



**Key points:**

- **Out-of-level testing helps with instructional decisions, NYSED officials say**
- **NYSED expects ESSA plan feedback from ED by December, final approval early next year**
- **Advocates: Off-grade exams will lead to discrimination, segregation, lack of transparency**

**New York requests off-grade testing for students with significant disabilities**

New York state education officials are preparing to ask the U.S. Education Department for a waiver to test a small portion of students with significant cognitive disabilities at their instructional level rather than their grade level as required by ESSA.

Disability advocates are fighting the request, saying it violates ESSA assessment requirements. Furthermore, the below-grade-level testing would be discriminatory and cause segregation and a lack of transparency, they said.

New York education officials, however, contend the waiver to the state's [ESSA plan](#) would provide teachers more relevant information on the students' instructional levels, according to the state ED's [website](#), which invited public comments on the proposed waiver.

"When students with disabilities are required to participate in assessments that do not allow [such] students to demonstrate what they know and are able to do, the assessments do not provide actionable information on student performance to districts and schools," the department stated in the [draft waiver request](#). "This waiver will allow NYSED to more accurately measure these students' achievement levels for the use of school districts in making future instructional decisions for these students and provide more accurate measurements of proficiency and growth for these students' districts and schools to apply towards the state's annual accountability system."

Students' off-grade assessment scores would be counted as nonproficient for accountability purposes, according to the draft waiver.

N.Y. education officials estimated that if a waiver is approved, 0.3 percent of students in grades 3 to 8 would take off-grade general assessments in English Language Arts and 1.4 percent would take off-grade assessments in mathematics.

Under the draft waiver, the off-grade assessment may not be more than two grade levels below a student's chronological grade level. Additionally, off-grade testing would end when the state's planned computer-adapted testing is implemented.

A student would be required to meet the following criteria to qualify for the below-grade-level test:

- Does not qualify for the NYSAA.

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- Took the NYSAA in the most recent previous year and performed at level 1 on the grade-level state assessment.
- Is identified as having significant intellectual delays and substantial difficulties in cognitive areas that are the reason the student is not able to reach grade-level proficiency in the student's grade level.
- Would fail to achieve a proficiency result above performance level 1 on the grade-level assessment even with extensive modifications and accommodations.
- Has, over at least a two-year period, received multiple formal assessments of student progress that substantiated the student's instructional level of performance.

The public comment period ended Sept. 8. NYSED received only eight comments regarding the assessment waiver for students with significant cognitive disabilities, according to department spokesman Jonathan Burman.

Throughout the year-long development of its ESSA plan, the state ED received more than 800 written comments and 270 verbal comments. It also held more than 130 meetings and public hearings, according to a [statement](#) on its website.

The state's Board of Regents gave final approval to the ESSA plan and the waiver on Sept. 11, and the state will file its ESSA plan to ED by Sept. 18. Feedback from ED is expected by December, and final approval is expected by early next year.

Special Ed Connection® *related story:*

- [Advocates respond to New York's off-grade request](#)

See also:

- [2 states signal intent for waivers to 1 percent cap for alternate assessments](#) (Aug. 14)
- [States asked to consider students with disabilities in stricter attendance policies](#) (Aug 8)
- [States propose range of subgroup sizes in ESSA accountability plans](#) (May 22)

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