



**CALIFORNIA DEPARTMENT OF EDUCATION**

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**CALIFORNIA STATE BOARD OF EDUCATION**

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**DRAFT** April 24, 2018

Jason Botel, Principal Deputy Assistant Secretary  
Delegated the authority to perform the functions  
and duties of the position of Assistant Secretary  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Assistant Secretary Botel:

As described in Section 8401 of the Every Student Succeeds Act (ESSA), the California Department of Education (CDE) and the State Board of Education (SBE) are requesting a four-year waiver which will allow California to include recently reclassified fluent English proficient (RFEP) students in measuring the progress of English learners (ELs) to achieve English language proficiency and provide additional weight for long term English learners (LTEL). After extensive research and consultation with stakeholders, the SBE approved the inclusion of RFEP students in California's English learner progress indicator (ELPI) at their September 2017 meeting. At the same meeting, the SBE approved a proposal strongly supported by stakeholders to provide additional weight in the ELPI calculation for LTEL who advanced at least one level on the California English Language Development Test (CELDT).

**A. Identify the Federal programs affected by the requested waiver**

Title I, Part A.

**B. Describe which Federal statutory or regulatory requirements are to be waived**

California is seeking a waiver for the following statutory requirements: Elementary and Secondary Education Act (ESEA)/ESSA Section 1111(c)(4)(B)(iv):

"For public schools in the State, progress in achieving English language proficiency, as defined by the State and measured by the assessments described in subsection (b)(2)(G), within a State-determined timeline for all English learners."

**C. Describe how the waiving of such requirements will advance student academic achievement**

In California, multiple measures are used to reclassify EL students as proficient in English. Pursuant to California *Education Code* Section 313 and in accordance with the *California Code of Regulations*, Title 5, Section 11303, the current standardized reclassification procedures for ELs are as follows:

1. Assessment of language proficiency using the state test of English language proficiency;
2. Teacher evaluation, including a review of the student's curriculum mastery;
3. Parent opinion and consultation; and
4. Comparison of student performance in basic skills against an empirically established range of performance in basic skills based on the performance of English proficient students of the same age.

California's definition of proficiency is not limited to only achieving a specified level on the English language proficiency assessment. Students who have attained English language proficiency based on the assessment may retain their EL status due to not meeting one or more of the other reclassification measures listed above. Including only current EL students within the ELPI would create an unrealistic view of the cohort because it does not show the progress toward California's definition of language proficiency made by *all* ELs; specifically, the progress of the students meeting all the criteria to leave the EL status.

The inclusion of RFEP students in the ELPI is in line with research on EL students and incentivizes local educational agencies (LEAs) and schools to view reclassification as a goal, provide appropriate services for EL students, and to exit EL students as soon as they have met California's reclassification criteria. Including students who recently reclassified ensures that all EL students are given full credit for progress to English language fluency. RFEP students, not students who only advanced on the English language proficiency assessment, have successfully transitioned from EL to fluent English proficient status, exiting the program. It also ensures that the state accountability measure for schools serving ELs is consistent with the Equal Educational Opportunities Act, which requires states to ensure LEAs provide language development services to EL students until they are reclassified, not only until they reach proficiency on a language proficiency assessment.

To fully comply with ESSA statute, California's current State Plan only includes current EL students in the ELPI. A waiver to allow the inclusion of RFEP students in the ELPI would increase student achievement by providing a more accurate measure of the effectiveness of EL programs and language development services for LEAs and schools within California's public school system.

In developing this indicator, the CDE consulted extensively with California stakeholders and researchers, who universally supported the inclusion of RFEP students from the prior year in the calculation to demonstrate EL progress toward proficiency. This support was based, in significant part, on experience with California's former Title III accountability measures under the No Child Left Behind Act. Specifically, Annual Measurable Achievement Objective (AMAO) 1 was the percentage of EL students making annual progress in learning English, as measured on the CELDT, and AMAO 2 was the percentage of EL students attaining the English proficient level on the CELDT. The interaction between AMAO 2 and California's reclassification criteria created a potential perverse incentive: retaining higher scoring ELs in the EL student group increased the chance of meeting the AMAO 2 target, which was at odds with the policy goal of reclassifying students as soon as they demonstrated sufficient language proficiency. Through the process, stakeholders shared examples where LEAs took different approaches to reclassification and how those played out within the former Title III accountability framework.

