

School students annually in reading/language arts, mathematics, and science for the 2009–2010 school year.

4. *Waiver applicant: West Virginia Department of Education*

- *Provisions waived:* Section 1111(b)(3)(A) of the ESEA; 34 CFR 200.2(a)(1).
- *Date waiver granted:* August 1, 2011.
- *Description of waiver:* A one-year waiver of the requirement to assess students in reading/language arts, mathematics, and science at Kenova Elementary School, which closed during the spring 2011 testing window because of structural safety issues caused by flooding.

B. *Waivers of the State Requirements to Use the Same Academic Measurement Assessments to Measure the Achievement of All Students and to Determine AYP.*

*Provisions waived:* Section 1111(b)(3)(A) and (b)(3)(C)(i) of the ESEA; 34 CFR 200.2(b)(1).

*Waiver applicants and approved dates:*

- Kansas Department of Education, April 5, 2011 (a one-year waiver with respect to McPherson Unified School District of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the State to use the same academic assessments to measure the achievement of all students and to determine AYP); and
- Washington Office of the Superintendent of Public Instruction, June 30, 2011. A one-year waiver of the statutory and regulatory requirements under Title I, Part A of the ESEA that required the State to use the same academic assessments to measure the achievement of all students and to determine AYP.

C. *Waivers of the Requirement to Include All Students Enrolled at the Time of Testing in the Participation Rate Calculations.*

1. *Waiver applicant: Florida Department of Education*

- *Provisions waived:* Section 1111(b)(2)(I)(ii) of the ESEA; 34 CFR 200.20(c)(1)(i).
- *Date waiver granted:* January 19, 2011.
- *Description of waiver:* A waiver of the requirement to include all students enrolled at the time of testing in the participation rate calculations used to determine AYP. This waiver authorized Florida to exclude students who took Algebra I as 6th, 7th, or 8th graders during school years 2007–2008 through 2009–2010 from participation rate calculations used in determining AYP based on assessment results from the relevant school year.

VI. **Waivers of Eligible School Attendance Area Requirements**

A. *Waivers of Requirements for Determining Eligible School Attendance Areas.*

1. *Waiver applicant: Keene School District*

- *Provision waived:* Section 1113(a)(2)(B) of the ESEA.
- *Date waiver granted:* June 29, 2011.
- *Description of waiver:* A waiver for four years, beginning in school year 2011–2012, of the requirements concerning Title I school eligibility to ensure continuity of Title I services for eligible children in Daniels Elementary School and Symonds Elementary School. This waiver enabled both schools to continue offering Title I programs to their eligible students without the interruption caused by small demographic changes that affected eligibility for Title I.

B. *Waiver of the Limitation on Reserving Funds for Financial Incentives and Rewards.*

1. *Waiver applicant: Hillsborough County Public Schools*

- *Provision waived:* Section 1113(c)(4) of the ESEA.
- *Date waiver granted:* August 1, 2011.
- *Description of waiver:* A one-year waiver of the 5 percent cap on the amount of Title I funds that an LEA reserve for financial incentives and awards so that Hillsborough County Public Schools could reserve up to 8.8 percent of their FY 2011 Title I, Part A allocation for such purposes.

VII. **Waiver of the Requirements for Schoolwide Programs**

A. *Waiver of the 40 Percent Poverty Threshold for Schoolwide Programs.*

1. *Waiver applicant: Aberdeen Public School District 6–1*

- *Provision waived:* Section 1114(a)(1) of the ESEA.
- *Date waiver granted:* November 4, 2011.
- *Description of waiver:* A waiver to allow Simmons Elementary School to operate a schoolwide program even though its percentage of students from low-income families was less than 40 percent, effective for four years or until the reauthorization of the ESEA, whichever came first.

VIII. **Waivers Regarding Teacher Incentive Fund (TIF) Requirements**

A. *Waiver of Application Requirements for the TIF Program.*

1. *Waiver applicant: Community Training and Assistance Center*

- *Provision waived:* Section 9401 of the ESEA.

