Federal Register

Friday,
January 23, 2009

Part II

Department of Education

Compliance Agreement; Notice

DEPARTMENT OF EDUCATION

Compliance Agreement

AGENCY: Department of Education.

ACTION: Notice of written findings and compliance agreement with the New Hampshire Department of Education.

SUMMARY: This notice is being published in the **Federal Register** consistent with section 457(b)(2) of the General Education Provisions Act (GEPA). Section 457 of GEPA authorizes the U.S. Department of Education (the Department) to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply with the applicable program requirements until a future date and that a compliance agreement is a viable means of bringing about such compliance.

On September 18, 2008, the Department entered into a compliance agreement with the New Hampshire Department of Education (NHDE). Section 457(b)(2) of GEPA requires the Department to publish written findings leading to a compliance agreement, with a copy of the compliance agreement, in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Sue Rigney, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Room 3C139, Washington, DC 20202–6132. *Telephone:* (202) 260–0931.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Title I of the Elementary and Secondary Education Act of 1965 (Title I), as amended by the No Child Left Behind Act of 2001, requires each State receiving Title I funds to satisfy certain requirements.

Under Title I, each State was required to adopt academic content and student academic achievement standards in at least mathematics, reading or language arts, and, beginning in the 2005–2006 school year, science. These standards must include the same knowledge and levels of achievement expected of all public school students in the State. Content standards must specify what all students are expected to know and be able to do; contain coherent and rigorous content; and encourage the teaching of advanced skills. Achievement standards must be aligned with the State's academic content standards and must describe at least three levels of proficiency to determine how well students in each grade are mastering the content standards. A State must provide descriptions of the competencies associated with each student's academic achievement level and must determine the assessment scores (''cut scores'') that differentiate among the achievement levels.

Title I also requires each State to implement a student assessment system used to evaluate whether students are mastering the subject material reflected in the State's academic content standards. By the 2005–2006 school year, States were required to administer mathematics and reading or language arts assessments yearly during grades 3–8 and once during grades 10–12. Further, beginning with the 2007–2008 school year, each State was required to administer a science assessment in at least one grade in each of the following grade spans: 3–5, 6–9, and 10–12.

In addition to a general assessment, Title I requires States to develop and administer at least one alternate assessment for students with disabilities who cannot participate in the general assessment, with or without accommodations. An alternate assessment may be based on grade-level academic achievement standards, alternate academic achievement standards, or modified academic achievement standards. Like the general assessment, any alternate assessment must satisfy the requirements for high technical quality, including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards.

In July 2007, NHDE submitted evidence of its standards and assessment system. The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) submitted that evidence to a panel of experts for peer review. Following that review, the Assistant Secretary concluded that NHDE's standards and assessment system did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient ''is failing to comply substantially with any requirement of law'' applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Compel compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law.

20 U.S.C. 1234c(a).

In a letter dated September 28, 2007, to Lyonel B. Tracy, Commissioner of Education for New Hampshire, the Assistant Secretary asked that NHDE enter into a compliance agreement with the Department. The purpose of a compliance agreement is ''to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements.'' 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means for bringing about such compliance.

In accordance with the requirements of section 457(b) of GEPA, 20 U.S.C. 1234f(b), on June 4, 2008, Department officials conducted a public hearing in New Hampshire to assess whether a compliance agreement with NHDE might be appropriate. Deborah Wiswell, the Administrator of the NHDE Bureau of Accountability, Gaye Fedorchak, also with the Bureau of Accountability, and one member of the public testified at this hearing. The Department considered the testimony provided at the June 2008 public hearing and all other relevant information and materials and concluded that NHDE would not be able to correct its non-compliance with Title I standards and assessment requirements immediately.

On September 18, 2008, the Assistant Secretary issued written findings, holding that compliance by NHDE with the Title I standards and assessment requirements is genuinely not feasible until a future date. Under Title I, NHDE was required to implement its final assessment system no later than the 2005–2006 school year. The evidence that NHDE submitted in July 2007 indicated that, well after the statutory deadline had passed, its standards and assessment system still did not fully meet Title I requirements. In addition, due to the enormity and complexity of the work needed to bring NHDE's standards and assessment system into full compliance, NHDE cannot immediately comply with all of the Title I requirements.

The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps NHDE has already taken to comply and the plan it has developed for further action. The compliance agreement sets out the action plan that NHDE must implement to come into compliance with Title I requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely NHDE's progress in meeting the terms of the compliance agreement.

The Commissioner of Education for NHDE, Lyonel B. Tracy, signed the compliance agreement on August 14, 2008, and the Assistant Secretary signed the compliance agreement on September 18, 2008.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Assistant Secretary's written findings is set forth as Appendix A and the compliance agreement is set forth as Appendix B of this notice.

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Authority: 20 U.S.C. 1234c, 1234f.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

Written Findings of the Assistant Secretary for Elementary and Secondary Education Regarding the Compliance Agreement Between the United States Department of Education and the New Hampshire Department of Education

I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c and 1234f, that the New Hampshire Department of Education (NHDE) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), as amended by the No Child Left Behind Act of 2001, 20 U.S.C. 6301 *et seq.*, and that it is not feasible for NHDE to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that NHDE did not meet, within the statutory timeframe, a number of the Title I requirements concerning the academic achievement standards, technical quality, and alignment for New Hampshire's alternate assessment based on alternate academic achievement standards for students with the most significant cognitive disabilities.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with NHDE to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these findings, NHDE will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I and other applicable Federal statutory and regulatory requirements.

