

ESEA Flexibility:

Department of Education Criteria and State Responses

by Allison Dunlap

The No Child Left Behind (NCLB) amendment to the Elementary and Secondary Education Act (ESEA) sets an ambitious goal for all U.S. schools: to have 100 percent of students proficient in English language arts and mathematics by 2013–14. As the deadline approaches, it has become increasingly clear that the nation's schools will not meet this goal.

School and government officials, research institutes, and many other organizations have identified several ways to revise NCLB so as to better promote student achievement. Among those seeking to improve NCLB is the U.S. Department of Education (ED), which has recently offered states the option of applying for flexibility regarding parts of the law.

The department's ESEA flexibility package allows qualifying states to waive 10 of the requirements, including the 2014 deadline for having all students proficient in reading/language arts and mathematics; the procedures for identifying and working with schools and districts in need of improvement; the requirements regarding a state's highly qualified teacher (HQT) targets; and certain requirements for how states spend federal funds. In turn for this flexibility, State Education Agencies (SEAs) must meet four major criteria determined by the Department of Education:

1. Demonstrate they have adopted college- and career-ready expectations for all students.
2. Develop and implement a system of differentiated recognition, accountability, and support.
3. Commit to developing, adopting, piloting, and implementing teacher and principal evaluation and support systems.
4. Remove duplicative and burdensome reporting requirements that have little or no impact on student outcome.

Not all states are prepared to meet these requirements, nor are all states applying for ESEA flexibility. According to the Department of Education (U.S. Department of Education [ED], States Intending, 2011), as of October 28, 2011, 16 states have declared their intent to apply for ESEA flexibility by November 14, and 23 states along with the District of Columbia and Puerto Rico have indicated they will apply by February of 2012. States applying for flexibility must demonstrate that they have fulfilled or will fulfill the four major requirements for ESEA flexibility.

This brief discusses ED's criteria, highlights state responses to those criteria, and provides recommendations.

I. College- and Career-Ready Expectations

The Department of Education requires that all states seeking ESEA flexibility demonstrate they have college- and career-ready expectations for all students, including students with disabilities and English-language learners (ELLs). States can demonstrate these expectations by adopting college- and career-ready standards

in reading/language arts and mathematics, developing and administering “high-quality assessments” that correspond to these standards, and measuring “student growth” based on these assessments in grades 3–8 and once in high school (ED, ESEA Flexibility, 2011, p. 3).

The Common Core Standards are likely to fulfill the department’s criteria for what constitutes college- and career-ready standards, but a state does not necessarily have to adopt the Common Core Standards to fulfill the requirement. A state’s standards must, however, be consistent with the following definition:

College- and career-ready standards are content standards for kindergarten through 12th grade that build towards college and career readiness by the time of high school graduation. A State’s college- and career-ready standards must be either (1) standards that are common to a significant number of states; or (2) standards that are approved by a State network of institutions of higher education, which must certify that students who meet the standards will not need remedial course work at the postsecondary level. (ED, ESEA Flexibility, 2011, p. 7)

States seeking ESEA flexibility must demonstrate that they have adopted college- and career-ready standards; describe a plan for transitioning to those standards; describe a plan for developing and administering “high-quality assessments” aligned with those standards; and describe plans for alternate assessments, English-language proficiency standards and assessments, public reporting of data, and new annual measurable objectives (AMOs). SEAs receiving flexibility would implement their standards while also piloting their assessments during the 2013–14 school year. They would administer their assessments statewide during the 2014–15 school year.

State Activities

Most states applying for ESEA flexibility have adopted the Common Core Standards. Among states and territories that have declared their intent to apply, Minnesota, Virginia, and Puerto Rico are the only three that have not fully adopted the Common Core.

States that have not adopted the Common Core might consult a recent study by the Education Policy Improvement Center, which compares the Common Core Standards to five other standards systems, two of which are explicitly designed to meet college- and career-ready expectations. The study finds that the five standards systems and the Common Core set similar expectations for language arts and mathematics (Conley et al., 2011).

Below, are details on standards and assessments in four states that have announced their intent to apply for ESEA waivers:

Iowa: Iowa adopted the Common Core State Standards in July 2010 and integrated these standards into the Iowa Core. The state requires all school districts to implement the Iowa Core in grades 9–12 by July of 2012 and in grades K–8 by the 2014–15 school year. According to the Iowa Department of Education (IDE) (2011), “a school that has fully implemented the Iowa Core is engaged in an ongoing process of data gathering and analysis, decision making, identifying actions, and assessing impact around alignment and professional development focused on content, instruction, and assessment” (para. 7). State officials interested in integrating the Common Core into their state standards may find IDE’s webcasts on its implementation process useful (Iowa Department of Education , Iowa Core Webcasts, 2011).

