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July 25, 2017

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Madam Secretary:

This letter is to request a waiver for the New Jersey Department of Education (NJDOE) from specific statutory and regulatory requirements established under the *Elementary and Secondary Education Act (ESEA)* as amended by the *Every Student Succeeds Act (ESSA)*.

This waiver request, if granted, would allow for each New Jersey middle school student, regardless of grade-level, who is enrolled in an advanced-mathematics course (Algebra I, Algebra II, or Geometry) to take an end-of-course assessment commensurate with their course of study instead of a grade-specific mathematics assessment.

The NJDOE is committed to empowering New Jersey schools and districts to promote the growth of all students. Toward that commitment, the NJDOE encourages schools and districts to create course pathways allowing students to reach their highest potential regardless of grade level. One way schools and districts do this is to allow middle school students to take advanced-mathematics courses in lieu of grade-level mathematics courses and to take the corresponding assessment associated with the course.

This would not be a new practice in New Jersey. The NJDOE's *ESEA* flexibility waiver under *No Child Left Behind* allowed the NJDOE to promote this practice, as it allowed all middle school students enrolled in advanced-mathematics courses to take the course-aligned end-of-course assessment in lieu of the grade-level assessment. This policy promoted the growth of all students by empowering educators, parents and students to select the mathematics course most appropriate for each student, and removed barriers preventing students from progressing to more advanced-mathematic courses in high school.

The *ESEA* as amended *ESSA* allows only 8th grade students enrolled in advanced-mathematics courses to take the end-of-course assessment aligned to the students' coursework, in lieu of the grade-level mathematics assessment.¹ This waiver request, if granted, would ensure that this rule is applied to all middle school students, not just 8th grade students. Parents and educators should

¹ *ESEA* as amended by *ESSA* 1111(b)(2)(C)

continue to have the option to determine whether a middle school student should be enrolled in an advanced-mathematics course, and the NJDOE’s testing policies should support and be aligned to that local decision.

Authority

Section 8401(a)(3) of *ESEA* as amended by *ESSA* allows the Secretary of the U.S. 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 *ESEA* as amended by *ESSA* establishes that a state educational agency (SEA) may submit such a waiver request.

Waiver Request Components

I. Identify 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 1, Basic Program Requirements.

II. Describe which federal statutory or regulatory requirements are to be waived.

The NJDOE is requesting a waiver, in part, from the following requirements:

- **Section 1111(b)(2)(B)(i)(I)** of *ESEA* as amended by *ESSA*, which requires that “the assessments under subparagraph (A) shall, except as provided in subparagraph (D), be the same academic assessments used to measure the achievement of all public elementary and secondary school students in the state;” and the corresponding regulation;
- **34 C.F.R. 200.2(b)(1)(i)**, which requires that “the assessment required under this section must, except as provided in sections 200.3², 200.5(b)³, and 200.6(c)⁴ and 1204⁵ of the *Elementary and Secondary Education Act* as amended by the *Every Student Succeeds Act* (henceforth referred to as “the Act”), be the same assessment used to measure the achievement of all students.”

Specifically, the NJDOE requests a waiver from the requirement to test all students using the same grade-specific mathematics assessment for middle school students, regardless of grade-level, who are enrolled in the following advanced-level mathematics courses: Algebra I, Algebra II, and Geometry. In lieu of taking the mathematics assessment

² This exception allows an SEA to allow local educational agencies (LEAs) to administer a state-approved, locally-selected, nationally recognized high school assessment, in lieu of a statewide academic assessment.

³ This exception allows SEAs, under certain conditions, to administer an end-of-course mathematics assessment in lieu of a grade-level mathematics assessment for 8th grade students.

⁴ This exception allows SEAs to administer an alternative assessment aligned to alternative academic achievement standards to students with significant cognitive disabilities.

