



EIA's Analysis of the US Department of Education's Proposed NCLB Waivers

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They say that it is darkest just before the sunrise—well...

The U.S. Department of Education announced last Friday an unprecedented, sweeping set of administrative changes to NCLB that mirror the Obama Administration's ESEA Blue Print first proposed in March, 2010. The Department indicated it proposed these changes in the absence of Congressional action on ESEA reauthorization and pressure from some States and local superintendents for relief from NCLB requirements, especially requirements pertaining to school accountability measures and improvement strategies.

There will be no public review and comment at the federal level associated with these administrative proposals but the court of public opinion is already weighing-in. Not surprisingly, there have been widespread questions about the Secretary's authority to waive NCLB and require new education reform actions by States and LEAs as waiver conditions, just as if a State were applying for a Race To The Top (RTTT) Competitive Grant—see more on this below.

But there will be 50 opportunities for the public to express their views and hopefully shape a State's application for flexibility. This consultation process will be a critical check and balance that somehow, our federal government has ignored. Please don't miss the opportunity at the State level.

Before diving into the details, the headline is:

All States that accept certain requirements for reform may request a waiver, effective with the 2012-2013 school year. If granted, it will change the federal AYP accountability measures that identify low-performing schools and that trigger improvement strategies including Choice and SES. These same waivers remove the requirements for these federally-mandated improvement strategies, however, States and districts may, at their own discretion, continue to use federal funds for tutoring. States may re-design how tutoring is organized, creating opportunities to improve access to students, but this process will play-out in a patch-work quilt fashion.

Our joint challenge and opportunity is to now carry this fight to State education agencies (SEAs), and with your help, EIA will do just that.

- EIA is contacting States to review implementation of SES this school year to ensure full and successful implementation of SES under current law. Proactive outreach, with your help, will help maximize tutoring for those children who need it the most.

- We will write to all State SES Coordinators and State Chiefs, prioritizing RTTT winners, with the message to use waivers to improve the delivery of tutoring services.
- We will provide specific recommendations, following EIA's principles for ESEA reauthorization that States may incorporate in their applications.
- We will continue to enlist the support of Members of Congress to pressure the Administration to accept waiver applications that continue SES services for low-income children.
- And we will help you identify new student support services business opportunities should your current SES business diminish.

All of the EIA support services will be made available to current members of the EIA SES Coalition—[please join us today so we can help you tomorrow.](#)

The following is an overview of the Flexibility package as it is called by the Department (www.ed.gov/flexibility). In the coming days and weeks, the Department will provide additional details as they get questions from States and other stakeholder organizations and EIA will continue updating its community on the Policy page of www.educationindustry.org.

Proposed Flexibility to NCLB

To receive flexibility through these waivers of NCLB requirements, a State must develop a rigorous and comprehensive plan addressing the four critical areas that are designed to improve educational outcomes for all students. All States will be eligible for this flexibility – it's not a competition. However, this isn't blanket flexibility – it's just for those States and school districts moving forward with reform. The USDoE expects to keep a high bar and will give States who agree to meet a high bar the flexibility they seek for education reform at the local level.

Even though it is not a competition, the Race To The Top (RTTT) Competitive Grant significantly shapes this waiver process in that the state RTTT winners and finalists have already agreed to the major education reform principles described below. These States should be faster getting their applications to the US DOE. **The 12 winning applications are: the Delaware, District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio, and Rhode Island and Tennessee. State finalists, but not winners are: Arizona, California, Colorado, Illinois, Kentucky, Louisiana, New Jersey and South Carolina.**

Any State seeking a waiver from NCLB (aka ESEA) must agree to implement four critical areas of education reform. They are:

1. Transition to College- and Career-Ready Standards and Assessments: To request ESEA flexibility, a State must have already adopted college- and career-ready standards in reading/language arts and mathematics designed to raise the achievement of all students, including English Learners and students with disabilities. The State will then help its schools and districts transition to implementing those standards and will commit to administering statewide tests aligned with college- and career-readiness.
2. Develop Systems of Differentiated Recognition, Accountability, and Support --A State will establish a differentiated recognition, accountability, and support system that gives credit for progress towards college- and career-readiness. The system each State develops will recognize

and reward the highest-achieving schools that serve low-income students and those that show the greatest student progress as Reward Schools.