Kansas: Kansas adopted the Common Core Standards in October 2010 and is currently transitioning to those standards. The state plans to provide Common Core professional development to educators through at least 2015 that will include conferences, workshops, and summer academies. The Kansas Department of Education’s Common Core timeline aims to have a fully operational summative assessment by 2015, but that schedule can change in response to external factors (Kansas State Department of Education, 2011).

Minnesota: The Minnesota K–12 Academic Standards include part of the Common Core Standards in English/language arts but do not include the Common Core Standards in mathematics. The Minnesota

Department of Education is reviewing the Common Core Standards in mathematics but cannot change Minnesota's mathematics standards without legislative action (Minnesota Department of Education, 2011). To qualify for ESEA flexibility, Minnesota will need to demonstrate that its current standards are consistent with college- and career-ready expectations or develop such standards.

South Dakota: South Dakota adopted the Common Core Standards in November of 2010. The state is now offering a three-year "Common Core Professional Development" series designed to help educators implement them. The state has joined the Smarter Balanced Assessment Consortium, which is working to develop high-quality assessments aligned to the Common Core. South Dakota plans to administer its Common Core-aligned assessments in 2015 (South Dakota Department of Education, 2011).

2. Developing a System of Differentiated Recognition, Accountability, and Support

The Department of Education requires that all states seeking ESEA flexibility develop an accountability system that focuses on the lowest performing schools and rewards the highest performing schools. These systems of differentiated recognition, accountability, and support should aim to improve student achievement and close achievement gaps. Under current NCLB provisions, states must report school and district progress toward adequate yearly progress (AYP) and identify "for improvement" any Title I school that misses AYP for two consecutive years. States approved for ESEA flexibility would no longer categorize schools this way. Instead, a new system would use three new categories: focus schools, priority schools, and reward schools.

To begin building this new system, ED asks that states seeking flexibility set "new ambitious but achievable AMOs" that account for achievement and growth in reading/language arts and mathematics and that identify achievement among subgroups (ESEA Flexibility, 2011, p. 1). ED offers states three options for developing new AMOs:

- A. States can set AMOs designed to reduce by half the number of students who are not proficient within the next six years. These AMOs would look for annual equal increments and would account for the "all students" group and for each subgroup. States selecting this option will be reviewed by ED staff.
- B. States can set AMOs designed to have 100 percent of students achieving proficiency by 2020. These AMOs would look for annual equal increments indicating successful progress toward this goal. States selecting this option will be reviewed by ED staff.
- C. States can develop their own AMOs as long as they are "educationally sound" and "ambitious but achievable." States selecting this option will be peer reviewed. (Flexibility FAQs, 2011, p. 7)

States applying for a waiver would need to describe their differentiated recognition, accountability, and support system along with plans to implement it in the waiver application; they would actually implement their plan at the beginning of the 2012 school year.

State Activities

States seeking ESEA waivers are at different stages of developing systems of differentiated recognition, accountability, and support. Although ED requires states seeking flexibility to meet the criteria laid out in its ESEA flexibility documents, the department also suggests that SEAs have the flexibility to "design innovative systems" that meet the individual needs of a state (Flexibility FAQs, 2011, p. 22). State officials interested in developing systems that exceed the criteria established by ED might consider including assessments in subjects other than reading and mathematics; developing processes for serving and identifying schools that do not fall into the focus, priority, or reward categories; or using additional measures to gauge school performance, such as attendance rates or school climate.

Pilot states

In March 2008, ED launched its Differentiated Accountability Pilot Program that allowed nine states—Arkansas, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, New York, and Ohio—to develop and pilot differentiated accountability systems. Lessons learned from four of these states, as determined by a Center on Education Policy (CEP) study, follow.

Georgia: Georgia officials implementing a differentiated accountability system found that intervening more quickly with struggling schools improved state test results; that tutoring was a valuable resource for school improvement, while offering students school choice transfers was ineffective; and that good communication between the Georgia Department of Education and district and school officials produced positive outcomes. In fact, Georgia was the only state in the CEP study in which district and school officials reported successful communication regarding the new accountability system (Caitlin, 2009).

Maryland: Maryland’s differentiated accountability system uses early, intensive interventions to avoid prolonged restructuring periods; includes school climate surveys to determine the specific needs of struggling schools; and requires schools undergoing restructuring to submit reports three times per year that identify three action steps that are most likely to improve student achievement, which are then monitored by state officials to ensure their successful implementation (Caitlin, 2009).

Ohio: Ohio’s differentiated accountability system, the Ohio Improvement Process (OIP), focuses efforts at the district rather than the state level: when a school is identified as in need of low, medium, or high support, the district and school work together through the improvement process. To gauge a school’s progress, state officials examine changes in scores on state tests over three years rather than using student proficiency as a measure. If a school demonstrates a rate of increase on test scores that would bring students to proficiency by 2014, then that school has demonstrated significant progress and is no longer subject to state intervention (Caitlin, 2009).

