



COMMONWEALTH of VIRGINIA

Patricia I. Wright, Ed.D.
Superintendent of Public Instruction

DEPARTMENT OF EDUCATION
P.O. BOX 2120
Richmond, Virginia 23218-2120

Office: (804) 225-2023
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August 28, 2009

Dr. Joseph C. Conaty
Delegated Authority to Perform the Functions
and Duties of the Assistant Secretary for Elementary
and Secondary Education
Office of Elementary and Secondary Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Dr. Conaty:

I am writing to request waivers as listed below from certain Title I, Part A, requirements on behalf of the school divisions in Virginia.

- A waiver to allow local education agencies (LEAs) with schools in Year 1 of Title I School Improvement to: 1) offer Supplemental Educational Services (SES), in addition to Public School Choice (PSC), to eligible students; and 2) count the funds spent providing SES toward the LEA's obligation to spend an amount at least equal to 20 percent of its Title I, Part A, allocation on SES and choice-related transportation. I recognize that without such a waiver, LEAs may only count funds spent providing SES to eligible students in Year 2 of Title I School Improvement as required under Section 1116(b)(10) of the *No Child Left Behind Act of 2001* (NCLB). Allowing LEAs to offer SES to eligible students in Title I schools in Year 1 of Title I School Improvement and count the costs of providing SES to those students toward the 20 percent obligation may assist more students to reach proficiency on the state assessments in reading/language arts and mathematics.
- A waiver to allow LEAs with Title I schools in Title I School Improvement to exclude some or all of Fiscal Year (FY) 2009 Title I, Part A, funds under the *American Recovery and Reinvestment Act of 2009* (ARRA) in calculating the

required 10 percent professional development set-aside. Section 1116(c)(7)(A)(iii) of NCLB requires LEAs with schools in Title I School Improvement to set aside 10 percent of their funds for professional development. The waiver would allow LEAs to determine whether their professional development needs warrant the use of some or all of the FY 2009 ARRA Title I, Part A, funds.

- A waiver to allow LEAs to exclude some or all of the ARRA Title I, Part A, funds in calculating their 20 percent obligation for choice-related transportation and SES. Section 1116(b)(10) of NCLB requires LEAs to determine a 20 percent obligation for Public School Choice-related transportation and SES based on LEAs' total FY 2009 Title I, Part A, allocation. Allowing LEAs the flexibility to determine the amount of ARRA Title I, Part A, funds to set aside will permit them to determine how to best use the funds to address the particular needs of their students.
- A waiver to allow LEAs to exclude some or all of the FY 2009 ARRA Title I, Part A, funds in calculating the per pupil amount for SES. Section 1116(e)(6)(A) of NCLB requires LEAs to determine the per pupil amount for SES based on LEAs annual Title I, Part A, allocation. For FY 2009, the total allocation would include ARRA and regular Title I, Part A, funds. Providing LEAs with the option to reduce the per pupil amount for SES will allow SES to be provided to a greater number of students.
- A waiver to allow the state to permit school divisions to carry over FY 2009 Title I, Part A, and FY 2010 Title I, Part A, funds in excess of the 15 percent carry over limitation more than once every three years. Section 1127(b) of NCLB permits a state to waive the limitation to carry over no more than 15 percent of the Title I, Part A, funds once every three years if: 1) the LEA's request is reasonable and necessary; or 2) a supplemental Title I, Part A, appropriation becomes available. The request is made based on the supplemental nature of the ARRA Title I, Part A, funds.

As requested, Virginia's Adequate Yearly Progress (AYP) targets in reading and mathematics for the 2008-2009 and 2009-2010 school years are provided in the chart below. The complete chart that contains the targets from 2001-2002 through 2013-2014 can be found at the following link:

<http://www.doe.virginia.gov/VDOE/nclb/VA-AcctWkbk.pdf>.

Adequate Yearly Progress (AYP) Targets		
Year	Mathematics Percent Proficient	Reading/Language Arts Percent Proficient
2008-2009	79	81
2009-2010	83	85

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Adequate Yearly Progress (AYP) results based on assessments administered in the 2008-2009 and 2009-2010 school years will be made based on the requirements of Section 1111(b)(2) of the *Elementary and Secondary Education Act of 1965* (ESEA).

