



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

APR 24 2015

The Honorable Robert Hammond
Commissioner of Education
Colorado Department of Education
201 East Colfax Ave., Room 500
Denver, CO 80203

Dear Commissioner Hammond:

This letter serves as a response to the Colorado Department of Education's (CDE) March 9, 2015 request for waivers of certain requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, and other changes to its approved ESEA flexibility request. Specifically, CDE requested the following waivers:

- A waiver of ESEA sections 1111(b)(1)(B) and 1111(b)(3)(C)(i) that, respectively, require a State educational agency (SEA) to apply the same academic content and academic achievement standards to all public schools and public school children in the State and to administer the same academic assessments to measure the achievement of all students. CDE requested these waivers so that a local educational agency (LEA) is not required to double test—
 - a student who is not yet enrolled in high school but who takes advanced high school level mathematics coursework and corresponding assessments; or
 - a student in Grade 3 or Grade 4 who is participating in the 2014–2015 school year field test of CDE's Spanish Language Arts Assessment;
- A waiver of ESEA section 1111(b)(3)(C)(ix)(I), which requires an SEA and each LEA to provide for the participation of all students on the State assessment. CDE requested this waiver in order to remove students whose parents refuse to permit them to participate in the State assessments from the list of non-participants that would count against a school or district should the school or district fall below the 95 percent assessment participation requirement.

After reviewing CDE's request, pursuant to my authority under ESEA section 9401, I am granting a one-year waiver (for school year 2014–2015) of ESEA sections 1111(b)(1)(B) and 1111(b)(3)(C)(i) and the corresponding regulatory provisions in order that LEAs in Colorado are not required to double test students in the following situations:

- CDE may use, with respect to a student who is not yet enrolled in high school but who takes high school mathematics coursework and the corresponding high school assessment, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. In implementing this waiver, CDE will use the advanced assessment taken at the middle school level for middle school accountability and CDE will administer a higher-level

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mathematics assessment in high school to those students who take the advanced assessment in middle school and use that higher-level mathematics assessment for high school accountability. Colorado law (Section 22-7-1013, C.R.S.) requires local school boards to adopt policies for academic acceleration, which can include the systems and procedures to allow students in middle school grades to participate in high school courses.

- For a student in Grade 3 or Grade 4 who is participating in the 2014–2015 school year field test of CDE’s new Spanish Language Arts Assessment, CDE is not required to also administer the Colorado English Language Arts Assessment. This waiver applies only to third- and fourth-grade students who are native Spanish speakers, who are within their first three years of schools within the United States, and who are enrolled in an English language proficiency program that provides academic instruction in Spanish. I understand that 971 students in 97 schools in 17 school districts will participate in the field test. I am approving the waiver for this situation based on the understanding that—
 - The Spanish Language Arts Assessment is aligned to college- and career-ready standards.
 - Students participating in the field test are taking the full form of the assessment.
 - Students participating in the field test are participating in CDE’s English language proficiency assessment.

In addition, as a condition of approving the waiver as it relates to the Spanish Language Arts Assessment field test—

- CDE must report performance against annual measurable objectives (AMOs) for subjects and grades that are not part of the field test for a school that has students participating in the field test and for all schools that do not have students participating in the pilot.
- CDE must continue to meet all other obligations with respect to reporting the achievement of students who take the statewide assessments.
- CDE will make accountability determinations for all schools in the State based on the students who take the statewide assessments administered in the 2014–2015 school year, consistent with the State’s minimum number of students necessary to produce statistically valid and reliable results and the State’s small school review procedures. (Please note that the U.S. Department of Education (ED) acknowledges that CDE indicated, as part of its ESEA flexibility renewal request, that it wishes to maintain the school ratings for the 2015–2016 school year that it applied in the 2014–2015 school year. This request will be handled as part of the State’s ESEA flexibility renewal request.)
- CDE will submit the Spanish Language Arts Assessment for peer review as part of its statewide assessment system when ED reinstates the assessment peer review process.

I am denying CDE’s request for a waiver of ESEA section 1111(b)(3)(C)(ix)(I), which requires an SEA and each LEA to provide for the participation of all students on the State assessments. CDE requested this waiver so that it may remove students whose parent refuse to permit them to participate in the State assessments from the list of non-participants that would count against a school or LEA should the school or LEA fall below the 95 percent assessment participation requirement. ESEA section 1111(b)(3)(C)(ix)(I) is critical for ensuring that an SEA and LEAs can identify the learning progress of all students against the same high expectations. This requirement 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.

The assessment requirements under the ESEA are focused on ensuring that parents and educators have the information they need to help every student be successful by providing a measure of school and district accountability and on protecting equity for all students by maintaining a consistent measure of student performance regardless of where they go to school. A high-quality, annual statewide assessment system is essential to providing critical information regarding student achievement to parents and educators at all levels. When that system is aligned with the academic content standards that establish what a State expects all children to know and be able to do, and with the academic achievement standards that determine how well students are mastering the material in the content standards, it provides the road map for aligning instruction to the academic needs of students identified by the assessment system. High-quality, annual, statewide assessments provide information on *all* students so that educators can improve educational outcomes, close achievement gaps between subgroups of historically underserved students and their more advantaged peers, increase equity, and improve instruction.

As part of its request, the CDE also requested an amendment to Principle 3 of its approved ESEA flexibility request to give LEAs discretion with respect to the weight for which student growth will be included in teacher and principal evaluation and support systems for the 2014–2015 school year only. CDE’s amendment request to ED regarding Principle 3 of its ESEA flexibility request remains under review and will be addressed with a separate response.

If you have any questions, please contact me or have your staff contact Faatimah Muhammad at Faatimah.Muhammad@ed.gov or (202) 453-6827. Thank you for your continued focus on enhancing education for all of Colorado’s students.

Sincerely,



Deborah S. Delisle
Assistant Secretary