



California Department of Education

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October 17, 2018

Mr. Frank Brogan
Assistant Secretary for Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Assistant Secretary Brogan:

California was disappointed to receive your disapproval of our waiver request of Section 1111(c)(4)(B)(iv) of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act, in a letter dated October 9, 2018. California originally submitted the request on May 16, 2018, requesting approval of a four-year waiver to allow the inclusion of recently reclassified fluent English proficient (RFEP) students in measuring the progress of English learners (ELs) to achieve language proficiency and provide additional weight for long-term English learners (LTELs) in California's English Learner Progress Indicator (ELPI).

Pursuant to the ESSA Section 8401(b)(4)(B)(ii), California has revised the waiver and is resubmitting via this letter the request for your consideration. In addition, California respectfully requests a hearing in support of the revised waiver should the Secretary determine this resubmission does not meet the requirements of the law.

As home to the largest EL population in the nation, California is in a unique position to serve our 1.3 million EL students which represent over 25 percent of all ELs nationally. As a leader in the field, we have been innovative in developing the measurement of the progress of ELs, in compliance with state and federal law. The progress of this student group is crucial to the success of our schools and as such, California has paid close attention to how we educate them and monitor their outcomes. With the ELPI, California developed an accountability measure that national research experts and practitioners agree will improve outcomes for our EL population.

October 2018 Revised Waiver Request

The California Department of Education (CDE) and the State Board of Education (SBE) are resubmitting a request for a four-year waiver to allow California to (1)

include recently reclassified fluent English proficient (RFEP) students in measuring the progress of English learners (ELs) in achieving English language proficiency, and (2) provide additional weight for long-term English learners (LTEL). This revised waiver seeks to address the issues outlined in a response from the U.S. Department of Education Office of Elementary and Secondary Education, while including the relevant components of the original waiver. This waiver would allow California to include students who took the final step toward demonstrating language proficiency—being reclassified—in the calculation, and therefore more accurately measure how an LEA's or school's language acquisition programs are (or are not) helping students attain English language proficiency. In consultation with multiple stakeholders including national EL research experts, local educational agencies, and EL advocates, 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 LTELs who advanced at least one level on the California English Language Development Test (CELDT). The CDE and SBE request your support of this revised waiver request.

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

As detailed below, the overall intent of this waiver is based on ensuring that the ELPI advances student academic achievement. Specifically, the inclusion of RFEP students and giving additional credit for LTEL students who advance one or more levels in the ELPI provides an incentive to schools and districts to continue to promote the long-term progress of EL students to proficiency, enabling their reclassification, and to assist LTELs in making progress towards proficiency. This measure is a step that goes beyond success on the assessment.

In California, multiple measures are used in the determination of whether EL students are proficient in English and may exit the EL class. Pursuant to California law in the State's *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 score on the English language proficiency assessment, but rather a holistic standard for language fluency and use based on both quantitative and qualitative data. 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 were recently reclassified in the ELPI calculation 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.

ED's denial of the State's waiver request claims that "[b]oth including RFEPs and giving additional weight to LTELs in the indicator could result in some schools receiving higher ratings on the ELP indicator than they would receive based on the performance of English learners in the school and, therefore, not being identified for supports and interventions to improve student achievement even though they have low performance of English learners making progress toward ELP." California disputes this claim.

It is true that removing RFEPs and the additional weight for LTELs would cause some schools to have lower performance levels (i.e., ELPI color on the Dashboard). The fact that some schools receive higher ratings does not outweigh the benefits, in terms of how the indicator will inform instruction and incentivize how schools focus their programs, of including RFEPs and LTELs. The disapproval letter appears to ignore these valid benefits for both current and future ELs. As discussed in depth throughout this letter, there are multiple valid and evidence-based reasons to include them in this indicator. Additionally, the point of the ELPI is not to arbitrarily increase or decrease the number of schools identified for assistance, but to properly capture how well a school is performing at moving their EL students towards ELP: all of their ELs, including LTELs, with reclassification the final and critical step in demonstrating language proficiency. Finally, if the articulated standard were applied consistently, no waiver related to the calculation of an indicator could be granted, which appears contrary to what the United States Congress intended in the passage of ESSA. A school that has “lower performance” under one method of calculating performance may not be identified for support and intervention under a different method of calculating performance because, under that other method, they are not as low-performing. This in itself does not mean that a particular rating system is invalid. Because identification of at least the lowest performing five percent of schools is a relative inquiry, modifying how any indicator is calculated will almost certainly result in some schools being identified that would not have been identified, and vice versa. In essence, this argument assumes its conclusion: California’s proposed approach will not advance student achievement (and therefore any impact on school identification must be negative).

California also disputes the assertion that, “by including RFEPs in the ELP indicator calculation by counting them as making progress on the ELP test in the year after they are no longer taking the ELP test (because they are no longer English learners), and awarding schools credit for those students who have already exited English learner status, could result in an inaccurate portrayal of the progress of current English learners toward ELP proficiency.”

