



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

JUN 05 2015

The Honorable Elizabeth Berlin
Acting Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, NY 12234

Dear Acting Commissioner Berlin:

I am writing in response to your March 20, 2015, request to Secretary Arne Duncan, U.S. Department of Education (ED), for waivers of certain requirements under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). In particular, you requested waivers so that New York may: (1) exempt English learners (ELs) who have attended schools in the United States for less than two years from taking the State's reading/language arts assessment and from using the results of this assessment for accountability purposes; (2) use the progress that a subset of ELs make on the State's English language proficiency assessment for Title I accountability purposes; (3) assess a subset of students with disabilities at their instructional level rather than grade level; and (4) use the performance of a subset of students on a Regent's Technical Assessment Advisory Panel-recommended technical assessment for Title I accountability purposes.

Current regulations in 34 C.F.R. § 200.6(b)(4)(i)(A) allow a State educational agency (SEA) to exempt a recently arrived EL (defined as an EL who has attended schools in the U.S. for less than 12 months) from the first administration of the State's reading/language arts assessment and to exclude the results of recently arrived ELs from the accountability determinations in mathematics and reading/language arts, if taken. Outside this limited exception, current law requires annually assessing all students on academic content in the tested grades and including their results in accountability determinations. Similarly, 34 C.F.R. § 200.6(a)(1)(i)(A) requires that the SEA assess all students, including students with disabilities, against the content and achievement standards for the grades in which the students are enrolled. ED supports these requirements as necessary to ensure that teachers and parents of all students, including ELs and students with disabilities, have information on their students' proficiency and progress in reading/language arts and mathematics.

Further, 34 C.F.R. § 200.12 requires that an SEA implement a single, statewide accountability system based on student performance on the academic assessments required under the law (*i.e.*, based on the performance of students on the *same* academic assessments for all students). This requirement is necessary to ensure that schools are held accountable for the academic achievement of all students, including ELs and students with disabilities as well as students taking additional assessments such as the Regent's Technical Assessment Advisory Panel-

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recommended technical assessment, on the State assessments required by ESEA section 1111(b)(3).

Given these provisions of current law, and consistent with ED's previous decisions to deny similar requests, I am declining to exercise my authority to grant the waivers that you have requested.

If you have any questions, please contact Heather Rieman, Chief of Staff, at heather.rieman@ed.gov, or Victoria Hammer or Hans Neseth of my staff at: OSS.NewYork@ed.gov. Thank you for your efforts to work with your districts to improve the education of all students in New York.

Sincerely,

A handwritten signature in blue ink that reads "Deborah S. Delisle". The signature is written in a cursive style.

Deborah Delisle
Assistant Secretary

cc: Ira Schwartz, Assistant Commissioner