are approved by USED for accountability purposes. States that elected to develop an AA-MAS have done so and should be allowed to continue to use such assessments, as allowed under current regulations) until the 'next generation' of assessments is implemented.

It is important to note, however, that the USED grants to States and consortia of States under the EAG and GSEG programs have resulted in a significant new body of knowledge. Specifically, new information about the characteristics of persistently low performing students in general education, item analysis, and the delivery of accommodations within computer testing environments which provide essential information that should be considered in the development of a comprehensive assessment system. Therefore, USED should quickly synthesize these findings.

We request that USED provide clear and specific guidance that assessment systems developed under this grant program may not include alternate assessments based on modified academic achievement standards. However, review and consideration of the findings of grant-funded work in this area should be a required component of the development of a comprehensive assessment system.

3. The lack of clarity regarding the use of out-of-level testing (OOLT) in summative assessment components required to be developed under this grant program.

The USED must clarify that any summative assessment components developed under this grant program must measure performance against grade-level standards, including any "computer adaptive testing".

Specifically, the use of out-of-level testing (OOLT) is not allowable in any summative assessments developed under this grant program. Further, exceptions for any subgroup of students - such as students with disabilities and/or English Language learners - should not be permitted within any assessment framework proposed under this program.

We urge USED to maintain the position taken in ESEA regulations issued in July 2002 regarding OOLT which states that:

"One of the bedrock principles of the NCLB Act is that all students can learn to high standards. As a result, section 1111(b)(1) requires challenging academic content and student achievement standards that a State applies to all schools and students in the State. Similarly, section 1111(b)(3) requires a State to develop aligned assessments that the State uses to measure the achievement of all students. These requirements are accurately implemented in Secs. 200.2(b)(1) and 200.6(a) of the final regulations. Specifically, as Sec. 200.6(a)(1) indicates, a State's assessment system must provide accommodations so that a student with disabilities or a student covered under Section 504 of the Rehabilitation Act of 1973 can be

held to the content and achievement standards for the grade in which the student is enrolled. Although "out-of-level" tests, for example, may provide instructional information about a student's progress, they are not an acceptable means to meet the State's assessment requirements under Secs. 200.2 and 200.6 or the accountability requirements of the NCLB Act." (34 CFR Part 200, Final Regulations for Standards and Assessments)

Equally important, any computer-based assessments developed under this program must be developed to be as transparent as possible about the content on which students are assessed and the ways in which the content is assessed. They should not revert to normative assessments, which compare students only to each other rather than to content standards, even in the name of being able to measure growth.

We request that USED provide clear and specific guidance that the use of out-of-level testing as summative components developed under this grant program is not allowed. Furthermore, we request guidance urging applicants to use great caution when any type of out of level testing occurs for formative assessment purposes. U.S. ED research on the use of out of level testing has generally concluded that the level of the testing is more a consequence of instruction than of student ability.

We have requested to meet with you, Assistant Secretary Posny and Joanne Weiss to discuss these issues further. As always, we thank you for considering our recommendations and for your continued commitment to the education of students with disabilities.

Sincerely,

Katy Beh Neas, Easter Seals	202.347.3066	kneas@easterseals.com
Paul Marchand, The Arc/UCP	202.783.2229	marchand@thedpc.org
Laura Kaloi, NCLD	703.476.4894	lkaloi@ncl.org

cc: Alexa Posny
Joanne Weiss
Carmel Martin
Thelma Melendez
Martha Kantor

The CCD Task Force on Education is made up of almost 60 national organizations concerned about the education of students with disabilities and the participation of parents in the educational process. The Task Force is comprised of organizations that represent educators, related services professionals, direct service providers, advocates and parents.

Notice Inviting Applications for the Race to the Top Assessment Programs and Alternate Assessments on Alternate Academic Achievement Standards

The Notice Inviting Applications (NIA) excludes students who take an alternate assessment on alternate academic achievement standards (AA-AAS) from the reference to “all students” by excluding them from the definition of a child with a disability. By excluding these students and addressing the development of the AA-AAS in a separate grant from OSERS, the Department has inadvertently sent a message that could have far-reaching negative implications for their instruction and assessment. The message that it is acceptable to separate these students from their typical peers, even from peers with other disabilities and make them the sole responsibility of the special education department conflicts with the Department’s message on inclusion and the moral imperative to provide a world class education to every child based on college and career ready standards, as described in “A Blueprint for Reform.”

Assessment concerns:

1. If a consortium decides to develop an AA-AAS with RTTT funding, there are no rules /guidelines specified for oversight since the AA-AAS was not in the Notice Inviting Applicants.
2. The Growth Model Task Force Report¹ states that approved growth models should be required to combine results from all students and all assessments. How will this happen if the AA-AAS is not developed as part of a comprehensive assessment system?
3. If the criteria for assessments developed as part of the RTTT comprehensive assessment system grant are not applied to the AA-AAS (to the extent appropriate), many unanticipated problems will develop down the road—the same way adding the 2% rule without considering the impact of the language on the 1% rule created many unintended negative consequences.
4. Past GSEG grant language will not be sufficient to ensure quality AA-AAS development with a solid grounding in the rigorous content standards being used in the development of the assessments under the RTTT grant or to ensure that other key criteria for the comprehensive assessment systems grants are being applied to AA-AAS development.

Recommendations:

1. Provide rules/ guidelines and oversight for consortia/states that are developing a new AA-AAS with either RTTT or GSEG funding or both. The rules/ guidelines and oversight should be consistent with research based best practices from the National Alternate

¹ Growth Models for Accountability Considerations and Recommendations for Including Students with Disabilities

<http://www.ndss.org/images/stories/NDSSresources/pdfs/nclb%20growth%20model%20june%2009%20final.pdf>

Assessment Center (NAAC). See “Documenting the Technical Quality of Your State’s Alternate Assessment: An Annotated Workbook Volumes I and II.”²

2. Require that any AA-AAS developed under the RTTT and/or GSEG grant support the inclusion of student growth measures. These data must be combined with growth data from other assessments as part of the accountability system.
3. Incorporate the criteria from the RTTT Comprehensive assessment system grant including disaggregated data by subgroup into the GSEG (except for Consortium Governance, if the GSEG applicants will be states), with modifications for their application to an AA-AAS.
4. Require that applicants for the RTTT and GSEG include information in their applications on how they will work with experts in large-scale assessment, special education, curriculum, and content (in the subject matter to be assessed).
5. Require that any AA-AAS being developed with RTTT and/or GSEG funding have a solid grounding in the rigorous content standards being used in the development of the assessments under the RTTT grant (e.g., Common Core State Standards).

² Developed in partnership with the New Hampshire Enhanced Assessment Initiative (NHEAI), the National Alternate Assessment Center (NAAC), and the National Center for the Improvement of Educational Assessment (NCIEA) March 2006

<http://www.cehd.umn.edu/NCEO/TopicAreas/StateForum/VolumeITechnicalDocuWorkbook.pdf>
(Volume I)

<http://www.cehd.umn.edu/NCEO/TopicAreas/StateForum/VolumellTechnicalDocuWorkbook.pdf>
(Volume II) For additional resources see

http://www.cehd.umn.edu/NCEO/TopicAreas/AlternateAssessments/aa_aasResources.htm and
<http://naacpartners.org/products.aspx>