



south dakota
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September 3, 2015

Via email (OSS.South_Dakota@ed.gov) and First Class U.S. Mail

Ann Whalen
U.S. Department of Education
Office of Elementary and Secondary Education
400 Maryland Ave. SW
Washington, D.C. 20202

Re: Request for reconsideration of high-risk designation
State of South Dakota

Dear Acting Assistant Secretary Whalen:

On August 21, 2015, I received your response to South Dakota's request for renewal of ESEA flexibility. In that response, the United States Department of Education (US DOE) renewed approval of South Dakota's ESEA flexibility request through the end of the 2015-2016 school year but placed South Dakota on high-risk status. Your letter also states that if South Dakota does not submit a request for reconsideration, South Dakota's high-risk status will be considered final. Please consider this South Dakota's request for reconsideration of the high-risk designation.

Before addressing the specific facts which demonstrate why South Dakota should not be placed on high risk status, I must address two initial matters. First, the August 21 letter states that the high-risk determination was made "pursuant to the authority in 34 C.F.R. § 80.12." However, it appears that rule has been removed and reserved. 79 FR 76095 (Dec. 19, 2014). This places South Dakota at a disadvantage in formulating its reconsideration request. It is hard to fully provide "a detailed description setting forth the basis for [the] belief that [the high risk] designation is improper," without having been provided with the specific section(s) and subsection(s) of the Code of Federal Regulations that US DOE is relying upon to make its designation or an explanation of why § 80.12 is being cited. Therefore, South Dakota requests clarification of US DOE's authority and criteria for the high-risk determination and reserves the right to supplement when that clarification is provided.

Second, the meaning of high-risk status in the context of a waiver is unclear. The letter states that failure to comply with the stated conditions will result in South Dakota being “required to return to implementing ESEA in school year 2016-2017.” By also placing South Dakota on high-risk status, it is unclear whether US DOE is implying that there would be additional automatic consequences for failure to comply with the conditions, such as suspension or termination of funds. Again, South Dakota requests clarification on this matter.

Turning to the specific reasons why the high-risk designation is improper, South Dakota believes that its system does, in fact, meet the ESEA Flexibility requirements established by US DOE. In describing how test results should be used, US DOE has repeatedly used the phrase “significant factor.” Regarding how that is determined, US DOE has specifically stated that “an SEA has discretion to determine how student growth is included as a ‘significant factor’ and to determine the other measures an LEA must use in defining its performance levels.”¹

Relying on that guidance, South Dakota worked closely with the education field, in particular the South Dakota Education Association (SDEA), to develop a system that uses state test results in a way that makes them both meaningful and practical, and hence a significant factor. The system balances both professional practices and student growth through the use of student learning objectives (SLOs).

The teacher effectiveness system requires teachers in tested grades and subject areas to use state test results to develop SLOs, which indicates growth between two points in time. The principal effectiveness system builds on the idea of measuring student growth through SLOs, informed by state test results. The principal effectiveness system also specifically focuses on school performance as measured by annually measurable objective (AMO) targets, which are based on state test results, and/or goals specific to the indicators on the School Performance Index. At the high school level, those indicators include academic performance, high school completion, college and career readiness, or some combination of these factors, all of which measure school performance. In addition, South Dakota has invested significant financial and human resources over the last two years to provide SLO training to teachers and administrators across the state so the system could be implemented in a consistent and high quality manner. More than 6,200 (of approximately 9,000) teachers attended SLO trainings.

Additionally, there is no history of unsatisfactory performance or failure to comply with terms and conditions of prior awards. South Dakota submitted its revised plan for Principle 3 to US DOE on June 26, 2013, and has always been extremely forthcoming with US DOE about the system and how it would use test scores as part of the Student Learning Objectives (SLO) process. US DOE staff has indicated concerns but always continued to encourage

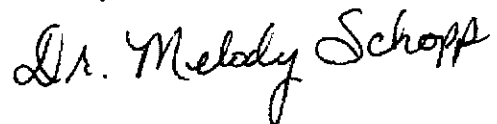
¹ FAQ document, revised Aug. 3, 2012.

South Dakota to keep moving ahead. There is simply no history of risk demonstrating that high-risk status is appropriate.

Perhaps it all comes down to this philosophical difference: In South Dakota, we trust our teachers and school administrators to do the right things for students. We openly acknowledge that we can always improve our system, but bottom line: We believe in our educators. Our system reflects that philosophy.

For these reasons, South Dakota respectfully requests that US DOE reconsider and remove the high-risk designation.

Sincerely,

A handwritten signature in black ink that reads "Dr. Melody Schopp". The signature is written in a cursive, flowing style.

Dr. Melody Schopp
Secretary
South Dakota Department of Education

cc: Celeste McLaughlin
Stephanie Washington