The Honorable Christopher A. Koch  
State Superintendent of Education  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777-0001

Dear Superintendent Koch:

This letter serves as a response to your letter dated February 11, 2015, regarding the requirements for State assessments under the Elementary and Secondary Education Act of 1965 (ESEA). Before I respond to your three specific questions, please let me emphasize the importance of the assessment requirements in the ESEA. A high-quality, annual statewide assessment system is essential to providing critical information regarding student achievement to parents and educators at all levels. When that system is aligned with the academic content and achievement standards that a State expects all children to know and be able to do, it provides important information on all students so that educators can improve educational outcomes, close achievement gaps, increase equity, and improve instruction.

Below, I have responded to each question, providing the statutory and regulatory citations, as applicable, and noting any differences between the statutory and regulatory requirements of the ESEA and ESEA flexibility.

1. Whether giving parents the ability to opt out of the assessment required under Section 6311(b)(3) would violate any provisions of ESEA?

ESEA section 1111(b)(3) (20 U.S.C. § 6311(b)(3)) requires a State educational agency (SEA) that receives funds under Title I, Part A of the ESEA to implement in each local educational agency (LEA) in the State a set of high-quality, yearly academic assessments that includes, at a minimum, assessments in mathematics, reading or language arts, and science. With respect to reading/language arts and mathematics, the assessments must be administered in each of grades 3 through 8 and once in grades 10 through 12. With respect to science, the assessments must be administered once during grades 3 through 5, grades 6 through 9, and grades 10 through 12.

SEAs and LEAs must provide for the participation of all students on the assessments (see ESEA section 1111(b)(3)(C)(ix)(I)) so that they can identify the learning progress of all students against the same high expectations, regardless of a student’s race, ethnicity, socioeconomic status, or neighborhood. This requirement does not permit certain students or a specific percentage of students to be excluded from assessments. Rather, it sets out the rule that all students in the tested grades must be assessed. ESEA flexibility does not remove these requirements.
In applying for funds under Title I, Part A of the ESEA, the SEA assured that it would administer the Title I, Part A program in accordance with all applicable statutes and regulations (see ESEA section 9304(a)(1)). Similarly, each LEA that receives Title I, Part A funds assured that it would administer its Title I, Part A program in accordance with all applicable statutes and regulations (see ESEA section 9306(a)(1)). If an SEA does not ensure that all students are assessed, it would be out of compliance with ESEA section 1111(b)(3). Given the reliance on assessment results in other Federal education programs, an SEA or its LEAs may find themselves out of compliance with those programs also. Those additional programs include those targeting students most at risk, including, but not limited to: School Improvement Grants (SIG); ESEA Title III; Part B of the Individuals with Disabilities Education Act (IDEA); programs for rural schools under ESEA Title VI; migratory students under ESEA Title I, Part C; and programs focused on professional development and other supports for teachers, such as ESEA Title II.

2. If it violates any provisions of ESEA, can Illinois obtain a waiver from such provision?

Section 9401 of the ESEA authorizes the US Department of Education to grant waivers of ESEA requirements, with certain exceptions, when waivers will increase the quality of instruction and improve the academic achievement of students. I have previously declined requests to exercise this authority to grant waivers of the ESEA provisions requiring the annual assessment of students because they do not meet the statutory threshold for approving a waiver.

3. Under what circumstances, if any, may Illinois allow parents the ability to opt their children out of the assessments required under 6311(b)(3)?

As noted above, section 1111(b)(3)(A) of the ESEA (20 U.S.C. 6311(b)(3)(A)) states that all students in the tested grades must be assessed. It does not permit certain categories of students or a specific percentage of students to be excluded from assessments. We encourage States to work with parents to make sure they are fully informed about the purposes and importance of the annual statewide assessment system. As I noted at the outset, a high-quality, annual statewide assessment system is essential to providing critical information regarding student achievement to parents and educators, and it provides important information on all students so that educators can improve educational outcomes, close achievement gaps, increase equity, and improve instruction.

Please do not hesitate to contact me if you need additional information or clarification. Thank you for your continued commitment to enhancing education for all of Illinois' students.

Sincerely,

[Signature]

Deborah S. Delisle
Assistant Secretary