



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

November 28, 2018

The Honorable Lamont Repollet  
Acting Commissioner  
New Jersey Department of Education  
100 River View Plaza  
P.O. Box 500  
Trenton, NJ 08625

Dear Commissioner Repollet:

I am writing to provide the final determination of the U.S. Department of Education (the Department) in response to the New Jersey Department of Education's (NJDOE) 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 permit a local educational agency (LEA) to reassign certain English learners (EL) to a different cohort than the cohort to which the student should be assigned for purposes of calculating the four-year and extended-year adjusted cohort graduation rates.

Specifically, on January 12, 2018, NJDOE requested to waive ESEA sections 8101(23)(A)(i) and (25)(A)(i) and ESEA sections 8101(23)(A)(ii) and (25)(A)(ii), which set forth the requirements for calculating a school's four-year and extended-year adjusted cohort graduation rates, to allow an LEA to request that certain ELs be moved to the grade nine cohort for the year following the year to which the ELs should have been assigned. Under NJDOE's proposal, this flexibility would permit an LEA to reassign any EL who: (1) is in his or her second year of enrollment in high school, (2) was enrolled for less than one year in a school in the United States in the prior year, (3) has a literacy level two or more grade levels below his or her native language, and (4) is not on track to graduate based on credit accrual. Under this proposal, NJDOE would effectively give a school "full credit" in the adjusted cohort graduation rate for an EL who graduates a year after the cohort to which the EL should have been assigned.

On April 12, 2018, the Department declined to approve NJDOE's waiver request because it did not meet the requirements in section 8401(b)(1)(C), (D), and (F) of the ESEA that a waiver advance student achievement, be monitored and regularly evaluated, 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, the Department notified NJDOE of that determination, providing detailed reasons, in writing, for the determination and offered NJDOE an opportunity to revise and resubmit its waiver request within 60 days. On June 8, 2018, NJDOE resubmitted its request, providing additional information in support of its waiver.

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

On June 25, 2018, the Department concluded, despite NJDOE'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. Under section 8401(b)(4)(B)(iii) of the ESEA, the Department offered NJDOE the opportunity to request a hearing to present argument and testimony in support of its waiver request. On July 9, 2018, NJDOE submitted written testimony in support of its waiver request, which constituted the entirety of the hearing and which was considered in reaching this decision.

I appreciate the additional information NJDOE provided in its written testimony and the strategies NJDOE has proposed to provide individualized support to certain newly arrived ELs as well as NJDOE's interest in ensuring that newly arrived ELs have the appropriate supports. I also understand NJDOE's argument that these students may benefit from receiving additional time to graduate.

However, despite the additional justification provided, I remain concerned that the waiver, if granted, would not advance student academic achievement. The State argues that this waiver would give ELs who are reassigned to a later cohort more time in which to graduate and would reduce dropout rates. In fact, however, this waiver would most directly impact accountability determinations, potentially leading to a result in which schools that would otherwise be identified for improvement absent this waiver avoiding identification. This would mean less school improvement supports and resources would be available for students in those schools. Further, allowing an LEA the option to reassign certain ELs to a different graduation cohort might create different expectations for those students as compared to other students. In effect, this may lower the educational quality for these ELs, rather than advance their academic achievement.

In addition, NJDOE has the flexibility to pursue other options to support newly-arrived ELs without a waiver. Several of the strategies that NJDOE proposed to improve academic achievement in its revised waiver request (*e.g.*, a personalized instructional plan) can be provided without reassigning these students to a later graduation cohort and without a waiver.

The written testimony also does not clearly demonstrate how implementation of the waiver will maintain or improve transparency in reporting to parents and the public on student achievement and school performance with respect to graduation rates. NJDOE notes its intention to provide data on the number of students who receive a cohort reassignment. NJDOE does not, however, commit to reporting the graduation rates for the cohort absent reassignments, stating only that it is exploring the feasibility of reporting multiple graduation rates. Moreover, NJDOE's decision not to include "reassigned" ELs in the proper adjusted cohort graduation rate for accountability purposes will mask the actual graduation rate of schools. I have, therefore, concluded that NJDOE's proposal would not maintain transparency to parents and the public.

Based on my conclusions described above, I am declining to approve NJDOE's waiver request because it does not meet the requirements for a waiver under ESSA section 8401(b)(1)(C) and (F) that a waiver

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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.

If you have questions, please do not hesitate to contact Katherine Cox or Megan Oberst of my staff at: [OSS.NewJersey@ed.gov](mailto:OSS.NewJersey@ed.gov).

Sincerely,

/s/

Frank T. Brogan  
Assistant Secretary  
for Elementary and Secondary Education

cc: Judy Alu, Acting Title I Director