



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

**MAY 31 2018**

The Honorable Sydnee Dickson  
State Superintendent of Public Instruction  
Utah State Board of Education  
250 East 500 South  
P.O. Box 144200  
Salt Lake City, UT 84114-4200

Dear Superintendent Dickson:

I am writing in response to Utah State Board of Education's (USBE) request on May 1, 2018, for a waiver of the requirement in section 1111(c)(4)(E) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act, that for the purpose of measuring, calculating and reporting on the academic achievement indicator in a State's school accountability system, the State educational agency (SEA) must include in the denominator the greater of: (1) 95 percent of all students in the grades assessed or 95 percent of all such students in the subgroup, as the case may be, or (2) the number of students participating in the assessments. The USBE's request notes correctly that this section essentially requires an SEA to include non-tested students as zero, or non-proficient (up to 95 percent of students in the tested grades), in the calculation of the academic achievement indicator for a school when the assessment participation rate of the school is below 95 percent.

You assert that the waiver would enable the State to maintain one coherent accountability system and avoid undermining the transparency of that system by counting students who opt out of the assessments as non-proficient. You note that Utah State law authorizes a parent to excuse his or her child from taking a statewide assessment and requires USBE to prevent any negative impact to a local educational agency (LEA) or its employees due to parent opt-out. To support participation in State assessments, you explain that USBE's Testing Ethics Policy, which has the effect of law in Utah, requires educators and LEAs to ensure all eligible students are tested, and that no student is discouraged from participating in a statewide assessment. Additionally, you indicate that USBE recently enacted a rule that allows a parent to request that an LEA allow a student's demonstration of proficiency on a statewide assessment to fulfill a requirement in a course, such as a local end-of-course assessment. Finally, you indicate that USBE is making several changes to its assessment system that may result in higher participation in assessments.

I appreciate the information that USBE submitted as part of its waiver request, and I appreciate that USBE is taking steps to annually monitor opt-out rates at the school and student group levels. However, after carefully reviewing USBE's request, I am declining to approve the waiver request because it does not meet the statutory requirements for a waiver outlined in ESEA section 8401(b). Namely, USBE does

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not sufficiently demonstrate how the request will advance student academic achievement (ESEA section 8401(b)(1)(C)).

At the core of the ESEA are the requirements that each State that receives Title I, Part A funds adopt challenging academic standards and aligned academic assessments that the State administers to all public school students in the State. These provisions ensure that a State holds *all* students to the same State-determined challenging academic standards and annually measures whether students have learned the content those standards demand. The State assessments provide invaluable information to parents, educators, policymakers and the public about the condition of education in each school and LEA in the State in order to inform instruction and improve student achievement. School accountability is determined, in significant part, on student performance, as measured by proficiency on the State's assessments. Because of the importance of student performance as a measure of school success, ESEA section 1111(c)(4)(E) requires that the academic achievement indicator in a State's accountability system take into consideration the participation rate of students in the grades assessed, thereby incentivizing schools to encourage participation of their students in the assessments.

Under ESEA section 8401(b)(4)(B)(ii), USBE may revise and resubmit its waiver request by no later than 60 days from the date of this letter. If you would like additional assistance or have any questions, please contact Porscheoy Brice of my staff at: [OSS.Utah@ed.gov](mailto:OSS.Utah@ed.gov).

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students.

Sincerely,

A handwritten signature in black ink that reads "Jason Botel". The signature is written in a cursive style with a large, sweeping "J" and "B".

Jason Botel  
Principal Deputy Assistant Secretary,  
Delegated the Authority to Perform the  
Functions and Duties of the Assistant Secretary  
of Elementary and Secondary Education

cc: Tiffany Stanley, Chief of Staff, Office of the Superintendent, Utah State Board of Education  
Patty Norman, Deputy Superintendent, Utah State Board of Education