

U.S. DEPARTMENT OF EDUCATION REPORT TO CONGRESS
ON WAIVERS GRANTED UNDER SECTION 9401 OF THE
ELEMENTARY AND SECONDARY EDUCATION ACT DURING
CALENDAR YEAR 2008

June 2009

INTRODUCTION

Section 9401 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, authorizes the Secretary of Education to grant waivers of ESEA requirements to State educational agencies (SEAs), local educational agencies (LEAs), Indian tribes, and schools in order to assist them in increasing the quality of instruction for students and improving student academic achievement. The authority applies generally to all statutory or regulatory requirements under the ESEA, with certain specified restrictions. For example, the Secretary may not waive applicable civil rights requirements, prohibitions against using Federal funds to supplant non-Federal funds, or requirements relating to parental participation and involvement or the equitable participation of private school students and teachers. Section 9401(e)(4) of the ESEA requires the Secretary to submit an annual report to Congress summarizing the uses of waivers by SEAs, LEAs, Indian tribes, and schools and describing whether those waivers have increased the quality of instruction and improved student achievement. In accordance with that requirement, this report provides information about waivers that the Department granted during calendar year 2008.

In 2008, the Department granted a total of 51 waivers under the section 9401 waiver authority. The waivers granted were as follows: (1) four waivers relating to Hurricanes Katrina, Rita, and Ike; (2) two new waivers allowing implementation of the "growth model pilot," and nine extensions of existing waivers to continue implementation of a growth model pilot; (3) six new waivers allowing implementation of the "differentiated accountability model pilot;" (4) one new waiver and four continuations of existing waivers allowing LEAs in need of improvement to be eligible to apply to their SEA to become supplemental educational services (SES) providers; (5) four new waivers and three continuations of existing waivers allowing LEAs to provide SES to eligible students attending schools that receive funding under Title I, Part A of the ESEA (Title I schools) and are in their first year of school improvement; (6) one Title I schoolwide eligibility waiver; (7) one Title I, Part A within-district allocation waiver; (8) one waiver of the ESEA transferability rule; (9) one "local-flex" waiver; (10) four waivers to the Insular Areas Consolidated Grant restrictions; and (11) ten waivers allowing recipients of funds under the Indian Education formula grant program to charge additional administrative costs to the program.

SPECIFIC WAIVER ACTIVITY

The Federal Register notice detailing all the section 9401 waivers that the Department granted during calendar year 2008 is attached to this report as Appendix A. Below is a summary of the various categories of section 9401 waivers:

- *Hurricanes Katrina, Rita, and Ike Waivers*

The Department used the section 9401 waiver authority to grant four hurricane-related waivers in 2008. Louisiana received a waiver of section 421(b) of the General Education Provisions Act to extend for one year the time needed to obligate all fiscal year 2006 ESEA funds that were scheduled to expire on September 30, 2008. This waiver was granted because of delays in starting programs caused by disruptions related to Hurricanes Katrina and Rita.

Mississippi received a waiver that extended through September 30, 2009 the period of availability of fiscal year 2006 Title II, Part A funds. In addition, Mississippi received a waiver that extended through September 30, 2009 the period of availability of fiscal year 2006 Title I, Part B, Subpart 1 (Reading First) funds. The extensions were needed because of disruptions due to Hurricane Katrina.

The Department also granted Texas a waiver that extended through September 30, 2009 the period of availability of fiscal year 2006 Title I, Part B, Subpart 1 (Reading First) funds. This waiver was granted to provide flexibility to Texas and its LEAs that were not able to obligate all of their Reading First funds because of delays caused by Hurricane Ike.

- *"Growth Model Pilots"*

In 2008, the Department granted two new waivers allowing implementation of a "growth model pilot" to Michigan and Missouri. In addition, the Department granted nine extensions of existing waivers to continue implementation of a growth model pilot to Alaska, Arizona, Arkansas, Delaware, Florida, Iowa, North Carolina, Ohio, and Tennessee. In 2008, eleven States had growth models that were approved by the Department under the section 9401 waiver authority.

These waivers allow States to use growth-based accountability models as part of the process of determining adequate yearly progress (AYP) under ESEA Title I. Growth model pilots track individual student achievement from one year to the next, giving schools credit for student achievement over time. Missouri's approval was conditioned upon Missouri's adoption of a uniform minimum group size for all students in the State, including students with disabilities and limited English proficient students.

The Department is conducting an evaluation of the impact of the growth model pilots on AYP determinations.

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- *"Differentiated Accountability Pilots"*

In 2008, the Department granted waivers to the first six States to participate in the "differentiated accountability pilot" – Florida, Georgia, Illinois, Indiana, Maryland, and Ohio. This pilot program gives States the opportunity to propose their own methods for categorizing Title I schools for improvement and determining the interventions required for each category, allowing States to target resources and interventions to those schools most in need.

