California Department of Education

Executive Office

SBE-002 (REV. 11/2017)

 memo-gad-lao-apr19item02

# **MEMORANDUM**

DATE: April 17, 2019

TO: MEMBERS, State Board of Education

FROM: TONY THURMOND, State Superintendent of Public Instruction

SUBJECT: Every Student Succeeds Act (ESSA): Request for a Waiver Under Title 1, Part A, Section 8401 to Align the State and Federal English Learner Progress Indicator.

## Summary of Key Issues

This Information Memorandum provides an update on California’s request for a waiver under Title I, Part A, Section 8401 with respect to how it calculates the English learner progress indicator (ELPI).

On April 15, 2019, the California Department of Education (CDE) and the California State Board of Education (SBE) received the final determination of disapproval letter from the U.S. Department of Education (ED). This decision by ED represents the final step in the waiver process under the ESSA.

**Brief History of Key Issues**

In September 2017, after extensive research and consultation with educators and equity advocates, the SBE approved the inclusion of: (1) reclassified fluent English proficient (RFEP) students in ELPI; and (2) an additional weight in the ELPI calculation for long-term English Learners (LTEL) who advanced at least one level on California’s English Proficiency assessment. Stakeholders strongly supported this action.

In April 2018, the SBE directed the CDE to request a four-year waiver from the ED that, if granted, would allow California to include recently RFEP students in measuring the progress of ELs to achieve English language proficiency and provide additional weight for LTELs who make progress. The CDE submitted the waiver request to ED on May 16, 2018.

In October 2018, the CDE and the SBE received a letter initially denying the waiver request. Under Section 8401 of the Elementary and Secondary Education Act as amended by the ESSA, the Secretary of Education may issue an initial determination of disapproval, but must allow the State Education Agency 60 days to revise and resubmit the waiver request. On October 17, 2018 California submitted an amended waiver request with updated arguments in support of the waiver to respond to the content of the ED’s initial determination of denial letter.

The CDE provided an update with a detailed summary to the SBE on the ELPI waiver in the October 2018 Information Memorandum, <https://www.cde.ca.gov/be/pn/im/infomemooct2018.asp>. This memorandum includes copies of the correspondence between the CDE and the ED through October 2018.

On January 11, 2019, a delegation of SBE and CDE staff appeared at a hearing before the ED in Washington, D.C., to provide final arguments in support of California’s waiver request. Despite the strong, unified effort of the California delegation to advocate for the waiver request and articulate the strong support for the waiver request from California’s equity and education stakeholders, the CDE and SBE received the final determination of disapproval letter on April 15, 2019, see attachment 1. California has exhausted its rights under the Title I, Part A, Section 8401 waiver process.

The CDE will jointly work with SBE staff, stakeholders, and researchers to explore options and develop next steps regarding the best way to move forward with a new ELPI methodology for the 2019 California School Dashboard. The CDE anticipates a July 2019 SBE Agenda Item to further discuss and receive direction on this issue.

## Attachment(s)

Attachment 1: ED’s Final Determination of Disapproval Letter dated April 15, 2019

(4 Pages)

## ATTACHMENT 1: ED’s Final Determination of Disapproval Letter

 UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

Dr. Linda Darling-Hammond President

California State Board of Education 1430 N Street, Suite 5111

Sacramento, CA 95814

The Honorable Tony Thurmond Superintendent of Public Instruction California Department of Education 1430 N Street

Sacramento, CA 95814

Dear President Darling-Hammond and Superintendent Thurmond:

***APR* 1 5 *2019***

I am writing to provide the final determination of the U.S. Department of Education (the Department) in response to California's request for a waiver under section 8401 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), with respect to how it calculates its Progress in Achieving English Language Proficiency (ELP) indicator in its statewide system of annual meaningful differentiation.

On May 16, 2018, California requested to waive section 111l (c)(4)(B)(iv), which requires a State to establish an ELP indicator that measures progress of English learners in achieving ELP as measured by the statewide ELP assessment. Through this waiver request, California sought to do two things. First, California requested to include students in the ELP indicator who exited English learner status in the prior year (referred to in California as "reclassified fluent English proficient students"). To do this, California would rely on the student's performance on the ELP assessment in the prior year, since the student who is no longer an English learner would not take the ELP assessment in the current year. Second, California requested to give a school twice as much credit on the ELP indicator for a long-term English learner who makes progress in achieving ELP compared to any other English learner.

On October 9, 2018, I declined to approve California's waiver request because it did not meet the requirements in section 8401(b)(l)(C) of the ESEA that a waiver advance student academic achievement and in section 8401(b)(l)(F) that the waiver demonstrate how it will maintain or improve transparency (California did not request to waive requirements in ESEA section 111l(b) or (h), transparency of the accountability system, including the ELP indicator, which is a significant factor in our consideration of California's request). Under section 8401(b)(4)(B)(i)-(ii) of the ESEA, I notified California of that determination, providing detailed reasons, in writing, for my determination , and offered California an opportunity to revise and resubmit its waiver request within 60 days. On October 17, 2018, California resubmitted its request, providing additional information in support of its waiver.

