



December 2, 2013

President Michael Kirst
California State Board of Education
1430 N Street, Room #5111
Sacramento, CA 95814

Secretary Arne Duncan
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Superintendent Tom Torlakson
California Department of Education
1430 N Street
Sacramento, CA 95814

Assistant Secretary Deborah Delisle
Office of Elementary & Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: California Elementary and Secondary Education Act (ESEA) Testing Waiver

Dear President Kirst, Superintendent Torlakson, Secretary Duncan and Assistant Secretary Delisle:

In response to a notice we learned was posted on the California Department of Education website, EdVoice has serious policy and legal concerns about California's most recent request for a waiver from federal requirements to implement yearly individual student academic assessments in mathematics and reading/language arts and report information from those assessments to parents, teachers, and principals as mandated by ESEA. In addition, EdVoice is concerned about the failure of the State Board of Education (SBE), as the State Educational Agency (SEA), to properly notify the public in a manner mandated by federal law.

As Assistant Secretary Delisle outlined in her letter of October 29, 2013, the flexibility that the Secretary is offering in limited waivers of specified ESEA requirements is to avoid double testing and to "protect a core principle of the law: that States must provide a reading/language arts and a mathematics assessment to every student in the tested grades in the State." And, as that letter outlines, the assessments are to "provide value to students and families." However, California's latest plan to simply expand the number of students participating in the scaled-down field test, without supplying any data on student or subgroup achievement to parents or schools, does not provide value to students and families. Beyond keeping parents and teachers in the dark, the proposal for excessive field testing wastes limited resources on meaningless tests, the data from which won't even be used by test publishers or policymakers to support item statistics or inform performance level setting.

California Department of Education and Smarter Balanced staff publicly stated at the November 6, 2013 SBE meeting that a scientific sample of 20% of students was necessary for the field test to meet quality standards, set performance levels and assess test administration and capacity needs. They have also recently stated that the field tests will produce individual student results that are not valid and reliable. Why then should California assess the other 75% of students with a tool that will produce results that cannot be shared and that will not improve information gathered from the field test? We believe the California's ESEA waiver request is not consistent with the intent or the letter of Title I of ESEA as explicitly articulated in Section 1001, nor with the double testing waiver flexibility guidelines. The latest request, in a string of ESEA waiver requests, is obviously designed as a head fake to appear as if the state is somehow complying with ESEA mandates but providing no actual gauge on the progress of students to parents, or their teachers and principals in California schools.

Section 9401(c)(6) of ESEA explicitly prohibits the Secretary from waiving statutory or regulatory requirements relating to parental participation and involvement. How are parents to be involved when they are not provided ANY objective information regarding how their child, school or school district is achieving? By enacting AB 484, the California Legislature did the SBE and the students and educators of California a disservice when it knowingly passed a law that is blatantly out of compliance with Title I of ESEA. As Assistant Secretary Delisle noted in her previously referenced letter, AB 484 not only violates ESEA but, "some of the State's key responsibilities to California's children and families."

On its face, the waiver requests the Secretary ignore fifteen years of effort by three of his predecessors and the staff at the U.S. Department of Education, who closely worked with California to migrate statewide administration of national norm-referenced tests producing individual scores to criterion-referenced and standards-aligned grade-level and end-of-course exams without ever having to suspend a federal or state requirement of providing individual pupil scores to parents, teachers, principals or policymakers. The current waiver request is also blatantly internally inconsistent in its justification for not utilizing the CSTs by continuing the use of the California High School Exit Exam (CAHSEE) for AYP determination for high schools. There is no dispute that the CAHSEE is not at all aligned to old or new state standards.

Several alternative approaches are available to California consistent with the intent of ESEA that would acknowledge known parameters and LEA capacity constraints, while helping to ease the transition to Smarter Balanced assessments. The SBE, as the SEA and recipient of Title I funds, has the authority to move forward with a more balanced approach, providing information on relevant CSTs to parents and schools and districts on student, subgroup, grade, school and school district performance, and on the results of field tests, with appropriate caveats.

For example, one option to cure California's complete non-compliance would be to offer certain CSTs to the students who are not taking the Smarter Balanced assessments necessary for the psychometrically appropriate field test sample. Such a policy would be particularly appropriate for the CSTs in English Language Arts (ELA), as the Common Core ELA standards are known to be

closely aligned and modeled after California's previous ELA standards. This would allow schools and districts to continue to gauge student progress, a central requirement of ESEA for decades.

