

February 9, 2012

Honorable Gerard Robinson
Commissioner
Florida Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, FL 32399

Dear Commissioner Robinson:

I am pleased to approve Florida's request for ESEA flexibility, subject to Florida's meeting the conditions described below. I congratulate you on submitting a request that demonstrates Florida's commitment to improving academic achievement and the quality of instruction for all of the State's elementary and secondary school students.

Last fall, the U.S. Department of Education (Department) offered States the opportunity to request flexibility from certain requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, in exchange for rigorous and comprehensive plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. This flexibility is intended to support the groundbreaking reforms already taking place in many States and districts that we believe hold promise for improving outcomes for students. We are encouraged by the innovative thinking and strong commitment to improving achievement for all students that is evident in Florida's request.

Our decision to approve Florida's request for ESEA flexibility, subject to Florida's meeting certain conditions, is based on our determination that the request meets the four principles articulated in the Department's September 23, 2011, document titled *ESEA Flexibility*. In particular, Florida has: (1) demonstrated that it has college- and career-ready expectations for all students; (2) developed, and has a high-quality plan to implement, a system of differentiated recognition, accountability, and support for all Title I districts and schools in the State; (3) committed to developing, adopting, piloting, and implementing teacher and principal evaluation and support systems that support student achievement; and (4) provided an assurance that it will evaluate and, based on that evaluation, revise its administrative requirements to reduce duplication and unnecessary burden on districts and schools. Our decision is also based on Florida's assurance that it will meet these four principles by implementing the high-quality plans and other elements of its request as described in its request and in accordance with the required timelines. In approving Florida's request, we have taken into consideration the feedback we received from the panel of peer experts and Department staff who reviewed Florida's request, as well as Florida's revisions to its request in response to that feedback.

The waivers that comprise ESEA flexibility are being granted to Florida pursuant to my authority in section 9401 of the ESEA. A complete list of the statutory provisions being waived is set forth in the table enclosed with this letter. Consistent with section 9401(d)(1) of the ESEA, I am granting waivers of these provisions through July 27, 2012. If Florida meets the conditions

described below prior to that date, I will extend the approval of these waivers through the end of the 2013–2014 school year, at which time Florida may request an extension of these waivers.

In the coming days, you will receive a letter from Michael Yudin, Acting Assistant Secretary for Elementary and Secondary Education, containing additional information regarding Florida’s implementation of ESEA flexibility, as well as information regarding monitoring and reporting. Please note that the Department will closely monitor Florida’s implementation of its request in order to ensure that all students continue to receive the assistance and supports needed to improve their academic achievement.

Our decision to place conditions on the approval of Florida’s request is based on the fact that Florida has not formally changed its inclusion policies to ensure that all students, including all English learners and all students with disabilities, are fully included in the State’s system of differentiated recognition, accountability, and support. It is also based on the fact that Florida has an unresolved monitoring finding related to its implementation of the School Improvement Grants (SIG) program and the process the Florida Department of Education (FDOE) used to award its fiscal year 2010 SIG funds. In its request for ESEA flexibility, Florida has committed to changing its inclusion policies related to English learners and students with disabilities, and we are confident that Florida will quickly resolve the finding regarding its implementation of the SIG program.

To receive approval to implement ESEA flexibility through the end of the 2013–2014 school year, Florida must: (1) provide an amended request demonstrating that Florida has modified its inclusion policies to ensure that all students, including all English learners and all students with disabilities, are fully included in the State’s system of differentiated recognition, accountability, and support in accordance with ESEA requirements for such inclusion, including by attaching to the amended request evidence of such formal modification of the State’s inclusion policies; and (2) submit an approvable plan to the Department no later than July 15, 2012, as required by step 5 of the corrective action required to resolve the finding in the February 8, 2012 SIG Monitoring Report related to the FDOE’s awarding of its fiscal year 2010 SIG funds. If Florida fails to demonstrate that it has modified its inclusion policies or fails to take the necessary steps to resolve the SIG monitoring finding, the waivers being granted to Florida through ESEA flexibility will expire on July 27, 2012, and Florida and its districts will be required to immediately resume complying with all ESEA requirements, including making adequate yearly progress determinations based on assessments administered during the 2011–2012 school year.

Florida continues to have an affirmative responsibility to ensure that it and its districts are in compliance with Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age in their implementation of ESEA flexibility as well as their implementation of all other Federal education programs. These laws include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, the Age Discrimination Act of 1975, and requirements under the Individuals with Disabilities Education Act.