On November 13, 2018, pursuant to section 8401(b)(4)(B)(iii) of the ESEA, I offered California the opportunity for a hearing to present argument and any testimony in support of its waiver request before making my final determination. The Department conducted the hearing on January 11, 2019, at the U.S. Department of Education in Washington, DC. At the hearing, the California Department of Education and the California State Board of Education presented oral argument. California also provided handouts and presented a PowerPoint in support of its waiver request.

As I understand it, the main point that California made at the hearing with respect to both aspects of the waiver it requested for the ELP indicator *(i.e.,* including students who recently exited English learner status in the indicator and giving extra points for long-term English learners who make progress) is that the proposed calculation of the ELP indicator will create certain incentives for educators in terms of how they teach English learners. Specifically, California argues that its proposed ELP indicator will incentivize educators to: (1) help English learners exit English learner status, particularly those students who score proficient on the ELP assessment but have not met California's other exit criteria; and (2) focus on long-term English learners to help them make progress.

I conclude that California has not demonstrated that its proposal to include in the ELP indicator students who exited English learner status in the prior year (based on the prior year's ELP assessment) will advance student academic achievement, for a number of reasons. First, California offered no rationale as to how its proposed change to the indicator would actually result in more students exiting English learner status, other than general assertions that including former English learners in the ELP indicator for an additional year after they exit status will change behavior, without providing any detail as to what specific behavior requires changing and why doing so will achieve that goal. Therefore, California's argument that its proposal will create incentives to exit those students from English learner status seems speculative.

Moreover, the link between the ELP indicator and exiting a student from English learner status is not direct in California. As described at the hearing, California has adopted exit procedures for an English learner to exit English learner status that include criteria in addition to receiving a score of proficient on the ELP assessment. I understand that those additional criteria include teacher evaluation, parent opinion and consultation, and receiving a certain score on a statewide content assessment. When asked at the hearing, California agreed that the reason most English learners in California who have scored proficient on the ELP assessment have not exited English learner status is that they have not met the requirement to receive a particular score on the statewide content assessment, a score that many proficient-English-speaking students are unable to achieve. California did not explain how including former English learners in this indicator for an additional year after they are no longer English learners will result in current English learners receiving a higher score on the statewide content assessment.

I also disagree with California's argument that the waiver is necessary to mitigate negative incentives that existed under the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), to keep students in English learner status longer than necessary because districts were held accountable for the number or percentage of English learners who achieved proficiency on the ELP assessment. The amended ESEA recognizes that, while teaching students to be proficient in English remains an essential goal, the State accountability system must take into account a school's rate of progress toward that goal. For that reason, the negative incentives California cited under the ESEA, as amended by NCLB, no longer exist.

Finally, the ELP indicator is the only indicator that the ESEA requires be calculated for a single subgroup of students. To permit a State to include students in that indicator other than English learners would diminish the very purpose of the indicator: to hold a school accountable for the performance of English learners. Although I appreciate and share California's desire to move more students out of English learner status, I do not share California's belief that including students who are no longer English learners in the ELP indicator is beneficial for students who are currently English learners.

There are other ways to achieve California’s goal. For example, California could modify its exit procedures to remove or modify the criterion requiring a certain score on the content assessment. We agree that it is problematic should a student be kept in English learner status longer than necessary and suggest that perhaps reevaluating California's exit procedures might be an effective method of helping such students exit.

I also conclude that California has not demonstrated how its proposal to award a school twice as many points for a long-term English learner (compared to a non-long-term English learner) who makes progress toward achieving ELP will advance student academic achievement. As discussed above, California relies on the teacher-level incentive argument. California's argument that awarding more points for long-term English learners will create an incentive that "may" result in advanced student academic achievement is not sufficient.

I applaud California for considering different ways of helping its long-term English learners. However, there are many ways California could support long-term English learners; for example, devoting more targeted resources to those students, providing specialized professional development to teachers and otherwise assisting schools and educators to support long-term English learners. California also has discretion to modify how it defines progress within its ELP indicator, including by reducing the amount of progress that English learners must make in order for the school to receive credit in the State's accountability system.

I appreciate the hard work and analysis California has done to identify obstacles preventing California's large and diverse English learner population from achieving ELP and trying to develop solutions. I recognize, as California presented, that California is unique in the number of English learners that it serves (according to California, approximately 1.3 million current English learners, which constitutes 20 percent of California's total enrollment). I understand that California engaged in a lengthy and collaborative process to develop its proposed ELP indicator and that it has worked hard to present clear information to parents about how English learners, and subsets of English learners, are performing in each school. I particularly commend California for its efforts to help long-term English learners in the State, a group of students who historically have more difficulty exiting English learner status, make progress toward achieving ELP.

However, for all the reasons described above, I am declining California's waiver request. The request does not meet the requirements for a waiver under ESEA section 8401 because California has not demonstrated that the waiver will advance student academic achievement. I am also concerned, as noted in my letter of February 26, 2019, that California may not have included an ELP indicator in its

statewide system of annual meaningful differentiation in the 2018-2019 school year (based on data from the 2017-2018 school year), which would be out of compliance with section l 11l(c)(4) of the ESEA.

I appreciate the work you are doing to improve your schools and provide a high-quality education for all students, including English learners, in California's schools. If you have any questions, please contact my staff at: OSS.California@ed.gov.

Sincerely,



Frank T. Brogan Assistant Secretary for Elementary and Secondary Education

cc: Shanine Coats, Education Administrator, Performance, Planning and Technology Branch, CDE