



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

AUG 28 2014

The Honorable Janet Barresi
State Superintendent of Public Instruction
Oklahoma State Department of Education
2500 North Lincoln Blvd.
Oklahoma City, OK 73105

Dear Superintendent Barresi:

This letter responds to your request for a one-year extension of the flexibility granted to Oklahoma under the Elementary and Secondary Education Act of 1965, as amended (ESEA). I appreciate your continued interest in ESEA flexibility. I am also pleased to learn that, as you indicated in your ESEA flexibility extension request, Oklahoma has benefitted from ESEA flexibility.

Oklahoma's initial request for ESEA flexibility was approved based on the State's plans and commitment to carrying out all of the principles that ensure a comprehensive, systemic approach to improve instruction and learning for all students. Based on those commitments, the U.S. Department of Education (ED) granted your State and local educational agencies (LEAs) significant flexibility from certain requirements of the No Child Left Behind Act of 2001 (NCLB). However, at this time, Oklahoma can no longer demonstrate that it is meeting those principles; specifically, Oklahoma can no longer demonstrate that the State's standards are college- and career-ready standards. Therefore, I am declining to extend Oklahoma's ESEA flexibility beyond the 2013–2014 school year.

In order to receive ESEA flexibility, Oklahoma, as well as all States that received ESEA flexibility, committed to several principles, including a requirement to have adopted college- and career-ready standards in at least reading/language arts and mathematics for kindergarten through grade 12 at the time of its request, and to have implemented those standards no later than the 2013–2014 school year (Principle 1 of ESEA flexibility). ED provided States with two options for meeting this requirement. States could either (1) adopt college- and career-ready standards that are common to a significant number of States, or (2) adopt college- and career-ready standards that are approved by a State network of institutions of higher education (IHEs), which must certify that students who meet the standards will not need remedial course work at the postsecondary level.

Oklahoma chose to meet this ESEA flexibility requirement by adopting and implementing college- and career-ready standards common to a significant number of States, which were adopted by the Oklahoma State Board of Education in June 2010. However, through legislation enacted in Oklahoma on June 5, 2014, Oklahoma will no longer implement those standards, beginning in the 2014–2015 school year. Instead, this legislation requires the State to implement the standards in reading/language arts and mathematics that were in place prior to the revised standards the Oklahoma State Board of Education adopted in June 2010.

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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.

As noted above, ESEA flexibility does not require the adoption of standards that are common to a significant number of States, the option Oklahoma originally selected. Rather, it provides States with the option of demonstrating that their standards are college- and career-ready by working with their IHEs, and several States approved for ESEA flexibility have chosen this option. In a letter dated June 13, 2014, I requested that Oklahoma amend its ESEA flexibility extension request to reflect the newly enacted legislation and invited the State to provide evidence that its standards are certified by its State network of IHEs as college- and career-ready. I requested that such evidence be submitted within 60 days (by August 12, 2014) so that ED could consider this information as part of the State's extension request. On August 6, 2014, Oklahoma notified ED that the State educational agency is not able to submit evidence from its State network of IHEs that the standards in place prior to June 2010 are college- and career-ready, and that there is no timetable for that review to be completed. Based on this information, Oklahoma can no longer demonstrate that the State's standards are college- and career-ready, and has not given any timetable by when the State will be able to provide the appropriate evidence to ED. For these reasons, I am declining to extend Oklahoma's approval of ESEA flexibility.

Oklahoma and its LEAs must therefore resume implementing the requirements of Title I of the ESEA, as amended by NCLB, as well as all other ESEA requirements that were waived under ESEA flexibility. I look forward to working with you on a thoughtful plan to do so. If, in the future, Oklahoma is able to demonstrate that it has adopted and is implementing college- and career-ready standards for all students, I would be pleased to reconsider Oklahoma's request to implement ESEA flexibility.

I appreciate that transitioning back to NCLB is neither simple nor desirable. I also understand that, because the 2014–2015 school year has started in Oklahoma, it may be extremely difficult for Oklahoma to immediately resume complying with the specific requirements of ESEA sections 1116(b) and (e) related to supplemental educational services (SES) and public school choice. Therefore, while Oklahoma must resume implementing all other requirements that were waived under ESEA flexibility for the 2014–2015 school year, I expect Oklahoma and its LEAs to resume compliance with the specific requirements regarding SES and public school choice no later than the start of the 2015–2016 school year. Oklahoma, of course, may choose to resume compliance with those requirements at any point prior to that date.

