



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

January 16, 2018

The Honorable MaryEllen Elia  
Commissioner of Education  
New York State Education Department  
89 Washington Avenue, Room 111  
Albany, NY 12234

Dear Commissioner Elia:

I am writing in response to the New York State Education Department's (NYSED) request to the U.S. Department of Education (the Department) for a waiver of the requirements in sections 1111(b)(1)(B) and (b)(2)(B)(i) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), which require a State to hold all students to the same academic standards and administer the same aligned assessments to all students. NYSED requested this waiver to assess children with disabilities who are enrolled in grades 4-8 using reading/language arts and mathematics assessments not more than two grade-levels below chronological grade level.

I have reviewed NYSED's request and, pursuant to my authority under ESEA section 8401(b), I am denying NYSED's request. After reviewing NYSED's request, I have determined that the State has not demonstrated the requested waiver would advance student achievement or how it will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, as required under 8401(b)(1)(C). ESEA section 1111(b)(1)(B) requires the State educational agency to apply the same challenging academic content standards and aligned academic achievement standards to all public schools and public school students in the State; holding all students to the same, high standards is critical to ensuring the State will advance student achievement and that all students graduate high school with the knowledge and skills they need to succeed in college and the workforce. Further, ESEA section 1111(b)(2)(B)(i)(I) requires that, with the exception of alternate assessments aligned to alternate academic achievement standards for students with the most significant cognitive disabilities, the assessments administered by the State must be the same academic assessments used to measure the achievement of all public elementary and secondary students. Waiving these requirements would undermine the intent of the statute that States set high expectations that apply to all students and hold schools accountable for reaching those expectations. The Department supports these requirements as necessary to ensure that teachers and parents of all students, including children with disabilities, have information on students' proficiency and progress in reading/language arts and mathematics.

400 MARYLAND AVE., SW, WASHINGTON, DC 20202  
<http://www.ed.gov/>

I appreciate the work that you and your staff are doing to provide a high-quality education for all students in New York's schools. If you have any questions, please contact Denise M. Joseph of my staff at: [OSS.NewYork@ed.gov](mailto:OSS.NewYork@ed.gov).

Sincerely,

/s/

Jason Botel  
Principal Deputy Assistant Secretary,  
Delegated the Authority to Perform the  
Functions and Duties of the Position of  
Assistant Secretary, Office of  
Elementary and Secondary Education

cc: Ira Schwartz, Associate Commissioner  
Jhone Ebert, Senior Deputy Commissioner for Education Policy  
Angelica Infante, P-12 Instructional Support Deputy Commissioner