Prior to submitting this waiver request, all school divisions in the state were provided with notice and a reasonable opportunity to comment on this request. Virginia provided such notice by sending an e-mail to the superintendent in each division in the state. A copy of the e-mail is provided in Attachment A along with all comments received in response to the notice. Virginia will provide notice and information regarding this waiver request to the public by posting the request on the Virginia Department of Education's Web site at the following link: <http://www.doe.virginia.gov/>.

If granted the requested waivers, Virginia assures that the following conditions will be met:

- The state will implement the waiver to allow LEAs to offer SES in addition to PSC only for those LEAs that meet all the statutory and regulatory requirements related to SES in the 2009-2010 school year. Additionally, the state will submit to the United States Department of Education (USED) by September 30, 2010, a report that includes the name and NCES division identification number for each school division implementing the waiver.
- The state will implement the waiver for the LEAs in Title I School Improvement to exclude some or all of Fiscal Year (FY) 2009 Title I, Part A, funds under the *American Recovery and Reinvestment Act of 2009* (ARRA) in calculating the required 10 percent professional development set-aside only for LEAs that assure:
 - Compliance with the statutory and regulatory obligations for the professional development set-aside in regard to their regular Title I, Part A, allocation;
 - Freed up funds will be used to address identified needs based on data;
 - Applications or amendments for Title I, Part A, funds will include the data on which they relied to identify needs that will be addressed by the freed up funds; and
 - Compliance with all of the Title I, Part A, statutory and regulatory obligations including the use of effective methods and instructional strategies that are based on scientifically-based research.
- The state will implement the waiver for LEAs to exclude some or all of the ARRA Title I, Part A, funds in calculating their 20 percent obligation for choice-related transportation and SES only for LEAs that assure:

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- Compliance with the statutory and regulatory obligations for the provision of SES and PSC with respect to their regular FY 2009 Title I, Part A, allocation;
 - Freed up funds will be used to address identified needs based on data;
 - Applications or amendments for Title I, Part A, funds will describe the data on which they relied to identify needs that will be addressed by the freed up funds; and
 - Compliance with all of the Title I, Part A, statutory and regulatory obligations including the use of effective methods and instructional strategies that are based on scientifically-based research.
- The state will implement the waiver for an LEA to exclude some or all of the FY 2009 ARRA Title I, Part A, funds in calculating the per pupil amount for SES only for those LEAs that assure:
 - Compliance with the statutory and regulatory obligations for the provision of SES with respect to their regular FY 2009 Title I, Part A, allocation; and
 - Compliance with all of the Title I, Part A, statutory and regulatory obligations including the use of effective methods and instructional strategies that are based on scientifically-based research.
 - The state will implement the waiver for an LEA to carry over FY 2009 Title I, Part A, and FY 2010 Title I, Part A, funds in excess of the 15 percent carry over limitation more than once every three years only based on the ARRA funds.

Please contact Ms. Roberta Schlicher, director of program administration and accountability, at (804) 225-2870 or Roberta.Schlicher@doe.virginia.gov if you have questions or need additional information.

Sincerely,



Patricia I. Wright, Ed.D.
Superintendent of Public Instruction

PIW/rs

Attachment

Attachment A

From: McHale, Juanita (DOE) **On Behalf Of** Wright, Patricia (DOE)
Sent: Wednesday, August 12, 2009 11:00 AM
To: McHale, Juanita (DOE)
Cc: Sheehan, Ann (DOE)
Subject: SUPTS E-MAIL: Opportunity to Comment on Request for Waivers from Certain Title I, Part A, Requirements

As required by the United States Department of Education (USED) Draft Nonregulatory Guidance on Title I, Part A, Waivers, July 2009, attached to this e-mail is a draft of Virginia's request for a waiver of certain requirements under Title I, Part A. Question A-6 of the guidance requires states to provide all interested school divisions with an opportunity to comment on the waiver request prior to submitting the request to USED.

