

Guidance

Title I, Part A and ESEA Flexibility

Introduction

The following guidance is intended to provide clarification on the relationship between district (LEA) Title I, Part A programs and the Kentucky Department of Education’s (KDE) approved NCLB flexibility request. It includes a chart that explains the effects of the waiver provisions on LEA programs, a glossary of terms pertinent to federal accountability, a customizable sample letter that can be used to inform parents about the waiver, and an explanation of school and district consequences under the proposed state accountability plan. The letter should be revised to meet your district’s needs and then should be sent immediately to parents.

Please note that the waivers discussed within this document apply only to Title I schools, Tier II schools served under the School Improvement Grant program, and Title I-eligible high schools with a graduation rate below 60 percent. **Although Kentucky will identify other non-Title I schools as reward, priority, or focus schools, these waivers would not be relevant to those schools.**

Further questions concerning these topics can be addressed to the staff of the Division of Consolidated Plans and Audits (Sharma Aitken, Christina Benassi, Claude Christian, Dan Davison, Vicki Fosbender, Helen Jones, Judy Littleton, Julie Lovely, Zack Marinelli, Mary Marshall, David Millanti, Monica Murphy, Heather Rhorer, Monica Shack, Donna Tackett, and Neil Watts) at 502-564-3791 or via email.

Additionally, information concerning ESEA flexibility can be found on the KDE website (<http://education.ky.gov/Pages/default.aspx>) and the United States Department of Education’s flexibility webpage (<http://www.ed.gov/esea/flexibility>).

ESEA Title I, Part A Provisions Waived and Their Effects on LEA Programs

Provision	Description	Effects on LEA Title I, Part A Programs
Section 1003(a), School Improvement Funds State Level Reservation	Requires the state (SEA) to reserve 4% of its Title I, Part A allocation for school improvement activities and to distribute at least 95% to LEAs for use in Title I schools in improvement, corrective action, and restructuring	The reservation would not be waived. An SEA may distribute section 1003(a) funds to LEAs for use in priority and focus schools. It is the state’s intent to distribute 1003(a) funds to focus and priority schools. See the definitions for priority and focus school in the glossary.
Section 1113(a)(3)-(4), Rank Order Requirements	Requires that schools be served in rank order based on their poverty percentages.	This is waived for selected schools. The waiver permits an LEA to serve with Title I funds a Title I-eligible high school with a graduation rate below 60 percent that the SEA has identified as a priority school even if that school does not rank sufficiently high to be served based solely on the school’s

Provision	Description	Effects on LEA Title I, Part A Programs
		poverty rate.
Section 1114(a)(1), Schoolwide Poverty Threshold	Requires a 40% poverty threshold to be eligible to operate a schoolwide program	This is waived for selected schools. The waiver permits an LEA to operate a schoolwide program in a school with less than 40% poverty if it is identified as a priority or a focus school in order to allow the LEA to implement interventions aligned with turnaround principles or an intervention that is based on the needs of the school's students. See the definition of turnaround principles in the glossary.
1116(b) (except (b)(13)), School Improvement Requirements	Requires LEA to identify schools for improvement, corrective action, and restructuring with corresponding requirements	<ul style="list-style-type: none"> • The school improvement categories (improvement, corrective action, and restructuring) will no longer exist and will be replaced with designations of focus and priority schools. • Offering public school choice and supplemental educational services (SES) will no longer be required. The 20% set-aside for these services will no longer be required. The state will no longer approve nor maintain the list of SES providers. However, a district may reserve up to 20% of its Title I, Part A allocation to continue or to offer school transfer for students attending Title I schools, to offer a tutoring program for students attending Title I schools, or a combination of school transfer or tutoring. • Revision of the school improvement plan within three months of being identified for improvement will no longer be federally required. • Improvement schools will not be required to reserve 10% of their Title I, Part A allocation for professional development. However, a district may require its Focus and Priority schools to reserve up to 10% of their Title I, Part A allocations in order to provide supplemental professional development within the school.

