



CALIFORNIA DEPARTMENT OF EDUCATION
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CALIFORNIA STATE BOARD OF EDUCATION
MICHAEL W. KIRST, President
916-319-0827

DRAFT June 7, 2012

Michael Yudin, Acting Assistant Secretary
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Acting Assistant Secretary Yudin:

Subject: Request for Waiver of Provisions of Sections 1116(b) and (c) of the Elementary and Secondary Education Act, Pursuant to Section 9401 of the Elementary and Secondary Education Act

As President of the State Board of Education and State Superintendent of Public Instruction, and on behalf of all California districts, we are requesting a waiver of certain provisions of the Elementary and Secondary Education Act. Like Secretary of Education Duncan, we recognize that the No Child Left Behind Act, with its escalating proficiency targets and associated sanctions, is no longer useful for identifying which schools need improvement or for intervening appropriately in those schools. The appropriate solution is to reauthorize the Act, replace its inflexible requirements with provisions that accommodate the differences in state policy approaches, and give districts adequate flexibility to improve student achievement. In the meantime, we seek more immediate relief through this waiver request.

The members of the State Board of Education and the State Superintendent of Public Instruction have given careful consideration to the waiver package offered by Secretary Duncan and appreciate that you, Mr. Yudin, visited our state and discussed its provisions with us. As we conveyed to you at the January State Board of Education meeting, California state law requires that the state reimburse local educational agencies for the cost of any state-mandated activities. Given California's severe, ongoing fiscal challenges, it is impossible for the state or its districts to implement the requirements of the Secretary's waiver package effectively and within the required timeline, and we are not willing to make promises that we are unable to carry out. We ask that you consider instead our waiver request contained in this letter, which has three main objectives:

- 1) **Ending the ineffective practice of over-identifying schools and districts for program improvement.** Unrealistic and ever-increasing performance targets have forced us to label 63 percent of Title I schools and 47 percent of districts receiving Title I funds as "needing improvement," and to apply sanctions that do not necessarily lead to improved learning for the students in those schools. This practice has confused the

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public, demoralized teachers, and tied up funds that could have been more precisely targeted on the schools and districts that are **most** in need of improvement.

- 2) **Giving districts greater spending flexibility to increase student achievement.** We request a waiver of the requirements that schools in improvement set aside funds for Title I professional development, Supplemental Educational Services, and choice-related transportation activities. Instead, these funds should be available for the activities that will be most effective for improving teaching and learning in the local context, which could include, for example, targeted tutoring provided by the districts and schools, teacher coaching to improve instruction, or systems for identifying specific student achievement problems and developing targeted instructional interventions.
- 3) **Transitioning to a single, transparent accountability system.** After more than a decade of living under two conflicting accountability systems, California's districts, schools, and public want to return to a single system that works. Before President George W. Bush signed the No Child Left Behind Act into law, California had implemented a robust accountability system that encouraged school improvement and sent a single, consistent message to the public about how well schools were doing to improve the achievement of students. The state statutes that established that system are still in place and represent a more effective approach. Now that the shortcomings of the federal system are more widely understood, we want to return our focus to our state system that has a proven track record of measuring growth and identifying where it is lacking.

To achieve these ends, the State Board of Education as the State Educational Agency is specifically seeking a waiver to exempt local educational agencies in California from Title I, Part A sections 1116(b) and (c) with the exception of subsections 1116(b)(13) and 1116(c)(4). We are requesting this waiver for the 2012–13 and 2013–14 academic years.

In accordance with the waiver authority established in federal law (Section 9401 of the Elementary and Secondary Education Act), we outline in this letter California's specific, measurable educational goals, we describe how the state will measure progress toward these goals, and we explain the state's plan for assisting schools and districts in meeting those goals. Please note that in this request, we only describe current and planned initiatives to the extent that they address these requirements and fit within the policy parameters established by the Elementary and Secondary Education Act. We can provide additional information about other aspects of our education system that are of interest to the Secretary, but do not consider such information pertinent to this specific request.

California's Current Accountability System

California's Public Schools Accountability Act of 1999 established the state's school accountability program. Specifically, it:

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- Created the Academic Performance Index, a composite, test-based score ranging from 200 to 1,000 that reflects overall school performance and measures improvement in school performance from one year to the next;
- Established a statewide performance target of 800 on the Academic Performance Index and a system for setting annual school-level targets that encourage steady improvement toward that statewide goal;
- Required schools to demonstrate improvement for all numerically significant student groups including racial and ethnic student groups, socioeconomically disadvantaged pupils, English learners, and students with disabilities;
- Defined a system of intervention in underperforming schools, including standards, criteria, and qualifications for external evaluators to assist low-performing schools; and
- Established eligibility criteria for an awards program for schools meeting or exceeding state growth targets.

