UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 28, 2023

The Honorable Pender Makin
Commissioner of Education
Maine Department of Education
23 State House Station
Augusta, ME 04333-0023

Dear Commissioner Makin:

I am writing regarding the Maine Department of Education's (MDE) March 10, 2023, letter, which was in response to the February 24, 2023, letter from the U.S. Department of Education (Department) regarding MDE's administration of statewide assessments in the 2020-2021 and 2021-2022 school years. In that correspondence, the Department communicated its intent to place MDE's Title I, Part A (Title I) grant on high-risk status and withhold 25 percent of MDE's fiscal year 2022 Title I State administrative funds.[1]

In its March 10, 2023, response, MDE provided an explanation as to why it believes the Department should not withhold these funds and why the Department should not designate the State's Title I grant as high-risk. Specifically, MDE provided three reasons for this. First, MDE expressed that it was not out of compliance with the assessment requirements in the Elementary and Secondary Education Act of 1965 (ESEA). Second, MDE believes it acted in good faith to meet the relevant ESEA requirements. Finally, MDE characterized the Department's proposed actions as unreasonable, disproportionate, and unfair.

Concerning MDE's first assertion, the information provided by MDE does not change the Department's conclusions regarding MDE's non-compliance with the ESEA requirements. A State has important discretion to develop and administer statewide assessments. In the 2020-2021 and 2021-2022 school years, MDE administered what it described as "temporary implementations" of its reading/language arts (R/LA) and mathematics assessments. As MDE has acknowledged, it used normative achievement standards for each of the two school years in question. Norm-referenced achievement standards do not measure specific achievement, knowledge, or skills against the State's academic standards; instead, they measure performance against a norm, which varies based on the composition of the group on which the norm is based. The norm-referenced variability does not meet the ESEA requirements.

ESEA requirements on this provision are unambiguous. Specifically, ESEA section 1111(b)(2)(B)(ii) requires that Statewide assessments "be aligned with the challenging State academic standards and provide coherent and timely information about student attainment of such standards and whether the student is performing at the student's grade level." They are to "be used for purposes for which such assessments are valid and reliable, consistent with relevant, nationally recognized professional and technical testing standards, [and] objectively *measure academic achievement, knowledge, and skills.*" (ESEA section 1111(b)(2)(B)(iii) (emphasis added)). Similarly, ESEA section 1111(b)(1)(B)(ii) requires that a State shall "with respect to academic achievement standards, *include the same knowledge, skills, and levels of achievement expected of all public school students in the State*" (emphasis added). Thus, basing proficient against a group's norm versus performance at the grade level on the attainment of the standard does not meet the requirements.

[1] See: https://oese.ed.gov/files/2023/02/Maine-achievement-standards-letter.pdf.

While MDE contends that the ESEA does not explicitly mention that achievement standards be "criterion-referenced," the plain reading of the ESEA is clear: the State's achievement standards must compare a student's knowledge against a *pre-determined* standard, or as noted above, be "aligned" with the expectations for students at each grade level. The provisions outlined above preclude norm-referenced achievement standards because *all* students must have the chance to achieve the highest standard. Norm-referenced achievement standards, which are based on a student's performance relative to his or her peers, by their very nature cannot meet this requirement.[2] A normative score does not permit all students the opportunity to be proficient, and does not establish the content knowledge needed to be proficient. Because MDE used normative achievement standards in the 2020-2021 and 2021-2022 school years, it did not meet ESEA requirements.

Regarding MDE's assertion that it acted in good faith, while MDE had not yet demonstrated that its prior assessments in R/LA and mathematics had met all ESEA requirements, it is not uncommon for a State to take multiple submissions of evidence to demonstrate the quality of its assessments. In the two prior peer reviews of Maine's previous R/LA and mathematics assessments (see letters on June 5, 2018, and January 15, 2021[3]), the Department identified the Maine general assessments in grades 3 through 8 as having "partially met" ESEA requirements and provided feedback on additional documentation that was needed to confirm the quality of the assessments. While a State may elect to change assessments whenever it chooses, the Department did not indicate that the State's R/LA and mathematics assessments were "invalid" and that MDE must cease their administration. Rather, based on peer reviewers' feedback, the Department provided input on how MDE could strengthen those assessments. By contrast, the 2018 letter identified the MDE science alternate assessments as not meeting requirements and required that MDE substantially revise or replace the science assessment. Accordingly, MDE had a clear example of when the Department requires a State to change an assessment that fundamentally does not meet ESEA requirements (i.e., the MDE science alternate assessment), which was not the case with the prior MDE R/LA and mathematics assessments. Whereas your decision to change your assessment may have been based on concerns about the previous assessment, even in good faith, that does not mean that the state should implement an assessment that does not meet the requirements of ESEA.

