



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

May 3, 2012

The Honorable Robert Hammond  
Commissioner of Education  
Colorado Department of Education  
201 E. Colfax Avenue, Suite 500  
Denver, Colorado 80202

Dear Commissioner Hammond:

I am writing in response to the Colorado Department of Education's (CDE's) request to waive certain requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. In particular, CDE requested waivers of the requirements of (1) ESEA sections 1116(a)(1)(A)-(B) and 1116(c)(1)(A) and the corresponding regulatory provisions that require each local educational agency (LEA) and the State educational agency (SEA) to determine adequate yearly progress (AYP) for all schools and LEAs, respectively; and (2) ESEA sections 1113(a)(3)-(4) and 1113(c)(1) and the corresponding regulatory provisions that require an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. CDE submitted this request in response to a voluntary opportunity that the U.S. Department of Education provided to all SEAs requesting ESEA flexibility.

In addition, as part of its request for ESEA flexibility, CDE requested a waiver of ESEA section 3122(a)(3)(A)(iii), which requires an SEA to include, as the third of three annual measurable achievement objectives (AMAO 3) used in making accountability determinations under Title III of the ESEA, objectives based on making adequate yearly progress (AYP) for the subgroup of English Learners in accordance with section 1111(b)(2)(B) of the ESEA. Making AYP includes meeting annual measurable objectives (AMOs) in reading/language arts and mathematics, the minimum participation rate of 95 percent, graduation rate for high schools, and the other academic indicator for elementary and middle schools. CDE requested this waiver so that it may use for AMAO 3 the same targets for English Learners as CDE uses for all students in its State-developed differentiated recognition, accountability, and support system in reading, writing, and mathematics, in place of the State's new AMOs.

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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.*

After reviewing CDE's request, I am granting, pursuant to my authority under ESEA section 9401, the following waivers:

- A two-year waiver of ESEA sections 1116(a)(1)(A)-(B) and 1116(c)(1)(A) and the corresponding regulatory provisions so that CDE and its LEAs are not required to make AYP determinations based on assessments administered in the 2011–2012 and 2012–2013 school years, respectively. I am granting this waiver because it is likely to increase the quality of instruction and improve the academic achievement of students by enabling CDE and its LEAs to focus on implementing the differentiated recognition, accountability, and support system described in its approved ESEA flexibility request that CDE believes will better differentiate among schools and provide more useful information on LEA and school performance to educators, parents, and the public than AYP does.
- A two-year waiver of ESEA sections 1113(a)(3)-(4) and 1113(c)(1) and the corresponding regulatory provisions so that CDE may permit, for the 2012–2013 and 2013–2014 school years, an LEA to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that CDE has identified as a priority school even if that school has a lower poverty rate than other Title I-participating schools in the LEA. I am granting this waiver based on my determination that, because these high schools have low graduation rates, receiving Title I, Part A funds would enable them to better increase the quality of their instruction and improve the academic achievement of all of their students, and concurrently to increase their graduation rates.
- A two-year waiver of ESEA section 3122(a)(3)(A)(iii) so that CDE may use, for purposes of AMAO 3, the same targets that is uses in the growth component of its State-developed differentiated recognition, accountability, and support system in reading, writing, and mathematics, in place of the State's new AMOs. Colorado's targets for student performance are an essential part of its School and District Performance Frameworks, on which the State's new Title I accountability system is based. Although Colorado's AMOs reflect the State's aspirations for the proficiency of all students and all student subgroups, the School and District Performance Frameworks are directly linked to school and district identification, as well as the supports and consequences related to that identification. Accordingly, granting this waiver is likely to increase the quality of instruction and improve the academic achievement of English Learners by providing consistent and meaningful improvement targets for LEAs that are directly linked to the support to be provided to English Learners through CDE's accountability system.

As CDE has assured in its request, it must:

- Report on its State report card the following data, which mirror the components of AYP:
  - For the "all students" group and each subgroup described in ESEA section 1111(b)(2)(C)(v)(II) —
    - information on student achievement at each proficiency level;
    - data comparing actual achievement levels to the State's annual measurable objectives (AMOs);
    - the percentage of students not tested;



- performance on the other academic indicator for elementary and middle schools; and
  - graduation rates for high schools.
- Ensure that its Title I LEAs report the above-referenced data on their local report cards for each school and the LEA as a whole.
  - Continue to comply with all other reporting requirements in ESEA section 1111(h)(1)(C) and ensure that its LEAs continue to comply with all other reporting requirements in ESEA section 1111(h)(2)(B), including the requirement for both the SEA and LEAs to report information on achievement at each proficiency level disaggregated by gender and migrant status.
  - Hold any Title I-eligible high schools that are served through the waiver of ESEA section 1113 accountable for meeting CDE's new AMOs and include those schools in its differentiated recognition, accountability, and support system as it does all other Title I schools.
  - Ensure that any LEA that takes advantage of the waiver of ESEA section 1113 with respect to Title I-eligible high schools implements interventions in those schools consistent with the turnaround principles as set forth in CDE's ESEA flexibility request and complies with all other Title I requirements with respect to the schools.
  - Continue to include in AMAO 3 a determination of whether the subgroup of English Learners has met the required 95 percent participation rate and the CDE's graduation rate goal or target or the other academic indicator, as applicable.

I appreciate the work you are doing to move forward with implementing your approved ESEA flexibility request. If you have any questions, please contact Victoria Hammer via email or phone at [Victoria.Hammer@ed.gov](mailto:Victoria.Hammer@ed.gov) or 202-260-1438.

Sincerely,



Michael Yudin  
Deputy Assistant Secretary of Policy and  
Strategic Initiatives  
Delegated Authority to Perform the  
Functions and Duties of the Assistant  
Secretary for Elementary and Secondary  
Education