



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

April 24, 2014

Honorable Randy Dorn
Superintendent of Public Instruction
State Department of Public Instruction
P.O. Box 47200
Olympia, WA 98504

Dear Superintendent Dorn:

This letter responds to your letter of March 27, 2014, in which you formally requested a one-year extension of the flexibility I granted to Washington under the Elementary and Secondary Education Act of 1965 (ESEA). I appreciate your continuing interest in ESEA flexibility and was pleased to hear that, as a State leader, you believe it has enabled school improvement efforts in Washington to significantly increase student achievement.

As you know, Washington's request for ESEA flexibility was approved based on Washington's commitments to carry out certain actions in support of key education reforms. In return for those commitments, we granted your State and your local school districts significant flexibility. However, Washington has not been able to keep all of its commitments. Thus, although Washington has benefitted from ESEA flexibility, I regret that Washington's flexibility will end with the 2013–2014 school year.

One of the commitments that Washington — and every State that received ESEA flexibility — made was to put in place teacher and principal evaluation and support systems that take into account information on student learning growth based on high-quality college- and career-ready (CCR) State assessments as a significant factor in determining teacher and principal performance levels, along with other measures of professional practice such as classroom observations. These systems also require that all teachers and principals receive robust, timely, and meaningful feedback on their performance and support in order to inform and improve instruction so that all students meet the expectations of new CCR standards. Including student learning growth as a significant factor among the multiple measures used to determine performance levels is important as an objective measure to differentiate among teachers and principals who have made significantly different contributions to student learning growth and closing achievement gaps.

Because Washington first made that commitment in its waiver application of February 27, 2012, and Washington was unable to take the steps necessary to fulfill that commitment even after having been given an additional school year (2012–2013) to do so, it was placed on high-risk status on August 14, 2013. Washington's high-risk designation specified that the State must submit, by May 1, 2014, final guidelines for teacher and principal evaluation and support systems that meet the requirements of ESEA flexibility, including requiring local educational

agencies (LEAs) to use student achievement on CCR State assessments to measure student learning growth in those systems for teachers of tested grades and subjects. Your March 27, 2014, letter indicates that the State will be unable to provide such guidelines. I recognize that requiring the use of statewide assessments to measure student learning growth requires a legislative change, and that Governor Inslee and your office worked diligently to obtain that change. I thank you for your leadership and courage in those efforts.

However, because those efforts were unsuccessful, and your legislature is not scheduled to reconvene until January 2015, I cannot extend Washington's authority to implement ESEA flexibility, and Washington and its LEAs must resume implementing the requirements of Title I of the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), as well as all other ESEA requirements that were waived under ESEA flexibility, for the 2014–2015 school year. This means that, among other actions that the State and LEAs will have to resume, LEAs in Washington must once again set aside 20 percent of their Title I funds for public school choice and supplemental educational services rather than having the flexibility to use those funds for other activities to improve student achievement in low-achieving schools. Should Washington obtain the requisite authority to resolve its condition, I would be pleased to reconsider Washington's request to implement ESEA flexibility at any time.

I appreciate that transitioning back to NCLB is not desirable, and will not be simple. Attached for your reference is a list of NCLB requirements with which the State and its LEAs must resume complying starting with the 2014–2015 school year. Assistant Secretary for Elementary and Secondary Education Deborah Delisle will follow up with you to discuss the transition and help you think about ways to preserve the gains Washington has made under ESEA flexibility.

Thank you again for your leadership and your efforts to keep the commitments Washington made in its ESEA flexibility request. Thank you, as well, for your continued focus on enhancing education for all of Washington's children.

Sincerely,

/s/

Arne Duncan

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(1)	1003(a) ²	The ESEA requires an SEA to reserve four percent of its Title I, Part A allocation for school improvement activities and to distribute at least 95 percent of that reservation to LEAs for use in Title I schools in improvement, corrective action, or restructuring.	ESEA flexibility does not waive this reservation; ESEA flexibility permits an SEA to distribute section 1003(a) funds to LEAs for use in priority and focus schools.	Beginning with the first allocation of ESEA section 1003(a) funds following the termination of ESEA flexibility, an SEA must allocate funds only for use in Title I schools in improvement, corrective action, or restructuring.
(2)	1003(g)	The ESEA requires an SEA to award School Improvement Grant (SIG) funds to LEAs for Title I schools in improvement, corrective action, or restructuring.	ESEA flexibility permits an SEA to award SIG funds to an LEA to implement one of the four SIG models in any priority school.	Beginning with the first new awards of SIG funds following the termination of ESEA flexibility, an SEA may award SIG funds only for Tier I, Tier II, or Tier III schools under the SIG program. To the extent the SEA has already used this flexibility to award SIG funds to LEAs for priority schools that are not Tier I, Tier II, or Tier III schools, the schools may continue to receive the funds for the remainder of their three-year SIG grants, provided that the SIG-implementing school continues to implement the SIG model.

