



JANET BARRESI
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF OKLAHOMA

MEMORANDUM

TO: The Honorable Members of the State Board of Education
FROM: Janet C. Barresi
DATE: June 26, 2014
SUBJECT: Update and Discussion on ESEA Flexibility Waiver

The United States Department of Education (USDE) notified Oklahoma on June 13, 2014 that additional information would be required in order to be approved to implement Elementary and Secondary Education Act (ESEA) Flexibility beyond the 2013-2014 school year. If not approved to extend flexibility, the State would transition back to ESEA. The attached document explains the requirements on States that transition from the ESEA Flexibility back to ESEA.

Attachments

kkw



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 13, 2014

Honorable Janet Barresi
State Superintendent of Public Instruction
Oklahoma State Department of Education
Hodge Education Building
2500 North Lincoln Boulevard
Oklahoma City, OK 73105-4599

Dear Superintendent Barresi:

Thank you for your efforts over the past two years implementing local and State-led reforms to support improved teaching and learning for all students, particularly historically disadvantaged student subgroups. I am pleased that the flexibility the U.S. Department of Education (ED) offered from specific requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), in exchange for a rigorous and comprehensive State-developed plan designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction (ESEA flexibility) has been able to support your efforts.

I am writing with respect to a very important matter concerning the Oklahoma State Department of Education's (OSDE's) implementation of its ESEA flexibility request. I understand that the Oklahoma State legislature recently enacted legislation that impacts OSDE's implementation of its ESEA flexibility request. Specifically, I understand that this legislation requires Oklahoma's State Board of Education to implement the subject matter standards for English Language Arts and Mathematics which were in place prior to the revisions adopted by the Board in June 2010 and statewide student assessments for English Language Arts and Mathematics that assess the standards and objectives found in the subject matter standards that were in place prior to the revisions adopted by the Board in June 2010. These standards and assessments are not consistent with OSDE's approved ESEA flexibility request. Accordingly, in order to be approved to implement ESEA flexibility beyond the 2013–2014 school year, OSDE must submit evidence that the content standards in reading/language arts and mathematics it will implement in the 2014–2015 school year are college- and career-ready content standards and that the assessments it will administer during that year are aligned with such college- and career-ready standards consistent with the principles of ESEA flexibility.

To meet the standards requirements of ESEA flexibility, a State educational agency (SEA) must have adopted college- and career-ready standards in at least reading/language arts and mathematics for kindergarten through grade 12 at the time of its request, and must have fully implemented those standards no later than the 2013–2014 school year. ED provided an SEA with two options for meeting

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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.

Please note that the submission of this information does not constitute submission for the required peer review, nor would ED's approval of the submission constitute approval of the assessments. Additional information is forthcoming about the ED's process to peer review and approval of State assessment systems.

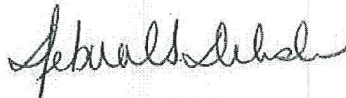
In its ESEA flexibility request, OSDE also assured that it would develop and administer, no later than the 2014–2015 school year, alternate assessments based on grade-level academic achievement standards or alternate assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities that are consistent with 34 C.F.R. § 200.6(a)(2) and are aligned with the State's college- and career-ready content standards. OSDE must address how it will ensure that it will administer an alternate assessment aligned with the standards it will implement in the 2014–2015 school year.

To amend its approved request for ESEA flexibility, OSDE must submit both the amendment request template (available at: <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.htm>), and a redlined version of its currently approved request reflecting its changed approach to adopting and implementing college- and career-ready standards and developing and administering high-quality assessments. OSDE must submit this amendment request no later than 60 calendar days from the date of this letter.

In the coming days, a member of my staff will contact Kerri White, your ESEA flexibility lead, regarding this amendment request. In the meantime, please refer to the document titled *ESEA Flexibility Amendment Submission Process* (available at: <http://www2.ed.gov/policy/eseaflex/amendment-submission-process.doc>), which describes the steps that are necessary as part of requesting an amendment. Please do not hesitate to contact Elizabeth Ross or John McLaughlin of my staff at elizabeth.ross@ed.gov or john.mclaughlin@ed.gov if you have any questions.

I appreciate your continued focus on enhancing education for all of Oklahoma's students.

