



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

January 16, 2018

The Honorable MaryEllen Elia  
Commissioner of Education  
New York State Education Department  
89 Washington Avenue, Room 111  
Albany, NY 12234

Dear Commissioner Elia:

I am writing in response to the New York State Education Department's (NYSED) request to the U.S. Department of Education (the Department) for a waiver of the requirements in section 1111(b)(3)(A) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), to permit NYSED not to include recently arrived English learners' results on the statewide reading/language arts assessment in the State's accountability system until year three of their enrollment in U.S. schools.

I have reviewed NYSED's request and, pursuant to my authority under ESEA section 8401(b), I am denying NYSED's request. After reviewing NYSED's request, I have determined that the State has not demonstrated the requested waiver would advance student achievement or how it will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, as required under section 8401(b)(1)(C) and (F). Under ESEA section 1111(b)(3)(A), a State may choose to: (i) exclude recently arrived English learners from one administration of the statewide reading/language arts assessment and exclude such students' results for the first year of enrollment; or (ii) assess and report the performance of recently arrived English learners on the reading/language arts assessment in each year of enrollment and for the purposes of accountability exclude assessment results for the first year of enrollment, include a measure of student growth on these assessments in the second year of enrollment, and include students' proficiency results in the accountability system beginning in the third year of enrollment. A State may also develop a system for including recently arrived English learners in its assessment and accountability systems by using both the first and second options to different subgroups of recently arrived English learners depending on their characteristics. Waiving this requirement would undermine the intent of the statute that States set high expectations that apply to all students and hold schools accountable for reaching those expectations.

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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.*

NYSED 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. If NYSED decides to resubmit, it must do so no later than 60 days from the date of this letter.

I appreciate the work that you and your staff are doing to provide a high-quality education for all students in New York's schools. If you have any questions, please contact Denise M. Joseph of my staff at: [OSS.NewYork@ed.gov](mailto:OSS.NewYork@ed.gov).

Sincerely,

/s/

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

cc: Ira Schwartz, Associate Commissioner  
Jhone Ebert, Senior Deputy Commissioner for Education Policy  
Angelica Infante, P-12 Instructional Support Deputy Commissioner