¹ The corresponding regulations that implement these statutory provisions were also waived for States implementing ESEA flexibility.

² In general, ESEA section 1003 provides school improvement requirements.

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(3)	1111(b)(2)(E) – (H) ³	The ESEA establishes the requirements for annual measurable objectives (AMOs).	ESEA flexibility permits an SEA to set new ambitious but achievable AMOs.	An SEA must calculate AMOs in accordance with ESEA section 1111(b)(2)(E) – (H) for the 2013–2014 school year. These AMOs will require 100 percent proficiency for the “all students” group and for all subgroups identified in ESEA section 1111(b)(2)(C)(v).
(4)	1114(a)(1) ⁴	The ESEA requires that a school have at least 40 percent poverty to be eligible to operate a schoolwide program.	ESEA flexibility permits an LEA to operate a schoolwide program in a priority school or a focus school that has less than 40 percent poverty that is implementing a schoolwide intervention.	Consistent with 34 C.F.R. section 200.25(b)(1)(ii), any school that operated a schoolwide program in the most recent school year may continue to operate a schoolwide program. Beginning with the 2014–2015 school year, a school that has less than 40 percent poverty and did not begin implementing a schoolwide program under ESEA flexibility in the 2012–2013 or 2013–2014 school year may not begin doing so.

³ In general, ESEA section 1111 provides State plan requirements.

⁴ In general, ESEA section 1114 provides schoolwide program requirements.

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(5)	1116(a)(1)(A) – (B) and 1116(c)(1)(A) ⁵	The ESEA requires an SEA and its LEAs to make adequate yearly progress (AYP) determinations for LEAs and schools, respectively.	ESEA flexibility waives the requirements for an SEA and its LEAs to make AYP determinations.	<p>An SEA and its LEAs must resume making AYP determinations in accordance with the ESEA requirements beginning with AYP determinations based on the results of assessments administered in the 2013–2014 school year.⁶</p> <p><u>AMOs</u> An SEA must use AMOs calculated in accordance with ESEA section 1111(b)(2)(E) – (H) for the 2013–2014 school year to make its AYP determinations. These AMOs will require 100 percent proficiency for the “all students” group and for all subgroups identified in ESEA section 1111(b)(2)(C)(v).</p> <p><u>Safe Harbor</u> A school may also make AYP under ESEA section 1111(b)(2)(D)(f) (<i>i.e.</i>, “safe harbor”), which provides that a school will be considered to have made AYP if the percentage of students not proficient decreases by 10 percent from the percentage of students not proficient in the preceding school year.</p>

⁵ In general, ESEA section 1116 provides LEA and school improvement requirements.

⁶ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(6)	1116(b) (except (b)(13))	The ESEA requires LEAs to identify schools for improvement, corrective action, or restructuring and to implement the corresponding requirements.	ESEA flexibility waives the requirement for an LEA to identify schools for improvement, corrective action, or restructuring and to implement the corresponding requirements.	<p>An LEA must resume identifying schools for improvement, corrective action, or restructuring. In doing so, the LEA must advance a school along the school improvement timeline under ESEA section 1116(b)(2) - (8) based on the school's status in the 2011-2012 school year.</p> <p>In addition, schools and the LEA must resume implementing the corresponding requirements for the 2014-2015 school year. These requirements include, but are not limited to, the requirement that the LEA spend an amount equal to 20 percent of its Title I allocation to provide supplemental educational services (SES) and transportation for public school choice to eligible students; the requirement that the LEA provide, not less than fourteen days prior to the first day of the school year, all students enrolled in a school identified for improvement, corrective action, or restructuring with notice of the public school choice option; and the requirement that the LEA provide all low-income students enrolled in a school identified for the second year of improvement, corrective action, or restructuring with the option to take advantage of SES.</p>

