

Department of Legislative Services  
Maryland General Assembly  
2016 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1204  
Ways and Means

(Delegate Vogt, *et al.*)

---

**Education - PARCC Testing - Exemption for Children With Disabilities (Ben's Rule)**

---

This bill exempts a child with a disability from being given a Partnership for Assessment of Readiness for College and Careers (PARCC) assessment or its equivalent except (1) if a parent or guardian of the child and the administration of the school that the child attends have agreed that the child may be given a PARCC assessment or its equivalent and (2) the agreement specified has been documented in the Individualized Education Program (IEP) of the child.

The bill takes effect July 1, 2016.

---

**Fiscal Summary**

**State Effect:** The bill's requirements will put the State out of compliance with the federal Individuals with Disabilities Education Act (IDEA) and the Elementary and Secondary Education Act (ESEA), jeopardizing up to \$203.4 million in federal IDEA Part B revenues and \$204 million in federal ESEA Title I revenues authorized for FY 2017. As long as the State is out of compliance with federal law, federal revenues, which are anticipated to increase in future years, will continue to be in jeopardy.

**Local Effect:** Local school system federal IDEA and Title I revenues may be jeopardized.

**Small Business Effect:** None.

---

## Analysis

### Current Law:

#### *Individuals with Disabilities Education Act*

The federal IDEA requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns age 21, in accordance with an IEP specific to the individual needs of the student. An IEP is a written statement for each child with a disability that, among other things, must indicate the present levels of academic achievement and functional performance of a child, measurable academic and functional goals for the child, how the child's progress toward meeting these goals will be measured, and the special education and related services that are to be provided for the child. The parent of a child with a disability is a member of the IEP team that is responsible for developing and reviewing a child's IEP and for revisions to the IEP.

#### *Elementary and Secondary Education Act*

The most recent reauthorization of ESEA, the [Every Student Succeeds Act \(ESSA\) of 2015](#), maintained the annual assessment requirements. The law requires annual assessments of *all* students in grades 3 through 8 and at least once in high school in reading/language arts and mathematics; the law also requires students to be tested in science at least once in grades 3 through 5, 6 through 8, and 9 through 12. Furthermore, ESEA sections 1111(b)(3)(C)(i) and (ix)(I) require State assessments to “be the same academic assessments used to measure the achievement of all children” and “provide for the participation in such assessments of all students.” States are required to have 95% of students participate in the assessment, although states may allow parents to have their students opt out of taking the assessment.

Under ESSA, states are responsible for establishing their own accountability systems that must be submitted to the U.S. Department of Education. Plans must be peer reviewed, with the reviewers being made public, and states could have a hearing if their plans are turned down. The State Plan includes the federal assessment requirements. Specifically, according to section 1111(b)(3)(C)(i), the assessments must provide for the participation of *all* students, although there should be reasonable adaptations and accommodations for students with disabilities. In addition, limited English proficient students must be assessed in a valid and reliable manner and provided reasonable accommodations on assessments administered to such students. To the extent practicable, the assessments should be in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English proficiency.

### *Elementary and Secondary Education Act Funding Penalty Provisions*

If a state fails to meet any of the requirements of ESEA section 1111, including those that relate to the State Plan and assessments, the U.S. Secretary of Education may withhold funds for state administration under section 1111 of Title I, until the U.S. Secretary of Education determines that the state has fulfilled those requirements.

In addition, the U.S. Secretary of Education can disapprove any State plan that does not meet all of the requirements of section 1111 of Title I, which includes all Title I requirements, including reporting requirements. If the plan is not approved, the State does not receive funding.

### *Testing Requirements for Students with Disabilities*

Federal regulations issued under IDEA (34 CFR section 300.160(a)) require that each state “ensure that all children with disabilities are included in all general state and district-wide assessment programs, including assessments described under section 1111 of ESEA, 20 USC 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.”

According to ESEA section 1111, a state may provide for alternate assessments aligned with the challenging state academic standards and alternate academic achievement standards for students with the most significant cognitive disabilities. However, the total number of students assessed using the alternative assessment may not exceed 1% of the total number of all students in the State who are assessed in such a subject. Parents must be clearly informed as part of the process for developing an IEP that their child’s academic achievement will be based on alternative achievements, and how such participation may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

The previous reauthorization of ESEA, the No Child Left Behind Act, and its regulations did not cap the percentage of students who could take the alternate assessment. However, there was a cap of 1% of alternate assessment scores that could be used in the accountability systems.

