





## **Closing the Achievement Gap: Looking at No Child Left Behind and the future of the Waiver Program**

An Introduction to a Forthcoming Analysis of the Waiver Program

By,

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### **Introduction**

In 2002 the No Child Left Behind Act: To close the achievement gap with accountability, flexibility, and choice, so that no child is left behind (NCLB) was signed into law by President George W. Bush. NCLB requires states that receive federal funds to administer statewide assessment tests and to demonstrate “adequate yearly progress” (AYP) of classified subgroups of students. The goal of NCLB is to ultimately achieve a goal of 100 percent reading and mathematics proficiency by 2014. Each state developed its own methods to measure progress in reading and math. Those schools failing to meet their target proficiency rate would have to be provided supplementary resources or allow students to enroll in a higher performing school.

The results of NCLB have been mixed to say the least. In fact, in September 2011, the United States Department of Education (USDOE) began to offer a waiver program.<sup>1</sup> The opportunity would allow flexibility for state educational agencies (SEAs) that otherwise would be penalized for not meeting inflexible standards. The Secretary himself acknowledges that “[i]nstead of fostering progress and accelerating academic improvement, many NCLB requirements have unintentionally become barriers to State and local implementation of forward-looking reforms designed to raise academic achievement.”<sup>2</sup> Waivers still have to be reviewed and approved by the USDOE.<sup>3</sup> Thirty-seven states and the District of Columbia have since been waived out of No Child Left Behind.<sup>4</sup> In addition, eight more are currently under review.<sup>5</sup> California is not included in either group as its waiver application was rejected.<sup>6</sup> Arizona, Florida, Mississippi, New York, and Ohio will be surveyed as representative states that have waived out.

### **An Overview of the Waiver Program**

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<sup>1</sup> DEP’T OF EDUC., LETTER TO CHIEF STATE SCHOOL OFFICERS REGARDING NCLB FLEXIBILITY (Sept. 23, 2011), available at <http://www2.ed.gov/policy/gen/guid/secletter/110923.html>.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> DEP’T OF EDUC., ESEA FLEXIBILITY, <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html> (last visited May 21, 2013).

<sup>5</sup> Id.

<sup>6</sup> *California's Request For No Child Left Behind Waiver Rejected*, KQED (Dec. 26, 2012), <http://blogs.kqed.org/newsfix/2012/12/26/californias-request-for-no-child-left-behind-waiver-rejected/>.

Under NCLB, states were allotted flexibility in the methods they used to meet proficiency standards, and with the new waivers that practice has continued. Still waivers have to meet certain requirements. Also states will still be subject to deadlines on aspects of their waiver and monitoring.<sup>7</sup> A state's waiver request must address four principles:

- 1) College- and Career-Ready Expectations for All Students;
- 2) State-Developed Differentiated Recognition, Accountability, and Support;
- 3) Supporting Effective Instruction and Leadership; and
- 4) Reducing Duplication and Unnecessary Burden.

State educational agencies may waive out of the following provisions of the NCLB and their associated regulatory, administrative, and reporting requirements:

1. Flexibility Regarding the 2013-2014 Timeline for Determining Adequate Yearly Progress (AYP)
2. Flexibility in Implementation of School Improvement Requirements
3. Flexibility in Implementation of LEA Improvement Requirements
4. Flexibility for Rural LEAs
5. Flexibility for Schoolwide Programs
6. Flexibility to Support School Improvement
7. Flexibility for Reward Schools
8. Flexibility Regarding Highly Qualified Teacher (HQT) Improvement Plans
9. Flexibility to Transfer Certain Funds
10. Flexibility to Use School Improvement Grant (SIG) Funds to Support Priority Schools
11. Flexibility in the Use of Twenty-First Century Community Learning Centers (21st CCLC) Program Funds
12. Flexibility Regarding Making AYP Determinations
13. Flexibility Regarding Within-District Title I Allocations

## **State Waiver Analysis<sup>8</sup>**

Examining the waiver programs that states have submitted, there are some distinctions between states, as well as similarities. A prominent distinction is how states approach the issue of lower achieving groups or schools, with some states using a penalizing method, while others use an encouragement method. States also have some similarities among their waiver programs. Language and techniques have been standardized from NCLB and the waiver program. Each state has similar language as to identifying “priority,” “focus,” or “reward” schools. A focus school is contributing to the achievement gap in the state. A priority school has been identified as among the lowest-performing schools in the state. A reward school is either of the highest performing schools or highest progress.

