



To: Members of the Oregon Senate Education Committee

From: Christopher Kratzer, Director U.S. Government Relations, ACT, Inc.

Date: March 15, 2019

Subject: Testimony Submission on Senate Bill 157

Chairman Wagner and Members of the Committee,

I write on behalf of ACT, Inc. the provider of the ACT college admissions test, and in advance of the scheduled hearing on Senate Bill 157. I regret that I am not able to attend the hearing in person and appreciate the opportunity to provide comments on the legislation.

SB 157 as introduced directs the Department of Education to administer a nationally-recognized assessment of high school students' knowledge and skills and further allows school districts to decline to administer the statewide summative assessment in grades where the nationally-recognized assessment is administered.

Background:

The Every Student Succeeds Act (ESSA) requires every state to test students at least once in high school (grades 9 through 12) in the core academic subjects of English language arts, math, and science. The law envisions that states administer the same assessment or system of assessments (i.e., a single, statewide high school assessment, or multiple assessments) to meet this requirement. Such a test or tests would be used in every school district in the state for this purpose and would need to meet several technical requirements, including demonstrated alignment to the state's academic standards.

However, ESSA also affords school districts the option to use a locally-selected "nationally-recognized" high school assessment, such as the ACT or SAT, in lieu of the state's existing high school test to meet these federal assessment requirements for high school. In order to exercise this flexibility, the State Education Agency (SEA) and the U.S. Department of Education (USDE) must separately approve the test's use for this purpose and the same test must be administered in all schools in the given district.

It appears that the intent of SB 157 would be to utilize an alternative test to be used in lieu of the state's existing high school test [SBAC]. The only allowable mechanism to achieve that intent while still remaining compliant with federal law (requisite for the state to receive its Title I federal funding) is through the locally-selected assessment option contained in ESSA. SB 157 as introduced would fail to meet the statutory and regulatory requirement contained in ESSA and in the rules promulgated to implement the law.



Concerns with SB 157 (Introduced) Under ESSA

The current draft of SB 157 reads that “a school district may decline to implement the statewide summative assessment related to mathematics or English for any grade in which the students of grade take the [nationally-recognized] assessment.”

Federal compliance requires states and districts to take certain steps before allowing a nationally-recognized assessment to be used in place of the state designed assessment.

- **Active selection, stakeholder input, and the state’s ability to revoke approval.** ESSA envisions districts actively selecting the nationally-recognized assessment, not declining the state assessment. For example, ESSA requires that districts notify parents of the request to administer the nationally-recognized assessment (§1111(b)(2)(H)(vi)). As part of the notification, districts must provide parents and, as appropriate, students the opportunity to provide meaningful input on the decision (34 C.F.R. § 200.3). Further, ESSA regulations state that the state may revoke a local educational agencies ability to use a nationally-recognized assessment for good cause (34 C.F.R. § 200.3(b)(3)).
- **State technical requirements.** Prior to allowing districts to use a nationally-recognized assessment in lieu of the state assessment, the state must evaluate the assessment to ensure that the nationally-recognized assessment meets certain technical requirements—including comparability to the state assessment (§1111(b)(2)(H)(v)).
- **Federal approval prior to administration.** Technical information, including establishing comparability, must be approved through the U.S. Department of Education’s peer review process prior to being used in lieu of the state assessment (§1111(b)(2)(H)(iii) and 34 C.F.R. § 200.3(b)(2)(ii)). SB 157 is silent on the federal review and compliance requirements that must be fulfilled prior to utilizing the nationally-recognized assessment.

SB 157 also fails to follow the district-to-state request model found in ESSA allowing districts to choose and then request the use of a nationally recognized high school assessment. Instead, by requiring that the department shall administer “a nationally recognized assessment” SB 157 does not truly provide districts with choice. Further, nothing in ESSA limits a state to selecting only one nationally-recognized assessment.

- ESSA allows states to approve more than one nationally-recognized assessment. The language in ESSA specifies that “state approval of nationally-recognized high school academic assessments that are available for local selection” and the state must “establish technical criteria to determine if any such assessment meets the requirements.” (§1111(b)(2)(H)(ii) (emphasis added)).



Summary

ACT is not able to support SB 157 in its current form because of its incongruence with federal law and for the narrow construction limiting choice as intended in the federal law. We urge caution during consideration of SB 157 without amendment, and also urge a thorough review of the compliance aspects with regard to ESSA. To this point, ACT is willing to work with the Committee to align this legislation with the locally-selected provisions contained in ESSA to ensure that the Oregon Department of Education and Oregon school districts could exercise the choice if that is the preferred direction of those entities.

Thank you for the opportunity to provide input on this legislation.

Sincerely,

A handwritten signature in blue ink that reads "Chris J. Kratzer".

Christopher J. Kratzer
Senior Director, U.S. Government Relations
ACT, Inc.