Comments on the waiver request will be accepted through Wednesday, August 26, 2009. Please submit requests to Ann Sheehan, Title I specialist, by e-mail at Ann.Sheehan@doe.virginia.gov or by fax to (804) 371-7347.

If you have questions or need additional information, please contact Ann Sheehan, Title I specialist, at Ann.Sheehan@doe.virginia.gov or (804) 371-2932.

**DRAFT LETTER TO BE SENT TO THE UNITED STATES DEPARTMENT OF
EDUCATION AFTER RECEIPT OF PUBLIC COMMENT**

August 28, 2009

Dr. Joseph C. Conaty
Delegated Authority to Perform the Functions
and Duties of the Assistant Secretary for Elementary
and Secondary Education
Office of Elementary and Secondary Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Dr. Conaty:

I am writing to request waivers as listed below from certain Title I, Part A, requirements on behalf of the school divisions in Virginia.

- A waiver to allow local education agencies (LEAs) with schools in Year 1 of Title I School Improvement to: 1) offer Supplemental Educational Services (SES), in addition to Public School Choice (PSC), to eligible students; and 2) count the funds spent providing SES toward the LEA's obligation to spend an amount at least equal to 20 percent of its Title I, Part A, allocation on SES and choice-related transportation. I recognize that without such a waiver, LEAs may only count funds spent providing SES to eligible students in Year 2 of Title I School Improvement as required under Section 1116(b)(10) of the *No Child Left Behind Act of 2001* (NCLB). Allowing LEAs to offer SES to eligible students in Title I schools in Year 1 of Title I School Improvement and count the costs of providing SES to those students toward the 20 percent obligation may assist more students to reach proficiency on the state assessments in reading/language arts and mathematics.
- A waiver to allow LEAs with Title I schools in Title I School Improvement to exclude some or all of Fiscal Year (FY) 2009 Title I, Part A, funds under the *American Recovery and Reinvestment Act of 2009* (ARRA) in calculating the

required 10 percent professional development set-aside. Section 1116(c)(7)(A)(iii) of NCLB requires LEAs with schools in Title I School Improvement to set aside 10 percent of their funds for professional development. The waiver would allow LEAs to determine whether their professional development needs warrant the use of some or all of the FY 2009 ARRA Title I, Part A, funds.

- A waiver to allow LEAs to exclude some or all of the ARRA Title I, Part A, funds in calculating their 20 percent obligation for choice-related transportation and SES. Section 1116(b)(10) of NCLB requires LEAs to determine a 20 percent obligation for Public School Choice-related transportation and SES based on LEAs' total FY 2009 Title I, Part A, allocation. Allowing LEAs the flexibility to determine the amount of ARRA Title I, Part A, funds to set aside will permit them to determine how to best use the funds to address the particular needs of their students.
- A waiver to allow LEAs to exclude some or all of the FY 2009 ARRA Title I, Part A, funds in calculating the per pupil amount for SES. Section 1116(e)(6)(A) of NCLB requires LEAs to determine the per pupil amount for SES based on LEAs annual Title I, Part A, allocation. For FY 2009, the total allocation would include ARRA and regular Title I, Part A, funds. Providing LEAs with the option to reduce the per pupil amount for SES will allow SES to be provided to a greater number of students.
- A waiver to allow the state to permit school divisions to carry over FY 2009 Title I, Part A, and FY 2010 Title I, Part A, funds in excess of the 15 percent carry over limitation more than once every three years. Section 1127(b) of NCLB permits a state to waive the limitation to carry over no more than 15 percent of the Title I, Part A, funds once every three years if: 1) the LEA's request is reasonable and necessary; or 2) a supplemental Title I, Part A, appropriation becomes available. The request is made based on the supplemental nature of the ARRA Title I, Part A, funds.