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<sup>7</sup> DEP'T OF EDUC., MONITORING PROCESS FOR ESEA FLEXIBILITY, <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/monitoring/index.html> (last visited Mar. 22, 2013).

<sup>8</sup> Much of the text within this section comes from the waivers themselves, which can be found at <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

### ***Arizona***

Arizona has waived out of all the provisions with the exception of number 11. Its program includes giving letter grades to schools. Its goal is to have 100 percent of students achieving proficiency no later than the end of the 2019-2020 school year. The state has identified focus schools as needing the greatest attention and demanding interventions to improve student performance. School districts with focus schools are required to adapt interventions from the school intervention models under the School Improvement Grants (SIG) program that are targeted to subgroup needs. Priority schools will be targets of implementing rigorous turnaround and transformation models in 32 SIG schools to launch similar interventions in 37 additional priority schools.

All districts and schools must complete Comprehensive Improvement Plans. As well, priority and focus schools must create these plans based on an external audit. These particular schools must also establish leadership teams to conduct needs assessments, review research, and attend workshops on the continuous improvement planning process. Districts with priority and focus schools must submit upgraded Comprehensive Improvement Plans for review and approval and will receive intensive assistance and support from Arizona's School Improvement and Intervention office.

### ***Florida***

Florida has waived out of all the provisions. In addition to giving schools grades, like Arizona, Florida has targets to cut the gap to proficiency in half within six years for all students and disaggregated student subgroups. With its more robust accountability system, nearly 300,000 students with disabilities will now be fully included in Florida's grading system. In addition, approximately 2,000 schools that did not have enough students with disabilities or English Learners for reporting purposes under current law will now be accountable for these students in the lowest-performing 25 percent subgroup. Focus schools will be identified as ones with a grade of "D," and districts with these schools must implement four components to ensure that they are clearly defining the needs, aligning resources, and identifying support strategies.

Florida will require districts with schools not identified as priority or focus but that persistently miss performance targets for certain student subgroups to submit, as part of their district improvement plans, specific research-based strategies to help the identified schools accelerate student performance in reading and/or mathematics. The district improvement plan must also include individuals responsible, a timeline, and methods to monitor student progress throughout the school year. Lowest-performing schools, those with a grade of "F," will be targeted as priority schools. They will conduct a diagnostic needs assessment and implement one of the four intervention models under the School Improvement Grants Program or a "hybrid" model. Further, Florida will require districts that have multiple schools identified as among the lowest performing to appoint a dedicated turnaround director.

Florida's focus is on four Annual Measurable Objectives (AMOs): 1) School Grades, which provide a comprehensive review of the performance of all schools including subgroup

*Closing the Achievement Gap: Looking at No Child Left Behind and the future of the Waiver Program*

achievement and student learning gains; 2) Performance of All Students and Student Subgroups in Reading and Mathematics; 3) Progress of Students in the Lowest-Performing 25% in Reading and Mathematics; and 4) Comparison of Florida's Student Performance to the Highest-Performing States and Nations.

***Mississippi***

Mississippi has also waived out of all the provisions. The state hopes to cut the gap to proficiency in half within six years for all students and disaggregated student subgroups. Mississippi has a system of differentiated recognition, accountability, and support that uses a Quality of Distribution Index (QDI), which gives schools some credit for students performing at the basic level, more credit for students performing at the proficient level, and the most credit for students performing at the advanced level. The QDI is used to rank schools and identify them for improvement. Each school would receive a score for the whole school, as well as for two combined subgroups: the lowest-performing 25 percent of students and the highest-performing 25 percent of students. Schools also receive a score that measures the gap between in QDI scores between these two new subgroups to focus attention on closing achievement gaps.

Mississippi identified both schools with the largest achievement gaps as well as schools with the lowest performance of the new low-performing subgroup. These schools will receive a state-appointed support specialist who will visit at least twice monthly, and will conduct a comprehensive needs assessment. Also, any school in which a single subgroup does not meet targets for two consecutive years must take action to address low performance, even if the school is making progress overall or for the combined subgroup. Mississippi is lowering the minimum number of students necessary for individual subgroup performance to be considered from 40 to 30 to capture more schools in the accountability system. To coordinate technical assistance and build school and district capacity, Mississippi will create statewide professional learning communities, and the new Office of the Associate Superintendent for Instructional Enhancement will provide support to priority schools, focus schools, and other schools not meeting targets for subgroups.

