



## OVERVIEW OF ESEA WAIVER FLEXIBILITY PROGRAM

### BACKGROUND: THE ROLE OF FEDERAL ACCOUNTABILITY IN IMPROVING OUTCOMES FOR ALL STUDENTS

The Elementary and Secondary Education Act (ESEA), passed in 1965, was a landmark legislation of both public education and civil rights history. It established a key role of the federal government as ensuring that every child has equal access to a quality education. The No Child Left Behind (NCLB) Act of 2002, the most recent reauthorization of this law, required for the first time that states and districts “shine a bright light” on the academic performance of all student subgroups (i.e. Native, Asian, African American, Hispanic, White, Low-Income, Limited English Proficient Students, and Special Education Students.)

In setting goals for all student subgroups to become proficient in reading and mathematics by the 2013-14 school year, NCLB set a clear accountability framework of annual benchmarks which would trigger interventions and supports if schools did not meet them. However, states found that this “one-size-fits-all” framework had placed strains on their education systems, including the problem of over-identifying schools as low-performing.

### FLEXIBILITY FROM FEDERAL EDUCATION LAW

Attempts to address these and other concerns through ESEA reauthorization, originally expected in 2008, have failed in Congress. Due to this delay, the U.S. Department of Education (ED) announced on September 16, 2011 an “ESEA Flexibility Waiver program,” which offered states an opportunity to apply for waivers from certain provisions in exchange for designing and implementing reforms supported by the Administration. Through this program, states were able to waive certain accountability provisions of NCLB, including 100% proficiency in reading and mathematics by 2014. In addition, states were no longer required to intervene (i.e. through improvement, corrective action, or restructuring), in Title I schools that fail, for two consecutive years or more, to make Adequate Yearly Progress (AYP), according to NCLB’s framework of annual benchmarks toward the 100% goal.

Through the waiver application, approval and monitoring process, ED intends to hold states and the District of Columbia, as well as the Bureau of Indian Education, accountable for improving student outcomes. ED has outlined specific principles states must follow in exchange for waiving NCLB accountability provisions. These principles include:

- 1) Adoption and implementation of college- and career-ready (CCR) standards, supported by high-quality assessments for grades 3-8 and once in high school, aligned to accurately measure CCR standards.
- 2) Development of differentiated accountability, support and reward systems for districts and schools that drive continuous improvement in graduation rates and achievement for all subgroups.
- 3) Development and implementation of new teacher and principal evaluation systems, in which student growth, as shown in CCS-aligned test data, is a significant factor, to support and evaluate effectiveness.

ED also decided to allow states to revise federally mandated policies that had become outdated or deemed impractical. However, many new policies approved under the waivers may fail to hold each state, district and school accountable for providing a high quality education to every student.

### EQUITY CONCERNS WITHIN APPROVED STATE WAIVERS

The Campaign for High School Equity, and others who have analyzed these waivers, have found disturbing trends that raise serious concerns about the ESEA Flexibility Waiver Program’s impact on students. While the intent of the ESEA Flexibility Waiver program is to support state leadership and innovation in the design of their accountability systems, the great risk for certain students, especially students of color, Native students, English language learners (ELLs), and low-income students, is that the complexity and individual variation of the state waiver plans greatly diminishes the

transparency of the accountability system under NCLB. This makes it very difficult for policymakers, educators, parents and the public to understand and monitor how accountability is serving to identify the needs of these students and to trigger necessary interventions for them.

Our concerns include:

- The use of “super subgroups,” which combine multiple ESEA subgroups and/or create new subgroups by achievement level regardless of ethnic/racial/economic status, and masks individual subgroup performance.
- Annual Measurable Objectives (yearly targets in reading and mathematics for each subgroup) are no longer required in state accountability systems to identify schools in need of improvement or trigger interventions in those schools.
- Significantly fewer schools are identified for support or improvement under waiver plans than under NCLB. Overall, 2,842 fewer schools have been identified as being in need of interventions under state waivers.
- While states indicate that more students are captured under state accountability system through waivers, it is unclear if states can demonstrate they are actually intervening and serving this larger pool of students.
- States with A to F accountability ratings for schools lack more robust data analysis to ensure schools with large gaps are not being missed.

There are additional concerns with the process by which ED is monitoring the implementation of these waivers.

Specifically:

- Failure to meaningfully engage civil rights and other equity-based organizations in review and monitoring of state waivers.
- Lack of transparency and support for public engagement by not providing data and detailed monitoring reports on its *ED.Gov* website.
- Lack of assurance by ED that it will take enforcement actions when states fail to accomplish what they said they would do in their initial waiver application.
- Lack of clarity on how ED is holding states accountable in addressing issues found in the ED monitoring reports in a timely manner.

## **RECOMMENDATIONS**

CHSE looks forward to working with Congress and other advocates to press ED and states to improve the ESEA flexibility waiver process and strengthen state accountability planning and implementation to ensure that the needs of underserved students are clearly identified and effectively met. CHSE strongly encourages the following actions:

The U.S. Department of Education should:

- Actively drive improved ESEA subgroup achievement;
- Ensure transparency in state accountability systems;
- Better monitor states’ Annual Measurable Objectives;
- Engage diverse stakeholders; and
- Ensure the creation of super subgroups does not subsume the needs of historically underserved students.

Individual states need to publicly disaggregate student subgroup data for accountability purposes; focus on student achievement as well as student growth and provide transparent and accessible data to the public. Legislators and education advocates should encourage ED to improve its monitoring by being more robust, independent and inclusive, and use multiple sources of data in evaluating state progress. Advocacy groups should engage and support state and local advocates to provide “robust consultation” with states in the development of their waiver applications for submission early next year.

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