



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

MAY 22 2009

THE ASSISTANT SECRETARY

The Honorable Steven L. Paine
State Superintendent of Schools
West Virginia Department of Education
Building 6, 1900 Kanawha Blvd. E.
Charleston, West Virginia 25305-0330

Dear Superintendent Paine:

I am responding to your letter of May 14, 2009, requesting a waiver of certain assessment and accountability requirements of the Elementary and Secondary Education Act of 1965 (ESEA) due to the severe flooding that occurred earlier this month, which has prevented some schools within Mingo County from reopening and caused problems with teachers and students fully returning to other schools. I understand that this issue is particularly pressing, as West Virginia's state accountability assessment (WESTEST 2) is scheduled for administration May 18 through May 29, 2009. According to your letter, Governor Manchin has declared a state of emergency in six counties, but Mingo County was the hardest hit by the flooding and is the only one that is certain to have schools closed during the testing window. Thank you for bringing this situation to our attention.

In light of the natural disaster that has prevented some schools in Mingo County from operating during West Virginia's assessment window, I am granting this waiver, pursuant to my authority in section 9401 of the ESEA, to waive the provisions in sections 1111(b)(3)(A), 1111(b)(3)(C)(vii), and 1116(a)(1)(A) of the ESEA that require the annual administration of statewide assessments and annual determinations of whether a school is making adequate yearly progress (AYP). This waiver extends to the schools in Mingo County that have been prevented from opening or operating at sufficient capacity to administer statewide assessments during West Virginia's assessment window due to the flooding that occurred earlier this month and applies only to the 2008-09 school year.

As a result of receiving this waiver, Mingo County must provide notice and information to the public regarding this waiver in the manner in which it customarily provides similar notice to the public (see section 9401(a)(3)(B)(ii) of the ESEA). Further, Mingo County must submit a report to you that (1) identifies the schools that were subject to the waiver; and (2) documents that the schools continued to implement the respective school improvement requirements in section 1116(b) in 2009-10. The West Virginia Department of Education must submit that report to the Department.

I also understand that, although some schools in Mingo County, as well as schools in the five other counties that were declared to be disaster areas, are operational and students in those schools are taking the assessments that will form the basis of AYP determinations, it is possible that those schools will not make AYP due to disruption caused by the severe flooding. Mingo County and the other districts in areas that have been declared to be disaster areas that have

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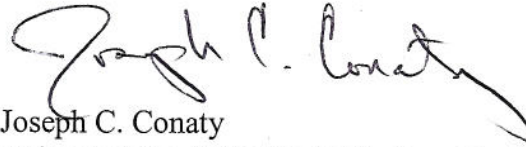
schools that do not make AYP may examine those AYP determinations to determine, on a case-by-case basis, whether the school's not making AYP was affected by the natural disaster. If so, the districts may take advantage of section 1116(b)(7)(D) of the ESEA, which contemplates this situation. That provision provides that a district "may delay, for a period not to exceed 1 year, implementation of the requirements [of the second year of school improvement], corrective action..., or restructuring...if the school...fail[s] to make adequate yearly progress...due to exceptional or uncontrollable circumstances, such as a natural disaster....No such period shall be taken into account in determining the number of consecutive years of failure to make adequate yearly progress." Likewise, if appropriate, based on a case-by-case review of districts that do not make AYP, West Virginia may take advantage of section 1116(c)(10)(F) of the ESEA, which provides similar relief with respect to school districts

A school that receives the benefit of the waiver granted above must maintain the same improvement status, if any, in the 2009–10 school year that it had for the 2008–09 school year. Similarly, implementation of the delay provisions means that, if a particular school or district does not make AYP because of the natural disaster, that school or district will not be obligated to advance to the next level of school improvement, corrective action, or restructuring, as it would otherwise be obligated to do. Rather, it will continue to implement in the 2009–10 school year the same interventions and improvement activities that it implemented in the 2008–09 school year. In particular:

- If a school or district for which the delay provision is implemented makes AYP using 2008–09 assessment data, the school or district must be given its earned AYP designation (*i.e.*, it will either retain its current designation if this is the first year it makes AYP or it will exit improvement if this is the second year it makes AYP).
- If a school or district for which the delay provision is implemented misses AYP for the first time based on assessments administered in 2008–09, the school or district is not affected by the delay provision (*i.e.*, because it is not yet identified for improvement).
- If the delay provision is implemented for a school or district that was identified for improvement, corrective action, or restructuring in the 2008–09 school year (*i.e.*, based on the results of assessments administered in 2007–08), the school's or district's existing school improvement status (*i.e.*, as of the 2008–09 school year) will remain in effect for the 2009–10 school year. If such a school or district again fails to make AYP based on assessments administered in 2009–10, the school or district will advance on the improvement timeline in the 2010–11 school year.
- If the delay provision is implemented with respect to a school or district that did not make AYP for the first time based on the results of assessments administered in 2007–08 and thus was not identified for improvement in the 2008–09 school year, the school or district will continue to have no improvement status in the 2009–10 school year. If the school or district again fails to make AYP based on assessments administered in 2009–10, it will then be identified for improvement in the 2010–11 school year.
- If the delay provision is implemented with respect to a school or district that was previously identified for improvement but made AYP for the first time based upon assessments administered in 2007–08, and the school or district makes AYP based on assessments administered in 2009–10, that school or district will exit improvement prior to the 2010–11 school year.

Again, thank you for bringing this situation to our attention and please let us know if there is anything else the Department can do to help West Virginia. I know that you will do everything in your power to make the schools in West Virginia safe for students to return to the classroom and continue their studies as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Conaty". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph C. Conaty
Delegated the Authority to Perform the Functions
and Duties of the Assistant Secretary for
Elementary and Secondary Education

cc: Governor Joe Manchin, III
Jan Barth