

# ESEA Flexibility Requests

## ESEA Flexibility Requests—A Study of States' Requests for Waivers from Requirements of the No Child Left Behind Act of 2001

WASHINGTON, DC – COUNCIL OF CHIEF STATE SCHOOL OFFICERS

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Produced by:

Accountability Systems & Reporting State Collaborative on Assessment and Student Standards

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## **THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS**

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# **ESEA Flexibility Requests—A Study of States’ Requests for Waivers from Requirements of the No Child Left Behind Act of 2001**

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## **Summary, Analysis, and Commentary on States’ Requests for Waivers in Order to Implement Next-Generation Educational Accountability Systems and Approval Decisions by the U. S. Department of Education**

**A Study Commissioned by CCSSO’s Accountability Systems & Reporting State Collaborative on Assessment and Student Standards**

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**2013**



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## Executive Summary

In late September 2011, as reauthorization of the No Child Left Behind Act of 2001 (NCLB) did not show signs of progressing, President Barack Obama and Secretary of Education Arne Duncan announced plans for *ESEA Flexibility* that would be “fast-tracked” in order to afford states a number of options to have various NCLB requirements waived. Many of the requirements for which states could seek waivers were regarded by critics of the law as in need of revision. These waivers were intended to allow states to forgo selected NCLB requirements such as making annual adequate yearly progress (AYP) determinations and imposing various sanctions on schools and districts identified as in need of improvement. States seeking the flexibility afforded by the waivers would have to participate in peer reviews of their proposals and agree to include the following principles in re-designing their educational accountability systems:

1. Adopt College- and Career-Ready Standards and Assessments for All Students
2. Create State-Developed, Differentiated Systems of Recognition, Accountability, and Support
3. Support Effective Instruction and Leadership through Educator Evaluation
4. Reduce Duplication and Administrative Burden for School Districts and Schools

In the months that would follow, almost all of the states and the District of Columbia submitted an *ESEA Flexibility Request* seeking waivers of numerous NCLB requirements. Implementation of the approved accountability *Flexibility Requests* appears to hold significant potential to positively impact teaching and student achievement throughout the nation. Recognizing this significance, member states of the Accountability Systems & Reporting (ASR) State Collaborative decided in May 2012 to commission a study to examine the scope, content, related issues, and the initial impact of these waivers on states’ educational accountability systems. Of particular interest to ASR member states was the opportunity afforded through such a study to learn from the experiences of other states and to apply these findings to guide the redesign and implementation of their respective educational accountability systems.

## Design of the Study

Thus, the resultant design of the study, which is described in Chapter 1, was carried out in two-parts. The first part (reported in Chapter II) centers on presenting, through an extensive review of related literature, research, analysis, occasional commentary, and additional interpretive background regarding various aspects of states’ *Flexibility Requests* (and the waivers they sought) and the approval decisions subsequently rendered by the U. S. Department of Education (ED). We also present examples of various components of states’ next-generation accountability systems that we felt were particularly noteworthy for consideration by other states. The information provided focuses primarily, but not exclusively, on Principle 2 of the *Flexibility Request* template, *State-Developed Differentiated Recognition, Accountability, and Support*. The study was not intended to, nor does it, explore, discuss, or attempt to judge the various issues and perceived limitations associated with NCLB that have arisen since its enactment in January 2002.

The second part of the study (reported in Chapter III) focuses on promising practices from states implementing next-generation educational accountability systems. To accomplish this second part,

interviews were conducted with staff members of state departments of education in seven states. Feedback from the state interviews is organized around seven general topics:

1. College- and Career-Ready Standards and Assessments
2. Innovative Indicators
3. Establishing Performance Expectations
4. Reporting Practices
5. Support Strategies
6. Establishing Coherence
7. Monitoring and Evaluation

## Status of Waiver Requests

As of July 1, 2013, 38 states and the **District of Columbia** have received either partial or full approval of their *ESEA Flexibility Requests* across a total of four submittal opportunities or “Windows” as follows:

- Eleven states submitted *Requests* in November 2011 (Window 1). All were eventually approved.
- Another 26 states and the **District of Columbia** submitted *Requests* in Window 2 during February 2012 for peer review the following month. Of the 26 additional states, one subsequently withdrew and all the others have been approved except **Illinois** and **Iowa**.
- In September 2012, a third Window to submit *Flexibility Requests* was provided and seven states met the deadline for submitting their *Requests* during this time (one state later withdrew its *Request*). Four states were subsequently approved while two states (**Alabama** and **Maine**) continue to refine their *Requests*.
- Although not publicly announced, ED subsequently provided a fourth opportunity (Window 4) for the submittal of *Flexibility Requests* for the few remaining states that had not previously chosen to do so. Three states and a consortium of **California school districts** met the February 28, 2013, deadline. ED has yet to announce decisions on these.

As of July 1, 2013, only two states have not submitted a *Flexibility Request* (**Montana** and **Nebraska**), two have withdrawn their waiver requests (**North Dakota** and **Vermont**), four states continue to negotiate approval with ED, and three states and a consortium of nine **California School Districts** are awaiting decisions on their *Flexibility Requests*. In January 2013, ED Secretary Duncan declined to exercise his waiver authority to approve **California’s** request (submitted outside of the peer review windows).

## Waiver Approvals and Outcomes

Negotiating approval of waiver plans with ED was not always “easy” and sometimes, was a lengthy and extended iterative process. The incorporation of teacher and principal performance evaluations based in part on students’ performance on state assessments proved to be particularly difficult and challenging for many states.

According to the researchers whose work we analyzed, among other problems with state’s initial waiver requests (particularly in Windows 1 and 2) were:

- A lack of sufficient and well-documented consultation with stakeholders.
- Articulation of how SWDs and LEP students would have access to rigorous coursework that would prepare them for the CCSS.
- New school grading systems that were deemed to be too complex to be readily understood by parents and others and that didn't give sufficient weight to high school graduation.
- Plans for priority and focus schools that didn't sufficiently set forth how the states would intervene and lacked detail related to how and when schools might exit this status. Most states' proposals for turning around low-performing schools seldom set out any type of consequences or plans for making adjustments along the way.

General observations and impressions of states' approved waivers include those offered by several researchers:

- Approved waivers depart substantially from the accountability systems under NCLB. They tend to be more complex and multifaceted, less transparent and less uniform across states.
- Most states will use new measures in place of NCLB's adequate yearly progress yardstick to judge how well schools and districts are doing. Many will also use multiple performance levels for schools such as grades.
- Fewer student groups will be tracked for some major accountability determinations due to the use of "super groups" wherein the academic performance across several student groups—such as SWDs, LEP students, and low-income students—is combined into a single group.
- Supplemental educational services will be eliminated by many states with the funds being redirected to low-performing Title I schools.

### Examples of Noteworthy Interventions

- **Connecticut** plans to pay top educators from reward schools to serve as improvement coaches in low-performing schools (Ayers and Owens, 2012, July, p. 27). The state also created a "commissioner's network" to provide support for low-performing schools (Ujifusa, 2012, p. 21).
- **Illinois** and **Louisiana** plan to create or expand state units for school turn-around and invest in regional teams to provide technical assistance (Ayers and Owens, 2012, July, p. 28).
- **Iowa** would ask reward schools to host teams from low-performing schools (Ayers and Owens, 2012, July, p. 27). In a somewhat similar vein, **Minnesota** schools identified as priority schools because of low-performing subgroups will be afforded an opportunity "to learn from high-performing schools with similar demographics" (Klein, 2011, December 14, p. 21).
- **Louisiana** will use a "network team" to analyze data and set goals in low-performing schools (Ujifusa, 2012, June 6, p. 23).
- **New Jersey** will create seven Regional Achievement Centers that will monitor and intervene in the state's lowest-performing schools, that is, schools that might eventually be subject to state closure.
- **North Carolina** will engage "Roundtables" of educators to monitor school district initiatives (Ujifusa, 2012, June 6, p. 23).

- **Tennessee** has designed a state-run Achievement School District (ASD) modeled after **Louisiana's** Recovery School District created in the aftermath of Hurricane Katrina. In the ASD, schools would be run by charter operators, or directly by the statewide district itself. Schools operated under this new authority “would be given charterlike leeway when it comes to hiring, budgeting, scheduling, and programming.”  
**Tennessee** school districts with low-performing schools would have the option of participating in an ‘innovation zone’. Under this option, the school district would give its low-performing schools “autonomy and intensive support similar to what schools are getting from the state-operated ASD district” (Klein, 2011, December 14).
- In **Washington**, the state will use its nine Educational Service Districts to provide access to professional development and technical assistance for struggling schools (Ujifusa, 2012, August 22, pp. 26, 27).

## Amendments to State's Waiver Plans

To date, ED has posted 49 amendments to approved *Flexibility Requests* for 11 states ranging in number from a single amendment for each of several states to 14 for one and 10 each for two other states. The amendments are described in detail in Chapter II. For the most part, the amendments seemed to represent routine “tweaking” of plans without discernible patterns across the 11 states.

Examples of the amendments included:

- **Florida's** request to continue directing its school districts to allocate funds to Title I schools wishing to continue providing SES.
- **Kentucky's** intervention plans with schools and districts that continue to be among the lowest-performing wherein they will be required to revise the Comprehensive School or District Improvement Plans and post the revised plan on their websites.
- **Maryland's** revision of its indicators to rate high schools wherein the value of the four-year adjusted cohort graduation rate will be increased and the points for career attainment and attendance will be replaced with points for college- and career-preparation including AP examination performance or concentration in career and technology education or college enrollment.
- **Oklahoma's** use of the state's A to F grading system as the basis for its differentiated recognition, accountability, and support system.

## Review of Selected Accountability Components

A central focus of this project has been to better understand the implementation challenges faced by states in developing and adapting accountability systems in response to the priorities and requirements outlined in the ESEA waivers. In order to gain a deeper understanding of these issues and to identify promising practices, selected states were studied in greater depth which included a detailed review of their waivers and/or a telephone interview to gain additional insights into their practices, rationale, and objectives. The states were selected based on a number of factors with the primary intent of representing a variety of strong approaches related to the following topics:

- college- and career-ready standards and assessments;
- innovative indicators;
- establishing performance expectations;
- reporting practices;
- support strategies;
- establishing coherence; and
- monitoring and evaluation.

The selected states were: **Colorado, Kentucky, Massachusetts, Michigan, New Hampshire, North Carolina, Rhode Island, and Utah**. The results of this aspect of our study are presented in Chapter III.

### **Implications for Next-Generation Educational Accountability Systems**

The paper concludes with a discussion in Chapter IV of implications for states and other education interest groups resulting from our study of *ESEA Flexibility Requests* approved by the U. S. Department of Education (ED) and a myriad of related issues surrounding these approvals. We first present an overview of the emerging context under which approved *ESEA Flexibility* states are implementing their new systems together with a consideration of related issues as many states begin their transition to new academic content standards and assessment. We close with a capsule consideration of the possibility of ESEA reauthorization and suggestions for future studies.





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## Chapter I: *ESEA Flexibility Requests—A Study/Research Project*

Presented in this chapter is a discussion of how this study came to be, its underlying rationale, and the framework for an examination of states<sup>1</sup> requests for waivers of certain requirements of the No Child Left Behind Act of 2001 (NCLB). The waivers were proposed consistent with the Elementary and Secondary Education Act of 1965 (ESEA) options (commonly referred to as “*ESEA Flexibility*”) announced by President Barack Obama and U. S. Department of Education (ED) Secretary Arne Duncan in September 2011. The study focused primarily (but not solely) on Principle 2 of ED’s waiver request template, *State-Developed Differentiated Recognition, Accountability, and Support*. The study was not intended to, nor does it, explore, discuss, or attempt to judge the various issues and perceived limitations associated with NCLB that have arisen since its enactment in January 2002.

The study findings are presented in two parts. The first, in Chapter II, is a summary and analysis of related literature together with occasional interpretive commentary and additional background provided by the study’s authors regarding the nature of waivers that states sought and were granted or, in some cases, were not granted. The second, in Chapter III, centers on follow-up interviews with selected states in order to “drill deeper” into various aspects of their new accountability systems resulting from the approved waivers. Implications for states based on the study’s outcomes are reported in Chapter IV. Every effort has been made to present the information in a neutral manner drawing on multiple sources without isolating any specific state practice or decision as either commendable or ill-advised. The reader is referred to ED’s documents (1) *ESEA Flexibility Request*, (2) *Peer Review Guidance*, and (3) *Frequently Asked Questions* for supplemental information (all available at [www.ed.gov](http://www.ed.gov) and cited in the list of References and Related Readings at the end of this paper).<sup>2</sup>

## Background

In March 2010, ED released a framework, *A Blueprint for Reform* (<http://www2.ed.gov/policy/elsec/leg/blueprint/publicationtoc.html>), intended to serve as a foundation for the reauthorization of the Elementary and Secondary Education Act of 1965.<sup>3</sup> The plan sought to build on significant reforms that had been enabled under the American Recovery and Reinvestment Act of 2009 and centered on four priorities for reform (priorities which later became the Principles undergirding the *ESEA Flexibility Initiative*):

1. Improving teacher and principal effectiveness to ensure that every classroom has an effective teacher and every school has an effective leader.

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<sup>1</sup> Unless otherwise indicated, the term “states” in this paper means state education agencies (SEAs).

<sup>2</sup> Another comprehensive source for background information and a discussion of implementation issues regarding *ESEA Flexibility* is the April 2013 publication, “The New Title I: The Changing Landscape of Accountability,” by Manasevit, Winters, and Edwards.

<sup>3</sup> Since its initial passage in 1965, ESEA has been subject to reauthorization on a five-year cycle. Had that cycle been followed, the law would have been re-authorized in 2007. That has not happened as of the time that this paper was published. NCLB is the title of the latest ESEA reauthorization occurring in early 2002.

2. Providing information to families to help them evaluate and improve their children's schools, and to educators to help them improve their students' learning.
3. Implementing college- and career-ready standards and developing improved assessments aligned with those standards.
4. Improving student learning and achievement in America's lowest-performing schools by providing intensive support and effective interventions.

Subsequently, in cooperation with ED, and in the continued absence of reauthorization, the Council of Chief State School Officers (CCSSO) undertook a significant leadership role in support of educational reform in early 2011 by convening a Taskforce comprised of chief state school officers and additional experts in accountability to develop a vision for Next-Generation Accountability Systems. The work of this group included producing in June 2011 the document, *Roadmap for Next-Generation Accountability Principles*,<sup>4</sup> a "roadmap" highlighting educational accountability policy priorities. The roadmap provided a guide written by states, for states, for building accountability systems centered on preparing all students for success in college and careers.

The work of this Taskforce, in turn, was substantively reflected in the administration's decision and implementing framework to move forward with the *ESEA Flexibility Initiative* soon thereafter. After the initiative was announced, the Council worked closely with states applying for *Flexibility* waivers and continues to support them as they implement their new accountability systems.

### ***ESEA Flexibility Announced***

In their late September 2011 announcement, the President and Secretary of Education signaled that plans for *ESEA Flexibility* would be "fast-tracked" in order to afford states a number of options to have various NCLB requirements waived. Many of the requirements for which states could seek waivers were regarded by critics of the law as in need of revision.<sup>5</sup> These waivers allowed states to forgo selected NCLB requirements such as setting new performance trajectories for Annual Measurable Objectives (AMOs) that reflect their new target dates for improvement. States seeking the flexibility afforded by the waivers would have to participate in peer reviews<sup>6</sup> of their proposals and agree to include the following principles in re-designing their educational accountability systems:

1. Adopt College- and Career-Ready Standards and Assessments for All Students
2. Create State-Developed, Differentiated Systems of Recognition, Accountability, and Support
3. Support Effective Instruction and Leadership through Educator Evaluation
4. Reduce Duplication and Administrative Burden for School Districts and Schools

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<sup>4</sup> Available at [http://www.ccsso.org/Resources/Publications/Roadmap\\_for\\_Next-Generation\\_State\\_Accountability\\_Principles.html](http://www.ccsso.org/Resources/Publications/Roadmap_for_Next-Generation_State_Accountability_Principles.html).

<sup>5</sup> State-specific information on *ESEA Flexibility Requests* and related documents can be found at (1) [www.ed.gov/esea/flexibility/requests](http://www.ed.gov/esea/flexibility/requests), (2) *Education Week's NCLB Waivers: A State-by-State Breakdown* [www.edweek.org/ew/section/infographics/nclbwaivers.html](http://www.edweek.org/ew/section/infographics/nclbwaivers.html) or [www.edweek.org/go/waivermap](http://www.edweek.org/go/waivermap), and (3) at the Center on Education Policy's *NCLB Waiver Watch* [www.cep.dc.org](http://www.cep.dc.org).

<sup>6</sup> The Window 1 peer reviews were held in early December 2011, with states' waiver plans and requests due at ED in November, giving submitting states just over two months to prepare their applications.

## States Ready

The fact that states were indeed ready for *ESEA Flexibility* was affirmed by Center on Education Policy (CEP) researchers Jennifer McMurrer and Namai Yoshioka in their fall 2012 study of states' early experiences in applying for waivers and implementing their new accountability systems. In this extensive research effort, almost all states that have submitted waivers [through Window 2] with the District of Columbia counting as a state—for a total of 38—responded to CEP's survey. The most common reasons why states applied for waivers were (McMurrer & Yoshioka, 2013, March 4, p.4):<sup>7</sup>

- We doubt that ESEA will be reauthorized in the next year and districts and schools in our state need flexibility in meeting some of its provisions (27 states).
- Too many schools in our state were inappropriately identified as needing improvement under NCLB (25 states).
- We believe that the reforms described in our application will result in increases in the state education agency's capacity to assist schools and districts needing improvement (25 states).
- We believe that a waiver could afford more local control of education than the policies in place under NCLB (21 states).
- We wanted a unified accountability system instead of a state system and a federal system (21 states).

According to the study's authors, the key findings that emerged from CEP's survey related to the primary reasons states decided to opt for *ESEA Flexibility* were:

1. States believe that the waivers address several of the problems they see with the NCLB accountability requirements. For example, 37 states agreed that NCLB set an unrealistic goal of 100% of students reaching proficiency by 2014 and mandated consequences for schools in improvement that did not always increase student achievement. Most of the states surveyed anticipate that the accountability system in their waiver application will satisfy or somewhat satisfy their concerns about NCLB. For example, 35 states expect their waiver accountability system to do at least a somewhat better job than NCLB at identifying schools in need of improvement.
2. States are optimistic that the waivers will improve student learning. A large majority of the states surveyed expect the waiver requirements for college- and career-ready standards and for growth-based teacher and principal evaluation systems to improve student learning to a great extent, and a majority agreed that differentiated accountability systems will increase learning to a great or some extent.
3. Waivers have shaped state policies and accelerated some reforms. Although many states had already put in place or intended to carry out several of the policies required for a waiver before they applied, the waiver requirements have spurred several states to modify existing plans or to adopt policies they would not otherwise have implemented. For example, ten states reported amending their plans for new teacher evaluation systems due to the waiver. A dozen states

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<sup>7</sup> Available at: <http://www.cep-dc.org/displayDocument.cfm?DocumentID=418>

reported they had not intended to implement differentiated recognition systems for districts and schools in their states before applying for a waiver.

4. Changes in teacher and principal evaluation systems are well underway, despite resistance in some states from teachers. Twenty-nine of the 38 states surveyed are either piloting or implementing new teacher evaluation and support systems, and 11 of these states are using the results for personnel decisions. A similar number are piloting or implementing principal evaluation and support systems. However, many surveyed states reported experiencing resistance to their teacher evaluation and support systems from teachers, teachers' unions, and administrators.
5. States have mixed views about whether implementing the various aspects of the waivers will cost more than implementing similar NCLB provisions. In particular, half or more of the states surveyed projected that college-and career-ready standards and differentiated recognition and accountability systems will cost about the same to implement as the systems implemented under NCLB requirements. But more than half of the surveyed states indicated that the teacher evaluation and support systems required by the waiver will cost more to implement than comparable NCLB provisions.
6. Many state officials are concerned about what will happen to the programs and policies in their waiver plans if ESEA is reauthorized. A majority of states were apprehensive about the confusion the transition to amended ESEA requirements would cause, the costs and disruption involved in implementing yet another accountability system, and the loss of credibility that might ensue among educators, parents, and other stakeholders. At the same time, some states were more neutral or optimistic that a reauthorized ESEA might be consistent with their waiver plans or might allow them to continue similar policies.

### Peer Reviews Begin

As of July 1, 2013, 38 states and the **District of Columbia** have received partial or full approval of their *ESEA Flexibility Requests*, four states continue to negotiate approval with ED, two states have withdrawn their *Requests*, three states and a consortium of nine **California School Districts** are awaiting decisions on their *Flexibility Requests*, two states have not submitted a *Request*, and ED has denied one state's *Request*:

- Approved (39): **Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin.**
- Negotiating Approval (4): **Alabama, Illinois, Iowa and Maine.**
- Awaiting Flexibility Approval Decisions (3): **Pennsylvania, Texas, and Wyoming.**<sup>8</sup>
- Withdrew Submittal (2): **North Dakota and Vermont.**
- Did not Submit a *Request* (2): **Montana and Nebraska.**

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<sup>8</sup> ED also continues to review a *Flexibility Request* from a consortium of nine California school districts.

- Denied (1): **California**.

Following a December 2011 peer review, ED approved what became the first round (referred to by the Department as “Window 1”) of *ESEA Flexibility Requests* submitted in mid-November by eleven states.<sup>9</sup> Another 26 states and the **District of Columbia** submitted *Requests* in a second round (Window 2) during February 2012 that were peer reviewed the following month.<sup>10</sup> Of the 26 additional states, one state withdrew its *Request* and 24 have been approved.<sup>11 12</sup> In September 2012, a third opportunity (Window 3) to submit *Flexibility Requests* was provided and seven states met the deadline for submitting their *Requests* during this time (one of the seven later withdrew its *Request*).<sup>13</sup> On May 20, 2013, ED announced that three additional states had been approved and followed that with another approval on June 26, bringing the total number of approvals including the **District of Columbia** to 40.

Although not publicly announced, ED provided a fourth opportunity for the submittal of *Flexibility Requests* (Window 4) in mid-February 2013 for the few remaining states that had not previously chosen to do so. Three states and a consortium of nine **California** school districts met the February 28, 2013, deadline. As of July 1, 2013, ED had not announced any decisions regarding these *Requests*.

As of July 1, 2013,, two states, **Montana** and **Nebraska**, have not submitted a waiver request and two states, **North Dakota** and **Vermont**, have withdrawn their waiver requests. In January 2013, ED Secretary Arne Duncan declined to exercise his waiver authority to approve **California’s** request (submitted outside of peer review windows).

By mid-2012, some states with approved waivers had begun submitting to ED proposed amendments to their approved plans. The nature of these requests and the resultant decisions are presented in Chapter II.

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<sup>9</sup> See “Waiver Hopefuls Put Through Paces By Review Process,” by Michele McNeil, in *Education Week*, February 22, 2012, pp. 1, 26-27.

<sup>10</sup> See “Round-Two NCLB Waiver Bids Critiqued,” by Alyson Klein, in *Education Week*, May 16, 2012, pp. 21-22. See also “Latest NCLB Waiver States Face ‘To Do’ Lists,” by Andrew Ujifusa, *Education Week*, June 6, 2012, pp. 21, 23.

