



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

AUG 28 2014

The Honorable Brad Neuenswander  
Interim Commissioner  
Kansas State Department of Education  
Landon State Office Building  
900 Southwest Jackson Street, Suite 620  
Topeka, KS 66612

Dear Commissioner Neuenswander:

This letter is in response to Kansas's April 14, 2014, request for a one-year extension of flexibility under the Elementary and Secondary Education Act of 1965, as amended (ESEA flexibility), so that Kansas may continue to implement ESEA flexibility through the end of the 2014–2015 school year.

Our team has reviewed Kansas's request and, pursuant to section 9401(d)(2) of the ESEA, I am pleased to extend Kansas's ESEA flexibility request for one year, through the end of the 2014–2015 school year. My decision to extend Kansas's ESEA flexibility request is based on my determination that ESEA flexibility has been effective in enabling Kansas to carry out important reforms to improve student achievement and that this extension is in the public interest. I have also determined that Kansas's ESEA flexibility Part B monitoring next steps have been adequately addressed. Additionally, this letter provides my approval of the proposed amendments to Kansas's ESEA flexibility request that align with ESEA flexibility and the ESEA. A summary of the amendments Kansas has requested via ESEA flexibility is included within this letter and enclosure. This letter also provides my approval of Kansas's teacher and principal evaluation and support guidelines. Finally, I have determined that Kansas has met the condition on its ESEA flexibility request. Accordingly, I am lifting that condition and removing Kansas from high-risk status. Kansas's amended ESEA flexibility request will be posted on the U.S. Department of Education's (ED) website.

Because Kansas does not have valid and reliable State assessment data from the 2013–2014 school year as discussed below, this extension is subject to Kansas's commitment to continue working with ED on Kansas's teacher and principal evaluation and support systems, which may require additional flexibility. Kansas's continued work with ED on Principle 3 will inform ED's decision regarding renewal of Kansas's ESEA flexibility beyond the 2014–2015 school year.

#### Amendments

On September 27, 2013, and March 19, 2014, Kansas submitted information to support its amendment request for additional flexibility in its use of its teacher and principal evaluation and support systems to inform personnel decisions, consistent with ED's announcement of June 13, 2013. Specifically, Kansas requested to use its educator evaluation systems to inform personnel decisions based on ratings from the

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2016–2017 school year beginning in the 2017–2018 school year. Kansas requested this delay in making personnel decision because it will not have student growth data on its high-quality, aligned assessments until the 2015–2016 school year. As a result, the 2017–2018 school year will be the first year Kansas will have two years of data to calculate student growth. Because this request is consistent with the additionally flexibility ED offered on June 13, 2013, I am pleased to approve this amendment request.

However, I am unable to approve one amendment that Kansas has proposed to its ESEA flexibility extension request. I am unable to approve Kansas’s proposed amendment to exempt from its State assessments its high school students who receive a “college-ready score” on either the ACT or SAT in advance of the State assessments. This proposed amendment violates ESEA section 1111(b)(3)(C)(i), which provides that a State must use the same academic assessments used to measure the achievement of all children.

On August 27, 2014, Kansas submitted an additional amendment request to ED. Please note that this amendment request remains under review and will be addressed with a separate response.

#### Condition and High-Risk Status

On August 14, 2013, I conditionally approved Kansas to implement ESEA flexibility through the 2013–2014 school year. This approval was subject to the condition that Kansas complete certain key actions related to its teacher and principal evaluation and support systems throughout the 2013–2014 school year and that Kansas submit — no later than May 1, 2014 — an amended request that incorporates final guidelines for teacher and principal evaluation and support systems that meet the requirements of ESEA flexibility, including 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. Pursuant to the authority in 34 C.F.R. § 80.12, I also placed Kansas on high-risk status.

Consistent with the requirements of this condition, Kansas provided ED a high-quality plan outlining how it intended to resolve its condition and provided regular updates to ED on its progress in carrying out that plan. On May 1, 2014, Kansas submitted an amended ESEA flexibility request that incorporates final guidelines for teacher and principal evaluation and support systems, including how Kansas is proposing to ensure that student growth is included in those systems as a significant factor and its criteria and process for approving locally-selected measures of student growth. My staff has carefully reviewed this documentation, and I have determined that Kansas satisfied the August 14, 2014, condition placed on its ESEA flexibility request. Therefore, I am lifting that condition and removing Kansas from high-risk status under ESEA flexibility.