***New York***

New York has waived out of all the provisions. It anticipates cutting the gap to proficiency in half within six years. To facilitate the work in its focus districts, it will assign an Integrated Intervention Team to each district. The role of the Integrated Intervention Team will be to assess the district and schools using the new Diagnostic Tool for School and District Effectiveness to inform district and school intervention plans. The teams will consist of New York Department of Education staff, district staff, external educational experts, and content and/or subgroup specialists. All schools that persistently fail to make targets for any subgroup will be identified as a "Local Assistance Plan" (LAP) school. New York takes into account the past achievement of schools in identifying LAP schools. It will develop and implement a single tool, the Diagnostic Tool for School and District Effectiveness, to help schools and districts identify how student performance, instructional programs and services, and teacher and leader effectiveness compare to the ideal performance levels sought. This single tool will replace the multiple diagnostic tools currently used by the state's program offices.

## **Ohio**

Ohio has waived out of all provisions. Ohio also has a grading system for its schools. Its target is to cut the gap to proficiency in half within six years. Schools with the greatest challenges will be identified as focus schools. A rank-ordered list will be created of schools with large gaps between a subgroup or subgroups and the statewide all-students group that are not making progress over three years. The lowest performing schools will be identified as priority schools. Priority schools will choose from one of five rigorous turnaround models. If these schools fail to implement the chosen model or fail to make progress within three years, they must choose another model, restart, or the school will be closed. Also the Ohio Improvement Process has been created to support struggling schools using student data to focus districts and schools on identifying improvement areas.

An accountability system has been created for districts that place them into one of four categories: high support, medium support, low support, and independent support. The lowest-performing districts will receive high levels of support, which will entail creating a needs assessment and improvement plan, addressing school safety and other non-academic barriers to learning, participating in an on-site Diagnostic Review, and selecting from several options that include replacing staff or extending the school day or year. Medium support districts will be required to conduct a diagnostic assessment based on meeting targets, implement the Ohio Improvement Process, and address school safety, discipline, and non-academic barriers.

### **Looking Forward at the Impact of the Waiver Program**

The waiver program is rather new, with the first submissions window starting in 2011. With failed efforts to reform NCLB, the waiver program is an option for states that will not meet NCLB's 2014 deadline that 100% of students must be proficient in reading and math. Since the waiver program is not actually reforming the law, it opens a door for states to adapt the policy to their needs.

Since it is not reform, the waivers do not resolve the many issues with NCLB. Namely, it still focuses on reading and math. This focus continues to skirt the importance of a well-rounded education that includes promoting creativity, critical thinking, and physical activity. The arts, humanities, and social sciences are not included in the proficiency measures. As well, the waiver program continues to push an English-only agenda, factoring in English as a second language students as a subgroup for reading proficiency. Additionally, methods of assessing the schools continue to be reduced to grades and examinations. The only notable distinctions between states in the waiver programs are the methods with which states use to assess students and schools.

Even though under NCLB states used varying methods to improve education in their states, waivers give states even more oversight as to how they divide resources and target their assessments. The waivers have opened the door to new issues with state education policies. Notably, with the waivers, states are allowed to now report progress of subgroups separately and

*Closing the Achievement Gap: Looking at No Child Left Behind and the future of the Waiver Program*

do not have to comply with uniform standards across subgroups.<sup>9</sup> With NCLB all groups had to meet the same proficiency levels and could not be separated. This new option has impacted new plans by states in its assessments and proficiency goals of subgroups. Resulting in states setting different proficiency standards for different subgroups. Some states have used this opportunity to set different achievement goals for different sub-groups. Notably, the District of Columbia, Virginia, and Florida have followed this route.<sup>10</sup> Since most of these waivers have recent assessments and goals, we have yet to see a long-term impact of the programming.

