



Disability Rights Education & Defense Fund



Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Dear Secretary Duncan:

We are writing to express our concerns about waivers granted to states and districts under the Elementary and Secondary Education Act (ESEA) and to offer our recommendations for the ongoing waiver process, including upcoming extensions and renewals. It's important to stress that we do not object to waivers per se. We think the U.S. Department of Education (USDOE) made the correct decision to allow states to revise federally mandated policies that had become outdated or impractical, especially in light of Congress' failure to revise ESEA since the last reauthorization in 2002.

However, it is crucial that the Department uphold its responsibility to monitor waiver implementation and determine whether states and districts are adequately serving the students who are the intended beneficiaries of ESEA's policies i.e., students of color, students from low-income families, English language learners, and students with disabilities. The recent report by the Campaign for High School Equity raises serious concerns about whether states' new accountability systems maintain an adequate focus on closing achievement gaps between these groups and their more advantaged peers.

We request that states be required as part of their application for waiver extension and renewal to present evidence—including student achievement and graduation rate data wherever applicable—to justify the new policies they have adopted under waivers. USDOE should use this information to determine whether or not their existing waiver should be extended or renewed as currently constituted. If states cannot present evidence that their waiver plans work as intended and preserve the best interests of the students, they should be compelled to change those policies. Here are our recommendations.

Super Subgroups

One of the most concerning and risky changes made to state accountability systems was the creation by some states of “super subgroups.” Ostensibly, states were allowed to aggregate the performance of students from different subgroups into one super subgroup such that in instances where “N” sizes were too low for one or more particular subgroups to count within the system, the grouping of at least two or more subgroups together would increase the N size such that more students within these subgroups would be accounted for in the state’s revised accountability system.

We urge you to consider the following questions before deciding if and when the use of super subgroups should be continued by a State:

- How many students that would have been included in a subgroup prior to waivers are now being included in the super subgroup for accountability purposes? How often are super subgroups made up of subgroups for which N sizes would have been prohibitively small? How many are not?
- What is the impact of basing accountability decisions on super subgroups? Meaning, how many more or how many fewer schools and students are receiving intervention due to the use of super subgroups in comparison to the state’s accountability system prior to ESEA flexibility?

If there is indication in a state that super subgroups are comprised of subgroups for which N sizes would have been sufficient for separate analysis and/or that subgroup performance is being masked by super subgroup averages, the use of super-subgroups should be eliminated.

Graduation Rates

Graduation rate calculations must return to what was required by the 2008 regulations (34 C. F. R. § 200.19(b)) for the purposes of both reporting and accountability – As a condition for receiving ESEA flexibility, USDOE required states to implement “college- and career ready expectations for all students,” achieved through both accountability and the implementation of new standards and assessments. This is a reasonable and worthy expectation, however, we believe that allowing states to use substandard and inaccurate calculations of the high school graduation rate runs contrary to the college- and career-ready objective.

Because USDOE’s graduation rate regulations are not being fully implemented, a number of states have adopted harmful practices in the way they calculate graduation rates for accountability. These practices include the use of GEDs, which have questionable long-term value for the student and inappropriately reward the school from which the student dropped out. They also include the use of alternative and inaccurate calculations entirely, such as the use of dropout and leaver rates and the use of the extended-year rate that fails to incentivize schools to graduate students within the standard number of years.

As such, we request that the calculation for graduation rates defined by the 2008 regulations (34 C. F. R. § 200.19(b)) be reinstated as the only calculation allowable for all accountability purposes, including for both annual measurable objectives and super subgroups.

Require states using extended-year graduation rates to set more ambitious objectives - USDOE's guidance accompanying the 2008 regulations clearly articulates the expectation that the use of an extended-year graduation rate would be accompanied by more rigorous annual targets for the extended-year graduation rate than for the four-year graduation rate. **We urge USDOE to fully implement this policy by requiring states using an extended-year adjusted cohort graduation rate to set higher graduation rate targets for the extended-year rate than for the four-year adjusted cohort rate.**

States using an extended-year rate should also indicate whether, for purposes of the 60 percent trigger for priority/focus school identification, whether or not the four-year adjusted cohort rate is used for this determination. If an extended-year rate is used, the state should raise the 60 percent trigger accordingly. This is important because using an extended-year graduation rate affects the number of high schools identified for district intervention. The use of an extended-year rate without raising the 60 percent trigger may not identify high schools with four-year graduation rates below 60 percent, potentially preventing them from receiving needed support. Our analysis indicates that Colorado, Massachusetts, Minnesota, Missouri, Oregon, Rhode Island, and Washington use an extended-year rate, but have not raised the 60 percent trigger for identification of focus and priority schools.

Restore subgroup accountability on graduation rates - We are deeply appreciative of USDOE's decision to require states to intervene in schools that miss their subgroup graduation rate targets. Based on our analyses, under existing waivers, 11 states have weak or non-existent subgroup accountability for graduation rates, which put lower-performing students at risk of not receiving the support they need to graduate college- and career-ready. We urge USDOE to be vigilant in its oversight on this issue as the waiver renewal process advances.

Modified Achievement Standards for Students With Disabilities

We appreciate and applaud the Department's recent move to prohibit states from testing a portion of their student's with disabilities on modified achievement standards through an alternate assessment (the 2% regulation). We were also pleased that discontinuing use of the 2% test was a requirement for any state that received a waiver. In considering renewals, we urge the Department to ask states to clearly outline their plans for ending these assessments and transitioning children to the general assessment. States should disclose their timeline, description of how they intend to provide professional development to educators and inform parents and other community stakeholders about the process.