#### Waiver of Reporting Academic Achievement

On July 21, 2014, for consideration as part of its ESEA flexibility extension request, Kansas submitted a request to waive certain reporting requirements for ESEA flexibility, as well as its State and local report cards. With this waiver request, Kansas submitted comprehensive information related to the Distributed Denial of Service cybersecurity attack that occurred during its 2013–2014 school year assessment window. As a result of this cyber-attack and other issues related to the use of Kansas’s new assessment platform, Kansas provided evidence that it does not have valid and reliable data from assessments taken during the 2013–2014 school year and therefore is unable to report achievement data on its State and local report cards or to calculate and report its annual measureable objectives (AMOs) based on that data.

Because Kansas does not have valid and reliable State assessment data at the school, LEA, or State level, I am granting Kansas a one-year waiver from the reporting requirements in ESEA section 1111(h)(1)(C)(i)-(iv) and the corresponding requirements in 1111(h)(2)(B). However, I am approving this waiver subject to Kansas's commitment to conduct a cybersecurity audit and provide the results of this audit to ED in order to reduce the likelihood that Kansas's State assessment system will be subject to such attacks in the future.

Kansas continues to have an affirmative responsibility to ensure that it and its districts 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 Kansas will continue to implement the reforms described in its approved ESEA flexibility request and advance its efforts to hold schools and school districts 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 Eric Larson at: [Eric.D.Larson@ed.gov](mailto:Eric.D.Larson@ed.gov).

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

Sincerely,



Deborah S. Delisle  
Assistant Secretary

Enclosure

cc: Sandra Guidry, Assistant Director

## Approved Amendments to Kansas's ESEA Flexibility Request

The following is a summary of approved amendments to Kansas's ESEA flexibility request. The U.S. Department of Education (ED) approves these amendments because Kansas's ESEA flexibility request, as amended, continues to be aligned with the principles of ESEA flexibility. Please refer to ED's website ([www.ed.gov/eSEA/flexibility](http://www.ed.gov/eSEA/flexibility)) for Kansas's complete ESEA flexibility request.

- **Develop and Administer Annual, Statewide, Aligned, High-Quality Assessments that Measure Student Growth (Principle 1.C), Set Ambitious But Achievable Annual Measurable Objectives (Principle 2.A), Reward Schools (Principle 2.C), Priority Schools (Principle 2.D), Focus Schools (Principle 2.E)**

Revision: Kansas amended its request to include information about the Distributed Denial of Service attack that occurred during its 2013–2014 assessment window. As a result of this attack, for its 2013–2014 assessments, Kansas will not calculate or report against any of its four annual measurable objectives (AMOs): Reduction of Non-Proficient, Achievement, Gap, or Growth. Kansas will also not report against its Participation Rate AMO. Additionally, Kansas will not identify new reward schools for the 2014–2015 school year, nor will it exit priority and focus schools from priority and focus school status. Instead, Kansas will continue to serve the same priority and focus schools it served in the 2013–2014 school year in the 2014–2015 school year.

- **Develop and Administer Annual, Statewide, Aligned, High-Quality Assessments that Measure Student Growth (Principle 1.C)**

Revision: Kansas amended its request to reflect that it is no longer participating in the Smarter Balanced assessment consortium. Kansas also provided clarification regarding how it is meeting the requirements to administer a high-quality assessment in the 2014–2015 school year.

- **Priority Schools (Principle 2.D)**

Revision: Kansas amended its request to change the district facilitator and implementation coach assignments in priority schools to better reflect the required work in priority schools.

Revision: Kansas amended its request to reflect its use of IndiStar and to indicate that, as a result of its use of IndiStar, the number of times that the State educational agency (SEA) can review a priority school's plans and progress has increased from one to three times per year.

Revision: Kansas amended its request to clearly state that local educational agencies are responsible for monitoring priority schools' use of ESEA section 1003(a) funds.

Revision: Kansas amended its request to update the year three timeline for priority school interventions to clearly indicate that technical assistance to priority schools will be directed at the all students and non-proficient student groups.

- **Focus Schools (Principle 2.E)**

Revision: Kansas amended its request to emphasize the manner in which focus schools will be served. This amendment includes changes to heighten the focus on the lowest performing 30 percent of students, including students with disabilities and English Learners.

Revision: Kansas amended its request to change the district facilitator and implementation coach assignments in focus schools to better reflect the required work in focus schools.

Revision: Kansas amended its request to update the year-three timeline for focus school interventions to clearly indicate that technical assistance to focus schools will be directed at the lowest-performing 30 percent subgroup. Additionally, Kansas indicated that summer academies would include a workday for focus school leadership to conduct a root-cause analysis around the data of the lowest-performing 30 percent of students in focus schools and provide assistance in coaching and developing interventions and lessons aligned to Kansas standards.

- **Provide Incentives and Supports to Other Title I Schools (Principle 2.F)**

Revision: Kansas amended its request to provide additional information regarding its Not Making Progress Schools.