



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

November 20, 2015

The Honorable Elliot Asp
Interim Commissioner of Education
Colorado Department of Education
201 E. Colfax Ave., Room 500
Denver, CO 80203

Dear Interim Commissioner Asp:

I am writing in response to Colorado's request for renewal of flexibility under the Elementary and Secondary Education Act of 1965, as amended (ESEA flexibility), so that Colorado may continue to implement ESEA flexibility.

Our team, including my staff and other senior leaders at the U.S. Department of Education (ED), reviewed Colorado's request dated November 16, 2015. Pursuant to section 9401(d)(2) of the ESEA, I am pleased to renew approval of Colorado's ESEA flexibility request through the end of the 2015–2016 school year, as requested by the Colorado Department of Education (CDE) and subject to the conditions below.

My decision to renew approval of Colorado's ESEA flexibility request is based on my determination that ESEA flexibility has been effective in enabling Colorado to carry out important reforms to improve student achievement and that its renewal is in the public interest. With this renewal, Colorado will be able to continue implementing its plans to promote innovative, locally tailored strategies to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. Colorado's approved request will be posted on ED's website.

This letter also provides my approval of Colorado's amendments to its ESEA flexibility request. A summary of Colorado's significant approved amendments is enclosed with this letter.

To receive approval to implement ESEA flexibility beyond the 2015–2016 school year, Colorado must meet the following conditions:

- Submit to ED, no later than February 29, 2016, evidence that each local educational agency (LEA) and school that has been granted a waiver by the Colorado Board of Education under the Colorado Innovation Schools Act of 2008 is meeting all ESEA flexibility requirements.
- Submit to ED, no later than February 29, 2016, evidence that Colorado has developed and is implementing a process to determine that each LEA and school that receives a waiver granted by the Colorado Board of Education under the Colorado Innovation Schools Act of 2008 is meeting all ESEA flexibility requirements.

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.

If Colorado resolves these conditions and makes no additional changes to its ESEA flexibility request, and is otherwise continuing to fulfill the commitments in its ESEA flexibility request, I will consider Colorado's request for renewal of ESEA flexibility for additional years.

In addition to the conditions discussed above, this renewal is subject to Colorado's commitment to:

- Provide to ED, by February 29, 2016, additional information on its progress in carrying out the high-quality plan set forth in its ESEA flexibility request, including timeline and milestones, that will lead to implementation of high-quality statewide assessments in English language arts (ELA) and mathematics in high school that are aligned to its college- and career-ready standards in the 2015–2016 school year and each year thereafter.
- Demonstrate, during ED's monitoring and follow-up of ESEA flexibility implementation, that Colorado is implementing the plan set forth in its ESEA flexibility request to ensure that priority and focus schools that have not met the State's exit criteria and are identified in the State's next cohort of priority and focus schools will be prepared to implement more rigorous interventions by the start of the 2016–2017 school year.
- Demonstrate, during ED's monitoring and follow-up of ESEA flexibility implementation, that Colorado is implementing the plan set forth in its ESEA flexibility request, including timeline and milestones, which will lead to inclusion of student growth in teacher and principal evaluation and support systems based on State assessments administered no later than the 2015–2016 school year and each year thereafter.

Additionally, as we communicated in our April 28, 2015, letter to CDE, ESEA section 1111(b)(3)(C)(ix)(I) requires a State educational agency (SEA) and each LEA to provide for the participation of all students on the State assessments. This provision of the law is critical for ensuring that an SEA and LEAs can identify the learning progress of all students against the same high expectations. The ESEA does not permit certain students or a specific percentage of students to be excluded from the State assessments, nor does it permit an SEA to exclude from its accountability system, and the ratings the system produces, students who decline to participate in the statewide assessments.

In its renewal request, Colorado requested an amendment that would exempt performance on the State's ELA assessments of "recently arrived" English learners (ELs) who have attended schools in the United States for less than two years from the achievement component of the State's accountability system. Instead, Colorado would assess all recently arrived ELs in ELA in their first year in schools in the United States and use the results as a baseline to measure growth in the students' second year in schools in the United States as part of its accountability system. Colorado would include all recently arrived ELs in ELA in both the school achievement measure and the academic growth measure of its accountability system in the students' third year in schools in the United States.