- *Date waiver granted:* July 11, 2011.
- *Description of waiver:* Waiver of two requirements of TIF: (1) Absolute Priority 1 in the NIA that required each TIF grantee to develop a rigorous evaluation system for teachers and principals that took into account student growth as a significant measure and multiple classroom observations; and (2) one of the required five core elements in the NIA, each of which was to have been in place before a grantee could make incentive payments using TIF funds (75 FR 28741).

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Dated: October 3, 2017.

**Jason Botel,**

*Acting Assistant Secretary for Elementary and Secondary Education.*

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**DEPARTMENT OF EDUCATION**

**Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended**

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2013 under the waiver authority of the Elementary and

Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), including waivers related to flexibilities granted to States in exchange for State-led reforms (ESEA flexibility).

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during 2013.

**FOR FURTHER INFORMATION CONTACT:** Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260-2221 or by email: [kia.weems@ed.gov](mailto:kia.weems@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** In 2013, the Department granted waivers through an initiative known as ESEA flexibility to 45 States under the waiver authority in section 9401 of the ESEA, in exchange for a rigorous and comprehensive State-developed plan designed to improve student academic achievement and increase the quality of instruction.<sup>1</sup> The Department also granted individual waivers to certain States under the waiver authority in section 9401 of the ESEA.

We granted:

(a) ESEA Flexibility: The Department granted the following ten waivers to 45 SEAs under ESEA flexibility:

1. Flexibility Regarding the 2013–2014 Timeline for Determining Adequate Yearly Progress (AYP);
2. Flexibility in Implementation of School Improvement Requirements;
3. Flexibility in Implementation of Local Educational Agency (LEA) Improvement Requirements;
4. Flexibility for Rural LEAs;
5. Flexibility for Schoolwide Programs;
6. Flexibility to Support School Improvement;

7. Flexibility for Reward Schools;
8. Flexibility Regarding Highly Qualified Teacher (HQT) Improvement Plans;

9. Flexibility to Transfer Certain Funds; and

10. Flexibility to Use School Improvement Grant (SIG) Funds to Support Priority Schools.

In addition to waiving the ten provisions listed above, the Department granted three optional waivers under ESEA flexibility related to the following:

1. Waivers of the 21st Century Community Learning Centers (21st CCLC) requirement to provide services during non-school hours or when school is not in session;
2. Waivers of the requirement to make AYP determinations; and
3. Waivers of requirements pertaining to Title I, Part A within-district allocations.

(b) 119 waivers extending the period in which funds were available for obligation: 30 waivers extending the period for State-administered ESEA formula grant programs that received fiscal year (FY) 2011 funds under the regular appropriation or FY 2009 funds under the American Recovery and Reinvestment Act (ARRA), one waiver extending the period for the 21st CCLC, 84 waivers for school improvement activities, and four waivers extending the period for the Striving Readers Comprehensive Literacy Formula Grant Program funds;

(c) Three waivers allowing SEAs to approve schools or LEAs identified as in need of improvement to become supplemental educational services (SES) providers;

(d) Two waivers pertaining to school eligibility requirements and the definition of persistently lowest-achieving schools;

(e) Eight waivers of requirements related to State academic standards or assessments: Three waivers allowing extensions of the growth model pilot; four waivers related to the substitution of standards or assessments; and one waiver permitting the use of annual measureable achievement objectives (AMOs) to make AYP determination based on assessments administered the previous year;

(f) 45 waivers allowing SEAs to waive the carryover limitation more than once every three years for their Title I, Part A allocation; and

(g) One waiver of the requirement that an LEA provide parents of eligible students with notice of their public school choice options at least 14 days before the start of school year.

## I. ESEA Flexibility Waivers

### A. Flexibility Regarding the 2013–2014 Timeline for Determining AYP

The Department waived the requirements in section 1111(b)(2)(E)–(H) of the ESEA that prescribe how an SEA establishes AMOs for determining AYP to ensure that all students met or exceeded the State's proficient level of academic achievement on the State's assessments in reading/language arts and mathematics no later than the end of the 2013–2014 school year. Under this waiver, an SEA no longer needed to follow the statutory procedures for setting AMOs to use in determining AYP. Instead, an SEA had flexibility to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.