<sup>11</sup> See “Tide of NCLB Waivers Rises; Tally Stands at 33 and Counting,” by Alyson Klein, *Education Week*, August 8, 2012, p. 24. **Idaho** was approved in late October 2012 bringing the total approvals at that time to 34.

<sup>12</sup> However, by March 2013, only 12 states had received approval for their teacher evaluation systems; 11 states had to change their planned systems or create new ones (McNeil, 2013, March 6, p. 1). Thus, it would seem that the other “approved” waiver states should be considered, technically, “conditionally approved.” For states unable to secure Principle 3 approval during their initial peer review, ED has required a second peer review, for Principle 3 only, following receipt of required additional information/documentation. If the additional submittal is found to be satisfactory by a panel of two “peer experts” and ED staff, an approval letter is sent from the OESE Assistant Secretary (but not posted at the Department’s website). If the additional documentation is still insufficient, the state also receives a letter to that effect from the Assistant Secretary (which is also not posted).

<sup>13</sup> See “Latest States in Hunt For NCLB Flexibility Include Rural Players,” by Michele McNeil, *Education Week*, September 26, 2012, pp. 20-21.

## A Study of Waiver Approvals

Implementation of the approved accountability *Flexibility Requests* appears to hold significant potential to positively impact teaching and student achievement throughout the nation. Recognizing this significance, member states of the Accountability Systems & Reporting (ASR) State Collaborative decided in May 2012 to commission a study to examine the scope, content, related issues, and the initial impact of these approvals on states' educational accountability systems under NCLB and, perhaps in another study at a later time, the attainment of the over-arching *Flexibility* goals of turning-around low-performing schools, improving instruction, and raising student achievement.<sup>14</sup> Of particular interest to ASR member states was the opportunity afforded through such a study to learn from the experiences of other states and to apply these findings to guide the redesign and implementation of their respective educational accountability systems.

In August 2012, ED announced plans for monitoring every state receiving *Flexibility* waivers (including the **District of Columbia**). According to ED's website, "The Department will monitor each State approved for ESEA flexibility to ensure the State implements its plan fully, effectively, and in a manner that is consistent with the approved request and the requirements of ESEA flexibility, while supporting the State in their work to improve achievement for all students." It is too early to determine the extent to which the monitoring outcomes may provide additional information that could be supportive to this study of the status of states' implementation of their next-generation educational accountability systems. However, it is very likely that the monitoring reviews will play a critical role in determining how well states' next-generation educational accountability systems are working and whether the systems are indeed serving to support the attainment of significant gains in low-performing schools. Additional information on this monitoring is provided in Chapter II.

## Focus of the Study

The primary focus of this study—through research, literature reviews, and follow-up inquiries related to approved *Flexibility* waivers including in-depth interviews with selected states—was to describe the nature of waivers that states sought and those that were approved, to examine related issues, to identify and describe "promising practices", and to otherwise learn from states with approved *Flexibility Requests*<sup>15</sup> in order to support other states that may wish to incorporate findings of interest into their own next-generation accountability systems.

By focusing on specific aspects of states' waiver approvals, this study also aimed to explore key implementation issues and to determine answers to a variety of questions. However, in several instances, it turned out that, for various reasons, the information needed simply was not available or was more complex and time-consuming to obtain than anticipated. One example was the information

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<sup>14</sup> Section 9401(e)(4)(B) of the statutes requires the Secretary of Education to describe whether waivers under that section served to (1) increase the quality of instruction to students or (2) improve the academic achievement of students.

<sup>15</sup> Unless otherwise specified, the terms "*Flexibility* waivers" and "*Flexibility Requests*" are used interchangeably in this paper.



regarding waivers that states may have sought but which were eventually dropped during negotiations with ED. The central aspects of states' waiver that were examined included the following:

- *Implementation challenges associated with a state's accountability design, transition to a new system, and validation of same.* For example, to what degree did states face unforeseen or unintended consequences associated with making the sort of significant changes that may have been involved and what was the nature of those? How were these resolved?
- *The extent to which next-generation accountability systems designed and implemented by various states differed and on what bases they differed.* What were the discernible patterns or commonalities among these systems, and to what extent did they vary? Were there other *Flexibility* waivers states were interested in but which were not included in their *Requests* for one reason or another? Were the desired additional waivers expressly prohibited under the *Flexibility* guidelines or did they simply appear to have been "non-negotiable" with ED for some reason?
- *"Unique strategies or initiatives" states may have taken with respect to implementation.* What lessons might be helpful to those designing, as well as those beginning to implement, next-generation accountability systems? For example, were there particular strategies employed by individual states that resulted in greater "buy-in" on the part of chronically low-performing districts and schools? Did states engage new partners in their school improvement efforts and/or modify existing partnerships to better serve low-performing schools and districts?
- *How states plan to determine whether their waivers are working to improve education for their students.* How are states planning to monitor and evaluate the effectiveness of their new accountability systems? Are there particularly promising or innovative plans for evaluating the effectiveness of particular *Flexibility* waivers?

### Further Study through Interviews with Selected States

In addition to the above aspects of states' new accountability systems that were the overall focus of this study, other aspects were addressed more closely in follow-up interviews with selected states. In so doing, the researchers sought to address a number of important issues common to many states and to illuminate promising practices to inform solutions. These included:

- *College- and Career-Ready Standards (CCRS) and Assessments.* How are states working to transition from existing reading and mathematics tests in the short time prior to adoption of new consortium-based tests? Moreover, we focused on how states are addressing standards for tests in other academic content areas, such as science and social studies.
- *Innovative Indicators.* Beyond traditional accountability indicators, such as assessment results and graduation rates, what states adopted new, more innovative, elements into their accountability systems and what can be learned from their experiences?
- *Establishing Performance Expectations.* How do states ensure that information from multiple sources are brought together to establish performance targets that are ambitious but attainable?



- *Reporting Practices.* How do states provide straightforward, easy-to-understand, reports while ensuring that stakeholders have rich detail to inform initiatives?
- *Support Strategies.* What initiatives offer insight into promising practices for supporting understanding and use of the accountability results and, more broadly, support improvements to promote student achievement?
- *Establishing Coherence.* State educational accountability initiatives address multiple levels including: student, school, and educator accountability. While the focus of this study is primarily on school accountability, we acknowledge that policy-makers always look to establish coherence among systems. What state practices provide insight into alternatives to promote coherence in a comprehensive system?
- *Monitoring and Evaluation.* Educational accountability systems often change as a result of ongoing evaluation and/or policy shifts. How are states managing this transition to promote continuous improvement and minimize disruption?

## Methodology

In the initial conceptualization of this study, it was proposed that a broad-based collection of data (i.e., survey) would be employed to produce mainly quantitative or surface level information on a wide range of factors. After considerable discussion and reflection at ASR's Fall 2012 meeting, it was determined that a tighter focus on a smaller number of central factors would provide a more useful in-depth, qualitative picture of how states sought to move toward next-generation accountability systems. Much of the information that would be yielded in a largely quantitative inquiry about states' *Flexibility Requests* turned out to be already publicly available (as evidenced in the extensive literature review reported in Chapter II). For example, we know which states choose to base their Annual Measureable Objectives (AMOs) on Option A, B, or C<sup>16</sup> in Principle 2.B; we know which states are using "super groups" or consolidated student groups in making school performance determinations; and we know which states are using letter grades to report school performance as illustrated in the literature review.

For these reasons, and based on the feedback of ASR member states, we decided to conduct a scholarly review of the related publicly available information and present the findings as background information on the *Flexibility Requests* and the waivers granted. That information is summarized and presented in Chapter II. We also conducted follow-up research in order to clarify specific elements of some states' waiver requests and to answer other questions associated with the study's focus.

Thus, it was agreed that we would conduct the study in a two-part manner. One part would center on presenting a summary, analysis, occasionally commentary, and additional interpretive background regarding various aspects of states' *Flexibility Requests* (and the waivers they sought) as suggested above. The second part focuses on promising practices from states implementing next-generation educational accountability systems. To accomplish this second part, interviews were conducted with staff in select states. The states were chosen from a pool of nominees by an ASR committee working with the study's researchers. The findings of this phase of the study are reported in Chapter III of this paper.

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<sup>16</sup> See related discussion of these options under the section, "AMOs" in Chapter II for additional information.

## Conducting the Study

Milestone steps to planning and conducting this study included:

- Forming a workgroup and developing an action plan and timelines (September 2012).
- Finalizing a study/research plan and action plan (late October 2012).
- Conducting literature reviews for related research, reports, and articles (on-going).
- Planning and finalizing elements to be included in the study during the Fall ASR meeting (October 2012).
- Finalizing elements to be included in follow-up interviews with selected states (mid-November 2012).
- Selecting states for in-depth study (late-November 2012).
- Conducting follow-up interviews with the selected states (mid-December 2012 to mid-January 2013).
- Beginning paper to report findings (early December 2012).
- Reviewing progress at the Winter ASR meeting (February 2013).
- Drafting report of study findings (March to May 2013).
- Presenting findings at the Spring ASR meeting (May 2013).
- Completing study report (July to August 2013).

In summary, this project was focused mainly on each state's *Flexibility* architecture or framework and the "roll out" of same—that is:

- What were some of the significant issues at peer review and how were those resolved?
- What changes in a state's educational accountability system were proposed initially and what changes were approved by ED in the end?
- Has the full (and revised) accountability system been implemented?
- How is the new system "playing out?"
- What are the "lessons learned" from the process that can be shared with other states?
- What were some of the "new" approaches to elements such as grading schools and supporting school improvement?
- Have amendments been necessary? If so, what have those been, and has ED approved same?

## The Next Chapter

Chapter II centers on the nature of *ESEA Flexibility* waivers that states sought and the resultant decisions by the U. S. Department of Education (ED) regarding those requests. We present the results of a scholarly review of the related publicly available information and also present the findings as background information on the *Flexibility Requests* and the waivers granted. Occasionally, we provide interpretive commentary and additional background information regarding the waiver requests and the applicable statutes, regulations, and non-regulatory guidance.

The information presented is also intended to serve as a succinct "snapshot" regarding various elements of approved state waiver plans that might be of particular interest to other states. The chapter

concludes with: (a) information on amendments to previously approved waiver plans that some states (11) have already requested and ED has approved; and (b) suggested recommendations and issues to watch—from the researchers, analysts, and education writers we have studied.

## Chapter II: Approved *ESEA Flexibility Waivers*: A Summary and Analysis of Selected Elements

### Introduction

Presented in this chapter is a compendium of information resulting from four peer reviews<sup>17</sup> conducted by the U. S. Department of Education (ED) of states' *ESEA Flexibility Requests* including information regarding the nature of approvals and waivers that were subsequently granted. Also included are: (a) a section on amendments to previously approved waiver plans sought by several states and ED's resultant approval decisions together; and (b) suggested recommendations and issues to watch—from the researchers, analysts, and education writers we have studied. The information has been gleaned through:

- Review and analysis of materials submitted by states to ED and decision letters from the Department to the states;<sup>18</sup>
- Review and analysis of sources cited in the List of References and Related Readings;<sup>19</sup>
- Conversations, interviews, and emails with state education agency staff members as well as follow up communications with ED representatives; and
- Review of parts or almost all of the *ESEA Flexibility Requests* submitted for peer review.

The information presented in this chapter is intended to serve as a succinct “snapshot” regarding various elements of approved state waiver plans that might be of particular interest to other states. The information focuses primarily, but not exclusively, on Principle 2, *State-Developed Differentiated Recognition, Accountability, and Support*, in the *Flexibility Request* template.<sup>20</sup> Also, the information is drawn from an early point in time during which many states are still in the start-up phases of institutionalizing their approved waiver plans. These plans are highly likely to change as states reflect on what is working and continuously seek to improve their plans as demonstrated by the fact that some states have already received approval from ED to amend their plans. The approved amendments are described later in this chapter.

Readers are cautioned that not only are states' plans likely to continue to shift with the passage of time, but the outcomes of ED's monitoring reviews that are just beginning are also likely to cause some states to modify their waiver plans. In other words, “it's early in the process and things may change over time!” Also, it should be noted that our study is based on what is on the record as having been approved by ED for the various states, as of July 1, 2013. For example, a number of states have received separate letters approving the Principle 3 portion (Supporting Effective Instruction & Leadership) of their *Flexibility Requests* that have not been posted at ED's website. Further, very little is known about what elements

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<sup>17</sup> The fourth peer review was held in April 2013. It is unlikely that all of the results from this review will be known in time for inclusion in this paper.

<sup>18</sup> See [www.ed.gov/esea/flexibility](http://www.ed.gov/esea/flexibility).

<sup>19</sup> Links for many of the sources cited in this chapter are provided either in the text or the List of References.

<sup>20</sup> While every effort has been made to present these observations in the same order that a state's *Flexibility Request* for waivers of various NCLB requirements must follow, that has not always been practical.

of states' plans may not have been approved. In this regard, we share the observation of many others that it has been ED's practice over the past several years to verbally "negotiate out," rather than deny in writing, elements that it deems not in keeping with the letter or intent of statutes, regulations, or guidance.

## Observations and Comments on the Process and Outcomes

After reviewing ED's approval decisions following peer reviews of states' *Flexibility Requests*, many educational researchers, analysts, education reporters, and other interested parties conducted a variety of related studies and offered a wide range of generalized observations, impressions, and conclusions regarding Department's resultant waiver decisions. For example:

1. Approved waivers depart substantially from the accountability systems under the No Child Left Behind Act of 2001 (NCLB). The waivers tend to be more complex and multifaceted, less transparent (making it harder to understand how student performance is being measured and difficult to compare from one state to another), and less uniform across states than the replaced policies. Whether these waivers result in an environment in which poor academic performance by some student groups becomes masked remains to be seen (Kober and Riddle, 2012, October, pp. 2, 5). Conversely, as Riddle observes (2012, October), "Although these systems are complex, one could argue that they capture more dimensions of school performance that impact achievement, such as school climate" (p. 26).
2. States' content and student achievement standards—especially the definition of a "proficient" student's performance—continue to vary widely, as do many technical yet important aspects of how Adequate Yearly Progress (AYP) is determined across the states, such as whether growth models are employed (Riddle, 2012, May 8, p. 14).
3. One of the biggest issues for states during the Window 1 peer review, according to McNeil (2012, February 22) was "articulating how they would make sure students in special education and English-learners have access to rigorous coursework that will prepare them for common academic standards and how their teachers will get the professional development they need." Additionally, states did not appear to "have good plans for how to build evaluation systems to incorporate the teachers working with those students" (p. 27). In their review of Window 2 proposals, Ayers and Owen (2012) concluded that, "Most states did not include plans to train general educators on ways to best support English language learners<sup>21</sup> aligned with the [CCSS]" (p. 14).
4. Speaking at the February 2012 National Title I Association Conference,<sup>22</sup> a Window 1 peer reviewer stated that the meaningful engagement of stakeholders including documenting the audiences, what was talked about, and what groups of stakeholders were represented was "monumental" [in the development of a state's waiver request]. It "was not just that you had

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<sup>21</sup> In this paper, the terms Limited-English Proficient Students (LEPs), English Language Learners (ELLs), and English Learners (ELs) refer to the same student group.

<sup>22</sup> See the *Flexibility Request* document for the requirements under the heading, "Consultation," which precedes Principle 1 (*College- and Career-Ready Expectations for All Students*). That involvement also has implications for Principles 2 and 3.

meetings but specifically, what did you talk about at those meetings . . . Did you just have conversations with superintendents or did you also have that conversation with parents?” In a separate session at the conference, an ED representative also stressed the importance of detailing in a state’s *Flexibility Request* the nature of changes that were made in the application as a result of stakeholder involvement (Brownstein, A., 2012, March, p. 2).

5. In this same vein, according to ED (*Summary of Considerations to Strengthen State Requests for ESEA Flexibility, 2012*)<sup>23</sup>, Window 1 peers “also noted that multiple SEAs did not provide strong evidence that their flexibility requests were presented to parents and other stakeholders in a manner that clearly articulated the major changes proposed for their accountability systems. Peers raised particular concerns regarding stakeholder understanding of subgroup accountability changes” (p. 1). The peers also identified several approaches that appeared to help states “meaningfully engage and solicit input from stakeholders” including:
  - Some SEAs used multiple methods of communication, including a combination of surveys, focus groups, advisory committees, community engagement forums, and outreach to teachers within the state.
  - One SEA included multiple stakeholders representing diverse groups on a flexibility working group that met several times during the development of the request.
  - Another SEA developed a consultation action plan and assigned specific staff to reach out to specific organizations.
  - Other SEAs noted, in their submissions, specific changes that they had made in response to stakeholder input.

### Negotiating Approval

It was also clear that, for many states, negotiating with ED and gaining the Department’s approval for waiver plans wasn’t always an “easy” or necessarily quick process. While waiver requests for Window 1 states stretched out over several months, all 11 *Requests* were eventually approved—although, according to some participants in the process, not without some “trying times.” Window 2 states seemed to have had similar experiences although one state was still negotiating approval with ED well over one year after peer review (in February 2012). The peer review for the seven states submitting in Window 3 was held in September 2012. One state subsequently withdrew its application, three states were approved in May 2013, and three states continue to negotiate approval with ED. The peer review for Window 4 submittals was conducted in early April 2013. No decisions have been released although ED is on record promising the consortium of California school districts a decision “by the end of this school year.”

As noted in the “Peer Reviews Begin” section in Chapter 1, only 12 of the “approved” waiver states had successfully negotiated “unconditional” approval by March 2013 (McNeil, 2013, March 6, p. 1). The

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<sup>23</sup> ED issued this paper shortly after the Window 1 reviews summarizing peer comments and recommendations regarding cross-cutting issues and offering suggestions for additional resources that could be helpful to states planning to submit waiver requests in the future. It is available at: <http://www.ed.gov/sites/default/files/considerations-strengthen.pdf>. This is an area that did not seem to be problematic during the Window 2 peer reviews. This was very likely due, at least in part, to the fact that the issue was among those stressed in technical assistance workshops provided for states preparing Window 2 submittals

remaining states were still negotiating, primarily, approval of their teacher evaluation systems—especially that part related to the incorporation of student growth and achievement as a “significant factor.” Leigh Manasevit, Tiffany Winters, and Charles Edwards—in their recent report on Title I and *ESEA Flexibility*—aptly characterize the related issues:

This [the incorporation of student growth and achievement in teacher performance evaluations] stems partly from difficult-to-resolve technical questions, such as how to track individual student scores back to specific teachers or how to evaluate teachers who teach subjects on which students are not assessed on uniform state exams. There are also broader questions as to whether there is any scientifically valid way to link student achievement and teacher evaluation even where there is available data. Finally, there is much resistance from teachers and professional organizations that represent them. They base their resistance on the belief that student scores do not represent the multiple other factors that affect an individual student’s performance, such as poverty, class size, or school resources, that are not within the control of individual teachers.

### **Congress Shows Interest in the Process**

In somewhat of a curious related development, Representatives John Kline, Chair of the Committee on Education and the Workforce, and Todd Rokita, Chair of the Subcommittee on Early Childhood, Elementary, and Secondary Education, sent a letter on April 19, 2013, to each state that had received approval of its waiver request requesting information “to better understand how waivers are affecting states’ education systems.” The Representatives stated that it was the duty of their respective committees to “conduct appropriate oversight over the waiver approval and implementation processes.” Approved states were asked to contact committee staff by April 26, 2013, in order to arrange a meeting to discuss responses to the following information regarding their *ESEA* waivers:

1. How many meetings, either by phone, teleconference, or in person, were needed with the Department of Education before the waiver was finally approved?
2. How many meetings, either by phone, teleconference, or in person, and what written correspondence, occurred between provisional and final approval?
3. How many amendments have been requested and how many have been approved for the waiver? Please indicate how the need for the amendment arose and describe the involvement of the Department of Education.
4. Please describe the monitoring process for the waiver. How much is being conducted through desk top monitoring and how much is being conducted through on-site visits?
5. Please describe the top five challenges your state has faced in implementing the waiver.
6. Please describe what plans you have in place in the event your waiver is revoked for noncompliance or some other reason. Please include your estimation of the impact of transitioning back to current law.

The letter did not include information regarding what steps might be taken by the committees following receipt of the requested information nor did it elaborate on the matter of “revocation” of a state’s approved waiver plan by ED including the procedures and statutory authority for such an action.<sup>24</sup>

## Window 1 Submittals

Eleven states submitted *Flexibility Requests* in late 2011 for the initial round of waivers. Seven of those states—**Colorado, Indiana, Kentucky, Massachusetts, Minnesota, New Jersey, and Tennessee**—won full approval almost immediately while **Florida, Georgia, and Oklahoma** received conditional approvals following peer review and negotiations with ED. **New Mexico** was required to complete additional work on its *Request* before eventually receiving full approval.

Wayne Riddle of the Center on Education Policy (2012, March 8) conducted a thorough analysis of the “major themes of the accountability-related provisions in the waiver requests” of these eleven states. He was among those concluding that the waivers to be implemented “are more complex in several respects than those in the NCLB statute.” Riddle identified the following as key findings emerging from this first round of peer reviews (pp. 2-3):

- *Greater coordination with state accountability systems.* Each of the states will integrate federal accountability provisions with their state accountability systems to a greater degree than previously. (See also later discussion under “School Accountability.”)
- *Adoption of the Common Core State Standards.* All of the states [in this window] have adopted and are implementing the CCSS. (**Minnesota** has adopted the English language arts standards but not the mathematics standards.)
- *Greater complexity in achievement targets.* Every state proposed major changes to their AMOs but the use of those to make accountability determinations, such as identifying schools for interventions, will vary widely.
- *New measures of school and district performance.* Most of the states will use new measures in place of NCLB’s adequate yearly progress (AYP) requirements. Additionally, progress will be measured in part on students’ academic growth.
- *Multiple performance levels for schools.* Most states will replace AYP measures in which a school either makes or does not make AYP with multiple measures to identify schools for interventions or rewards.
- *Fewer subgroups tracked for some major accountability decisions.* At least seven of the 11 states will base some of their most significant accountability decisions on the achievement of just two student groups—all students and a single broad “disadvantaged” student group [also referred to as “super groups”].

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<sup>24</sup> Section 9401(f) of ESEA addresses the Secretary’s authority to terminate waivers: “The Secretary shall terminate a waiver under this section if the Secretary determines, after notice and an opportunity for a hearing, that the performance of the State or other recipient affected by the waiver has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purpose.” Question A-7, pp. 4-5, in the August 2012 *FAQs* document briefly elaborates on this provision.



- *Elimination of school choice and tutoring requirements.* Only two of the 11 states will continue to require schools identified for improvement to offer students the choice of another public school or reserve funds for tutoring or supplemental educational services (SES) provided by private companies or public entities. The extent to which interested parents in states opting to discontinue these options, especially SES, in this or subsequent rounds were consulted or engaged in the decision-making process is unknown.