Sincerely,



Deborah S. Delisle
Assistant Secretary

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(1) 1003(a) ³	The ESEA requires an SEA to reserve four percent of its Title I, Part A allocation for school improvement activities and to distribute at least 95 percent of that reservation to local educational agencies (LEAs) for use in Title I schools in improvement, corrective action, or restructuring.	ESEA flexibility does not waive this reservation; ESEA flexibility permits a State educational agency (SEA) to distribute section 1003(a) funds to LEAs for use in priority and focus schools.	Beginning with the first allocation of ESEA section 1003(a) funds following the termination of ESEA flexibility, an SEA must allocate funds only for use in Title I schools in improvement, corrective action, or restructuring.
(2) 1003(g)	The ESEA requires an SEA to award School Improvement Grant (SIG) funds to LEAs for Title I schools in improvement, corrective action, or restructuring.	ESEA flexibility permits an SEA to award SIG funds to an LEA to implement one of the four SIG models in any priority school.	Beginning with the first new awards of SIG funds following the termination of ESEA flexibility, an SEA may award SIG funds only for Tier I, Tier II, or Tier III schools under the SIG program. To the extent the SEA has already used this flexibility to award SIG funds to LEAs for priority schools that are not Tier I, Tier II, or Tier III schools, the schools may continue to receive the funds for the remainder of their three-year SIG grants, provided that the SIG-implementing school continues to implement the SIG model.

¹ The corresponding regulations that implement these statutory provisions of the Elementary and Secondary Education Act of 1965, as amended (ESEA) were also waived for States implementing ESEA flexibility.

² Timelines in this chart are applicable to SEAs and LEAs transitioning from ESEA flexibility to the ESEA at the end of the 2013–2014 school year.

³ In general, ESEA section 1003 provides school improvement requirements.

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(3)	The ESEA establishes the requirements for annual measurable objectives (AMOs).	ESEA flexibility permits an SEA to set new ambitious but achievable AMOs.	An SEA must calculate AMOs in accordance with ESEA section 1111(b)(2)(E) – (H) for the 2013–2014 school year. These AMOs will require 100 percent proficiency for the “all students” group and for all subgroups identified in ESEA section 1111(b)(2)(C)(v).
(4)	The ESEA requires that a school have at least 40 percent poverty to be eligible to operate a schoolwide program.	ESEA flexibility permits an LEA to operate a schoolwide program in a priority school or a focus school that has less than 40 percent poverty that is implementing a schoolwide intervention.	Consistent with 34 C.F.R. section 200.25(b)(1)(ii), any school that operated a schoolwide program in the most recent school year may continue to operate a schoolwide program. Beginning with the 2014–2015 school year, a school that has less than 40 percent poverty and did not begin implementing a schoolwide program under ESEA flexibility in the 2012–2013 or 2013–2014 school year may not begin doing so.

⁴ In general, ESEA section 1111 provides State plan requirements.

⁵ In general, ESEA section 1114 provides schoolwide program requirements.

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(5)	1116(a)(1)(A) – (B) and 1116(c)(1)(A) ⁶	The ESEA requires an SEA and its LEAs to make adequate yearly progress (AYP) determinations for LEAs and schools, respectively.	ESEA flexibility waives the requirements for an SEA and its LEAs to make AYP determinations.
			<p>An SEA and its LEAs must resume making AYP determinations in accordance with the ESEA requirements beginning with AYP determinations based on the results of assessments administered in the 2013–2014 school year.⁷</p> <p><u>AMOs</u> An SEA must use AMOs calculated in accordance with ESEA section 1111(b)(2)(E) – (H) for the 2013–2014 school year to make its AYP determinations. These AMOs will require 100 percent proficiency for the “all students” group and for all subgroups identified in ESEA section 1111(b)(2)(C)(v).</p> <p><u>Safe Harbor</u> A school may also make AYP under ESEA section 1111(b)(2)(F)(i) (<i>i.e.</i>, “safe harbor”), which provides that a school will be considered to have made AYP if the percentage of students not proficient decreases by 10 percent from the percentage of students not proficient in the preceding school year.</p>

⁶ In general, ESEA section 1116 provides LEA and school improvement requirements.

