



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

AUG 24 2009 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 writing in response to West Virginia's requests to waive certain statutory and regulatory requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA). After reviewing West Virginia's requests, I am pleased to grant the following waivers:

- Offering SES in addition to public school choice in the first year of improvement and counting the costs of both toward an LEA's 20 percent obligation. I am granting a one-year waiver of ESEA section 1116(b)(10) and 34 C.F. R. § 200.48 to permit an LEA in West Virginia to offer SES in addition to public school choice to eligible students in Title I schools in the first year of school improvement and to count the costs of providing SES to these students toward the LEA's 20 percent obligation under 34 C.F. R. § 200.48.
- Calculation of "set-asides" for Title I, Part A funds. I am granting a one-year waiver to permit an LEA or school, as applicable, in West Virginia to exclude all or part of the Title I, Part A funds it receives through the American Recovery and Reinvestment Act of 2009 (ARRA) when calculating:
 - An LEA's obligation to spend an amount equal to at least 20 percent of its fiscal year (FY) 2009 Title I, Part A funds for public school choice-related transportation and SES (ESEA section 1116(b)(10); 34 C.F.R. § 200.48(a)(2)).
- Ability to grant LEAs a waiver of the carryover limitation. I am granting West Virginia a two-year waiver of section 1127(b) of the ESEA to allow it to waive the carryover limitation in section 1127(a) of the ESEA more than once every three years for an LEA that needs the additional waiver because of the supplemental Title I, Part A appropriation provided through the ARRA.

These waivers are granted on the condition that West Virginia will satisfy the conditions detailed in the enclosure to this letter, including the requirement to report certain information about the use of each of the waivers to the Department by September 30, 2010. Please be sure to review the enclosure carefully.

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I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact Zollie Stevenson, Director of Student Achievement and School Accountability Programs (SASA) at (202) 260-0826.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thelma', with a long, sweeping flourish extending to the right and ending in a loop.

Thelma Meléndez de Santa Ana, Ph.D.

Enclosure

cc: Governor Joe Manchin, III
Jan Stanley

CONDITIONS ON TITLE I, PART A WAIVERS

Offering SES in addition to public school choice in the first year of improvement and counting the costs of both toward the 20 percent obligation (ESEA section 1116(b)(10); 34 C.F.R. § 200.48)

This waiver is granted on the condition that West Virginia will:

- Ensure that each LEA taking advantage of the waiver complies with all other statutory and regulatory requirements related to SES for the 2009–2010 school year; and
- Submit to the Department, by September 30, 2010, a report that provides the name and NCES District Identification Number for each LEA taking advantage of the waiver.

“Set-aside” calculations — Excluding Title I, Part A ARRA funds from an LEA’s 20 percent obligation (ESEA sections 1116(b)(10); 34 C.F.R. §§ 200.48(a)(2))

This waiver is granted on the condition that West Virginia will:

- Only implement the waiver for an LEA that provides assurances to West Virginia that:
 - The LEA will comply with its statutory and regulatory obligations for the set-aside with respect to its regular Title I, Part A allocation;
 - The LEA will use the funds freed up by the waiver to address needs identified based on data;
 - The LEA will comply with all of its other Title I, Part A statutory and regulatory obligations, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that “use effective methods and instructional strategies that are based on scientifically based research”;
 - The LEA will submit an application for Title I, Part A funds (LEA application) or, if necessary, an amendment to its existing LEA application that describes the data on which it relied to identify needs that will be addressed using the funds freed up by the waiver and the evidence that supports the strategies it intends to use to address those needs;
- Not approve an LEA’s application or amendment to an LEA’s application unless or until it determines, based on the LEA’s description, that the LEA has satisfied its obligation to identify needs based on data and address those needs using evidence-based strategies;
- Not approve an LEA to implement the waiver unless or until the LEA has an approved application (or amended application) that includes the required description of the data and evidence;
- If necessary, require an LEA seeking to implement the waiver to amend its application in accordance with the SEA’s usual process for changing an LEA’s application;
- Comply with its obligation under 34 C.F.R. § 200.47(a)(1)(ii)(B)(I) to post on its website the 20 percent obligation for each LEA and ensure that this information accurately reflects each LEA’s implementation of the waiver; and
- Submit to the Department, by September 30, 2010, a report that provides:
 - The name and NCES District Identification Number for each LEA implementing each of the waivers; and
 - The name and NCES District Identification Number for each LEA that requested but was denied permission to implement each of the waivers.

Waiving the carryover limitation more than once every three years (ESEA section 1127(b))

This waiver is granted on the condition that West Virginia will use its authority granted by this waiver to waive the carryover limitation in section 1127(a) more than once within three years only for an LEA that needs a second (or third) waiver because of its Title I, Part A ARRA funds.