Michelle McNeil also examined states' first round *Flexibility Requests* and ED's decisions. She incorporated feedback from peer reviewers to the Department in a February 22, 2012 *Education Week* article and is one of the few to have considered that feedback in examining states' *Flexibility* proposals. With respect to the peers in this round, she reported that: "Besides flaws in states' plans to target subgroups such as special education students and English-learners,<sup>25</sup> peer reviewers advising the Education Department found other problems in the initial applications, including:

- A lack of consultation with stakeholders in creating the waiver proposals;
- New grading systems that were too complex to be understood by parents and educators and that didn't give enough weight to graduation rates;
- Significant weaknesses in using annual achievement targets to drive incentives for schools that are not in the lowest-performing category; and
- Vague plans for developing and implementing new evaluation systems for teachers and principals (p. 26).

## Window 2 Submittals

Twenty-six states and the **District of Columbia** submitted *Flexibility Requests* for the Window 2 peer reviews conducted in February 2012. **Vermont** subsequently withdrew its *Request* because the state wanted to give students state tests every other year and ED indicated that it would not approve such a waiver (Ujifusa, 2012, June 6, p. 21). By August 2012, 22 of the states and the **District of Columbia** had successfully met the requirements for approval of their *Flexibility Requests*. Of the remaining three states at that time—**Idaho**, **Illinois**, and **Nevada**—**Idaho** and **Nevada** were approved later and only **Illinois** continues to negotiate its *Request* with ED (the central issue being timelines contained in the state's teacher evaluation legislation according to a state official in June 2013).

According to Michelle McNeil (2012, March 26), in an *Education Week* article, states submitting waiver requests for Window 2 "seem to have learned from their predecessors and dodged pitfalls that triggered some revisions from first-round states" (p. 1). Among her conclusions following a review of these proposals were the following (pp. 1, 22):

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<sup>25</sup> Additionally, McNeil noted that, "The Education Department clearly tried to protect subgroups. In the next round of applications, the Department added a requirement that makes it clear states must report on the performance of individual subgroups as specified under the No Child Left Behind Act" (p.27). It is important to recall that Window 1 states had just over two months to prepare and submit their waiver requests. Clearly, states submitting requests later benefitted from the experiences of these early submitters.

- The applicants did a better job explaining how they will help English-learners and special education students succeed.
- States did not stray as far from NCLB’s original emphasis on holding schools accountable for the performance of small groups of students deemed at risk of school failure.
- Fewer than one-half of the states are incorporating subjects other than mathematics and reading into their accountability systems despite criticisms from many sectors that NCLB has served to narrow the curriculum to those two areas at the expense of others.

As ED negotiated *Requests* with states following the Window 2 Peer Review, one state assessment director (who wished to remain anonymous) likened the process to a prolonged game of “ping pong”.<sup>26</sup> Alyson Klein (2012, May 16), in another *Education Week* article reporting on outcomes of Window 2 reviews, characterized the Department as pressing for “more ambitious goals for student achievement, a sharper focus on students who historically have been overlooked, and a more specific set of remedies for perennially struggling schools” (p. 21). Klein also stated that, during this second window of reviews, ED’s concerns regarding these aspects of states’ waiver requests centered on:

- The needs of subgroups of students; particularly when states proposed combinations resulting in “super subgroups.”<sup>27</sup> Although fewer states advanced this concept during the second round—those that did were asked to provide more information ensuring that “special populations wouldn’t get lost in the shuffle.”
- The need to “shoot higher” in setting targets for growth in student achievement and making sure that graduation rates are a significant factor in accountability.<sup>28</sup> See also later discussion of graduation rate issues in this chapter.
- Explanations of rationale when some states planned to continue using free tutorial services in their lowest-performing schools.<sup>29</sup> For example, **Arkansas, Illinois, and South Carolina**—all of

<sup>26</sup> In their analysis of states’ perspectives about their experiences in applying for waivers, McMurrer & Yoshioka (2013, March 4, p. 21) provide comments on the experiences of five states in negotiating their waiver requests with ED.

<sup>27</sup> States making this argument almost always asserted, and demonstrated with data, that doing so would result in more schools being included in accountability determinations because the numbers of students would be more than the minimum-n’s associated with student groups under NCLB.

<sup>28</sup> Prior to *ESEA Flexibility*, states were required—by regulation—to strengthen their graduation rates and to meet more stringent requirements including ED approval of annual target rates that would ensure “continuous and substantial progress” toward each state’s goal (set at 85% by many states at the time). The regulations also required that the graduation rates be disaggregated and included in Adequate Yearly Progress (AYP) determinations for student groups. Prior to this, graduation rates were factored only into the all students group for AYP determinations. Under *Flexibility*, there is an optional waiver that permits states to forego making AYP determinations. (See later discussions on this subject in this chapter and also Questions B-2 and B-9 in ED’s August 3, 2012, *FAQs* document and B-11 in ED’s *FAQs* March 5, 2013, Addendum document.) Nevertheless, states are still required to include graduation rate data in their annual reports.

<sup>29</sup> The requirement to provide Supplemental Educational Services (such as free tutorial services) when a school was identified for improvement under NCLB can be waived as a requirement under *ESEA Flexibility*. The purpose of this waiver is to make the SES funds available for other kinds of support; especially in focus and priority schools. Thus,

which wanted to “continue using free tutoring services in their lowest-performing schools . . . were asked to explain their rationale for the move and to spell out a process for screening providers.” For another example, see the plan amendment approved for **Florida** in the section, “Amendments to Approved Plans,” later in this chapter.

- Plans for “priority” and “focus” schools that “didn’t do a good job of explicitly setting out how they [the state] would intervene” in those schools. Additionally, “the Department deemed that they [the plans] didn’t set a high bar for deciding when a school should get out of priority or focus status.”
- The need for more specificity in plans related to offering rewards for high-performing schools.
- The need to revamp accountability systems that don’t adequately address accountability related to the performance/achievement of student groups and the reporting of same.
- The need for substantially more information to explain how states consulted with stakeholders on their waiver planning (pp. 21-22). This issue was also noted in other reports after the Window 1 reviews were completed.

In his analysis of major themes of accountability-related provisions proposed in the Window 2 *Flexibility Requests*, Riddle (2012, May 8) characterized them as “strikingly similar<sup>30</sup> to those approved by ED during the first round. This suggests that states have shared information about the types of changes that ED is likely to approve or disapprove and that second-round states have closely tracked what was approved in the first round”(p. 3). He concluded that, “Overall, the applications submitted . . . [in both the first and second windows] represent a major shift in NCLB accountability policies” (p. 16). As NCLB has been implemented, there has been considerable variability among states with respect to their accountability systems including academic content and student academic achievement standards as well as technical aspects in AYP determinations such as the use of growth models. Riddle believes that “this approach to accountability will be replaced by a system that is more consistent in some respects but less consistent in others” leading to conclusions such as (p. 16):

- Content standards, and presumably student achievement standards, will eventually become more consistent among the states [due to the near-universal adoption of the Common Core].
- Ratings of schools under state and NCLB accountability systems will become the same,<sup>31</sup> but measures used to determine consequences for inadequate or high performance by schools will vary tremendously across different states. Riddle provided these examples:

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ED’s concern may be less about tutoring services and more about interest in why a given state sees same as more important than re-directing the funds to the lowest-performing schools.

<sup>30</sup> Riddle’s analysis resulted in almost identical key findings (pp. 2-3) to those reported for his analysis of Window 1 *Requests* (see “Window 1 Submittals” above). In addition to his earlier findings, Riddle noted that most approved states would replace AYP determinations with systems that use multiple performance levels to identify schools for interventions, rewards, or other consequences; an option that was not open to Window 1 applicants.

<sup>31</sup> According to Riddle, all Window 2 states provided for the “integration and coordination of NCLB accountability provisions with those of state accountability systems.” He noted that, “The existence of dual systems of accountability, often with very different ratings for individual schools, has been a major criticism of NCLB policies” (p. 4).

- Some states plan to use, for school accountability purposes, indicators beyond measuring student achievement, such as teacher and principal effectiveness (**South Dakota** [also **Alabama** and **Kentucky**]), school climate (**South Dakota**), compliance with state law (**Michigan**), and various indicators of school context (**Illinois**) (p. 9).
- Nine states will use grades or stars to assign subsets of schools to one of the three *Flexibility* required categories while 11 states plan to create eight school improvement categories (p. 10).

Ayers and Owen (2012, July) examined the waiver plans of 26 states and the **District of Columbia** approved during the Window 2 peer reviews.<sup>32</sup> They concluded that (p. 2):

- Most states have changed and would change their policies and practices significantly from those under NCLB.
- The waiver process itself did not appear to stimulate new innovations aside from accountability, but was an opportunity to articulate a new vision for reform.
- States have proposed interesting and promising ideas in each principle area. Some states are pushing new ideas, many of which are promising or innovative, by ensuring all students graduate college- and career-ready, developing differentiated accountability systems, and improving teacher and leader effectiveness.
- Very few states proposed detailed plans for reducing duplication and unnecessary administrative burden on districts and schools.<sup>33</sup>
- Very few states detailed how they would use their 21st Century Community Learning Center [21<sup>st</sup> CCLC] funding to increase learning time. About half the states rejected the opportunity to use 21<sup>st</sup> CCLC funds—which were previously limited to providing before- and after-school tutoring—to lengthen the school day, week, or year, and those that indicated that they would seek a waiver to do so offered little detail on how they would utilize the funds diverted from traditional 21<sup>st</sup> CCLC activities.<sup>34</sup>
- States are using various sources of funding to implement their plans. [States with Race to the Top grants (RT<sup>3</sup>) seem to have a distinct advantage in this regard; especially in areas where the

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<sup>32</sup> The authors provide a succinct summary of the accountability requirements under *Flexibility* in Figure 5, p. 21 of their report.

<sup>33</sup> This was a requirement originally set forth as Principle 4. However, after the initial round of peer reviews, ED moved this requirement to the list of assurances (it became #9) a state must affirm in its *Flexibility Request*. Thus, a state submitting a waiver request after this point simply needed to agree that it would “evaluate, and on the basis of that evaluation, revise its own administrative requirements to reduce duplication and unnecessary burden on LEAs and schools.” The *Peer Review Guidance* documents are silent on this matter although some guidance on how states can address this requirement is provided in ED’s responses to Questions C-62 and C-63 of the August 2012 *FAQs* document.

<sup>34</sup> Under *ESEA Flexibility*, states are afforded three optional flexibility waivers including this one related to 21<sup>st</sup> CCLC funding. See also Question B-19 (p. 27) in the August 2012 *Flexibility FAQs*. On December 19, 2012, ED approved **Colorado’s** request for an amendment to its waiver plan in order to use 21<sup>st</sup> CCLC funds to support expanded learning time activities during and after school hours.

program requirements are similar or overlap such as evaluating teacher and principal effectiveness.]<sup>35</sup>

### Window 3 Submittals

Seven states (**Alabama, Alaska, Hawaii, Maine, New Hampshire, North Dakota**,<sup>36</sup> and **West Virginia**) submitted Flexibility Requests by the September 6, 2012, deadline. Five of the states—all but **Hawaii** and **Alabama**—represent “a large swath of rural America.” In these states, teachers are often teaching multiple subjects (further complicating teacher evaluation) and they tend to have smaller SEAs which can adversely affect their capacity to develop and implement *Flexibility Requests*.

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<sup>35</sup> As an example, according to Alyson Klein (2012, May 16), “Some states that won the federal Race to the Top competition—including **Maryland, North Carolina**, and **Ohio**—received feedback letters [on their *ESEA Flexibility Requests*] that were relatively long on praise and fairly short on areas to work on” (p. 22).

<sup>36</sup> The state subsequently withdrew its application after it became clear that ED was unlikely to accept parts of its plan.

### Common Approaches\*

Applicants in this window tended to:

1. Use only mathematics and reading in accountability systems—early round states tended to include other subjects.
2. Use NCLB student groups. (**Hawaii** proposed a single “high needs” subgroup comprising economically disadvantaged students, ELs, and SWDs; lowering minimum-n from 40 to 30 and pooling three years of data to reach minimum-n if necessary.)
3. Be further behind in implementing teacher and principal evaluation systems.

### “Other” Approaches\*

Notable among the *Requests* in this window:

1. **North Dakota** proposed a 25% reduction in the achievement gap (not 50%).<sup>37</sup>
2. **Alaska** has not adopted the CCSS and seeks approval of their alternative (see note below). **Virginia** has not adopted the standards and had their *Flexibility Request* approved earlier.
3. **Alabama** is one of only a few states incorporating percentage of effective teachers and principals<sup>38</sup> as a factor in school accountability.<sup>39</sup>
4. **Hawaii** is the only one of the seven stating that it has met the teacher/principal evaluation requirements.<sup>40</sup>

\*From: McNeil, M. (2012, September 26, pp. 20-21.

On May 20, 2013, ED announced that it had approved the waiver requests from **Alaska, Hawaii, and West Virginia**. This was followed by an announcement from ED on June 26, that the Department had approved **New Hampshire’s Request**. That left two Window 3 states still negotiating with ED various aspects of their waiver requests. As noted later in the section, “Achievement Examinations and Additional Assessments,” **Alaska** subsequently joined the Smarter Balanced consortium and was able to demonstrate that it had adopted comparable college- and career-ready standards that were “well aligned with the CCSS.”

### Window 4 Submittals

Although not publicly announced, ED provided for a fourth round window for the submittal of *Flexibility Requests* on the part of the few states that had not submitted same during the three earlier windows. With a February 28, 2013 deadline, three states (**Pennsylvania, Texas, and Wyoming**) and a consortium of **California school districts** submitted waiver applications. Full details on the applications from

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<sup>37</sup> Later not accepted leading to withdrawal of the state’s *Flexibility Request*.

<sup>38</sup> Determining effective teachers and principals is a requirement under Principle 3, *Supporting Effective Instruction and Leadership*. Related to this Principle, readers may wish to review the paper prepared by Carole Gallagher (2012) for WestEd, *Presenting Findings from Measures of Teacher Effectiveness: Key Reporting Considerations for States and Districts*. The purpose of this paper is to “support states at all stages of planning and development as they move forward with systems for reporting on measures of teacher effectiveness.” Included is information on key features of comprehensive reports that present findings from the measurement of teacher effectiveness; types of laws and policies that affect reporting; and reporting practices in five states, the **District of Columbia**, and **New York City**.

<sup>39</sup> **Kentucky** and **South Dakota** also include “effective teachers and principals” as a measure in their School Improvement Index (see pp. 43-45 and 102 in the former’s state approved *Flexibility Request* and pp. 39-40 in the latter’s approved *Request*).

<sup>40</sup> **Hawaii** is a RT<sup>3</sup> state; so the state had an earlier start on establishing its teacher and principal evaluation component.

**Pennsylvania** and **Wyoming** have not yet been released to the public and the latter has received an extension from ED to keep working on its *Flexibility Request*.

The **Texas** submittal follows an extended period in which it seemed that the state would not request ESEA waivers. On September 6, 2012, the Commissioner of Education there circulated to the state's school administrators a *Notice of Intent to Apply for Waivers* inviting the submittal of comments to the proposed waivers. Included in the proposed waivers were two that, if approved, would have permitted the state to forego the NCLB requirements pertaining to the allocation of Title I funds. It was not until February 28, 2013, that the state submitted "an interim framework" request for waivers indicating that a complete request would be finalized by mid-April. On March 7, 2013, ED granted the **Texas Education Agency** "an extension to resubmit its request no later than April 15, 2013." The extension was "subject to the condition that TEA staff consult regularly with Department staff during the preparation of its revised request." The state is seeking flexibility under the Secretary's general waiver authority, not the authority under §9401 which is governing the *ESEA Flexibility Initiative*. According to Michelle McNeil (2013, March 13), "The Texas application has many of the required core components—such as adopting standards for college and career readiness (though not the common core), creating a differentiated accountability system, and using student growth in its teacher-evaluation system" (p. 22). However, she notes, "the application appears to be missing a few elements as well, such as how its new accountability system will be used to form personnel decisions and exactly what its new academic goals will be for schools and individual subgroups of students" (p. 22).

The *Flexibility Request* submitted by the **California Office to Reform Education (CORE)**,<sup>41</sup> a consortium of school districts in **California** comes on the heels of unsuccessful earlier efforts by the state to negotiate with ED a package of waivers outside of the *ESEA Flexibility* structure.<sup>42</sup> In the CORE application, nine school districts—Clovis, Fresno, Long Beach, Los Angeles, Oakland, Sacramento, San Francisco, Sanger, and Santa Ana—are partners to the NCLB waiver application. A 10<sup>th</sup> member of CORE, Garden Grove Unified School District, did not join the *Flexibility Request*. The combined districts, representing more than one million students, are seeking to establish an accountability system substantively different from the rest of the state.<sup>43</sup> In a precedent at the time, ED granted the McPherson, Kansas, Unified School District a one-year waiver on April 5, 2011, "to allow the district to pilot the use of assessments

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<sup>41</sup> Additional information on CORE is available at: <http://relwest.wested.org/alliances/1>.

<sup>42</sup> In June 2012, **California** by-passed the peer review process and submitted a letter directly to ED seeking a number of *Flexibility* waivers. In January 2013, Secretary Duncan informed the state that he was declining to exercise his waiver authority (provided for in section 9401 of the statutes) in the matter. See "*Flexibility Requests Turned Down*" later in this chapter for additional background information.

<sup>43</sup> On March 26, 2013, ED announced that although its "strong preference and focus in the ESEA flexibility process remains on working with states, including California, if it decides to seek ESEA flexibility for the upcoming school year . . . we believe [that the CORE] request merits careful consideration. The CORE districts collectively serve 1.2 million students and "we commend the level of work and collaboration . . . [they] have invested in their plan." The announcement further stated that, "Under Section 9401, the Department has the authority to grant district-level waivers and we will now move CORE's application into the peer review process." The specific "authority" was not cited in the announcement.



developed by the ACT in lieu of the State's assessments in grade 6 through 8 and high school and to use the results of these assessments in accountability determinations (Meléndez de Santa Ana, 2011)."

According to Lesli Maxwell in an *Education Week* article (2013, March 6), the CORE waiver would (p. 22):

- Not only measure schools on academic measures, it would also judge progress at eliminating disparities in rates of student discipline and absenteeism, among other factors.
- Grade schools across three broad domains: academic, social/emotional, and culture and climate.
- Set common goals across the three domains that would replace the 100 percent proficiency requirements in the NCLB law.
- Judge schools on how students achieve and grow on mathematics and reading assessments, as well as science and social studies.
- Measure graduation rates and persistence rates.<sup>44</sup>
- Use only student test scores from a school's highest grade level to judge whether an entire school is meeting goals for accountability purposes (later dropped from the application).
- Measure the social/emotional domain in schools on factors such as how they address uneven suspension and expulsion rates and chronic absenteeism, while the culture and climate component would draw heavily on feedback collected in student, parent, and staff-member surveys.
- Pair struggling schools with a coaching team from a high-performing school with similar demographics for technical assistance and support, and those that don't improve would undergo a more traditional state intervention.
- Permit the districts to reclaim a collective \$109 million in Title I funds annually that they currently pay for transporting students to higher-performing schools or providing them with tutors.

In a follow up article, Michelle McNeil, writing in *Education Week* (2013, April 3, p. 18), reported that the CORE waiver application had gone to peer review with ED aiming "to have an answer for the . . . districts by the end of this school year." She also noted that the peers would be following "additional guidance [from the Department] on how to judge a request that looks a lot different from a state application." That guidance has not been made public. According to McNeil, California state Superintendent Tom Torlakson and state school board President Michael W. Kirst provided "a letter of tepid support" expressing "'enthusiasm' for what the letter called an 'innovative' waiver." In the same letter, Torlakson and Kirst "outlined their reservations about how such a waiver would work, including the role of the state in monitoring the nine districts, whether other districts would be able to join in, and the process used by federal officials to approve the request."

### States Not Formally Submitting or Withdrawing Flexibility Requests

As noted in the introduction to Chapter I, two states have not submitted a waiver request (**Montana** and **Nebraska**). **Vermont** (Window 2) and **North Dakota** (Window 3) withdrew their waiver requests after

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<sup>44</sup> The term, "Persistence Rate," is most commonly used to report data on how many students return from one semester to the next; in other words, continuous enrollment at an institution of higher education.



initial submittal. **Illinois** (Window 2) is still in negotiations with ED over portions of its *Flexibility Request* and **Iowa**<sup>45</sup> (Window 2) is working with its legislature to establish the required teacher evaluation system. Two Window 3 states—**Alabama** and **Maine** are also still in negotiations with ED over parts of their *Flexibility Requests* and no decisions have been announced by ED regarding Window 4 submittals.

A late-2011 letter from Michael Yudin, Acting Assistant Secretary for Elementary and Secondary Education, to chief state school officers presented a more limited option to submitting a *Flexibility Request*:

If a State educational agency (SEA) needs additional time to plan for implementation of ESEA flexibility, it may request approval to use the same annual measurable objectives (AMOs) for determining adequate yearly progress (AYP) based on assessments administered in the 2011–2012 school year that it used for the previous year. In return for this temporary flexibility, an SEA must adopt college- and career-ready standards; link teacher, principal, and student achievement data and provide that information to educators to improve their practice; and identify persistent achievement and graduation rate gaps within the State that need to be closed. An SEA must also sign an assurance indicating it understands that it will either request and be approved for the full ESEA flexibility by the time it would typically make AYP determinations for the 2013–2014 school year (based on assessments administered in the 2012–2013 school year), or comply with all the requirements of current law, including holding its schools and districts accountable for reaching its current AMO trajectory towards 100 percent proficiency by 2013–2014.

## Implementing New Accountability Systems—States Employ a Variety of Approaches

Presented below are examples of approaches various states have taken in developing Principle 2 of their waiver plans.<sup>46</sup> Included are several that seem to be particularly notable because they address one or more areas where ED’s decisions were a little surprising, seemed to result in changes to the *Flexibility* requirements over time, or—sometimes—seemed to be contradictory and, thus, merited further exploration. In other instances, the examples were chosen because they reflect the design and implementation of Principle 2 elements in a manner not common across more than a few states.

As additional background, readers may wish to examine the May 2013 Southern Regional Education Board (SREB) paper by Erica DeCuir ([http://publications.sreb.org/2013/13E05\\_WaiverBrief.pdf](http://publications.sreb.org/2013/13E05_WaiverBrief.pdf)) reporting on the “new achievement goals, new systems for evaluating school performance, [and] new ways to identify low-performing schools” (p. 1) for the 13 SREB member states that had received ESEA waivers. The three remaining member states all have waivers pending. DeCuir, noting that the 13

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<sup>45</sup> **Iowa** is one of four states opting for the more limited option to a *Flexibility Request* (approved June 29, 2012). The other three are all states that submitted Window 3 *Flexibility Requests*—**Alaska** (approved June 27, 2012), **Maine** (approved May 15, 2012), and **West Virginia** (May 11, 2012).

