



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

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**TO:** Members of the State Board of Education

**FROM:** Karen B. Salmon, Ph.D.

**DATE:** March 24, 2020

**SUBJECT:** Flexibility for States on the Elementary and Secondary Education Act (ESEA)  
Assessment and Accountability Requirements

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**PURPOSE:**

To review the *Flexibility for States on the Elementary and Secondary Education Act (ESEA) Assessment and Accountability Requirements* that the Secretary of Education Betsy DeVos released on Friday, March 20, 2020.

**BACKGROUND/HISTORICAL PERSPECTIVE:**

As a result of the extraordinary circumstances created by the COVID-19 pandemic and resulting school closures, the U.S. Department of Education has provided flexibility to all States regarding the assessment and accountability requirements under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). States are able to apply for a waiver for the 2019-2020 school year. Through the waiver, Maryland would not need to administer its statewide assessments to all students, to make annual accountability determinations, to identify schools for support and improvement, or to provide data on Maryland's and local report cards for assessment and accountability information.

**EXECUTIVE SUMMARY:**

Given that Maryland schools have been closed since March 16, 2020, the waiver request would provide the necessary relief to local school systems, schools, students, educators, and parents. All materials provided by the U.S. Department of Education are attached for review. The U.S. Department of Education has promised a response within one business day to any State that submits a waiver request using the optional waiver template. Maryland would not be required to complete public notification in advance of submitting the request, but rather may notify the public of the request and the opportunity to comment at the same time as the submission or shortly thereafter.

**ACTION:**

Request permission to submit a waiver for *Flexibility for Maryland on the Elementary and Secondary Education Act (ESEA) Assessment and Accountability Requirements* for the 2019-2020 school year.

**ATTACHMENTS:**

Letter from Betsy DeVos, the Secretary of Education, to Chief State School Officers dated  
March 20, 2020

Waiver template provided by the U.S. Department of Education addressed to The Honorable Frank T.  
Brogan

Draft letter from Dr. Karen B. Salmon, Ph.D. to The Honorable Frank T. Brogan requesting a waiver  
for Maryland



**Karen B. Salmon, Ph.D.**  
State Superintendent of Schools

March 24, 2020

The Honorable Frank T. Brogan  
Assistant Secretary for Elementary and Secondary Education  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Assistant Secretary Brogan:

I am writing to request a waiver, pursuant to section 8401(b) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, of all of the following requirements.

- ◆ Assessment requirements in section 1111(b)(2): the requirements to administer all required assessments in school year 2019-2020;
- ◆ Accountability and school identification requirements in sections 1111(c)(4) and 1111(d)(2)(C)-(D): the requirements that a State annually meaningfully differentiate all public schools and the requirements to identify schools for comprehensive and targeted support and improvement and additional targeted support and improvement based on data from the 2019-2020 school year; and
- ◆ Report card provisions related to certain assessments and accountability in section 1111(h) based on data from the 2019-2020 school year, namely:
  - o Section 1111(h)(1)(C)(i) (accountability system description).
  - o Section 1111(h)(1)(C)(ii) (assessment results).
  - o Section 1111(h)(1)(C)(iii)(I) (other academic indicator results).
  - o Section 1111(h)(1)(C)(iv) (English language proficiency assessment results).
  - o Section 1111(h)(1)(C)(v) (school quality or student success indicator results).
  - o Section 1111(h)(1)(C)(vi) (progress toward meeting long-term goals and measurements of interim progress).
  - o Section 1111(h)(1)(C)(vii) (percentage of students assessed and not assessed).
  - o Section 1111(h)(1)(C)(xi) (number and percentage of students with the most significant cognitive disabilities taking an alternate assessment).
  - o Section 1111(h)(2)(C) with respect to all waived requirements in section 1111(h)(1)(C) as well as 1111(h)(2)(C)(i)-(ii) (information showing how students in a local educational agency (LEA) and each school, respectively, achieved on the

academic assessments compared to students in the State and Local Education Agencies (LEA)).

I am requesting these waivers because it is not possible to administer assessments required under ESEA section 1111(b)(2) or comply with the concomitant accountability, school identification, and reporting requirements as originally planned due to extensive school closures in Maryland. These closures are in response to extraordinary circumstances for which a national emergency has been duly declared by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and this action will protect the health and safety of students, staff, and our communities.

In seeking this waiver, I assure that:

- ◆ Any school that is identified for comprehensive or targeted support and improvement or additional targeted support and improvement in the 2019-2020 school year will maintain that identification status in the 2020-2021 school year and continue to receive supports and interventions consistent with the school's support and improvement plan in the 2020- 2021 school year.
- ◆ The Maryland State Department of Education will provide the public and all LEAs in the State with notice of and the opportunity to comment on this request (e.g., by posting information regarding the waiver request and the process for commenting, on Maryland's website).

Thank you for your consideration and support for all of the students, educators, and parents in Maryland.

Best Regards,

Karen B. Salmon, Ph.D.  
State Superintendent of Schools

This template is an example that may be used for the submission of a request for waivers of assessments, accountability and school identification, and reporting requirements under the Elementary and Secondary Education Act of 1965, as amended. Note that the Department will accept, process, and approve any appropriate waiver request; for assistance please contact [OESE.TitleI-a@ed.gov](mailto:OESE.TitleI-a@ed.gov). However, the Department plans to respond in one business day to a State educational agency that follows the example and provides all necessary information in an accessible way.

The Honorable Frank T. Brogan  
Assistant Secretary for Elementary and Secondary Education  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Assistant Secretary Brogan:

I am writing to request a waiver, pursuant to section 8401(b) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, of the following requirements.

