**Oklahoma State Department of Education**

**NCLB/ESEA Waiver Information**

Background:

In 2011, the Oklahoma State Department of Education submitted an *ESEA Flexibility Request* to the U.S. Department of Education requesting an exemption, on behalf of all Oklahoma school districts, from statutory requirements of the *No Child Left Behind Act of 2001.* Pursuant to the waiver, the State of Oklahoma received flexibility with regard to certain requirements of federal law. In exchange, Oklahoma submitted a comprehensive plan designed to close student achievement gaps, increase equity, improve instruction, and increase accountability. The Waiver Request was based on the following bold education forms previously passed by the Oklahoma State Legislature and signed into law by both Governors Fallin and Henry:

* Reading Sufficiency Act (2011 Amendments)
* A-F Report Card System
* Teacher and Leader Effectiveness Evaluation System
* Achieving Classroom Excellence (ACE) Graduation Requirements
* Implementation of a State Longitudinal Database System
* Virtual Learning
* Adoption of challenging state-wide academic standards focused at preparing students to be college, career and citizen ready.

Essentially, the State of Oklahoma, through this Waiver Request, identified state-implemented reforms and sought approval from the U.S.D.E. to rely on those reforms to meet the requirements of NCLB. The U.S. Department of Education agreed that the reforms implemented by the State were rigorous and reliable enough to provide adequate accountability under NCLB. As such, Oklahoma is relying on alternative accountability measures to determine school and student achievement in the State. For example, the A-F Report Card system replaced the determination of Adequate Yearly Progress (AYP). Under the Waiver, State-developed initiatives have replaced federal NCLB requirements.

Specific Exemptions As A Result of the Waiver:

Receipt of the Waiver is significant because federal law imposes numerous obligations on both SEA’s (State Educational Agencies) and LEA’s (Local Educational Agencies) with regard to student achievement, academic standards, closing achievement gaps, and identifying schools that are in need of further improvement. Currently, federal law mandates how schools will be assessed and what actions a state must take with regard to schools that are in need of improvement. The Waiver exempts Oklahoma from these specific federal requirements. Specifically, the Waiver allows Oklahoma to develop a State plan to put into action to determine how to improve student achievement and assess the progress of schools.

Oklahoma has requested flexibility from the following eleven NCLB (ESEA) requirements:

1. NCLB establishes standards by which the OSDE must establish Annual Measurable Objectives (AMO’s) for determining adequate yearly progress (AYP) of all schools in the State. The current federal guidelines require States to ensure that all students meet or exceed the State’s proficient level of academic achievement on the State’s assessments in reading/language arts and mathematics no later than the end of the 2013–2014 school year.

* Upon receipt of the Waiver, Oklahoma is allowed to develop new and more reasonably achievable AMO’s in reading/language arts and mathematics.
* Under the Waiver, the OSDE is permitted to provide meaningful goals that are used to guide support and improvement efforts for the State, LEAs, schools, and student subgroups.

1. NCLB establishes specific requirements with regard to identifying schools that are in need of improvement. Upon this identification, both the State and the local school district are required to take specific steps to comply with federal law—depending on how many years the school has been identified as needing improvement. (The school may have to take corrective action, or implement a restructuring plan, for example.)

* Under the Waiver, school districts in Oklahoma are exempted from these requirements.
* OSDE is required to identify schools in need of improvement, but these school sites are exempted from the requirements that would apply under federal law.

1. NCLB establishes specific requirements with regard to identifying schools that are in need of improvement. In addition to the requirements discussed in #2 above, NCLB may also place financial restrictions upon the school district/school site identified as being in need of improvement, in need of corrective action, or under a restructuring plan. In these cases, the school may be required to set aside 20% of Title I funding. Under these federal provisions, the school district will be required to use Title I money (previously used on instruction, teacher pay, etc . . .) to provide specific, supplemental education services to students and provide students the option of transferring out of the poor performing school. Under these federal requirements, school districts are required to provide transportation to those students choosing to transfer out of the identified site.

* Under the Waiver, school districts in Oklahoma are exempted from these requirements.
* OSDE is required to identify schools in need of improvement, but these school sites are exempted from having to set aside 20% of their Title I money for required services that may not be appropriate for that school/district.

1. NCLB has specific requirements relating to the use of certain funds: specifically, the Small, Rural School Achievement (SRSA) and Rural and Low Income School (RLIS) programs. If a school site who receives funding under these federal programs fails to make AYP, the school is limited in how these funds may be expended.

* Under the Waiver, Oklahoma has received permission for these schools use these funds for any authorized purpose—even if the school is identified as needing improvement.

1. NCLB has specific requirements with regard to serving all students in the school with intervention programs that are implemented school wide. Specifically, federal law requires that a school have a poverty percentage of over 40 percent or more in order to operate a school-wide improvement program.