The Maryland State Department of Education (MSDE), as the State education agency, must make certain assurances, as conditions for receiving ESEA Title I and IDEA federal funds to support the education of students with disabilities, that the State has in effect policies and procedures that:

- establish goals for the performance of students with disabilities in the State that are the same as the State's objectives for progress by children under section 1111(b)(2)(C) of ESEA (20 USC § 6311);
- are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;
- ensure that assessments shall be the same academic assessments used to measure the achievement of all children under section 1111(b)(3)(C) of ESEA (20 USC § 6311);
- report annually on its State report card, for the "all students" group and for each subgroup described in ESEA section 1111(b)(2)(C)(v)(II): information on student achievement at each proficiency level and data comparing actual achievement levels to the State's annual measurable objectives; and
- report annually to the Secretary of the U.S. Department of Education and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of ESEA (34 CFR § 300.157).

#### *Educational Accountability Program under State Law*

The State Board of Education, the State Superintendent of Schools, each local board of education, and each public school must implement a program of education accountability for the operation and management of the public schools. Under the education accountability program, the State board and the State superintendent must assist each local board to establish educational goals and objectives that conform with statewide educational objectives for subject areas including reading, writing, mathematics, science, and social studies. With the assistance of its local boards of education, each public school must survey current student achievement in reading, language, mathematics, science, social studies, and other areas to assess its needs. The State board and the State superintendent must implement specified assessment programs in reading, language, mathematics, science, and social studies that include written responses. By January of each year, the State Superintendent of Schools must send the Governor and the General Assembly a report that includes documentation on progress and recommendations for legislation.

**Background:** In 2015, federal legislation and regulations changed in regards to standardized testing of students with disabilities. In August 2015, the U.S. Education Department published a regulation entitled, ["Improving the Academic Achievement of the Disadvantaged; Assistance to States for the Education of Children With Disabilities,"](#) which requires states to give the same assessments to students without disabilities as to the vast majority of those with disabilities under the premise that nearly all students can "make academic progress when provided with challenging instruction and appropriate supports." This is a transition from the "2% rule," which allowed states in making accountability

HB 1204/ Page 4

determinations to count as proficient scores for up to 2% of students in the grades assessed using alternative assessments based on modified academic achievement standards.

Then in December 2015, the reauthorization of ESEA, ESSA, passed. The ESSA made further changes to assessment requirements for students with disabilities by limiting the percentage of students with disabilities who could take a state's alternative assessment aligned with college- and career-ready standards to 1% of test takers (as discussed above). However, IDEA and ESSA still recognize that students with disabilities may require the use of accommodations or an alternate assessment.

These changes in federal policy regarding standardized testing and standardized testing of students with disabilities in general have caused some parents of students with disabilities to speak out against standardized testing of students with disabilities. However, as explained above, failure to follow federal policies regarding standardized testing jeopardizes federal funding.

#### *Partnership for Assessment of Readiness for College and Careers*

MSDE was granted federal approval to utilize the PARCC assessments to establish compliance with its flexibility waiver under ESEA in August 2015. The PARCC assessments will also be used to meet compliance under ESSA. ESEA requires Maryland to include students with disabilities receiving special education and related services in accordance with an IEP consistent with IDEA in these assessments. However, IDEA recognizes that students with disabilities may require the use of accommodations or an alternate assessment.

PARCC used universal design principles to make the assessment as accessible as possible to all students, including English learners and students with disabilities. In addition, to make accessibility features available to all students, a student's IEP or 504 plan team members can decide to include additional features to increase accessibility based on a student's personal need profile. For example, closed-captioning of multimedia passages is available on the English language arts/literacy assessments. A full list of accessibility features can be found on the PARCC [website](#).

For more information regarding federal, State, and local assessments and testing in public schools, please see the **Appendix – Assessments and Testing in Public Schools**.

**State Revenues:** There is no provision under the federal ESEA to exempt students with disabilities from taking the PARCC assessment or its equivalent. In fact, federal law states that specified federal funds may be withheld if the State fails to administer the assessments to students with disabilities. If Maryland exempts children with disabilities from being given a PARCC assessment or its equivalent in circumstances other than those allowed by

federal law, the federal government could potentially withhold approximately \$203.4 million in federal IDEA Part B (sections 611 and 619) revenues and \$204 million in federal ESEA Title I revenues in fiscal 2017 and each subsequent year until the State complies with federal law.

The estimated loss in federal revenues is based on funds authorized but not yet appropriated by the federal government. As long as the State is out of compliance with federal law, federal revenues, which are anticipated to increase in future years, will continue to be in jeopardy.