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(7)	1116(c)(3) and (5) – (11)	The ESEA requires an SEA to identify LEAs for improvement or corrective action and to implement the corresponding requirements.	ESEA flexibility waives the requirement for an SEA to identify LEAs for improvement or corrective action and to implement the corresponding requirements.	<p>An SEA must resume identifying LEAs for improvement or corrective action. In doing so, the SEA must advance an LEA along the LEA improvement timeline under ESEA section 1116(c)(3) – (10) based on the LEA’s status in the 2011–2012 school year.</p> <p>In addition, the SEA and its LEAs must resume implementing the corresponding requirements for the 2014–2015 school year. These requirements include, but are not limited to, the requirement that the SEA promptly provide notice to the parents of each student enrolled in a school served by an LEA identified for improvement that includes the results of the SEA’s annual review of the progress of the identified LEA, the reasons for that identification, and how parents can participate in upgrading the quality of the LEA. These requirements also include, but are not limited to, the requirement that LEAs identified for improvement shall, not later than three months after being identified, develop or revise an LEA plan that, among other things, addresses the professional development needs of the instructional staff serving the agency by committing to spend not less than 10 percent of the Title I, Part A funds received by the LEA, excluding funds reserved for professional</p>

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(8)	1116(e)	The ESEA requires an SEA and its LEAs to take a variety of actions to offer SES to eligible students in schools in improvement, corrective action, or restructuring.	ESEA flexibility waives the requirements for an SEA and its LEAs regarding offering SES.	development under ESEA section 1119. An SEA and its LEAs must resume the necessary actions to offer SES to eligible students in schools in the second year of improvement, corrective action, or restructuring, for the 2014–2015 school year. These actions include, but are not limited to, the requirements that each LEA with schools in the second year of improvement, corrective action, or restructuring provides annual notice to parents of the availability of SES, the identity of approved providers of SES, and a brief description of the services, qualifications, and demonstrated effectiveness of each SES provider.

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(9)	1117(b)(1)(B) ⁷	The ESEA limits the schools that may receive Title I, Part A funds reserved for the State awards program.	ESEA flexibility permits funds reserved for the State awards program to go to any Title I-eligible reward school.	Beginning with awards made following AYP determinations based on the results of assessments administered in the 2013-2014 school year, ⁸ an SEA may award funds reserved under ESEA section 1117(c)(2) only to a school that significantly closed the achievement gap between subgroups of students or exceeded AYP for two or more consecutive years. For purposes of determining whether a school exceeded AYP in the 2012-2013 school year, the SEA should determine whether the "all students" group and all subgroups in the school met their AMOs in reading/language arts and mathematics, the 95 percent participation rate requirement, and the State's graduation rate goal or targets or, for middle and elementary schools, whether the school met the other academic indicator.

⁷ In general, ESEA section 1117 provides school support and recognition requirements.

⁸ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

	ESEA SECTION¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(10)	2141(a), (b), (c) ⁹	The ESEA requires an LEA improvement plan for an LEA that fails to make progress toward reaching objectives for highly qualified teachers for two consecutive years, technical assistance from the SEA in developing the improvement plan, and SEA/LEA agreement on use of Title II, Part A funds for an LEA that misses AYP and fails to make progress toward reaching annual objectives for highly qualified teachers for three consecutive years.	ESEA flexibility waives each of these requirements for an LEA and SEA and lifts the restriction on the use of Title II, Part A funds.	<p>An SEA and its LEAs must resume complying with these requirements for the 2014–2015 school year. To meet the improvement plan and technical assistance requirements of ESEA sections 2141(a) and (b), an SEA and its LEAs must use highly qualified teacher data from both the 2012–2013 and 2013–2014 school years. To meet the SEA/LEA agreement requirements of ESEA section 2141(c), an SEA and its LEAs must use highly qualified teacher data from the 2011–2012, 2012–2013, and 2013–2014 school years and AYP data from the 2011–2012, 2012–2013, and 2013–2014 school years.</p> <p>For purposes of determining whether an LEA failed to make AYP in the 2011–2012 and 2012–2013 school years, the SEA should determine whether the “all students” group or any subgroup in the school missed any of its AMOs in reading/language arts and mathematics, the 95 percent participation rate requirement, or the State’s graduation rate goal or targets or, for middle and elementary schools, whether the school missed the other academic indicator.</p>

⁹ In general, ESEA section 2141 provides the technical assistance and accountability requirements for SEAs and LEAs in preparing, training, and recruiting high quality teachers and principals.