<sup>46</sup> In a paper (2013, February), “*States Reflect on New Accountability Systems: Waivers, now what?*,” CCSSO provides examples of how eight states are taking new approaches to their educational accountability systems through ESEA Flexibility.

approved waiver states' reform plans vary widely, sets forth five key policies to which the states seem to have given high priority in these plans and around which policy-makers "can compare accountability reform" in these states (pp. 4-10):

- Policy 1: College- and Career-Readiness Standards
- Policy 2: Differentiated Accountability
- Policy 3: Ambitious but Achievable Goals
- Policy 4: Tiered Methodology to Identify Schools for Improvement
- Policy 5: Teacher and Principal Evaluation Systems

### **School Accountability (Principle 2.A.i)**

An important aspect of waivers under *ESEA Flexibility* has been the opportunity afforded states that had dual accountability systems under NCLB to combine those systems. This waiver has made it easier for states with dual accountability systems (one federal and the other state) to integrate those systems. (See earlier discussion on this subject at the conclusion of the section, "Window 2 Submittals," above.) Changes to states' educational accountability systems afforded through waivers also significantly impacted the NCLB requirements related to (1) making Adequate Yearly Progress (AYP) determinations, (2) participation rates, and (3) graduation rates. Among other things, once priority and focus schools are identified, states do not have to annually determine whether other low-performing schools should be placed into priority or focus status. This allows states time to focus efforts on the schools most in need and provide an opportunity for reform efforts to have an impact.

In his analysis of *Flexibility Requests* submitted for Window 2, Riddle (2012, May 8) noted that almost all of the approved states plan to supplement or replace AYP with state-specific accountability measures. He concluded that,

These alternative measures will vary widely in their scope, complexity, and transparency. They often consider not only student proficiency and graduation rates, but also individual student growth, aggregate progress in raising student achievement or reducing achievement gaps, test participation rates, indicators of college- and career-readiness for high schools (such as ACT/SAT scores, CTE certifications, post-secondary attendance rates, or advanced diplomas). At least 21 [Window 2] states plan to use individual student growth data for at least some aspects of their primary accountability measure (p. 9).

Examples include:

- **New Mexico**, which is one of the few, if not the only, states to include "opportunity to learn, based on attendance and classroom surveys with potential bonus points awarded using measures of student and parent engagement" as a part of its accountability determinations for elementary and middle schools (Riddle, October 2012, pp. 20-21).
- **Nevada**, which has designed a School Performance Framework—a 100 point index derived from indicators for:

- Achievement growth (40%), achievement status (30%), reductions in subgroup achievement gaps (20%), and attendance or climate (10%) at the elementary and middle school levels; and
- Achievement status (30%), reductions in subgroup achievement gaps (10%), graduation rates for all students and subgroups (30%), college- and career-readiness such as advanced diplomas, remedial coursework, SAT/ACT and AP (16%), and other factors such as 9th grade credits and attendance or climate (14%) at the high school level (Riddle, 2012, May 8, p. 9).
- **Rhode Island**, which will use its Composite Index Score for school accountability. The score is based on seven indicators, each of which has five levels of scoring, with a resulting range of 20 to 100 including:
  - The percent proficient (all students);
  - Progress toward the 2017 proficiency goal (all students);
  - The percentage of students scoring above proficient distinction or advanced (all students);
  - Consolidated subgroup performance gaps;
  - Growth (median student growth percentile and consolidated subgroups compared to students not in subgroups) for elementary and middle schools only;
  - High school graduation rates (four-, five-, and six-year rates for all students); and
  - High school “scaled score change” (improvement in 11th grade test scores over the previous year for all students) (Riddle, 2012, May 8, p. 9).
- **Utah**, which following extended negotiation with ED, received approval to continue focusing primarily on growth (improving student performance over time) instead of proficiency (getting students over a particular bar)<sup>47</sup> (Klein, 2012, July 18, p. 22).

### Achievement Examinations and Additional Assessments (Principle 2.A.ii)

Under this part of Principle 2, states seeking waivers are afforded two options with respect to including data on the achievement of students in state assessments in their differentiated recognition, accountability, and support systems.<sup>48</sup> Option A is to include only reading or language arts and mathematics to identify reward, focus, and priority schools. Option B is to include student achievement in additional assessments for this purpose.<sup>49</sup>

<sup>47</sup> In ED’s August 2012 *FAQs* document at Question C-13, p. 36, the Department’s response seems to require states to use a “growth to standards” model. However, ED apparently does not intend to release related guidance until 2014-15. “Student growth” is defined on p. 8 of ED’s document, *ESEA Flexibility*.

<sup>48</sup> In December 2012, ED notified the states that it was suspending peer reviews of state assessment systems. That left 15 states without Departmental approval of one or more of the assessments they are using to make accountability determinations under NCLB. According to ED, assessment peer reviews will not start up again until 2015 when new common assessments begin being used for accountability purposes. It is not known whether the use of a “non-approved” assessment was an issue for any state during the waiver review and approval process (McNeil, M., 2013, June 12, p. 35).

<sup>49</sup> States administering alternate assessments based on alternate student achievement standards may continue to include the proficient and advanced scores of SWDs who take such an assessment. However, nothing in *ESEA Flexibility* gives a state or school district the authority to exceed the regulatory caps when making accountability determinations. See Question B-11a in the August 2012 *FAQs* document for additional information.

- All of the applicant states—except **Alabama, Alaska,**<sup>50</sup> **Utah,** and **Virginia**—are participating in at least one of the two assessment consortia—Smarter Balanced Assessment Consortium (Smarter Balanced) and Partnership for Assessment of Readiness for College and Careers (PARCC).<sup>51</sup>
- Fourteen of the Window 2 states will incorporate subjects beyond reading and mathematics into accountability determinations—eleven states adding science, five writing, and four history or social studies (Ayers and Owens, 2012, July, p. 22). Riddle (2012, May 8), in his review of these same states reported that, “All of the applicant states appear to maintain the NCLB requirement that 95% of all students must participate in testing, although states vary in their treatment of schools and districts that fail to meet the requirement” (p. 6). (See also discussion below regarding Participation Rates.)
- **Illinois** plans to include science and ACT examinations as measures of college readiness for high school students (Ayers and Owens, 2012, July, p. 22).
- The performance indices of some Window 2 states also include participation in and/or scores on Advanced Placement (AP) and International Baccalaureate (IB) tests, dual enrollment programs, or career and technical education (CTE) certifications (such as WorkKeys) (Riddle, p. 6).

### Adequate Yearly Progress Determinations<sup>52</sup>

Under NCLB, each state was required to establish a timeline for making AYP to ensure that all students, including all students in each student group, would meet or exceed the state’s proficient level of academic achievement by the end of the 2013-14 school year. The law also prescribed the elements that needed to be included in calculating AYP. Under *ESEA Flexibility*, a state may instead set AMOs in at least reading or language arts and mathematics for school districts and schools, including student groups that are ambitious but achievable. (See below for a further discussion of AMOs and their role in determining school performance.)

States electing this waiver are relieved from carrying out the NCLB school and district improvement requirements in the statutes and their associated regulatory requirements. Waiver schools and districts would no longer be identified as in need of improvement, corrective action, or restructuring, even if they missed AYP for two or more years. Accordingly, they would not need to take the required steps

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<sup>50</sup> In late spring, 2013, the state joined the Smarter Balanced consortium although it has not adopted the CCSS. **Alaska** was able to demonstrate that it had adopted comparable college- and career-ready standards that were “well aligned with the CCSS.”

<sup>51</sup> In February 2013, **Florida’s** chief, Tony Bennett, commented that his state was developing a contingency plan in case the new assessments were not ready. He noted that “complexities” could delay the tests including costs, reaching agreement on performance standards, and having sufficient technology ready to support computer-based assessments (Gewertz, 2013, February 27, p. 17).

<sup>52</sup> See Waiver #12 under Optional Flexibilities in the *ESEA Flexibility Request* document and Question B.11 (pp. 20-22) in the August 2012 *FAQs* document for additional information. It is important to note that “any element [participation rate, graduation rates for high schools, and Other Academic Indicators (OAI)s for elementary and middle schools] of ESEA accountability linked to meeting AYP would instead be linked to meeting the state’s AMOs.”

that accompany such identification.<sup>53</sup> Moreover, states and their school districts are not required to report the improvement status of schools on their respective report cards.<sup>54</sup>

### AMOs (Principle 2.B)

Under NCLB, AMOs were central to accountability determinations; schools and districts missing targets could be identified for improvement and subject to accompanying sanctions for continued failure to meet targets. For waiver states, AMOs will be only part of the criteria applied to the determination of school performance. With *Flexibility*, a state has the latitude to reset its AMOs from those originally set under NCLB, and they no longer have to be linked to all students at or above proficient by a date certain. However, the new AMOs must be ambitious, but achievable, and provide meaningful goals that are used to guide support and improvement efforts for the state, school districts, schools, and student subgroups. A state has three options for resetting its AMOs:

- A. Set AMOs in annual equal increments toward a goal of reducing by one-half the percentage of students in the “all students” group and in each subgroup who are not proficient within six years;
- B. Set AMOs that increase in annual equal increments and result in 100 percent of students achieving proficiency by no later than the end of 2019–20 school year; or
- C. Use another method that is educationally sound and results in ambitious, but achievable, AMOs for all schools and all subgroups.

For additional information, see also Questions B-3 through B-6 in ED’s August 2012 FAQs document.

During the Window 2 peer reviews (26 states and DC), eight states<sup>55</sup> chose Option A (“gap cutting”) and four others chose similar goals (ambitious but attainable goals). **Arizona** was the only state to choose Option B (all students to grade level by 2020). Most states chose Option C;<sup>56</sup> the opportunity to set their own goals (Ayers and Owens, 2012, July, pp. 22-23).

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<sup>53</sup> According to an analysis by Brownstein (2013, March), “Parental Involvement . . . is undergoing some subtle changes as waivers shift the parameters of what states are required to do” (p. 1). He observes that waiver states “are freed to ignore the prescriptive requirements that once required districts to quickly inform parents when the schools their children attended were faltering and to offer them opportunities to participate in fixing the problems.” Brownstein also noted that on December 2012, ED Secretary Arne Duncan speaking at a Washington, DC, elementary school, “unveiled a draft framework for family engagement the department developed . . . that is still listed as a draft and awaiting comments from the field” (p. 2). (See also Question C.30, pp. 45-46, in the August 2012 FAQs document for additional information.)

<sup>54</sup> See “State and Local Report Cards, Title I, Part A of the Elementary and Secondary Education Act of 1965, as Amended. Non-Regulatory Guidance,” revised February 8, 2013. Available at: [http://www2.ed.gov/programs/titleiparta/state\\_local\\_report\\_card\\_guidance\\_2-08-2013.pdf](http://www2.ed.gov/programs/titleiparta/state_local_report_card_guidance_2-08-2013.pdf). For a background discussion on this guidance, see “New ESEA Report Card Guidance Released” by Charles Edwards in the April 2013 *Title I Monitor*.

<sup>55</sup> **Arkansas, Delaware, Illinois, Maryland, New York, North Carolina, Rhode Island, and Washington.**

<sup>56</sup> It is highly probable that some of these states subsequently modified their plans such that they are now more closely aligned with Option A or Option B.

In an *Education Week* article, Michelle McNeil (2012, October 17), noted that “a vast majority of states that received federal waivers are setting different expectations for different subgroups of students . . . [marking] a dramatic shift in policy and philosophy from the original law” (p. 1). This approach would not be permitted under Option B.

According to McNeil:

The leeway to set the new academic goals tacitly acknowledges that the 100 percent goal [set forth under NCLB that all students will be proficient in English language arts or reading and mathematics by 2014] is unrealistic. But it also means that many members of racial and ethnic minorities, English-language learners, and students with disabilities will fail to sufficiently master college- and career-readiness standards by the end of the 2016-17 school year at greater rates in most waiver states<sup>57</sup> (pp. 1, 25).

She further reported (p. 25) that eight states set the same targets for all students—**Arizona, Colorado, Michigan, Missouri, Nevada, New Mexico, Oregon, and South Carolina**. A different tack has been taken by **Wisconsin** which set differing AMO targets for its student groups. However, while each group will have a different starting point, they will all have a common ending point toward which growth trajectories will be plotted. Examples of states setting different targets<sup>58</sup> for different student groups cited by McNeil included:

- In **Georgia**, the goal for elementary and middle school mathematics is 79 percent proficient for students with disabilities and 92 percent for the all students group. (The 2011 starting points were 59 percent and 84 percent respectively.)
- In **Minnesota**, the goal for 11th grade mathematics is 62 percent for Black students, 66 percent for Hispanic students, and 82 percent for White students. (The 2011 starting points were 25 percent, 31 percent, and 64 percent respectively.)
- In **New Jersey**, the goal for mathematics proficiency for English-learners is 73 percent and 93 percent for White students. (The 2011 starting points were 46 percent and 86 percent respectively.)

### **Reward, Focus, and Priority Schools (Principles 2.C, 2.D, and 2.E)**

The *ESEA Flexibility* requirements related to the identification of reward, focus, and priority schools are prescriptive and straight-forward. Window 2 states appeared to experience fewer problems with this at peer review than Window 1 states did. CCSSO conducted an independent review of ED’s response letters and the accompanying Peer Reviewer Notes sent by ED to Window 1 states (CCSSO, 2012,

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<sup>57</sup> While this does not, in and of itself, mean that students in these groups will fail, it does mean that in most waiver states that schools (and districts) will not be held accountable for moving all members of a given student group to subject-mastery targets by 2016-17 (six years following the 2010-11 starting point for closing the proficient/non-proficient gaps by at least 50 percent).

<sup>58</sup> These percentages are targets for reducing the number of students not meeting grade-level academic standards. Clearly, the lower-performing students must improve at a faster rate over a six-year period in order to meet the differing targets.

January). While not intended to be all-inclusive, the review identified 11 “themes” that were presented at a January 2012 meeting conducted by CCSSO for states preparing for Window 2 submittals. Three of the 11 themes were applicable to the identification of reward, focus, and priority schools. Specifically, based on the feedback provided by ED to states, ED seemed to approve requests that:

1. Demonstrated how the determination of reward, focus, and priority schools align with ED’s definitions.
2. Assigned specific criteria under which schools may exit priority or focus status.
3. Included substantial information on the supports and interventions states propose for schools **not** identified as priority or focus schools.

In her December 2011 review of Window 1 waiver requests, Klein (2011, December 14) concluded that the 11 states varied widely in their approaches as to how and when a school could exit priority status. She cited three examples:

- **Kentucky**, where schools would have to meet the state’s new achievement benchmarks for three consecutive years, and no longer be ranked in the lowest-performing five percent of Title I schools. [According to an amendment to its plan approved by ED in September 2012, “schools and districts that continue to be among the lowest performing schools and districts in the state for two consecutive years will be required to revise their Comprehensive School or District Improvement Plans and post the revised plans on their websites. If a school or district continues to be among the lowest performing schools or districts for a third consecutive year, the school or district must again revise its Comprehensive School or District Improvement Plan, submit the plan for review and approval by the state, and post the revised plans on its website.”]
- **Massachusetts**, where schools would have to meet several benchmarks. For example, elementary and middle schools would need to improve student performance at a rate consistent with low-performing schools that made substantial gains between 2006 and 2009.
- **Minnesota**, where schools would exit status if they could get out of the bottom quartile for two consecutive years.

In their analysis of states’ submitting *Flexibility Requests* for Window 2, Ayers and Owens (2012, July), noted (regarding reward, focus, and priority schools) that:

- Second-round states proposed similar ways to reward highly rated schools, both for achievement and growth. Many states, such as **Nevada**, would grant high-flying schools more autonomy or reduce administrative requirements; some would ask reward schools to share information on how they achieved success; and others would connect these schools with low-performing schools (p. 26).
- States’ proposals for turning-around low-performing schools often lacked detail or important quality controls. And, aside from monitoring, few states set out any type of consequences or plans for making adjustments along the way (p. 27).
- Twenty-four states intend to require priority schools to undergo a battery of diagnostic assessments or a needs analysis to determine why they are under-performing and then to



design interventions based on those findings. Twenty-five states would do the same for focus schools (p. 27).

- Most states would identify priority schools on a two-year cycle but a few would stretch that to three or four years. **Kansas** plans to identify priority and focus schools every year, while **Louisiana, Maryland, New York, and Washington** plan to identify focus schools annually (p. 27).
- Many states said they plan to engage outside organizations or external partners to help school districts and schools with the improvement process. In some states, an outside partner would be required for priority schools and optional for focus schools and some states, like **Virginia**, would create a pre-approved list of providers from which districts can select (pp. 27-28).

Ayers and Owens (2012, July) also pointed to **Rhode Island** as a state having one of the “clearest, most comprehensive turn-around plans” (p. 28). In that state:

Priority and focus schools must complete diagnostic screenings, gain approval for a selected intervention model, set performance targets—including leading and lagging indicators of progress—and show they have reached at least 80 percent of their targets in order to exit low-performing status. Focus schools that do not make progress with subgroups can fall into priority status and persistently underperforming priority schools lose autonomy and must implement more drastic intervention models within three to five years.

In one of very few analyses of approved state waivers focused on plans for rewarding improvement, Alyson Klein, writing in *Education Week* (2013, May 8, pp. 22-23), reported on how eight states—**Delaware, Kansas, Kentucky, Louisiana, Mississippi, New Jersey, New York, and Tennessee**—are rewarding high-performing schools and high-progress schools together with the criteria for the rewards.

Among her findings:

- While **New Jersey** does not allow focus schools to make its rewards list, **Kentucky** does allow both focus and priority schools to qualify for rewards distinction if they make significant progress.
- **Louisiana** distributed grants of \$8,000 plus to each school that made its growth targets, and one district received \$230,000 for its high gains in student achievement.
- On the other hand, **Mississippi** reported that it did not have sufficient funds to finance its plans for rewards schools; in part due to sequestration—the across-the-board cuts to Federal programs levied earlier this year.
- The size of potential bonuses schools may receive varies among the states. For example, reward schools in **New York** get the chance to compete for grants of up to \$100,000 to help share promising practices, while in **Delaware** up to two schools could be eligible for grants as high as \$10,000.
- **Mississippi** is allowing reward schools—and other high achievers—the chance to apply for flexibility in meeting a host of state regulations including some governing teacher-student ratios.



- **Kansas** and other states will offer reward school staff members the chance to help in school improvement efforts across the state in a number of ways, including serving as mentors at priority schools with comparable demographics.

### Participation Rates

Under NCLB, “making” AYP required that at least 95 percent of students enrolled in the tested grades during the testing window participate in the state’s assessments. States receiving waivers must still report participation rates and a student group would not be able to make its AMOs unless it had at least a 95 percent participation rate.<sup>59</sup> However, states can use a lower rate as part of a school accountability index with different targets. Examples include:

- **Arizona**, which received approval in Window 2 to use an A to D scale to grade its schools. Under the approval, those schools with 95 percent participation rates are eligible to earn up to an A. If the participation rate is between 85 and 94 percent, the school may earn up to a B. If the participation rate is between 75 and 84 percent, the school may earn up to a C; and if the rate is below 75 percent, the school may earn only a D. The state is also looking at ways to increase accountability requirements in 2013-14. One option would be to count non-testing students as “not passing.” Another would be for Title I schools not reaching 95 percent to be audited and required to amend their Continuous Improvement Plan to include specific steps addressing the problem. (See pp. 47-48 of the state’s approved *Flexibility Request* at: <https://www2.ed.gov/policy/eseaflex/approved-requests/az.pdf>.)
- **Florida**, whose approval in Window 1 prohibits schools from receiving a grade of A (A to F scale) if they have tested less than 95 percent of their students in the assessed grades. Schools testing less than 90 percent cannot receive a grade of any kind. (See p. 54 of the state’s approved *Flexibility Request* at: <https://www2.ed.gov/policy/eseaflex/approved-requests/fl-amendment.pdf>.)

### Graduation Rate

The definition, calculation, and use of graduation rates in waiver states has come under considerable scrutiny as the *ESEA Flexibility Initiative* has evolved (see below for examples). Responding to criticism from various stakeholders,<sup>60</sup> ED Secretary Arne Duncan sent a letter to chief state school officers on November 26, 2012, affirming that he was not waiving applicable regulations related to how graduation rates were to be calculated and how the resultant data were to be used in school accountability determinations. He further stated that each state “approved for ESEA flexibility must incorporate, **to a significant degree**, [emphasis added] the four-year adjusted cohort graduation rate into its State-developed system of differentiated recognition, accountability, and support.”<sup>61</sup> However, the letter did

<sup>59</sup> See discussion at Question B-11, pp. 2-4, in ED’s document, *Frequently Asked Questions Addendum* (March 5 2013).

<sup>60</sup> M. McNeil blog posted November 28, 2012.

<sup>61</sup> This appears to be the first time that the “to a significant degree” requirement appears in this context. It was later included in a March 5, 2013, addendum to the Department’s *ESEA Flexibility FAQs* although not defined or quantified.

not indicate that the Department would make any waiver states change the manner in which they would calculate or use graduation rates in their approved new accountability plans, even if those didn't "conform" to requirements reiterated in his letter.<sup>62</sup>

Michelle McNeil, writing in *Education Week* (2012, October 31, pp. 18-19), reported that there is growing concern among some members of Congress and some education interest groups that waiver flexibility is eroding the progress that has been made over the past several years with respect to the calculation of graduation rates and their importance in educational accountability determinations.<sup>63</sup> According to McNeil, Window 1 peer reviewers found "significant problems with many of the states' graduation-rate accountability plans," problems that ED did not always address in granting waiver approvals. She further stated that following the initial peer reviews and ED approvals, the manner in which graduation rates are defined and the degree to which they factor into school accountability in several states have been "watered down by other factors such as when states use extended-year rates or introduce separate measures that allow schools to get credit for GED recipients." An additional factor fueling concern over graduation rates among advocacy groups, McNeil opines, is the ability of states to set "different school performance benchmarks by race and ethnicity."

Somewhat unexpected were the waiver approvals for **Louisiana** and **South Dakota** in that they involved the inclusion of data on GED recipients in the determination of high school performance (but not the calculation of high school graduation rates) in these states. Under NCLB, the inclusion of GED completion data as a factor in high school accountability determinations was prohibited. In this case, the two states successfully argued that high schools should be credited for those students who left school before graduation but who successfully completed an equivalency program.

The specifics of these two approvals:

- **Louisiana**, which bases high school performance evaluations on end-of-course exams (25%), ACT scores (25%), graduation rates (25%), and a "graduation index" that weights graduation rates by the numbers of regular or advanced diplomas (25%). The state will include GED recipients in the calculation of its graduation index. (See p. 56 of the state's approved *Request* at

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<sup>62</sup> The Secretary's letter reaffirmed that states and school districts "must continue to calculate graduation rates using a four-year adjusted cohort rate . . . and [the state] must set a single graduation rate goal." The letter also reaffirmed that states and school districts must report on their annual report cards "the four-year adjusted cohort rate, in the aggregate and also disaggregated" by the student groups prescribed in NCLB. Additionally, states and school districts would have to report the data "by any 'combined subgroup' that a [state] has in its approved" *Flexibility Request*. In the final analysis, however, once a state has received its waiver approval, there are no longer sanctions for failing to meet the targets; except, perhaps qualifying as a reward school.

<sup>63</sup> Recently, the National Center for Education Statistics (NCES) reported that the "averaged freshman graduation rate" for public school students increased from 75.5 percent nationwide in 2009 to 78.2 percent in 2010. NCES uses the "averaged freshman graduation rate" for these national determinations. The method required under NCLB has only been in use for few years and cannot yet be used for long-term trend analyses (Adams and Sparks, 2013, January 30, p. 18).

<https://www2.ed.gov/policy/eseaflex/approved-requests/la.pdf> and also Riddle, October 2012, pp. 16, 24.)