II. Relevant Statutory and Regulatory Provisions

A. Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended by the No Child Left Behind Act of 2001

Title I of the Elementary and Secondary Education Act of 1965 (Title I), as amended by the No Child Left Behind Act of 2001, 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student academic achievement standards. Under Title I, each State, including the District of Columbia and Puerto Rico, was required to adopt academic content and student academic achievement standards in at least mathematics, reading or language arts, and science. These standards must include the same knowledge and levels of achievement expected of all public school students in the State. Content standards must specify what all students are expected to know and be able to do; contain coherent and rigorous content; and encourage the teaching of advanced skills. Achievement standards must be aligned with the State's academic content standards and must describe at least three levels of proficiency to determine how well students in each grade are mastering the content standards. A State must provide descriptions of the competencies associated with each student's academic achievement level and must determine the assessment scores (''cut scores'') that differentiate among the achievement levels.

Each State was also required to implement a student assessment system used to evaluate whether students are mastering the subject material reflected in the State's academic content standards. By the 2005–2006 school year, States were required to administer mathematics and reading or language arts assessments yearly during grades 3–8 and once during grades 10–12. Further, beginning with the 2007–2008 school year, each State was required to administer a science assessment in at least one grade in each of the following grade spans: 3–5, 6–9, and 10–12. A State's assessment system must:

- Be the same assessment system used to measure the achievement of all public school students in the State;
- Be designed to provide coherent information about student attainment of State academic content standards across grades and subjects;
- Provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient (LEP) students;
- Be aligned with the State's academic content and student academic achievement standards;
- Express student results in terms of the State's student academic achievement standards;
- Be valid, reliable, and of adequate technical quality for the purposes for which they are used and be consistent with nationally recognized professional and technical standards;
- Involve multiple measures of student academic achievement, including measures that assess higher order thinking skills and understanding of challenging content;
- Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal family beliefs and attitudes;
- Enable results to be disaggregated by gender, each major racial and ethnic group, migrant status, students with disabilities, English proficiency status, and economically disadvantaged students;
- Provide individual student reports; and

• Enable itemized score analyses.

20 U.S.C. 6311(b)(3); 34 CFR 200.2.

In addition to a general assessment, States were required to develop and administer at least one alternate assessment for students with disabilities who cannot participate in the general assessment, with or without accommodations. 34 CFR 200.6(a)(2). An alternate assessment may be based on grade-level academic achievement standards, alternate academic achievement standards, or modified academic achievement standards. Like the general assessment, any alternate assessment must satisfy the requirements for high technical quality, including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards.

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is ''failing to comply substantially with any requirement of law applicable to such funds.'' 20 U.S.C. 1234c. In such a case, the Assistant Secretary is authorized to:

(1) Withhold funds;

(2) Compel compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law.

20 U.S.C. 1234c(a).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is ''to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements.'' 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the evidence presented, the Assistant Secretary determines that full compliance is genuinely not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and must publish those findings, together with the substance of any compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A compliance agreement must set forth an expiration date, not later than three years from the date of the written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. 1234f(c)(1). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect. 20 U.S.C. 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement to be no longer in effect, and may take any of the compliance actions set forth above. 20 U.S.C. 1234f(d).

III. Analysis

A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement Is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and NHDE is appropriate, the Assistant Secretary must first determine whether compliance by NHDE with the Title I standards and assessment requirements is genuinely not feasible until a future date. 20 U.S.C. 1234f(b)(2). Second, the Assistant Secretary must determine whether NHDE will, within a period of up to three years from the date of these written findings, be able to come into compliance with the Title I requirements. Not only must NHDE come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome were not possible, then a compliance agreement between the Assistant Secretary and NHDE would not be appropriate.

B. NHDE Has Failed To Comply Substantially With Title I Standards and Assessment Requirements

In July 2007, NHDE submitted evidence of its standards and assessment system. The Assistant Secretary submitted that evidence to a panel of experts for peer review. Following that review, the Assistant Secretary concluded that NHDE's standards and assessment system did not meet a number of the Title I requirements. Specifically, the Assistant Secretary determined that, to demonstrate its compliance, NHDE had to submit the following evidence regarding its alternate assessment based on alternate academic achievement standards:

Academic Achievement Standards

1. Evidence of approved/adopted alternate academic achievement standards for students with the most significant cognitive disabilities in reading/language arts and mathematics for each of grades 3 through 8 and high school.

2. Evidence that the alternate academic achievement standards include the following for each content area:

a. At least three levels of achievement, including two levels of high achievement (*e.g.*, proficient and advanced) that determine how well students are mastering the State's academic content standards, and a third level of achievement (*e.g.*, basic) to provide information about the progress of lower-achieving students toward mastering the two levels of high achievement;

b. Descriptions of the competencies associated with each achievement level; and

c. Assessment scores (''cut scores'') that differentiate among the achievement levels.