Provision	Description	Effects on LEA Title I, Part A Programs
		<ul style="list-style-type: none"> • The requirement for notice to be sent to parents upon school improvement identification will no longer be required. • Corrective or restructuring actions provided by the district to schools identified as such will no longer be required. • 1116(b)(13) requires a district to permit a child who has transferred due to public school choice to remain in the choice school through the highest grade in the school. Although offering school choice will not be required, this provision is not waived. However the district is no longer required to provide transportation for affected students starting with the 2012-2013 school year.
1116(c)(3) and (5) – (11), LEA Improvement Requirements	Requires an SEA to identify LEAs for improvement and corrective action with corresponding requirements	<ul style="list-style-type: none"> • The district improvement categories (improvement and corrective action) will no longer exist and will be replaced with focus or priority districts. • The requirement for notice to be sent to parents upon district improvement identification will no longer be required. • Revision of the district plan within three months of being identified for improvement will no longer be federally required. • Districts in improvement will no longer be required to reserve 10% of their Title I, Part A allocations to provide district-wide PD. • Corrective Actions Plans will no longer be required, as districts will no longer be identified in corrective action. In addition, districts will no longer be required to set-aside deferred funds for implementing Corrective Action Plans.
1116(e), LEA Improvement Requirements	Requires SEA and LEAs to take a variety of actions to offer supplemental educational services (SES) to eligible students in	Offering SES will no longer be required. However, a district may reserve up to 20% of its Title I, Part A allocation to continue or to

Provision	Description	Effects on LEA Title I, Part A Programs
	schools in improvement, corrective action, restructuring	offer school transfer for students attending Title I schools, to offer a tutoring program for students attending Title I schools, or a combination of school transfer or tutoring.
1117(b)(1)(B), Reservation for State Academic Achievement Awards	Limits the schools that can receive Title I, Part A funds reserved for State awards program	The waiver allows funds reserved for State awards program to go to any reward school. See the definition of reward school in the glossary. Currently, KDE has no plans to provide Title I, Part A reward funding, but is searching for alternative sources of funding to implement rewards.
2141(c), Highly Qualified Teachers	Requires SEA/LEA agreement on use of Title II, Part A funds for LEAs that miss AYP for 3 years and fail to make progress toward reaching annual objectives for highly qualified teachers and restricts the hiring paraprofessionals with Title I, Part A funds	The waiver will not restrict the hiring of paraprofessionals with Title I, Part A funds. However, LEAs still must comply with the requirements with respect to paraprofessionals in ESEA section 1119(c) through (g). Other Title I, Part A highly qualified provisions are still in effect, including: notifying parents of their right to request teacher qualifications and notification of parents when their child is taught for more than four consecutive weeks by a teacher that is not highly qualified.
6123(b)(1), Transferability of Funds	Limits to 50% or 30% the amount an LEA may transfer from a covered program into another covered program or into Title I, Part A	The waiver allows an LEA to transfer up to 100% of its Improving Teacher Quality State Grants (Title II, Part A) or Educational Technology State Grants (Title II, Part D) program funds from one program into the other or into Title I, Part A. No funds can be transferred out of Title I, Part A into another program.
6123(d), Transferability of Funds	Requires modification of plans and notice of transfer	An LEA would not have to notify the SEA prior to transferring funds from one eligible program to another.
6123(e)(1), Transferability of Funds	Transferred funds are subject to the requirements of the program to which they are transferred	The waiver permits an LEA to exclude funds transferred into Title I, Part A from its base allocation in calculating any set-aside percentages. Requirements for the equitable participation of private school students, parents, and teachers must be met for each

Provision	Description	Effects on LEA Title I, Part A Programs
		fund to be transferred prior to any transfer being made.
6213(b), Rural Schools	Requires LEAs that fail to make AYP to use funds to carry out the requirements under ESEA section 1116	Spending restrictions tied to improvement status will be lifted. LEAs will have greater flexibility in spending Small, Rural School Achievement Program or Rural and Low-Income School Program funds.
6224(e), Rural Schools	Requires SEA to permit LEAs that fail to make AYP to continue to receive an SRSA grant only if LEA uses funds to carry out ESEA section 1116	Spending restrictions tied to improvement status will be lifted. LEAs will have greater flexibility in spending Small, Rural School Achievement Program or Rural and Low-Income School Program funds.

Glossary for Federal Accountability

1. **Focus School:** A “focus school” is a Title I school in the State that, based on the most recent data available, is contributing to the achievement gap in the State. The total number of focus schools in a State must equal at least 10 percent of the Title I schools in the State. A focus school is—
 - a school that has the largest within-school gaps between the highest-achieving subgroup or subgroups and the lowest-achieving subgroup or subgroups or, at the high school level, has the largest within-school gaps in graduation rates; or
 - a school that has a subgroup or subgroups with low achievement or, at the high school level, low graduation rates.

An SEA must also identify as a focus school a Title I high school with a graduation rate less than 60 percent over a number of years that is not identified as a priority school.

