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March 18, 2021

The Honorable Ruth E. Ryder
Deputy Assistant Secretary
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Deputy Assistant Secretary Ryder:

This letter is to formally request a waiver from specific statutory and regulatory requirements established under the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA) (hereafter referred to as ESSA) on behalf of New Jersey students, educators, and districts (hereafter referred to as Local Education Agencies (LEAs)). The New Jersey Department of Education (NJDOE) is requesting a one-year waiver of the requirements to administer the:

- New Jersey Student Learning Assessment (NJSLA) in English Language Arts, Mathematics, and Science;
- Dynamic Learning Maps (DLM); and
- ACCESS for English Language Learners (ELLs).

The NJDOE is also requesting a one-year waiver of all related accountability and reporting requirements.

As COVID-19 continues to cause severe disruptions to students' education, school communities must focus on the social-emotional health, safety, and wellness of their students and staff. Educators are also providing academic instruction to students through a large array of modalities and in a variety of learning environments. The NJDOE is requesting this waiver to ensure that New Jersey schools can continue to focus on these priorities and to dedicate time and resources to providing students with the necessary systems of individualized supports.

The NJDOE maintains that capturing snapshots of how students are performing on grade and subject level standards is critical to the success of accelerating learning and student academic achievement. Under normal circumstances, summative statewide assessments would provide valuable data to effectively target resources and supports. However, at this time, due to the many constraints and disruptions caused by COVID-19, summative assessments in the spring of 2021 would not reap the same benefits as they do in typical years. Variations in instructional modalities have raised concerns that the NJDOE and LEAs may not be able to administer the statewide assessments in an equitable manner and in the manner in which they were originally designed to be administered, potentially compromising the comparability and usefulness of student performance data.

Over the last several months, the NJDOE has worked closely with the educational community to identify sources of data regarding student performance and access to learning opportunities that, under current conditions, provide an alternative to statewide summative assessment. Taken together, these data sources can support LEAs and the State in targeting resources and supports and developing data-driven instruction and intervention plans for students, without causing the operational complications that impede appropriate administration of statewide assessments.

Throughout any school year, interim and formative assessments provide valuable information about student learning and instructional insights. This year, when COVID-19 disruptions cause unsafe and inadequate conditions for summative statewide assessments to be used in the manner for which they were designed, LEAs must more heavily rely upon interim and formative student performance data. Therefore, the application below outlines the NJDOE's interim assessment data collection, instructional plans, novel options for administering a screener assessment this fall, attendance, access to digital learning devices, and other data sources that will allow for effective targeting of resources and support.

In its February 22, 2021 guidance document, the U.S. Department of Education (ED) highlighted several flexibilities available to State Educational Agencies (SEAs) that might build capacity to safely administer statewide assessments. Those flexibilities are insufficient for New Jersey. Firstly, the NJDOE has conferred with its technical experts and concluded that shortening assessments within a narrow timeframe would undermine the technical quality of the assessments such that results would not be sufficiently reliable or valid for their intended use. Second, regarding the flexibility to offer remote administration, the variations in instructional modalities¹ occurring throughout the school year will detract from the quality of comparable data normally collected through New Jersey's annual statewide assessments. The NJDOE is concerned that if administered, significant groups of students would opt-out of participation in statewide assessments, thus skewing the results and providing an inaccurate picture of how students are progressing this year. In addition to missing data, administration conditions render it inappropriate to interpret and use the results in the same manner as in-person tests. This can be due to unequal access to technology; variations in examinee environment; or concerns about availability of appropriate accommodations and support.

Third, administering the spring 2021 assessment in summer or fall would result in the same if not additional operational constraints that thwart professional practices and standards. In the summer, there would be more, not less variability in student attendance and uneven testing conditions within the state and even within districts, schools, and classrooms. Additional operational constraints to a summer administration include challenges surrounding securing certificated staff who are bound to terms and conditions of ten-month

¹ In August 2020, Governor Murphy signed Executive Order No. 175, which set forth requirements for the reopening of school buildings for in-person instruction throughout the State. The Order, in part, required that LEAs able to satisfy mandated health and safety protocols open to students for full-time or hybrid in-person instruction. LEAs unable to adequately meet those requirements were permitted to delay the resumption of in-person instruction, but were required to make good-faith efforts towards the resumption of in-person instruction. As of March 5, 2021, of the 670 public school districts, charter schools, renaissance schools, and public receiving schools surveyed by the NJDOE, 114 employed an all-remote instructional model (representing 377,539 students), 87 were providing entirely in-person instruction (representing 72,157 students), 439 were providing a hybrid model under which students received in-person instruction for only a portion of each school week (representing 816,603 students), while 30 reported the use of different models in different schools within the LEA (representing 77,486 students).

collective bargaining agreements. A fall administration will be administered so far afield from the window for which it was intended that data results would fall short of the integrity of the results normally provided by NJSLA. A summative assessment is not designed to be administered months after students complete the course. Additionally, identifying accommodations and modifications for students with disabilities and English Language Learners would be difficult within the short beginning-of-year framework. Data from a fall administration would be provided to LEAs in late November, which is insufficient to support analysis to determine what targeted supports are needed for a given student group or class. In sum, the fall timing would significantly compromise the use of the NJSLA program for the purpose of targeting resources and supports to students.

