



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

August 3, 2018

The Honorable Lamont Repollet  
Commissioner  
New Jersey Department of Education  
PO Box 500  
Trenton, NJ 08625

Dear Commissioner Repollet:

I am writing in response to the request of the New Jersey Department of Education (NJDOE) for a 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 more than 1.0 percent of the total number of students in the State using an alternate assessment aligned with alternate academic achievement standards (AA-AAAS). NJDOE initially requested the waiver on February 23, 2018, and provided additional materials needed in support of this request on May 18, 2018. NJDOE requested this waiver because, based on State data for the 2016-2017 school year, NJDOE will need to assess more than 1.0 percent of students using an AA-AAAS in the 2017-2018 school year.

After reviewing NJDOE's request, I am declining to exercise my authority under ESEA section 8401 to grant the State educational agency 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 a subject. My reason for denial of the request is that NJDOE 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 reading/language arts and mathematics assessments. In 2016-2017, based on data provided by the State in the Consolidated State Performance Report (CSPR), NJDOE assessed less than 95 percent of children with disabilities in these subjects.

Additionally, the NJDOE did not meet all of the requirements of 34 CFR 200.6(c)(4) since it did not adequately describe how it would regularly monitor and evaluate each local educational agency (LEA) they anticipate will exceed the 1.0 percent AA-AAAS participation rate to ensure that the LEA provides sufficient training to members of individualized education plan (IEP) teams, so that these team members understand and implement the guidelines established by the State for participation in the AA-AAAS, and thus ensure that all students are appropriately assessed.

If the participation data the NJDOE previously reported via the CSPR is not accurate and the NJDOE can demonstrate that it assessed at least 95 percent of children with disabilities on the reading/language arts and mathematics assessments, and that it has addressed the additional points raised above, the

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NJDOE 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). The revised waiver request must address how the requirements are met 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 children with disabilities. The revised waiver request must be submitted 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 the students of New Jersey. If you have any questions, please contact Katherine Cox or Megan Oberst of my staff at [OSS.NewJersey@ed.gov](mailto:OSS.NewJersey@ed.gov).

Sincerely,

/s/

Frank Brogan  
Assistant Secretary for Elementary and Secondary  
Education

cc: Karen Campbell, Title I Director  
Jeffrey Hauger, Assessment Director