If California were not to provide any information to parents, teachers, principals, districts, or policymakers on student progress, even while administering assessments, it would only breed confusion and mistrust. Although the waiver request purportedly assures that "California will ensure that parents of students in each school participating in the field test will be notified of the school's participation," such a claim is a red herring as it relates to parent involvement or information parents or teachers could use to address any student's or subgroup of students' needs.

There has been no demonstration from the waiver request or backup, or any publicly available information that California would provide any meaningful information to districts or schools on student or subgroup performance from the field tests. Even if it is determined that it is not appropriate to report individual student level data from field testing, it's unclear how the massive expansion of the field test sample would preclude the state from generating useful subgroup, grade, school-level, district-level and statewide reports on aggregate assessment results.

Particularly given recently enacted California law explicitly prohibiting actions promised in the accompanying assurances, we have serious concerns about whether California can legally meet the assurances outlined in its waiver request. California's assurance in its waiver request to "resume making AYP determinations for all schools and all single-school LEAs based on assessments administered in the 2014-15 school year" is meaningless, as AB 484 explicitly prohibits certain use of old and new data. Section 60641(a)(2) of the Education Code now specifies that "state agencies or local educational agencies shall not use a comparison resulting from the scores and results of the Measurement of Academic Performance and Progress (MAPP) assessments and the assessment scores and results from assessments that measured previously adopted content standards." If the state cannot refer to previous years' assessment scores, what will be the baseline for AYP determinations in 2014-15? California must provide more reliable information about how it will specifically meet this assurance given this explicit prohibition.

The request also states that California "will ensure that all students in the tested grades will participate in the field test with 95 percent taking both reading/language arts and mathematics items." There is no credible evidence that California LEAs will have the technological capacity to administer the Smarter Balanced tests by computer for 95 percent of students. The most recent data provided from the Technology Readiness Tool suggests that only 45 percent of California districts are technologically equipped to do so. And even as districts develop plans to become ready, many recent news reports have shown districts scaling back their expectations for technological readiness. Moreover, AB 484 added Section 60648.5 to the Education Code to explicitly authorize the Board to indefinitely delay statewide assessments beyond 2015 if it deems LEAs cannot fully implement the new assessments; and Section 60649 (b) of the Education Code conveniently obscures full implementation and specifies no specific school-year in triggering an evaluation requirement. Additional evidence to demonstrate how California will meet all of its

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assurances, including 95 percent of students assessed by computer, and a 2015 full administration in ELA and math must be provided as back-up to the waiver request.

Furthermore, this waiver request was not issued in accordance with ESEA mandated procedures and is therefore unlawful. Under Section 9401(b)(3)(iii) of ESEA, the SEA is required to “provide notice and information to the public regarding the waiver request in the manner in which the applying agency customarily provides similar notices and information to the public.” The timing and manner in which the notice was apparently posted was dubious, if not unlawful on its face. Bookended by two weekends and five days during the week of Thanksgiving, and the fact that it was NOT distributed to the full email list that customarily receives similar notices relating to such SEA business, information and action. This raises serious concerns about whether there was an intentional effort to limit the public’s ability to review and comment on the specifics of the proposal, previously unheard, summarized or distributed in any public setting in a manner consistent with federal or state law.

This waiver request violates the law and could subject the State and the U.S. Department of Education to unnecessary litigation regarding both substance and procedure. This waiver should be denied for failure to properly notice the request for public comment. California needs a plan that will actually provide value to all students and families, not just pay lip service to assessing all students and then hide all the student and subgroup results from parents, teachers and principals.

The Secretary should deny this version of the waiver unless conditions are met that would meet the spirit of ESEA Title I in providing essential information student achievement to parents, educators and policymakers. This could involve conducting field tests on an appropriate scientific sample of students, while administering meaningful gauges of learning, such as the California Standards Test in ELA and other reasonable gauges of student achievement for the remainder of students and providing data from those assessments, with the appropriate caveats to parents, teachers, principals, districts and policymakers.

The U.S. Department of Education should insist on additional supporting information to demonstrate that the SEA provided a legitimate opportunity for public to comment or require an extended comment period. And the Secretary should require the SEA to be explicit in demonstrating that California can actually and lawfully execute the plan and meet the assurances as outlined, particularly considering the technological limitations expressed by LEAs, prohibitions in AB 484, and lack of state’s timely direction on comprehensive technical specifications for computer-based and computer adaptive assessments.

Sincerely,



Bill Lucia
President & CEO