Investments in Intervention

Since establishing the state accountability system, California has invested heavily in interventions for schools that failed to make significant growth as measured by the Academic Performance Index. Between 2000–01 and 2007–08, the state provided funding and technical assistance to 1,288 schools under the Immediate Intervention Underperforming Schools Program at a cost of \$668.6 million. Of these, 1,140 schools ultimately met their growth targets and exited the program.

Also during that time, 802 schools participated in the High Priority Schools Grant Program at a cost of \$749.3 million. Of those schools, 309 that failed to make significant growth were assigned to work with an intervention team. While this program was helpful to many participating schools, program evaluations suggested that longer term district-level approaches could be more effective, leading the state to shift its focus accordingly. From 2008–12, California allocated \$177 million to districts in program improvement, for district-level assistance and intervention teams, and other activities. The first three years of evaluation data suggest that the district assistance and intervention model is effective for increasing student achievement.

In addition, the state established the Quality Education Investment Act in 2006. This \$3 billion state initiative assists schools that were performing in the lowest two deciles of the Academic Performance Index at the program's inception. This infusion of resources has helped these schools reduce class size, increase student access to school counselors, provide professional development, increase the number of highly qualified teachers, and improve facilities, among other activities. (Note that in 2008, California's severe budget crisis led the state to collapse several categorical programs, including the Immediate Intervention Underperforming Schools Program and the High Priority Schools Grant Program described above. Funding for the Quality Education Investment Act remains intact.)

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Outcomes to Date

In the past 13 years, California's accountability system has led to increased student achievement overall and strong progress on closing the achievement gap. Since the full implementation of the California Standards Tests in 2003, academic achievement for all students in both English-language arts and mathematics has been steadily increasing. In English-language arts, the percent of students scoring proficient or advanced increased from 35 percent in 2003 to 54 percent in 2011, marking a substantial increase in the number of students who are prepared to succeed in college or career. California's most vulnerable students also showed major improvement: the percent of students scoring at the lower level of achievement decreased by 13 percentage points over that same period, from 32 percent in 2003 to 19 percent in 2011.

California students have also made impressive gains in mathematics: the percent of students scoring proficient or advanced increased from 35 percent in 2003 to 50 percent in 2011. Across that same time period, the percent of students scoring at the lower level of achievement decreased by 11 percentage points from 38 percent in 2003 to 27 percent in 2011.

These substantial gains in test scores are reflected in the state accountability system. In 2003, for example, an elementary school in the lowest 10 percent had an Academic Performance Index score between 564 and 609 points. In 2011, an elementary school in the lowest 10 percent had an Academic Performance Index score between 700 and 714 points.

To summarize, while the federal system has subsumed increasing numbers of schools and districts under the banner of failure for the last decade, California's system has consistently differentiated between schools that are improving and those that are not.

Looking Ahead: Plans for Change

With this state-defined request, we are seeking to return to a single system of school accountability that is both understandable and rigorous. We intend to keep the Academic Performance Index at the core of our state accountability system, while making improvements. This waiver request will provide much-needed flexibility and relief from the adverse effects of the No Child Left Behind Act, while increasing our focus on the schools most in need of improved student learning.

We plan to strengthen California's system of accountability and interventions as follows:

- California will transition to a single system of performance goals that uses the annual Academic Performance Index schoolwide and student group targets as the state's Annual Measureable Objectives. The state will continue to identify schools and districts needing improvement, but will use its own accountability system to identify them. The State Board of Education will initiate conforming changes as needed to California's Accountability Workbook and submit these to the U.S. Department of Education for review. (California's current Annual Measurable Objectives, as required by Section 9401

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(b)(1)(C), are documented in the state's approved Accountability Workbook, available on the CDE Accountability Workbook Web page at <http://www.cde.ca.gov/ta/ac/ay/wb.asp>.

