

Congress of the United States

Washington, D.C. 20515

March 25, 2021

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave SW
Washington, D.C. 20202

Dear Secretary Cardona:

Last week, the U.S. Department of Education (Department) released a template for states to request waivers of certain accountability and reporting requirements under the *Elementary and Secondary Education Act* (ESEA). We applaud the Department's efforts to provide states clarity around federal requirements for this academic year and for the expedited process being offered. However, the template raises serious questions about your commitment to faithfully executing the laws under your jurisdiction and to transparency within the Department's operations.

First, ESEA was last reauthorized in 2015 by the *Every Student Succeeds Act* (ESSA). Because of widespread, bipartisan concern about abuses of waiver authority under the Obama administration, Congress affirmatively acted to limit that waiver authority. Among other things, ESSA prohibits the Secretary from disapproving a waiver request based on conditions outside the scope of the request¹ and explicitly lists the circumstances under which the Secretary can disapprove a request.²

The waiver template the Department released last week appears to violate these statutory limitations. On page two, the template imposes two new reporting requirements related to chronic absenteeism and access to technology on states and demands additional information on a laundry list of other metrics. These conditions are not permitted under ESEA as amended by ESSA. They are both outside the scope of what states are seeking to be waived and violate specific prohibitions on the Secretary requiring states to report new data beyond existing reporting requirements.³

Second, the template invites states to email the Department if they wish to discuss assessment flexibility. The Obama administration used similarly opaque waiver processes to coerce states into the Department's preferred policy directions, creating frustration and uncertainty among all

¹ 20 U.S.C. § 7861(b)(4)(D)

² 20 U.S.C. § 7861(b)(4)(A)

³ 20 U.S.C. § 6311(e)(1)(D)

stakeholders. Signaling your willingness to negotiate with states outside of the public view suggests that the Department might once again resume these extralegal processes.

To help Congress better understand your legal justification for these elements of the template, and to ensure the public of your commitment to transparency, we respectfully ask that you respond to the following questions no later than two weeks after receipt of this letter:

1. How does requiring states to report certain data elements as a condition of receiving a waiver comply with 20 U.S.C. § 7861(b)(4)(A) and (D)?
2. Will email correspondence between states and the Department on assessment flexibility constitute a waiver request under 20 U.S.C. § 7861(a)? If so, how will the Department ensure that the provisions of 20 U.S.C. § 7861 are followed? If not, what is the process states should follow to request an assessment waiver under such section?
3. The template directs states to email the Department if “specific circumstances within the State” necessitate assessment flexibility discussions. What are the “specific circumstances” that would prompt the Department to grant states assessment flexibility?
4. If a state submits a waiver request related to assessments as permitted under 20 U.S.C. § 7861, without first emailing the Department, under what criteria will the Department evaluate that waiver request?
5. What information will the Department publicly disclose regarding assessment flexibility discussions with states?

Please contact Mandy Schaumburg, mandy.schaumburg@mail.house.gov, with Ranking Member Foxx’s staff and Kristin Spiridon, kristin.spiridon@help.senate.gov, with Ranking Member Burr’s staff with any questions regarding this request. Thank you for your prompt reply to this letter.

Sincerely,



Virginia Foxx
Ranking Member
U.S. House Committee on Education
and Labor



Richard Burr
Ranking Member
U.S. Senate Committee on Health, Education,
Labor and Pensions