

REQUEST FOR PUBLIC COMMENT: REVISED FEDERAL MIDDLE SCHOOL TESTING WAIVER

Recent changes in state law impact high school math testing requirements for students including the elimination of the Geometry test as a graduation requirement. These changes have other consequences including the possibility of increasing the total number of math tests required for thousands of students. The law directs the Department to seek a waiver from the U.S. Department of Education to use Algebra I as the “primary assessment of high school mathematics.”

Options for a federal waiver. In order to meet the statutory requirement to seek a federal waiver, Ohio must decide how to design the waiver request. The request must consider the needs of advanced middle school students as well as scholars utilizing the Integrated Math course pathway. Ohio’s current federal waiver allows advanced middle school students taking high school courses to take the test aligned with their course rather than double testing with the grade-level test. For example, if an eighth-grade student is taking Algebra I, that student would only take the Algebra I test and not the eighth-grade test. During the fall of 2019, the Department [shared a memo](#) outlining the challenges related to potential changes to the high school math testing system and three potential options for consideration. That memo outlined three options:

- 1) Administer only the Algebra I (and Integrated Math I) test, eliminate the Geometry and Integrated Mathematics II tests, and forgo all middle school double-testing waivers.
- 2) Request an amendment to the previously approved waiver that specifies Algebra I as the *primary* high school test for accountability, while maintaining the expanded middle school waiver for all math tests.
- 3) Pursue Algebra I/eighth grade math ESSA waiver but amend the expanded waiver to remove all other math tests.

This memo was shared with stakeholders including education associations (superintendents, principals, teachers, etc.), the State Board of Education, and numerous other groups including Ohio’s Test Steering Committee, and content advisory groups.

Stakeholder response. Multiple stakeholders provided formal and informal feedback that provides key insights into their priorities. While there was not a consensus,

the predominant common theme was maintaining flexibility for middle school students and schools. Stakeholders expressed great concerns about any actions that would reduce middle school flexibility.

Proposed waiver revisions. Accordingly, the Department is proposing a revision to the federal waiver that clarifies that Algebra I will be the primary assessment of high school mathematics for graduation, but Geometry will continue to be a state test for accountability purposes. The proposal also updates the waiver to note the elimination of the English Language Arts I test for

the class of 2023 and beyond. These revisions would maintain Ohio's flexibility to administer relevant high school tests to middle school students taking high school courses for credit, as well as avoiding double testing scenarios for local decisions to utilize Integrated math pathways.

The "redlined" version of the previously approved waiver request follows in this document. Redlined text represents proposed revisions to the existing approved waiver language. Per federal requirements, this will be posted for public comment for 30 days. After the public comment period, the Department will revise the proposal as relevant and then submit to the US Department of Education for review.

**Please share comments and feedback on this waiver revision proposal at:
ESEAWaiver@education.ohio.gov.**



**Department
of Education**

Mike DeWine, Governor
Paolo DeMaria, Superintendent of Public Instruction

May 18, 2020 ~~September 18, 2017~~

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Madam Secretary:

This letter is to revise a previously approved ~~request a~~ waiver for the Ohio Department of Education (ODE) from specific statutory and regulatory requirements established under the Elementary and Secondary Education Act (*ESEA*) as amended by the Every Student Succeeds Act (*ESSA*).

This waiver revision request, if granted, would continue to allow for each Ohio middle school student to take a high school end-of-course assessment in any subject, not just mathematics, when the student is enrolled in the corresponding course for high school credit and address recent changes in state-required assessments. This waiver, previously approved in 2015 and 2018, would continue to allow ODE and Ohio's schools and districts to ensure that students are assessed on the curriculum that fully aligns to their instruction.

ODE is committed to ensuring that Ohio's schools and districts continue to have incentives to properly serve all students with advanced coursework and to ensure that students will be assessed on the appropriately aligned curriculum.