⁷ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(6)	<p>The ESEA requires LEAs to identify schools for improvement, corrective action, or restructuring and to implement the corresponding requirements.</p>	<p>ESEA flexibility waives the requirement for an LEA to identify schools for improvement, corrective action, or restructuring and to implement the corresponding requirements.</p>	<p>An LEA must resume identifying schools for improvement, corrective action, or restructuring. In doing so, the LEA must advance a school along the school improvement timeline under ESEA section 1116(b)(2) - (8) based on the school's status in the 2011–2012 school year.</p> <p>In addition, schools and the LEA must resume implementing the corresponding requirements for the 2014–2015 school year. These requirements include, but are not limited to, the requirement that the LEA spend an amount equal to 20 percent of its Title I allocation to provide supplemental educational services (SES) and transportation for public school choice to eligible students; the requirement that the LEA provide, not less than 14 days prior to the first day of the school year, all students enrolled in a school identified for improvement, corrective action, or restructuring with notice of the public school choice option; and the requirement that the LEA provide all low-income students enrolled in a school identified for the second year of improvement, corrective action, or restructuring with the option to take advantage of SES.</p>

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT²
(7)	<p>The ESEA requires an SEA to identify LEAs for improvement or corrective action and to implement the corresponding requirements.</p>	<p>ESEA flexibility waives the requirement for an SEA to identify LEAs for improvement or corrective action and to implement the corresponding requirements.</p>	<p>An SEA must resume identifying LEAs for improvement or corrective action. In doing so, the SEA must advance an LEA along the LEA improvement timeline under ESEA section 1116(c)(3) – (10) based on the LEA’s status in the 2011–2012 school year.</p> <p>In addition, the SEA and its LEAs must resume implementing the corresponding requirements for the 2014–2015 school year. These requirements include, but are not limited to, the requirement that the SEA promptly provide notice to the parents of each student enrolled in a school served by an LEA identified for improvement that includes the results of the SEA’s annual review of the progress of the identified LEA, the reasons for that identification, and how parents can participate in upgrading the quality of the LEA. These requirements also include, but are not limited to, the requirement that LEAs identified for improvement shall, not later than three months after being identified, develop or revise an LEA plan that, among other things, addresses the professional development needs of the instructional staff serving the agency by committing to spend not less than 10 percent of the Title I, Part A funds received by the LEA, excluding</p>

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(8)	<p>The ESEA requires an SEA and its LEAs to take a variety of actions to offer SES to eligible students in schools in improvement, corrective action, or restructuring.</p>	<p>ESEA flexibility waives the requirements for an SEA and its LEAs regarding offering SES.</p>	<p>funds reserved for professional development under ESEA section 1119.</p> <p>An SEA and its LEAs must resume the necessary actions to offer SES to eligible students in schools in the second year of improvement, corrective action, or restructuring, for the 2014–2015 school year. These actions include, but are not limited to, the requirements that each LEA with schools in the second year of improvement, corrective action, or restructuring provides annual notice to parents of the availability of SES, the identity of approved providers of SES, and a brief description of the services, qualifications, and demonstrated effectiveness of each SES provider.</p>

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(9)	1117(b)(1)(B) ⁸ The ESEA limits the schools that may receive Title I, Part A funds reserved for the State awards program.	ESEA flexibility permits funds reserved for the State awards program to go to any Title I-eligible reward school.	Beginning with awards made following AYP determinations based on the results of assessments administered in the 2013–2014 school year, ⁹ an SEA may award funds reserved under ESEA section 1117(c)(2) only to a school that significantly closed the achievement gap between subgroups of students or exceeded AYP for two or more consecutive years. For purposes of determining whether a school exceeded AYP in the 2012–2013 school year, the SEA should determine whether the “all students” group and all subgroups in the school met their AMOs in reading/language arts and mathematics, the 95 percent participation rate requirement, and the State’s graduation rate goal or targets or, for middle and elementary schools, whether the school met the other academic indicator.

⁸ In general, ESEA section 1117 provides school support and recognition requirements.

⁹ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(10) 2141(a), (b), (c) ¹⁰	The ESEA requires an LEA improvement plan for an LEA that fails to make progress toward reaching objectives for highly-qualified teachers for two consecutive years, technical assistance from the SEA in developing the improvement plan, and SEA/LEA agreement on use of Title II, Part A funds for an LEA that misses AYP and fails to make progress toward reaching annual objectives for highly-qualified teachers for three consecutive years.	ESEA flexibility waives each of these requirements for an LEA and SEA and lifts the restriction on the use of Title II, Part A funds.	An SEA and its LEAs must resume complying with these requirements for the 2014–2015 school year. To meet the improvement plan and technical assistance requirements of ESEA sections 2141(a) and (b), an SEA and its LEAs must use highly-qualified teacher data from both the 2012–2013 and 2013–2014 school years. To meet the SEA/LEA agreement requirements of ESEA section 2141(c), an SEA and its LEAs must use highly qualified teacher data from the 2011–2012, 2012–2013, and 2013–2014 school years and AYP data from the 2011–2012, 2012–2013, and 2013–2014 school years. For purposes of determining whether an LEA failed to make AYP in the 2011–2012 and 2012–2013 school years, the SEA should determine whether the “all students” group or any subgroup in the school missed any of its AMOs in reading/language arts and mathematics, the 95 percent participation rate requirement, or the State’s graduation rate goal or targets or, for middle and elementary schools, whether the school missed the other academic indicator.