* Under the Waiver, SDE has received an exemption from this requirement which allows a school site to implement interventions consistent with the needs of the students in the school. The interventions must be designed to enhance the entire education program in the school, but those schools are no longer required to have a 40%+ poverty percentage rate.

1. NCLB provides specific funding to the OSDE that is to be reserved and used for districts who have sites with schools identified for improvement, corrective action or restructuring.

* Under the Waiver, the SDE is exempted from this financial restriction and allowed to allocate funds received pursuant to this section to districts in order to serve *any* of the State’s priority and focus schools. This provides for targeted allocation to serve the schools most in need.

1. NCLB authorizes the SDE to reserve Title I funds to reward to Title I schools who are high performing schools. Under this section, the school has either (1) significantly closed the achievement gap between subgroups in the school; or (2) exceed AYP for two or more consecutive years. This financial restriction limited the SDE with regard eligibility of reward schools to receive additional Title I funding.

* Under the Waiver, the SDE may use these funds for any of the State’s reward schools.

1. NCLB requires both the state and individual districts to comply with certain requirements for improvement plans of highly qualified teachers.

* Under the Waiver, the State is waived from the requirements of this section so that educators in each school and district can focus on individual and teacher leader improvement through the State’s TLE System.

1. NCLB limits the amount of funds both the state and individual districts may transfer from federal programs. (Under federal law, there are restrictions placed upon the use federal money and whether federal funds may be transferred to other federal programs.)

* Under the Waiver, the SDE may transfer up to 100% of the funds it receives under authorized programs into Title I (Part A) funds. The relief from this financial restriction could result in increases allocations to schools and will result in more flexibility with regard to the expenditure of funds.

1. NCLB has specific requirements with regard to School Improvement Grants (SIG), and the requirements placed on schools who have received SIG’s. Schools that receive this grant are required to comply with various provisions of federal law, all of which increase duties, reporting, and mandatory implementation of certain programs. Currently, these funds are limited to Tier 1 schools.

* Under the Waiver, the SDE is permitted to award SIG funds to any of the State’s priority schools. This would increase the eligibility of funding pursuant to this program.

1. NCLB restricts the activities provided by community learning centers under the 21st Century Community Learning Centers program to activities provided during non-school hours or periods when the school is not in session. Under this program, school districts receive federal funds to implement programs before and after school or during summer recess.)

* Under the Waiver, recipients of this grant may use 21st Century funds 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.

Amendments to the Waiver

The Waiver request was approved as a result of State-led initiatives adopted by the Oklahoma Legislature and later signed into law. For example, Oklahoma was able to request a waiver from the highly-qualified plan requirements (mentioned above) because the Oklahoma Teacher and Leader Effectiveness Evaluation System (TLE) was deemed to be rigorous and determined to lead to the development of highly qualified teachers. As a result, the amendment and/or revocation of any of the following programs will require, at a minimum, an amended Waiver request being submitted to the U.S.D.E. for approval. This includes revocation/suspension of the following reforms:

* A-F Report Card System
* Teacher and Leader Effectiveness Evaluation System (TLE)
* Oklahoma Academic State Standards, which have been determined to be college and career-ready standards

The acceptance of the Waiver request by U.S.D.E. was in part based on other State-led initiatives that further increase rigor in Oklahoma schools:

* Reading Sufficiency Act (2011 Amendments)
* Implementation of a State Longitudinal Database System
* Virtual Learning
* ACE Graduation Requirements

The most fundamental aspect of the Waiver request is Oklahoma’s commitment to implement college and career readiness standards and corresponding assessments to measure these standards by the year 2014-2015. Failure to fully implement and test new standards by the 2014-2015 school year will result in the loss of the Waiver.

District Compliance with NCLB

There are significant concerns relating to the loss of the Waiver request and the potential impact on districts. All affected school districts (and the SDE) would be required to comply with the eleven requirements of NCLB set forth above. Whereas school districts are now operating under State designated reforms in lieu of federal requirements, if the Waiver were to be revoked, federal requirements would govern the evaluation of school performance. In some situations, school districts would be required to meet federal requirements **and** additional state requirements. The best example of this is the determination of AYP. If Oklahoma loses the Waiver, Federal law will require the SDE to determine whether every school site in the State makes AYP. In addition, school districts will also receive an A-F Report Card. (This is mandated by State law. See 70 O.S. 1210.545.)

If the Waiver is revoked and the aforementioned requirements apply to schools in Oklahoma, the effects on Oklahoma schools will be significant. The SDE estimates that up to 95% of schools will be identified as in need or in need of corrective action for failing to make AYP under federal law. These school districts would be required to take the following actions:

* School districts would be required to set aside 20% of Title I funds for specific purposes.
* School districts would be required to use the “set aside” money to provide supplemental education support to students enrolled in the site.
* School districts would be required to use the “set aside” to notify parents of the identification. This includes informing parents about the purpose of the identification, the basis of the identification, and the ways in which the district will remedy the failure.
* In some situations, depending on the number of years the school has been identified as failing, the district may be legally required to offer parents the option to transfer to another school site. In these cases, the district will be required to provide transportation for the student to the site of the parent’s choice.