The *ESEA* as amended by *ESSA* allows only 8th grade students enrolled in advanced-mathematics courses to take the end-of-course assessment (algebra I) aligned to the students' coursework, in lieu of the grade-level mathematics assessment.¹ This Ohio's currently approved ~~waiver request, if granted, would~~ ensure that this rule is applied to all middle school students, not just 8th grade students, and in all subject areas, not just mathematics. This technical revision clarifies that Ohio statute eliminated the English Language Arts I test for students in the class of 2023 and beyond² so that middle school flexibility will not apply for that particular end-of-course exam beyond the class of 2022 (unless that assessment were to be reinstated at a later date).

Additionally, Algebra I will be the primary high school assessment of mathematics. The state Geometry test will no longer be a state requirement for students to meet graduation requirements but still will be offered as a state test for accountability purposes. As such, current middle school flexibility will be maintained for mathematics assessments. Parents and educators should continue to have the option to determine whether a middle school student should be enrolled in an advanced course, and ODE's testing policies should support and be aligned to that local decision.

¹ *ESEA* as amended by *ESSA* 1111(b)(2)(C)

² Ohio Revised Code section 3301.0712(B)(2)(b).

Authority

Section 8401(a)(3) of *ESEA*, as amended by *ESSA*, allows the Secretary of the U.S. Department of Education (Secretary) to waive “any statutory or regulatory requirement of this Act for which a waiver request is submitted,” except for the reasons outlined in section 8401(c), which do not apply in this case. Section 8401(a)(1) of *ESEA* as amended by *ESSA* establishes that a state educational agency (SEA) may submit such a waiver request.

Waiver Request Components

I. Identify the federal programs affected by this waiver request.

This waiver request will affect Title I, Improving the Academic Achievement of the Disadvantaged, Part A, Improving the Basic Programs Operated by Local Educational Agencies, Subpart 1, Basic Program Requirements.

II. Describe which federal statutory or regulatory requirements are to be waived.

ODE is requesting a waiver, in part, from the following requirements:

- Section 1111(b)(2)(B)(i)(I) of *ESEA* as amended by *ESSA*, which requires that “the assessments under subparagraph (A) shall, except as provided in subparagraph (D), be the same academic assessments used to measure the achievement of all public elementary school and secondary school students in the state;” and the corresponding regulation:
- 34 C.F.R. 200.2(b)(1)(i), which requires that “the assessment required under this section must, except as provided in sections 200.3³, 200.5(b)⁴, and 200.6(c)⁵ and 1204⁶ of the *ESEA* as amended by *ESSA*, be the same assessment used to measure the achievement of all students.”

Specifically, ODE requests a waiver from the requirement to test all students using the same grade-specific assessment for mathematics, regardless of grade-level or subject area, who are enrolled in advanced-level courses. In lieu of taking the assessment typically administered to students in their grade levels, students enrolled in these advanced-level courses will take the assessment aligned to the courses in which they are enrolled. Algebra I will be the primary high school assessment of mathematics. While the state Geometry test will no longer be a state requirement for students to graduate, it will still be offered as a state test for accountability purposes. ODE would apply the rules established at section 1111(b)(2)(C)(i) through (iii) of *ESEA* as amended by *ESSA* and 34 C.F.R. 200.5(b)(1) through (3) to any student who does not take the assessment typically administered in the grade in which the student is enrolled. Specifically, if a student does not take the assessment typically administered in the grade in which he or she is enrolled:

³ This exception allows an SEA to allow local education agencies (LEAs) to administer a state-approved, locally-selected, nationally recognized high school assessment, in lieu of a statewide academic assessment.

⁴ This exception allows SEAs, under certain conditions, to administer an end-of-course mathematics assessment in lieu of a grade-level mathematics assessment for 8th grade students.

⁵ This exception allows SEAs to administer an alternative assessment aligned to alternative academic achievement standards to students with significant cognitive disabilities.

⁶ This exception allows for SEAs that have been so authorized by the Secretary to administer “innovative assessments” in lieu of statewide academic assessments to some students in the state.