These determinations must be based on the achievement and lack of progress over a number of years of one or more subgroups of students identified under ESEA section 1111(b)(2)(C)(v)(II) in terms of proficiency on the statewide assessments that are part of the SEA’s differentiated recognition, accountability, and support system, combined, or, at the high school level, graduation rates for one or more subgroups.

Note: Kentucky will extend this definition to include non-Title I, Part A schools.

2. **Priority School:** A “priority school” is a school that, based on the most recent data available, has been identified as among the lowest-performing schools in the State. The total number of priority schools in a State must be at least five percent of the Title I schools in the State. A priority school is—
 - a school among the lowest five percent of Title I schools in the State based on the achievement of the “all students” group in terms of proficiency on the statewide assessments that are part of the SEA’s differentiated recognition, accountability, and support system, combined, and has

demonstrated a lack of progress on those assessments over a number of years in the “all students” group;

- a Title I-participating or Title I-eligible high school with a graduation rate less than 60 percent over a number of years; or
- a Tier I or Tier II school under the SIG program that is using SIG funds to implement a school intervention model.

3. **Reward School:** A “reward school” is a Title I school that, based on the most recent data available, is—

- a “**highest-performing school,**” which is a Title I school among the Title I schools in the State that have the highest absolute performance over a number of years for the “all students” group and for all subgroups, on the statewide assessments that are part of the SEA’s differentiated recognition, accountability, and support system, combined, and, at the high school level, is also among the Title I schools with the highest graduation rates. A highest-performing school must be making AYP for the “all students” group and all of its subgroups. A school may not be classified as a “highest-performing school” if there are significant achievement gaps across subgroups that are not closing in the school; or
- a “**high-progress school,**” which is a Title I school among the ten percent of Title I schools in the State that are making the most progress in improving the performance of the “all students” group over a number of years on the statewide assessments that are part of the SEA’s differentiated recognition, accountability, and support system, and, at the high school level, is also among the Title I schools in the State that are making the most progress in increasing graduation rates. A school may not be classified as a “high-progress school” if there are significant achievement gaps across subgroups that are not closing in the school.

4. **Turnaround Principles:** Meaningful interventions designed to improve the academic achievement of students in priority schools must be aligned with all of the following “turnaround principles” and selected with family and community input:

- providing strong leadership by: (1) reviewing the performance of the current principal; (2) either replacing the principal if such a change is necessary to ensure strong and effective leadership, or demonstrating to the SEA that the current principal has a track record in improving achievement and has the ability to lead the turnaround effort; and (3) providing the principal with operational flexibility in the areas of scheduling, staff, curriculum, and budget;
- ensuring that teachers are effective and able to improve instruction by: (1) reviewing the quality of all staff and retaining only those who are determined to be effective and have the ability to be successful in the turnaround effort; (2) preventing ineffective teachers from transferring to these schools; and (3) providing job-embedded, ongoing professional development informed by the teacher evaluation and support systems and tied to teacher and student needs;
- redesigning the school day, week, or year to include additional time for student learning and teacher collaboration;
- strengthening the school’s instructional program based on student needs and ensuring that the instructional program is research-based, rigorous, and aligned with State academic content standards;
- using data to inform instruction and for continuous improvement, including by providing time for collaboration on the use of data;

- establishing a school environment that improves school safety and discipline and addressing other non-academic factors that impact student achievement, such as students' social, emotional, and health needs; and
- providing ongoing mechanisms for family and community engagement.

A priority school that implements one of the four SIG models is implementing an intervention that satisfies the turnaround principles. An SEA may also implement interventions aligned with the turnaround principles as part of a statewide school turnaround strategy that allows for State takeover of schools or for transferring operational control of the school to another entity such as a recovery school district or other management organization.

Sample Letter Used to Notify Parents of Changes Due to the NCLB Waiver

DATE

Dear Parent or Guardian:

In February 2012, the United States Department of Education (USDE) granted to the Kentucky Department of Education (KDE) a waiver of several provisions of the No Child Left Behind Act of 2001 (NCLB). The purpose of this letter is to explain how parts of the waiver under Title I, Part A of NCLB relate to your child's education.