⁵ This exception allows for SEAs that have been so authorized by the Secretary to administer “innovative assessments” in lieu of statewide academic assessments to some students in the state.

typically administered to students in their grade levels, students enrolled in these advanced-level mathematics courses will take end-of-course assessments aligned to the courses in which they are enrolled. The NJDOE would apply the rules established at section 1111(b)(2)(C)(i) through (iii) of *ESEA* as amended by *ESSA* and 34 C.F.R. 200.5(b)(1) through (3) to any student who does not take the mathematics assessment typically administered in the grade in which the student is enrolled. Specifically, if a student does not take the mathematics assessment typically administered in the grade in which he or she is enrolled:

- The student will take the end-of-course mathematics assessment the state administers to high school students to comply with assessment requirements established at section 1111(b)(2)(B)(v)(I)(bb) of *ESEA* as amended by *ESSA*;
- The student's performance and participation on the high school assessment will be used in the year in which the student takes the assessment for the purposes of measuring academic achievement and participation as it pertains to the school-based accountability system required under *ESEA* as amended by *ESSA*; and
- In high school, the student will take a more advanced, state-administered end-of-course mathematics assessment and the student's performance on and participation in that assessment will be used for the purposes of measuring academic achievement and participation as it pertains to the school-based accountability system required under *ESEA* as amended by *ESSA*.

III. Describe how the waiving of the requirements indicated above will advance student academic achievement.

The waiving of the above requirements in the manner requested by the NJDOE would advance student academic achievement in several ways.

First, waiving of the above requirements allows for students to take assessments aligned to their coursework. Alternatively, requiring a student capable of excelling in an advanced mathematics course (e.g., Algebra I) to take a general grade-level (e.g., 7th grade) mathematics assessment, could discourage a school from enrolling such a student in an advanced-level mathematics course. In this case, the student would be required to take an assessment that is not aligned to his or her coursework or, worse, take two assessments: Algebra I, which would provide the teacher and student information on the student's learning for that year, and the misaligned 7th-grade mathematics assessment, as required by law. By allowing the student to take just an end-of-course assessment, schools and educators are encouraged to enroll the student in the mathematics course most appropriate to promote the student's academic achievement.

The NJDOE has evidence that allowing students enrolled in advanced-level mathematics courses to take the corresponding end-of-course assessments in lieu of grade-level mathematics assessments leads to high academic achievement. Under its approved *ESEA* flexibility waiver, the NJDOE allowed all students enrolled in advanced-level mathematics courses to take end-of-course assessments aligned to course content in lieu of grade-level assessments. The NJDOE's review of PARCC end-of-course assessment data indicates that a growing number of students in middle school excel at advanced-level mathematics

coursework and pass advanced-level mathematics assessments. As demonstrated in Figure I, deeper analysis has shown that performance on the Algebra I assessment (the advanced-level mathematics assessment taken most frequently by middle school students), by grade level, is inversely proportional; that is, a greater proportion of students who enroll in Algebra I in lower grades demonstrate proficiency on the Algebra I assessment than students who enroll in Algebra I in higher grades. Since so many New Jersey middle school students have been successful in advanced-level mathematics coursework, it is in the best interest of students to administer end-of-course mathematics assessments that align with students' coursework rather than the grade-level exam.

Conversely, requiring middle school students who are enrolled in advanced-mathematics courses to take grade-level assessments, which would be misaligned to the students' mathematics coursework, could have adverse impacts on students. If students are required to take misaligned assessments, schools would not be able to properly assess student learning. This would limit the ability of teachers and parents to understand and address any gaps in learning. Alternatively, without the waiver, students could be asked to take both the exam that matches their coursework and the grade-level exam. This practice would take away valuable classroom time from the student and provides no valuable information to the student, educator, or the state.

FIGURE 1

Statewide Proficiency Rates

	6 th Grade		7 th Grade		8 th Grade	
	# Tested	% Proficient	# Tested	% Proficient	# Tested	% Proficient
Algebra I	64	96.9%	3,608	96.9%	30,922	75.2%
Algebra II	0	N/A	39	84.6%	288	86.8%
Geometry	3	100.0%	34	97.1%	3168	93.7%

	9 th Grade		10 th Grade		11 th Grade	
	# Tested	% Proficient	# Tested	% Proficient	# Tested	% Proficient
Algebra I	64,417	26.5%	6,755	6.0%	1,900	4.6%
Algebra II	5,452	78.2%	24,991	45.5%	42,113	8.0%
Geometry	22,597	59.2%	52,926	12.8%	7,801	3.4%

IV. Describe the methods that will be used to monitor and regularly evaluate the effectiveness of the implementation plan of this waiver request.

