



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 22, 2023

The Honorable Sam Percy
Interim Commissioner of Education
Tennessee Department of Education
710 James Robertson Parkway
Nashville, TN 37243

Dear Interim Commissioner Percy:

I am writing in response to the Tennessee Department of Education's (TDOE's) revised request to the U.S. Department of Education (Department) on June 6, 2023, for a waiver of sections 1111(b)(2)(B)(i)(I) and 1111(b)(2)(B)(v)(I) (bb) of the Elementary and Secondary Education Act of 1965 (ESEA) which requires that the assessments shall be the same academic assessments used to measure the achievement of all public elementary school and secondary school students in the state (except for students taking the alternate assessment); and that States to annually administer the same mathematics assessment at least once in grades 9-12. TDOE originally requested this waiver on February 6 to continue its existing practice to permit high school students in Tennessee to take different high school mathematics assessments, either Algebra I or Integrated Math I, for the 2022-2023 school year, along with a plan that TDOE believed would bring the State into compliance with ESEA requirements beginning in the 2023-2024 school year. The Department declined to approve this request on May 4, 2023.¹

In TDOE's revised request, the State made no changes to the plan for the 2022-2023 school (i.e., the State continued to be out of compliance by not administering the same high school mathematics assessment to all students). The State proposed a plan to statistically link its Algebra I and Integrated Math I assessments beginning in the 2023-2024 school year to establish an equivalence between the two assessments. After reviewing TDOE's revised request, I am declining to exercise my authority, under section 8401(b) of the ESEA, to waive sections 1111(b)(2)(B)(i)(I) and 1111(b)(2)(B)(v)(I) (bb) of the ESEA for the 2022-2023 school year. I do not find that granting this waiver would advance student achievement for all public children in the State.

In addition, the Department remains concerned that TDOE's proposed approach beginning in the 2023-2024 school year will not result in an assessment that meets all ESEA requirements. As TDOE noted, there is an overlap of approximately 75 percent of the content standards on which the Algebra I and Integrated Math I assessments are based. TDOE described its plan to link the two assessments using a small, common set of items (approximately 30 percent of the test items). TDOE intends to conduct an achievement standards-setting exercise which would result in both

¹ See: <https://oese.ed.gov/files/2023/05/TNhsassessmentwaiverresponse2023-1.pdf>.

tests being reported on the same scale, with equivalent values for the “proficient” cut score. While this plan will establish a statistical equivalence between the tests, it does not meet the ESEA requirement that all students are assessed against the same academic content standards with the same assessment using the same achievement standards. This is an essential requirement of the ESEA; it is necessary to ensure to provide comparable information across the State to parents, educators, and the public about school performance. The assessments also play an important role in the State’s accountability system; having consistent information for all schools is necessary to ensure all schools are being held to the same, consistent, and high expectations. It does not appear likely that TDOE’s proposed approach will be able to establish that all students are being assessed against the same content standards on the same assessment and which produce the same achievement standards for high school mathematics. I appreciate that TDOE permits its local educational agencies to select between two different mathematics course pathways in high school; as our staff have discussed at several points since this issue was first raised, we believe there are ways for TDOE to address this situation while continuing to permit local flexibility in coursetaking. My staff are available to provide technical assistance to you regarding ways you may consider for addressing this issue.

As you know, the Department first raised this concern in our 2021 Performance Report² following our consolidated monitoring review, and also reiterated this concern in the May 4, 2023, waiver response. TDOE currently has a condition on the State’s Title I, Part A grant award related to this issue.³ Because the plan outlined in this waiver request is insufficient to resolve the finding outlined in the 2021 Performance Report, the Department is revising the actions needed to remove the condition on TDOE’s Title I, Part A grant award. In addition to the information required in the Department’s September 26, 2022, letter, TDOE must provide an updated plan within 45 calendar days from the date of this letter that includes:

- Documentation of the high school mathematics assessments TDOE will administer for the 2023-2024 school year, and future school years, for all Title I purposes (i.e., assessment requirements under ESEA section 1111(b), accountability requirements under ESEA section 1111(c) and reporting requirements under ESEA section 1111(h) – which must be the same assessment across all three purposes). This documentation should demonstrate a plan to ensure that all students are tested on the same content using the same achievement standards.

Pursuant to section 8401(b)(4)(B)(iii) of the ESEA, TDOE may request a hearing before me to present argument and any testimony in support of its waiver request. If TDOE requests a hearing, it may submit written argument, present oral testimony from one or more witnesses in Washington, D.C., via teleconference, or both. By statute, we must conduct this hearing within 30 days after the date of your revised waiver request—i.e., by July 6, 2023. Therefore, please let me know by June 26, 2023, whether you intend to present oral testimony. TDOE may also submit a written argument to me by July 6, 2023.

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. My staff is willing to discuss options with TDOE to become

² See <https://oese.ed.gov/files/2021/11/TDOE-Performance-Monitoring-Review-Report-2.pdf>.

³ See <https://oese.ed.gov/files/2023/02/tn-fy22-condition-ltr-2022.pdf>.

compliant with the ESEA requirements for high school mathematics assessments. If you have any questions, please contact my staff at: ESEA.Assessment@ed.gov.

Sincerely,

/s/

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

cc: Eve Carney, Deputy Commissioner, TDOE
David Laird, Assistant Commissioner of Assessment and Accountability, TDOE
Deborah Thompson, Assistant Commissioner of Federal Programs and Oversight, TDOE