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(11)	6123(a) ¹⁰	The ESEA limits to 50 percent the amount an SEA may transfer from a covered program into another covered program or into Title I, Part A.	ESEA flexibility waives the percentage limitation, thereby permitting an SEA to transfer up to 100 percent of funds from a covered program.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA must comply with the 50 percent limitation on the amount it may transfer from a covered program into another covered program or into Title I, Part A.
(12)	6123(b)(1)	The ESEA limits to 50 percent or 30 percent the amount an LEA may transfer from a covered program into another covered program or into Title I, Part A.	ESEA flexibility waives the percentage limitations as well as the restrictions on the use of transferred funds.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, LEAs must comply with the 50 percent or 30 percent (as applicable) amount it may transfer from a covered program into another covered program or into Title I, Part A. An LEA in corrective action is no longer eligible to transfer funds.
(13)	6123(d)	The ESEA requires modification of plans to account for transfer and notice of transfer to the Secretary or the SEA, as appropriate.	ESEA flexibility waives these requirements for an SEA and its LEAs.	Beginning with transfers made with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA and its LEAs must resume complying with these requirements.
(14)	6123(e)(1)	The ESEA subjects transferred funds to the requirements of the program to which they are transferred.	ESEA flexibility permits an LEA to exclude funds transferred into Title I, Part A from the base in calculating any set-aside percentages.	Beginning with transfers made with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, an SEA and its LEAs must resume complying with this requirement— <i>i.e.</i> , include funds transferred into Title I, Part A in the base for calculating any set-aside percentages.

¹⁰ In general, ESEA section 6123 provides the requirements subject to which an SEA and its LEA may transfer funds.

ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(15) 6213(b)	The ESEA requires LEAs that fail to make AYP to use funds to carry out the requirements under ESEA section 1116.	ESEA flexibility permits an LEA that receives these funds to use them for any authorized purpose, regardless of whether the LEA made AYP.	An LEA that receives these funds and fails to make AYP based on the results of assessments administered in the 2013–2014 school year ¹¹ must resume using the funds only to carry out the requirements of ESEA section 1116 in the 2014–2015 school year.
(16) 6224(e) ¹²	The ESEA requires an SEA to permit an LEA that fails to make AYP to continue to receive a Small, Rural School Achievement grant only if the LEA uses funds to carry out ESEA section 1116.	ESEA flexibility permits an LEA that receives these funds to use them for any authorized purpose, regardless of whether the LEA made AYP.	An LEA that receives these funds and fails to make AYP based on the results of assessments administered in the 2013–2014 school year ¹³ must resume using the funds only to carry out the requirements of ESEA section 1116 in the 2014–2015 school year.
(17) 4201(b)(1)(A), 4204(b)(2)(A) ¹⁴	The ESEA requires a 21 st Century Community Learning Center (21 st CCLC) to provide activities during nonschool hours or periods when school is not in session.	ESEA flexibility permits an eligible entity to provide 21 st CCLC activities to support expanded learning time during an expanded school day, week, or year in addition to activities during nonschool hours or periods when school is not in session.	Beginning with the first 21 st CCLC competition conducted after the termination of ESEA flexibility, eligible entities may apply only to provide activities during nonschool hours or periods when school is not in session.

¹¹ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

¹² ESEA section 6224(e) provides the requirements subject to which determinations of continuing participation in the Small, Rural School Achievement Program shall be made.

¹³ States that received determination flexibility as part of field-test flexibility will work with ED to determine the appropriate assessment year from which to resume making AYP determinations for all LEAs and schools.

¹⁴ In general, ESEA sections 4201 and 4204 provide the requirements of the 21st Century Community Learning Centers Program.

	ESEA SECTION ¹	DESCRIPTION OF REQUIREMENT	DESCRIPTION OF WAIVER BEING TERMINATED	RESUMING COMPLIANCE WITH ESEA REQUIREMENT
(18)	1113(a)(3) – (4) and (c)(1)	The ESEA requires an LEA to rank and serve eligible schools according to poverty and allocate Title I funds to schools in rank order of poverty.	ESEA flexibility permits LEAs to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA identified as a priority school even if that school does not rank sufficiently high to be served based solely on the school's poverty rate.	Beginning with FY 2014 funds, <i>i.e.</i> , funds available to SEAs on July 1, 2014, LEAs must resume ranking and serving eligible schools according to poverty alone and allocating Title I funds to schools in rank order of poverty.