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DEPARTMENT OF EDUCATION
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Note:

The NJDOE is seeking public input on the **draft** waiver request below that it intends to submit to the U.S. Department of Education. If approved, the request would enable a school district, when appropriate, to provide an English Learner who meets specific criteria an additional year to graduate high school without negatively impacting a school's graduation rate. Public comment on this request must be submitted to essa@doe.state.nj.us by Friday, November 10, 2017.

The Honorable Betsy DeVos
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

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 for an English learner (EL), under specific circumstances, to be moved to the graduation cohort for the year immediately following his/her ninth-grade entry year. This would enable a local educational agency (LEA), when appropriate, to provide an English learner an additional year to graduate without negatively impacting a school's graduation rates. The NJDOE's waiver request would apply only to newcomer, or newly arrived immigrant, English learners.

In a report funded by the United States Department of Education (USDE), Abbot and Hastings (2012, p. 3) found that, "During the critical ninth-grade transition, districts and schools establish the academic expectations that will determine whether ELL students catch up with their peers or fall further behind." In creating these support systems, districts must "create the academic-support systems that will either exacerbate or begin addressing critical learning gaps. Ninth grade is also the time to provide the foundational services that will engage ELLs, keep them in school, and culminate in a diploma that certifies true readiness for college, careers, and civic life" (Abbott & Hastings).

Newcomer ELs often enter high school without the content skills and English language proficiency needed to succeed in an educational setting in the United States. The acceleration of English

language development and academic-language is essential if they are to have any hope of graduating at equal rates of their non-EL peers (Abbott & Hastings, 2012). Even with an accelerated development of English language proficiency and content skills, newcomer ELs often struggle to graduate. As a result, students who are ELs often have high dropout rates and are at a high risk of academic failure because schools cannot accelerate growth at the pace that is needed (Short & Boyson, 2012). The proposals in this waiver would allow New Jersey’s local education agencies (LEAs) to have choice within the accountability framework so that they can provide EL newcomers with the academic supports they need to graduate from high school with the necessary skills for postsecondary success.

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 USDE (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 will affect the four-year and extended-year graduation rates used in the school-based accountability system and school reports required under Sections 1111(c) and (h) of *ESEA* as amended by *ESSA*.

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

The New Jersey Department of Education (NJDOE) is requesting a waiver, in part, from the following requirements:

- Section 8101(23)(A)(i) and (25)(A)(i) of *ESEA* as amended by *ESSA*, which requires, for calculating a school’s four-year and extended-year adjusted cohort graduation rate, that the denominator “consist of the number of students who form the original cohort of entering first-time students in grade 9” plus “the students who joined that cohort, after the date of the determination of the original cohort” and minus those students who have: “transferred out” as the term is defined in Section 8101(25)(C), emigrated to another country, transferred to a prison or juvenile facility, or died; and
- Section 8101(23)(A)(ii) and (25)(A)(ii) of *ESEA* as amended by *ESSA*, which requires, for calculating a school’s four-year and extended-year adjusted cohort graduation rates, that the numerator consist of only those students in the cohort who earned a high school diploma within four years (for four-year rate) and one or more additional years beyond the fourth year of high school (for extended-year rate).

- Specifically, the NJDOE requests a waiver from the requirement to include English learners who meet the criteria established in (a) – (d) below in the denominator for graduation rate calculations for the grade 9 cohort to which the student is originally a member. Instead, an English learner who meets the criteria and for whom a local educational agency (LEA) has made a formal request to the NJDOE will be reassigned to the grade 9 cohort for the following year.

The sections above would be waived as follows:

In the year immediately following the ninth grade entry year, an LEA may request an English learner be reassigned to the grade 9 cohort if the student meets the following criteria:

- (a) The English learner is currently in his/her second year of enrollment in high school;
- (b) The English learner is classified as an English learner and was enrolled for less than one year in any U.S. school during the prior school year;
- (c) The English learner has a literacy level two or more grade levels below in his/her native language as measured by LEA-established criteria and with guidance developed by the NJDOE; and
- (d) The LEA has determined before the end of the second year of enrollment, the student is not on track to graduate based on credit accrual.

Illustrative Example

If an English learner entered ninth grade at the beginning of the 2015-2016 school year, the student would be considered a member of the ninth-grade cohort for that year. In accordance with §8101(25), the student must remain in that cohort and be included as part of the denominator for the four-year graduation rate calculation four years later (2019) unless he/she “transferred out” as the term is defined in §8101(25)(C), emigrated to another country, transferred to a prison or juvenile facility, or died.

The NJDOE is requesting a waiver from having to keep that English learner in his or her original ninth grade cohort under special conditions. If an English learner meets the criteria established at (a) – (d) above and the LEA has made a request for that English learner to be reassigned, the English learner would be moved from the 2015-2016 ninth-grade cohort to the 2016-2017 ninth-grade cohort. Thus the student would not be included in the denominator for four-year graduation rate in 2019 and the five-year graduation rate in 2020, but would instead be included in the denominator for the graduation rate calculation for four-year graduation rate in 2020 and the five-year graduation rate in 2021. If the student completed all requirements for a high school diploma, the student would also be included in the numerator for that year. The student would also be included in the denominator and, if applicable, the numerator for any extended-year graduation rate calculations for his/her new ninth-grade graduation cohort.

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 NJDOE would advance student academic achievement in several ways.

This waiver would provide an additional year for ELs to gain English proficiency. New Jersey analyzed the high school language arts results of ELs by language proficiency level and found that students' ability to achieve proficiency on the state graduation tests (New Jersey High School Proficiency Assessment) dramatically improved when they had more time to develop their English language proficiency (New Jersey Department of Education, 2013). Newcomer ELs who have an additional year in the ninth grade cohort, due to low literacy skills, will be given additional time to improve their language proficiency by the time they need to take the high school graduation language arts assessment.

Huang, Haas, Zhu and Tran (2016) state that the later an EL is reclassified as a non-EL decreases the student's chances of graduating from high school in four years. Their study suggests that to graduate in four years, ELs must enter high school with the academic skills to be successful in mainstream English-only classes. Time for additional supports and alternative teaching practices may be necessary to enable ELs to graduate. This waiver would allow for EL newcomers, who do not have the academic skills necessary to be academically successful in mainstream classes, to have an extra year to gain those skills before penalizing an LEA in the four-year and five-year graduation rate.

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 provide technical assistance, guidance and conduct performance-based monitoring throughout the year to ensure the effectiveness of the implementation plan of this waiver. The NJDOE will reevaluate this waiver on an annual basis based on data evaluation and consultation with districts that enroll a high population of newcomer students.

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

Schools will continue to provide the programs required by *N.J.A.C. 6A:15*. This section of New Jersey state code mandates that LEAs provide specific and comprehensive program supports based on the EL populations they serve. The NJDOE also offers extensive training and works with LEAs throughout the year in a variety of contexts.

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.

Students who receive a cohort reassignment will be reported in all applicable subgroups including the EL subgroup under school performance reports. The policies around students in the cohort reassignment will be delineated through policy and guidance articulated to the public on the NJDOE's website.

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

On October 10, 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 LEAs a request for public comment on this waiver request.

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

Public comments received regarding this waiver request are enclosed as requested.

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

Sincerely,

Kimberley Harrington
Commissioner

KH/PM

Enclosures

c: Peggy McDonald
Senior Staff
Karen Campbell
Collen Schulz-Eskow

Appendix A

2016-2017 PARCC ELA 10 Performance by ACCESS Level