- **South Dakota**, which received approval (See p. 37 of the state's *Request* at <https://www2.ed.gov/policy/eseaflex/approved-requests/sd.pdf>) to include students receiving GEDs in its School Performance Index as a measure of academic growth. In the index for high schools, the high school graduation rate will count 50% toward the performance indicator and GED earners will count the other 50%.

Other graduation rate approaches of interest included:<sup>64</sup>

- Variability among states in how they incorporate graduation rate data in their school performance indices; for example, in **Michigan** where the rates are worth just 10 percent of a school's grade; in **Kentucky**, 20 percent; and **Nevada** 30 percent (McNeil, 2012, October 31, p. 18).
- **Colorado**, which will allow schools to use a four-, five-, six-, or seven-year graduation rate—whichever is the highest—as one of four college- and career-ready indicators that in total make up 35 percent of a school's grade (McNeil, 2012, October 31, p. 19).

In early February 2013, the Alliance for Excellent Education (AEE), a Washington-based policy organization, released the results of its study of ESEA waivers, particularly those related to graduation rate determinations. In their report, *The Effect of ESEA Waiver Plans on High School Graduation Rate Accountability*,<sup>65</sup> AEE concluded (p. 3):

While there are certainly examples of promising reforms being realized through the waiver process, an extensive analysis conducted by the Alliance for Excellent Education finds an unfortunate consequence of these changes: the progress made by the 2008 graduation regulations in holding schools accountable for how many students they actually graduate—the ultimate goal of K-12 education—may be threatened in numerous states.

Referring to the fact that graduation rate accountability differs widely among the waiver states, the report also notes that “ED emphasizes that all states are still required to *calculate and report* graduation rates in accordance with the 2008 regulations.” However, the report continues, “*Reporting* is not the same as accountability which is defined as the way in which states require interventions as a result of low graduation rates” (p. 3). Among the report findings:<sup>66</sup>

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<sup>64</sup> For additional information on related innovative initiatives, see *Education Week's* recent Editorial Projects in Education publication, “Diplomas Count—Second Chances—Turning Dropouts into Graduates,” (2013, June 6).

<sup>65</sup> Available at: <http://www.all4ed.org/files/ESEAWaivers.pdf>.

<sup>66</sup> See Appendix A of the report, *High School Graduation Rate Accountability: State-by-State Highlights and Recommendations*, and Appendix B, *High School Graduation Rate Accountability in States' Waiver Applications: Concerns by Issue*, for more detailed information.

- **Delaware, Hawaii, Kentucky, New York, Ohio, Virginia, and Washington** are the only states using graduation accountability policies consistent with the letter and spirit of the 2008 regulations.
- Ten states and DC—**Arizona, Colorado, Connecticut, District of Columbia, Georgia, Indiana, Louisiana, Massachusetts, Missouri, Oklahoma, and South Dakota**—use measures of high school completion that are inconsistent with the 2008 graduation rate regulations. The measures include use of the GED, use of an alternative diploma, and alternative rates.
- Twelve states—**Arizona, Colorado, Florida, Kentucky, Maryland, Massachusetts, Michigan, New Mexico, Rhode Island, South Dakota, Tennessee, and Wisconsin**—have a system that allocates less than 25 percent of their school accountability indexes to the adjusted cohort graduation rates, creating the possible incentive to push out low-performing students in order to increase overall test scores.

### School Rating Systems and Measuring Improvement

Under NCLB, the “rating” of schools and the measures to be used for that purpose were essentially “fixed” (and otherwise known as AYP) with almost no leeway for ratings or measures not provided for under the law or applicable regulations. All of this has changed markedly under *ESEA Flexibility*. Waiver states now incorporate a variety of additional measures, often in the form of performance indexes, to measure school performance and to determine degrees of improvement.

- In a review of the 26 states and DC participating in the Window 2 *Flexibility Requests*, Ayers and Owens (2012, July) reported that “nine states proposed giving schools letter grades or stars [to reflect how well they were doing] so that the ratings were clear to educators and the public.” However, they concluded that, “Many school rating systems are also complex” (p. 24). In this same vein, McNeil (2012, February 22), in an *Education Week* article reporting on *Requests* submitted in Window 1, noted that the peer reviewers found that states’ new grading systems “were too complex to be understood by parents and educators . . .” (p. 26).
- **Louisiana** features an A-F system for grading schools and has set improvement targets based on each school’s share of non-proficient students. (Ujifusa, 2012, June 6, p. 23) The state will also have three sets of AMOs including one that requires 100% proficiency by 2014. However, the latter will be used solely for reporting purposes (Riddle, October 2012, p. 10).
- In **Maryland**, the state will track student achievement in English, mathematics, and science as well as growth data in English and mathematics (Ujifusa, 2012, June 6, p. 23).
- **New York** developed a *Diagnostic Tool for School and District Effectiveness* to let school districts measure how student achievement and teacher effectiveness compare with the state’s standard (Ujifusa, 2012, June 6, p. 23).

### Student Groups (Principle 2.B)

In another somewhat unexpected decision, ED approved the use of “super-groups” or consolidated student groups in student achievement determinations instead of those student groups set forth under NCLB during Window 1 of states’ *Flexibility* waiver requests. Many states submitted similar *Requests* for Window 2 that were also approved. Some Window 3 applicants are still negotiating similar proposals.

States planning to use super-groups have typically argued that this approach captures more schools in accountability determinations because of larger minimum-n sizes previously used. It was also argued that such an approach avoids having performance counted multiple times when students are classified in multiple groups (e.g., a student who is both an ELL and disabled). In approving super-groups, ED has consistently required states to present data demonstrating that more schools would be “captured” in this manner. ED has also consistently required that approved states (1) lower their minimum-n sizes, (2) demonstrate that low performance among the “combined” student groups will not be masked, and (3) report student performance against the new AMOs on state and district report cards.

Examples include:

- **Arizona** will use a combined “super-group” with the caveat that school districts are required to target interventions to schools not making progress with students in the traditional subgroups, not only those in the “super-group” (Klein, 2012, August 8, p. 2).
- **Connecticut** and **Delaware** revised their subgroup formulas with the latter lowering minimum-n’s from 40 to 30 and the former from 40 to 20. It appears that ED required several states to lower their minimum-n in similar instances (Ujifusa, 2012, June 6, pp. 21, 23).
- **Illinois** will lower its minimum-n from 30 to 15, and only then use a super-group for schools with groups of students not meeting the minimum-n. The state will not include Asian students in its super-groups (Ayers and Owens, 2012, July, p. 26).
- **Massachusetts** will use only two student groups in calculating its Progress and Performance Index to make judgments concerning schools’ performance—an “all students” group and a “high-needs” combination group to include SWDs, low-income status students, and current and former ELLs (Riddle, October 2012, p. 17).
- **Michigan** will use a combined subgroup of the bottom 30% of students in each school. The state had to demonstrate that the schools are the same ones that are “slipping” with subgroup students (Klein, 2012, August 8, p. 24). **Michigan** will then rank its schools on a “Top to Bottom” list based on an accountability index that takes into consideration student achievement, student growth, school improvement over time, achievement gaps in five subject areas, and graduation rate for high schools (Riddle, October 2012, pp. 18-19).

### English Language Learners (Principle 2.B)

As has been noted earlier in this chapter, a significant criticism of states’ waiver requests in Window 1 was that there were flaws in their plans with respect to serving students with disabilities (SWDs) and English Language Learners (ELLs).<sup>67</sup> In Window 2, the states did a better job of explaining how they will help ELLs and SWDs succeed (McNeil, 2012, March 26, p. 1). Below are examples of “promising practices” that have been identified by others who have analyzed states’ approved *Flexibility Requests*:

- **Arizona, Colorado, and Missouri** were commended by Ayers and Owen (2012, July, p. 13) for their efforts in this area.

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<sup>67</sup> Question A-13, p. 9, in ED’s August 2012 FAQ document covers “specific provisions in this flexibility that address SEA and LEA responsibilities with respect to serving English Learners.”

- **Arizona** now requires all educators in the state “to obtain an endorsement in Structured English Immersion training.”
- **Colorado** “is providing trainings for general educators, administrators, and district staff on instructional strategies for English language learners.”
- **Missouri** is taking steps to ensure that the “English language learning perspective is included in all [teacher] preparation and trainings.”
- **Illinois** is the only state indicating that it would include English language proficiency examinations in accountability for ELLs (Ayers and Owen, 2012, July, p. 22).
- **New York** was identified as a “state that stood out in the waiver application process for submitting detailed and comprehensive information about its plans to teach English language learner students in both its move to college- and career-ready standards and its efforts to improve leadership and instruction.” Integral to the state’s plans was the creation of Network Teams to provide technical assistance. These teams (one in each of 35 of the state’s 37 Boards of Cooperative Educational Services), consisting of three expert educators serving 25 schools, work with teachers to deliver sustained professional development including strategies for ELLs and SWDs (Chang, 2012, August 31, pp. 4-6). The state has also set up Network Equivalency Teams in 150 of its school districts and provides monthly trainings in Albany for all of the teams (750 participants serving SWDs and ELLs in grades K-5 and 750 serving those in grades 6-12). A “core group” for the network teams at the state level provides the overall leadership and direction for this initiative.

### Students with Disabilities (Principle 2.B)

In general, ED’s *ESEA Flexibility* documents did not provide much direction to states in the preparation of *Flexibility Requests* with respect to the inclusion of students with disabilities (SWDs).<sup>68</sup> For example, while the *FAQs* documents include a question regarding “specific provisions in the flexibility” related to serving ELLs, there is not a similar question related to serving SWDs other than Question A-12, pp. 7-8, in the August 2012 document. In this case, the question concerns whether the flexibility affects the rights of a student with a disability to a free appropriate public education in accordance with his or her IEP.

There is one other question (C-15, p. 37) directed at the needs of SWDs in a waiver plan. The first part of the response to that question pertains to phasing out, by the end of 2013-14, the use of Alternate Assessments based on Modified Academic Achievement Standards (AA-MAAS) in those states which had received approval for same and who also submitted waiver applications.<sup>69</sup> The second part pertains to the administration of alternate assessments based on alternate academic achievement standards. The response at this part sets forth four conditions for the continued use of this assessment.

<sup>68</sup> Following the waiver application peer reviews conducted in December 2011, the peers identified nine suggestions for how states could improve in this area. These suggestions/recommendations were included in the paper, “*Summary of Considerations to Strengthen State Requests for ESEA Flexibility*,” later distributed to states by ED.

<sup>69</sup> According to the National Center on Education Outcomes, 12 states with operational AA-MAAS tests had approved *Flexibility* waivers as of December 2012—**Connecticut, Georgia, Indiana, Kansas, Louisiana, Maryland, Michigan, Minnesota, North Carolina, Oklahoma, Tennessee, and Virginia.**

The Advocacy Institute recently completed a study<sup>70</sup> of states' approved waiver plans (those approved through March 1, 2013) and identified seven issues they believe could adversely affect SWDs. The issues are:

1. Loss of subgroup accountability for test participation.
2. Loss of subgroup accountability for performance.
3. Differentiated annual measurable objectives.
4. Decreased focus on graduation rates.
5. Limited requirements for intervention.
6. Including students with significant cognitive disabilities.
7. Discontinuing the alternate assessment based on modified academic achievement standards.

### Interventions (Principles 2.D.iii and 2.G)

A critical aspect of supporting effective instruction and leadership in turning around low-performing schools and fostering improved learning among low-achieving students is designing and implementing interventions that can be targeted to these goals. In her early review of states' waiver requests for Window 2, Alyson Klein (2011, December) noted that ED was "requiring that states spell out how they would address such 'principles' as extending learning time, using student achievement data to inform instruction, putting in place an instructional program backed up by research, and considering nonacademic factors in student achievement, such as students' social and emotional needs" (p. 20). Klein also identified several common turnaround strategies including:

- Hiring data coaches to help teachers and principals better understand where students are in terms of performance;
- Putting in place instructional 'walk-throughs' to check out teachers' practices; and
- Working with districts to extend the school day or add extra planning time.

Described below are examples of noteworthy interventions that a number of approved waiver states are implementing:

- **Connecticut** plans to pay top educators from reward schools to serve as improvement coaches in low-performing schools (Ayers and Owens, 2012, July, p. 27). The state also created a "commissioner's network" to provide support for low-performing schools (Ujifusa, 2012, p. 21).
- **Illinois** and **Louisiana** plan to create or expand state units for school turn-around and invest in regional teams to provide technical assistance (Ayers and Owens, 2012, July, p. 28).
- **Idaho's** Legislature enacted a law (Fractional Average Daily Attendance) permitting funding to follow a student seeking credit-bearing coursework outside of the traditional school such as online or dual enrollment courses in neighboring districts. **Louisiana's** dual-enrollment programs will provide financial assistance to students enrolling in eligible colleges or universities and

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<sup>70</sup> "ESEA Flexibility: Issues for Students with Disabilities". Available at: <http://www.advocacyinstitute.org/ESEA/ESEAflex.shtml>.



provide assistance to students enrolling in courses that lead to an industry-based certification (Ayers and Owens, 2012, July, p. 16).

- **Iowa** would ask reward schools to host teams from low-performing schools (Ayers and Owens, 2012, July, p. 27). In a somewhat similar vein, **Minnesota** schools identified as priority schools because of low-performing subgroups will be afforded an opportunity “to learn from high-performing schools with similar demographics” (Klein, 2011, December 14, p. 21).
- **Kansas** will require school districts to target interventions to schools that don’t make progress with subgroups if they are not already priority or focus schools (Klein, 2012, August 8, p. 24).
- **Louisiana** will use a “network team” to analyze data and set goals in low-performing schools (Ujifusa, 2012, June 6, p. 23).
- **New Jersey** will create seven Regional Achievement Centers that will monitor and intervene in the state’s lowest-performing schools, that is, schools that might eventually be subject to state closure.
- **North Carolina** will engage “Roundtables” of educators to monitor school district initiatives (Ujifusa, 2012, June 6, p. 23).
- **Oregon** has set a goal for its schools now performing in the “middle of the pack” to improve to the current level of its best schools within seven years (Klein, 2012, August 8, p. 24).
- **Rhode Island** will employ a “warning” category for schools with “isolated but serious challenges” in such areas as student achievement and graduation rate (Ujifusa, 2012, June 6, p. 23).
- **Tennessee** has designed a state-run Achievement School District (ASD) modeled after **Louisiana’s** Recovery School District created in the aftermath of Hurricane Katrina. In the ASD, schools would be run by charter operators, or directly by the statewide district itself. Schools operated under this new authority “would be given charterlike leeway when it comes to hiring, budgeting, scheduling, and programming.”  
**Tennessee** school districts with low-performing schools would have the option of participating in an ‘innovation zone’. Under this option, the school district would give its low-performing schools “autonomy and intensive support similar to what schools are getting from the state-operated ASD district” (Klein, 2011, December 14).
- In **Washington**, the state will use its nine Educational Service Districts to provide access to professional development and technical assistance for struggling schools (Ujifusa, 2012, August 22, pp. 26, 27).

## Reducing Red Tape (Principle 4)

Originally a requirement for states seeking *ESEA Flexibility*, Principle 4 was changed to an assurance (#9) after the Window 1 submittal period. The requirement can now be satisfied with applying states assuring that they will “evaluate and, based on that evaluation revise [their] own administrative requirements to reduce duplication and unnecessary burden” on school districts and schools (Question C-62 in ED’s August 2012 *FAQs* document). The answer to Question C-63 (p. 58) provides examples of what states might do to reduce administrative burdens.

Following are three examples of states taking specific steps to reduce red tape:



- **Connecticut**, which “convened a ‘red tape’ focus group and where the governor will convene a ‘Red Tape Review and Removal Taskforce’” (Ayers and Owens, 2012, July, p. 40).
- **North Carolina**, which contacted every school district to solicit feedback on the reduction of red tape and “how they could consolidate or eliminate reporting requirements” (Ayers and Owens, 2012, July, p. 40).
- **South Carolina**, which produced a long list of activities to be reviewed in order to reduce red tape (Ayers and Owens, 2012, July, p. 40).

## Related Events

In addition to the experiences of states seeking waiver approvals and ED’s actions on same, there are several related “events” surrounding *ESEA Flexibility* that contribute important contextual background. These are described below.

### Flexibility Requests Turned Down

**California** attempted to “go its own way” with respect to an NCLB waiver. In May 2012, the State Board of Education unanimously approved a waiver request “that doesn’t follow” ED’s model. **California’s** plan sought to omit the required component of teacher and principal effectiveness evaluation. The state argued that it is unable to fund assistance to schools to set up such an evaluation system. **California** subsequently submitted its *Request* directly to ED on June 15, 2012, in a letter jointly signed by State Superintendent Tom Torlakson and State Board of Education President Michael Kirst (Klein, 2012, May 16, p. 23).

According to an *Education Week* Policy Brief, ED informed **California** in a December 21, 2012, phone call that its request would be denied. ED has consistently maintained that states would need to follow all of the rules in order to receive *Flexibility* waivers (Klein and McNeil, 2013, January 9, p. 22). On January 4, 2013, ED Secretary Arne Duncan, in a letter to State Board President Kirst, informed the state that “I am declining to exercise my authority to approve your waiver request.” The secretary’s decision appears to be based in large measure on his conclusion that **California** did not agree with all of the principles nor was it “prepared to take on the rigorous reforms required by all of the principles of ESEA flexibility in exchange for that waiver.”

Shortly after Secretary Duncan’s letter was sent to **California**, eight of the state’s school districts (the number later increased to nine)—including Los Angeles and San Francisco—announced that they had “banded together to move ahead on rolling out the Common Core State Standards and designing new teacher evaluations based in part of student performance” (Maxwell, 2013, January 23, p. 1). (See “Window 4 Submittals” above for additional information.)

This past summer, ED denied<sup>71</sup> **Iowa’s Flexibility Request** after it was determined that the state did not have the “authority to enforce the requirements that teachers and principals be evaluated in part based on student achievement” (Klein, 2012, July 18, p. 22). In a subsequent article, Klein (2012, August 8)

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<sup>71</sup> Technically, ED did not “deny” the *Request*; instead, the Department stated that it “could not be approved at this time.”

characterized the *Request* as having been “turned down” noting that “the state could still be on track to receive a waiver if it is able to work through some legislative hurdles dealing with its teacher-evaluation system” (p. 24).

### Re-Set AMOs after Initial Approval

In an *Education Week* article on September 12, 2012 (pp. 21-22), Michelle McNeil reported that shortly after ED approved **Virginia’s Flexibility Request** June 29, 2012, the Department determined that the state’s “widely publicized new academic achievement targets for schools” would “do little, if anything, to close gaps between the low-performing groups of students, such as blacks and Hispanics, and their white peers.” Subsequently, ED required **Virginia** to “redo its AMOs so that students who are the furthest behind make the greatness progress.”

As originally approved by ED, the focus was “on closing gaps between students and subgroups in low-performing schools versus high-performing schools.” It was not focused on “closing gaps between at-risk student groups, such as low-income students, and their better off peers.” In January 2013, the state issued a bulletin ([http://www.doe.virginia.gov/federal\\_programs/esea/flexibility/faq\\_amo.pdf](http://www.doe.virginia.gov/federal_programs/esea/flexibility/faq_amo.pdf)) setting out the new AMOs “for raising achievement in Virginia’s low-performing schools” that had been negotiated with ED. On March 5, 2013, ED informed **Virginia** that it was approving the state’s revised methodology for setting AMOs because the changes would ensure that subgroups further behind would be required to make greater rates of progress.

### Monitoring Approvals

In August 2012, ED announced a three-part plan to “manage” its oversight of ESEA waivers. At the same time, the Department issued *ESEA Flexibility Monitoring, Part A* guidance which included monitoring indicators, a description of the monitoring process, and the monitoring protocol. The initial monitoring (Part A) would be conducted via conference calls after states with approved waiver requests submitted protocol documentation. In Part B of ED’s monitoring plan, a “deeper look” would be taken at states’ “early implementation of ESEA flexibility and other unwaived Title I requirements.” During Part C, ED would engage in a combination of on-site monitoring, desk monitoring, and progress checks. (See McNeil, 2012, August 29, pp. 16-17, and *ESEA Flexibility, Part A Monitoring Protocol* August to October 2012.)

Part A Monitoring was completed in late 2012. Copies of the monitoring reports are available state-by-state at: <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

### ESEA Flexibility Accountability Addendum

In a December 21, 2012, letter to chief state school officers, Assistant Secretary for Elementary and Secondary Education Deb Delisle outlined a simplified procedure for states with approved *ESEA Flexibility Request* waivers to reconcile their NCLB educational accountability workbooks with their approved requests. In addition to setting out the procedures, the Assistant Secretary’s letter included a template (also referred to as an addendum) for states to enter their information and an example completed by the state of **Minnesota**.

The approved states were required to complete an Accountability Addendum to ESEA Flexibility Request, and submit that to ED by February 18, 2013. According to the letter, the addendum “addresses the accountability elements that (a) were not waived under ESEA flexibility, (b) were generally not addressed in an SEA’s ESEA flexibility request, or (c) may have been included in an SEA’s ESEA flexibility request but, because of their importance to a State’s system and to provide transparent information to the public, merit inclusion.”

The addendum also includes “an item addressing determinations regarding the third annual measurable achievement objective (AMAO) under Title III of the ESEA,” so states do not have to submit a separate update to their consolidated application for Title III purposes. The addendum and approved *Flexibility Request* will serve as a state’s system of differentiated recognition, accountability, and support.

Each state’s completed addendum was to be reviewed internally at the Department and, when approved, posted with its approved *Flexibility Request*. It is highly likely that some clarification/revision will be required from the state prior to approval of the addendum. The addendum and sample document are available at: <http://www.ed.gov/esea/flexibility/support-for-states>.

### Amendments to Approved Plans

On May 15, 2012, ED released two documents—(1) *ESEA Flexibility Amendment Submission Process* and (2) *Template*—addressing questions as to how states could amend their approved waiver plans. Information on states that have submitted amendments is posted, on a state-by-state basis, at [www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html](http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html) to the extent that ED has approved those amendment requests.

In its announcement of the amendment submission process, ED noted that any state with an approved waiver is encouraged to “continuously evaluate the effectiveness of its plan and other elements of its approved request” as it “proceeds with implementation and to consider whether changes are necessary to address any challenges that it identifies or to more efficiently and effectively implement its plan.” As a result, the Department concluded that a state “may want or need to amend its approved ESEA flexibility request.” The Department also cautioned that, “An amendment may not conflict with the ESEA flexibility principles. Furthermore, the Department does not anticipate approving an amendment that would extend the required timelines for implementing ESEA flexibility.”

Through May 2013, ED had posted on its website approvals for a total of 49 amendments to the *Flexibility Requests* of 11 states—ranging in number from a single amendment for each of a few states to 14 for one and 10 for two others. These amendments are described below.

**Arkansas** was approved on October 25, 2012, to make two amendments to its approved waiver plan:

- The state will give districts, schools, and subgroups full credit for meeting AMOs when the performance, growth, or graduation rate meet or exceed the percentage at the 90th percentile rank of the state distribution for performance, growth, or graduation rate of the “all students” group, based upon 2011-2012 data (Principle 2.B).

- The state will amend its *ESEA Flexibility* proposal to allow for the use of current year or a three-year weighted average for meeting AMOs for graduation rate (Principle 2.A).