3. Evidence that the Board or other authority has adopted all alternate academic achievement standards.

4. Documentation that the State has reported separately the number and percent of those students with disabilities assessed (a) on an alternate assessment against alternate academic achievement standards, (b) on an alternate assessment against grade level standards, and (c) on the regular assessment (including those administered with appropriate accommodations).

5. Documentation that the State has involved diverse stakeholders in the development of its alternate academic achievement standards.

Technical Quality

6. Evidence that the State has documented validity (in addition to the alignment of the alternate assessment with the content standards), as described in the *Standards and Assessments Peer Review Guidance: Information and Examples for Meeting Requirements of the No Child Left Behind Act of 2001*.

7. For the alternate assessment, documentation of the standard setting process, including a description of the selection of judges, the methodology employed, and the final results.

8. For the alternate assessment, evidence that the State has considered the issue of reliability, as described in the *Standards and Assessments Peer Review Guidance: Information and Examples for Meeting Requirements of the No Child Left Behind Act of 2001*.

9. Evidence that the State has ensured that its alternate assessment system is fair and accessible to all eligible students, including LEP students.

10. Evidence that the State has taken steps (such as bias review of items) to ensure fairness in the development of the alternate assessment.

11. If different test forms or formats are used for the alternate assessment, evidence that the State has ensured that the meaning and interpretation of the results are consistent.

12. Evidence that the State has established:

a. Clear criteria for the administration, scoring, analysis, and reporting components of its alternate assessment; and

b. A system for monitoring and improving the ongoing quality of its alternate assessment.

Alignment

13. Evidence that the State has taken steps to ensure alignment between its alternate assessment and the State's academic content and alternate academic achievement standards.

14. Evidence that the State has developed ongoing procedures to maintain and improve alignment between the alternate assessment and standards over time, particularly if gaps have been noted.

Inclusion

15. Evidence that the State has implemented alternate assessments for students with disabilities who are unable to participate in the regular assessment even with accommodations.

16. Evidence of guidelines and training that the State has in place to ensure that all students with disabilities taking the alternate assessment are included appropriately in the State assessment system.

17. Evidence that the State has developed clear guidelines for Individualized Educational Program (IEP) Teams to apply in determining which assessment is most appropriate for a student.

18. Regarding the alternate achievement standards:

a. Evidence that the State has developed clear guidelines for IEP Teams to apply in determining when a child's cognitive disability justifies assessment based on alternate academic achievement standards; and

b. Evidence of the steps the State has taken to instruct regular and special education teachers and appropriate staff on how to properly administer assessments (including making use of accommodations) for students with the most significant cognitive disabilities.

Reporting

19. Evidence that the State's reporting system facilitates appropriate, credible, and defensible interpretation and use of its assessment data.

20. Evidence that the State has provided for the production of individual interpretive, descriptive, and [non-clinical] diagnostic reports that indicate relative strengths and instructional needs and possess the following characteristics:

a. Express results in terms of the State's alternate academic achievement standards rather than numerical values (*e.g.*, scale scores or percentiles);

b. Provide information for parents, teachers, and principals to help them understand and address a student's specific academic needs; and

c. Display the information in a format and language that is understandable to parents, teachers, and principals (*e.g.*, through the use of descriptors that describe what students know and can do at different performance levels) and include interpretative guidance for these audiences.

21. Evidence that the State ensures that these individual student reports will be delivered to parents, teachers, and principals as soon as possible after the alternate assessment has been administered.

C. NHDE Cannot Correct Immediately Its Noncompliance With the Title I Standards and Assessment Requirements

Under Title I, NHDE was required to implement its final assessment system no later than the 2005–2006 school year. 20 U.S.C. 6311(b)(3). The evidence that NHDE submitted in July 2007 indicated that, well after the statutory deadline had passed, its standards and assessment system still did not fully meet Title I requirements. In addition, due to the enormity and complexity of the work that is needed to be done to bring NHDE's standards and assessment system into full compliance, NHDE cannot immediately comply with all of the Title I requirements. As a result, the Assistant Secretary finds that it is not genuinely feasible for NHDE to come into compliance until a future date.

D. NHDE Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance With the Requirements of Title I Within Three Years

At the public hearing, which was held on June 4, 2008, NHDE presented evidence of its commitment and capability to come into compliance with the Title I standards and assessment requirements within three years. For example, NHDE has already applied for and obtained a grant from the Department's Office of Special Education Programs, and has begun using those grant funds to develop Grade Level Expectations and alternate assessment links.

NHDE has also developed a comprehensive action plan, incorporated into the compliance agreement, which sets out a very specific schedule that NHDE has agreed to meet during the next three years for attaining compliance with the Title I standards and assessment requirements. As a result, NHDE is committed not only to coming into full compliance within three years but to meeting a stringent, but reasonable, schedule for doing so. The action plan also sets out documentation and reporting requirements with which NHDE must comply. These provisions will allow the Assistant Secretary to ascertain promptly whether NHDE is meeting each of its commitments under the compliance agreement and is on schedule to achieve full compliance within the effective period of the agreement.

The task of developing a standards and assessment system that meets the Title I requirements is not a quick or easy one. However, the Assistant Secretary has determined that, given the commitment of NHDE to comply with the terms and conditions of the compliance agreement, it is possible for NHDE to come into full compliance with the Title I standards and assessment requirements within three years.

