



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

August 1, 2013

The Honorable Virginia M. Barry
New Hampshire Department of Education
101 Pleasant Street
Concord, NH 03301

Dear Commissioner Barry:

The U.S. Department of Education (ED) is committed to working with New Hampshire to ensure full and effective implementation of your approved request for ESEA flexibility, 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 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 Hampshire 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.

The waivers that are included in the table enclosed with Secretary Duncan's letter include waivers that permit New Hampshire or its LEAs to: operate a schoolwide program in a priority or focus school that does not meet the 40 percent poverty threshold; provide funds 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 Grants (SIG) school intervention models. Please note that these waivers apply only to schools that meet the ESEA flexibility definitions of priority, focus, and reward schools, as applicable. Essentially, if New Hampshire identifies other schools as reward, priority, or focus schools that do not meet those definitions, 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

400 MARYLAND AVE., SW, WASHINGTON, DC 20202
<http://www.ed.gov/>

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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.

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

Under ESEA flexibility, LEAs in New Hampshire are no longer required by Federal law to offer SES or transportation for public school choice. Accordingly, New Hampshire should have taken steps to ensure, as appropriate, that its LEAs provided parents with information regarding the termination of SES and transportation for public school choice, including an explanation of the interventions, incentives, and supports that have replaced those options.

Please note that, although LEAs are no longer 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 have been clearly explained to parents in the information that was provided regarding the changes being made with respect to the provision of SES and public school choice.

Accountability Addendum

ED recognizes that, in light of New Hampshire's approved ESEA flexibility request, some elements of New Hampshire's current accountability workbook do not reflect New Hampshire's new system of differentiated recognition, accountability, and support. To help ensure transparency and consistency of information while at the same time minimizing the burden on an SEA, ED has developed an accountability addendum, which replaces the accountability workbook of a State approved for ESEA flexibility. Together, an SEA's approved ESEA flexibility request and its accountability addendum contain the elements of the State's system of differentiated recognition, accountability and support. Information about the accountability addendum, as well as a sample addendum, is available on ED's ESEA flexibility web page at <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>. Your State contact will be in touch with you to discuss the process for completing and submitting your accountability addendum for ED's review.

Amendments to New Hampshire's ESEA Flexibility Request

ED encourages New Hampshire 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, ED anticipates that New Hampshire might want or need to make other changes to its ESEA flexibility request.

If New Hampshire wishes to make changes to its ESEA flexibility request, New Hampshire must submit those changes to ED as early as feasible for ED's review and approval. Upon receipt of the proposed changes, ED will determine whether the changes require additional peer review. New Hampshire may not implement any changes to its approved request until those changes have been approved by ED. Additional information regarding the format and process for a State educational agency (SEA) to submit a request to amend its ESEA flexibility request is available on the "Support and Technical Assistance for States" section of the ESEA flexibility webpage at: www2.ed.gov/policy/elsec/guid/esea-

[flexibility/index.html](#). With the exception of the flexibilities in Secretary Duncan’s June 18, 2013 letter, ED does not anticipate approving any amendment that would result in a State’s no longer meeting the required timelines for implementation of ESEA flexibility.

In addition to submitting information on amendments to its request, New Hampshire must submit its final lists of priority, focus, and reward schools to the Department by August 15, 2013.

Principle 3 Review

New Hampshire must submit for peer review its guidelines for its teacher and principal evaluation and support systems, in accordance with Principle 3 of ESEA flexibility, once they are developed and adopted. ED will provide you with information regarding the schedule for this submission and peer review shortly. In particular, ED will review the proposed weighting of student growth based on the statewide assessments in New Hampshire’s teacher and principal evaluation and support systems, as well as the system that is proposed to collect and analyze the results from pilot tests to verify that student growth will be a significant factor in those systems, consistent with the requirements of ESEA flexibility.

Continuing Consultation

Meaningful engagement and soliciting input from teachers and their representatives, and other diverse stakeholders, was an important part of developing New Hampshire’s ESEA flexibility request. Such consultation will be equally important as you continue to implement 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 Hampshire must provide ED certain reports, data, and evidence regarding its progress in implementing the plans and other elements of its approved request. Generally, SEAs are meeting this requirement primarily by providing information to ED through *EDFacts/Consolidated State Performance Report*, and by providing information required for ED’s monitoring of ESEA flexibility implementation.

Monitoring

ED has begun monitoring SEAs to ensure full and effective implementation of approved ESEA flexibility requests. ED will track New Hampshire’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*. ED expects to begin Part A monitoring of New Hampshire’s implementation of ESEA flexibility at the start of the 2013–2014 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, ED may adjust the reports, data, and evidence it needs to track implementation, as appropriate. Your ED contact 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 he 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 Hampshire or a significant number of its LEAs do not implement the State's request as approved by ED, if New Hampshire fails to submit in a timely manner the required reports, and data, or if New Hampshire does not receive approval of its guidelines for teacher and principal evaluation and support systems. If the waivers are terminated, New Hampshire and its LEAs must immediately resume complying with the requirements of current law. Similarly, if the Secretary determines not to extend or renew the waivers granted to New Hampshire beyond the end of the 2014-2015 school year, New Hampshire and its LEAs would be required to immediately resume complying with the requirements of current law in that instance, as well.

I hope you find this information helpful. Congratulations again on receiving approval of New Hampshire'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 Hampshire.

Sincerely,

/s/

Deborah S. Delisle
Assistant Secretary

cc: Paul Leather, Deputy Commissioner