



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

July 27, 2022

The Honorable Tony Thurmond
Superintendent
California Department of Education
1430 N Street
Sacramento, CA 95814

Dr. Linda Darling-Hammond
President
California State Board of Education
1430 N Street, Room 5111
Sacramento, CA 95814

Dear Superintendent Thurmond and Dr. Darling-Hammond:

I am writing in response to California's request to the U.S. Department of Education (Department) on April 15, 2022, for a waiver of three accountability requirements in Title I, Part A (Title I) of the Elementary and Secondary Education Act of 1965 (ESEA) in order to implement an alternative accountability system for the State's Dashboard Alternative Status Schools (DASS). Specifically, California requested that the Department waive the requirements for the Academic Achievement indicator in ESEA section 1111(c)(4)(B)(i), the Graduation Rate indicator in ESEA section 1111(c)(4)(B)(iii), and annual meaningful differentiation in ESEA section 1111(c)(4)(C).

California noted that it has been developing its DASS program since 2017. There are 1,044 DASS schools in the State (about 10 percent of California's total number of public schools), which are, primarily, schools that focus on credit recovery for high school students, special education schools, and other schools with a high percentage of "high-risk" students including foster youth, youth experiencing homelessness, students who are highly mobile or have a significant gap in enrollment, and expelled students.

California proposed to use an alternative system of annual meaningful differentiation for DASS schools that would deviate in two ways from its system of annual meaningful differentiation for all other schools. First, California has proposed that the Academic Achievement indicator would use different cut points (i.e., the school's average scale score) on the reading/language arts and mathematics assessment for "Low" and "Very Low" levels for DASS schools compared to non-DASS schools. For example, a DASS elementary school with an average scale score on the reading/language arts assessment that is 125 points lower than the score needed to be proficient is categorized as "Low" whereas a non-DASS elementary school with the same average scale score would be categorized as "Very Low." This results in lower expectations for student performance on statewide assessments for DASS schools than non-DASS schools. Second, rather than using its approved Graduation Rate indicator based on the four-year and five-year adjusted cohort graduation rates consistent with ESEA section 1111(c)(4)(B)(iii),

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

California proposes to use a one-year graduation rate for DASS schools based on the number of students in grade 12 and include students as graduates who do not receive a regular high school diploma (e.g., special education certificate of completion, California high school equivalency certificate, adult education diploma).

After carefully considering California’s request, I am declining to approve the State’s request because it does not meet the statutory requirements for a waiver outlined in section 8401(b)(1) of the ESEA. Namely, California does not sufficiently demonstrate how the request will advance student academic achievement (section 8401(b)(1)(C)). The State has also not demonstrated how schools will continue to provide assistance to the same populations served by the Title I, Part A program, particularly in schools that would otherwise be identified for support and improvement and be eligible to receive school improvement funds under ESEA section 1003 (section 8401(b)(1)(F)).

California’s proposal would result in lower expectations on academic achievement for those schools serving greater proportions of high-risk students, as defined by California, than other schools. Setting different, lower expectations for some students and schools is against the purpose of Title I, as described in ESEA section 1001, to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps. Under California’s proposal, a DASS school with the same student outcomes around academic achievement and graduation rates as a non-DASS school would not be identified for support and improvement whereas the non-DASS school with those student outcomes would be identified. An identified school develops and implements a school support and improvement plan and is eligible for additional school improvement funding under ESEA section 1003. In California’s proposal, the DASS school would not be required to develop and implement such a plan, nor would it be eligible for school improvement funds.

While the Department is declining to grant this waiver, there are existing provisions within the ESEA that California may consider, which we provided in our letter to you in January 2022. In addition to the three provisions identified in the Department’s letter in January 2022, there are other flexibilities that may be useful for California’s consideration:

- *Definition for Graduation Rate indicator.* While California may not use a one-year graduation rate for its Graduation Rate indicator required under ESEA section 1111(c)(4)(B)(iii), the State may propose to incorporate multiple extended-year adjusted cohort graduation rates to give credit to schools in which students are receiving a regular high school diploma in six or more years.
- *Methodology for identifying schools for CSI based on low graduation rate.* Similar to the flexibility described above for the Graduation Rate indicator, a State may use an extended-year adjusted cohort graduation rate to identify any public high schools in the State that are failing to graduate one third or more of their students for comprehensive support and improvement.
- *Additional information on State and local report cards.* California’s letter requesting a waiver notes on page 8 that “when discussing options with parents, local educational agencies have often referred to the DASS graduation rates as a measure of what DASS schools can accomplish with their students beyond a four-year graduation timeframe.” As noted in question B-2 of the Department’s guidance on State and local report cards, an SEA may include on its State or local report cards any other information it believes will best inform parents, students, and other members of the public about the progress of each elementary and secondary school.¹ Additionally, as noted in question C-2, in addition to the data elements required by the ESEA, an LEA may include any other information it determines to be appropriate, whether or not that

¹ <https://www2.ed.gov/policy/elsec/leg/essa/report-card-guidance-final.pdf>

information is included on the State report card. Thus, California may include the DASS graduation rate measure, as well as any other information, on State and/or local report cards to provide this information to parents.

California may revise its waiver request, consistent with section 8401(b)(4)(B)(ii) of the ESEA, to meet the requirements of section 8401(b)(1) and resubmit the revised waiver request. If California decides to resubmit, it must do so no later than 60 days from the date of this letter.

Finally, because California's request to waive these requirements is related to the existing conditions of high-risk status on California's Title I grant awards, I am amending the conditions. In order to resolve the conditions and remove the high-risk status, CDE must:

- By September 1, 2022, provide a plan (including a State plan amendment if changes to its approved consolidated State plan are needed) to meet the requirement to include all schools in its system of annual meaningful differentiation using the same Academic Achievement and Graduation Rate indicators for DASS and non-DASS schools based on data from school year 2021-2022 and for school identifications in fall 2022.
- By January 15, 2023, provide evidence to the Department that CDE identified schools in fall 2022 consistent with all statutory requirements (i.e., based on a system of annual meaningful differentiation that (1) uses the same Academic Achievement and Graduation Rate indicators for DASS and non-DASS schools and (2) uses a calculation of the Academic Achievement indicator that takes into account participation rate in accordance with the requirements in section 1111(c)(4)(E) of the ESEA).

If California does not demonstrate compliance with these requirements, the Department may take additional enforcement action.

Please reach out to my staff at OESE.titlei-a@ed.gov if you have any questions.

Sincerely,

/s/

James F. Lane, Ed. D.
Senior Advisor, Office of the Secretary
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

cc: Joseph Saenz, CDE Federal Policy Liaison