IV. Conclusion

For the foregoing reasons, the Assistant Secretary finds the following: (1) That full compliance by NHDE with the standards and assessment requirements of Title I is genuinely not feasible until a future date; and (2) that NHDE can meet the terms and conditions of the attached compliance agreement and come into full compliance with the standards and assessment requirements of Title I within three years of the date of these findings. Therefore, the Assistant

Secretary has determined that it is appropriate to enter into a compliance agreement with NHDE. Under the terms of 20 U.S.C. 1234f, that compliance agreement becomes effective on the date of these findings.

Dated: September 18, 2008.

Kerri L. Briggs, PhD,

Assistant Secretary, Office of Elementary and Secondary Education.

Compliance Agreement Under Title I of the Elementary and Secondary Education Act Between the United States Department of Education and the New Hampshire Department of Education

Title I of the Elementary and Secondary Education Act of 1965 (Title I), as amended by the No Child Left Behind Act of 2001, requires each State receiving Title I funds to satisfy certain requirements.

Each State was required to adopt academic content and achievement standards in at least mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science. These standards must include the same knowledge and levels of achievement expected of all public school students in the State. Content standards must specify what all students are expected to know and be able to do; contain coherent and rigorous content; and encourage the teaching of advanced skills. Achievement standards must be aligned with the State's content standards and must describe at least three levels of proficiency to determine how well students in each grade are mastering the content standards. A State must provide descriptions of the competencies associated with each achievement level and must determine the assessment scores (''cut scores'') that differentiate among the achievement levels.

Each State was also required to implement a student assessment system used to evaluate whether students are mastering the subject material reflected in the State's academic standards. By the 2005–2006 school year, States were required to administer mathematics and reading/language arts assessments yearly during grades 3–8 and once during grades 10–12. Further, beginning with the 2007–2008 school year, each State is required to administer a science assessment in at least one grade in each of the following grade spans: 3–5, 6–9, and 10–12. A State's assessment system must:

- Be the same assessment system used to measure the achievement of all public school students in the State;
- Be designed to provide coherent information about student attainment of State standards across grades and subjects;
- Provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient (LEP) students;
- Be aligned with the State's content and achievement standards;
- Express student results in terms of the State's student achievement standards;
- Be valid, reliable, and of adequate technical quality for the purpose for which they are used and be consistent with nationally recognized professional and technical standards;
- Involve multiple measures of student academic achievement, including measures that assess higher order thinking skills and understanding of challenging content;
- Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal family beliefs and attitudes;
- Enable results to be disaggregated by gender, each major racial and ethnic group, migrant status, English proficiency status, students with disabilities, and economically disadvantaged students;
- Provide individual student reports; and
- Enable itemized score analyses.

In addition to a general assessment, States were required to develop at least one alternate assessment for students with disabilities who cannot participate in the general assessment, with or without accommodations. An alternate assessment may be based on grade-level achievement standards, alternate achievement standards, or modified achievement standards. Like the general assessment, any alternate assessment must satisfy the requirements for high technical quality, including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards.

The New Hampshire Department of Education (NHDE) was unable to timely meet certain of the requirements for its standards and assessments system. In order to be eligible to continue to receive Title I funds while working to comply with the statutory and regulatory requirements regarding alternate assessments, Lyonel B. Tracy, Commissioner of Education, indicated NHDE's interest in entering into a compliance agreement with the United States Department of Education (Department). On June 4, 2008, the Department conducted a public hearing regarding: (1) Whether NHDE's full compliance with Title I is not feasible until a future date, and (2) whether NHDE is able to come into compliance with the Title I requirements for an alternate assessment system within three years.

Pursuant to this Compliance Agreement under 20 U.S.C. Section 1234f, NHDE must be in full compliance with the outstanding requirements no later than three years from the date of the Assistant Secretary's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. In order to achieve compliance with the standards and assessment requirements, NHDE must submit the following evidence:

Because New Hampshire is substantially revising its alternate assessment based on alternate academic achievement standards (NH–Alt), NHDE must submit the following evidence:

Academic Achievement Standards

1. Evidence of approved/adopted alternate academic achievement standards for students with the most significant cognitive disabilities in reading/language arts and mathematics for each of grades 3 through 8 and high school.

2. Evidence that the alternate academic achievement standards include the following for each content area:

a. At least three levels of achievement, including two levels of high achievement (*e.g.*, proficient and advanced) that determine how well students are mastering the State's academic content standards, and a third level of achievement (*e.g.*, basic) to provide information about the progress of lower-achieving students toward mastering the two levels of high achievement;

b. Descriptions of the competencies associated with each achievement level; and

c. Assessment scores (''cut scores'') that differentiate among the achievement levels.

3. Evidence that the Board or other authority has adopted all alternate academic achievement standards.

4. Documentation that the State has reported separately the number and percent of those students with disabilities assessed (a) on an alternate assessment against alternate academic achievement standards, (b) on an alternate assessment against grade level standards, and (c) on the regular assessment (including those administered with appropriate accommodations).

5. Documentation that the State has involved diverse stakeholders in the

development of its alternate academic achievement standards.

Technical Quality

6. Evidence that the State has documented validity (in addition to the alignment of the alternate assessment with the content standards), as described in the *Standards and Assessments Peer Review Guidance: Information and Examples for Meeting Requirements of the No Child Left Behind Act of 2001*.

