



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

July 10, 2018

The Honorable Karen Salmon  
State Superintendent of Schools  
Maryland State Department of Education  
200 West Baltimore Street  
Baltimore, MD 21201

Dear Superintendent Salmon:

I am writing in response to the Maryland State Department of Education's (MSDE's) resubmission to the U.S. Department of Education (the Department), dated June 19, 2018, of the 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), related to MSDE's transition to new general science assessments in 2016-2017.

On February 27, 2018, MSDE requested a retroactive one-year waiver of the following sections of the ESEA: (1) Sections 1111(b)(1)(A) and 1111(b)(2)(B)(ii) and (v)(II), which 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; and (2) Sections 1111(b)(2)(B)(x) and (xii) and 1111(h)(1)(C)(ii) and (2)(C), which 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. On May 22, 2018, the Department denied MSDE's retroactive request, noting that MSDE did not administer science assessments in 2016-2017 as required by law and that MSDE did not report grades 5 or 8 science assessment results for school year (SY) 2016-2017. On June 19, 2018, MSDE resubmitted its request.

After reviewing MSDE's resubmission, I am declining to exercise my authority under section 8401 of the ESEA to grant MSDE the retroactive waiver requested. The reason for denying the resubmission remains that MSDE did not administer science assessments as required by law in 2016-2017 or request a waiver of applicable requirements prior to its assessment window. Further, MSDE did not report grades 5 or 8 science assessment results for SY 2016-2017. In its waiver February 2018 request, MSDE also sought a waiver of the science assessment requirements for high school students for school year 2017-2018. The Department approved that request prospectively.

In its resubmission, MSDE indicated that it submitted a waiver as soon as it realized it would need one. However, MSDE's initial request was submitted on February 27, 2018; yet Maryland's assessment window occurred in spring 2017. During SY 2016-2017, MSDE administered a stand-alone field test of its new science assessments for all students in grades 5 and 8 rather than its legacy science

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assessment without first seeking a waiver from the Department of the applicable requirements. As a result, a retroactive waiver is not appropriate.

Pursuant to ESEA section 8401(b)(4)(B)(iii), MSDE may request a hearing before me to present argument and any testimony in support of its waiver request. Specifically, if MSDE requests a hearing, it may submit a written argument, present oral testimony from one or more witnesses in Washington, DC or via teleconference, or both. By statute, we must conduct this hearing within 30 days after the date of your resubmission—*i.e.*, by July 19, 2018. Therefore, please let me know by July 12, 2018, whether you intend to present oral testimony. Otherwise, MSDE, if it so chooses, may submit written argument to me by July 19, 2018.

We appreciate our continued relationship with MSDE and remain committed to working with you. If you have any questions, please contact Dr. Ashley Briggs of my staff at: [OSS.Maryland@ed.gov](mailto:OSS.Maryland@ed.gov).

Thank you for your continued commitment to ensuring that all students in Maryland have access to a high-quality education.

Sincerely,

/s/

Frank Brogan  
Assistant Secretary

cc: Mary Gable, Assistant State Superintendent, Maryland State Department of Education