



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 25, 2018

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

Dear Commissioner Repollet:

I am writing in response to the New Jersey Department of Education's (NJDOE) updated request, dated June 8, 2018, for a waiver of sections 8101(23)(A)(i) and (25)(A)(i) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). ESEA sections 8101(23)(A)(i) and (25)(A)(i) stipulate that the denominator for a school's four-year and extended-year adjusted cohort graduation rate consists of the number of students who form the original cohort of entering first-time students in grade 9 plus the students who joined that cohort after the date of the determination of the original cohort minus those students who have transferred out, emigrated to another country, transferred to a prison or died. NJDOE also requested to waive ESEA sections 8101(23)(A)(ii) and 8101(25)(A)(ii), which stipulate that the numerator for a school's four-year and extended-year adjusted cohort graduation rates consists of only students in the cohort who earned a high school diploma within four years (four-year rate) and one or more additional years beyond the fourth year (extended-year rate). New Jersey requested this waiver to allow newly arrived English learners (ELs), at the request of a local educational agency (LEA), to be reassigned to the grade 9 cohort for the following year. New Jersey first requested the waiver on January 12, 2018. On April 12, 2018, I declined to approve New Jersey's initial request because it did not meet the statutory requirements for a waiver outlined in ESEA section 8401(b). NJDOE has resubmitted its request pursuant to ESEA section 8401(b)(4)(B)(ii).

I appreciate the additional information NJDOE provided on June 8, 2018, and the strategies you have proposed to support certain newly arrived ELs. In particular, I commend NJDOE's proposal to require local educational agencies (LEAs) to develop a personalized instructional plan to provide additional support to address academic deficits for these students. However, despite the additional justification provided, the revised request does not meet the statutory requirements for a waiver outlined in ESEA section 8401(b).

As you know, ESEA section 8401(b)(1)(C) and (F) requires that a waiver advance student academic 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. I carefully

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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.*

reviewed your additional rationale with these requirements in mind and remain concerned that the waiver request, if approved, would not meet them. As I noted in my letter on April 12, 2018, the ESEA provides States with the flexibility to calculate and report an extended-year adjusted cohort graduation rate(s) for students who graduate with a regular high school diploma in more than four years. This provision of the ESEA, which I understand NJDOE is implementing, addresses concerns that some ELs may need additional time to earn a four-year diploma and provides credit to schools with a higher extended-year graduation rate. Although I agree NJDOE's proposal to provide certain ELs with a personalized instructional plan would help advance academic achievement, this support could be provided without reassigning certain newly arrived ELs to a later graduation cohort.

The updated request 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. Including ELs who have been reassigned to a later graduation cohort in the four-year cohort graduation rate would result in an inaccurate four-year rate, and parents and the public would not know the actual four-year rate.

Consequently, I am declining to approve NJDOE's updated waiver request because the request does not meet the requirements for a waiver under ESSA section 8401. Specifically, it does not advance student academic achievement for the affected newly arrived students or maintain or improve transparency in reporting to parents and the public on student achievement and school performance with respect to graduation rates.

Pursuant to ESEA section 8401(b)(4)(B)(iii), NJDOE may request a hearing before me to present argument and any testimony in support of its waiver request. Specifically, if NJDOE requests a hearing, it may submit written argument, present oral testimony from one or more witnesses in Washington, D.C. 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 9, 2018. Therefore, please let me know by June 28, 2018, whether you intend to present oral testimony. NJDOE may also submit a written argument to me by July 9, 2018.

If you need additional information or clarification on ESEA implications, 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/

Jason Botel  
Principal Deputy Assistant Secretary,  
Delegated the Authority to Perform the  
Functions and Duties of the Assistant Secretary  
of Elementary and Secondary Education

cc: Karen Campbell, Title I Director