*Provisions waived:* Section 1111(b)(2)(E)–(H) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

### B. Flexibility in Implementation of School Improvement Requirements

The Department waived the requirements in section 1116(b) of the ESEA for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I school that failed, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. Under this waiver, an LEA was no longer required to identify respective Title I schools for improvement, corrective action, or restructuring, and neither the LEA nor its schools were required to take statutorily required improvement actions, including providing public school choice and SES to eligible

<sup>1</sup> Additional information regarding ESEA flexibility can be found at: <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

students. An LEA was also exempt from administrative and reporting requirements related to school improvement.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- San Francisco Unified School District (California)
- Los Angeles Unified School District (California)
- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

*C. Flexibility in Implementation of LEA Improvement*

The Department waived the requirements in section 1116(c) of the ESEA for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, failed to make AYP, and neither the LEA nor the SEA was required to take statutorily required improvement actions. An LEA was also exempt from associated administrative and reporting requirements related to LEA improvement.

*Provisions waived:* Section 1116(c)(3) and (5)–(11) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education

- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- San Francisco Unified School District (California)
- Los Angeles Unified School District (California)
- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

*D. Flexibility for Rural LEAs*

The Department waived the requirements in sections 6213(b) and 6224(e) of the ESEA that limited participation in, and use of funds under, the Small, Rural School Achievement (SRSA) and RLIS programs based on whether an LEA made AYP and was complying with the requirements in section 1116 of the ESEA. Under the waiver, an LEA that received SRSA or RLIS funds had flexibility to use those funds for any authorized purpose regardless of the LEA's AYP status.

*Provisions waived:* Sections 6213(b) and 6224(e) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction

- West Virginia Department of Education

*E. Flexibility for Schoolwide Programs*

The Department waived the requirement in section 1114(a)(1) of the ESEA that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. Under this waiver, an LEA had flexibility to operate a schoolwide program in a Title I school that did not meet the 40 percent poverty threshold if the SEA identified the school as a priority school or a focus school, and the LEA implemented interventions consistent with the turnaround principles or interventions that were based on the needs of the students in the school and designed to enhance the entire educational program in the school, as appropriate.

*Provision waived:* Section 1114(a)(1) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- San Francisco Unified School District (California)
- Los Angeles Unified School District (California)
- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

*F. Flexibility To Support School Improvement*

The Department waived the requirement in section 1003(a) of the ESEA for an SEA to distribute funds

reserved under that section only to LEAs with schools identified for improvement, corrective action, or restructuring. Under this waiver, an SEA had flexibility to allocate ESEA section 1003(a) funds to an LEA in order to serve any priority or focus school, if the SEA determined such school was most in need of additional support.

*Provision waived:* Section 1003(a) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia State Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
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- Puerto Rico Department of Education
- Texas Education Agency
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- West Virginia Department of Education

*G. Flexibility for Reward Schools*

The Department waived the provision in section 1117(c)(2)(A) of the ESEA that authorized an SEA to reserve Title I, Part A funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) exceeded AYP for two or more consecutive years. Under this waiver, an SEA had flexibility to use funds reserved under section 1117(c)(2)(A) of the ESEA to provide financial rewards to any reward school, if the SEA determined such school was most appropriate to receive a financial reward.

*Provision waived:* Section 1117(b)(1)(B) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Learning Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education

- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

*H. Flexibility Regarding HQT Improvement Plans*

The Department waived the requirements in section 2141(a) through (c) of the ESEA for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers. Under the waiver, an LEA that did not meet its HQT target did not have to develop an improvement plan under section 2141 of the ESEA and had flexibility in how it used its Title I and Title II funds. An SEA was exempt from the requirements regarding its role in the implementation of those plans, including the requirement that it enter into agreements with LEAs on the use of funds and the requirement that it provide technical assistance to LEAs on their plans. This flexibility allowed an SEA and LEA to focus on developing and implementing more meaningful evaluation and support systems.

*Provisions waived:* Section 2141(a)–(c) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
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- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)

- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

**II. Flexibility To Transfer Certain Funds**

The Department waived the limitations in section 6123 of the ESEA that limited the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. Under this waiver, an SEA and its LEAs had flexibility to transfer up to 100 percent of the funds received under the authorized programs among those programs and into Title I, Part A programs. Moreover, to minimize burden at the State and local levels, the SEA was not required to notify the Department, and its participating LEAs were not required to notify the SEA, prior to transferring funds.