California argues that only including EL students in the ELPI indicator is more likely to result in an inaccurate portrayal on EL progress toward proficiency when EL students who otherwise might have been reclassified continue to be held back as ELs to boost school and district ELPI results. The goal of ELP education is to assist EL students in reaching English proficiency, which in California is not reached until the student is reclassified. California listened closely to national research experts, our accountability Technical Design Group, EL stakeholders, local educational agencies, and equity advocates who overwhelmingly supported the inclusion of RFEPs in the calculation of the ELPI. Failure to provide schools credit for reclassifying English proficient students is counter to the goal of measuring and reporting this indicator in the first place. Additionally, as discussed in more depth in Section F below, if the waiver is granted, California would report transparently how the overall rate is reached, with separate breakdowns for what portion of the overall rate comes from annual progress

measured on the assessment, what portion comes from the additional weight for LTELs, and what portion comes from having reclassified students. There would therefore be nothing inaccurate or misleading in the data.

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 levels 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 percent of California's current EL students are LTELs and another 11 percent are at risk of becoming LTELs and will clearly support the advancement of student achievement.

California also disputes the claim that “giving additional weight to the performance of LTELs provides confusing information in the indicator calculation about the performance of English learners in achieving the ELP and could obscure the performance of other English learners and result in a lack of transparency around how English learners in a school are actually performing on the ELP indicator.”

California argues that explicitly incorporating LTELs into the calculation provides greater transparency and attention to the progress this group of students are (or are not) making towards ELP. When California presented this idea to national research experts, our accountability Technical Design Group, EL stakeholders, local educational agencies, and equity advocates, they also unanimously and strongly supported the inclusion of additional credit for LTEL progress. Including the additional weight for progress by students who are LTEL incentivizes districts to focus on these students to ensure that they are making progress towards ELP. LTEL students, because they are LTEL, by definition struggle more at progressing towards proficiency in a timely fashion. Without this additional weight, there is a potentially perverse incentive for schools to focus on the students (i.e., non-LTELs) who more easily and more quickly progress towards ELP. This obviously does not advance the academic achievement for LTELs. Finally, as discussed in more depth in Section F below, if the waiver is granted, California would report transparently how the overall rate is reached, with separate breakdowns for what portion of the overall rate comes from annual progress measured on the assessment, what portion comes from the additional weight for LTELs, and what portion comes from having reclassified students. There would therefore be nothing inaccurate or misleading in the data. In fact, parents do care strongly that students continue to progress in their mastery of the language, regardless of how long they have been considered ELs.

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 toward proficiency, meeting the exit criteria, and academic results.

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

California will continue to solicit feedback on this system with stakeholders and others to ensure that this information still reflects current research, parent wishes, and school needs.

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.

As noted throughout this waiver, the request to include RFEP students and provide extra weight to the progress of LTELs in the ELPI is supported widely by California’s stakeholders. Specifically, a draft of this waiver was presented at the CPAG April Meeting and was posted for public comment from May 1 through May 10, 2018. The comments collected, which reflect the broad support for this waiver request from California stakeholders, are attached. California received one letter from a national policy organization that was not supportive of California’s waiver request. This letter does not alter the California’s waiver request for two reasons. First, the letter reflects a substantial misunderstanding of California’s approach to the ELPI; specifically, the inaccurate belief that the waiver seeks to treat reclassified students as LTELs. Second, the additional data that is requested is already publicly reported on the CDE data Web portal, DataQuest, at <https://dq.cde.ca.gov/dataquest/>.

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)

With approval of the revised waiver, the revised ELPI would maintain or improve transparency in reporting to parents and the public on student achievement and school performance for several categories of ELs. Although the ELPI measure of Status and Change combines prior year RFEP students with EL students making progress plus the additional weight for LTEL students making progress, the individual components of the ELPI indicator are distinctly reported through the California School Dashboard (Dashboard) downloadable data files. In submitting this revised waiver, California is also committed to adding this disaggregated information to the Dashboard interface, in a similar method to the report for the EL student group for the academic indicators. Specifically, the downloadable files currently disaggregate the school level number of ELs who increased one or more levels, LTELs who increased one or more levels, and RFEPs. In other words, the number of RFEP students in Status, number of EL students advancing one or more levels in Status, the number of LTEL students given additional credit for advancing one or more levels in Status, the number of RFEP students in Change, the number of EL students advancing one or

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more levels in Change, and the number of LTEL students given additional credit for advancing one or more levels in Change are all reported separately. In providing this information publicly, California ensures that there is transparency in the data reported.

California serves approximately 1.3 million EL students; that is, approximately a quarter of our student population are English learners. 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 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.

If you have any questions regarding this subject, please contact Marguerite Ries, Federal Policy Liaison, Government Affairs Division, by phone at 916-319-0650 or by e-mail at mrries@cde.ca.gov. Thank you for your consideration.

Sincerely,



Tom Torlakson
State Superintendent of Public Instruction
California Department of Education



Michael Kirst
President
California State Board of Education

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