New York: New York simplified its accountability system by creating a single system for both Title I and non-Title I schools. State officials also established a provision whereby a “Distinguished Educator” may be assigned to schools undergoing restructuring. These Distinguished Educators, usually former school leaders, serve as ex officio school board members. New York officials expressed concerns about communication between state and local levels, suggesting that some schools and districts were unsure what differentiated accountability meant (Caitlin, 2009).

3. Teacher and Principal Evaluation and Support Systems

States receiving ESEA flexibility would no longer need to implement improvement plans for LEAs that miss a state’s HQT targets, nor would LEAs need to develop such plans. However, states seeking flexibility would need to “develop, adopt, pilot, and implement, with the involvement of teachers and principals, teacher and principal evaluation and support systems” (ED, ESEA Flexibility, 2011, p. 5).

To meet the threshold of what ED terms a “high-quality” system, these evaluation and support systems must meet several criteria. ED requires that such systems be used for continual improvement of instruction; that they be used to evaluate teachers and principals regularly; that these systems provide “clear, timely, and useful feedback;” and that they be used to inform personnel decisions (p. 5). Such systems must also establish at least three classifications that “meaningfully differentiate” educator performance (p. 5). In other words, an evaluation system might differentiate among those educators who exceed, meet, or are below expectation levels.

Additionally, these evaluation and support systems must use “multiple valid measures” to determine educator performance (p. 5). These measures could include classroom observations, teacher portfolios, student surveys, or other factors determined by an SEA. Notably, the department requires that data on student growth for all students constitute a “significant factor” in measuring educator performance (p. 5). Thus, a change in an individual student’s test score from one year to the next would be included as a “significant factor” in evaluating a teacher or principal.

SEAs applying for flexibility must develop and describe their guidelines for these systems in their waiver application and then adopt them after approval from ED. LEAs would then develop evaluation and support systems based on these guidelines during the 2012–13 school year, pilot these systems during the 2013–14 school year, and fully implement them during the 2014–15 school year. Once these evaluations are fully operating, ED requires states to ensure that effective teachers are equitably distributed across schools and districts.

State Activities

States seeking ESEA waivers are at different stages as they consider ways to develop teacher and principal evaluation and support systems that would both fulfill the department’s ESEA flexibility criteria and meet the individual needs of the state. Spurred in part by the Federal Race to the Top program, many states have taken measures to tie student achievement to educator evaluations, placing these states in a better position to apply for ESEA flexibility. These and other states are now left to determine how their current systems align with the department’s criteria.

A 2011 study by the National Council on Teacher Quality examines state actions regarding teacher evaluations. The authors present lessons learned from their review that may be useful to states developing evaluation systems, including the following:

- Classroom observations are an important part of gathering information on teacher performance.
- Growth and value-added data, though imperfect, is useful in determining who the most and least effective teachers are.
- States may need to do more than review and approve district evaluations to ensure that those evaluations are successfully implemented. The authors recommend giving LEAs “specific tools, models, and detailed frameworks for conducting and scoring teacher evaluations” (p. iii).
- Third-party evaluators can provide significant feedback and important checks on evaluation processes.
- States should plan to address educator anxieties regarding evaluations.
- States will likely need to address potential setbacks or loopholes in evaluations systems as quickly as possible.

The following examples detail state-specific actions related to educator evaluation systems:

Colorado: CO SB 191, the state’s 2010 law on teacher and principal effectiveness, requires that all teachers and principals receive annual evaluations starting in 2012, that 50 percent of an educator’s evaluation is linked to student growth, and that personnel decisions are based on educator effectiveness. Colorado’s system uses three evaluation performance levels, categorizing educators as “highly effective,” “effective,” and “ineffective.” Every educator in the Colorado system can be dismissed based on his or her evaluations, but districts must first provide such educators with an opportunity to appeal and improve performance (National Council on Teacher Quality [NCTQ], 2011).

Minnesota: Minnesota’s teacher evaluation system requires that probationary teachers be evaluated three times annually and that student outcomes constitute 35 percent of a teacher’s evaluation. The state also allows teachers to present a portfolio demonstrating their performance and growth. Teachers in Minnesota who do not meet professional standards as determined by an evaluation are not eligible for dismissal based solely on that evaluation; instead, these teachers go through a teacher improvement process (NCTQ, 2011). Recent Minnesota legislation also requires the creation of a principal evaluation system that will consider the following: high standards for student performance, rigorous curriculum, quality instruction, professional behavior, school culture, and school performance.