*Provisions waived:* Section 6123(a), (b)(1), (d), and (e)(1) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
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- West Virginia Department of Education
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- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

*A. Flexibility To Use SIG Funds To Support Priority Schools*

The Department waived the requirements in section 1003(g)(4) of the

ESEA and the definition of a “Tier I school” in section I.A.3 of the SIG final requirements. Under this waiver, an SEA had flexibility to award SIG funds available under section 1003(g) of the ESEA to an LEA to implement one of the four SIG models in any priority school.

*Provision waived:* Section 1003(g)(4) of the ESEA and Section I.A.3 of the SIG final requirements (74 FR 65618).

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

**B. Flexibility in the Use of 21st CCLC Program Funds**

The Department waived requirements in sections 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA that restricted the activities provided by a community learning center under the 21st CCLC program to activities provided only during non-school hours or periods when school was not in session (*i.e.*, before and after school or during summer recess). Under this waiver, an SEA had flexibility to permit community learning centers to use 21st CCLC funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school was not in session.

*Provisions waived:* Sections 4201(b)(1)(A) and 4204(b)(2)(A) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education

- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

**C. Flexibility Regarding Making AYP Determinations**

The Department waived the requirements in section 1116(a)(1)(A)–(B) and (c)(1)(A) of the ESEA that required LEAs and SEAs to make determinations of AYP for schools and LEAs, respectively. Instead, an SEA and its LEAs had to report on their report cards performance against the AMOs for all subgroups identified in section 1111(b)(2)(C)(v) of the ESEA, and use performance against the AMOs to support continuous improvement in Title I schools.

*Provisions waived:* Section 1116(a)(1)(A)–(B) and (c)(1)(A) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

**D. Flexibility Regarding Within-District Title I Allocations**

The Department waived the requirements in section 1113(a)(3)–(4) of the ESEA that required an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. Under this waiver, an LEA had flexibility to serve with Title I funds a graduation rate below 60 percent that the SEA identified as a priority school even if that school did not rank sufficiently high to be served based solely on the school’s poverty rate.

*Provisions waived:* Section 1113(a)(3)–(4) and (c)(1) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Arizona Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Kansas State Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Nevada Department of Education
- New Hampshire Department of Education
- Ohio Department of Education
- Oregon Department of Education
- Pennsylvania Department of Education
- Puerto Rico Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- San Francisco Unified School District (California)
- Los Angeles Unified School District (California)
- Fresno Unified School District (California)
- Sanger Unified School District (California)
- Santa Ana Unified School District (California)
- Sacramento City Unified School District (California)
- Long Beach Unified School District (California)
- Oakland Unified School District (California)

**III. Extensions of the Obligation Period**

A. The Department granted waivers for ESEA State-administered formula grant programs extending until September 30, 2014, the period of availability for FY 2011 Title I, Part A funds reserved for school improvement activities under section 1003(a) of the ESEA.

*Provision waived:* Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. 1225(b)).

*Waiver Applicants:*

- Maryland State Department of Education
- New York State Department of Education
- Ohio Department of Education
- Oklahoma State Department of Education
- Rhode Island Department of Education
- Virginia Department of Education

B. The Department granted waivers for ESEA State-administered formula

grant programs extending until September 30, 2014, the period of availability of FY 2009 Title I, Part A program funds awarded under ARRA.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA (20 U.S.C. 1225(b)).

*Waiver Applicants:*

- Alabama State Department of Education
- Arizona Department of Education
- Arkansas Department of Education
- California Department of Education
- Colorado Department of Education
- Florida Department of Education
- Iowa Department of Education
- Kentucky Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Minnesota Department of Education
- Montana Office of Public Instruction
- Nebraska Department of Education
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- Oregon Department of Education
- Pennsylvania Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- Tennessee Department of Education
- Texas Education Agency
- West Virginia Department of Education

C. Waivers extending the period of availability of SIG program funds awarded under section 1003(g) of the ESEA.

1. Extended the period of availability of FY 2009 SIG funds until September 30, 2014.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA.

