



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

November 7, 2013

The Honorable Michael L. Williams
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, TX 78701

Dear Commissioner Williams:

Congratulations on receiving approval of Texas' 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 Texas. Full and effective implementation of your request for ESEA flexibility will be critically important to accomplishing these goals. The U.S. Department of Education (ED) is committed to working with Texas to ensure full and effective implementation, to include 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.

Condition on Approval

Texas' ESEA flexibility request was approved subject to one condition. In order to receive approval to implement ESEA flexibility through the end of the 2014–2015 school year, Texas must submit to ED for review and approval by May 2, 2014. This submission must include an amended request incorporating final guidelines for teacher and principal evaluation and support systems that meet the requirements of ESEA flexibility, including the requirements regarding the use of student growth, as defined in the document titled *ESEA Flexibility*, as a significant factor in determining a teacher's or principal's summative evaluation rating. As noted in Secretary Duncan's approval letter, if Texas fails to submit final guidelines that meet the requirements of ESEA flexibility by May 2, 2014, the waivers being granted to Texas will expire at the end of the 2013–2014 school year, and Texas and its schools will be required to immediately resume complying with all ESEA requirements.

Waivers in ESEA Flexibility

The waivers that comprise ESEA flexibility have been granted pursuant to the Secretary's authority under section 9401 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

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

Consistent with that authority, only the statutory requirements listed in the table enclosed with Secretary Duncan’s letter approving your request, and their implementing regulations, have been waived through ESEA flexibility. Texas 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 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 Texas or LEAs in Texas 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 Grant (SIG) school intervention models. Please note that these waivers apply only to schools that meet the definitions of priority, focus, and reward schools. For reward and focus schools, this includes only Title I schools; for priority schools, it also includes Tier II schools served under the SIG program and Title I-eligible high schools with a graduation rate below 60 percent. If Texas identifies non-Title I schools as reward or focus schools, or other non-Title I schools as priority schools, these waivers would not be relevant to those additional schools. These waivers do 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.

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

Under Texas’ approved ESEA flexibility request, LEAs in the State will no longer be required by Federal law to offer SES or transportation for public school choice. As is noted in the document titled *ESEA Flexibility*, a State educational agency (SEA) may require its LEAs to continue to provide SES and/or public school choice, or its LEAs may choose to continue to do so. If these options are not exercised, an LEA may begin implementing this waiver of SES and public school choice in the 2013–2014 school year.

Further, if the State options to continue offering public school choice and SES are not exercised, ED expects that Texas will provide, or will ensure 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 2013–2014 school year, while explaining 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. ED also expects that similar information about the status of SES will be provided 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, under ESEA section 1116(b)(13), which ESEA flexibility does not waive, 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. 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.

Accountability Workbooks

ED recognizes that, in light of Texas' approved ESEA flexibility request, some elements of Texas' Accountability Workbook do not reflect Texas' new system of differentiated recognition, accountability, and support. The Accountability Workbook will be replaced by an Accountability Addendum that will be posted with Texas' approved ESEA flexibility request. Details regarding the preparation of the Accountability Addendum are available on the "Support for States" section of ED's ESEA flexibility webpage.

Amendments to Texas' ESEA Flexibility Request

ED encourages Texas 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 Texas might want or need to make changes to its ESEA flexibility request.

If Texas wishes to make changes to its ESEA flexibility request, Texas 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. Texas 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 an SEA to submit a request to amend its ESEA flexibility request is available on the "Support for States" section of ED's ESEA flexibility webpage. Please note that ED does not anticipate approving any amendment that would result in a State no longer meeting the required timelines for implementation of ESEA flexibility.

An SEA that updates its lists of priority, focus, and reward schools using new assessment data must also submit those lists to ED by November 29, 2013.

Continuing Consultation

Meaningfully engaging and soliciting input from teachers and their representatives, and other diverse stakeholders, was an important part of developing Texas' 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, Texas must provide ED certain reports, data, and evidence regarding its progress in implementing the plans and other elements of its approved request. ED anticipates that an SEA will be able to meet this requirement primarily by providing information to ED through *EDFacts*/Consolidated State Performance Report (much of which is part of current collections), and by providing information required for ED's monitoring of Texas' ESEA flexibility implementation.

Monitoring

ED is monitoring SEAs to ensure full and effective implementation of approved ESEA flexibility requests. ED will track Texas' 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*. Information about the monitoring process can be found on the "Support for States" section of ED's ESEA flexibility webpage.

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. ED 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 Texas or a significant number of its LEAs do not implement its request as approved by ED, if Texas fails to submit in a timely manner the required reports, data, and evidence, or if Texas fails to submit its final lists of priority, focus, and reward schools. In addition, as noted above, Texas' waiver will expire at the end of the 2013–2014 school year if it does not submit to ED for review and approval, by May 2, 2014, an amended request incorporating final guidelines for teacher and principal evaluation and support systems that meet the requirements of ESEA flexibility, including the requirements regarding the use of student growth, as defined in *ESEA Flexibility*, as a significant factor in determining a teacher's or principal's summative evaluation rating. If the waivers are terminated or expire by their own terms at the end of the 2013–2014 school year, Texas and its LEAs must immediately resume complying with the requirements of current law.

Response to ED's Office of Inspector General's (OIG) report on internal controls over Statewide test results

On September 26, 2013, Texas received a final report of the ED-OIG's audit detailing findings and recommendations to improve systems of internal control that prevent, detect, and require corrective action if the systems find indicators of inaccurate, unreliable, or incomplete Statewide test results. In response to a draft of this report, both Texas and the La Joya LEA, which exhibited findings, agreed with the findings and recommendations. In addition, they described the corrective actions that they have already initiated and those that they plan to initiate to address these recommendations. ED expects Texas and La Joya to complete the corrective actions in response to this report in a timely manner. In the unlikely event that Texas does not resolve these findings, ED may take this into consideration in extending approval of ESEA flexibility.

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

Sincerely,

/s/

Deborah S. Delisle
Assistant Secretary

cc: Lizzette Gonzalez Reynolds, Chief Deputy Commissioner