The waivers granted authorize States to use their differentiated accountability models as part of their system of school improvement interventions, thereby permitting States to vary the intensity and type of school interventions to match the academic reasons that lead to a school's identification for improvement.

The Department is conducting an evaluation of the effects the pilot will have on student achievement.

- *Allowing LEAs in Need of Improvement to Be Eligible to Apply to Their SEA to Become SES Providers*

In 2008, the Department granted one new waiver – to Charlotte-Mecklenburg Schools – and four continuations of existing waivers – to Anchorage School District, Boston Public Schools, Chicago Public Schools, and Hillsborough County Public Schools (Florida) – allowing these LEAs in need of improvement to be eligible to apply to their respective SEA to become providers of SES during the 2008-2009 school year. These waivers build upon the SES pilot waivers granted in prior years. The Department is currently conducting an evaluation of the impact of these waivers on student achievement.

- *Allowing LEAs to Provide SES to Eligible Students in Title I Schools in the First Year of School Improvement*

In 2008, the Department granted four new waivers – to Alabama, Arkansas, Tennessee, and Utah – and three continuations of existing waivers – to Alaska, North Carolina, and Virginia – allowing select LEAs within these States to provide SES to eligible students attending Title I schools that are in their first year of school improvement during the 2008-2009 school year. These waivers build upon the SES pilot waivers granted in previous years.

- *Title I Schoolwide Eligibility and Title I Within-District Allocation Waivers*

The Department granted one Title I schoolwide eligibility waiver that permitted an elementary school in Berkeley County, West Virginia, to implement a schoolwide program even though fewer than 40 percent of its students were from low-income families. The school, which had a 39 percent poverty rate, will begin the planning necessary to implement a schoolwide program and develop a comprehensive plan to raise the academic achievement of all students.

In addition, the Department granted a waiver that allowed Henry County School District, Georgia, to skip the school selection and rank order of poverty requirements when allocating Title I, Part A services to two elementary schools. Without this waiver, Henry County would have been required to allocate Title I funds to Walnut Creek Elementary School, a newly opened school with a 39 percent poverty rate, before it allocated funds to Austin Road Elementary School, which has a 38 percent poverty rate and previously operated a Title I program. This waiver also required Henry County to provide equitable services to eligible private school children residing in Austin Road's school attendance area.

- *Transferability Rule Waiver*

The Department granted a waiver that permitted New York to transfer Title II, Part A funds for State-level activities to its Title I, Part A administrative reserve. The waiver allows the State to enhance its Title I allocation so that it can continue to implement specific strategies for State activities.

- *Local-Flexibility Demonstration Agreement*

The Department waived the requirement that would have precluded Seattle Public Schools (SPS) from continuing to implement its "Local-Flex" demonstration agreement because it failed to make AYP for two consecutive years. As a result, SPS may consolidate grant funds for certain ESEA programs. This waiver will assist SPS in making AYP as it implements its strategic plan.

- *Consolidated Grant Restrictions*

Regulations concerning the Consolidated Grants to the Insular Areas restrict the use of grant funds to those programs that receive an allocation. Because American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands needed to continue to consolidate funds under Title V, Part A in order to continue implementation of their educational reform strategies (but no appropriation was made for fiscal year 2008 under Title V, Part A), the Department granted waivers that allow the Areas to use fiscal year 2008 consolidated grant or any fiscal year 2007 carryover funds to support programs under Part A of Title V.

- *Waivers of the Administrative Cost Limitation that Applies to Indian Education Funds*

Under the Indian Education formula grant program, recipients are permitted to expend no more than five percent of their grant award on administrative costs. Some LEAs that receive relatively small awards under the program would have difficulty effectively administering the program if subjected to the cap. As part of their application for funds under the program, LEAs were allowed to request, if needed, a waiver of the five percent limitation. In 2008, the Department granted waivers of the administrative cost limitation applicable to the Indian Education formula grant program to ten school districts.

CONCLUSION

In 2008, the Department granted more substantive waivers under the authority in section 9401 of ESEA than in previous years. We recognize that these waivers can serve as useful tools in facilitating State and local efforts to raise student academic achievement. While it is often very difficult to measure the precise impact that particular waivers have on student academic achievement, we believe that they provide States and districts with needed flexibility by removing, under particular circumstances, specific statutory or regulatory impediments to State or local education reform efforts. As noted above, the Department is conducting evaluations of the impact of the growth model, differentiated accountability, and SES pilot waivers on student academic achievement and, once data are available, will include this information in future reports.