*Waiver Applicants:*

- Alabama State Department of Education
- Arizona Department of Education
- Arkansas Department of Education
- California Department of Education
- Colorado Department of Education
- Florida Department of Education
- Iowa Department of Education
- Kentucky Department of Education
- Maine Department of Education
- Maryland State Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Minnesota Department of Education
- Montana Office of Public Instruction
- Nebraska Department of Education

- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- Oregon Department of Education
- Pennsylvania Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- Tennessee Department of Education
- Texas Education Agency
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education

2. Extended the period of availability of FY 2010 SIG funds.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA.

a. Extension granted until June 1, 2013.

*Waiver Applicant:*

- Idaho State Department of Education
- b. Extension granted until August 1, 2013.

*Waiver Applicant:*

- Idaho State Department of Education
- c. Extension granted until September 30, 2013.

*Waiver Applicants:*

- Mississippi Department of Education
  - Virginia Department of Education
- d. Extension granted until September 30, 2014.

*Waiver Applicants:*

- Alabama State Department of Education
- California Department of Education
- Delaware Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Elementary and Secondary Education
- Oklahoma State Department of Education
- Rhode Island Department of Education
- Texas Education Agency

3. Extended the period of availability of FY 2011 SIG funds.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA.

a. Extension granted until September 30, 2014.

*Waiver Applicants:*

- Alaska Department of Education and Early Development
- Arizona Department of Education
- Hawaii State Department of Education

- Kansas State Department of Education
- Kentucky Department of Education
- Maine Department of Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- Ohio Department of Education
- Pennsylvania Department of Education
- South Carolina Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Wisconsin Department of Public Education

b. Extension granted until September 30, 2015.

*Waiver Applicants:*

- California Department of Education
- District of Columbia Office of the State Superintendent of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Missouri Department of Elementary and Secondary Education
- New York State Department of Education
- Oklahoma State Department of Education

4. Extended the period of availability of FY 2012 SIG funds.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA.

a. Extension granted until September 30, 2015.

*Waiver Applicants:*

- Arkansas Department of Education
  - Delaware Department of Education
  - Washington Office of the Superintendent of Public Instruction
- b. Extension granted until September 30, 2016.

*Waiver Applicants:*

- Colorado Department of Education
- District of Columbia Office of the State Superintendent of Education
- Georgia Department of Education
- Idaho State Department of Education
- Illinois State Board of Education
- Indiana Department of Education
- Kansas State Department of Education
- Louisiana Department of Education
- Maine Department of Education
- Massachusetts Department of Elementary and Secondary Education
- Nebraska Department of Education
- Nevada Department of Education
- Rhode Island Department of Education

5. Extended the period of availability of FY 2013 SIG funds.

*Provision waived:* Tydings Amendment, section 421(b) of GEPA.

a. Extension granted until September 30, 2016.

*Waiver Applicant:*

- Minnesota Department of Education

D. Waivers for the Striving Readers Comprehensive Literacy Grant Program extending the period of availability until December 31, 2013 of FY 2010 funds awarded under Part E, Section 1502 of the ESEA.

*Provision waived:* Tydings

Amendment, section 421(b) of GEPA.

*Waiver Applicants:*

- California Department of Education
- New Mexico Public Education Department
- South Carolina Department of Education
- Tennessee Department of Education

E. Waivers for the 21st CCLC program extending the period of availability of FY 2010 funds until September 30, 2013.

*Provision waived:* Tydings

Amendment, section 421(b) of GEPA.

*Waiver Applicant:*

- Kansas State Department of Education

#### IV. Waivers Allowing SEAs To Approve Schools or LEAs Identified as in Need of Improvement To Become SES Providers

The Department permitted SEAs to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as a provider of SES.

*Provisions waived:* 34 CFR

200.47(b)(1)(iv)(A) and (B).

*Waiver Applicants:*

- California Department of Education (during the 2014–15 and 2015–16 school years)
- Montana Office of Public Instruction (during the 2013–14 school year)

#### V. Waivers of School Eligibility Requirements and Definition of Persistently Lowest-Achieving Schools

The Department allowed SEAs to: (A) Waive the school eligibility requirements by replacing the list of Tier I, Tier II, and Tier III schools with their list of priority schools; and (B) replace the definition of “persistently lowest-achieving schools” with the State’s definition of “priority schools.”

