



## State of New Jersey

DEPARTMENT OF EDUCATION

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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

KIMBERLEY HARRINGTON  
Commissioner

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

Dear Madam Secretary:

The New Jersey Department of Education (NJDOE) is formally requesting a waiver, in part, 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 the state to exceed the 1 percent cap on students with significant intellectual impairment who are administered the alternate proficiency assessment (APA) in order to meet the statewide assessment requirement. In the 2016-2017 school year, 1.12 percent of students were administered the APA or English Language Arts and Math.

### Authority

Section 8401(a)(3) of the *Elementary and Secondary Education Act (ESEA)* as amended by the *Every Student Succeeds Act (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. Specifically, this waiver request, if granted, would impact the performance of the students with disabilities subgroup as it pertains to the school accountability system required under section 1111(c) of *ESEA* as amended by *ESSA* and the reporting of this subgroup's performance required under section 1111(h) of *ESEA* as amended by *ESSA*.

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

The NJDOE is requesting a waiver from the requirement that, for each subject, the total number of students assessed in such subject using the alternate proficiency assessment does not exceed 1 percent of the total number of all students in the State who are assessed in each subject at section 1111(b)(2)(D)(i)(I) of *ESEA* as amended by *ESSA*.

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

Students with significant intellectual disabilities are require extensive, individualized direct instruction and substantial supports to achieve measurable gains. These students are instructed using alternate standards that, while related to college and career readiness standards, are significantly reduced in terms of depth, breadth and complexity.

The granting of the waiver would advance student academic achievement by ensuring students with significant intellectual disabilities are administered assessments that best measure their performance and allow students to demonstrate their knowledge and abilities.

**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 monitor the effectiveness of the implementation of the waiver through analysis of assessment and other data, including numbers of students administered the alternate proficiency assessment and the number of LEAs submitting justification for exceeding the 1 percent cap. These data will be used to identify LEAs who may require training and technical assistance on correctly identifying those students who meet existing eligibility requirements for administration of the alternate proficiency assessment.

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

Students with significant intellectual disabilities will continue to be served in accordance with the requirements of IDEA and state law and regulations governing special education, and the granting of the waiver will have no impact on the provision of such services. The waiver will ensure that all students with significant intellectual disabilities, who meet the criteria for alternate assessment, receive the individualized instruction they require and are assessed using the method that allows students to demonstrate their knowledge and abilities.

**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*.**

The granting of the waiver will not impact reporting to parents, as that will continue to occur. Rather, the impact will be on the performance of the students with disabilities subgroup and the reports with respect thereto. The department will address this by announcing the granting of the waiver on its webpage and in its explanation of assessment results included with the data that are reported.

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

On December 5, 2017, consistent with the manner in which NJDOE customarily provides similar notice and opportunity for comment to the public, NJDOE posted to [its website](#) and distributed to its 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 reach out to [essa@doe.state.nj.us](mailto:essa@doe.state.nj.us) if you have any questions or need any more information from us.

Sincerely,

Kimberley Harrington  
Commissioner

KH/PM  
Enclosures  
c: Peggy McDonald  
Senior Staff  
Karen Campbell  
Collen Schulz-Eskow