As requested, Virginia's Adequate Yearly Progress (AYP) targets in reading and mathematics for the 2008-2009 and 2009-2010 school years are provided in the chart below. The complete chart that contains the targets from 2001-2002 through 2013-2014 can be found at the following link:

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- The state will implement the waiver to allow LEAs to offer SES in addition to PSC only for those LEAs that meet all the statutory and regulatory requirements related to SES in the 2009-2010 school year. Additionally, the state will submit to the United States Department of Education (USED) by September 30, 2010, a report that includes the name and NCES division identification number for each school division implementing the waiver.
- The state will implement the waiver for the LEAs in Title I School Improvement to exclude some or all of Fiscal Year (FY) 2009 Title I, Part A, funds under the *American Recovery and Reinvestment Act of 2009* (ARRA) in calculating the required 10 percent professional development set-aside only for LEAs that assure:
 - Compliance with the statutory and regulatory obligations for the professional development set-aside in regard to their regular Title I, Part A, allocation;
 - Freed up funds will be used to address identified needs based on data;
 - Applications or amendments for Title I, Part A, funds will include the data on which they relied to identify needs that will be addressed by the freed up funds; and
 - Compliance with all of the Title I, Part A, statutory and regulatory obligations including the use of effective methods and instructional strategies that are based on scientifically-based research.
- The state will implement the waiver for LEAs to exclude some or all of the ARRA Title I, Part A, funds in calculating their 20 percent obligation for choice-related transportation and SES only for LEAs that assure:

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- Compliance with the statutory and regulatory obligations for the provision of SES and PSC with respect to their regular FY 2009 Title I, Part A, allocation;
- Freed up funds will be used to address identified needs based on data;
- Applications or amendments for Title I, Part A, funds will describe the data on which they relied to identify needs that will be addressed by the freed up funds; and
- Compliance with all of the Title I, Part A, statutory and regulatory obligations including the use of effective methods and instructional strategies that are based on scientifically-based research.
- The state will implement the waiver for an LEA to exclude some or all of the FY 2009 ARRA Title I, Part A, funds in calculating the per pupil amount for SES only for those LEAs that assure:
 - Compliance with the statutory and regulatory obligations for the provision of SES with respect to their regular FY 2009 Title I, Part A, allocation; and
 - Compliance with all of the Title I, Part A, statutory and regulatory obligations including the use of effective methods and instructional strategies that are based on scientifically-based research.
- The state will implement the waiver for LEA to carry over FY 2009 Title I, Part A, and FY 2010 Title I, Part A, funds in excess of the 15 percent carry over limitation more than once every three years only based on the ARRA funds.

Please contact Ms. Roberta Schlicher, director of program administration and accountability, at (804) 225-2870 or Roberta.Schlicher@doe.virginia.gov if you have questions or need additional information.

Sincerely,

Patricia I. Wright, Ed.D.
Superintendent of Public Instruction

PIW/rs

Attachment

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- Compliance with the statutory and regulatory obligations for the provision of SES and PSC with respect to their regular FY 2009 Title I, Part A, allocation;
- Freed up funds will be used to address identified needs based on data;
- Applications or amendments for Title I, Part A, funds will describe the data on which they relied to identify needs that will be addressed by the freed up funds; and
- Compliance with all of the Title I, Part A, statutory and regulatory obligations including the use of effective methods and instructional strategies that are based on scientifically-based research.
- The state will implement the waiver for an LEA to exclude some or all of the FY 2009 ARRA Title I, Part A, funds in calculating the per pupil amount for SES only for those LEAs that assure:
 - Compliance with the statutory and regulatory obligations for the provision of SES with respect to their regular FY 2009 Title I, Part A, allocation; and
 - Compliance with all of the Title I, Part A, statutory and regulatory obligations including the use of effective methods and instructional strategies that are based on scientifically-based research.
- The state will implement the waiver for an LEA to carry over FY 2009 Title I, Part A, and FY 2010 Title I, Part A, funds in excess of the 15 percent carry over limitation more than once every three years only based on the ARRA funds.

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Sincerely,

Patricia I. Wright, Ed.D.
Superintendent of Public Instruction

PIW/rs

Attachment

Comments Received
Re: Waivers from Certain Title I, Part A, Requirements

Date	Received From	Comment	Status
9/24/2009	Fairfax County Public Schools	Recommend language be revised in bullet two on page 1 to make clear that the waiver applies to divisions with schools in Title I School Improvement.	Revision made and incorporated into letter.