



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

The Honorable John B. King, Jr.
Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dear Commissioner King:

Congratulations on receiving approval of New York's request for ESEA flexibility. Submitting a request that meets the four ESEA flexibility principles is a significant accomplishment; you and your staff should be proud of the work you have done and that you plan to do to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction in New York. Full and effective implementation of your request for ESEA flexibility will be critically important to accomplishing these goals. Therefore, the U.S. Department of Education (Department) is committed to working with New York to ensure full and effective implementation, including by providing technical assistance and monitoring the progress of implementation toward the goals set for your schools and students.

The purpose of this letter is to provide some additional information about how to implement your approved request and how to meet certain obligations related to the approval of your request.

Waivers in ESEA Flexibility

The waivers that comprise ESEA flexibility have been granted pursuant to the Secretary's authority under section 9401 of the ESEA. Consistent with that authority, only the statutory requirements listed in the table enclosed with Secretary Duncan's letter approving your request, and the related regulatory requirements, have been waived through ESEA flexibility. New York and its local educational agencies (LEAs) remain obligated to comply with all other requirements of the ESEA, including, for example, the fiscal requirements in ESEA section 1120A, the report card requirements, the regulatory requirements for calculating graduation rates, the caps on the number of proficient and advanced scores of students with disabilities who take an alternate assessment based on alternate or modified academic achievement standards that may be included in accountability determinations, and the requirements related to equitable services.

In addition, the waivers that are included in the table enclosed with Secretary Duncan's letter include waivers that permit New York or LEAs in New York to: operate a schoolwide program in a priority or focus school that does not meet the 40 percent poverty threshold; provide funds

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reserved under ESEA section 1003(a) to any priority or focus school; provide funds reserved under ESEA section 1117(c)(2)(A) to any reward school; and provide funds under ESEA section 1003(g) to any priority school that will implement one of the four school improvement grant (SIG) school intervention models. Please note that these waivers apply only to Title I schools, Tier II schools served under the SIG program, and Title I-eligible high schools with a graduation rate below 60 percent. In other words, if New York identifies other non-Title I schools as reward, priority, or focus schools, these waivers would not be relevant to those additional schools. Moreover, approval of your request for ESEA flexibility does not waive any other requirements related to schoolwide programs, the reservation under ESEA section 1003(a), the provision of funds under ESEA section 1117(c)(2)(A), or the allocation of SIG funds, respectively; they merely modify the universe of schools to which those respective provisions apply.

As you know, in addition to the waivers offered under ESEA flexibility, the Department granted New York a waiver of ESEA section 1111(b)(2)(G)(iv) to permit New York to incorporate a measure of student growth into its accountability determinations based on assessments administered in the 2011–2012 school year only. In October, the Department will conduct a separate review of New York’s proposed growth model. In the coming months, the Department will provide additional information about the materials New York must submit for that review. After reviewing the results of that review and any changes New York makes to its growth model based on that review, I will determine whether to grant an extension of this waiver.

Waivers of Requirements to Provide Supplemental Educational Services (SES) and Transportation for Public School Choice

Under ESEA flexibility, LEAs in New York will no longer be required by Federal law to offer SES or public school choice. Accordingly, New York should ensure, as appropriate, that its LEAs provide parents with information to explain why SES and transportation for public school choice will no longer be offered beginning in the 2012–2013 school year, explain the interventions, incentives, and supports that will replace those options, and provide other relevant details regarding the termination of the existing services. This information should be provided as early as feasible so that parents may plan accordingly, and should be provided in a language and format that is understandable to parents. New York should also provide similar information about the status of SES to all SES providers in the State.

Please note that, although LEAs will no longer be obligated by Federal law to provide transportation for public school choice, a student who is already taking advantage of public school choice must be permitted to remain at his or her school of choice until he or she has completed the highest grade in that school because ESEA flexibility does not waive ESEA section 1116(b)(13). This right should be clearly explained to parents in the information that is provided regarding the changes being made with respect to the provision of SES and public school choice. To enable parents to exercise this right, we encourage LEAs to consider providing transportation to these schools of choice beyond the end of the 2011–2012 school year.