¹⁰ In general, ESEA section 2141 provides the technical assistance and accountability requirements for SEAs and LEAs in preparing, training, and recruiting high quality teachers.

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(11)	6123(a) ¹¹	The ESEA limits to 50 percent the amount an SEA may transfer from a covered program into another covered program or into Title I, Part A.	ESEA flexibility waives the percentage limitation, thereby permitting an SEA to transfer up to 100 percent of funds from a covered program.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA must comply with the 50 percent limitation on the amount it may transfer from a covered program into another covered program or into Title I, Part A.
(12)	6123(b)(1)	The ESEA limits to 50 percent or 30 percent the amount an LEA may transfer from a covered program into another covered program or into Title I, Part A.	ESEA flexibility waives the percentage limitations as well as the restrictions on the use of transferred funds.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, LEAs must comply with the 50 percent or 30 percent (as applicable) amount it may transfer from a covered program into another covered program or into Title I, Part A. An LEA in corrective action is no longer eligible to transfer funds.
(13)	6123(d)	The ESEA requires modification of plans to account for transfer and notice of transfer to the Secretary or the SEA, as appropriate.	ESEA flexibility waives these requirements for an SEA and its LEAs.	Beginning with transfers made with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA and its LEAs must resume complying with these requirements.
(14)	6123(e)(1)	The ESEA subjects transferred funds to the requirements of the program to which they are transferred.	ESEA flexibility permits an LEA to exclude funds transferred into Title I, Part A from the base in calculating any set-aside percentages.	Beginning with transfers made with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA and its LEAs must resume complying with this requirement— <i>i.e.</i> , include funds transferred into Title I, Part A in the base for calculating any set-aside percentages.

¹¹ In general, ESEA section 6123 provides the requirements subject to which an SEA and its LEA may transfer funds.

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(15)	6213(b)	The ESEA requires LEAs that fail to make AYP to use funds to carry out the requirements under ESEA section 1116.	ESEA flexibility permits an LEA that receives these funds to use them for any authorized purpose, regardless of whether the LEA made AYP.	An LEA that receives these funds and fails to make AYP based on the results of assessments administered in the 2013–2014 school year ¹² must resume using the funds only to carry out the requirements of ESEA section 1116 in the 2014–2015 school year.
(16)	6224(e) ¹³	The ESEA requires an SEA to permit an LEA that fails to make AYP to continue to receive a Small, Rural School Achievement grant only if the LEA uses funds to carry out ESEA section 1116.	ESEA flexibility permits an LEA that receives these funds to use them for any authorized purpose, regardless of whether the LEA made AYP.	An LEA that receives these funds and fails to make AYP based on the results of assessments administered in the 2013–2014 school year ¹⁴ must resume using the funds only to carry out the requirements of ESEA section 1116 in the 2014–2015 school year.
(17)	4201(b)(1)(A), 4204(b)(2)(A) ¹⁵	The ESEA requires a 21st-Century Community Learning Center (21st CCLC) to provide activities during non-school hours or periods when school is not in session.	ESEA flexibility permits an eligible entity to provide 21st CCLC activities to support expanded learning time during an expanded school day, week, or year in addition to activities during non-school hours or periods when school is not in session.	Beginning with the first 21st CCLC competition conducted after the termination of ESEA flexibility, eligible entities may apply only to provide activities during non-school hours or periods when school is not in session.

¹² States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

¹³ ESEA section 6224(e) provides the requirements subject to which determinations of continuing participation in the Small, Rural School Achievement Program shall be made.

¹⁴ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

¹⁵ In general, ESEA sections 4201 and 4204 provide the requirements of the 21st-Century Community Learning Centers Program.

TRANSITIONING FROM ESEA FLEXIBILITY TO THE ESEA

ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT ²
(18)	1113(a)(3) – (4) and (c)(1)	The ESEA requires an LEA to rank and serve eligible schools according to poverty and allocate Title I funds to schools in rank order of poverty.	ESEA flexibility permits LEAs to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school does not rank sufficiently high to be served based solely on the school's poverty rate.
			Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, LEAs must resume ranking and serving eligible schools according to poverty alone and allocating Title I funds to schools in rank order of poverty.