7. For the alternate assessment, documentation of the standard-setting process, including a description of the selection of judges, the methodology employed, and the final results.

8. For the alternate assessment, evidence that the State has considered the issue of reliability, as described in the *Standards and Assessments Peer Review Guidance: Information and Examples for Meeting Requirements of the No Child Left Behind Act of 2001*.

9. Evidence that the State has ensured that its alternate assessment system is fair and accessible to all eligible students, including LEP students.

10. Evidence that the State has taken steps (such as bias review of items) to ensure fairness in the development of the alternate assessment.

11. If different test forms or formats are used for the alternate assessment, evidence that the State has ensured that the meaning and interpretation of the results are consistent.

12. Evidence that the State has established:

a. Clear criteria for the administration, scoring, analysis, and reporting components of its alternate assessment; and

b. A system for monitoring and improving the on-going quality of its alternate assessment.

Alignment

13. Evidence that the State has taken steps to ensure alignment between its alternate assessment and the State's academic content and alternate academic achievement standards.

14. Evidence that the State has developed ongoing procedures to maintain and improve alignment between the alternate assessment and standards over time, particularly if gaps have been noted.

Inclusion

15. Evidence that the State has implemented alternate assessments for students with disabilities who are unable to participate in the regular assessment even with accommodations.

16. Evidence of guidelines and training that the State has in place to ensure that all students with disabilities taking the alternate assessment are included appropriately in the State assessment system.

17. Evidence that the State has developed clear guidelines for Individualized Educational Program (IEP) Teams to apply in determining which assessment is most appropriate for a student.

18. Regarding the alternate achievement standards:

a. Evidence that the State has developed clear guidelines for IEP Teams to apply in determining when a child's cognitive disability justifies assessment based on alternate academic achievement standards; and

b. Evidence of the steps the State has taken to instruct regular and special education teachers and appropriate staff on how to properly administer assessments (including making use of accommodations) for students with the most significant cognitive disabilities.

Reporting

19. Evidence that the State's reporting system facilitates appropriate, credible, and defensible interpretation and use of its assessment data.

20. Evidence that the State has provided for the production of individual interpretive, descriptive, and [non-clinical] diagnostic reports that indicate relative strengths and instructional needs and possess the following characteristics:

a. Express results in terms of the State's alternate academic achievement standards rather than numerical values (*e.g.*, scale scores or percentiles);

b. Provide information for parents, teachers, and principals to help them understand and address a student's specific academic needs; and

c. Display the information in a format and language that is understandable to parents, teachers, and principals (*e.g.*, through the use of descriptors that describe what students know and can do at different performance levels) and include interpretative guidance for these audiences.

21. Evidence that the State ensures that these individual student reports will be delivered to parents, teachers, and principals as soon as possible after the alternate assessment has been administered.

During the duration of this Compliance Agreement, NHDE is eligible to receive Title I, Part A funds if it complies with the terms and conditions of this Agreement, and all other provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements that are not specifically addressed by this Agreement. The attached action steps are a detailed plan and specific timeline for how NHDE will come into compliance with the Title I standards and assessment requirements. These action steps are incorporated into this Agreement and may be amended by joint written agreement of the parties, provided full compliance is still feasible by the expiration of the Agreement.

In addition to all terms and conditions set forth above, NHDE agrees that its continued eligibility to receive Title I, Part A funds is predicated upon its compliance with all statutory and regulatory requirements of that program that are not specifically addressed by this Agreement, including any amendments to the No Child Left Behind Act of 2001.

If NHDE fails to comply with any of the terms and conditions of this Agreement, including the action steps attached hereto, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order. 20 U.S.C. 1234f(d).

It is so agreed.

For the New Hampshire Department of Education.

/s/ _____

Lyonel B. Tracy

Commissioner of Education

Date 8–14–08

For the United States Department of Education:

/s/ _____

Kerri L. Briggs, Ph.D

Assistant Secretary, Office of Elementary and Secondary Education

Date 18–Sept–08

Date this Compliance Agreement becomes effective: Sept. 18, 2008

Expiration Date of this Agreement: Sept. 18, 2011

BILLING CODE 4000–01–P

NH Compliance Agreement Work Plan: August 5, 2008

The following work plan represents the New Hampshire Department of Education's (NH DOE) intent to fulfill our compliance agreement with the United States Department of Education (USED). The NH DOE believes this three year work plan will result in a technically sound alternate assessment system that leads to improved teaching and learning for New Hampshire's students with the most significant cognitive disabilities. The work associated with the compliance agreement coincides with and is complementary to New Hampshire's participation in a General Supervision and Enhancement Grant with the University of New Hampshire.

This work plan is organized around major aspects of test design and development and describes the key tasks in each category. For each key task, the start date and end date are specified and where appropriate the expected deliverables are outlined. Further, NH DOE agrees to provide quarterly updates—starting October 31, 2008—to USED. In addition to brief narratives, these updates will be used to submit the deliverables mentioned throughout the work plan.