3. Implement Special Interventions for the State's Lowest-Performing Schools – For “**Priority Schools**”, generally, those in the bottom 5 percent, a State must implement rigorous interventions to turn the schools around. In an additional 10 percent of the State's schools – “**Focus Schools**,” identified based on low graduation rates, large achievement gaps, or low student subgroup performance, the State is required to target strategies designed to focus on students with the greatest needs. *Note: tutoring is an allowable but not required intervention.*
4. Evaluate and Support Teacher and Principal Effectiveness: Each State that receives ESEA flexibility will set basic guidelines for teacher and principal evaluation and support systems. The State and its districts will develop these systems with input from teachers and principals and will assess their performance based on multiple valid measures, including student progress over time and multiple measures of professional practice, and will use these systems to provide clear feedback to teachers on how to improve instruction.

Impacts on the K-12 service industry under the Flexibility Waivers:

Yes, SES providers and SES families may see service level cuts – The waivers will allow states to turn their backs on NCLB's SES requirements, regardless of the fact that some 600,000 students are currently enrolled, and that more than 2 million have been served in the SES program's 8-year history. But this doesn't have to be the end of SES as we know it.

Yes there are exciting new opportunities also created by waivers--Providers of school turn-around services, charter school operators, alternative education, dropout prevention, credit recovery, tutoring, professional development for teachers and school leaders, assessment and curricula developers tied to College and Career Readiness (and Common Core Standards. The Obama Administration may have given providers in these sectors a significant boost, as SEA's and school systems scramble to develop, meet and evaluate personnel and school standards.

Types of Flexibility Available to States

A State may request flexibility through waivers of one or more several specific provisions of NCLB, to include:

1. Flexibility Regarding the 2013–2014 Timeline for Determining Adequate Yearly Progress (AYP): An SEA would no longer need to follow the procedures in ESEA section 1111(b)(2)(E) through (H) for setting annual measurable objectives (AMOs) to use in determining AYP. Instead, an SEA would have flexibility to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals that will be used to guide support and improvement efforts for the State, local educational agencies (LEAs), schools, and student subgroups.
2. Flexibility in Implementation of School Improvement Requirements: An LEA would no longer be required to comply with the requirements in ESEA section 1116(b) to identify for improvement, corrective action, or restructuring, as appropriate, its Title I schools that fail, for two consecutive

years or more, to make AYP, and neither the LEA nor its schools would be required to take currently required improvement actions; however, an SEA may still require or permit an LEA to take such actions. An LEA would also be exempt from all administrative and reporting requirements related to school improvement under current law. ***(Note: SES and Choice are described in Section 1116 (b). Under the language of the waiver, while it is NO LONGER REQUIRED at the federal level, states and school districts may continue to offer SES/Choice at their own discretion).***

