



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

January 18, 2017

The Honorable Michael W. Kirst  
President  
California State Board of Education  
1430 N Street, Suite 5111  
Sacramento, CA 95814

The Honorable Tom Torlakson  
Superintendent of Public Instruction  
California Department of Education  
1430 N Street  
Sacramento, CA 95814

Dear President Kirst and Superintendent Torlakson:

I am writing to provide the final determination of the U.S. Department of Education (the Department) in response to the California Department of Education's (CDE) request for a waiver under section 8401 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), to implement its transition plan for administering new general and alternate science assessments.

On June 2, 2016, CDE requested this waiver so that it could transition to new general and alternate science assessments aligned with the Next Generation Science Standards, which CDE adopted in 2013, without testing students on California's current science test while CDE pilots and field tests its new assessments. Specifically, under CDE's transition plan, CDE would pilot items for the new general science assessments in school year 2016–2017 with all students in fifth and eighth grades and high school, conduct a census field test with all students in those grades in 2017–2018, and conduct a full operational test in 2018–2019. With respect to alternate science assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities, CDE would pilot items for a new test for eligible students in fifth and eighth grades and high school in school years 2016–2017 and 2017–2018, conduct a census field test in 2018–2019, and administer a full operational alternate assessment in 2019–2020. While it is piloting and field testing its new science assessments, CDE would not administer its existing, approved science assessments. In addition, CDE would not report individual student or school-level achievement data to parents, educators, or the public.

On September 30, 2016, I declined to approve CDE's waiver request because it did not meet the requirements in section 8401(b)(1)(C) and (F) of the ESEA that a waiver advance student

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achievement and maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of student subgroups. Under section 8401(b)(4)(B)(i)-(ii) of the ESEA, I notified CDE of that determination, providing detailed reasons, in writing, for my determination, and offered CDE an opportunity to revise and resubmit its waiver request within 60 days. On November 29, 2016, CDE resubmitted its request, providing additional information in support of its waiver. CDE, however, did not alter its transition plan or timeline.

On December 13, 2016, I concluded, despite CDE's additional rationale in support of its waiver request, that it still did not warrant approval because it did not meet the statutory requirements to improve student achievement and maintain or improve transparency in reporting to parents and the public. Further, the waiver contained an un-waivable request as it relates to students with the most significant cognitive disabilities for whom there must be a fully operational alternate assessment in science for students with the most significant cognitive disabilities at the same time as the CDE administers an operational general science assessment (section 612(a)(16)(A) of the Individuals with Disabilities Education Act (IDEA)). Under section 8401(b)(4)(B)(iii) of the ESEA, I offered CDE the opportunity to request a hearing to present argument and any testimony in support of its waiver request.

On December 20, 2016, CDE requested a hearing but asked that it be conducted after January 2, 2017. The Department conducted the hearing on January 6, 2017 via WebEx. At the hearing, Keric Ashley, Deputy Superintendent of the District, School, and Innovation Branch of CDE, presented oral argument. CDE also submitted a letter on January 6, 2017, that articulated the argument it made at the hearing.

I respect CDE's decision to upgrade its current science standards by adopting the Next Generation Science Standards. With that decision comes the task of developing new assessments and setting academic achievement standards in science aligned with the new content standards. As with any assessment development, I know that this work is not easy and CDE is fortunate to have a broad coalition of stakeholders to support its efforts. I appreciate CDE's interest in ensuring that its new science assessments are a tool for learning and that assessing students in science does not take unnecessary time away from valuable instruction. I also understand CDE's arguments that having time to conduct a census field test of a new online assessment will afford the opportunity to work out glitches and likely presage a smooth operational assessment.

Nevertheless, I remain deeply concerned about CDE's transition plan and timeline. CDE's pilot tests will not measure the full depth and breadth of the State's academic new content standards in science, because each student will receive only a sample of assessment items during the pilot phase. Moreover, CDE will not have set new academic achievement standards, so CDE will not be able to validly and reliably measure student academic achievement on either the pilot or the field tests. Further, during the years in which it administers the pilot and field tests, CDE will not have comparable individual student or school-level achievement results across districts in the State to report to the public. Finally, CDE's transition plan will result in an additional year — 2018–2019 — before students with the most significant cognitive disabilities have a fully operational alternate assessment in science.