While MDE staff and Department staff discussed MDE's change to its assessments several times over the past two years, we never indicated that any particular assessment or vendor would be problematic. A State has wide latitude to design the assessment that best meets its needs, provided it meets ESEA requirements. When administering new assessments, this includes bringing together educators to establish criterion-referenced achievement standards. Doing so is essential to providing parents and educators important information about the academic status and progress of Maine's students on Maine's academic content standards. This information was especially valuable following the COVID-19 disruptions of the 2020-2021 and 2021-2022 school years. Because Maine implemented norm-referenced achievement standards for those two years, it could not describe the status of students in terms of the State's academic content expectations. Per discussions with Maine leadership, Maine did not review this assessment with their technical advisory committee, even though some discussions were held separately with stakeholders. Moving forward, we highly recommend all assessments are reviewed by the technical advisory committee to ensure stakeholders have an opportunity for formal feedback while considering whether the assessment is compliant with federal law.

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[2] The Department's regulations (34 CFR 200.1(c)) further make clear this requirement. "The challenging academic achievement standards required under paragraph (a) of this section must – (i) Be aligned with the State's challenging academic content standards and with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards; and…[include] not less than three achievement levels that describe at least two levels of high achievement – proficient and advanced – that determine how well students are mastering the material in the State's academic content standards; and a third level of achievement – basic – to provide complete information about the progress of lower-achieving students toward mastering the proficient and advanced levels of achievement."

[3] See https://www2.ed.gov/admins/lead/account/nclbfinalassess/me10.pdf and https://oese.ed.gov/files/2021/01/me-peer-review-letter.pdf.

Finally, MDE's letter requested that the Department reconsider the actions we intend to impose as MDE considers them unreasonable, disproportionate, and unfair. Under ESEA section 1111(a)(7), if a State fails to meet certain requirements of section 1111 of the ESEA, the Secretary has the discretion to withhold Title I funds for State administration. This affords the Secretary broad discretion in determining when and how the Department would withhold funds. The enforcement actions the Department plans to impose falls within the range of this authority, and reflects Maine's noncompliance on a significant ESEA requirement, over two consecutive school years, that impacted nearly all of Maine's tested students and the confidence parents may have in the reliability of these results.

After reviewing MDE's March 10, 2023, letter, the Department has again determined that MDE was out of compliance on an essential requirement to set achievement standards that provide information to parents, educators, and the public about how well Maine students are mastering Maine's content standards, and that this non-compliance persisted for two years. As a result, the Department is upholding the high-risk status on Maine's Title I grant award. To remove this status, MDE must satisfy the requirements enumerated in the Department's letter on February 24, 2023. Further, due to these factors, the Department will withhold 25 percent ($117,422) of MDE's fiscal year 2022 Title I, Part A allocation for State administration, pursuant to section 1111(a)(7) of the ESEA, which reverts to LEAs in the State. That is, MDE must allocate the $117,422 to its LEAs in accordance with the Title I regulations governing within-State allocations to LEAs. To support this effort, please see the enclosed guidance.

We are also in receipt of the information you provided about your future assessments and how you will come into compliance with your new assessments. We look forward to working with you on that as we move forward.

The Department continues to stand ready to support MDE in implementing these critical requirements. Please contact my staff at ESEA.Assessment@ed.gov if you have any questions.

Sincerely,

James F. Lane, Ed.D.
Principal Deputy Assistant Secretary
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

Enclosure

cc: Janette Kirk, MDE Chief of Learning Systems

GUIDANCE

WITHHOLDING TITLE I, PART A FUNDS FOR ALLOCATION

TO LOCAL EDUCATIONAL AGENCIES

Introduction

As a result of Maine's failure to comply with the fundamental requirement of section 1111(b)(1) of the Elementary and Secondary Education Act of 1965 (ESEA) which requires that a State educational agency (SEA) adopt criterion-referenced academic achievement standards, the U.S. Department of Education (Department) is withholding, in accordance with section 1111(a)(7) of the ESEA, $117,422, which represents 25 percent of Maine's Federal fiscal year (FY) 2022 (school year 2022-2023) Title I, Part A funds that are available for State administrative activities.

The State's total Title I, Part A allocation is not affected by this withholding action. The effect of this withholding is that Maine returns the funds withheld for program administration by the Maine Department of Education to the local educational agencies (LEAs) from which they were initially reserved, rather than returning the withheld funds to the U.S. Treasury.