State:

*Please check all that apply:*

- Assessment requirements in section 1111(b)(2): the requirements to administer all required assessments in school year 2019-2020.
- Accountability and school identification requirements in sections 1111(c)(4) and 1111(d)(2)(C)-(D): the requirements that a State annually meaningfully differentiate all public schools and the requirements to identify schools for comprehensive and targeted support and improvement and additional targeted support and improvement based on data from the 2019-2020 school year.
- Report card provisions related to certain assessments and accountability in section 1111(h) based on data from the 2019-2020 school year, namely:
  - Section 1111(h)(1)(C)(i) (accountability system description).
  - Section 1111(h)(1)(C)(ii) (assessment results).
  - Section 1111(h)(1)(C)(iii)(I) (other academic indicator results).
  - Section 1111(h)(1)(C)(iv) (English language proficiency assessment results).
  - Section 1111(h)(1)(C)(v) (school quality or student success indicator results).
  - Section 1111(h)(1)(C)(vi) (progress toward meeting long-term goals and measurements of interim progress).
  - Section 1111(h)(1)(C)(vii) (percentage of students assessed and not assessed).
  - Section 1111(h)(1)(C)(xi) (number and percentage of students with the most significant cognitive disabilities taking an alternate assessment).

- Section 1111(h)(2)(C) with respect to all waived requirements in section 1111(h)(1)(C) as well as 1111(h)(2)(C)(i)-(ii) *(information showing how students in a local educational agency (LEA) and each school, respectively, achieved on the academic assessments compared to students in the State and LEA).*

I am requesting these waivers because it is not possible to administer assessments required under ESEA section 1111(b)(2) or comply with the concomitant accountability, school identification, and reporting requirements as originally planned due to extensive school closures in the State. These closures are in response to extraordinary circumstances for which a national emergency has been duly declared by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and this action will protect the health and safety of students, staff, and our communities.

In seeking this waiver, I assure that:

- Any school that is identified for comprehensive or targeted support and improvement or additional targeted support and improvement in the 2019-2020 school year will maintain that identification status in the 2020-2021 school year and continue to receive supports and interventions consistent with the school's support and improvement plan in the 2020-2021 school year.
- The State educational agency will provide the public and all LEAs in the State with notice of and the opportunity to comment on this request (*e.g.*, by posting information regarding the waiver request and the process for commenting, on the State website).

Thank you for your consideration.

Sincerely,

Chief State School Officer (or Authorized Representative)

Digital Signature

OR

Typed Name and Date

By typing my name here, I am affirming submission of this waiver on behalf of the State.



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

March 20, 2020

Dear Chief State School Officer:

I know you are facing unprecedented challenges right now, and I first want to commend you for the truly remarkable efforts you and your teams are making to help ensure learning continues for all of America's students. I appreciate the difficulty you face in ensuring a positive learning environment while providing for the health and safety of your students and staff. I also understand that the novel Coronavirus disease 2019 (COVID-19) has caused widespread school closures with much uncertainty about how to continue learning during the national emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The U.S. Department of Education is committed to supporting you with every tool at our disposal and extending all flexibilities within our control.

Due to the extraordinary circumstances created by the COVID-19 pandemic and resulting school closures, I am providing flexibility to all States regarding the assessment and accountability requirements under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). Given the widespread, extended school closures, I know many States will be unable to administer their statewide assessments to all students in the spring of 2020. As statewide accountability systems rely on fair, reliable and valid assessment results, I also recognize that States that do not administer their assessments will also not be able to annually meaningfully differentiate among public schools or identify schools for support and improvement, as required under section 1111(c)(4) and 1111(d)(2)(C)-(D) of the ESEA.


Therefore, pursuant to my authority under section 8401(b) of the ESEA, I am inviting your State to request a waiver, for the 2019-2020 school year, of the assessment requirements in section 1111(b)(2) of the ESEA, the accountability and school identification requirements in sections 1111(c)(4) and 1111(d)(2)(C)-(D), and certain reporting requirements related to assessments and accountability in section 1111(h).

Through these waivers, your State would not need to administer its statewide assessments to all students, to make annual accountability determinations, to identify schools for support and improvement, or to provide data on its State and local report cards for assessment and accountability information.

If your State is interested in receiving these waivers, please submit your request to [OESE.TitleI-a@ed.gov](mailto:OESE.TitleI-a@ed.gov). I am enclosing a streamlined template for your convenience that includes a checklist to designate the waivers your State desires. My staff is committed to providing a response within one business day to any State that submits a waiver request using this optional waiver template. In addition, your State need not complete public notification in advance of submitting its request, but rather may notify the public of the request and the opportunity to comment at the same time as your submission or closely following it. I recognize that you have many questions and will need additional supports, including the possibility of additional waivers, as you deal with the COVID-19 national emergency.

If you have additional questions or concerns, contact us at [OESE.TitleI-a@ed.gov](mailto:OESE.TitleI-a@ed.gov). I encourage you to continue to monitor information regarding COVID-19 from the Centers for Disease Control and Prevention at [www.cdc.gov/coronavirus/](http://www.cdc.gov/coronavirus/) and at our website, [www.ed.gov/coronavirus](http://www.ed.gov/coronavirus). Thank you for your continued commitment to our nation's students during these extraordinary circumstances.

Sincerely,

A handwritten signature in black ink that reads "Betsy DeVos". The signature is written in a cursive style with a large initial "B".

Betsy DeVos

Enclosure

cc: Council of Chief State School Officers  
State Title I Directors  
State Assessment Directors