



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

JUN 26 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 the Utah State Board of Education's (USBE) request on June 13, 2018, for the U.S. Department of Education (the Department) to use its transition authority under Section 4(b) of the Every Student Succeeds Act (ESSA) to allow Utah a one-year exemption to meet the requirements of section 1111(c)(4)(E)(ii) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the ESSA. Under that section, for the purpose of measuring, calculating, and reporting on the academic achievement indicator in a State's school accountability system, a State educational agency (SEA) must include in the denominator the greater of: (1) 95 percent of all students 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 included in ESEA section 1111(b)(2)(B)(v)(I). USBE also requested transition authority to delay implementing the requirement that an SEA annually measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the assessments described under section 1111(b)(2)(B)(v)(I). Further, USBE requested that this issue be considered separate from approval of Utah's ESEA Consolidated State Plan, stating that the ESEA State plan template does not require an SEA to describe or provide assurances regarding calculating the academic achievement indicator.

On May 1, 2018, USBE requested a waiver of these same statutory requirements. USBE asserted that the waiver would enable the SEA to maintain a single accountability system and avoid undermining the transparency of that system by counting students who opt out of the assessments as non-proficient. You noted 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. On May 31, 2018, I declined to approve that request on the grounds that 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. I noted that school accountability is determined, in significant part, based 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.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Section 4(b) of the ESSA authorizes the Department to “take such steps as are necessary to provide for the orderly transition to, and implementation of, programs” authorized under the ESEA as amended by the ESSA from programs authorized under the ESEA prior to ESSA enactment. The ESEA was amended by the ESSA on December 10, 2015. The Department’s 2016 appropriations act delayed implementation of the requirements in ESEA section 1111, among others, until the 2017-2018 school year. I do not believe another year is warranted for USBE to transition to full implementation of the ESEA as amended by the ESSA. Therefore, I am declining to use transition authority to exempt USBE from calculating participation rate in the academic achievement indicator in accordance with ESEA section 1111(c)(4)(E).

In regard to USBE’s request to separate this issue from overall approval of the Utah Consolidated State Plan, the Department has consistently required a State to clarify its calculation of the academic achievement indicator when the State provides information that would appear to be inconsistent with the statute. In Utah’s plan, the SEA includes the following information: “In accordance with state law, beginning in the 2017–2018 school year, Utah will factor the requirement for 95 percent student participation in statewide assessments into the accountability system by publishing the school’s participation rate on a school’s report card (UCA Section 53E-5-21153A-1-1112 as in effect November 1, 2017).” Utah’s indication that the method by which the State will factor participation rate into the accountability system is by publishing the participation rate on a school’s report card suggests that Utah may not factor participation rate into the academic achievement indicator consistent with ESEA Section 1111(c)(4)(E). Therefore, we asked for clarification to ensure that Utah’s Consolidated State Plan is consistent with the statute prior to recommending approval of the plan. Thus far, we have not received a Consolidated State Plan from Utah that is consistent with the statute in this regard.

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact Porscheoy Brice of my staff at: OSS.Utah@ed.gov.

Sincerely,



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