



777 6th Street NW  
Suite 500  
Washington DC 20001  
tel (202) 618-3900  
fax (202) 478-1804  
[www.pennhillgroup.com](http://www.pennhillgroup.com)

## MEMORANDUM

TO: **Interested Parties**  
FROM: **Penn Hill Group**  
DATE: **March 18, 2020**  
SUBJECT: **Federal Waivers of ESEA Assessment Requirements**

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The purpose of this memorandum is to describe waivers that the U.S. Department of Education (ED or the Department) has granted with respect to the assessment requirements under Title I of the Elementary and Secondary Education Act (ESEA). In the coming days, Penn Hill Group will send out a companion memo on ED's history in waiving ESEA accountability requirements.

### **ED Waiver Authority**

As described in our March 17 memo, *Waiver Authorities and Other Flexibilities Available to the US Department of Education in Responding to the Coronavirus*, ESEA and other laws give the U.S. Secretary of Education authority to waive various statutory and regulatory requirements covering the programs operated under those statutes. The main ESEA waiver authority is in Section 8401, which authorizes States and Indian tribes, as well as local educational agencies (through States), to apply for and receive waivers of any ESEA statutory or regulatory requirement, except in certain specified areas, under procedures set forth in that section. The provisions that may not be waived include, among others, those related to civil rights, the allocation of ESEA funds to States and local educational agencies, and the requirement that ESEA assistance supplement, and not supplant, State and local funding.

### **Waivers of Assessment Requirements**

ESEA Section 1111(b)(2) requires that, as a condition of receiving Title I funding, a State administer annual assessments in reading or language arts, mathematics, and science, and sets various requirements relating to those assessments. ED has used the Section 8401 authority to provide a number of assessment-related waivers. We have identified the following<sup>1</sup>:

- A large number of States have received waivers of the requirement that they assess no more than 1 percent of their students using alternative assessment aligned with alternative standards for children with the most significant cognitive disabilities.
- While the statute allows an 8<sup>th</sup>-grade student enrolled in an advanced math class to take an end-of-course assessment in lieu of the State's math assessment (so long as certain other criteria are met), several States have received a waiver allowing them to apply this policy to comparable middle school students in other grades (and in one case, Virginia, in elementary-school grades as well).

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<sup>1</sup>This information was extracted from the [ED website](#), which tracks waivers going back to 2009.

- In various years, States have received waivers allowing them to field-test or otherwise make a transition to new assessments, and thus not abide by the statutory requirement that the same assessments be administered to all students in a State, as well as certain other provisions of the statute. For example, in 2017 and 2018, a number of States received waivers in order to field-test new science assessments aligned with the Next-Generation Science Standards.
- In 2009, Kentucky received a waiver, applicable to a school that had experienced flooding that damaged test materials, from the requirement to have this school go through an “adequate yearly progress determination” based on test results. Similarly, in 2018, California received a one-year waiver of the assessment requirements, applicable to a school that had experienced a school shooting and a school that had been affected by flooding and landslides.
- In 2011, Washington State received a waiver permitting the State to administer two different high-school end-of-course assessments and to use the results from either of those assessments in making adequate yearly progress determinations.
- In 2015, North Dakota received a waiver allowing the State to waive accountability determinations based on 2014-2015 assessment results in order to support the State’s transition to new assessments.
- In 2016, Alaska received a one-year waiver of the assessment requirements (for all grades and subjects), after technical problems resulted in many students being unable to access assessments online or, once accessed, to complete the tests. That year, Tennessee received a similar waiver, covering assessments of students in grades 3-8 in reading or language arts and in math.
- In 2017, Hawaii received a waiver allowing the State to pilot-test the Hawaiian Language State Assessments for students participating in the State’s Hawaiian Language Immersion program. This action required ED to waive several Title I assessment requirements.
- In 2018, Missouri received a one-year waiver from the requirement to test high school students (in at least one grade) in reading or language arts and in math, based on technical challenges that the State encountered in administering its end-of-course assessments.