



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

July 24, 2013

The Honorable James B. Phares
State Superintendent
West Virginia Department of Education
1900 Kanawha Boulevard East
Charleston, WV 25305

Dear Superintendent Phares:

The U.S. Department of Education (ED) is committed to working with West Virginia 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. This letter is intended 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. West Virginia 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 were included in the table enclosed with Secretary Duncan's letter include waivers that permit West Virginia or LEAs in West Virginia 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. In other words, if West Virginia 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

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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 spectrum 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 West Virginia are no longer required by Federal law to offer SES or transportation for public school choice. Accordingly, West Virginia 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.

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 West Virginia's approved ESEA flexibility request, some elements of the State's current accountability workbook do not reflect West Virginia'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 a State educational agency (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 West Virginia's ESEA Flexibility Request

ED encourages West Virginia 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 West Virginia may want or need to make additional changes to its ESEA flexibility request.

If West Virginia wishes to make changes to its ESEA flexibility request, the State must submit those changes to ED as early as possible for review and approval. Upon receipt of the proposed changes, ED will determine whether the changes require additional peer review. West Virginia 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 and Technical Assistance for States” section of the ESEA flexibility webpage at: <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

With the exception of the flexibilities announced in Secretary Duncan’s June 18, 2013 letter, 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.

In addition to submitting information on amendments to its request, West Virginia must submit its final lists of priority, focus, and reward schools to ED by August 15, 2013.

Principle 3 Review

West Virginia 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 West Virginia’s teacher and principal evaluation and support systems to verify that student growth will be a significant factor in those systems, consistent with the requirements of ESEA flexibility.

Continuing Consultation

Meaningfully engagement and soliciting input from teachers and their representatives, and other diverse stakeholders, was an important part of developing West Virginia’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, West Virginia must provide ED with 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 West Virginia’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 West Virginia’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, the 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 West Virginia or a significant number of its LEAs do not implement the State's request as approved by ED, if the State fails to submit in a timely manner the required reports and data, or if it does not receive approval of its guidelines for teacher and principal evaluation and support systems. If the waivers are terminated, West Virginia and its LEAs must immediately resume complying with the requirements of current law. Similarly, if the Secretary decides not to extend or renew the waivers granted to West Virginia beyond the end of the 2014-2015 school year, the State 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 to your State on receiving approval 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 West Virginia.

Sincerely,

/s/

Deborah S. Delisle
Assistant Secretary

cc: Robert E. Hull, Associate Superintendent