Enclosed for your reference is a list of NCLB requirements with which Oklahoma and its LEAs must resume compliance. Our team will follow up with you and/or your staff to discuss the transition and help you consider ways to preserve the gains Oklahoma has made under ESEA flexibility. Thank you for the extraordinary efforts by you and your staff, particularly Dr. Kerri White, to thoughtfully implement ESEA flexibility during the 2012–2013 and 2013–2014 school years.

Thank you for your continued focus on enhancing education for all of Oklahoma's children.

Sincerely,



Deborah S. Delisle
Assistant Secretary

Enclosure

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(1)	1003(a) ²	The ESEA requires an SEA to reserve four percent of its Title I, Part A allocation for school improvement activities and to distribute at least 95 percent of that reservation to LEAs for use in Title I schools in improvement, corrective action, or restructuring.	ESEA flexibility does not waive this reservation; ESEA flexibility permits an SEA to distribute section 1003(a) funds to LEAs for use in priority and focus schools.	Beginning with the first allocation of ESEA section 1003(a) funds following the termination of ESEA flexibility, an SEA must allocate funds only for use in Title I schools in improvement, corrective action, or restructuring.
(2)	1003(g)	The ESEA requires an SEA to award School Improvement Grant (SIG) funds to LEAs for Title I schools in improvement, corrective action, or restructuring.	ESEA flexibility permits an SEA to award SIG funds to an LEA to implement one of the four SIG models in any priority school.	Beginning with the first new awards of SIG funds following the termination of ESEA flexibility, an SEA may award SIG funds only for Tier I, Tier II, or Tier III schools under the SIG program. To the extent the SEA has already used this flexibility to award SIG funds to LEAs for priority schools that are not Tier I, Tier II, or Tier III schools, the schools may continue to receive the funds for the remainder of their three-year SIG grants, provided that the SIG-implementing school continues to implement the SIG model.

¹ The corresponding regulations that implement these statutory provisions were also waived for States implementing ESEA flexibility.

² In general, ESEA section 1003 provides school improvement requirements.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(3)	1111(b)(2)(E) – (H) ³	The ESEA establishes the requirements for annual measurable objectives (AMOs).	ESEA flexibility permits an SEA to set new ambitious but achievable AMOs.	An SEA must calculate AMOs in accordance with ESEA section 1111(b)(2)(E) – (H) for the 2013–2014 school year. These AMOs will require 100 percent proficiency for the “all students” group and for all subgroups identified in ESEA section 1111(b)(2)(C)(v).
(4)	1114(a)(1) ⁴	The ESEA requires that a school have at least 40 percent poverty to be eligible to operate a schoolwide program.	ESEA flexibility permits an LEA to operate a schoolwide program in a priority school or a focus school that has less than 40 percent poverty that is implementing a schoolwide intervention.	Consistent with 34 C.F.R. section 200.25(b)(1)(ii), any school that operated a schoolwide program in the most recent school year may continue to operate a schoolwide program. Beginning with the 2014–2015 school year, a school that has less than 40 percent poverty and did not begin implementing a schoolwide program under ESEA flexibility in the 2012–2013 or 2013–2014 school year may not begin doing so.

³ In general, ESEA section 1111 provides State plan requirements.

⁴ In general, ESEA section 1114 provides schoolwide program requirements.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(5)	1116(a)(1)(A) – (B) and 1116(c)(1)(A) ⁵	The ESEA requires an SEA and its LEAs to make adequate yearly progress (AYP) determinations for LEAs and schools, respectively.	ESEA flexibility waives the requirements for an SEA and its LEAs to make AYP determinations.	<p>An SEA and its LEAs must resume making AYP determinations in accordance with the ESEA requirements beginning with AYP determinations based on the results of assessments administered in the 2013–2014 school year.⁶</p> <p><u>AMOs</u> An SEA must use AMOs calculated in accordance with ESEA section 1111(b)(2)(E) – (H) for the 2013–2014 school year to make its AYP determinations. These AMOs will require 100 percent proficiency for the “all students” group and for all subgroups identified in ESEA section 1111(b)(2)(C)(v).</p> <p><u>Safe Harbor</u> A school may also make AYP under ESEA section 1111(b)(2)(I)(i) (<i>i.e.</i>, “safe harbor”), which provides that a school will be considered to have made AYP if the percentage of students not proficient decreases by 10 percent from the percentage of students not proficient in the preceding school year.</p>

⁵ In general, ESEA section 1116 provides LEA and school improvement requirements.