Notice to Parents

Under Title I, Part A of NCLB, districts were required to notify parents if any of its schools or the district itself were identified for improvement. **This provision has been waived, and districts no longer are required to notify parents of school or district improvement status.**

Public School Choice

Under Title I, Part A of NCLB, districts were required to offer students attending schools identified for improvement the opportunity to attend another public school not so identified. Districts were required to provide or pay for the provision of transportation to the transfer school. **This provision has been waived, and districts no longer are required to offer this option.**

Students taking part in the school choice option during the 2011-2012 school year are allowed to remain in the transfer school until they complete the highest grade in that school. However, the district is no longer responsible for providing for or paying for the provision of transportation. **INSERT DESCRIPTION IF THE DISTRICT IS ALLOWING FOR A TRANSITION PERIOD IN WHICH CURRENT TRANSFER STUDENTS WILL BE PROVIDED TRANSPORTATION.**

Supplemental Educational Services (SES)

Under Title I, Part A of NCLB, districts were required to offer students attending schools identified for Improvement, Year 2 and higher the opportunity to receive no-cost tutoring services, referred to as SES. **This provision has been waived, and districts no longer are required to offer this service.**

Students taking part in SES during the 2011-2012 school year are allowed to complete services for which they are currently enrolled. **INSERT DESCRIPTION IF THE DISTRICT WILL CONTINUE TO OFFER SES AS AN OPTION, ALTHOUGH IT IS NO LONGER REQUIRED.**

Additional information concerning Kentucky's NCLB waiver application and other waiver provisions can be found on the KDE website (<http://education.ky.gov/Pages/default.aspx>) and the USDE's flexibility webpage (<http://www.ed.gov/esea/flexibility>). You may contact the district's Title I, Part A coordinator, **ENTER NAME**, at **ENTER CONTACT PHONE, EMAIL, ADDRESS**.

Sincerely,

ENTER SUPERINTENDENT'S INFORMATION

Unbridled Learning Accountability

Currently, the following state accountability model is in DRAFT form only. Pending legislative approval, Kentucky's schools and districts will be subject to the following consequences under the state's new accountability system.

Support and Consequences for Priority and Focus Schools

- (1) Supports and consequences shall be applied to schools identified as Priority and Focus schools. These schools and their school districts shall receive notification from the Commissioner of Education within five (5) days of release of the annual accountability data identifying their category and the required supports and consequences that shall apply.
- (2) Priority Schools identified pursuant to KRS 160.346 as persistently lowest-achieving schools shall receive a leadership assessment as required and described in KRS 160.346 and 703 KAR 5:180.
- (3) A district containing a school(s) in the Priority School category shall require that school(s) comply with the provisions in this Section for no less than three years.
- (4) A school that is identified in the Kentucky Priority or Focus School category for the first time shall revise the comprehensive school improvement plan (CSIP) and submit it for approval by the district within ninety (90) days of receiving notice from the Commissioner. The CSIP must:
 - (a) Be developed with assistance from the district in using a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the CSIP.
 - (b) For Priority Schools, document meaningful family and community involvement in selecting the intervention strategies that shall be included in the revised CSIP.
 - (c) For Focus Schools, be developed using guidance from the Commissioner's Raising Achievement and Closing Gaps Council to inform their needs assessment and revised plan.
 - (d) Include the support that will be provided by the district.
 - (e) Be posted to the school website upon approval,
 - (f) Address the following areas:
 - (i) Curriculum alignment within the school, ensuring the school's instructional program is based on student needs, is research-based, rigorous, and is aligned with the Kentucky Core Academic Standards as described in 704 KAR 3:303;
 - (ii) Provision of time for collaboration on the use of data to inform evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;
 - (iii) Professional development to address the goals of the plan;
 - (iv) Parental and community communication and engagement;
 - (v) Attendance improvement and dropout prevention;

