



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

October 9, 2018

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 in response to the California Department of Education's (CDE's) request on May 16, 2018, for a waiver of section 1111(c)(4)(B)(iv) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). ESEA section 1111(c)(4)(B)(iv) requires a State's accountability system to include an English language proficiency (ELP) indicator that measures progress in achieving ELP, as defined by the State and measured by the State's ELP assessment, within a State determined timeline for all English learners. Specifically, CDE requested this waiver to: (1) allow CDE to include recently reclassified fluent English proficient (RFEP) students within the ELP indicator; and (2) to give additional weight to long-term English learners (LTEL) in the ELP indicator.

After carefully reviewing CDE's request and, pursuant to my authority under ESEA section 8401(b), I am declining to approve CDE's request. The State has not demonstrated how the requested waiver would advance student academic achievement, as required under section 8401(b)(1)(C), nor did the State describe how it would maintain or improve transparency in reporting to parents and the public on student achievement and school performance, as required by section 8401(b)(1)(F). Including RFEPs in the ELP indicator calculation by counting them as making progress on the ELP test the year after they are no longer taking the ELP test (because they are no longer English learners), and awarding schools credit for those students who have already exited English learner status, could result in an inaccurate portrayal of the progress of current English learners toward ELP proficiency. In addition, giving additional weight to the performance of LTELs provides confusing information in the indicator calculation about the performance of English learners in achieving ELP and could obscure the performance of other English learners and result in a lack of transparency around how English learners

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in a school are actually performing on the ELP indicator. Both including RFEPs and giving additional weight to LTELs in the indicator could result in some schools receiving higher ratings on the ELP indicator than they would receive based on the performance of the English learners in the school and, therefore, not being identified for supports and interventions to improve student achievement even though they have low performance of English learners making progress toward ELP.

CDE may revise its waiver request, consistent with section 8401(b)(4)(B)(ii) of the ESEA, to meet the requirements of section 8401(b)(1), and resubmit the revised waiver request. If CDE decides to resubmit, it must do so no later than 60 days from the date of this letter.

I appreciate the work you are doing to improve your schools and provide a high-quality education for all students in California's schools. If you have any questions, please contact Nkemjika Ofodile-Carruthers of my staff at: OSS.California@ed.gov.

Sincerely,

/s/

Frank Brogan
Assistant Secretary for
Elementary and Secondary Education

cc: Keric Ashley, Deputy Superintendent, Planning, Performance and Technology Branch
Marguerite Ries, Federal Policy Liaison