Priority and Focus Schools

Require states to annually refresh their list of schools in need of improvement – We agree that it isn't useful for struggling schools to stop receiving support as soon as they cross back over the 5% or 10% threshold necessary to be identified as in need of improvement. This risks having borderline schools bounce repeatedly into and out of "priority" or "focus" status without ever truly having improved, as would be the case for states that refresh their lists annually.

To avoid such circumstances, many states opted not to set a timeframe for identifying additional schools with the "priority" or "focus" labels under waivers. Unfortunately, due to this policy, many students may be stuck in failing schools without receiving appropriate support from their districts or states, which is

unacceptable. Our children cannot afford to sit idly by in substandard schools, waiting until states get around to doing something about their situation.

We believe there is a better approach to this problem. In order to meet these concerns, we request that each state be required to identify “priority” and “focus” schools each year. We also request for USDOE to establish a substantially different and clear threshold by which these schools are no longer required to undergo intervention.

Use of Available Information to Inform Decision-making

Specifically, we ask that states be required to provide answers to these questions using state data prior to being approved for any renewal:

- How are accountability indices, such as an “A-F grading” accountability system, serving the best interests of students? Do these ratings correspond to the actual performance of students in each school?
- For states employing multiple accountability formulae: What are the results of each accountability determination (e.g., number of A-F schools, priority schools)? What is the overlap between the formulas? Are there significant differences between the rating schools get through each accountability system that may be a misrepresentation to policymakers and the public?
- How do schools with graduation rates less than 60% fare in the accountability system under waivers? Are states intervening in all of these schools? For states employing an accountability index, how many schools have experienced a decrease in their graduation rate, but an increase in performance in other areas of student achievement as compared to the years immediately prior to implementing their waiver plan and are they being identified? What does the state require in schools that have an ESEA subgroup graduation rate less than 60% but an overall graduation rate of 60% or more?
- What is the impact of state policies that cap priority and focus group at 5% and 10% percent of schools? What are the common characteristics (e.g., elementary or high school, large or small, urban or rural) and demographics of the schools that fall into those categories?
- How many schools that had previously been in any stage of “in need of improvement” are either a priority or focus school? How many that had previously been in any stage of “in need of improvement” are not either a priority or focus school, and how have these schools performed since?

Public Transparency

Any data analysis conducted of waiver states should be made available to the public – We are encouraged that USDOE has begun to conduct a data analysis of the differentiated recognition, accountability, and support systems implemented by states under waivers. However, we do not understand the hesitance of USDOE in making its findings available to the public. A USDOE spokesperson would only commit to “look to make the data public” when asked about the Department’s plans. Parents and stakeholders have a

right to know about the deficiencies in their state's implementation of their waiver plans and accurate information regarding the performance of these schools. **We request that all such data, along with the details of any findings uncovered during USDOE's analysis of the data, be made available to the public prior to the approval of any application for waiver renewal.** All reporting on the performances of states under waivers, including student achievement data, must be released sufficiently prior to granting any extensions or renewals.

All public reporting should be presented in a clear, concise, and coherent manner – With potentially 50 states and the District of Columbia all reporting on different metrics at different times, it is vital that students and their families and stakeholders have access to data in a format that is easily understandable. Families and stakeholders should not be required to scour hundreds of pages of documents in effort to find the information they need. **We request that USDOE ensure that when it disseminates any information or data on the performances of schools, districts, and states under waivers that these reports are presented such that they are easily understood, consistent among all reports, and as succinct as possible while still providing sufficient information. Wherever possible, USDOE should create common templates for states to use in their public reporting.**

Fully Ensure Community Input Regarding Renewal of Applications

Page 4 of USDOE's guidance on ESEA Flexibility, provides a framework by which states were required to consult with the public in developing its application, stating:

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.

Unfortunately, this too often did not occur as was intended. The framework by which many states elected to fulfill this requirement ensured that only a select few stakeholders had the opportunity to have their voices heard. As most notably happened in Virginia, this lack of appropriate consultation sparked an outcry from community stakeholders in response to an application that did not meet the needs of the states' students and set differentiated expectations for the achievement levels of students of color. We appreciate the language USDOE has included in the guidance for waiver renewals requiring SEAs to document the changes made to their waiver applications as a result of input from community consultation. Still, we recommend that additional specificity be provided to avoid a repeat of this scenario.

We request that USDOE set clear guidelines for how a state will consult with its citizens as part of any waiver renewal application. Further, it should be prepared to reject any application from a state that does not, in fact, fully and appropriately seek input from community leaders in the development of the application.

We understand that the issuance of initial waivers under ESEA represented unfamiliar territory, and that there were few precedents by which to guide the process. However, the renewal of these waivers provides an opportunity to use what we have learned so far to make the necessary changes. We look forward to

working with you throughout this process to ensure that every child receives the high-quality education they deserve.

Sincerely,

A+ Denver

Alliance for Excellent Education

ConnCAN

Democrats for Education Reform

Disability Rights Education & Defense Fund

Education Reform Now

Educators4Excellence

League of Education Voters

MinnCAN

National Center for Learning Disabilities

National Council of La Raza (NCLR)

Step Up for Students

StudentsFirst