- (vi) Activities to target the underperforming areas of achievement, gap, growth, college and career readiness or graduation rate;
 - (vii) Activities to target demonstrators of weakness in program reviews;
 - (viii) Activities to target areas of need identified in teacher and leader effectiveness measures;
 - (ix) School safety, discipline strategies and other non-academic factors that impact student achievement, such as students' social, emotional and health needs;
 - (x) Design of the school day, week, or year to include additional time for student learning and teacher collaboration; and
 - (xi) Technical assistance that will be accessed.
- (g) For Priority Schools, include short-term, monthly plans for the first 90 days of implementation, and require the establishment of teacher assistance teams with intensive year-round training focused on teacher effectiveness and school improvement in the professional development component of their plan.
 - (h) For Focus Schools shall include specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group
- (5) Additional consequences shall apply to schools that remain in Priority and Focus status for more than one year, as follows:
- (a) A school that is identified in the Kentucky Priority School category for the second or more consecutive times, or a school that remains in the Kentucky Focus School category and does not make AMO and AYP for three consecutive compilations of the Overall Score shall revise the CSIP as specified above and submit it for approval by the district prior to submission for approval by the Kentucky Department of Education (KDE) within ninety (90) days of receiving notice from the Commissioner. Upon approval by the KDE, the CSIP shall be posted to the school website.
 - (b) In addition to that requirement of paragraph, a school that is identified in the Kentucky Priority School category for third or more consecutive time, or a school that remains in the Kentucky Focus School category and does not make AMO and AYP for four consecutive compilations of the Overall Score, shall engage in the following:
 - (i) Participate in a set of improvement strategies outlined by either a school-level or a district-wide accreditation process.
 - (ii) If directed by the KDE, receive the assignment of a high-achieving partner school of similar demographics for mentor activities as directed by the KDE; and
 - (iii) Accept ongoing assistance and resources throughout the year as assigned or approved by the KDE.
- (6) The KDE shall review and approve all submissions required by this Section.
- (7) The KDE shall monitor implementation of CSIPs and shall provide necessary guidance based upon information gathered from the following:
- (a) Progress reports from the school through the district;
 - (b) Data reviews;
 - (c) On-site observation; and
 - (d) Other information supplied at the district's or school's discretion.

Supports and Consequences for Focus and Priority Districts

- (1) Supports and consequences shall be applied to districts identified as Kentucky Priority or Kentucky Focus Districts. These districts shall receive notification from the Commissioner of Education within 5 days of release of the annual accountability data, identifying their category and the required supports and consequences that shall apply.

- (2) Kentucky Priority Districts shall receive a leadership assessment as required and described in KRS 160.346 and 703 KAR 5:180.
- (3) A district that is identified as a Kentucky Priority or Kentucky Focus District for the first time shall revise the CDIP within ninety (90) days of receiving the notice from the Commissioner. The CDIP must:
 - (a) Use a variety of relevant sources that shall include perception data gathered from the administration of a valid and reliable measure of teaching and learning conditions to inform the needs assessment required by the CDIP.
 - (b) Include the support to be provided to schools by the district.
 - (c) Be informed by guidance from the Commissioner's Raising Achievement and Closing Gaps Council.
 - (d) Be posted to the district website upon approval.
 - (e) Address the following areas:
 - (i) Curriculum alignment within the school(s), ensuring there is alignment with the Kentucky Core Academic Standards as described in 704 KAR 3:303;
 - (ii) Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;
 - (iii) Professional development to address the goals of the plan;
 - (iv) Parental and community communication and engagement;
 - (v) Attendance improvement and dropout prevention;
 - (vi) Activities to target the underperforming areas of achievement, gap, growth, college and career readiness or graduation rate;
 - (vii) Activities to target demonstrators of weakness in program reviews;
 - (viii) Activities to target areas of need identified in teacher and leader effectiveness measures; and
 - (ix) Technical assistance that will be accessed.
- (4) In addition to the above requirements, the CDIP for Focus districts shall include specific strategies to address gaps in achievement and graduation rates between the highest-achieving student performance group and the lowest-achieving student performance group.
- (5) Additional consequences shall apply to districts that remain in Priority and Focus status for more than one year, as follows:
 - (a) A district that is identified as a Kentucky Priority District for the second or more consecutive times or a district that remains in the Kentucky Focus District category and does not make AMO and AYP for three consecutive compilations of the Overall Score, shall revise the CDIP as specified above and submit it for approval by KDE within ninety (90) days of receiving the notice from the Commissioner. Upon approval by KDE, the CDIP shall be posted to the district website.
 - (b) In addition, a district that is identified as a Kentucky Priority District for the third or more consecutive time, or that remains in the Kentucky Focus District category and does not make AMO and AYP for four consecutive compilations of the Overall Score shall engage in the following:
 - (i) Participate in a set of improvement strategies outlined by a district-wide accreditation process;
 - (ii) If directed by the KDE, receive the assignment of a high-achieving partner district of similar demographics for mentor activities as directed by the KDE; and
 - (iii) Accept ongoing assistance and resources throughout the year as assigned or approved by the KDE
- (6) The KDE will review and approve all submissions required above.
- (7) The KDE shall monitor implementation of CDIPS and shall provide necessary guidance based upon information gathered from the following:
 - (a) Progress reports from the district;
 - (b) Data reviews;
 - (c) On-site observations; and
 - (d) Other information supplied at the district's discretion.