- The student will take the related subject and/or grade-level assessment the state administers to the students to comply with assessments requirements established at section 1111(b)(2)(B)(v)(I)(bb) of *ESEA* as amended by *ESSA*;
- The student's performance and participation on the assessment will be used in the year in which the student takes the assessment for the purposes of measuring academic achievement and participation as it pertains to the school-based accountability system required under *ESEA* as amended by *ESSA*; and
- In high school, the student will take a more advanced, state-administered end-of-course assessment and the student's performance on and participation in that assessment will be used for the purposes of measuring academic achievement and participation as it pertains to the school-based accountability system required under *ESEA* as amended by *ESSA*.

III. Describe how the waiving of the requirements indicated above will advance student academic achievement.

As part of Ohio's flexibility waiver approved in 2015 under *ESEA* as amended by the *No Child Left Behind Act (NCLB)*, the state requested and was granted waiver authority that allowed any student in middle school to take a high school end-of-course assessment in any subject, not just mathematics, when the student was enrolled in the corresponding course for high school credit. This waiver allowed ODE and Ohio's schools and districts to ensure that students were assessed on the curriculum that was fully aligned to their instruction. Ohio's approved waiver addressed all situations where accelerated students were taking high school courses before entering ninth grade.

In conjunction with its *ESSA* plan, Ohio is requesting submitted a separate waiver in 2017 and was approved to continue with its current practice to ensure that districts continue to have incentives to properly serve all students with advanced coursework and to ensure that students will be assessed on the appropriately aligned curriculum.

Note: Additional changes may be made from time to time in Ohio's assessment system relative to tests that are not required for federal compliance purposes. Ohio will make appropriate notification if such changes are made and will ensure that testing in high school is conducted at least once in English language arts, mathematics and science. (Note: this revision request is such a notification of minor changes to Ohio's assessment system.)

Opportunity for All Students: All districts in Ohio have local control to provide any high school courses, including mathematics, English and biology, to their middle school students for high school credit as long as certain conditions are met. The course curriculum used for middle school students must be the same as that used in high school and must be taught by a teacher certified to teach the high school level of content. With these conditions met, each school has the ability to offer its students high school-level courses. All districts can make choices regarding resource allocation priorities in order to support greater access to high school course content by middle school students.

It is important that when a middle school student takes a high school course, that the assessment taken by the student aligns to the course. Ohio administers high school end-of-course tests in four content areas: English language arts (English Language Arts II), mathematics (algebra I, geometry, integrated mathematics I, integrated mathematics II), science and social studies. Alignment of coursework and testing across all academic content areas is important because Ohio implemented a new system of graduation requirements that includes seven end-of-course tests at the high school level beginning with the graduating class of 2018. Ohio has since refined

the graduation requirements for students beginning with the class of 2023. These updated specifications require students to meet “competency” expectations in Algebra I and English Language Arts II.⁷ The English Language Arts I test will no longer be administered.

Many districts are offering advanced coursework to middle school students in many academic content areas to support students meeting graduation requirements. Districts have increased their efforts in recent years because Ohio had been granted the waiver from double testing.

It is Ohio’s policy intent that all students should have access to a rigorous and relevant curriculum with fully aligned assessments, and that students taking advanced classwork will be required to participate in the aligned assessments. This waiver created incentives to let students take advanced coursework in middle school by relieving students and districts of the burden of preparing for multiple assessments.

In addition, Ohio is one of the only states in the nation to rate schools and districts on the performance of and opportunities provided to its gifted students. Schools and districts earn points on the Ohio School Report Card based on the percentage of students identified and served in the different categories of ‘gifted students.’ The calculation provides an incentive to identify and serve traditionally under-represented populations (racial/ethnic minorities and economically disadvantaged students) by awarding bonus points if a certain identification and service threshold is reached.

