The Honorable Michael W. Kirst  
President  
California State Board of Education  
1430 N Street, Suite 5111  
Sacramento, CA 95814

The Honorable Tom Torlakson  
Superintendent of Public Instruction  
California Department of Education  
1430 N Street  
Sacramento, CA 95814

Dear President Kirst and Superintendent Torlakson:

I am writing in response to the California Department of Education’s (CDE) updated request, dated November 29, 2016, for a waiver under section 8401 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), to implement its transition plan for administering new general and alternate science assessments aligned to the California Next Generation Science Standards (CA NGSS).

As I noted in my response on September 30, 2016, the U.S. Department of Education (the Department) appreciates CDE’s interest in ensuring that its science assessments are a tool for learning and do not take unnecessary time away from valuable instruction. However, the updated request does not change CDE’s transition plan from its original waiver request, which includes piloting the new general science assessments in school year (SY) 2016–2017 with all students in fifth and eighth grades and high school, conducting a census field test with all students in those grades in SY 2017–2018, and conducting a full operational test in SY 2018–2019. With respect to alternate science assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities, CDE continues to propose to conduct a pilot test on eligible students in those grades in SYs 2016–2017 and 2017–2018, conduct a census field test in SY 2018–2019, and administer a full operational alternate in SY 2019–2020. CDE’s proposed pilot tests would not measure the full depth and breadth of the State’s academic content standards in science, as each student would receive only a sample of assessment items during the pilot phase, and both the proposed pilot and field tests would not be aligned to the relevant academic achievement standards, as such achievement standards would not have been established.

Further, during the years in which it administers the pilot and field tests, CDE continues to propose to not administer its current science assessments (either the general or alternate assessments) and, consequently, will not report individual student or school-level data to parents, educators, or the public.

Thus, if CDE moved forward with its proposal absent a waiver, CDE would be out of compliance with a number of requirements of the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), for SY 2016–2017 and the ESEA, as amended by the ESSA, for SYs 2017–2018 and 2018–2019. Specifically, NCLB sections 1111(b)(1)(A) and 1111(b)(3)(C)(ii) and (v)(II) require a State to establish student academic achievement standards and implement high-quality, yearly student academic
assessments in science that are aligned with those standards to measure student achievement and to inform instruction. The same requirements are found in ESSA sections 1111(b)(1)(A) and 1111(b)(2)(B)(ii) and (v)(II). Further, NCLB sections 1111(b)(3)(C)(xii) and (xv) and 1111(h)(1)(C)(i) and (2)(B) require a State to provide individual student reports to parents, teachers, and principals and to include the results of science assessments on State and local report cards. These same requirements are continued in the ESSA (sections 1111(b)(2)(B)(xii and (xii) and 1111(h)(1)(C)(ii) and (2)(C)). In addition, consistent with ESSA section 1111(b)(2)(D) and section 612(a)(16)(C) of the Individuals with Disabilities Education Act (IDEA), if a State has adopted alternate academic achievement standards for students with the most significant cognitive disabilities, as California has done, the State must conduct alternate assessments aligned with those standards for each subject, including science.

As you know, section 8401(b)(1) of the ESSA requires that any waiver will advance student achievement and maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of subgroups of students. I received your additional rationale but remain concerned that the waiver request, if approved, would not meet these requirements during the affected school years. The lack of an operational assessment measuring student achievement for all students against the full depth and breadth of the State’s academic content and achievement standards in science for two to three school years, as proposed, would mean that CDE would also lack valid and reliable data about student achievement in science during SYs 2016–2017 through 2018–2019. Thus, CDE would not be able to determine whether student achievement in science is improving, or be able to maintain, or enhance, the level of transparency in reporting to parents and the public on student achievement in science for the duration of the waiver.

Consequently, I am declining to approve CDE’s updated waiver request because the request still does not meet the requirements for a waiver under ESSA section 8401. Specifically, under the plan outlined, CDE will not administer an operational general science assessment in either SYs 2016–2017 or 2017–2018 or an operational alternate science assessment in SYs 2016–2017, 2017–2018, or 2018–2019. Therefore, CDE will have no achievement data in science to report to educators, parents or the public for several years. Finally, CDE would administer an operational general science test by SY 2018–2019 but would not administer an operational alternate assessment until SY 2019–2020, in violation of both the ESEA and IDEA.

The requirement to have an annual, high-quality assessment in science is important to (1) ensure that the public, including districts, schools, parents and educators have sufficient information on student academic achievement to help every student graduate college- and career-ready; (2) ensure that State and local leaders have information to evaluate the success of schools and ensure that additional resources and supports are directed to the schools and students most in need of support; and (3) protect equity by ensuring all students are held to the same challenging academic standards.

As I mentioned in my letter on September 30, 2016, the Department recognizes that transitioning to new assessments is challenging; however, CDE has multiple options for how it can support the development of new assessments and the transition to those assessments while still meeting the requirement to assess all students and provide useful information to parents, educators, and the public and not taking away too much valuable instructional time. These could include, for example, embedding items on the current State test, conducting a small-scale, stand-alone pilot of the new science items, or combining these options in tandem with other options such as conducting cognitive labs to collect data on new items or item types.
Pursuant to ESEA section 8401(b)(4)(B)(iii), CDE may request a hearing before me to present argument and any testimony in support of its waiver request. Specifically, if CDE requests a hearing, it may submit written argument, present oral testimony from one or more witnesses in Washington, D.C. or via teleconference, or both. By statute, we must conduct this hearing within 30 days after the date of your resubmission—i.e., by December 29, 2016. Therefore, please let me know by December 20, 2016, whether you intend to present oral testimony. Otherwise, CDE, if it so chooses, may submit written argument to me by December 29, 2016.

If you need additional information or clarification on ESEA implications, please do not hesitate to contact Stephanie Washington of my staff at: OSS.California@ed.gov. For additional information related to IDEA, please direct any inquiries to Susan Murray in the Office of Special Education Programs at: Susan.Murray@ed.gov.

Sincerely,

[Signature]

Ann Whalen
Senior Advisor to the Secretary
Delegated the Duties of Assistant Secretary for Elementary and Secondary Education

cc: Keric Ashley, Deputy Superintendent
Kristin Wright, Director of Special Education Division