⁶ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(6)	1116(b) (except (b)(13))	The ESEA requires LEAs to identify schools for improvement, corrective action, or restructuring and to implement the corresponding requirements.	ESEA flexibility waives the requirement for an LEA to identify schools for improvement, corrective action, or restructuring and to implement the corresponding requirements.	<p>An LEA must resume identifying schools for improvement, corrective action, or restructuring. In doing so, the LEA must advance a school along the school improvement timeline under ESEA section 1116(b)(2) - (8) based on the school's status in the 2011–2012 school year.</p> <p>In addition, schools and the LEA must resume implementing the corresponding requirements as soon as possible and no later than the start of the 2015–2016 school year. These requirements include, but are not limited to, the requirement that the LEA spend an amount equal to 20 percent of its Title I allocation to provide supplemental educational services (SES) and transportation for public school choice to eligible students; the requirement that the LEA provide, not less than fourteen days prior to the first day of the school year, all students enrolled in a school identified for improvement, corrective action, or restructuring with notice of the public school choice option; and the requirement that the LEA provide all low-income students enrolled in a school identified for the second year of improvement, corrective action, or restructuring with the option to take advantage of SES.</p>

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(7)	1116(c)(3) and (5) – (11)	The ESEA requires an SEA to identify LEAs for improvement or corrective action and to implement the corresponding requirements.	ESEA flexibility waives the requirement for an SEA to identify LEAs for improvement or corrective action and to implement the corresponding requirements.	<p>An SEA must resume identifying LEAs for improvement or corrective action. In doing so, the SEA must advance an LEA along the LEA improvement timeline under ESEA section 1116(c)(3) – (10) based on the LEA’s status in the 2011–2012 school year.</p> <p>In addition, the SEA and its LEAs must resume implementing the corresponding requirements for the 2014–2015 school year. These requirements include, but are not limited to, the requirement that the SEA promptly provide notice to the parents of each student enrolled in a school served by an LEA identified for improvement that includes the results of the SEA’s annual review of the progress of the identified LEA, the reasons for that identification, and how parents can participate in improving the quality of the LEA. These requirements also include, but are not limited to, the requirement that LEAs identified for improvement shall, not later than three months after being identified, develop or revise an LEA plan that, among other things, addresses the professional development needs of the instructional staff serving the agency by committing to spend not less than 10 percent of the Title I, Part A funds received by the LEA, excluding funds reserved for professional</p>

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(8)	1116(e)	The ESEA requires an SEA and its LEAs to take a variety of actions to offer SES to eligible students in schools in improvement, corrective action, or restructuring.	ESEA flexibility waives the requirements for an SEA and its LEAs regarding offering SES.	development under ESEA section 1119. An SEA and its LEAs must resume the necessary actions to offer SES to eligible students in schools in the second year of improvement, corrective action, or restructuring, as soon as possible and not later than the start of the 2015–2016 school year. These actions include, but are not limited to, the requirements that each LEA with schools in the second year of improvement, corrective action, or restructuring provides annual notice to parents of the availability of SES, the identity of approved providers of SES, and a brief description of the services, qualifications, and demonstrated effectiveness of each SES provider.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(9)	1117(b)(1)(B) ⁷	The ESEA limits the schools that may receive Title I, Part A funds reserved for the State awards program.	ESEA flexibility permits funds reserved for the State awards program to go to any Title I-eligible reward school.	Beginning with awards made following AYP determinations based on the results of assessments administered in the 2013–2014 school year, ⁸ an SEA may award funds reserved under ESEA section 1117(c)(2) only to a school that significantly closed the achievement gap between subgroups of students or exceeded AYP for two or more consecutive years. For purposes of determining whether a school exceeded AYP in the 2012–2013 school year, the SEA should determine whether the “all students” group and all subgroups in the school met their AMOs in reading/language arts and mathematics, the 95 percent participation rate requirement, and the State’s graduation rate goal or targets or, for middle and elementary schools, whether the school met the other academic indicator.

⁷ In general, ESEA section 1117 provides school support and recognition requirements.

⁸ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(10)	2141(a), (b), (c) ⁹	The ESEA requires an LEA improvement plan for an LEA that fails to make progress toward reaching objectives for highly qualified teachers for two consecutive years, technical assistance from the SEA in developing the improvement plan, and SEA/LEA agreement on use of Title II, Part A funds for an LEA that misses AYP and fails to make progress toward reaching annual objectives for highly-qualified teachers for three consecutive years.	ESEA flexibility waives each of these requirements for an LEA and SEA and lifts the restriction on the use of Title II, Part A funds.	<p>An SEA and its LEAs must resume complying with these requirements for the 2014–2015 school year. To meet the improvement plan and technical assistance requirements of ESEA sections 2141(a) and (b), an SEA and its LEAs must use highly-qualified teacher data from both the 2012–2013 and 2013–2014 school years. To meet the SEA/LEA agreement requirements of ESEA section 2141(c), an SEA and its LEAs must use highly-qualified teacher data from the 2011–2012, 2012–2013, and 2013–2014 school years and AYP data from the 2011–2012, 2012–2013, and 2013–2014 school years.</p> <p>For purposes of determining whether an LEA failed to make AYP in the 2011–2012 and 2012–2013 school years, the SEA should determine whether the “all students” group or any subgroup in the school missed any of its AMOs in reading/language arts and mathematics, the 95 percent participation rate requirement, or the State’s graduation rate goal or targets or, for middle and elementary schools, whether the school missed the other academic indicator.</p>