Only five states currently do not have waivers under review by the Department of Education. California, the most populous state in the country, and a state that has a litany of problems with its education program, is among those five states. 2014 is rapidly approaching, and without a waiver under review, it is subject to the NCLB proficiency requirement. Without an approved waiver, schools that do not meet the requirements will be labeled as “failing.” These schools will therefore be subject to sanctions, and over time could be shut down.<sup>11</sup>

This overview is the start of a more expansive analysis of the waiver program and its impact. As 2014 approaches, The Haas Institute will be evaluating the effectiveness of these waivers on reducing the achievement gap. Its examination will include, but is not limited to:

- How states interpret the achievement gap
- Effects of having different proficiency targets for subgroups
  - How the subgroups are divided and selected
  - Reasons for the subgroups
  - The effectiveness of differential targets
- Impact of English-only assessments
- NCLB’s impact on gifted student resources and whether waivers repairs the impact
- How arts and physical education programming is impacted by NCLB and waivers
- Examining best methods used by successful school districts and how these can be incorporated into the waiver program

Through a series of studies and reports, the Haas Institute will examine these issues in detail. Culminating into a recommendation as to how to best close the achievement gap through education reform.

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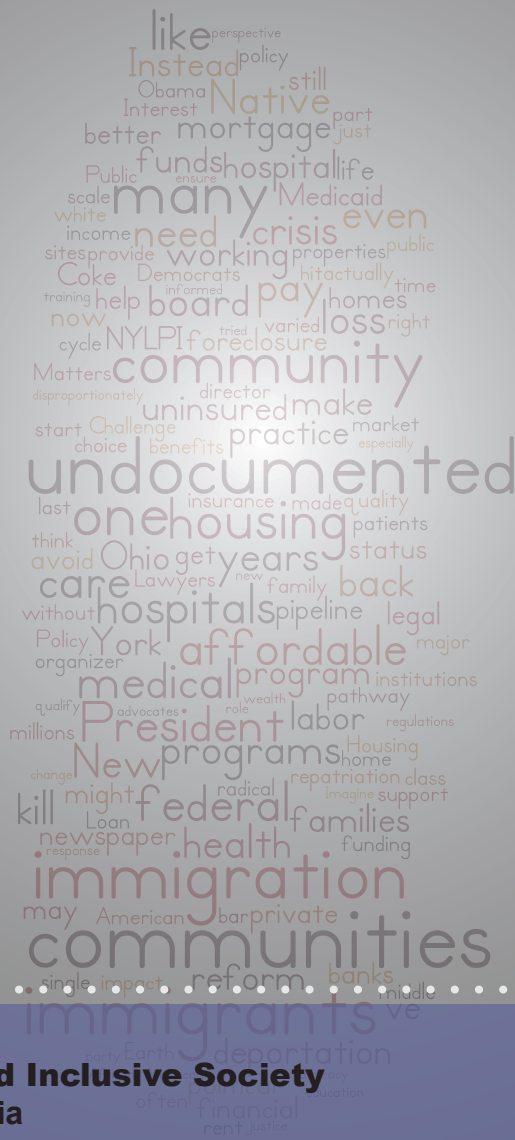
<sup>9</sup> DEP’T OF EDUC., ESEA FLEXIBILITY FREQUENTLY ASKED QUESTIONS ADDENDUM, <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html> (downloadable under “Overview”).

<sup>10</sup> See Kate Casas, *NCLB Waivers: Closing Achievement Gap Requires Policy Overhaul, Not Tweaks*, THE HUFFINGTON POST (Oct. 25, 2012 9:57 AM), [http://www.huffingtonpost.com/kate-casas/education-achievement-gap\\_b\\_2016306.html](http://www.huffingtonpost.com/kate-casas/education-achievement-gap_b_2016306.html); *Florida Adopts Academic Achievement Standards Based On Race, Ethnicity, Echoes Virginia*, THE HUFFINGTON POST, (last Updated Oct. 12, 2012 11:47 AM), [http://www.huffingtonpost.com/2012/10/12/echoing-virginia-florida-\\_n\\_1959151.html](http://www.huffingtonpost.com/2012/10/12/echoing-virginia-florida-_n_1959151.html).

<sup>11</sup> Howard Blume, *California won't get relief from No Child Left Behind law*, L.A. TIMES (May 20, 2013, 3:36 PM), <http://www.latimes.com/local/lanow/la-me-ln-california-no-nclb-waiver-20130520,0,1239500.story>.







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