The NJDOE will, for the purpose of tracking opportunity and achievement gaps among subgroups, annually evaluate the percentage of students in middle school grades enrolled in advanced-level mathematics courses and who take end-of-course mathematics assessments in lieu of grade-level mathematics assessments. The NJDOE will continually evaluate such gaps and provide guidance and technical assistance, as appropriate, to help LEAs close any such gaps (see Section V of this letter for more information).

In addition, the NJDOE will ensure that the performance of all students on annual statewide assessments is included in the calculations of a school's "academic achievement" for the purposes of the school-based accountability system required under *ESEA* as amended by *ESSA*. The NJDOE will continue to, consistent with its *ESSA* state implementation plan and in accordance with section 1111(h)(1)(C)(ii) of *ESEA* as amended by *ESSA*, report the assessment results of all students.

Also note that, because this waiver request affects such a small percentage of middle school students—in the 2015-2016 school year only 3.7% of 7th grade students and less than 0.1% of 6th grade students statewide took end-of-course mathematics assessments in lieu of grade-level assessments—the NJDOE anticipates minimal, if any, impacts on the state's school-based accountability and support system required under sections 1111(c) and (d) of *ESEA* as amended by *ESSA*.

V. Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.

The purpose of Title I of *ESEA* as amended by *ESSA* is "to provide all children significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps."⁶ Providing opportunities for all middle school students to enroll and achieve in advanced-level mathematics coursework is consistent with this purpose. In addition, the NJDOE is committed to closing opportunity and equity gaps as it pertains to access to advanced-level mathematics coursework in middle school.

As described in its proposed *ESSA* state plan, the NJDOE has had success in encouraging greater numbers of middle school students to take advanced-mathematics courses during the past several years, but economically disadvantaged students continue to be underrepresented in advanced mathematics-courses in middle school across the state. In 2015-2016, 36.9% percent of middle school students were economically disadvantaged students, but only 20.6% percent of middle school students taking advanced-mathematics courses were members of this subgroup. The NJDOE is committed to ensuring access to rigorous coursework is available to all students throughout middle school.

To support LEAs in offering greater opportunities for middle school students to enroll, and demonstrate academic achievement, in advanced-level mathematics coursework, the NJDOE plans to take the following actions:

1. Design, implement and evaluate research-based technical support for LEAs where PARCC Grades 3-6 results warrant a more focused approach to teaching prerequisites to Algebra I;⁷
2. Design, implement and evaluate research-based technical support around mathematics literacy;⁸

⁶ *ESEA* as amended by *ESSA* section 1001.

⁷ See Sections 5.1C and 5.2A of [NJDOE's proposed ESSA plan](#).

⁸ See Section 5.1C and 5.2A of [NJDOE's proposed ESSA plan](#).

3. Design and disseminate guidance to LEAs on the use of appropriate *ESSA* Title I funds to support preparation for advanced-level mathematics;⁹
4. Design, implement and evaluate professional learning opportunities that focus on a shift in planning, implementing and evaluating the effectiveness of instructional practices, including the use of technology to help students visualize the results of varying assumptions, explore consequences, compare predictions with data and explore and deepen their understanding of mathematical concepts; and
5. Develop multiple model course pathways (accelerated progressions of learning) for middle schools that allow middle school students to complete Algebra I and other advanced-level mathematics courses, and provide pathway exemplars and professional learning opportunities to support the implementation of each model course pathway.

VI. If the waiver relates to provisions of subsections (b) or (h) of section 1111 of *ESEA-ESSA*, describe how the SEA requesting the waiver 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*.

Not applicable. The NJDOE will continue to, consistent with its *ESSA* state implementation plan and in accordance with section 1111(h)(1)(C)(ii) of *ESEA* as amended by *ESSA*, report the assessment results of all students.

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

On July 25, 2017, consistent with the manner in which the NJDOE customarily provides similar notice and opportunity for comment to the public, the NJDOE posted to its [website](#) and distributed to its *ESSA* stakeholder listserv and LEAs a request for public comment on this waiver request.

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

To be completed at the conclusion of the public comment period.

Please email essa@doe.state.nj.us if you have any questions or need additional information.

Sincerely,

Kimberley Harrington
Commissioner

⁹ See NJDOE Guidance, [Unlocking Your Federal Funds](#), pp. 18-19.