- The State Board of Education will consider by January 2013 revisions to the statewide Academic Performance Index target or revisions to the method for calculating annual schoolwide and student group targets. While the Academic Performance Index was designed to encourage growth at all performance levels, we believe we need to carefully examine the effects of the target structure, particularly for schools that have long met the statewide target, to encourage continued focus on students who are not proficient. We will seek input from the Public Schools Accountability Act Advisory Committee and California's education community at large to help make this determination. If the State Board of Education adopts new targets, those will become California's Annual Measureable Objectives in the following school year.
- By March 2013, the State Board of Education, with input from the Public Schools Accountability Act Advisory Committee, will determine how it will use the Academic Performance Index to identify a targeted number of schools and districts that have not shown improvement over time or have low absolute performance. This process will replace the process of identifying schools and districts for Program Improvement under the No Child Left Behind Act.
 - The State Board of Education will identify a more targeted set of schools and districts for intervention, specifically those low-performing schools and districts that have not improved.
 - The State Board of Education will develop clear criteria to identify the targeted set of schools and districts that have not improved and require intervention, but will not require that a specific percentage be identified each year, or set other requirements that lead to schools and districts bouncing in and out of this status. The State Board of Education will also develop clear criteria to identify when schools and districts have improved sufficiently to regain full flexibility and autonomy from state interventions.
 - The State Board of Education will consider moving to a multi-year ("rolling") accountability measure or other techniques to smooth out fluctuations in scores, prevent schools from bouncing in and out of improvement status from year to year, and focus attention on the schools with the most intractable problems.
- By July 2013, the State Board of Education, with input from the Title I Committee of Practitioners, will identify what sanctions will be imposed on schools and districts that have been identified as not improving, based on the severity and persistence of underachievement problems. Those sanctions, currently authorized under state law, include: (a) replacing district personnel; (b) removing schools from the jurisdiction of the district and establishing alternative governance and supervision arrangements; (c) appointing a state receiver or trustee to administer the affairs of the district in place of the local governing board; (d) abolishing or restructuring the district; (e) authorizing students to transfer to higher performing schools in other districts and providing

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transportation; (f) instituting a new curriculum based on state content standards; and (g) deferring programmatic funds or reducing administrative funds. In recent years California has exercised its takeover option, appointing state trustees in three persistently low-performing districts. (Two of these districts have improved and regained autonomy from the state; the trustee is still in place in the third.)

- The state will focus its monitoring efforts at the district level, both because of capacity constraints, and to ensure district support for school improvement.
- Specific improvement activities will be selected based on the needs of the school and district, as determined by local data analysis and the qualitative judgments of individuals who are familiar with the school and district.
- Required improvement activities will largely focus on instruction, including activities that promote teacher collaboration and instructional coaching. Instructional improvement activities will emphasize a broad curriculum. Numerous California schools districts have been implementing research-based interventions which are improving student achievement and will be considered for incorporation in a statewide intervention model.
- The State Board of Education will bring more qualitative judgment to the process of identifying appropriate interventions and sanctions, using as guidance existing state standards and criteria for assessing district performance in seven key areas: governance; alignment of curriculum, instruction, and assessments to state standards; fiscal operations; parent and community involvement; human resources; data systems and achievement monitoring; and professional development. The State Board of Education may use local review panels to identify problems and assigned required activities.
- If our waiver is granted, these activities can be paid for, in part, with federal funds that are currently set aside for Supplemental Educational Services, Title I professional development, and choice-related transportation. Under the current system, local educational agencies and schools are obligated to direct Title I improvement resources to activities that frequently do not align with their local needs.
- Another possible source of funds is the approximately \$35 million annual allocation for local educational agencies that are newly identified as needing improvement under the No Child Left Behind Act (\$50,000, \$100,000, or \$150,000 per local educational agency, depending on the severity of the performance problem). Because of escalating performance targets, these funds are going currently to districts with moderate performance problems and could be better targeted. This may require a change in state statute to re-purpose the funds.

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- To support improved teaching and learning, districts will revise annual district and school plans to document how schools and local educational agencies are using their formerly reserved Title I, Part A funds to meet the needs of Title I eligible students. These plans will be uploaded to the state's web-based system, allowing the California Department of Education to monitor the plans and provide timely technical assistance to districts as they redirect funds and human resources to better support student learning.

