



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

AUG 11 2015

The Honorable Randy I. Dorn
Superintendent of Public Instruction
Office of the Superintendent of Public Instruction
P.O. Box 47200
Olympia, WA 98504-7200

Dear Superintendent Dorn:

I am writing in response to three recent requests for waivers by Washington's Office of the Superintendent of Public Instruction (OSPI) of certain provisions of the Elementary and Secondary Education Act of 1965 (ESEA). Specifically, on June 8, 2015, OSPI requested a waiver of the provisions of ESEA section 1116(e) with respect to providing supplemental educational services (SES). Instead, OSPI proposed a system by which each local educational agency (LEA) with one or more schools in the second year of improvement, corrective action, or restructuring would be required to set aside an amount up to 20 percent of its Title I, Part A allocation for extended-day intervention strategies provided by the LEA and approved by OSPI. In the alternative, on July 14, 2015, OSPI requested a waiver of 34 C.F.R. § 200.47(b)(1)(iv) that would allow it to approve schools and LEAs identified for improvement, corrective action, or restructuring as SES providers. In addition, on July 13, 2015, OSPI requested a waiver of ESEA section 1127(b) to grant a limited number of LEAs a waiver of the carryover limitation with respect to fiscal year (FY) 2014 Title I, Part A funds.

After careful consideration of your requests, I am declining to exercise my authority to waive ESEA section 1116(e) for eligible LEAs in Washington. One of the benefits of SES is the choice of public and private providers it affords to low-income parents. In that regard, I am approving your request for a waiver of 34 C.F.R. § 200.47(b)(1)(iv) through the 2015-2016 school year. With this waiver, OSPI may approve any LEA or school in Washington, even if it is identified for improvement, corrective action, or restructuring, to be an SES provider. As a result, any interested LEA may apply to the State to be a provider and afford parents the benefits of extended-day intervention strategies articulated in OSPI's waiver request. Moreover, in response to OSPI's concern about the quality of some SES providers, I note that all SES must be aligned with the State's standards and with instruction provided and content used by an LEA. Thus, if a provider's instruction is not so aligned or is of low quality, OSPI has the authority to not renew the provider's approval.

This waiver of 34 C.F.R. § 200.47(b)(1)(iv) is granted on the condition that OSPI will submit to the U.S. Department of Education (ED) a report that provides (1) the total number of LEAs identified for improvement or corrective action that were approved to be an SES provider for the 2015-2016 school year; and (2) the total number of schools identified for improvement,

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corrective action, or restructuring that were approved to be an SES provider for the 2015–2016 school year. Please submit this report to the contacts at the end of this letter by September 30, 2015.

OSPI also requested a waiver of the carryover limitation in ESEA section 1127(b) with respect to FY 2014 funds when OSPI reinstituted the interventions required in schools and LEAs identified for improvement. As a result, some LEAs encountered challenges spending an amount equal to 20 percent of their Title I, Part A allocation for choice-related transportation and SES. This waiver is needed to allow OSPI to grant a limited number of LEAs the flexibility they need to carryover more than 15 percent of their FY 2014 Title I, Part A funds for use during the 2015–2016 school year.

After reviewing OSPI's request, I am pleased to grant a one-year waiver of ESEA section 1127(b). This waiver allows OSPI to grant specific LEAs a waiver of the carryover limitation with respect to unexpended FY 2014 Title I, Part A funds even if an LEA received a carryover waiver of either its FY 2012 or FY 2013 Title I, Part A funds from OSPI. (Note: under section 1127(b), an LEA that did not receive a carryover waiver for either FY 2012 or FY 2013 is already eligible to apply to OSPI for an FY 2014 carryover waiver.)

Please note that this waiver is being granted based on specific, unanticipated circumstances affecting specific LEAs, which OSPI articulated through its request and clarified in subsequent discussions with ED staff. Please keep in mind that LEAs generally are expected to develop and implement plans for the expenditure of Title I, Part A funds during the year for which the funds are appropriated so that any carryover does not exceed 15 percent. To the extent that an LEA's carryover exceeds this amount, OSPI retains the authority to reallocate excess funds to other LEAs in accordance with criteria it has established under ESEA section 1126(c).

In requesting a waiver of ESEA section 1127(b) with respect to FY 2014 Title I, Part A funds, an LEA should apply to OSPI in accordance with OSPI's regular procedures for a waiver of the carryover limitation. Consistent with ESEA section 1127(b)(1), in granting such a waiver, OSPI must ensure that the request is reasonable and necessary. Additionally, this waiver is conditioned on OSPI's assurances that it will:

- Limit the number of carryover waivers it grants to LEAs under this waiver to specific LEAs that meet OSPI's criteria as articulated in its waiver request.
- Hold LEAs and their schools accountable based on the State's accountability system.
- Require any LEA receiving a waiver to first use the carryover funds to meet its 20 percent obligation with respect to the 2014–2015 school year to provide choice-related transportation, SES, or parent outreach and assistance during the 2015–2016 school year in addition to the amount the LEA is required to spend to meet its 20 percent obligation in 2015–2016 (*see* 34 C.F.R. § 200.48(d)(1)) unless the LEA met the requirements of § 200.48(d)(2) to spend less than the amount needed to meet its 20 percent obligation in 2014–2015.

I appreciate the work you are doing each day to improve your schools and to significantly improve academic services to your neediest students. If you need any additional assistance,

please do not hesitate to contact Diane Bragdon at Diane.Bragdon@ed.gov or Ashlee Schmidt at Ashlee.Schmidt@ed.gov or OSS.Washington@ed.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ann Whalen', with a stylized, cursive script.

Ann Whalen

Delegated the authority to perform the functions
and duties of Assistant Secretary for Elementary
and Secondary Education

cc: Gayle Pauley
Assistant Superintendent
Special Programs and Federal Accountability