



Multicultural Education, Training and Advocacy, Inc.

CENTER FOR LAW AND EDUCATION

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December 3, 2020

Commissioner Jeffrey Riley
Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02148-4906

Re: WIDA ACCESS

Dear Commissioner Riley:

The undersigned are public interest legal organizations that represent immigrant students and families. We write today to urge that you take courageous and important action and postpone the in-person administration of the WIDA ACCESS test for English language learners (ELL) during the COVID-19 pandemic. As public health data amply demonstrates, these students and their families are uniquely and disproportionately at risk of contracting the disease and the WIDA ACCESS in-person testing – which entails multiple separate test administrations over multiple days – places the students at imminent health risk and harm. We respectfully ask that DESE issue guidance to all schools in the Commonwealth concerning ELL students, particularly to inform parents, in English and relevant home languages, that in-person ACCESS testing at this time is voluntary and that parents and students will not be punished, disciplined, penalized, reported or otherwise sanctioned for their legitimate COVID-19 safety concerns.

In support for this urgent life-saving request, the undersigned organizations bring the following facts and circumstances to DESE's immediate attention:

1. As the attached chart confirms, the school districts with the highest percentage of ELL students are in the communities where COVID-19 infection rates substantially exceed the state average. The source for this important data are the websites of DESE and the Massachusetts Department of Health.
2. According to the Centers for Disease Control (CDC), Latinx persons are 2.8X or higher than White persons to contract COVID-19. Black persons are 4.7X higher than White persons, and Asians 1.3X higher than White persons. In Massachusetts, virtually all EL students and families fall into these higher-risk categories.
3. The CDC further advises that among the factors that increase community spread and individual risk are close physical contact, enclosed space and duration of exposure. The CDC defines as close contact being within 6 feet of an infected person for a cumulative total of 15 minutes over a 24 hour period starting from 2 days before illness onset or for 2 days prior to test specimen collection for asymptomatic persons.
4. On November 9, DESE released a memorandum to statewide educators on ACCESS for ELL students. The memorandum states that: "...students learning remotely will need to bring their school-issued laptops (and headsets, if these were also distributed) to the school or testing site on the day of their test administration". The memorandum does not acknowledge that parents of those students may have chosen remote learning options based on their legitimate concerns surrounding COVID-19 infection, illness, and death. Nor does DESE indicate an awareness of the deadly surge – confirmed by public health experts and authorities – that is currently unfolding with alarming COVID-19 cases on the rise locally, regionally, and nationally.
5. DESE's November 9 memorandum cites outdated state and foreign guidance relying on studies from schools in South Korea, Germany and the United Kingdom. Significantly, none of the foreign studies involved health and safety during the most recent second wave manifestations of the COVID-19 pandemic – and none were about the foreseeable impact of COVID-19 infection on discrete minority groups, including racial and ethnic groups.
6. DESE's November 9 memorandum has a minimal information on safety precautions such as the notion that a school may "consider" reducing the student-to-test-administrator ratio. This is far too weak and insufficient in light of the severity of COVID-19 transmission, infection, and illness. In fact, DESE's memorandum does not meaningfully require recent COVID-19 screening or testing of those who would administer and take the ACCESS test.

Many parents, educators, and advocates have urged a pause in standardized testing and assessment during the pandemic. For example, leading measurement experts such as Dr. James Woodworth, the Commissioner of the National Center for Education Statistics, announced that due to the COVID-19 pandemic there will be a delay in the NAEP assessment.

Notably, unlike other English language proficiency assessments that can be given remotely – and that do not require in person, face-to-face risk of COVID-19 exposure – WIDA has not agreed to modify its ACCESS assessment protocol to protect ELL students. Indeed, it appears to us that what is happening here is akin to the arguments of gun manufacturers who after the Sandy Hook school massacre argued that they merely sell weapons and are not responsible for their use.

In light of the foregoing facts – which produce a disparate impact and imminent harm that will disproportionately impact students of color and immigrant students – the undersigned organizations strongly believe that DESE’s improper and unjustified reliance on in-person testing for ELL students raises serious discrimination concerns.

In conclusion, we urge DESE to acknowledge that school district administration of in-person ACCESS test to ELL students among the highest risk populations and most vulnerable communities is far too risky – and potentially life-threatening. In response to this threat, WIDA ACCESS must be entirely voluntary. We respectfully request an immediate meeting to discuss this matter in greater detail. Attorney Rice can be reached via email at rlr@shore.net or telephone at 617-628-2226 and Attorney Espinoza-Madrigal can be reached via email at iespinoza@lawyersforcivilrights.org or telephone at 617-988-0624.

Respectfully submitted,

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