I am therefore declining to approve CDE's waiver request based on the transition plan and timeline that are currently before me because the request does not meet the requirements for a waiver under ESSA section 8401. Section 8401(b)(1)(C) and (F) require, respectively, that a waiver advance

student achievement and maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of subgroups of students. Because CDE will not administer an operational general science assessment in either SYs 2016–2017 or 2017–2018 or an operational alternate science assessment in SYs 2016–2017, 2017–2018, or 2018–2019, CDE will have no achievement data in science that is comparable across schools and districts to report to educators, parents, or the public for several years. The lack of an operational assessment measuring student achievement for all students against the full depth and breadth of the State’s academic content standards in science and the lack of academic achievement standards for two to three school years under CDE’s transition plan will mean that CDE will lack valid and reliable data about student achievement in science during school years 2016–2017 through 2018–2019. As a result, CDE will not be able to determine whether student achievement in science is improving, consistent with section 8401(b)(1)(C), or be able to maintain or enhance the level of transparency in reporting to parents and the public on student achievement in science for the duration of the waiver, consistent with section 8401(b)(1)(F).

If CDE moves forward with its transition plan and timeline, CDE will be out of compliance with a number of requirements of the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), for SY 2016–2017 and the ESEA, as amended by the ESSA, for SYs 2017–2018 and 2018–2019. Specifically, NCLB sections 1111(b)(1)(A) and 1111(b)(3)(C)(ii) and (v)(II) require the State to establish student academic achievement standards and implement high-quality, yearly student academic assessments in science that are aligned with those standards to measure student achievement and to inform instruction. The same requirements are found in ESSA sections 1111(b)(1)(A) and 1111(b)(2)(B)(ii) and (v)(II). Further, NCLB sections 1111(b)(3)(C)(xii) and (xv) and 1111(h)(1)(C)(i) and (2)(B) require the State to provide individual student reports to parents, teachers, and principals and to include the results of science assessments on State and local report cards. These same requirements are continued in ESSA sections 1111(b)(2)(B)(x) and (xii) and 1111(h)(1)(C)(ii) and (2)(C). In addition, because CDE will administer an operational general science test by SY 2018–2019 but will not administer an operational alternate assessment until SY 2019–2020, CDE will violate the requirement in section 612(a)(16)(A) of the Individuals with Disabilities Education Act (IDEA) that all students with disabilities be included in all general State and districtwide assessment programs, including assessments described in section 1111 of the ESEA, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs (IEPs). IDEA does not allow that this provision be waived.

As noted above, my decision is based on CDE’s current transition plan and timeline that are before me. At the hearing, Deputy Superintendent Ashley expressed interest in a one-year waiver for the 2016–2017 school year while it pilots its new assessment items. In 2017–2018, he indicated that CDE would be willing to report the raw scores from its census field test with an explanation of how to interpret those scores and what they mean for student progress and classroom instruction but not reporting on academic achievement standards. Deputy Superintendent Ashley also indicated a willingness to examine how CDE can meet the requirements of the IDEA to administer an operational alternate assessment in science for students with the most significant cognitive disabilities at the same time it administers an operational general science assessment. My decision does not address these offers because they are not formally before me as part of CDE’s waiver request. As always, the Department is willing to review any new waiver request from a State.

If you have questions, please do not hesitate to contact Tanesha Hembry of my staff at: [OSS.California@ed.gov](mailto:OSS.California@ed.gov) or Susan Murray in the Office of Special Education Programs at: [Susan.Murray@ed.gov](mailto:Susan.Murray@ed.gov).

Sincerely,

/s/

Ann Whalen  
Senior Advisor to the Secretary  
Delegated the Duties of Assistant Secretary  
for Elementary and Secondary Education

cc: Keric Ashley, Deputy Superintendent  
Kristin Wright, Director of Special Education Division