Furthermore, while the NJDOE has worked diligently to ensure that most NJSLA design features can be administered remotely, some accessibility and modification features may only be provided in an in-person setting. DLM and ACCESS for ELLs, as determined by their respective vendors, cannot be administered remotely. LEAs will therefore be required to administer several assessments in-person while adhering to the State's mandated health and safety protocols, a potentially burdensome process for educators and families, particularly in those LEAs that have been physically closed to students since March 2020. Under these conditions, to administer assessments this year will necessarily require that LEAs bring a portion of the student population into school buildings for the sole purpose of taking a test.

In light of the concerns outlined above, the NJDOE is requesting a waiver of all Statewide assessments and related statewide accountability system and reporting requirements.

Authority

Section 8401(a)(3) of the ESSA allows the Secretary of the United States Department of Education (Secretary) to waive, with the exceptions outlined in Section 8401(c), "any statutory or regulatory requirement of this Act for which a waiver request is submitted." Section 8401(a)(1) of the ESSA establishes that a state educational agency (SEA) may submit such a waiver request.

Accordingly, the NJDOE is submitting a formal request, containing the information described in subsection 8401(b)(1) to the USDE for its consideration.

Waiver Request Components

Identify and describe the federal programs affected by this waiver request.

This waiver request will affect Title I, Improving the Academic Achievement of the Disadvantaged, Part A, Improving the Basic Programs Operated by Local Educational Agencies, Subpart I, Basic Program Requirements. The NJDOE is requesting a one-year waiver of the requirements to administer all statewide assessments and all related accountability and reporting requirements not already waived by the NJDOE's submission of the optional template for waiver requests of accountability, school identification, and reporting requirements that ED made available on March 8, 2021.

Specifically, this waiver will affect the following sections of ESSA:

- Assessment requirements in Section 1111(b)(2): the requirements to administer all required assessments in school year 2020-2021.
 - Each state must implement a set of high-quality student academic assessments in mathematics, reading or language arts, and science. In the case of mathematics and reading or language arts, these assessments must be administered in each of grades 3 through 8 and at least once in grades 9 through 12. In the case of science, these assessments must be administered not less than one time each during grades 3 through 5; grades 6 through 9; and grades 10 through 12.
 - Each state may provide for alternate assessments aligned with the challenging state academic standards and alternate academic achievement standards for students with the most significant cognitive disabilities.
 - Each State plan shall demonstrate that local educational agencies in the state will provide for an annual assessment of English proficiency of all English learners in the schools served by the state educational agency.
- Report card provisions related to certain assessments and accountability in Section 1111(h) based on data from the 2020-2021 school year, namely:
 - Section 1111(h)(1)(C)(ii) (assessment results)
 - Section 1111(h)(1)(C)(iv) (English language proficiency assessment results)
 - Section 1111(h)(1)(C)(vii) (percentage of students assessed and not assessed)
 - Section 1111(h)(1)(C)(xi) (number and percentage of students with the most significant cognitive disabilities taking an alternate assessment)
 - Section 1111(h)(2)(C) with respect to all waived requirements in Section 1111(h)(1)(C) as well as 1111(h)(2)(C)(i)-(ii) (information showing how students in an LEA and each school, respectively, achieved on the academic assessments compared to students in the State and LEA)

In sum, it is not possible to administer assessments as required by ESSA section 1111(b)(2) or comply with the concomitant accountability, school identification, and reporting requirements as originally planned due to extensive school closures throughout the State. These closures are in response to extraordinary circumstances for which a national emergency has been declared by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and this action will protect the health and safety of students, staff, and our communities.

Describe how the waiving of the requirements indicated above will advance student academic achievement; how the NJDOE will monitor and evaluate the effectiveness of its proposed plan; how schools will continue to provide support and assistance to all students in the absence of the waived requirements; and how NJDOE will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi) of ESEA-ESSA.

Waiving the requirement to administer assessments will increase critically valuable instructional time for students throughout the 2020-2021 school year and enable school districts to reallocate resources and to better support students' academic, social-emotional, and health needs. This will allow LEAs to continue focusing their efforts on providing safe in-person instruction, rather than expending resources on in-person assessment preparation and administration. Additionally, all schools in comprehensive or targeted support and improvement status will continue to receive the same improvement funds and support to which their status entitles them, ensuring that students and educators in those schools identified as most in need of supports continue to receive targeted assistance that improves capacity for delivering high-quality, evidence-based instructions and interventions.