On December 19, 2012, **Colorado** received approval of its waiver request regarding restriction of activities provided by a community learning center under the Twenty-First Century Community Learning Centers (21st CCLC) program to activities provided only during non-school hours or periods when school is not in session (i.e., before and after school or during summer recess). The waiver (an optional one) was sought in order that 21st CCLC funds could be used to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session.

On October 16, 2012, ED approved **Delaware's** proposed amendment to include performance in science and social science in addition to English/language arts and mathematics as part of its new accountability system (Principle 2.A). At the same time, ED also approved the state's request to implement a plan for incentives and supports in other Title I schools (those not identified as priority or focus schools) and for building its own, its school districts', and its schools' capacity based on the work it is doing under its approved RT<sup>3</sup> plan (Principles 2.F and 2.G). Specifically, **Delaware** will differentiate its support and incentives for districts and schools within those districts based on achievement, growth, and gap closure. In addition, each district will be responsible for identifying schools that miss AMOs for any subgroup and indicating what each school will do to address the needs of that subgroup in the district's RT<sup>3</sup> plan.

Additionally, **Delaware's** request to align the state's RT<sup>3</sup> grant project and approved *ESEA Flexibility Request* with respect to student achievement targets as measured on statewide assessments was approved by ED on October 25, 2012. At the same time, ED also approved the state's request to revise its respective graduation rate baselines and targets for four subgroups to make them the same under both programs. The initial rates had inadvertently resulted in these subgroups being able to meet lower graduation rate targets under the waiver *Request*.

On July 27, 2012, ED approved **Florida's** request to require its school districts to:

Use an amount equal to 15 percent of their Title I, Part A funds allocated to Title I schools to provide supplemental educational services (SES) to students in Title I schools who are not proficient on the Statewide assessments [Principle 2.F] used to fulfill the [NCLB] assessment requirements . . . (i.e., the Florida Comprehensive Assessment Tests or FCAT 2.0 in grades 3-8 or, in high school, the Algebra I or English II end-of-course assessments).

This amendment and approval are particularly noteworthy in that only a few waiver states opted to continue requiring school districts to offer SES in their schools for eligible students (see also related discussion earlier in this chapter). In order for the amendment to be approved, ED required the state to provide:

- Information on why requiring that school districts provide SES is responsive to the needs of students who will receive these services.

- A description of how the state’s process for approving SES providers takes into account the performance of providers, including both their quality and prices, and how the process ensures that parents have access to high-quality options, including ELLs and SWDs, as well as a fair opportunity for such providers to compete on price.
- A description of how the state will provide access to transparent information on the quality of approved SES providers to school districts, parents, and community members.

**Kentucky** submitted 14 technical and other amendments to its waiver approval that were approved by ED on September 28, 2012. Among the changes were:

- The integration of its new teacher and leader evaluation system indicators into its new accountability system in 2014-15 (Principle 2.A).
- Each school that meets its overall index AMO will be labeled as progressing, in addition to being categorized based on their percentile rankings (Principle 2.B).
- Schools and districts that continue to be among the lowest performing schools and districts in the state for two consecutive years will be required to revise their Comprehensive School or District Improvement Plans and post the revised plans on their websites. If a school or district continues to be among the lowest performing schools or districts for a third consecutive year, the school or district must again revise its Comprehensive School or District Improvement Plan, submit the plan for review and approval by the state, and post the revised plans on its website (Principle 2.D).
- The criterion that requires a school to miss its overall index AMO in order to be identified as a focus school will be removed (Principle 2.E). Schools and districts that continue to be among the those with the lowest performing subgroups or with the greatest achievement gaps in the state for three consecutive years will be required to revise their Comprehensive School or District Improvement Plans and post the revised plans on their websites. If a school or district continues to be among those with lowest performing subgroups or the greatest achievement gaps for a fourth consecutive year, the school or district must again revise its Comprehensive School or District Improvement Plan, submit the plan for review and approval by the state, and post the revised plan on its website.
- A school will be required to revise its Comprehensive School Improvement Plan if it continues to have significant achievement gaps, even if it is identified as a high progress school.

On April 27, 2013, ED approved ten amendments for **Louisiana** pertaining to its state developed system of differentiated recognition, accountability and support (Principle 2.A.i); AMOs (Principle 2.B); and teacher and principal evaluation and support systems (Principle 3.B). The amendments included:

- Allow students who score “fair” (the second-lowest level) on an EOC test in middle school to retake the test in high school to demonstrate proficiency.
- Allow schools with grades of “F” that are completely taken over by a turnaround operator (i.e., whole-school restarts) to receive a letter grade of “T” for two years after takeover, rather than

an actual A-F grade. All information that would be used to calculate the letter grade will continue to be reported.

- Use students' highest score for any ACT administration through spring of 12th grade, rather than only up to the end of 11th grade, in the calculation of the ACT component of the high school.
- Award 140 points in the graduation index for a 5th-year graduate who earns a 3+ on an AP test or a 4+ on an IB test, which is less than the 150 points awarded for a 4th-year graduate who earns these scores and more than the 75 points awarded for a 5th-year graduate who does not earn these scores.
- For accountability decisions based on 2011-12 data, award higher numbers of points in the graduation index for students who earn academic endorsements and state-funded scholarship recipients, rather than awarding higher points for graduates who take AP/IB courses and pass AP/IB tests.
- Adjust the point scale for four-year cohort graduation rate in its index, resulting in an increase in score for graduation rates greater than 60 percent, while still keeping 80 percent as the State's goal.
- Change the percentage of non-proficient students required to exceed expected growth for a school to receive bonus points on the index from 35 percent to 30 percent.
- Award additional bonus points on its index for students who scored at the lowest levels of performance in the previous year and exceed expected growth.

ED approved **Maryland's** request on November 12, 2012, for three amendments related to its state-based system of differentiated recognition, accountability, and support (Principle 2.A). Specifically, the state will revise:

- Its baselines and targets for the AMOs in mathematics and reading so that they include all non-proficient students enrolled at the time of testing but who do not take the assessments consistent with its *Flexibility Request*.
- Its four-year graduation rate baselines and targets to use the same cohort for the calculation of its four- and five-year baselines and rates.
- The indicators used to rate high schools in its index. In the College- and Career-Readiness indicators, the value of the four-year adjusted cohort graduation rate will be increased to 12 percentage points. **Maryland** will also replace the four percentage points of Career Attainment and six percentage points of Attendance with eight percentage points for College- and Career-Preparation which includes AP examination performance (schools receive credit for students who receive a 3 or better on any AP examination) or concentration in career and technology education (same as career attainment) or college enrollment (schools receive credit for students that enroll in a two- or four-year credit bearing, public or private, in- or out-of-state, institution). The state will also rename its index from the "school performance index" to the "school progress index."

On January 2, 2013, ED approved two amendments for **Michigan**. Specifically:

- The state’s plan for color coding focus schools on its school scorecard (Principle 2.A) will be modified. Originally, **Michigan** planned to use red to code all focus schools (the color reserved for schools with the poorest overall performance).<sup>72</sup> Under the revision, the state will color code each focus school according to its overall performance under the state’s accountability system. The amendment does not preclude a focus school from being coded red if that is consistent with the school’s overall performance. The scorecards will also provide detailed information on the performance of students on the statewide tests that led to the school being identified as a focus school in order that these schools can better target the needs of these students.
- For accountability determinations based on tests administered in 2011-12, **Michigan** will use a four-year growth-to-standard trajectory on its growth model rather than a three-year trajectory (Principle 2.B). Under the revision, the state will count a student as proficient when reporting student proficiency against AMOs if that student shows enough growth to be proficient in four years. Because 2011-12 was the last year that ED approved **Michigan** to use its growth model in determining student proficiency against AMOs, the amendment was approved only for accountability determinations based on the 2011-12 assessments. The Department indicated that it would review the state’s growth model again in 2013 to determine whether it continues to meet the requirements for growth models for use in accountability determinations based on assessments administered in 2012-13 and beyond.<sup>73</sup>

**Oklahoma** received approval on August 16, 2012, for 10 amendments including:

- For 2012-13, use of the state’s A to F grading system as the basis for its differentiated recognition, accountability, and support system (Principle 2.A). The amendment explains how the grading system will be used to identify reward, priority, and targeted intervention schools and provides detail on the metrics and weightings of all components within the new system.
- Clarification of the factors used to determine “Grade +” and “Grade -” in the A to F grading system (Principle 2.A). Instead of requiring that all administrators in a school building be rated

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<sup>72</sup> This definition and practice would likely have caused confusion in that, under *ESEA Flexibility*, a state’s pool of priority schools must be equal to at least the lowest-performing five percent Title I schools; thus, the schools most likely to be color-coded red. A state’s pool of focus schools must be equal to at least ten percent of next low-performing Title I schools; thus, in Michigan, some schools which might be color-coded red.

<sup>73</sup> On March 8, 2013, ED held a webinar for the four states that use “growth-to-standards” models in their approved *Flexibility Requests* to count as proficient students who have shown enough growth to be proficient in a specified number of years when they are not yet proficient—**Michigan, New Mexico, New York, and Oklahoma**. The purpose of the webinar was to (1) announce a peer review of these models to be held on April 1, 2013; (2) clarify the information/documentation states needed to provide to the Department by March 29, 2013; and (3) describe the timeline for considering peer comments, making determinations, and sending determination letters to states. ED’s announced rationale for the limited scope peer review was, “To ensure the integrity, validity, and accuracy of State growth models used to count students as meeting AMO targets *when they are not yet proficient*. These peer reviews should not be confused, in any manner, with the peer reviews of growth models conducted by the Department in 2008 and 2009.



“effective” in order for the school to receive a “Grade +”, the state will require that the lead administrator be rated “effective” before a school can receive a “Grade +.”

- Provision of an opportunity for school districts to review data and make corrections or seek an appeal of a school’s grade and designation as a priority school (Principle 2.D.i) or as a focus school (Principle 2.E.i).
- Requiring that teachers in priority schools participate in professional development identified as appropriate by the state (Principle 2.D.iii) and the same for teachers in focus schools (Principle 2.E.iii). Teachers in C<sup>3</sup> schools (college, career, and citizen ready) will participate in all professional development and interventions required of other priority schools unless the State Director determines that equivalent interventions are already being provided.
- Prohibiting priority schools from exiting that status if the school is still in the bottom five percent of all schools in the state based on student achievement or has a graduation rate under 60 percent even if the school receives a grade of A, B, or C (Principle 2.D.v).
- Not using the state’s A to F grading system to identify focus school status (Principle 2.E.i). Instead, these schools will be identified using an achievement gap analysis consistent with the *Flexibility* requirements.
- Clarifying that focus schools should direct resources and interventions to meet the needs of low-achieving students, including students in subgroups for which the school was identified (Principle 2.E.iii).
- Permitting a focus school to exit that status once the school meets the AMO targets for the subgroups for which it was identified for two years, provided that the school would not be identified as a focus school based on the performance of any other subgroup (Principle 2.E.iv).
- Identifying “Grade D” schools as “targeted intervention” schools (Principle 2.F). These schools will be required to implement interventions aligned with the turnaround principles within 12 months of identification unless the school rises to a “C” to demonstrate significant improvement.

On August 31, 2012, ED approved **Tennessee’s** proposed amendment to revise its AMO baselines based on 2010-11 assessment results and, accordingly, its yearly AMOs as proposed in its original *ESEA Flexibility Request* (Principle 2.B). Resetting the AMOs is necessary in order to:

- Apply the one and two percent “caps” on the percentage of proficient and advanced scores of students with disabilities who take the state’s alternate assessment based on alternate academic achievement standards and alternate assessment based on modified academic achievement standards, respectively.
- Not include gifted students in calculating the baselines and AMOs for the students with disabilities subgroup.
- Include English Learners who have exited the limited English proficient (LEP) subgroup within the last two years in calculating the baselines and AMOs for the LEP subgroup.
- Reflect in the baselines and AMOs the waivers that the Department granted the state on July 20, 2012, to allow it to use, with respect to a student who is not yet enrolled in high school but who takes Algebra I or English II and the corresponding end-of-course assessment, the student’s



score on that assessment for federal accountability purposes for the grade in which the student is enrolled.

**Virginia's** proposed amended methodology for setting AMOs was approved by ED on March 5, 2013. The Department had previously advised the state the method originally approved for setting AMOs had been determined to result in AMOs "that did not require subgroups further behind to make greater rates of progress." The amended methodology addressed that limitation. (See also discussion above under "Re-set AMOs after Initial Approval.")

## Going Forward

At this point, the *ESEA Flexibility Initiative* is still very much in its infancy. As has been described in this chapter, a large number of states and the **District of Columbia** have only recently begun to implement their next-generation educational accountability systems. Two states are still negotiating final approval of their waiver requests submitted in August 2012, one is still negotiating approval of a request submitted in February 2012, and one is awaiting legislative approval of its teacher and leader evaluation plan. Additionally, three other states and a consortium of nine **California School** Districts are awaiting decisions on the *Flexibility Requests* they submitted in February 2013. The approved waivers seem to have provided the flexibility states sought to advance educational accountability system changes focused on delivering real accountability to all students, parents, and teachers.

It seems appropriate to conclude this chapter by presenting feedback from the researchers, analysts, and education writers we have cited regarding approaches for states to consider in order to more fully achieve the desired end results of their approved waivers. As food for thought, we have included here some of the recommendations they have offered and some of the suggested issues to watch that they posed. Toward this end, we drew from two in-depth studies of waiver proposals and ED's decisions regarding same. The first is a set of recommendations offered by Ayers and Owen (2012, July) as factors to consider for maximum effectiveness in implementing new accountability systems. The second is a set of issues identified by Kober and Riddle (2012, October) that they consider important to track as implementation matures. It should be noted that these recommendations do not necessarily represent the perspective of CCSSO in general or the authors of this paper in particular. This information is simply presented to provide a more complete account of the emerging literature related to *ESEA Flexibility* waivers.

After conducting their extensive review of Window 2 submittals and reporting their findings, Ayers and Owen (2012, July) offered a set of recommendations for states and ED that each "could take in order to enhance and maximize the effectiveness of the new waiver proposals." Several of the education reporters cited in this chapter also posed similar recommendations or various aspects of these recommendations. According to Ayers and Owens (pp. 42-43):

1. States should be treated as laboratories of reform that set the stage for eventual reauthorization of ESEA. States have proposed a variety of changes to their standards, assessments, accountability systems, and workforce policies. These are issues at the heart of

[NCLB] and thus represent new ways to implement federal law. Both successes and failures should inform how [ESEA] is reauthorized.

2. ED should ask for, and states should offer better, clearer information on aspects of state plans. We recognize some states are still negotiating with the Department of Education to enhance their applications, but even approved state plans are missing important information. Thus, we call on states to provide better, clearer information on how they will ensure students have equitable access to effective teachers, how their school rating system is linked to their annual goals, how they will ensure districts and schools engage in comprehensive approaches to school turnaround, and how they will reduce duplication and burden on districts and schools. Further, we call on the Department of Education to require this degree of detail before approving additional applications and in monitoring states whose applications have already been approved.
3. ED should establish a clearinghouse to document and share tools, strategies, and lessons of implementation. States and districts can learn from the successes realized and the challenges faced and overcome by other states and districts. The Department of Education should also provide guidance on how existing federal funds can support state activities initiated after being awarded a waiver.
4. States should learn from other states, either by joining consortia or replicating successful practices. States are proposing to take on sweeping reforms on an ambitious timeframe. Some states may face steep challenges as they implement new programs and develop new infrastructures under all four [Principle 4 became an “assurance” after Window 1.] of the waiver principles simultaneously. In order to build capacity or address certain reforms faster, states should look to their counterparts for examples of best practice. Additionally, states should consider forming partnerships or consortia with other states to build infrastructure as a group, as opposed to approaching an entire reform alone.
5. States have come up with some promising ideas for innovation and have made big promises that deserve to be kept. But the sheer variety and complexity of their plans, at least compared to No Child Left Behind, means the Department of Education will need to build capacity to ensure states turn their plans into reality. While monitoring and compliance were cornerstones of the relationship between the federal government and states under No Child Left Behind, waivers represent an opportunity to redefine that relationship as a partnership based on promoting innovative reform rather than rote compliance.
6. States should implement their plans as part of a coherent strategy—with clear goals, mid-course corrections, and consequences for schools failing to make progress. Any of the innovations noted in this report will fade quickly if they are not implemented with fidelity and persistence as part of a coherent approach to improving the K–12 education system. They must, therefore, include high expectations for districts and schools about how much progress is required, opportunities for ongoing review and adjustments, and clearly defined actions that will be taken if progress is not made.

Nancy Kober and Wayne Riddle, in their October 2012 paper, *Accountability Issues to Watch under NCLB Waivers*, identify five issues they believe merit watching over the next several years as waiver-approved states implement their next-generation accountability systems. The identified issues are (pp. 3-9):

1. *Goals, AMOs, and Methods for Determining Progress.* Most waiver states have replaced their AYP status model with “complex performance indexes . . . to determine schools’ progress and identify struggling schools for interventions.” A special concern regards the use of different AMOs for different student groups that, in turn, ‘essentially amounts to setting lower expectations for some students.’ Further, “the performance indexes being used by several waiver states are complex and multifaceted to the point that transparency is likely to become a victim.” Thus, “the most critical question is whether complex index systems will create an environment for subterfuge and make it easier for states to mask poor academic performance. With so many factors in the mix . . . it could be difficult to understand how those factors are combined into an overall index score or get a clear read on school performance.”
2. *Treatment of Student Subgroups.* The “shift to ‘super subgroups’ could make it easier for large, diverse schools to demonstrate progress because they will have fewer hurdles to surmount.” Additionally, “serious questions remain about how the shift to broader subgroups will affect instruction and achievement for students” in the different groups. Going forward, “Will it [the shift to broader subgroups] reduce the focus on the unique needs of a particular group that may require different interventions? While waiver states will still have to report the performance of all of the [NCLB] subgroups . . . it remains to be seen whether these disaggregated data will spur serious interventions focused on low-performing groups.”
3. *Categories of Schools and Differentiated Interventions.* Among the significant changes from NCLB, “the new accountability systems in waiver states establish multiple categories of schools that will be subject to different types of interventions” instead of a uniform series of progressively severe sanctions. Under *ESEA Flexibility*, the schools subject to differentiated interventions will be primarily the lowest-performing 15 percent of each state’s Title I schools. While this “differentiated approach will enable states and districts to more closely target interventions on specific areas or groups with the lowest performance . . . it also means that in many states, schools that are low achieving but are not in the priority group could escape interventions or serious improvement efforts.”
4. *Standards and Assessments.* Although this is the single major area of *Flexibility* wherein there is likely to be uniformity among the waiver states, “the assessments will not be ready for implementation until 2014-15.” By then, the current waivers [will] have expired. And the adopting states [CCSS] will have different timelines and policies for making the transition to new standards and assessments.’
5. *Waivers, Elections, and ESEA Reauthorization.* It is still too early to have any sense or ‘feel’ for how last year’s election results “or the potential reauthorization of ESEA will affect the implementation of new accountability systems in waiver states.” Kober and Riddle believe that, “A key question is whether progress in implementing redesigned accountability systems will come to a halt in the waiver states if a revamped ESEA . . . introduces a different set of policies.’

However, “the experiences of the waiver states could provide a treasure of information for ESEA reauthorization.”

## The Next Chapter

In Chapter III, we report on the findings of follow-up interviews with selected states designed to “drill deeper” into various aspects of the next-generation educational accountability systems in their approved *Flexibility Requests*. A central focus of this effort was to better understand the implementation challenges faced by states in developing and adapting educational accountability systems in response to the priorities and requirements outlined in the U. S. Department of Education’s (ED) ESEA waiver initiative and to share that information with other states.

We also examine promising practices identified in the selected states’ *Flexibility Requests* as those are being implemented. To accomplish this, interviews were conducted with department of education staff members in the selected states in order to gain a deeper understanding of related issues and to gain further insight into these practices; we believe that these are practices that other states may wish to incorporate into their new systems of differentiated recognition, accountability, and support.

## Chapter III: Review of Selected Accountability Components with State Exemplars

### Introduction

As noted in Chapter I, a central focus of this project is to better understand the implementation challenges faced by states in developing and adapting accountability systems in response to the priorities and requirements outlined in the ESEA waivers. In order to gain a deeper understanding of these issues and to identify promising practices, selected states were studied in greater depth which included a detailed review of their waivers and/or a telephone interview to gain additional insights into their practices, rationale, and objectives. These states were: **Colorado, Kentucky, Massachusetts, Michigan, New Hampshire, North Carolina, Rhode Island, and Utah**. The states were selected based on a number of factors; two of which were over-arching. First, we attempted to identify a diverse set of states with respect to accountability approaches. For example, for the purposes of our study, it would be undesirable for all selected states to employ the same practice for producing growth measures or reporting outcomes. Second, we identified states that incorporated one or more practices thought to serve as a “promising practice” to promote thinking about solutions to accountability challenges. To be sure, many states that were not identified for these more-in depth analyses also incorporated practices that could be regarded as innovative and exemplary. Certainly, the description of one state’s approach should not be regarded as implying another, different approach is without merit. Indeed, an idea that is well suited in one environment may not be suitable or viable in another. In the end, our intent was simply to describe a limited number of examples to provoke thinking about the kinds of strategies that we believe have potential to illuminate solutions.

All of the selected states were contacted in late 2012 or early 2013, and each participated in a telephone interview and/or provided written responses. States responded to a uniform set of questions regarding the background and context of their waiver application. However, other questions differed based on our read of a given waiver application in order to provide more information about selected areas. Feedback from this data collection is organized around seven general topics:

1. College- and Career-Ready Standards and Assessments
2. Innovative Indicators
3. Establishing Performance Expectations
4. Reporting Practices
5. Support Strategies
6. Establishing Coherence
7. Monitoring and Evaluation

### College- and Career-Ready Standards and Assessments

A primary area of inquiry relates to steps taken to adopt “college- and career-ready” standards (CCRS) for assessments. While many states responded to this criterion in their waiver request by addressing plans to adopt the CCSS and implement one of the assessments developed by the Race To The Top (RT<sup>3</sup>) funded consortia, PARCC or Smarter Balanced, less is known about plans to transition from existing

mathematics and reading tests in the years prior to adoption of new tests. Moreover, we sought to understand whether and how states are addressing standards for other content area tests, such as science and social studies.

One area that many states seek to address is tagging “readiness” to an explicit and meaningful criterion. **Colorado** provides an example of a state that has created a specific policy associated with readiness in consultation with the higher education community. This initiative led to the development of what is termed the *Post-Secondary and Workforce Readiness Endorsed Diploma* (PWR). One of the criteria for earning the diploma is achieving an established score associated with readiness on the state’s summative assessment or other qualifying assessment.