I Grade Level Expectation-Alternate Assessment Links

	Major Task / Sub-task (if applicable)	Start	End	Deliverable (if applicable)
1.1.0	Obtain grant funding to develop GLE-Alt Links (expansions of grade-level content standards with access -based descriptions)	Completed		GSEG funding award letter
1.2.0	Collect data on current degree of alignment/link between NH-Alt portfolios from the 2007-2008 school year to serve as a baseline for subsequent alignment and instructional validity studies. These data are being collected largely for training purposes and for NHDOE staff and its partners to gain a better understanding of the current levels of alignment/misalignment.	6/08	10/08	
1.2.1	• Design protocols based on Links for Academic Learning	Completed		Protocols—appendix in report
1.2.2	• Train a subset of 2008 scorers to serve as data collectors	Completed		Training protocol in report
1.2.3	• Collect data associated with 2008 scoring	7/08	8/08	
1.2.4	• Analyze and report findings	9/08	11/08	Summary report
1.3.0	Develop through the *Gaining Access* GSEG with UNH/IOD GLE-Alt Links expanded content standards and GLE plain language expansions for grades 3-8 and 10 in **reading and math**.	6/08	8/09	
1.3.1	• Recruit diverse panels of qualified general and special educators (National experts and NH State Panelists) to develop 'GLE-Alt Links' expanded content standards with associated access-based descriptions of proficient performance at each grade level.	6/08	10/08	List of qualified national and state participants included in quarterly report to USED
1.3.2	• Conduct expert panels meeting	11/08	2/09	Notes and agenda from meetings
1.3.3	• Draft preliminary GLE-ALT-Links.	9/08	3/09	Draft document
1.3.4	• Review/editing of draft links by panels of NH educators	3/09	6/09	Notes from meetings and feedback
1.3.5	• Final Reading and Mathematics GLE-Alt Links document for use in 2009-2010. (See 2.1.0)	6/09	8/09	GSEG grant summary, including completed GLE-ALT Links and resource document for reading and, math.
1.4.0	Develop in partnership with the assessment contractor (Measured Progress) the GLE-Alt Links for **science** grades 4, 8, & 11 **and writing** in grades 4, 7, & 10. This activity cannot start until the next contract period (starting 7/1/09) when funds are available.	7/09	3/10	

1.4.1	• Recruit diverse panels of qualified general and special educators (National and NH State).	7/09	11/09	List of qualified national and state panelists
1.4.2	• Conduct expert panels meeting	11/09	1/10	Notes and agenda from meetings
1.4.3	• Draft preliminary GLE-ALT-Links in writing and science	1/10	2/10	Draft document
1.4.4	• Review/editing by panels of NH educators	2/10	3/10	Notes from meetings and feedback
1.4.5	• Complete final writing and science GLE-Alt Links document for use in 2010-2011 assessment. This completion date coincides with proposed completion of NH-Alt manual for 2010-2011 year so that both can come out at same time.	3/10	3/10	GLE-Alt Links completed product Resource document for science and, writing
1.5.0	Conduct third party **alignment study** among the NH-Alt GLE Links, the GLEs, and the **items/tasks presented to students for reading, math, and science.**	4/10	8/10	
1.5.1	• Hire third party alignment contractor	1/10	3/10	Contract scope of work
1.5.2	• Design protocol, in collaboration with contractor, based on UNCC *Links for Learning* alignment model	3/10	5/10	Study protocol
1.5.3	• Recruit and train raters	5/10	6/10	List of invitees and final participants with associated demographic information
1.5.4	• **Collect data in association with 2010 Summer Scoring Institute**	6/10	7/10	
1.5.5	• Analyze data and write summary report	7/10	8/10	Alignment summary report
1.5.6	• Use alignment results to make any necessary adjustments in final GLE ALT Links or portfolio protocol in consultation with the field. This timing will allow incorporation of adjustments into mid-September statewide training sessions.	8/10	9/10	Notes on any changes to GLE Alt links and/or portfolio protocol
1.6.0	Submit the final NH-Alt GLE Links to the NH Commissioner of Education for approval. In NH, the Commissioner has the authority to determine whether to approve standards on his own or to refer the standards to the NH State Board of Education for approval. Schedule allows time to get onto State Board agenda if deemed necessary.	9/10	12/10	Board minutes or copy of memo from NH Commissioner of Education indicating approval of Alt Links

II Revised Portfolio Design and Implementation

	Task	Sub-task (if applicable)	Start	End	Deliverable (if applicable)
2.1.0	**Using the GLE-Alt Links in reading and mathematics**, provide guidance to NH educators on transitioning to the revised NH-ALT. The 2009-2010 transition portfolio will be more structured by requiring specific content targets—according to the NH-Alt GLE Links—to be assessed instead of the more flexible approach used in the past. The intent of this transition portfolio is to have teachers begin to focus on specific content targets, but it will not be as structured as the final NH-Alt portfolio.		7/09	8/09	
2.1.1	• Draft design document, including transition portfolio protocol, with assistance from NCEIA		3/09	7/09	Draft design document
2.1.2	• Incorporate the draft design decisions into the revised NH-Alt administrator manual and into fall training sessions for teachers.		6/09	9/09	2009-2010 NH-Alt administrators' manual, and training power-point.
2.1.3	• Conduct survey or focus groups with NH teachers to gather feedback regarding the transition portfolio structure and process.		2/10	6/10	Summary of survey results
2.2.0	Using the NH TAC and other stakeholders and selected experts, NH DOE will refine and **finalize the design of the revised structured portfolio assessment** to ensure that students are assessed on academic content linked explicitly to the NH-Alt GLE Links in 2010-2011.		9/08	3/10	