Nevada: Nevada’s educator evaluation system requires that at least 50 percent of a teacher’s evaluation be tied to student outcomes but also accounts for the following factors: efficacy of classroom management skills, efficacy of lesson plans or grade book, the degree to which a teacher aligns the curriculum with standards, and the degree to which a teacher addresses student needs. Based on their evaluations, Nevada teachers and administrators are placed into one of four categories: “highly effective,” “effective,” “minimally effective,” or “ineffective.” Post-probationary teachers and administrators who receive a rating of “ineffective” for two years return to probationary status and may be dismissed (NCTQ, 2011).

Oklahoma: Oklahoma’s Teacher and Leader Effectiveness Evaluation System rates teachers and principals using the five categories of “superior,” “highly effective,” “effective,” “needs improvement,” and “ineffective.” Any teacher rated in the bottom two categories is placed on a comprehensive remediation plan and receives instructional coaching. Oklahoma teachers are dismissed based on their evaluations if they receive a rating of “ineffective” for two years or a rating of “needs improvement” for three years. Teachers also are dismissed if they do not average an “effective” rating over the course of five years (NCTQ, 2011).

4. Removing Duplicative and Burdensome Reporting Requirements

Lastly, the Department of Education requires states seeking ESEA waivers to evaluate their administrative procedures and remove reporting requirements deemed either duplicative or burdensome. Although these evaluations will be specific to each state, the department makes the following recommendations to SEAs regarding the reduction of undue burden:

- Identify duplicative record keeping and reporting requirements that are critical priorities and consider eliminating them.
- Consider ways to streamline data collection timelines.
- Consider ways to consolidate or share information between agencies to avoid the duplication of work.
- Identify barriers to effective use of funds.

In each case, ED asks states to consider the importance of state-level administrative requirements based on the degree to which they are tied to student outcomes (Flexibility FAQs, 2011, p. 36).

Recommendations

States intending to apply for ESEA flexibility should consider to what degree their current systems fulfill ED’s criteria for flexibility, and, if necessary, develop plans for meeting those criteria. Although the following recommendations do not replace the need to conduct a thorough review of ED’s flexibility criteria, they will help SEAs begin to plan their application process.

College- and Career-Ready Expectations

- SEAs seeking flexibility that have adopted the Common Core Standards are likely to be well-positioned to meet this criterion. Such states should evaluate their processes and timelines for the development and implementation of the following: assessments aligned to these standards, alternate assessments, and English-language proficiency standards and assessments.
- SEAs seeking flexibility that have not adopted the Common Core Standards should evaluate the degree to which their current standards are based on college- and career-ready expectations, the degree of commonality between their standards and the standards of other states, and whether their standards are approved by a state network of institutions of higher education. Once these states have developed standards that are aligned with college- and career-ready expectations, they should evaluate their

processes and timelines for creating and implementing aligned assessments, alternate assessments, and English-language proficiency standards and assessments.

Developing a System of Differentiated Recognition, Accountability, and Support

SEAs seeking flexibility should do the following:

- Evaluate their existing AMOs and determine whether one of the two options that ED has proposed will suit their needs or if they must develop their own new ambitious but achievable AMOs.
- Consider processes for identifying and working with reward, priority, and focus schools, such as ways to recognize reward schools, strategies for supporting and improving priority and focus schools, and processes for determining when priority and focus schools exit those categories.
- Consider ways to provide incentives and support to schools that do not fall into priority or focus status but are not making acceptable progress toward narrowing achievement gaps and improving student achievement.
- Consider whether they will develop assessments in subjects other than reading and mathematics and whether they will use additional measures to gauge school performance, such as attendance rates or school climate.

Teacher and Principal Evaluation and Support Systems

SEAs seeking flexibility should do the following:

- Consider ways to engage teachers and principals in the process of developing and implementing new evaluation and support systems.
- Consider categories they will use to differentiate performance and whether they will use more than ED's required minimum of three categories.
- Determine how they will incorporate student growth into educator evaluations such that it constitutes a "significant factor" of those evaluations, and determine what other factors—such as classroom observations, educator portfolios, or student surveys—they will use to evaluate teacher performance.
- Consider processes for conducting regular educator evaluations, providing useful feedback, and providing student growth data to educators in a timely manner.
- Determine how they will use evaluations to inform personnel decisions and the role evaluations could play in probationary status, hiring, compensation, and termination.
- Consider ways to provide support to LEAs as they develop and implement evaluation systems based on SEA guidelines. Support strategies might include providing LEAs with toolkits and other user-friendly resources.
- Create a timeline and plan for providing training to educators regarding a state's new evaluation and support system.

Removing Duplicative and Burdensome Reporting Requirements

SEAs seeking flexibility should evaluate their state administrative processes to identify the following:

- Duplicative low-priority processes.
- Better ways to share information across agencies.

- Ways to streamline data collection timelines.
- Barriers to the effective use of funds.

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