---

### **Additional Information**

**Prior Introductions:** HB 1141 of 2015 was assigned to the House Rules and Executive Nominations Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Maryland State Department of Education, U.S. Department of Education, Partnership for Assessment of Readiness for College and Careers, Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2016  
kb/rhh

---

Analysis by: Caroline L. Boice

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510

## Appendix – Assessments and Testing in Public Schools

---

### *Commission to Review Maryland's Use of Assessments and Testing in Public Schools*

Chapter 421 of 2015 established the Commission to Review Maryland's Use of Assessments and Testing in Public Schools. In addition to other items, Chapter 421 required the Maryland State Department of Education (MSDE) to:

- survey and assess how much time is spent in each grade and in each local school system on administering local, State, and federally mandated assessments; and
- compile the results of the survey into documents that are consistent across local school systems and grade levels.

The full [Report on Local, State and Federally Mandated Assessments in Maryland](#) from August 2015 can be found on MSDE's website and the Department of Legislative Services library. The survey found that there are seven nationally mandated assessments; six State mandated assessments; and six types of locally mandated assessments. It should be noted that none of these assessments are mandated for all grades or student populations. For example, ACCESS for English Language Learners is only required for English language learners and the Kindergarten Readiness Assessment is only required for kindergarten students. The report also notes that many local school systems are currently transitioning their assessment efforts. According to the report, "They are transitioning to more technology-based assessments; they are transitioning in how they use the information produced through the assessments; and they are analyzing which assessments provide the most valuable information about teaching and learning. As a result, many school systems have recently made or are considering changes to their local assessment programs."

### *Federal Assessment Law*

The most recent reauthorization of the Elementary and Secondary Education Act (ESEA), the [Every Student Succeeds Act of 2015](#), maintained the annual assessment requirements. The law requires annual assessments of all students in grades 3 through 8 and at least once in high school in reading/language arts and mathematics; the law also requires students to be tested in science at least once in grades 3 through 5, 6 through 8, and 9 through 12. Furthermore, ESEA sections 1111(b)(3)(C)(i) and (ix)(I) require State assessments to "be the same academic assessments used to measure the achievement of all children" and "provide for the participation in such assessments of all students." States are required to have 95% of students participate in the assessment; although states may allow parents to have their students opt out of taking the assessment.

States may allow local school systems to use a “nationally recognized” high school exam in place of a state test. This test must be aligned to standards and equivalent to the state test in content, difficulty, and quality.

In a December 2, 2015 “Dear Colleague” letter, the U.S. Department of Education (ED) reiterated the importance of reaching the 95% participation rate and announced that, “[i]f a State with participation rates below 95% in the 2014-2015 school year fails to assess at least 95% of its students on the statewide assessment in the 2015-2016 school year, ED will take one or more of the following actions: (1) withhold Title I, Part A State administrative funds; (2) place the State’s Title I, Part A grant on high-risk status and direct the State to use a portion of its Title I State administrative funds to address low participation rates; or (3) withhold or redirect Title VI State assessment funds.”

### *Federal Recommendations*

In October 2015, the Obama Administration released a [Testing Action Plan](#) directed at reducing over testing in public schools, which was partly in response to a [report](#) by the Council of the Great City Schools that found that students typically spend about 20 to 25 hours per year (or about 2.3% of the school time) on roughly eight mandatory assessments. The plan advises that assessments be worth taking; high quality; time limited; fair – and supportive of fairness – in equity in educational opportunity; fully transparent to students and parents; just one of multiple measures; and tied to improved learning.

In regards to limiting the time spent on assessments, the plan recommends that states place a cap on the percentage of instructional time students spend taking required statewide standardized assessments to ensure that no child spends more than 2% of his or her classroom time on these assessments. Further, the plan recommends that parents receive formal notification if their child’s school exceeds this cap and an action plan should be posted to describe the steps the state will take to review and eliminate unnecessary assessments. Moreover, the plan recommends that low-quality test preparation strategies such as “drill-and-kill” be eliminated.

### *College- and Career-ready Curriculum*

Beginning with the 2013-2014 school year, a new college- and career-ready curriculum, aligned with the Common Core State Standards, known as the Maryland College- and Career-Ready Standards (MCCRS) was fully implemented in Maryland schools. As a result of the new curriculum, Maryland also required a new assessment system. The Partnership for Assessment of Readiness for College and Careers (PARCC) assessments in English language arts and mathematics, which are aligned with MCCRS, were administered statewide for the first time in the 2014-2015 school year to students in grades 3 through 8 and high school. The State Board of Education has also adopted new

science standards known as the Next Generation Science Standards. Maryland is part of a consortium that is developing new science assessments aligned to the standards.

Chapter 533 of 2013, the College and Career Readiness and College Completion Act of 2013, requires students to be assessed no later than at the end of grade 11 to determine whether they are ready for college-level, credit-bearing coursework in English/language arts/literacy and mathematics. In addition, it sets a goal for the State that all students achieve math competency in Algebra II, although there is no requirement that students take such a course in the law.