2.2.1	• Convene two meetings of NH TAC to solicit input on portfolio design issues, specifically providing advice to help NH DOE weigh issues of breadth versus depth in determining the required number of tasks each student is expected to complete and for which teachers will be required to submit evidence	9/08	7/09	TAC agendas and summaries
2.2.2	• Produce draft design document for final structured portfolio specifying the required number of tasks and pieces of evidence required for each content area and grade level. This document will incorporate the lessons learned, revisions from the transition portfolio implementation and focus group research.	7/09	11/09	Draft design document for final structured portfolio protocol
2.2.3	• Based on final design decisions, draft the 2010-2011 revised NH-Alt Teacher's Manual.	11/09	4/10	Revised NH-Alt Teacher's Manual for 2010-2011 – as published
2.3.0	Implement the revised NH-Alt Portfolio during the 2010-2011 school year, but on a slightly shortened time schedule (final submission by March 2011) in order to accomplish all required tasks prior to June 30, 2011. The revised NH-Alt Portfolio will require schools to submit student work demonstrating proficiency on a state-specified set of "GLE-Alt Links".	8/10	4/11	Portfolio submissions, 2010-2011 Teacher Manual
2.4.0	NH DOE currently conducts extensive professional development about how to administer the NH-Alt. Significant professional development will be required to ensure that NH educators are able to successfully administer the NH revised structured portfolio.	8/08	9/10	
2.4.1	• Along with GSEG partners, NH TAC, the test contractor, and other advisory groups, plan the additional professional development leading up to the 2009-2010 transition portfolio and especially in advance of the 2010-2011 final portfolio necessary for instructing NH educators on the conceptualization and procedures for both the transition and fully revised portfolio.	8/08	10/08	List of planned professional development experiences
2.4.2	• Implement professional development in support of the 2009-2010 transition portfolio. (see 2.4.1)	6/09	10/09	Lists of professional development workshops, agenda, training materials, and lists of attendees.
2.4.3	• Implement professional development in support of the 2010-2011 fully revised portfolio.	1/10	9/10	

III Academic Achievement Standards

	Task	Sub-task (if applicable)	Start	End	Deliverable (if applicable)
3.1.0	Using a diverse panel of stakeholders, NHDOE staff, and key external experts, we will **create draft achievement level descriptors** (ALD) in **reading, math, science, and writing**. The focus of these draft ALDs will to ensure that specific content references are included in the draft ALDs, based on draft GLE Links.		1/10	5/10	
3.1.1	• Recruit stakeholder panel		1/10	3/10	List of stakeholders with appropriate qualifications
3.1.2	• Draft achievement level descriptors with internal team		3/10	4/10	
3.1.3	• Share internal drafts with stakeholder panel to revise and refine ALDs.		4/10	5/10	Meeting agenda and ALDs
3.2.0	Using a diverse panel of stakeholders and key external experts, hold a standards setting event to establish/validate three cutscores resulting in four levels of achievement for reading, math, science, and writing.		9/09	6/11	

3.2.1	• TAC and other advisory group meetings to first determine the best approach for completing the standard setting process that will occur at the end of the 2010-2011 portfolio administration. These recommendations will occur after reviewing the results of the alignment study (including comparisons with baseline alignment analyses occurring in 2008), comparing the draft ALDs with the current ALDs, and changes in test specifications. **See Sections 4.1.1 – 4.1.4**	9/09	9/10	Meeting agenda and summaries
3.2.2	• Design standard setting process with the input of the test contractor and advisory committees. Given the anticipated revisions to the NH-Alt portfolio, we expect that a full standard setting event—using Body of Work and/or Profile methods—will be required.	9/09	9/10	Meeting agenda, proposed standard setting/validation meeting agendas.
3.2.3	• With our test contractor, implement standard setting process after the May 2011 Scoring Institute.	5/11	6/11	List of panelists, protocols, training materials, and evaluation of the meeting.
3.3.0	Submit the revised/revisited cutscores and ALDs to the NH Commissioner of Education for approval. In NH, the Commissioner has the authority to determine whether to approve standards on his own or to refer the standards to the NH State Board of Education for approval.	5/11	6/11	Board minutes or copy of memo from NH Commissioner of Education indicating approval of standards.

