



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

JUN 26 2015

The Honorable Candice McQueen  
Commissioner of Education  
Tennessee State Department of Education  
6th Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, TN 37243

Dear Commissioner McQueen:

I am writing in response to your March 31, 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 Tennessee may: (1) allow its local educational agencies (LEAs) to exempt English learners (ELs) from participating in the State's reading/language arts assessment until they are either (a) sufficiently proficient in English, as demonstrated by a score of 3 or higher on the WIDA ACCESS assessment, or (b) in their third year in a U.S. school; (2) count students as proficient on both the grade-level assessment and a high school assessment used to fulfill the assessment requirements under the ESEA for those students who take the high school course and corresponding assessment prior to high school in lieu of the grade-level assessment; and (3) exclude from the calculation of the four-year adjusted-cohort graduation rate a subset of students with disabilities in medically fragile status.

Regarding the request related to ELs, 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 one 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.

Regarding the second request, under ESEA flexibility, ED offered States a waiver to allow them to not double test a student who is not yet enrolled in high school but who takes advanced, high school level, mathematics coursework. The SEA would assess such a student with the corresponding advanced, high school level assessment in place of the mathematics assessment

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the SEA would otherwise administer to the student for the grade in which the student is enrolled. For Federal accountability purposes, the SEA will use the results of the advanced, high school level, mathematics assessment in the year in which the assessment is administered and will administer one or more additional advanced, high school level, mathematics assessments to such students in high school, consistent with the State’s mathematics content standards, and use the results in high school accountability determinations. The waiver does not provide for an SEA to also count a student as proficient on the grade-level mathematics assessment because the student did not take that assessment.

Regarding the third waiver request, as articulated in 34 C.F.R. 200.19, only a student who transfers out and enrolls in another school or in an educational program that culminates in the award of a regular high school diploma, emigrates to another country, or dies may be removed from a high school’s or LEA’s cohort. For further information regarding this topic, please see the high school graduation rate non-regulatory guidance at: [www2.ed.gov/policy/elsec/guid/hsgrguidance.pdf](http://www2.ed.gov/policy/elsec/guid/hsgrguidance.pdf).

Given these provisions of current law and regulation 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 Nkemjika Ofodile of my staff at: [OSS.Tennessee@ed.gov](mailto:OSS.Tennessee@ed.gov). Thank you for your efforts to work with your districts to improve the education of all students in Tennessee.

Sincerely,



Heather Rieman  
Acting Assistant Secretary

cc: Nakia Towns, Assistant Commissioner