



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

The Honorable Susan S. Bunting
Secretary of Education
Delaware Department of Education
The Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901-3639

March 4, 2019

Dear Superintendent Bunting:

I am writing in response to the Delaware Department of Education (DDOE) request on December 12, 2018, for an extension to its waiver of section 1111(b)(2)(D)(i)(I) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), of the requirement that a State may not assess using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS) more than 1.0 percent of the total number of students in the State who are assessed in a reading language arts, mathematics and science. DDOE requested this waiver because, based on State data for the 2017-2018 school year, the DDOE has concluded that it will need to assess more than 1.0 percent of students using an AA-AAAS in the 2018-2019 school year.

After reviewing Delaware's request, I am granting, pursuant to my authority under section 8401(b) of the ESEA, for school year 2018–2019, a one-year extension of the State's waiver of section 1111(b)(2)(D)(i)(I) of the ESEA so that the State may assess with an AA-AAAS more than 1.0 percent of the total number of students in the State who are assessed in reading/language arts and mathematics. DDOE demonstrated substantial progress in carrying out the plan that was submitted when the State initially requested this waiver a year ago.

As part of this waiver, DDOE assured that it:

- Will continue to meet all other requirements of section 1111 of the ESEA and implementing regulations with respect to all State-determined academic standards and assessments, including reporting student achievement and school performance, disaggregated by subgroups, to parents and the public.
- Assessed in the prior school year (2017-2018) at least 95 percent of all students and 95 percent of students with disabilities who are enrolled in grades for which an assessment is required.
- Will require that a local educational agency (LEA) submit information justifying the need of the LEA to assess more than 1.0 percent of its assessed students in any such subject with an AA-AAAS.
- Will provide appropriate oversight of an LEA that is required to submit such information to the State, and it will make such information publicly available.

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- Will verify that each LEA that is required to submit such information to the State is following all State guidelines in 34 CFR 200.6(d) (with the exception of incorporating principles of universal design) and will address any subgroup disproportionality in the percentage of students taking an AA-AAAS.
- Will implement, consistent with the plan submitted in Delaware’s waiver request, the system improvements and monitor future administrations to avoid exceeding the 1.0 percent cap.

I note that Delaware made progress in reducing the percentage of students taking an AA-AAAS in mathematics but not in reading/language arts or science. I am granting this extension despite the fact that Delaware has yet to demonstrate progress in reducing the percentage of students taking an AA-AAAS in each subject. Given the significant work underway, I expect to see the results of these efforts in the 2018-2019 school year and beyond. Beginning next year, any request for an extension of this waiver will be contingent on both continued progress implementing your plan and progress in reducing the percentage of students taking the AA-AAAS.

In addition, I want to remind you of the requirement in 34 CFR § 200.6(c)(3)(iv) that the State must make publicly available the information submitted by an LEA justifying the need of the LEA to assess more than 1.0 percent of its students on the AA-AAAS, provided that such information does not reveal personally identifiable information about an individual student. I also encourage you to make available your State’s plan and timeline and your progress to date in reducing the percentage of students taking the AA-AAAS.

However, I am denying DDOE’s request for a waiver of section 1111(b)(2)(D)(i)(I) of the ESEA to assess with an AA-AAAS more than 1.0 percent of the total number of students in the State who are assessed in science. My reason for denial of the request is that DDOE did not meet the requirement in 34 CFR 200.6(c)(4) that, in order to be eligible for such a waiver, the State must assess at least 95 percent of all students and 95 percent of children with disabilities on the science assessments. In 2017-2018, DDOE assessed less than 95 percent of children with disabilities on the science assessment.

If the data DDOE previously reported are erroneous and DDOE can demonstrate that it assessed at least 95 percent of all students and 95 percent of students with disabilities on the science assessments, DDOE may revise its waiver request, consistent with section 8401(b)(4)(B)(ii) of the ESEA, to meet the requirements under sections 8401(b)(1)(C) and (F) and resubmit the revised waiver request to address how it has met the requirements in 34 CFR 200.6(c)(4), including the requirement in 34 CFR 200.6(c)(4)(ii)(B) that the State has measured the achievement of at least 95 percent of all students and 95 percent of students in the children with disabilities subgroup under section 1111(c)(2)(C) of the ESEA who are enrolled in grades for which the State is required to administer statewide assessments. If DDOE decides to resubmit, it must do so no later than 60 days from the date of this letter.

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I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact my staff at: OSS.Delaware@ed.gov.

Sincerely,

/s/

Frank T. Brogan
Assistant Secretary
Elementary and Secondary Education

cc: Theresa Bennett, Director, Office of Assessment, Delaware Department of Education