Questions and Answers

Q1. How does a withholding from Maine's State administrative funds affect the amount of Title I, Part A funds available to its LEAs?

From an SEA's FY 2022 Title I, Part A allocation ESEA section 1004(b) authorizes the SEA to reserve for State administration up to one percent (or $400,000, if greater) of what the SEA would have received under Title I, Part A if $14 billion were appropriated in FY 2022 for Parts A, C, and D of Title I. With respect to Maine's FY 2022 Title I, Part A allocation, the following chart illustrates how this withholding from Title I, Part A funds available to Maine for State administration would affect how much Maine would need to allocate to LEAs, based on Maine's FY 2022 Title I, Part A allocation. (This example assumes that Maine is able to reserve the full amount for school improvement under ESEA section 1003, consistent with the special rule in ESEA section 1003(h).)

Line	Description	Amount
1	Maine FY 2022 Title I, Part A allocation	$59,492,429
2	Maine FY 2022 Title I, Part A allocation if $14 billion appropriated for Parts A, C, and D of Title I	$46,968,722
3	Maximum amount Maine is authorized to reserve from Title I, Part A for State administration prior to withholding (greater of Line 2 x 0.01 or $400,000)	$469,687

Line	Description	Amount
4	ESEA section 1003(a) reservation for school improvement	$4,164,471
5	Title I, Part A amount available to LEAs through Title I, Part A formulas without any withholding (Line 1 – Line 3 – Line 4)	$54,858,271
6	Reduction in the amount Maine is authorized to reserve for State administration (based on a withholding of 25 percent of FY 2022 State administrative funds) (Line 3 x 0.25)	$117,422
7	Revised FY 2022 amount available to LEAs through Title I, Part A formulas (Line 5 + Line 6)	$54,975,693

In this example, Maine is authorized to reserve up to $469,687 from its FY 2022 Title I, Part A grant award for State administration of Title I. Under section 1111(g)(2), the Department is withholding $117,422, which is 25 percent of this amount. Maine may allocate the $117,422 difference to LEAs from which they were initially reserved, as described in Q4 and Q5 below, or return those funds to the U.S. Treasury.

Q2. How does Maine ensure that the withheld funds revert to the Title I, Part A allocations of LEAs from which they were initially reserved?

Under 34 CFR § 200.100(d) of the Title I regulations, an SEA may reserve funds for State administration in one of two ways: (1) proportionately reduce each LEA's total Title I, Part A allocation while ensuring that no LEA receives less than its hold-harmless guarantee based on its poverty percentage; or (2) proportionately reduce each LEA's total Title I, Part A allocation even if an LEA's total allocation falls below its hold-harmless guarantee.

Maine must distribute the withheld funds to the allocations of the LEAs from which they were initially reserved. Thus, if Maine proportionately reduced each LEA's Title I, Part A allocation, irrespective of its hold-harmless amount, it must proportionately increase each LEA's allocation up to the amount of the withheld State administrative funds.

Q3. May Maine redistribute the funds withheld for State administration through its reallocation procedures or under ESEA section 1003?

No. Maine does not have discretion in how it distributes the withheld funds. Those funds must revert to the allocations of the LEAs from which they initially were reserved as described in Q2.

Q4. Must Maine recalculate LEA allocations for FY 2022 (SY 2022-2023) to reflect the withheld $117,421 if it chooses to restore the withheld funds to its LEAs rather than returning them to the U.S. Treasury?

Yes. Maine must recalculate its FY 2022 LEA allocations to reflect the withholding — *i.e.,* that $117,422 additional funds would have been available to LEAs for SY 2022-2023. Maine must then use those revised FY 2022 allocations as the hold-harmless to calculate each LEA's hold-harmless guarantee for FY 2023 (SY 2023-2024) allocations. Maine would also use those same FY 2022 LEA allocations as the base for ensuring that no LEA receives less in FY 2023 than it received in FY 2022 when reserving funds for school improvement, consistent with the special rule in ESEA section 1003(h). Maine must also determine the differences between the initial FY 2022 LEA allocations and the revised FY 2023 LEA allocations to implement the withholding as described in Q5.

Q5. From which Federal fiscal year's Title I, Part A funds may Maine implement the withholding?

Maine may implement the withholding from either its FY 2022 Title I, Part A funds for State administration that have not been obligated or FY 2023 Title I, Part A funds available for State administration. Either way, Maine would use the differences between the initial FY 2022 LEA allocations and the revised FY 2022 LEA allocations as the basis for adjusting its FY 2023 LEA allocations. Please note that if FY 2022 funds are used to implement the withholding, they must be obligated by LEAs by September 30, 2024.