Accountability Workbooks

The Department recognizes that, in light of New York's approved ESEA flexibility request, some elements of New York's Accountability Workbook do not reflect New York's new system of differentiated recognition, accountability, and support. We are currently working on a process for reconciling these documents in a way that ensures consistency and transparency while at the same time minimizing the burden on SEAs. We will be in touch with you to discuss this process as soon as it is finalized.

Amendments to New York's ESEA Flexibility Request

The Department encourages New York to continuously evaluate the effectiveness of the plans and other elements of its ESEA flexibility request as it proceeds with implementation, and to make necessary changes to address any challenges that it identifies. As a result of this process of continuous improvement, the Department anticipates that New York might want or need to make changes to its ESEA flexibility request.

If New York wishes to make changes to its ESEA flexibility request, New York must submit those changes to the Department as early as feasible for the Department's review and approval. Upon receipt of the proposed changes, the Department will determine whether the changes require additional peer review. New York may not implement any changes to its approved request until those changes have been approved by the Department. Additional information regarding the format and process for an SEA to submit a request to amend its ESEA flexibility request is available on the "Support for States" section of the ESEA flexibility webpage (<http://www.ed.gov/esea/flexibility/support-for-states>). Please note that the Department does not anticipate approving any amendment that would result in a State's no longer meeting the required timelines for implementation of ESEA flexibility.

Finally, New York must submit its final lists of priority, focus, and reward schools, with the names of schools identified, to the Department by August 1, 2012.

Continuing Consultation

Meaningfully engaging and soliciting input from teachers and their representatives, and other diverse stakeholders, was an important part of developing New York's ESEA flexibility request. Such consultation will be equally important as you proceed with implementing your ESEA flexibility request.

Submission of Reports, Data, and Evidence

ESEA section 9401(e)(2) requires an SEA receiving a waiver under section 9401 to report such information as the Secretary may require. In accordance with that provision and as it assured in its request, New York must provide the Department certain reports, data, and evidence regarding its progress in implementing the plans and other elements of its approved request. The Department anticipates that an SEA will be able to meet this requirement primarily by providing information to the Department through ED*Facts*/Consolidated State Performance Report (CSPR) (much of which is part of current collections), and by providing information required for the Department's monitoring of New York's ESEA flexibility implementation.

Monitoring

The Department plans to monitor SEAs to ensure full and effective implementation of approved ESEA flexibility requests. The Department will track New York's progress and success in implementing the plans and other elements of its approved ESEA flexibility request, including alignment with the four principles and the required timelines listed in the document titled *ESEA Flexibility*. In particular, the Department will monitor New York's process for ensuring that focus districts identify and require interventions in focus schools consistent with New York's approved request as part of the requirements of its new differentiated recognition, accountability, and support system. The Department expects to begin monitoring States' implementation of ESEA flexibility before the start of the 2012–2013 school year and will provide additional information on its monitoring plans in the coming weeks.

Please note that, as States' implementation of ESEA flexibility proceeds, the Department may adjust the reports, data, and evidence it needs to track implementation, as appropriate. We will keep you apprised of any modifications.

Secretary's Right to Terminate Waivers

Under ESEA section 9401(f), the Secretary must terminate a waiver if the Secretary determines, after notice and an opportunity for a hearing, that the performance of the entity affected by the waiver has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purpose. Accordingly, the Secretary may terminate the waivers granted through ESEA flexibility if New York or a significant number of its LEAs do not implement New York's request as approved by the Department or if New York fails to submit in a timely manner the required reports, data, and evidence or its final lists of priority, focus, and reward schools. If the waivers are terminated, New York and its LEAs must immediately resume complying with the requirements of current law.

I hope you find this information helpful. Congratulations again on receiving approval of New York's request for ESEA flexibility. I look forward to working with you and your staff as you implement this flexibility and as you continue working to improve education in New York.

Sincerely,

/s/

Deborah S. Delisle

cc: Ira Schwartz, Assistant Commissioner, Office of Accountability