Currently, the State of Oklahoma receives $148,119,558.00 million in Title I funds from U.S.D.E. Of that, ***about $27.198 million would be set aside for supplemental educational services and school choice***.

In addition to these requirements, depending on the number of years the school site (and district) have been identified as failing to make Adequately Yearly Progress (AYP), school sites and districts will be required to utilize specific intervention models. Again, this requirement is determined by the number of years the school site (and district) has been identified as failing under NCLB.

The school site/district will be required to perform any of the following actions:

1) Utilize a Turnaround Model – replacing the principal and rehiring not more than fifty percent (50%) of the staff and granting to the principal sufficient operational flexibility to fully implement a comprehensive approach to substantially improve student outcomes,

2) Utilize a Restart Model - converting or closing the school and reopening it as a charter school under an operator or an education management organization that has been selected through a rigorous review process. Except for the average daily membership and county population limitations specified in subsection A of Section 3-132 of this title, any charter school created pursuant to this subparagraph shall be subject to the provisions of the Oklahoma Charter Schools Act,

3) School closure - closing the school and enrolling the students who attended that school in other schools in the school district that are higher-achieving, or

4) Transformation Model, which includes implementing each of the following strategies:

(1) replace the principal,

(2) develop and increase teacher and school-leader effectiveness,

(3) institute comprehensive instructional reform,

(4) increase learning time and create community-oriented schools, and

(5) provide operational flexibility and sustained support.

Upon implementation of these strategies, law authorizes the State Board of Education to assume control of the school district/school site if: 1) The district implements the model for two years, and still does not make AYP; or 2) The district refuses to implement the required model.

**Effect on the SDE**

In addition to the requirements referenced above, loss of the Waiver request previously granted to Oklahoma would result in a dramatic increase in the number of school sites designated for improvement or corrective action – going from the current number of 168 Priority schools to 1,672 schools in School Improvement, Corrective Action and Restructuring. The SDE would be required to monitor, support, and provide in-depth assistance to these school sites. As a part of these duties, the SDE would assign support staff to each site; monitor expenditures of Title I funding; approve a list of vendors by which the school district can contract for the provision of supplemental education services; monitor supplemental educational services expenditures and take action against a school district for failure to comply with federal law. The increase in the number of identified schools combined with the intensive support required by federal law would result in the need for additional staff to carry-out mandatory duties required by NCLB.

Six fulltime employees currently handle internal operations in the state’s partnership with Priority, Focus and Targeted Intervention schools. A total of **18 employees** would be needed for the additional load, as well as an estimated **13 employees** to monitor processes of supplemental educational services and **15 more in-the-field staff** to provide team support. At the current salaries of existing employees carrying-out these same duties, this would require an additional $3.8 million in employee expenses.

**Current State of the Waiver**

Oklahoma’s ESEA Flexibility Waiver expires at the conclusion of the 2013-2014 school year. OSDE submitted an extension request on April 4, 2014, and OSDE has initiated the process of seeking clarification and additional documentation/information. If approved, the extension would expire at the end of the 2014-2015 school year. (USDE is currently granting only one-year extensions.) OSDE anticipates that the USDE will make a determination with regard to the extension request sometime in the next two months (by the end of June); however, we have not been given an exact timeline from USDE.

The approval process includes an "iterative process" where USDE asks for additional information or clarification as needed.  They have asked one set of clarification questions, and we are in the process of gathering this information for our response.  Typically, amendments and extensions have three to four "back and forth" requests.

* If any legislative changes impact the information already shared with USDE on April 4, OSDE will be required to submit an amendment to the extension request.
  + That will require a 2-week public comment period on the draft of the amendment.
  + Then the amendment, along with any public comment received, will be sent to USDE for their consideration and approval.
  + This process is likely to also be an "iterative process" in which we continue to provide information and clarification as needed until they are able to approve the request.  This can take several months.
* If any legislative changes violate the requirements of the USDE Waivers, USDE could choose to revoke the waiver at that time.
  + Example: If the timeline for implementing college- and career-ready standards and assessments changes, USDE could revoke the waiver.  However, if the timeline remains the same but the actual college- and career-ready standards and assessments are different than those described in the April 4 submission, we would have to seek approval, but we would be likely to get the approval as long as the timeline doesn't change.

**Potential items that could require an amendment:**

* RSA timeline/requirements
* College and career-ready standards timeline/content
* College and career-ready assessments timeline/implementation plan
* A-F Report Card requirements
* School Designation requirements/timeline
* TLE timeline/requirements
* Testing/ACE Graduation Requirements