After careful consideration of this matter, I am pleased to approve the amendment, subject to the conditions outlined below. Pursuant to my authority in Section 9401 of the ESEA, I am granting Colorado a waiver of 34 C.F.R. § 200.20(f)(1)(ii) through the period of renewal subject to the following conditions:

1. Colorado may exempt all recently arrived EL students from the ELA academic achievement component of the State's accountability system in their second year enrolled in schools in the

United States, so long as Colorado includes such students in the academic growth component of the State’s School Performance Framework in that year by using the ELA assessments administered to the students during their first year of enrollment to provide a baseline for the growth calculation.

2. Colorado must include in the academic achievement and academic growth components of its accountability system in ELA the performance of all ELs, including recently arrived ELs who have been enrolled in schools in the United States for more than two years.
3. Colorado must: (1) include the performance of recently arrived ELs on the State’s ELA assessments in reporting student achievement under ESEA section 1111(h)(1)(C)(i) and (h)(2)(B), respectively, beginning in their first year in schools in the United States; and (2) include performance on the ELA assessments of all recently arrived ELs in the calculation of annual measurable objectives after the students have been enrolled in schools in the United States for more than two years.

The waiver described above does not affect the requirements to administer mathematics and science assessment to recently arrived ELs on the required timelines.

Colorado continues to have an affirmative responsibility to ensure that it and its LEAs are in compliance with Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age in their implementation of ESEA flexibility. These laws include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, the Age Discrimination Act of 1975, and requirements under the Individuals with Disabilities Education Act.

I am confident that Colorado will continue to implement the reforms described in its approved ESEA flexibility request and advance its efforts to hold schools and LEAs accountable for the achievement of all students. If you need any additional assistance to implement your ESEA flexibility request, please do not hesitate to contact Cynthia Wright or Joseph Lee Suh of my staff at: OSS.Colorado@ed.gov.

Thank you for your commitment and continued focus on enhancing education for all of Colorado’s students.

Sincerely,

/s/

Ann Whalen
Delegated the authority to perform the functions
and duties of Assistant Secretary for Elementary
and Secondary Education

Enclosure

cc: Patrick Chapman, Executive Director, Federal Programs

Approved Amendments to Colorado's ESEA Flexibility Request

The following is a summary of significant approved amendments to Colorado's ESEA flexibility request. ED approves these amendments because Colorado's ESEA flexibility request, as amended, continues to be aligned with the principles of ESEA flexibility. Please refer to ED's website (<http://www2.ed.gov/policy/elsec/guid/esea-flexibility/map/co.html>) for Colorado's complete ESEA flexibility request.

- **College- and Career-Ready Expectations for All Students (Principle 1)**

Revision: Colorado submitted a high-quality plan for how it will administer new high-quality assessments in high school aligned with its College- and Career-Ready Standards in the 2015–2016 school year.

- **State-Developed System of Differentiated Recognition, Accountability and Support (Principle 2)**

Revision: Colorado will not assign new district accreditation ratings and school plan types under the State's system of differentiated recognition, accountability, and support based on assessments administered in the 2014–2015 school year. Colorado will resume assigning district accreditation ratings and school plan types based on assessments administered in the 2015–2016 school year.

Revision: Colorado amended its request with respect to how it incorporates participation rate into its differentiated recognition, accountability, and support system. Colorado will require schools that fall below 95% participation in one or more of the statewide assessments to address their low participation rates as part of their Unified Improvement Plan, including actions that schools and districts will take in response to their low participation rates. Additionally, Colorado will include low participation rates as an indicator in ESEA Program Effectiveness reviews conducted with Priority Improvement and Turnaround districts and priority, focus, and other Title I schools with participation rates below 95%.

- **Supporting Effective Instruction and Leadership (Principle 3)**

Revision: Colorado amended its request to provide districts with discretion in the weighting of growth in student learning based on the State assessment (0-50 percent) in an educator's summative rating for the 2014–2015 school year only. Colorado will fully implement its teacher and principal evaluation and support systems in the 2015–2016 school year, which require that at least 50 percent of an educator's summative evaluation rating is determined by growth in student learning of the educator's students.