*Provisions waived:* Sections I.A.1 and I.A.3 of the SIG final requirements (75 FR 66363).

*Waiver Applicants:*

- Idaho State Department of Education
- New Jersey Department of Education

#### VI. Waivers of Academic Standards, Assessments, and Accountability Requirements

A. Two-year extension of waiver permitting SEAs to use their Growth

Model Pilots in making accountability determinations based on assessments administered through the 2013–2014 school year.

*Provision waived:* Section 1111(b)(2) of the ESEA.

*Waiver Applicants:*

- Delaware Department of Education
- Iowa Department of Education
- Pennsylvania Department of Education

B. Waivers allowing substitution of standards or assessments.

Allowed Kansas to permit McPherson Unified School District, Kansas City, Kansas Public Schools and the Clifton-Clyde Unified School District to: (i) Administer the ACT in high school and the EXPLORE in grade 8 in lieu of the Kansas State assessments; and (ii) use the results of those assessments for accountability purposes.

*Provisions waived:* Section 1111(b)(1)(B), (b)(3)(A), and (b)(3)(C)(i)–(ii) of the ESEA.

*Waiver Applicant:*

- Kansas State Department of Education

C. Waiver permitting the use of AMOs to make AYP determinations based on assessments administered the previous year.

*Provision waived:* Section 1111(b)(2)(H) of the ESEA.

*Waiver Applicant:*

- Wyoming Department of Education

#### VII. Waivers Authorizing an SEA To Waive the Carryover Limitation for an LEA Because of Its Receipt of Title I, Part A ARRA Funds

Waiver to permit an SEA to waive the carryover limitation more than once within three years for an LEA that needs the additional waiver because of its receipt of Title I, Part A ARRA funds.

*Provision waived:* Section 1127(b) of the ESEA.

*Waiver Applicants:*

- Alabama State Department of Education
- Alaska Department of Education and Early Development
- Arizona Department of Education
- Arkansas Department of Education
- California Department of Education
- District of Columbia Office of State Superintendent of Education
- Florida Department of Education
- Georgia Department of Education
- Hawaii State Department of Education
- Idaho State Department of Education
- Illinois State Board of Education (applies to FY 2011 and 2012)
- Indiana Department of Education
- Iowa Department of Education
- Kentucky Department of Education
- Louisiana Department of Education

- Maine Department of Education
- Michigan Department of Education
- Minnesota Department of Education
- Mississippi Department of Education
- Missouri Department of Education
- Montana Office of Public Instruction
- Nebraska Department of Education
- Nevada Department of Education
- New Hampshire Department of Education: Merrimack School District
- New Hampshire Department of Education: Derry School District
- New Hampshire Department of Education
- New Jersey Department of Education
- New Mexico Public Education Department
- New York State Department of Education
- North Dakota Department of Public Instruction
- Ohio Department of Education
- Oklahoma State Department of Education
- Rhode Island Department of Education
- South Carolina Department of Education
- South Dakota Department of Education
- Tennessee Department of Education
- Utah State Office of Education
- Virginia Department of Education
- Washington Office of the Superintendent of Public Instruction
- West Virginia Department of Education
- Wisconsin Department of Public Instruction
- Wyoming Department of Education

#### VIII. Waivers Regarding Public School Choice

The Department granted an SEA a waiver to postpone notice of public school choice options beyond 14 days before the start of the school year to parents of eligible children attending schools that—

- A. Were newly identified for improvement for the school year; or
- B. Made AYP in the previous year, but did not exit improvement status.

*Provisions waived:* Section 1116(b)(1)(E)(i) of the ESEA and 34 CFR 200.37(b)(4)(iv).

*Waiver Applicant:*

- Wyoming Department of Education

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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Dated: October 3, 2017.

**Jason Botel,**

*Acting Assistant Secretary for Elementary and Secondary Education.*

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**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended by the No Child Left Behind Act of 2001

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2012 under the waiver authority of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), including waivers related to flexibility granted to States in exchange for State-led reforms (ESEA flexibility).