3. Flexibility in Implementation of LEA Improvement Requirements: An SEA would no longer be required to comply with the requirements in ESEA section 1116(c) to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, fails to make AYP, and neither the LEA nor the SEA would be required to take currently required improvement actions. An LEA would also be exempt from all associated administrative and reporting requirements related to LEA improvement under current law.
4. Flexibility for Rural LEAs: An LEA that receives Small, Rural School Achievement Program funds or Rural and Low-Income School Program funds would have flexibility under ESEA sections 6213(b) and 6224(e) to use those funds for any authorized purpose regardless of the LEA's AYP status.
5. Flexibility for Schoolwide Programs: An LEA would have flexibility to operate a schoolwide program in a Title I school that does not meet the 40 percent poverty threshold in ESEA section 1114(a)(1) if the SEA has identified the school as a **priority school** or a **focus school**, and the LEA is implementing interventions consistent with the **turnaround principles** or interventions that are based on the needs of the students in the school and designed to enhance the entire educational program in the school, as appropriate.
6. Flexibility to Support School Improvement: An SEA would have flexibility to allocate ESEA section 1003(a) funds to an LEA in order to serve any priority or focus school, if the SEA determines such schools are most in need of additional support.
7. Flexibility for Reward Schools: An SEA would have flexibility to use funds reserved under ESEA section 1117(c)(2)(A) to provide financial rewards to any **reward school**, if the SEA determines such schools are most appropriate for financial rewards.
8. Flexibility Regarding Highly Qualified Teacher (HQT) Improvement Plans: An LEA that does not meet its HQT targets would no longer have to develop an improvement plan under ESEA section 2141 and would have flexibility in how it uses its Title I and Title II funds. An SEA would be exempt from the requirements regarding its role in the implementation of these plans, including the requirement that it enter into agreements with LEAs on the uses of funds and the requirement that it provide technical assistance to LEAs on their plan. This flexibility would allow SEAs and LEAs to focus on developing and implementing more meaningful evaluation and support systems. An SEA would not be exempt from the requirement of ESEA section 1111(b)(8)(C) that it ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers; however, once more meaningful evaluation and support systems are in place in accordance with principle 2 (described below), an SEA may use the results of such systems to meet that requirement.

9. Flexibility to Transfer Certain Funds: An SEA and its LEAs would have flexibility to transfer up to 100 percent of the funds received under the authorized programs designated in ESEA section 6123 among those programs and into Title I, Part A. Moreover, to minimize burden at the State and local levels, the SEA would not be required to notify the Department and its participating LEAs would not be required to notify the SEA prior to transferring funds.
10. Flexibility to Use School Improvement Grant (SIG) Funds to Support Priority Schools: An SEA would have flexibility to award SIG funds available under ESEA section 1003(g) to an LEA to implement one of the four SIG models in any priority school.

An Optional 11th Waiver Provision

In addition to its request for waivers of each of the requirements above, an SEA may wish to request flexibility through a waiver related to the following:

Flexibility in the Use of Twenty-First Century Community Learning Centers (21st CCLC) Program Funds: An SEA would have flexibility under ESEA sections 4201(b)(1)(A) and 4204(b)(2)(A) to permit community learning centers that receive funds under the 21st CCLC program to use those funds to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session (*i.e.*, before and after school or during summer recess).

Waiver Application Timelines:

- States to notify USDOE by October 12, 2011 of intention to apply for a waiver.
- Applications due from SEAs in rounds according to their own readiness to implement the four principles:
 - Nov. 14, 2011, or
 - Feb. 2012, or
 - Sometime before the end of the 2011-12 school year.

Note: If a State needs more time to prepare its waiver application, it may request a “stop the clock” waiver to adjust its AMO’s based on 2011-12 assessment results.

SEA CONSULTATION Prior to Waiver Submissions

Each SEA must engage diverse stakeholders and communities in the development of its request. By engaging relevant stakeholders at the outset of the planning and implementation process, an SEA can ensure they have input in shaping the SEA’s comprehensive plan, which will help ensure successful implementation of the SEA’s plan. Ideally, an SEA will solicit input from stakeholders representing diverse perspectives, experiences, and interests, including those that will be impacted by and implement the policies included in the SEA’s plan, and will strengthen its request by revising it based on this input.

NOTE: *This is the best opportunity for SES providers and SES families to describe how they will be impacted if SES were no longer a mandated school improvement intervention.*

Each SEA must provide a description of how the SEA meaningfully engaged and solicited input on its request from teachers and their representatives. Each SEA must also provide a description of how the SEA meaningfully engaged and solicited input on its request from other diverse communities, such as students, parents, community-based organizations, civil rights organizations, organizations representing students with disabilities and English Learners, business organizations, and Indian tribes.