⁹ In general, ESEA section 2141 provides the technical assistance and accountability requirements for SEAs and LEAs in preparing, training, and recruiting high quality teachers and principals.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(11)	6123(a) ¹⁰	The ESEA limits to 50 percent the amount an SEA may transfer from a covered program into another covered program or into Title I, Part A.	ESEA flexibility waives the percentage limitation, thereby permitting an SEA to transfer up to 100 percent of funds from a covered program.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA must comply with the 50 percent limitation on the amount it may transfer from a covered program into another covered program or into Title I, Part A.
(12)	6123(b)(1)	The ESEA limits to 50 percent or 30 percent the amount an LEA may transfer from a covered program into another covered program or into Title I, Part A.	ESEA flexibility waives the percentage limitations as well as the restrictions on the use of transferred funds.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, LEAs must comply with the 50 percent or 30 percent (as applicable) amount it may transfer from a covered program into another covered program or into Title I, Part A. An LEA in corrective action is no longer eligible to transfer funds.
(13)	6123(d)	The ESEA requires modification of plans to account for transfer and notice of transfer to the Secretary or the SEA, as appropriate.	ESEA flexibility waives these requirements for an SEA and its LEAs.	Beginning with transfers made with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA and its LEAs must resume complying with these requirements.
(14)	6123(e)(1)	The ESEA subjects transferred funds to the requirements of the program to which they are transferred.	ESEA flexibility permits an LEA to exclude funds transferred into Title I, Part A from the base in calculating any set-aside percentages.	Beginning with transfers made with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA and its LEAs must resume complying with this requirement— <i>i.e.</i> , include funds transferred into Title I, Part A in the base for calculating any set-aside percentages.

¹⁰ In general, ESEA section 6123 provides the requirements subject to which an SEA and its LEA may transfer funds.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(15)	6213(b)	The ESEA requires LEAs that fail to make AYP to use funds to carry out the requirements under ESEA section 1116.	ESEA flexibility permits an LEA that receives these funds to use them for any authorized purpose, regardless of whether the LEA made AYP.	An LEA that receives these funds and fails to make AYP based on the results of assessments administered in the 2013–2014 school year ¹¹ must resume using the funds only to carry out the requirements of ESEA section 1116 in the 2014–2015 school year.
(16)	6224(e) ¹²	The ESEA requires an SEA to permit an LEA that fails to make AYP to continue to receive a Small, Rural School Achievement grant only if the LEA uses funds to carry out ESEA section 1116.	ESEA flexibility permits an LEA that receives these funds to use them for any authorized purpose, regardless of whether the LEA made AYP.	An LEA that receives these funds and fails to make AYP based on the results of assessments administered in the 2013–2014 school year ¹³ must resume using the funds only to carry out the requirements of ESEA section 1116 in the 2014–2015 school year.
(17)	4201(b)(1)(A), 4204(b)(2)(A) ¹⁴	The ESEA requires a 21st Century Community Learning Center (21st CCLC) to provide activities during non-school hours or periods when school is not in session.	ESEA flexibility permits an eligible entity to provide 21st CCLC activities to support expanded learning time during an expanded school day, week, or year in addition to activities during non-school hours or periods when school is not in session.	Beginning with the first 21st CCLC competition conducted after the termination of ESEA flexibility, eligible entities may apply only to provide activities during non-school hours or periods when school is not in session.

¹¹ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

¹² ESEA section 6224(e) provides the requirements subject to which determinations of continuing participation in the Small, Rural School Achievement Program shall be made.

¹³ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

¹⁴ In general, ESEA sections 4201 and 4204 provide the requirements of the 21st Century Community Learning Centers Program.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(18)	1113(a)(3) – (4) and (c)(1)	The ESEA requires an LEA to rank and serve eligible schools according to poverty and allocate Title I funds to schools in rank order of poverty.	ESEA flexibility permits LEAs to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school does not rank sufficiently high to be served based solely on the school's poverty rate.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, LEAs must resume ranking and serving eligible schools according to poverty alone and allocating Title I funds to schools in rank order of poverty.