A copy of Florida’s approved request for ESEA flexibility will be posted on the Department’s Web site at: <http://www.ed.gov/esea/flexibility/requests>. Again, I congratulate you on the approval of Florida’s request for ESEA flexibility and thank you for the work that you and your staff have done. I look forward to continuing to support you as you implement Florida’s ESEA flexibility request and work to improve the quality of instruction and academic achievement for all students.

Sincerely,

Arne Duncan

Enclosure

cc: Governor Rick Scott
Michael Grego, Senior Advisor

Provisions Waived Through Approval of Florida’s Request for ESEA Flexibility		
ESEA SECTION^[1]	DESCRIPTION	NOTES
STATE-LEVEL RESERVATION FOR SCHOOL IMPROVEMENT		
1003(a)	Requires State educational agency (SEA) to reserve 4 percent of its Title I, Part A allocation for school improvement activities and to distribute at least 95 percent to local educational agencies (LEAs) for use in Title I schools in improvement, corrective action, and restructuring	The reservation is not waived; SEA may distribute section 1003(a) funds to LEAs for use in priority and focus schools
SCHOOL IMPROVEMENT GRANTS		
1003(g)	Requires SEA to award School Improvement Grant (SIG) funds to LEAs with Title I schools in improvement, corrective action, or restructuring	Waiver permits SEA to award SIG funds to an LEA to implement one of the four SIG models in any priority school
2013–2014 TIMELINE		
1111(b)(2)(E) - (H)	Establishes requirements for setting annual measurable objectives (AMOs)	Waiver permits SEA to set new ambitious but achievable AMOs
SCHOOLWIDE POVERTY THRESHOLD		
1114(a)(1)	Requires 40 percent poverty threshold to be eligible to operate a schoolwide	Waiver permits LEA with less than 40 percent poverty to operate a

^[1] The corresponding regulations that implement these statutory provisions are also waived. Any ESEA statutory provision not listed in this table is not waived.

Provisions Waived Through Approval of Florida's Request for ESEA Flexibility		
	program	schoolwide program in a priority school or a focus school that is implementing a schoolwide intervention
SCHOOL IMPROVEMENT REQUIREMENTS		
1116(b) (except (b)(13))	Requires LEA to identify schools for improvement, corrective action, and restructuring with corresponding requirements	1116(b)(13), which requires LEA to permit a child who has transferred to remain in the choice school through the highest grade in the school, is not waived
LEA IMPROVEMENT REQUIREMENTS		
1116(c)(3) and (5) – (11)	Requires SEA to identify LEAs for improvement and corrective action with corresponding requirements	
1116(e)	Requires SEA and LEAs to take a variety of actions to offer supplemental educational services to eligible students in schools in improvement, corrective action, restructuring	
RESERVATION FOR STATE ACADEMIC ACHIEVEMENT AWARDS PROGRAM		
1117(b)(1)(B)	Limits the schools that can receive Title I, Part A funds reserved for State awards program	Waiver allows funds reserved for State awards program to go to any reward school
HIGHLY QUALIFIED TEACHER PLAN ACCOUNTABILITY AGREEMENT REQUIREMENT		
2141(c)	Requires SEA/LEA agreement on use of Title II, Part A funds for LEAs that miss AYP for three years and fail to make progress toward reaching annual objectives for highly qualified teachers	Waiver includes existing agreements and applies to restrictions on hiring paraprofessionals under Title I, Part A
LIMITATIONS ON TRANSFERABILITY OF FUNDS		
6123(a)	Limits to 50 percent the amount an SEA may transfer from a covered program into another covered program or into Title I, Part A	Waiver applies to the percentage limitation, thereby permitting SEA to transfer up to 100 percent from a covered program
6123(b)(1)	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	Waiver applies to the percentage limitations as well as to the restrictions on the use of transferred funds
6123(d)	Requires modification of plans and notice of transfer	

Provisions Waived Through Approval of Florida's Request for ESEA Flexibility		
6123(e)(1)	Transferred funds are subject to the requirements of the program to which they are transferred	Waiver permits an LEA to exclude funds transferred into Title I, Part A from the base in calculating any set-aside percentages
RURAL SCHOOLS		
6213(b)	Requires LEAs that fail to make AYP to use funds to carry out the requirements under ESEA section 1116	
6224(e)	Requires SEA to permit LEAs that fail to make AYP to continue to receive a Small, Rural School Achievement grant only if LEA uses funds to carry out ESEA section 1116	
21ST CENTURY COMMUNITY LEARNING CENTERS (CCLC)		
4201(b)(1)(A), 4204(b)(2)(A)	Require a community learning center to provide activities during non-school hours or periods when school is not in session	Waiver 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 non-school hours or periods when school is not in session

^[1] The corresponding regulations that implement these statutory provisions are also waived. Any ESEA statutory provision not listed in this table is not waived.