Frequency of High School Courses Taken by Middle School Students: Actual course and test records from the 2014-2015 and 2015-2016 school years indicate that algebra I is the high school course most frequently taken by students below the ninth grade. More than 32,000 middle school students took this course in each of the last two years and nearly 90 percent of those students took the course one year early while in the eighth grade. Other high school courses are much less likely to be taken by students prior to entering the ninth grade, but it does happen. In each of the last two school years, between 1,600 and 1,800 students took a high school English language arts course while in middle school, with nearly 96 percent taking integrated English language arts I as eighth-graders. Fewer than 2,500 middle school students took a high school integrated math course in each of the last two years and between 3,500 and 4,000 students took geometry each of the last two years while in middle school. The data are equally limited when looking at science courses with small numbers of students taking high school-level biology in a grade below nine. In summary, the vast majority of middle school students who take advanced coursework do so one year early as eighth-graders and will be able to meet federal testing requirements.

Reporting of Data: This data will be reported for relevant federal accountability purposes and will be integrated into the Ohio State Report Card. Ohio will continue to calculate participation rates for these students. In the case of an eighth-grader enrolled in an algebra I course, that student will be expected to participate in the algebra I assessment and will be reported as part of the middle school’s participation rate data. That ‘math’ assessment also will be included in the middle school’s Gap Closing calculation and will count for all other aspects of the report card (Indicators Met, Performance Index and Value-Added). Ohio will comply with all other *ESSA* reporting and accountability requirements using the appropriate assessment based on the course taken by each student.

High School Testing in Cases Where Students Take All High School Assessments in Middle School: The state recognizes that a very small number of students may take all end-of-course tests in a particular content area prior to entering high school. Actual test data indicates that fewer than 4,000 students complete end-of-course testing in one or more academic content areas while in middle school. Ohio will address the requirement to test students once during high

⁷ [Ohio Revised Code section 3313.618\(B\)\(1\).](#)

school in English language arts, math and science as follows: Ohio implemented college and career readiness assessments for all students using the ACT and SAT starting in the 2016-2017 school year. Students are required to participate in these assessments in the spring of their 11th grade year. The results of these assessments (a remediation-free benchmark) will be included in the graded Prepared for Success measure and is Ohio's college and career readiness measure on district and school report cards. Additionally, any student who has taken both the algebra I/integrated math I and geometry/integrated math II tests or the ~~English language arts I and~~ English language arts II test or the biology test in middle school will be required to use the college and career readiness assessment (ACT or SAT) as the federal accountability measure in the year the assessment is given.

Ohio will create an equivalent proficiency determination that will be reported for students who have completed any respective set of content area end-of-course tests while in middle school. Such students will be included in the Gap Closing measure participation rate calculation using the English language arts and math sections of the college readiness test. The various sections also will be used to fulfill the requirement to include all students in the high school's Gap Closing calculation, and those scores will count for all other aspects of the report card (indicators met, Performance Index and Value-Added).

Ohio will comply with all other ESSA reporting and accountability requirements using the appropriate assessment based on the courses taken by each student.

IV. Describe the methods that will be used to monitor and regularly evaluate the effectiveness of the implementation plan of this waiver request.

ODE will, for the purpose of tracking opportunity and achievement gaps among subgroups, annually evaluate the percentage of students in middle school grades enrolled in advanced-level courses and who take advanced-course assessments in lieu of grade-level assessments. ODE will continually evaluate such gaps and provide guidance and technical assistance, as appropriate, to help LEAs close any such gaps.

In addition, ODE will ensure that the performance of all students on annual statewide assessments is included in the calculations of a school's "academic achievement" for the purpose of the school-based accountability system required under ESEA as amended by ESSA. ODE will continue to, consistent with its ESSA state implementation plan and in accordance with section 1111(h)(1)(C)(ii) of ESEA as amended by ESSA, report the assessment results of all students.

Also note that, because this waiver request affects such a small percentage of middle school students – in the 2016-2017 school year only 3% of 7th grade students and less than 1.0% (.01%) of 6th grade students statewide took an advanced assessment in lieu of the grade-level assessments – ODE anticipates minimal, if any, impact on the state's school-based accountability and support system required under sections 1111(c) and (d) of ESEA as amended by ESSA.

V. Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.

The purpose of Title I of ESEA as amended by ESSA is "to provide all children significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps." Providing opportunities for all middle school students to enroll and achieve in advanced-level coursework is consistent with this purpose. In addition, the ODE is committed to closing opportunity and equity gaps as it pertains to access to advanced-level coursework in middle school, in all subject areas.

As described in its proposed *ESSA* state plan, the ODE has had success in encouraging greater numbers of middle school students to take advanced-level courses during the past several years, but economically disadvantaged students continue to be underrepresented in advanced-level courses in middle school across the state. In 2015-2016, 48.6 percent of middle school students were economically disadvantaged students, but only 5.5 percent of middle school students taking advanced-level courses were members of this subgroup. The ODE is committed to ensuring access to rigorous coursework is available to all students throughout middle school.

To support LEAs in offering greater opportunities for middle school students to enroll, and demonstrate academic achievement, in advanced-level coursework, the ODE plans to take the following actions:

1. Design, implement and evaluate research-based technical support for LEAs where Ohio State Tests Grades 3-7 results warrant a more focused approach to teaching prerequisites to Algebra I;
2. Design, implement and evaluate research-based technical support around mathematics literacy;
3. Design and disseminate guidance to LEAs on the use of appropriate *ESSA* Title I funds to support preparation for advanced-level mathematics;
4. Design, implement and evaluate professional learning opportunities that focus on a shift in planning, implementing and evaluating the effectiveness of instructional practices, including the use of technology to help students visualize the results of varying assumptions, explore consequences, compare predictions with data and explore and deepen their understanding of mathematical concepts.

VI. If the waiver relates to provisions of subsections (b) or (h) of section 1111 of *ESEA-ESSA*, describe how the SEA requesting the waiver will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi) of *ESEA-ESSA*.

Not applicable. The ODE will continue to, consistent with its *ESSA* state implementation plan and in accordance with section 1111(h)(1)(C)(ii) of *ESEA* as amended by *ESSA*, report the assessment results of all students.

VII. Describe how the public was informed of this waiver request and provided opportunity to provide public comment on the request.

Our intent to urge USDOE to continue to maintain the extended waiver for all relevant end-of-course exams was included in the stakeholder outreach conducted throughout 2016 and 2017, and published in the Department's *ESSA* Overview document released in January 2017. Stakeholders specifically requested ODE pursue an expanded waiver for all subject accelerated students to be able to be tested at the level of instruction rather than the overall grade level. Ohio also received over 11,000 comments to the draft state plan posted on ODE's website in January 2017 with consistent support for reducing excess testing and expanding supports and services for gifted students.

[Ohio engaged stakeholders from September 2019 through February 2020 regarding changes to state high school testing requirements. This included direct engagement with education stakeholder groups, presentations at the State Board of Education, and feedback gathered at numerous events including the teacher-based assessment content advisory committees. The redlined version of the revised waiver request was posted for public comment from March 9, 2020, through April 9, 2020.](#)

VIII. Attach or describe the public comments received regarding this waiver request.

In each publicly posted state plan draft, Ohio has included the language requesting the waiver that would allow for each Ohio middle school student to take a high school end-of-course assessment in any subject, not just mathematics, when the student is enrolled in the corresponding course for high school credit.

Stakeholders expressed desire for reductions in testing and this waiver request is consistent with those requests – for students to take the test for the course in which they are enrolled.

For example, Cleveland Metropolitan School District, submitted comment to ODE on June 15, 2017, about the Eighth-Grade Math Exception as written in Ohio’s state plan “We support the language in this section as it has not been changed from the previous version.”

Please email Christopher.Woolard@education.ohio.gov if you have any questions or need additional information.

Sincerely,

Paolo DeMaria
Superintendent of Public Instruction

Draft for Public Comment