IV Scoring and Reporting

	Task	Sub-task (if applicable)	Start	End	Deliverable (if applicable)
4.1.0	With the advice of the NH TAC, key stakeholders, and experts in severe disabilities and sensory access, NH DOE staff and contractors will create a revised scoring rubric that focuses on performance relative to student learning of academic content and NOT program information for schools. We intend for the revised rubric to include such features as performance accuracy, performance progress, independence, and generalization. NH DOE and its advisors will wrestle with the challenging issue of how to ensure that the tasks included in the portfolio measure student learning of the NH-Alt GLE Links rather than non-academic material. NH DOE is presently discussing with its advisors two general approaches to address this concern. The first would require adding a dimension to the scoring rubric to get at "closeness to the Alt GLE Link" while the second approach would require a minimum degree of linkage in order for the portfolio to be eligible for scoring and then incorporate programmatic feedback to schools as part of NH's state accountability system (*Follow the Child*). Both of these approaches have considerable advantages and disadvantages that will require extensive discussions among key stakeholders, but NH DOE will choose the approach that minimizes potential negative consequences while ensuring that the links to academic content are expected.		6/09	4/11	Revised NH-Alt scoring rubrics for reading, math, science, and writing. Training materials and procedures for scorers.
4.1.1	• Draft scoring dimensions and criteria in advance of September 2008 TAC meeting		7/08	9/08	Proposed list scoring dimensions and criteria (this is NOT a draft rubric)
4.1.2	• Discuss with NH TAC proposed scoring dimensions and criteria in order to gather enough feedback to draft an initial scoring rubric		9/08	9/08	TAC agenda and TAC summary
4.1.3	• Along with its test contractor and advisors, NH DOE will produce a draft scoring rubric.		10/08	3/09	Draft scoring rubric

4.1.4	• The draft rubric will be tested against the transition portfolios. The draft rubric will NOT be used to score the transition portfolios, rather the transition portfolios will be used to refine the draft scoring rubric during the Summer Scoring Institute.	6/10	8/10	Notes from piloting the scoring rubric and revised rubric
4.2.0	Given the changes to the scoring rubric and the revised content requirements for the assessment, the reporting structures will need to be revised. New score reports for students, schools, and districts will be developed as part of our test contract. The new reports—especially those for students/parents—will be designed to highlight the academic nature of the assessment and the students' performance. The NH TAC, the NH-Alt Advisory Committee, and other stakeholders will be involved in the design and development of these score reports. Draft reports will be tested in small focus groups to ensure that the reports yield the intended interpretations.	9/09	5/11	Report shells and results from the focus groups included in the technical manual. Report interpretation guide and other training materials.
4.2.1	• Along with its test contractor and advisors, NH DOE will produce draft report shells.	1/09	8/09	Draft state, district, school, and student report shells
4.2.2	• NH TAC will review draft report shells to provide feedback to NH DOE and its contractor	8/09	10/09	TAC agenda and summary
4.2.3	• NH DOE and its technical contractors will conduct small scale focus groups to ensure, to the extent practicable, that the reports yield the intended interpretations.	2/10	5/10	Summary of focus groups
4.2.4	• Revised report shells will be produced based on feedback from focus group participants and experts and used in reporting the 2010-2011 results.	6/10	10/10	Revised report shells

V Technical Documentation and Validity Evaluation

	Task	Sub-task (if applicable)	Start	End	Deliverable (if applicable)
5.1.0	NH DOE first published its technical manual for the current NH-ALT in 2005 (*Volume I of the NH-Alternate Assessment Technical Manual*) and NH DOE will update this manual to document the technical quality of the revised NH-ALT. In addition to the types of documentation found in Volume I technical manuals (see Marion & Pellegrino, 2006; also called the "nuts & bolts" volume), special attention in the updated manual will be on the: • Characteristics of students participating in the NH-ALT including descriptive information about how the students access academic content (sensory access); • Independent alignment analyses documented the link among the NH-Alt GLE Links, the tasks presented to the students, and the grade level GLEs; and • Results of the standard setting activities, especially the ways in which the achievement level descriptors reflect the academic content described in the NH-ALT GLE Links. This volume, produced in partnership with the assessment contractors, also serves an important role as a basis for the validity studies summarized in the Volume II technical manual. Given the timing of the activities during 2010-2011 test administration, a draft of the Volume I technical manual will be presented at the conclusion of the compliance agreement, yet it will require several months beyond the conclusion of the agreement to finalize the technical manual.		6/09	6/11	NH-Alt Structured Portfolio Technical Manual: Volume I

5.2.0	The set of validity studies conducted as part of this compliance agreement, the UNH/IOD GSEG, and as part of NH DOE's regular practice will be summarized in Volume II of the technical documentation prepared in partnership with the Center for Assessment. While it is too soon to specify the full set of studies, we anticipate conducting studies such as: • Examining teacher perception of alternately assessed students' GLE performance levels before vs. after implementation of newly aligned GLE-Alt links expanded content standards and revised NH-Alt procedures; • Evaluating how the new scoring rubric leads to more accurate inferences regarding students' academic performance; • Evaluating how the change to the structured portfolio affected the assessment of academic content compared to the current NH-ALT.	8/08	6/11	*Volume II: Validity Evaluation of the Revised NH-ALT Structured Portfolio*
5.2.1	• Along with the Center for Assessment and the NH TAC, NH DOE will draft the validity argument and develop validity evaluation plan for the revised NH-ALT	8/08	6/09	Draft validity evaluation plan
5.2.2	• Using the validity argument and draft plan, NH DOE after consulting with the NH TAC, will prioritize potential validity studies— in addition to those conducted as part of the UNH/IOD GSEG—that NH DOE will include in the first version of *Volume II: Validity Evaluation of the Revised NH-ALT Structured Portfolio*. NH will use the outlines generated as part of the NHEAI Grant.	1/09	9/09	Validity evaluation with set of prioritized studies outlined
5.2.3	• Conduct—contingent upon funding—and report the results of the prioritized validity studies as per Peer Review Guidance.	5/09	5/11	Student reports included in *Volume II*.

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