As noted, stakeholders and researchers agreed that considering whether EL students made annual progress on the language development assessment in conjunction with whether EL students were reclassified provided a more accurate measure of the LEA and school EL programs and would avoid replicating the potential perverse incentive under the former approach. This recommendation was consistent with research supporting the inclusion of RFEPs within the student group definition for ELs within the academic achievement indicator.

[See Saunders, W. M., & Marcelletti, D. J. (2013). The Gap That Can't Go Away: The Catch-22 of Reclassification in Monitoring the Progress of English Learners. *Educational Evaluation and Policy Analysis* (35)2, 139–156.)]

Additionally, California proposes that additional weight be given to LTELs who advance one or more level on the English language proficiency assessment. This would help ensure that the continued progress of LTELs toward English language fluency remains a focus for schools and LEAs. Providing this incentive is important considering that approximately 17% of California's current EL students are LTELs and another 11% are at risk of becoming LTELs and will clearly support the advancement of student achievement.

**D. Describe the methods the State educational agency, local educational agency, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan**

Schools, districts, and the public receive an annual indication of the progress made by their ELs. The CDE will use the ELPI and other state indicator results for the EL student group to ensure a focus on EL progress toward proficiency and EL achievement in all areas. Schools and districts are monitored every two years, possibly being selected for onsite or online federal program monitoring review. One risk indicator used when selecting LEAs for review is based on EL progress towards proficiency, meeting the exit criteria, and academic results.

Increasing the number of EL students meeting the exit criteria and increasing progress towards proficiency is how the effectiveness of the plan will be measured. The Title I and Title III offices jointly monitor and provide technical assistance.

**E. Include only information directly related to the waiver request**

The CDE solicited public comment through the California Practitioners Advisory Group (CPAG) and SBE meetings. Title I of the ESEA, as amended by the ESSA (Public Law 114–95 Section 1603, 20 *United States Code* Section 6573), requires each State educational agency that receives Title I funds to create a State committee of practitioners to advise the State in carrying out its responsibilities under Title I. The CPAG serves as California's committee for this purpose.

Stakeholders are supportive of this waiver because it will allow schools to focus on continuous improvement, and incentivize them to continue to exit students to demonstrate progress in this indicator. Further, California's stakeholder community was nearly universally supportive of the construction of this indicator to be inclusive of RFEP and LTEL students prior to California's most recent version of the State Plan.

**F. Describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describe how the State educational**

**agency, local educational agency, school, or Indian tribe 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)**

California serves approximately 1.3 million EL students; that is, approximately a quarter of our student population. Title I and Title III will continue to provide support for all ELs, allowing the CDE to focus on specific resources for schools not making progress within the EL student group and those not exiting students from the EL program.

The California School Dashboard (Dashboard) contains information disaggregated by student group, including EL students. Under federal statute, all schools need to annually notify parents of EL students of their progress both on language assessments and state content standard assessments. This waiver will not affect the parent notification requirements nor will it affect how the Dashboard disaggregates EL student group data. It will allow for annual meaningful differentiation [1111(c)(4)(c)] for the EL student group that is consistently underperforming.

Thank you for your consideration of this request. If you have questions regarding this request, please contact Keric Ashley, Deputy Superintendent, Planning, Performance, and Technology Branch, by phone at 916-319-0812 or by e-mail at [kashley@cde.ca.gov](mailto:kashley@cde.ca.gov).

Sincerely,

/s/

Tom Torlakson  
State Superintendent of Public Instruction  
California Department of Education

Michael W. Kirst  
President  
California State Board of Education

TT/MK:ji