Students who earn the endorsed diploma are assured (subject to additional review of other qualifications) of meeting minimum academic qualifications for all open or selective public institutions of higher education in **Colorado** and to be eligible for placement into credit-bearing courses. This policy sends a clear signal regarding the meaning of readiness.<sup>74</sup>

Another example comes from **Michigan**, which adopted rigorous academic content standards associated with CCRS in mathematics, reading, science, social studies, and writing. Achievement standards on the Michigan Merit Exams (MEE), which incorporates the ACT, are benchmarked to the ACT’s definition of college- and career-ready. Specifically, these benchmarks are intended to represent the level of achievement required for students to have a 50% chance of obtaining a B or higher or a 75% chance of earning a C or higher in a corresponding credit-bearing first-year college course.<sup>75</sup> Moreover, **Michigan** used empirical analysis to inform the establishment of new college- and career-ready based performance standards for all Michigan Educational Assessment Program (MEAP) tests in grades 3-8 beginning in 2011-12. The identified performance levels are intended to signal “on-track” to readiness based on the MEE standard.

**North Carolina** provides an example of a state that chose to redevelop state assessments in all content areas as part of a process to transition to new academic content and performance standards prior to 2014-15. Guided by the state’s broad-based Blue Ribbon Commission, the state adopted new content and performance standards explicitly linked to being on track to and achievement of college- and career-readiness. New assessments in ELA, mathematics, and science that are aligned to these standards and expectations were implemented in the 2012-13 academic year, even as **North Carolina** remains a participant in the Smarter-Balanced assessment consortium and plans to transition to its new system in 2014-15.

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<sup>74</sup> On a related note, states receiving ESEA *Flexibility* waivers must, by the year following implementation of CCRS but not later than the 2014-15 school year, report annually on college-going and college credit-accumulation rates for the “all students” group and must disaggregate those data by the NCLB subgroups for each high school in the state. (For more information, see pp. 14-15 and 40-42 in ED’s *State and Local Report Cards—Non-Regulatory Guidance* (2013, February 8).

<sup>75</sup> See: <http://www.act.org/solutions/college-career-readiness/college-readiness-benchmarks/>.

Another implementation issue associated with transition of standards and assessments is the development of formative/interim assessment resources. Many states have acknowledged that it is insufficient to address summative assessments alone in a comprehensive transition plan. **Rhode Island** is one such state that has developed interim assessment resources in ELA and mathematics in grades 3-8. **Rhode Island's** plan includes a technology-based test platform that allows schools to flexibly construct their own assessments from a bank of items aligned to the state's standards. Moreover, intact or fixed forms are available in the system to support interim assessment, providing information on student achievement.

## Innovative Indicators

School accountability systems under NCLB have been comprised of a relatively small number of indicators—primarily, state test scores and graduation rates. As a result of the flexibility offered through the ESEA waivers, many states sought to broaden the array of indicators used to inform classifications of school performance. A common feature in state plans was the inclusion of additional tests. For example, many states included academic performance on state assessments in science and social studies in school accountability ratings. Other states expanded their set of indicators to include non-state specific assessments, such as the ACT or SAT. Still other states sought to include more innovative indicators in the system apart from assessment performance. Proponents of this approach argue it provides a more comprehensive and authentic source of information to inform school classifications. Even so, many have recognized the challenge of using such non-traditional indicators in a fair and uniform manner for high-stakes accountability.

**Kentucky** provides an example of one state that broadened the slate of indicators throughout the system. At a high-level, the state's system is comprised of three components:

- *Next Generation Learners*: This includes achievement on selected assessments, a measure of achievement gap, a measure of academic growth, graduation rate, and indicators to inform readiness for college and career.
- *Next Generation Instructional Programs and Support*: This includes program reviews of key identified areas.
- *Next Generation Professionals*: This includes outcomes from the educator and leader evaluation system.

Within the Next Generation Learners section, **Kentucky** included a very broad set of indicators to inform readiness. Policy-makers were guided by the idea that college readiness and career readiness can be informed by distinct sets of indicators and they established a “menu” of indicators within each that could signal a student has achieved college- and/or career-readiness. For example, career readiness is broken down into academic indicators and technical indicators. The academic side can be achieved by earning a requisite score on the Armed Services Vocational Aptitude Battery (ASVAB) or ACT's Work Keys. The technical side can be achieved by meeting criteria on a state occupational skills test or earning selected industry certifications. Although college-readiness can be demonstrated by meeting only the academic criteria, a student must meet both the academic and technical criteria to be deemed career

ready. Additionally, **Kentucky's** model offers bonus points to students that meet both sets of requirements.

The instructional programs and support component in the **Kentucky** system serves as an example of a school accountability indicator that goes beyond state assessments. This component includes program reviews for arts and humanities, writing, practical living/career studies, and world languages. The program reviews represent a systematic method to analyze attributes of the instructional program and practices—such as having a trained professional evaluator provide ratings using an established rubric and set of criteria. The intent is to provide a broader set of evidence to inform classifications of school quality and to incentivize holistic improvement. As stated in the **Kentucky** application, “The model incorporates a variety of data points and does not rely on a single narrow metric to recognize success and support improvement.”

### Establishing Performance Expectations

The *ESEA Flexibility* waivers allowed states to incorporate multiple measures, including growth, into state educational accountability systems. Many critics argued that the NCLB proficiency-based system in which all students are held to a single threshold based on a dichotomous indicator (i.e., proficient or not proficient) failed to take into account the academic growth demonstrated by students or the influence of other potentially offsetting indicators of quality. Therefore, a perceived advantage of systems proposed in response to the ESEA waivers was the flexibility to use more information to inform classifications and to establish more appropriate and realistic expectations for performance.

In general, we found that most state models included varied information to account for the many factors that define school effectiveness. While the inclusion of multiple measures can also bolster the validity of outcomes, states also recognized that too many elements may make the model complicated to understand and burdensome to implement. Taken to the extreme, such an approach could produce “noise” that obscures the “signal,” and risk masking the most important outcomes.

The central challenge that states faced was ensuring that the school accountability performance targets, drawing on multiple measures, set a clear and meaningful standard for all student groups. States wanted to avoid systems that mask low performance or that set expectations for progress that were not tied to meaningful outcomes, such as achieving proficiency.

In this section, we profile the approach by two states to determine performance expectations overall. We do not explore specific approaches to setting AMOs or determining reward, priority, or focus schools, as these methods mostly followed relatively structured procedures set by the U.S. Department of Education (ED).

Many states, such as **Massachusetts**, created an index incorporating multiple measures. Massachusetts' Progress and Performance Index (PPI) includes participation in state assessments, student achievement, student growth, and graduation rate. Student achievement includes closing proficiency gaps, reducing the number of students in the lowest performance categories, and increasing the percentage of students scoring advanced—points are assigned based on outcomes on each of these dimensions. Student growth is based on Student Growth Percentiles (SGP) and awards points for exceeding state



median growth, increasing median growth over the previous year, and reducing the percentage of non-proficient students by at least 10 percent. Lastly, a range of points are awarded for graduation outcomes in accordance with meeting target rates or demonstrating improvement. The index is computed by combining points across indicators in the current year and computing a weighted average based on performance in the prior three years; more recent years are given higher weight.

Based on the resulting index, schools are classified into one of five levels. The top levels are based on index scores for all students and high needs students—a consolidated subgroup, or “super-group,” that includes student with disabilities, English language learners, former English language learners, and low income students. Approximately eighty percent of the state’s schools are classified into levels 1 and 2 based on established PPI thresholds and meeting test participation requirements. Schools are classified into level 3 or lower if they are among the lowest performing 20 percent. Importantly, other criteria are considered for classification in level 3 or lower, including low performance of subgroups.

The **Massachusetts** example shows how multiple normative and standards-based criteria work together to create a classification system based on several valued school performance characteristics. The index contains compensatory elements in that lower performance in some areas (e.g. graduation or growth) can be offset by higher performance in another. However, other criteria cannot be offset, such as failing to meet minimum participation rate or standards for subgroup performance. Additionally, standards established within indicators signal policy values for status, growth, improvement, and equity.

**North Carolina** provides an example of a state approach that does not incorporate an index, but uses a different approach to set performance expectations for schools that thoughtfully reflect state values. For years, **North Carolina** implemented their “ABC” system that reflected performance with respect to status and growth. Both components were valued and the highest performing schools (Honor Schools of Excellence) met expectations for both growth and status. The ABC system represented an additional accountability initiative, separate from the state’s NCLB system.

**North Carolina** is now moving to integrate these previously separate models into one model that values both status and progress. Status is based on student performance (percent proficient) on state tests in ELA, mathematics, and science. Progress is an improvement-based approach conditioned on meeting AMO targets, where AMOs are established using Option A in the waiver—reduce by half the percentage of students not proficient within six years. Additionally, graduation rate and ACT scores are included at the high school level and improvement targets are set for these indicators as well. **North Carolina** reports outcomes for all traditional NCLB subgroups and will add an academically gifted students group reflecting a policy value that performance for this subgroup, as well as traditionally lower performing groups, should be tracked. Finally, the state proposes to report growth based on a value-added model (Education Value Added Assessment System or EVAAS). However, the proposed system uses these value-added data for reporting and to identify support, but it does not contribute to school accountability classifications.

As mentioned, the **North Carolina** system does not use an index to report an overall composite outcome, but separately reports all the elements to inform differentiated accountability. The state

follows federally prescribed methods to classify schools as reward, priority, or focus and to indicate if a school met or did not meet AMO targets. The state's approach prioritizes achievement of proficiency and progress on state tests, ACT, and graduation rate for all students and subgroups based on annual improvement rates.

## Reporting Practices

It is also important to consider the manner in which results are reported to the public. On one hand, stakeholders value a single, straightforward outcome, such as a letter grade or a composite score. On the other hand, a single overall result can mask important findings from component parts. Ultimately, states desire solutions that are simple and clear but allow access to sufficient detail in order to be actionable and inform support initiatives.

States that are implementing promising practices have recognized that well-designed and useful reporting systems go beyond static reports and take advantage of technological innovations. Strong systems provide educators accessibility to data such that those closest to the classroom have the information needed to inform instructional decisions. Moreover, reports are accompanied by adequate interpretative information. Such information describes the meaning of, and precision of, the outcomes and clearly indicates uses and interpretations that are supported. This supplemental information may enhance the utility of reports, such as comparative information from similar schools or longitudinal trends. Innovative systems do not restrict these resources to printed reports, but take advantage of technology to produce resources such as narrated demonstrations, videos, or user guided tutorials.

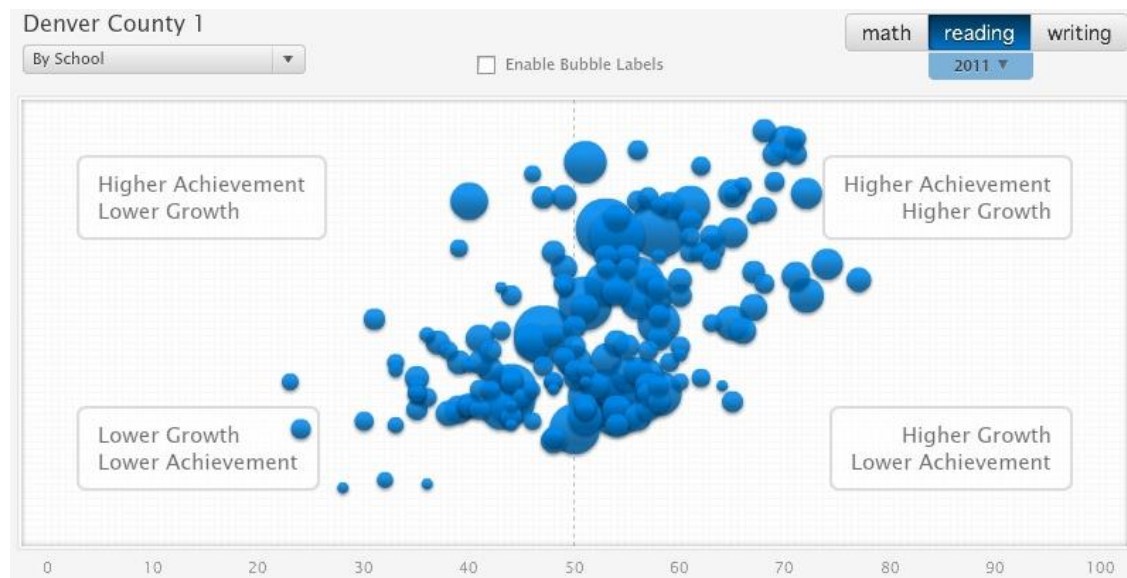
**Colorado's** SchoolView<sup>76</sup> system offers an example of a dynamic reporting system that balances the seemingly competing priorities of rich detail and clear presentation. Through this application, stakeholders can access a variety of conventional information, such as summaries of state assessment results in addition to customized reports. Users can access the system by role (e.g. parent, teacher, or administrator). Then, users can obtain a variety of information to identify meaningful patterns for individual schools or subgroups that might otherwise be hidden in broad, static summaries.

Figure 1 shows a screen shot of one display in **Colorado's** system. This graph depicts growth (median Student Growth Percentile (SGP) by status (percent proficient) and school size (size of bubble). These plots can be manipulated by the user to show different content areas, subgroups, or years. With the capacity to customize reports and to facilitate the presentation of a vast amount of information in a clear and simple manner, educators and other stakeholders can more easily locate findings in the data that can inform improvement initiatives.

Figure 1. Screen shot from Colorado Reporting System.

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<sup>76</sup> See <http://www.schoolview.org/index.asp> for more information including access to dynamic reports.

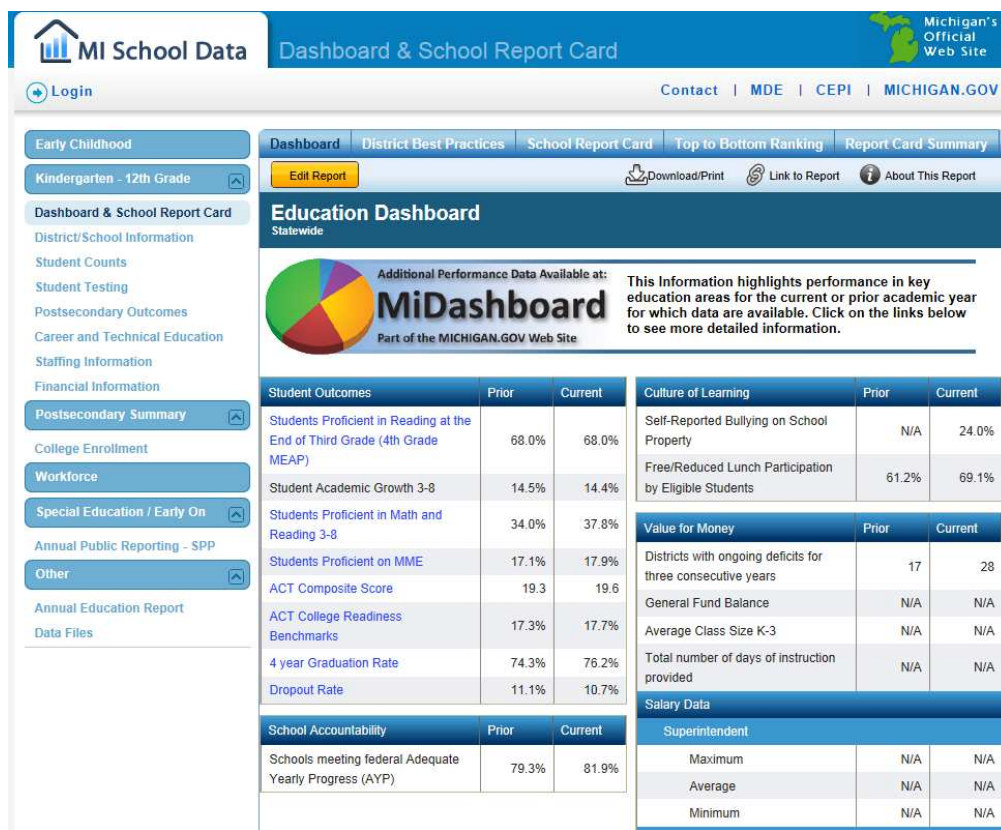


A similar approach is to produce what is often termed a dashboard or scorecard. For example, **Michigan** produces a comprehensive accountability scorecard that consolidates an immense collection of data in a clear, attractive application that users can manipulate.<sup>77</sup> A screen shot of one of the many portions of the dashboard is shown in Figure 2.

Dashboard reporting systems such as these give state departments of education the ability to summarize large quantities of information in “at-a-glance” reports. They also allow policy-makers the ability to highlight and track the findings deemed highest priority with common display features. As with similar systems, the dynamic reporting features allow users to manipulate data in order to create customized reports such as breakdowns by subgroups or annual trends.

<sup>77</sup> More information about the **Michigan** system can be accessed at: <https://www.mischooldata.org/>.

Figure 2. Screenshot from **Michigan's** Dashboard Reporting System



Still another promising practice is to provide a variety of support resources to stakeholders. For example, **Massachusetts** provides annotated reports, which offer stakeholders a model for understanding and making meaning of performance results. **Massachusetts** also provides “calculators” that allow users to produce outcomes based on component parts, which helps to clarify how components contribute to overall outcomes.

## Support Strategies

Many state leaders have recognized that a comprehensive plan to implement an effective accountability system is not complete without a robust plan to support appropriate use. Beyond reporting practices, many states have developed broad-based resources and launched initiatives to help stakeholders understand the new accountability system and use information to inform support strategies. In many cases, the state leaders we interviewed indicated that a multi-faceted approach to support was regarded as most effective.

One state with an extensive support strategy is **North Carolina**. The state provides training and resources using multiple media to include website, wiki-spaces, newsletters, webinars, and face-to-face meetings. Resources are in place to bring together data from multiple sources to inform support strategies. For example, the “NC Wise” information system provides a central resource for managing a

broad set of educational data that goes beyond assessment and accountability.<sup>78</sup> Moreover, **North Carolina** is rolling out another resource termed “Home Base” to provide a range of resources to include:<sup>79</sup>

- Instructional modules aligned to the standards to aid educators in building and implementing lessons.
- Work samples to provide access to exemplars of student work.
- Assessment modules that allow educators to build and implement formative and interim assessments.
- Professional development modules to help manage professional development activities and educator evaluation.

This resource is intended to provide information and support to students, teachers, administrators, and parents. The state has planned a training program to accompany roll-out to promote best use.

Similarly, **Colorado** has a multifaceted approach to supporting stakeholders with training and resources. Like many states, **Colorado** uses a combination of in-person and webinar training modes to maximize their reach. Static resources, such as annotated reports and self-guided training modules are provided to help districts and schools understand the system and the outcomes. Live training occurs in the fall around the data in the reports to help users not just understand the data, but focus on how to use them in improvement planning. Another feature of the **Colorado** support system is an annual needs assessment to help identify areas of strength and areas that could benefit from additional resources.

## Establishing Coherence

Given the breadth and complexity of state educational accountability systems, the concept of coherence has emerged as another priority design consideration under *ESEA Flexibility*. Coherence can refer to many things. On one level, coherence refers to logical connections among elements that are not directly measured in the accountability system, but are integral to the system producing trustworthy outcomes. For example, it is important for states to have coherence among curriculum, instruction, and assessment. A lack of coherence threatens the theory of action<sup>80</sup> and distorts the meaning of the accountability outcomes. Another dimension of coherence refers to logical connections among the accountability indicators themselves. That is, does the system provide incentives that are consistent and mutually supportive? If working toward one incentive is likely to impede accomplishment of another or promote a negative outcome, this works against coherence and threatens the validity of the entire accountability system. As an example, if earning a favorable educator evaluation depends on a teacher

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<sup>78</sup> More information about the North Carolina NC Wise system is available at <http://www.ncwise.org/>.

<sup>79</sup> More information about the North Carolina Home Base system is available at <http://www.ncpublicschools.org/homebase/>.

<sup>80</sup> A “Theory of Action” explains the assumptions about how the accountability system will bring about the desired changes and the conditions necessary for this to occur. The theory of action can serve as a framework for both the design and evaluation of accountability systems. (See, for example, Perie, M. (2007). *Key Elements in Educational Accountability Models*.)

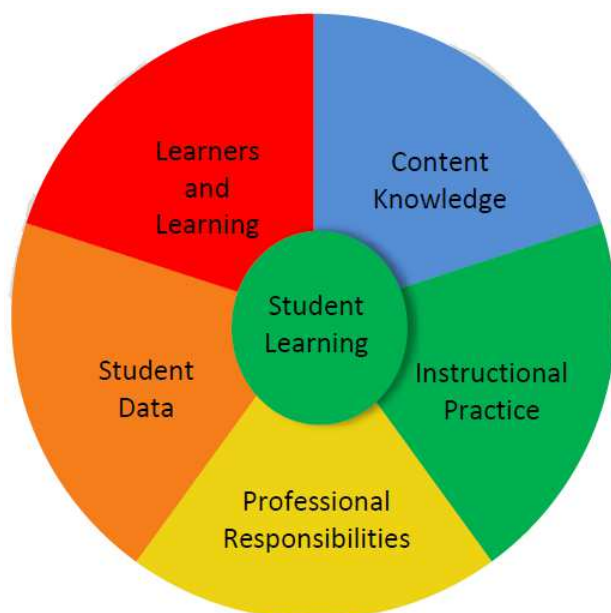
outperforming other teachers at the school, a case could be made that cooperation among teachers, which is valuable to support continuous improvement, will be diminished.

One state that intentionally promotes coherence in its waiver application (the state is still negotiating approval with ED), is **New Hampshire**. The state's proposed plans for teacher evaluation and support (Principle 3) provide that, "Coherence is an important design goal for the State Model in that [the state] intends for the various components of the model to work in complementary fashion and for the State Model system for teacher effectiveness to work coherently with NH's Performance-Based Adequacy School Accountability System and with the Leader Effectiveness Evaluation System." The plan describes a development process for a state model system for educator evaluation that values five domains. There are four domains of professional practice and one domain of student performance data. The professional practices are:

1. learners and learning;
2. content knowledge;
3. instructional practice; and
4. professional responsibilities.

These practices, in turn, link to student learning as shown in Figure 3. Student learning, naturally, is a prominent measure in the school accountability system and relies on the antecedents prioritized in the educator evaluation plan.

Figure 3. Proposed Domains of **New Hampshire's** Educator Evaluation Model



Another aspect of the **New Hampshire** proposal that should be acknowledged for its impact on coherence is the proposed "networks" of support. In an attempt to move away from a hierarchical and potentially fragmented system of supports, **New Hampshire** proposed a networked model that includes:



- Technical Assistance Networks (IMPROVE) to provide targeted assistance to promote improvement on areas that are explicitly aligned with measures for which the district is accountable.
- Knowledge Networks (LEARN) to expose districts and schools to a broad array of topics to promote teaching and learning.
- Innovation Networks (TRANSFORM) to provide opportunities to design and test new ideas on priority topics to promote change.

To be clear, this profile of the **New Hampshire** model is not intended to suggest the specific support strategies that should be mimicked or are uniformly applicable to other state systems. Rather, the illustration is provided to highlight one state's approach to establishing linkages across various dimensions of a multi-faceted state accountability system that has been designed to a specific theory of action with attention to coherence throughout the system.

The state of **Kentucky** provides another example of intentionally building coherence into the full accountability system. As noted previously, **Kentucky's** Next Generation Accountability System includes three components that contribute to overall scores: (1) learning, (2) instructional support/programs, and (3) professionals. These categories include information that goes beyond state tests and are intended to provide a more holistic and connected portrayal of school performance. Such a system is designed to incentivize mutually supportive actions and behaviors that cover a range of valued outcomes.