MSDE has indicated that additional tests are necessary to properly evaluate college and career readiness and could be helpful in familiarizing students with the rigor of the new MCCRS curriculum and what is required for the PARCC assessments prior to being tested in the subjects needed to meet graduation requirements.

MSDE suggests that, because students must be assessed for college readiness by the end of grade 11, and in order to accurately determine whether students are meeting the State goal of being competent in Algebra II, standardized statewide assessments are needed in English 11 and Algebra II. These assessments will be optional and paid for by the State. The possible addition of English 9 and Geometry PARCCs would assist in monitoring the progress made by students in anticipation of taking the tests necessary to meet graduation requirements. MSDE, local school systems, and community colleges have also agreed upon other existing methods for evaluating competency in determining college and career readiness, (e.g., Scholastic Aptitude Tests or advanced placement scores). The current PARCC contract does reflect the assumed phase-in of the additional four tests. In the current 2015-2016 school year (fiscal 2016), PARCC assessments include testing in reading and math for grades 3 through 8, English 10, Algebra I, and Algebra II for all students taking those respective courses. English 11 will also be offered in fiscal 2016 as an optional test.

### *Partnership for Assessment of Readiness for College and Careers*

The 2014-2015 PARCC testing was done in two parts – the performance-based testing in early spring and the end-of-year testing in late spring, closer to end of the school year. In May 2015, the PARCC governing board voted to:

- reduce the testing time for students by about 90 minutes overall and create more uniformity of test unit times;
- consolidate the two testing windows in mathematics and English language arts/literacy (which includes reading and writing) into one to simplify administration; and
- reduce the number of test units for all students.

PARCC reports that states and schools will have up to 30 school days in which to test during the 2015-2016 school year, but most will complete all testing in one to two weeks, depending on the school's scheduling and availability of computers. The spring 2016 testing times for the PARCC assessments are shown in **Exhibit 1**.

---

**Exhibit 1**  
**Spring 2016 PARCC Testing Times**

<b>Grades</b>	<b>ELA</b>	<b>Math</b>
Grade 3	Unit 1 – 90 minutes Unit 2 – 75 minutes Unit 3 – 90 minutes	Unit 1 – 60 minutes Unit 2 – 60 minutes Unit 3 – 60 minutes Unit 4 – 60 minutes
Grades 4-5	Unit 1 – 90 minutes Unit 2 – 90 minutes Unit 3 – 90 minutes	Unit 1 – 60 minutes Unit 2 – 60 minutes Unit 3 – 60 minutes Unit 4 – 60 minutes
Grades 6-8	Unit 1 – 110 minutes Unit 2 – 110 minutes Unit 3 – 90 minutes	Unit 1 – 80 minutes Unit 2 – 80 minutes Unit 3 – 80 minutes
Grades 9-12	Unit 1 – 110 minutes Unit 2 – 110 minutes Unit 3 – 90 minutes	Unit 1 – 90 minutes Unit 2 – 90 minutes Unit 3 – 90 minutes

PARCC: Partnership for Assessment of Readiness for College and Careers  
ELA: English Language Arts

Note: Math for grades 9-12 includes Algebra I, Geometry, Algebra II, and Integrated Mathematics I, II, III.

Source: Partnership for Assessment of Readiness for College and Careers

---

*Limited Testing*

In response to the concern of increased testing and in response to the Commission to Review Maryland's Use of Assessments and Testing in Public Schools, in addition to the PARCC adjustments discussed above, MSDE has reported that it has reduced the number of items on the Kindergarten Readiness Assessment and has asked local school systems to compile a list of all required assessments. In addition, MSDE has created a schedule that

shows the optimal way to administer the required assessments. MSDE reports that some local school systems have chosen to follow their schedule, while others have not.

In response to requests from the commission, in December 2015, MSDE provided an estimate of the amount of time that students spend taking mandated federal and State assessments by grade level. Overall, students in grades 3 through 8 spend between 7 and 10 hours each school year taking federally mandated tests, or 0.6% to 1.0% of instructional time based on 1,080 instructional hours in elementary and middle school and 1,170 hours in high school, in a school year. In addition, MSDE reported that students in kindergarten spend less than 1 hour per year taking the State-required Kindergarten Readiness Assessment. Finally, students spend 14.2 hours to take the four required high school assessments, three of which are also federally mandated. MSDE also surveyed local school systems on the amount of time that students spend taking mandated local assessments by grade. Overall, students spend on average 0.4% to 1.0% of their instructional time on local assessments in elementary school, increasing to about 1.5% in middle and high school. The amounts vary by grade and school system.

Some students are granted additional time to take assessments due to the student's 504 plan; (2) the federal Individuals with Disabilities Education Act; or (3) federal law relating to English language learners.