Relevant Definitions

1. **Priority School:** A “priority school” is a school that, based on the most recent data available, has been identified as among the lowest-performing schools in the State. The total number of priority schools in a State must be at least five percent of the Title I schools in the State. These schools are publically listed in the 2011-2012 school year. A priority school is—
 - a school among the lowest five percent of Title I schools in the State based on the achievement of the “all students” group in terms of proficiency on the statewide assessments that are part of the SEA’s differentiated recognition, accountability, and support system, combined, and has demonstrated a lack of progress on those assessments over a number of years in the “all students” group;
 - a Title I-participating or Title I-eligible high school with a graduation rate less than 60 percent over a number of years; or
 - a Tier I or Tier II school under the SIG program that is using SIG funds to implement a school intervention model.

2. **Focus School:** A “focus school” is a Title I school in the State that, based on the most recent data available, is contributing to the achievement gap in the State. The total number of focus schools in a State must equal at least 10 percent of the Title I schools in the State. These schools are publically listed in the 2011-2012 school year. ***Tutoring may provided in these schools if the LEA elects this strategy.*** A focus school is—
 - a school that has the largest within-school gaps between the highest-achieving subgroup or subgroups and the lowest-achieving subgroup or subgroups or, at the high school level, has the largest within-school gaps in graduation rates; or
 - a school that has a subgroup or subgroups with low achievement or, at the high school level, low graduation rates.

An SEA must also identify as a focus school a Title I high school with a graduation rate less than 60 percent over a number of years that is not identified as a priority school.

3. **School Turnaround Principles:** Meaningful interventions designed to improve the academic achievement of students in priority schools must be aligned with all of the following “turnaround principles” and selected with family and community input:
 - providing strong leadership by: (1) reviewing the performance of the current principal; (2) either replacing the principal if such a change is necessary to ensure strong and effective leadership, or demonstrating to the SEA that the current principal has a track record in improving achievement and has the ability to lead the turnaround effort; and (3) providing the principal with operational flexibility in the areas of scheduling, staff, curriculum, and budget;
 - ensuring that teachers are effective and able to improve instruction by: (1) reviewing the quality of all staff and retaining only those who are determined to be effective and have the ability to be successful in the turnaround effort; (2) preventing ineffective teachers from transferring to these schools; and (3) providing job-embedded, ongoing professional development informed by the teacher evaluation and support systems and tied to teacher and student needs;
 - redesigning the school day, week, or year to include additional time for student learning and teacher collaboration;

- strengthening the school’s instructional program based on student needs and ensuring that the instructional program is research-based, rigorous, and aligned with State academic content standards;
- using data to inform instruction and for continuous improvement, including by providing time for collaboration on the use of data;
- establishing a school environment that improves school safety and discipline and addressing other non-academic factors that impact student achievement, such as students’ social, emotional, and health needs; and
- providing ongoing mechanisms for family and community engagement.

A priority school that implements one of the four SIG models is implementing an intervention that satisfies the turnaround principles. An SEA may also implement interventions aligned with the turnaround principles as part of a statewide school turnaround strategy that allows for State takeover of schools or for transferring operational control of the school to another entity such as a recovery school district or other management organization.

Next Steps:

EIA will continue to closely monitor additional guidance from the USDoE. In the meantime, the State consultation process will be a critical opportunity for the SES community to show its support for the continuation of after school tutoring as states and districts will have the option to continue these interventions under a waiver authority.

EIA is currently working with States and districts to ensure optimal implementation of SES in this current school year.

EIA will also work closely with States to assist them in devising improvements to after school tutoring in their waiver applications consistent with our legislative recommendations.

To help support our efforts on your behalf, join the EIA SES Coalition today—agreement is located on EIA’s website or contact Steve Pines at 800-252-3280.