In Conclusion

California is moving forward with a plan to increase student learning, building on the strong foundation we already have. We understand the obvious and important link between quality teaching and learning. The State has adopted the Common Core State Standards and is on course to implement them on the timeline established in state statute, in line with what the state budget allows. As you know, California is also a governing state in the Smarter Balanced Assessment Consortium and anticipates a transition to new online assessments in 2015. In anticipation of this, the State Superintendent of Public Instruction and the State Board of Education will recommend action by the State to reauthorize and streamline the State's assessment system and ensure a smooth transition to the new tests. At the direction of Governor Brown, the State Board of Education will concurrently review our state accountability system and consider how to keep the Academic Performance Index intact as a strong quantitative measure of school performance, while giving additional emphasis to local judgments of quality and other, more qualitative accountability mechanisms, such as the School Accountability Report Cards that all schools must produce annually.

Our goals now are the same as they were when we first established the state accountability system in 1999—to maintain challenging yet achievable goals, and to assist underperforming schools in ways that improve student learning. California has been a leader and innovator in numerous fields, and we plan to return to that role in education accountability. Just as California led the way in developing emissions standards that were ultimately adopted across the nation, we now want to lead the nation in education accountability and student learning as well. As we approach reauthorization of the Elementary and Secondary Education Act, we believe that our state system of accountability provides a strong model for national consideration.

In the absence of reauthorization of the Elementary and Secondary Education Act, we request this waiver to provide districts with the flexibility they need to use Title I resources effectively and improve the academic achievement of their students. As we have described in this letter, we are committed to upholding school accountability in our state and excellence in our schools. Using our established state system of accountability and the tough sanctions authorized in existing state law, we will redouble our efforts to hold districts and schools accountable for improving student learning.

We have developed this waiver request by working collaboratively with local educational agencies and stakeholders, and we will implement the plan with continued collaboration.

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Prior to submitting this waiver request, California will provide all local educational agencies in the state with notice and a reasonable opportunity to comment on this request. The specific notice posting on the California Department of Education Public Notices Web page located at <http://www.cde.ca.gov/be/pn/pn/> is provided in Enclosure 1. Copies of all comments that California received from local educational agencies in response to this notice are attached. California has provided notice and information regarding this waiver request to the public in the manner in which California customarily provides such notice and information to the public.

If you have questions regarding this request, please contact Deborah V.H. Sigman, Deputy Superintendent, District, School, and Innovation Branch, by phone at 916-319-0812 or by e-mail at dsigman@cde.ca.gov.

Sincerely,

Tom Torlakson
State Superintendent of Public Instruction
California Department of Education

Michael W. Kirst
President
California State Board of Education

TT/MK:lw

Enclosure

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CALIFORNIA DEPARTMENT OF EDUCATION
TOM TORLAKSON, State Superintendent of Public Instruction
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1430 N Street Sacramento, CA 95814-5901



CALIFORNIA STATE BOARD OF EDUCATION
MICHAEL W. KIRST, President
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DRAFT May 10, 2012

NOTICE OF REQUEST TO WAIVE SECTION 1116(b) AND (c) OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

Request for comment on California requesting the U.S. Department of Education to waive subsection 1116(b) and (c) of the Elementary and Secondary Education Act (ESEA) for the 2012–13 and 2013–14 academic years.

Notice is hereby given that California will request the U.S. Department of Education (ED) to waive the ESEA subsection 1116(b) and (c) with the exceptions of 1116(b)(13); and 1116(c)(4). ESEA subsection 1116(b) and (c) mandate identification of improvement for schools and local educational agencies (LEAs) that do not meet the Adequate Yearly Progress (AYP) criteria for two consecutive years and require specific sanctions of the identified schools and LEAs while they are identified for improvement, corrective actions, or restructuring. The specific sanctions include Title I professional development, school-choice transportation, and supplemental educational services.

Subsection 1116(b)(13) permits a child who transferred to another school under this subsection to remain in that school until the children has completed the highest grade in that school; subsection 1116(c)(4) allows the state to choose to review the progress of only Title I served students in a targeted assistance school.

The purpose of this public notice is to notify you of the opportunity to submit written comment on the request to the ED to waive both the mandate for identification of improvement and the subsequent required sanctions including Title I professional development, school-choice transportation, and supplemental educational services.

All comments regarding the request for waiver must be submitted to Jeff Breshears, Administrator I, Title I Policy and Program Guidance Office, by e-mail at TitleI@cde.ca.gov by noon on Thursday, May 24, 2012.

The waiver request can be reviewed on the SBE Public Notices Web page at <http://www.cde.ca.gov/be/pn/pn/>.