

August 25, 2009

XXXXXXX  
XXXXXXX  
XXXXXXXXXXXX

Dear XXXX:

This is in response to your letter to the U.S. Department of Education, dated October 27, 2007, regarding the type of alternate assessment that can be administered to a student with a disability who does not participate in the XXXXXX Public Schools Curriculum Management System. Your letter was referred to the Office of Special Education Programs (OSEP) for response. I apologize for the delay in responding to your inquiry.

In your letter, you indicate that you have corresponded with Mr. Doug Cox, Assistant Superintendent for the Division of Special Education and Student Services, Virginia Department of Education (VDOE), regarding division-wide assessments and alternate assessment requirements. You included a copy of Mr. Cox's response letter regarding the XXXXXX Public School's Curriculum Management System (CMS), and have asked if the U.S. Department of Education agrees with Mr. Cox's response in this regard.

Under 34 CFR §300.160(a) of the regulations for Part B of the Individuals with Disabilities Education Act (IDEA), States are required to ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 111 of the Elementary and Secondary Education Act, with appropriate accommodations and alternate assessments, if necessary, as indicated in the respective individualized education programs (IEPs). States (or in the case of a district-wide assessment, a local educational agency (LEA)) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments even with accommodations. 34 CFR §300.160(c)(1). The IEP Team determines if an alternate assessment is required to measure the academic achievement and functional performance of a child with a disability on any State or district-wide assessment and must include a statement in each child's IEP explaining why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child. 34 CFR §300.320(a)(6)(ii).

It is our understanding that the student in question does not participate in the CMS because the student's IEP team determined that this assessment was not appropriate for the student; instead, the student participates in the Virginia Alternate Assessment Program (VAAP), which is a portfolio assessment. Because the VAAP is a portfolio assessment, it is our understanding that students with disabilities whose IEP Teams determine that they should participate in the VAAP are appropriately assessed repeatedly throughout the year in preparation for this portfolio assessment. Based on our review of your inquiry and the accompanying response that you received from Mr. Cox, we believe that the State's explanation was reasonable in light of the

applicable IDEA requirements that govern the participation of children with disabilities in assessments.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Deborah Morrow at 202-2457456.

Sincerely,

/s/

Andrew J. Pepin

Executive Administrator  
delegated the authority to  
perform the functions of the  
Assistant Secretary for the Office  
of Special Education and Rehabilitative Services

cc: Il. Douglas Cox  
Assistant Superintendent  
Division of Special Education and Student Services