For example, one feature of the **Kentucky** plan is that the professional component is intended to account for 10% of the overall school accountability score starting in 2013-14. This component addresses the extent to which educators and leaders at each school are classified as effective. The logic of this approach is that effective teachers and leaders are an important part of high performing schools and should influence overall school outcomes. This approach is likely to mitigate a potentially counterintuitive finding in which a school is evaluated as high performing with respect to the school indicator but educators and leaders at the school are relatively low performing—or vice versa.

## Monitoring and Evaluation

Yet another critical component to effectively designing and managing accountability systems is to have a plan for ongoing monitoring and evaluation. By so doing, states are well positioned to assess proposals for model changes, whether these are initiated by stakeholder groups, governing bodies (e.g., state board, legislative proposals), or other groups.

A system of evaluation starts with a clear set of goals and objectives, such as may be documented in a well-articulated set of principles for the system. By so doing, states have a basis to evaluate findings. Without a clear standard, it is difficult to judge whether the system is functioning as intended.

One example of a state that demonstrates this practice is **Utah**. The state's school accountability model grew out of ongoing work with a broad based stakeholder group. The group started with a set of design principles that can be found in their waiver request. One of these design principles is, "All schools, including those that serve traditionally low performing students, should have an opportunity to demonstrate success." **Utah** operationalized the principle by studying various approaches to modeling

academic growth that would be appropriately sensitive for a full range of schools, such as those that have relatively low status achievement (i.e. proficiency rates) or high poverty. Using this standard, one would be interested in observing that a full range of growth scores are attainable for schools that are high poverty and that the distribution of scores by poverty range (e.g., quartiles for percent free/reduced lunch eligibility) is not dramatically dissimilar. **Utah** evaluated such evidence during the design phase and continues to monitor the system with respect to such outcomes to assess the extent to which the system is working as intended.

Moreover, **Utah** regularly reviews model features and outcomes with both its Technical Advisory Committee (TAC) and a Policy Advisory Committee (PAC). The TAC focuses on examining the model and making recommendations to bolster the technical defensibility of the system. The PAC is comprised of education leaders from schools and districts around the state. These individuals are well positioned to provide focused feedback on the extent to which the model is working as intended and the results are being used meaningfully. This group also provides advice on aspects such as refinements to promote clarity (e.g., reporting features) or business rules to address special circumstances.

## Summary

The following table is provided to summarize the overall questions addressed in this chapter and the essential features of the state examples used to illustrate alternatives.

Topic	Key Question(s)	Selected Examples of State Practices
College- and Career-Ready Standards and Assessments	How is readiness measured and connected to a meaningful criterion?	<b>Colorado</b> created a specific policy associated with readiness in consultation with the higher education community, which led to the <i>Post-Secondary and Workforce Readiness Endorsed Diploma (PWR)</i> .
		<b>Michigan</b> used empirical analysis to inform the establishment of new college- and career-ready based performance standards for assessments.
	How are states supporting transition?	<b>North Carolina</b> has adopted new standards and redeveloped the full system of state assessments to link content and expectations to readiness.
		<b>Rhode Island</b> has implemented a robust system of formative and interim assessments to support transition to new expectations.
Innovative Indicators	What alternatives can be considered for including indicators beyond state test scores or graduation rates?	<b>Kentucky</b> is an example of one state that includes a variety of measures including a broad set of indicators for college- and career-readiness and program reviews.



Topic	Key Question(s)	Selected Examples of State Practices
Establishing Performance Expectations	How do states combine multiple measures and set meaningful performance expectations?	<b>Massachusetts</b> combines multiple measures into a compensatory index and uses both norm-based and standards-based criteria to set expectations and guide decision rules for classification.
		<b>North Carolina</b> does not combine elements into an overall index. The state values achievement and improvement to inform accountability outcomes; other indicators are used for reporting purposes.
Reporting Practices	How do states make large quantities of data more accessible and meaningful to stakeholders?	<b>Colorado</b> provides the dynamic SchoolView reporting system.
		<b>Michigan</b> provides a dynamic dashboard reporting system.
Support Strategies	What strategies do states use to help stakeholders understand the accountability model and make good use of the data?	<b>North Carolina</b> and <b>Colorado</b> are examples of states with multifaceted training and support initiatives. Their approach includes broad based professional development delivered in-person and through technology.
Establishing Coherence	How can state systems be designed to promote logical coherence among features?	Dimensions of <b>New Hampshire's</b> educator evaluation model and networks of support show attention to coherence.
		<b>Kentucky's</b> model includes a wide range of integrated components, including plans to incorporate educator evaluation outcomes in the overall school score.
Monitoring and Evaluation	How do states review the system and consider potential changes?	<b>Utah</b> regularly reviews evidence with their Technical Advisory Committee and Policy Advisory Committee. Evidence is evaluated with respect to well-articulated goals and priorities for the system.

## The Next Chapter

In Chapter IV, we conclude this paper by discussing implications for states and other education interest groups resulting from our study of *ESEA Flexibility Requests* approved by the U. S. Department of Education (ED) and a myriad of related issues surrounding these approvals. We begin by providing a possible context in which a number of forces appear to be surfacing that have the potential to impact states' approved waiver plans going forward; briefly discuss transition issues related to standards and assessments; suggest likely next steps for these states; muse about reauthorization; and identify

potential future studies. Throughout this study, we have endeavored to conduct an extensive review of related literature, conduct follow up research, and also conduct in-depth interviews with staff members in several of the states receiving “waiver approvals” from ED.

## Chapter IV: Implications for States' Next-Generation Educational Accountability Systems

As has been noted earlier in this paper, to conduct this study, we examined—either partially or completely—the approved *Flexibility Requests* of almost every state making such a request, conducted an extensive review of related literature, and interviewed numerous state and federal education staff members. It has been an exciting, interesting, and challenging project. We hope that our findings will be instructive and helpful to states as they continue their important work to improve and strengthen our nation's public elementary and secondary schools, thereby fostering and nurturing improved teaching and student achievement.

In this chapter, we:

- Present an emerging context under which several recent events may combine to impact the waiver plans of several states.
- Explore the issue of states transitioning to new standards and assessments over the next two or three years.
- Discuss implications for states and education interest groups in the form of options for the continuous improvement of states' next-generation educational accountability systems. Touch on the matter of ESEA reauthorization which appears to finally be “heating up.”
- Conclude by posing suggestions for future research based on the results of our study.

### Context

As we conclude our examination of waivers that states have received under *ESEA Flexibility*, examine the implications of this work, and project possible next steps, there seem to be a number of events, sometimes with competing goals, that are emerging which appear to hold some potential to impact the implementation of states' next-generation educational accountability systems and the attainment of the goals set forth in their waiver plans.<sup>81</sup> In fact, recent legislative activity in a few states is likely to cause those states to amend their approved waiver plans.

For example:

- Debate in some states over whether to continue participation in the common core state standards (CCSS) movement and/or the common testing consortia (i.e., PARCC and Smarter Balanced).<sup>82</sup> Examples include:
  - **Indiana**, where “the state legislature has voted to delay further implementation of the common standards for one year, pending hearings and a review by the state board of education” (McNeil, M., 2013, May 15). In that same legislation, which has been signed into law, the state department and state board of education were ordered to rewrite the state's A to F rating system for schools by blending schools' pass-fail rates on statewide tests with a

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<sup>81</sup> For an overview, see the article, “Rifts Deepen Over Direction of Ed. Policy in U. S.,” by Michele McNeil in *Education Week*, May 8, 2013.

<sup>82</sup> See also article, “Common Core Supporters Firing Back,” by Andrew Ujifusa in *Education Week*, May 15, 2013.

- measure of students' relative academic growth. The legislators believed that the year-old grading system was too complicated.
- **Michigan**, where the legislature "is debating whether to defund common-core implementation" (McNeil, M.). In early June 2013, lawmakers there "approved a state budget that prohibits the state department of education from spending any money to implement the common core and the assessments tied to the new standards" (Ujifusa, A. 2013, June 12, p. 36). Unless the governor vetoes the entire budget, the prohibitions will go into law soon.
  - **Ohio**, where "push-back" on the state's earlier adoption of the CCSS appears to be increasing according to state officials.
  - **Wisconsin**, where the Legislature's Joint Committee on Finance approved on May 29, 2013, a budget amendment calling for a review of how the CCSS in mathematics and reading compare to the state's standards, a halt to implementation of national standards in science and social studies, the conduct of several public hearings on the CCSS, and how much implementation will cost.
  - Earlier this year, **Alabama** opted out of both PARCC and Smarter Balanced in favor of "a new comprehensive test system being designed by ACT." ACT had earlier withdrawn from its contract with PARCC when its partnership with Pearson to develop a suite of tests was deemed to be a conflict of interest (Gewertz, C., 2013, April 24). Although **Alaska** has not adopted the CCSS, it has joined the Smarter Balanced consortium after demonstrating that its state-developed standards are comparable to the CCSS.
  - **Indiana** is another state reported in early 2013 to be considering dropping out of PARCC.
  - A suit by the National Education Association (NEA) over "specific measures used to calculate teachers' contributions to student learning." In this case, NEA is suing the **Florida Department of Education** on behalf of three affiliates of its Florida chapter and seven teachers contending that some teachers are being judged against the achievement of students or subjects they don't teach in violation of their constitutional rights. If granted an injunction, as requested, "it would essentially throw out evaluation results from the 2011-12 school year and future years until a new system could be developed" (Sawchuk, S., 2013, April 24).
  - In a somewhat related action, **Tennessee's** legislators "recently passed a law reducing the weight" given to the state's "growth measure based on the performance of the school as a whole for teachers in nontested subjects" (Sawchuk, S.).
  - The early 2013 decision by Secretary Duncan to accept an *ESEA Waiver Request* from The **California Office to Reform Education** consortium of nine school districts and move it to peer review. This waiver request is much broader than the, at the time, precedent-setting one granted to the McPherson, Kansas Unified School District in 2011 to administer ACT assessments in grades 6, 8, and 11 in lieu of the state assessments (see earlier discussion in Window 4 Submittals section in Chapter II). Whether this latest decision comes to be viewed as an attempt to overturn decades of education policy and leads to significant legal challenges remains to be seen.

- Increased interest on the part of state legislatures in states' next-generation accountability systems created through *ESEA Flexibility* waivers.
  - **Ohio**, where new legislation has been enacted providing for the three-year phase-in of a maximum of up to 18 new measures of accountability to replace the existing system that was part of the state's approved waiver plan. The 18 measures will be factored into letter grades to report school performance. The state board of education is also considering a list of additional data points that would be reported for schools and districts but not factored into grades.
- Efforts to alter high school graduation requirements.
  - **Florida's** governor signed a bill in late April 2013 approving revisions to the state's high school diploma requirements similar to those that had been under consideration in **Texas**. The new law in **Florida** requires "the state school board to create new 'pathways' for earning a diploma that include allowing industry certification in various trades to be used for academic credit. One provision allows such certifications to replace certain subject courses and tests, including Algebra 2 which is part of the math sequence" in the CCSSs the state adopted earlier (Legislative Briefs, *Education Week*, 2013, April 24).
  - In May 2013, the **Texas** legislature passed a bill scaling back the number of EOC examinations high school students have to pass in order to receive a diploma. The governor is expected to sign the bill reducing the required EOCs from 15 to five. The legislation also replaces the state's recommended route to a diploma with a "foundation" diploma requiring fewer credits in history, mathematics, and science.

In summary, standards, assessments, and accountability systems are now at the forefront of scrutiny by policy makers and stakeholders in many states. This will likely necessitate careful work to demonstrate the value of recent and proposed initiatives and require efforts to monitor and evaluate findings. Some suggested approaches to accomplish this are addressed in the subsequent sections.

## Transition of Standards and Assessments

It would be an understatement to point out that states are on the cusp of remarkable transition in standards and assessment. As noted, many states are transitioning to the CCSS and/or are making other changes to state standards to increase rigor and connect to college- and career-readiness. Many states are also involved in one or more large scale assessment consortia that will produce new tests aligned to the CCSS in 2015.<sup>83</sup> The general assessment consortia are the Smarter Balanced Assessment Consortium (SBAC) and the Partnership for the Assessment of Readiness for College and Careers (PARCC), which are working to create new tests of English Language Arts and mathematics in grades 3-8 and high school. Additionally, two state consortia are developing alternate assessments based on alternate academic

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<sup>83</sup> On June 18, 2013, ED Secretary Arne Duncan announced that during the transition from current statewide assessments to new assessments aligned with CCRS, states participating in field testing new assessments during 2013-14 may request a one-year waiver to allow schools participating in these field tests to administer only one assessment to any individual student—either the current statewide assessment or the field test. Participating schools would retain their ESEA accountability designations for an additional year during which the same targeted interventions would have to continue (if applicable).

achievement standards: Dynamic Learning Maps (DLM) and the National Center and State Collaborative (NCSC), which will develop new assessments in 2015 for students with significant cognitive disabilities. These initiatives will yield substantial changes to the state assessments that factor prominently in accountability and may necessitate extensive reworking of educational accountability systems once they are in place.

Changes in standards and assessments require an investigation of impact prior to implementation and ongoing monitoring and support following implementation. Such investigations help states maximize the likelihood that the objectives for accountability will be met and that results are technically defensible. Some of the focal areas of such an investigation may include:

- *Evidence Supports Theory of Action*: This addresses the supports and structures that must be in place to bolster the integrity of the information in the model and to improve the likelihood that actions based on information derived from the accountability model will promote intended outcomes.
- *Results are Reliable*: Reliability refers to the consistency or stability of a measure. In this case, we are interested in the reliability of the measures of school or teacher/leader outcomes. Reliability is challenging in this context due to the error in both achievement measures and growth measures and influence of sampling error.
- *Results are Valid*: This addresses the extent to which results are credible and useful for the intended purposes. Investigations of validity often address questions such as:
  - Is the model appropriately sensitive to differences in student demographics and school factors?
  - Are the results associated with variables related to effectiveness and generally those the school can influence? For example, a strong relationship between model outcomes and variables such as socioeconomic status or school size may signal a threat to validity.
  - Are the classifications credible and in sync with other trusted indicators?
  - Are negative consequences mitigated?

## Where do States Go from Here?

A recent CCSSO document (2013, February), “*States Reflect on New Accountability Systems: Waivers, Now What?*,” provides an apt summation of likely “next steps” for the states with approved *Flexibility Requests*. Approved ESEA flexibility is not the end; it is just the next step in the effort to improve low-performing schools, raise student achievement, and strengthen instruction and school leadership. These states have developed and are implementing well thought out and rigorous next-generation accountability systems under *ESEA Flexibility*. Going forward, it will be critical to evaluate whether these new systems are serving to drive significant gains in student achievement in the way they were intended. States have indicated that they remain committed to a process of innovation, evaluation, and continuous improvement over time, with many explicitly setting out a process of continuous improvement in their approved waiver plans. In the final analysis, however, states will need an updated and improved federal law that builds on state leadership and provides the stability states need to fully realize the potential of their reform efforts.

Continuous improvement of next-generation state educational accountability systems should:

1. *Build in evaluation of the accountability system as a whole as well as each individual component.* As stated in the Council's *Roadmap for Next-Generation State Accountability Systems*, each component of the framework is important both individually and as part of the whole; hence, evaluations should be designed accordingly. Questions to consider include: whether the system as a whole is effectively serving as the core organizing strategy in meeting the state's student achievement goals; whether each component contributes and works in tandem with the other component; and whether the feedback received from users of the accountability system, particularly educators, is positive.
2. *Establish expectations for review and improvement.* These should be articulated early in the development of the system and expected to be used throughout the implementation process.
3. *Include a focus on unintended consequences.* State accountability systems should be designed to spur innovation and improvement in educational practice at a school level and beyond. States should be deliberate about monitoring the impact of innovation and continual improvement efforts on teaching and learning in order to avoid creating barriers to greater reform.
4. *Make the evaluations and reviews transparent.* Rather than confining the results of the continuous improvement evaluations to SEA leaders and staff, disseminate the results more broadly so that all stakeholders understand in what ways the accountability system is working or not and why changes might be necessary.
5. *Act on the results.* Once a state knows what needs to be enhanced or changed, leaders must exercise the political will to do so. Actors within the educational system must adapt to an environment that continuously innovates and improves for greater levels of student achievement.

## Reauthorization

Finally, there is the matter of reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). After an extended period of speculation as to when ESEA reauthorization might occur—at the beginning of 2013, it was already five years overdue--and just what that might eventually look like, reauthorization activity suddenly picked up steam in both chambers of Congress in May 2013. By mid-June, both the Senate and House education committees had taken up bills, marked them up, and reported them out for action by the respective bodies. However, it is unlikely that final action on the reauthorization will occur until much later into the year, if at all. The Senate bill, however, would allow waiver-approved states to “stick with those plans” (Klein, A., 2013, June 12, p. 31).

As late as a February 2013 hearing on the issue before the U. S. Senate Health, Education, Labor, and Pensions Committee, it was unclear whether that committee intended to begin work on reauthorization or, instead, see what lessons might be learned from the NCLB waivers that states have received over the past year. According to Alyson Klein in an *Education Week* article at the time (2013, February 20, p. 25), some members of Congress were still wondering whether ED had the authority to issue waivers “with strings attached;” some believed that the waivers had helped their states; and some believed they had created “uncertainty.” Regardless, “Lawmakers also [have to] consider whether the policies put in place

by the waivers work for students, particularly the traditionally over-looked populations that the law was designed to protect, such as students in special education and English-language learners”.

CCSSO will continue to call on Congress to reauthorize an improved ESEA based on the strong state waiver plans that are being implemented under *ESEA Flexibility*.<sup>84</sup> Until ESEA is reauthorized, however, it seems clear that states are committed to moving forward with implementation of their new accountability systems.

## Potential Future Studies

Although highly desirable, it is still a bit early in the *Flexibility Initiative* to attempt to examine even its potential impact on districts, schools, local educators, students, and parents. Looking ahead, once states have had more experience with implementing their *Flexibility* agreements, implications for states’ waiver plans resulting from ED’s initial round of monitoring reviews are known, and more student achievement data become available, the following additional studies may be merited:

- Continue to observe states with approved waivers to determine, after one and two years, how effective each has been in turning around priority and focus schools. This should include measuring the degree of success in turning around all low-performing schools and raising the academic achievement of all low-performing students, students with disabilities, and English language learners (student achievement data should be added into the study as quickly as it becomes available).
- Examine how the new accountability approaches in states approved in the Windows 2, 3, and 4 peer reviews (March 2012, October 2012, and April 2013) differ from those in Window 1 (December 2011) and how those approved in Window 4 differ from those in Windows 3 and 2 and so forth. To what extent did the states do things differently? Did there appear to be faster implementation by learning from others? With respect to fidelity of implementation and determination of diversity among the states and their new accountability systems, are they really doing things differently?<sup>85</sup>
- Examine the extent to which a given approach has been effective in supporting a state’s next-generation accountability system. For example, is there demonstrable support for achieving improved performance in all schools vs. just Title I schools?
- Explore the perceptions of stakeholders who were involved in the development of new accountability systems with respect to implementation, the extent to which they were involved

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<sup>84</sup> [http://www.ccsso.org/News\\_and\\_Events/Current\\_News/Minnich\\_Update\\_Our\\_Education\\_Legislation.html](http://www.ccsso.org/News_and_Events/Current_News/Minnich_Update_Our_Education_Legislation.html).

<sup>85</sup> Some parts of the peer review guidance changed from one window to the next window; for example, initially requiring approved states to continue making AYP determinations to making same optional. However, states and their school districts must include on their report cards performance against the AMOs for all NCLB subgroups and use performance against the AMOs to support continuous improvement in Title I schools. Any examination of the degree to which states’ next-generation accountability systems may have differed will have to take into account the extent to which ED may have revised specific parts of the approval criteria to become more prescriptive or restrictive.



with their states after implementation of the *Flexibility Request* itself, and how they perceive the new accountability designs to be working.

- Review the methodology and processes ED followed to implement its monitoring of states' *Flexibility* plans and how this may have impacted the states' plans. What were the Department's overall findings? To what extent were states required to modify or amend their plans as a result of the monitoring outcomes?

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## Related U. S. Department of Education Documents

The following documents have been issued by the U. S. Department of Education (ED) to support implementation of the *ESEA Flexibility* initiative. Readers are cautioned that Window 1 documents are superseded by Window 2 documents and so forth. Thus, ED sometimes removes earlier iterations of given documents from access on its website. Unless otherwise noted, the most recent iterations of these documents are available at: <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

*Accountability Addendum to Flexibility Request and Sample (Addendum January 2013 and Sample December 2012)*

*ESEA Flexibility Frequently Asked Questions (Revised August 3, 2012)*

*ESEA Flexibility Frequently Asked Questions Addendum (March 5, 2013)*

*ESEA Flexibility Review Guidance [for Window 1] (September 23, 2011)*

*ESEA Flexibility Review Guidance [for Window 2] (February 10, 2012)*

*ESEA Flexibility Review Guidance for Window 3 (June 7, 2012)*

*ESEA Flexibility (September 23, 2011)*

*ESEA Flexibility Request [for Window 1] (September 23, 2011)*

*ESEA Flexibility Request [for Window 2] (February 12, 2012)*

*ESEA Flexibility Request for Window 3 (June 7, 2012)*

*ESEA Flexibility Amendment Submission Process and Template (May 15, 2012)*

*One-Year AMO Waiver Guidance and Template (late-2011)*

*State and Local Report Cards—Non-Regulatory Guidance (revised February 2, 2013)*

Available at: [http://www2.ed.gov/programs/titleiparta/state\\_local\\_report\\_card\\_guidance\\_2-08-2013.pdf](http://www2.ed.gov/programs/titleiparta/state_local_report_card_guidance_2-08-2013.pdf)



## Acronyms Used in this Paper

AA-MAAS	Alternate Assessment based on Modified Academic Achievement Standards
ACT	American College Test; also refers to the American College Testing Program
AMOs	Annual Measurable Objectives
AP	Advanced Placement
ASR	Accountability Systems and Reporting SCASS
ASVAB	Armed Services Vocational Aptitude Battery
AYP	Adequate Yearly Progress
21stCCLC	Twenty-first Community Learning Centers
CCRS	College- and Career-Ready Standards
CCSS	Common Core State Standards
CCSSO	Council of Chief State School Officers
CEP	Center on Education Policy
CTE	Career and Technical Education
ED	U. S. Department of Education
ELA	English Language Arts
ELLs	English Language Learners
ESEA	The Elementary and Secondary Education Act of 1965
EVAAS	Education Value Added Assessment System
FAQs	Frequently Asked Questions
IB	International Baccalaureate
LEAs	Local Education Agencies (aka school districts)
LEP	Limited English Proficient
NCES	National Center for Education Statistics
NCLB	The No Child Left Behind Act of 2001
OESE	Office of Elementary and Secondary Education

PARCC	Partnership for Assessment of Readiness for College and Careers
RT <sup>3</sup>	Race to the Top Grants
SBAC	Smarter Balanced Assessment Consortium (aka Smarter Balanced)
SAT	Scholastic Aptitude Test
SCASS	State Collaborative on Assessments and Student Standards
SEAs	State Education Agencies (aka State Departments of Education)
SGP	Student Growth Percentile
SWDs	Students with Disabilities
TOA	Theory of Action