As New Jersey's state assessments would be administered differently than they were originally designed to be administered, and student results would therefore be less comparable and useful than in prior years, this waiver will enable LEAs to concentrate their staffing and scheduling resources on instruction and high quality, formative assessments which are expected to provide more immediate and actionable student feedback. Collaborating with stakeholders, the NJDOE will focus on enhancements to provide educators and families with increased access to student-level data and to build educators' capacity to connect strong instructional, standards-based practices so all students receive high quality, targeted, and individualized instruction.

Alternative Data Sources

Understanding the importance of using data to target resources and supports and to develop instruction and intervention plans tailored to student needs, the NJDOE has identified several sources of data that, in combination, will paint a picture of COVID-19's impact on learning opportunities. Those data sources include:

1. LEAs' interim assessments;
2. Beginning-of-year screener assessments that measure the level of support a student might need to ensure readiness for grade-level coursework;
3. NJDOE's collection of data regarding student access to digital learning devices and internet connectivity;
4. NJDOE's collection of data regarding the type of learning environment (i.e. in-person, remote, hybrid, or combination) an LEA provides;
5. Attendance collections;
6. A clearinghouse of successful practices that New Jersey school districts have identified as notable achievements in mitigating the challenges posed by COVID-19;
7. The New Jersey Department of Health's regularly-updated dashboard of regional COVID-19 activity levels and number of school-related COVID cases and confirmed outbreaks by county.

LEAs' Interim Assessments

To fill data gaps caused by interrupted statewide assessment administration and to ensure that students are making meaningful growth toward grade-level standards, LEAs will provide the NJDOE with a snapshot of student learning during this school year through the submission of district-level interim assessment data denoting whether students are performing below, on, or above grade level for mathematics, ELA, and science. An interim assessment is defined as a comparison of student understanding or performance against a set of uniform standards within the same school year at periodic intervals, frequently at the end of a grading period. It may contain hybrid elements of formative and summative assessments, or a summative test of a smaller

The Department will collect this as a snapshot at the end of the year. This collection will allow the NJDOE to determine the number of days that specific students or student groups attended school remotely vs. in-person in the 2020-2021 school year. These data – in addition to standard attendance and chronic absenteeism that the NJDOE collects as outlined in its approved ESSA State Plan – will build the NJDOE’s understanding of how COVID-19 affected access to in-person instruction and other learning opportunities for specific student groups.

Clearinghouse of Successful Practices

On February 19, 2021, the NJDOE launched its [clearinghouse of successful practices](#) that LEAs have identified as notable achievements in mitigating the challenges posed by COVID-19. District-reported successes are categorized by county, district size, and topic area to facilitate meaningful collaboration and learning opportunities between similarly-situated districts. These data will provide focused, tested, and context-specific practices to help LEAs develop strategies to address issues related to learning gaps, attendance, lack of access to nutrition, housing, and other critical needs, and LEA operations.

New Jersey Department of Health (NJDOH) Data: COVID-19 Activity Level Reports and School Outbreaks

The NJDOH publishes several data reports that help the State better understand COVID-19 transmission risk throughout the State. For example, the NJDOH’s [COVID-19 Activity Level Index Weekly Reports](#) assign transmission risk levels to each region of the State. The State also publishes a COVID-19 School-Related [Outbreaks dashboard](#) that displays, for each county, the number of confirmed outbreaks, associated with in-school transmission in K–12 settings, that have been verified by Local Health Departments and reported to the NJDOH (since August 1, 2020). This data allows NJDOE to target resources and supports to those education communities in the areas hardest hit by COVID-19.

Taken together, New Jersey’s extensive plan to collect, report, and use alternative data sources will more effectively inform support initiatives than relying on state summative assessments, which are likely to be both incomplete and of uncertain quality in 2021.

Describe how the public was informed of this waiver request and provided opportunity to provide public comment on the request.

The NJDOE provided the public and LEAs notice and a reasonable time for them to comment in the manner in which it customarily provides notice and the opportunity to comment to the public. That notice was posted to the NJDOE’s website and distributed to LEAs.

Attach or describe the public comments received regarding this waiver request.

The NJDOE received emails from over 3,500 individuals who expressed their support for the waiver. Commenters cited inequitable administration of the assessments and the need to prioritize the health and safety of students as key reasons for their support.

Please contact ESSA@doe.nj.gov if you have any questions or need additional information.

Sincerely,

Angelica Allen-McMillan, Ed.D.
Acting Commissioner