The ESEA requires that the Department publish in the **Federal Register**, and disseminate to interested parties, a notice of its decision to grant a waiver of statutory or regulatory requirements under the ESEA. Between 2011 and 2016, the Department granted more than 800 waivers of statutory or regulatory requirements to State educational agencies (SEAs) but neglected to comply with the ESEA's publication and dissemination requirements. This notice is intended to fulfill the Department's obligation to publicize its waiver decisions by identifying the waivers granted during 2012.

**FOR FURTHER INFORMATION CONTACT:** Kia Weems, U.S. Department of Education, 400 Maryland Avenue SW., Room 3W341, Washington, DC 20202. Telephone: (202) 260-2221 or by email: [Kia.Weems@ed.gov](mailto:Kia.Weems@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** In 2012, the Department granted waivers through an initiative known as ESEA flexibility to 35 States from ten specific provisions of the ESEA 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.<sup>1</sup> In addition to waiving the ten provisions, the Department granted three optional waivers under ESEA flexibility. The Department also granted 134 individual waivers under the waiver authority in section 9401 of the ESEA.

We granted:

(a) ESEA flexibility: The Department granted the following ten waivers to 35 SEAs under ESEA flexibility:

1. Flexibility Regarding the 2013–2014 Timeline for Determining Adequate Yearly Progress (AYP);
2. Flexibility in Implementation of School Improvement Requirements;
3. Flexibility in Implementation of Local Educational Agency (LEA) Improvement Requirements;
4. Flexibility for Rural LEAs;
5. Flexibility for Schoolwide Programs;
6. Flexibility to Support School Improvement;
7. Flexibility for Reward Schools;
8. Flexibility Regarding Highly Qualified Teacher (HQT) Improvement Plans;
9. Flexibility to Transfer Certain Funds; and
10. Flexibility to Use School Improvement Grant (SIG) Funds to Support Priority Schools.

In addition to waiving the ten provisions listed above, the Department granted three optional waivers under ESEA flexibility related to the following:

1. Granted waivers to 23 States under the Flexibility in the Use of Twenty-First Century Community Learning Centers (21st CCLC) Program Funds;
2. Granted waivers to 33 States under the Flexibility Regarding Making AYP Determinations; and

3. Granted waivers to 33 States under the Flexibility Regarding Within-District Title I Allocations;

(b) 73 waivers extending the period during which funds were available for obligation: 11 waivers extending the period for ESEA State-administered formula grant programs that received fiscal year (FY) 2009 funds under the regular appropriation; 14 waivers extending the period for ESEA State-administered formula grant programs that received FY 2009 funds under the American Recovery and Reinvestment Act (ARRA); one waiver under the Enhancing Education Through Technology (Ed-Tech) Program; one waiver under the Migrant Education Consortium Incentive Grant Program; two waivers under the Consolidated Grant funds for Insular Areas; 38 waivers for school improvement activities for certain fiscal years' funds; and six waivers extending the period for the Striving Readers Comprehensive Literacy Formula Grant Program funds;

(c) 21 waivers relating to school improvement requirements: Three waivers pertaining to school eligibility requirements and the definition of persistently lowest-achieving schools; and 18 waivers granting additional time to meet the teacher and principal evaluation requirement (11 for cohort 1 schools and seven for cohort 2 schools);

(d) 11 waivers of requirements related to State academic standards or assessments: Three waivers allowing substitution of standards or assessments; and eight waivers permitting use of annual measurable objectives (AMOs) to make AYP determinations based on assessments administered in the previous school year;

(e) One waiver of the five percent cap on Title I funds an LEA may reserve to provide financial incentives and rewards to teachers in schools identified for improvement, corrective action, or restructuring;

(f) Two schoolwide poverty threshold waivers permitting specific schools with less than 40 percent poverty the flexibility to operate a schoolwide program;

(g) Four waivers of the requirement to provide parents notice of public school choice options at least 14 days before the start of the school year;

(h) Two new waivers and one continuation allowing LEAs both to provide SES to eligible students attending schools in the first year of improvement that received funding under Title I, Part A and to count the costs of doing so toward meeting the LEAs' "20 percent obligation";

<sup>1</sup> Additional information regarding ESEA flexibility can be found at: <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.