

**Department of Legislative Services**  
Maryland General Assembly  
2014 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 1001

(Delegate Hixson, *et al.*)

Ways and Means

Education, Health, and Environmental Affairs

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**Education - Federal Elementary and Secondary Education Act - Waiver Requests**

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This bill requires the Maryland State Department of Education (MSDE) to submit a proposed waiver request from specific provisions of the federal Elementary and Secondary Education Act (ESEA) to the Legislative Policy Committee (LPC) *prior* to submitting the request to the U.S. Department of Education (USDE). MSDE must allow the Legislative Policy Committee at least 30 days after the committee receives the proposed waiver request to review and comment on the proposed waiver request. MSDE must provide any additional information regarding the proposed waiver request if requested by the Legislative Policy Committee.

The bill takes effect June 1, 2014.

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**Fiscal Summary**

**State Effect:** MSDE can submit a proposed ESEA waiver request to the LPC 30 days prior to submitting the request to USDE using existing resources. The Department of Legislative Services, which provides staff support to LPC, can implement the bill with existing resources.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

### **Current Law/ Background:**

#### *No Child Left Behind Act (NCLB) Requirements and Penalties*

Under NCLB, the most recent ESEA reauthorization, 100% of students must achieve proficiency on statewide assessments in reading and mathematics by 2014, a standard which no state is able to meet. Unless 100% of students in a school achieve proficiency on statewide assessments in 2014, then it will fail to meet adequate yearly progress (AYP). A school that fails to meet AYP for two consecutive years will be identified for “school improvement” and must draft a school improvement plan and devote at least 10% of federal funds provided under Title I of NCLB to teacher professional development. Schools that fail to make AYP for a third year are identified for corrective action and must institute interventions designed to improve school performance from a list specified in the legislation. Schools that fail to make AYP for a fourth year are identified for restructuring, which requires more significant interventions. If schools fail to make AYP for a fifth year, they must implement a restructuring plan that includes reconstituting school staff and/or leadership, changing the school’s governance arrangement, converting the school to a charter, turning it over to a private management company, or some other major change.

Maryland had 324 schools in improvement (22.4% of all public schools) in the 2011-2012 school year, including 102 schools that had not met AYP for more than six consecutive years. Some of these schools did not meet AYP due to the performance of special education students who are held to the same 100% proficiency standard.

#### *ESEA Flexibility Waiver*

Due to the strict penalties under NCLB for a standard that no state was able to achieve, and the absence of Congressional reauthorization of ESEA, USDE offered states an opportunity to apply for an ESEA flexibility waiver.

To receive a waiver, states had to outline their plans to improve instruction and student academic achievement on specific topics. ESEA flexibility waivers applied to 10 ESEA requirements (and up to 3 optional ESEA requirements) including achieving 100% student proficiency by 2014; supplemental education services and school choice; corrective action, school restructuring, and improvement plan requirements; and Title I and Title II fund restrictions for districts that do not achieve highly qualified teacher requirements, which requires all teachers in core academic subjects to be highly qualified.

One specific requirement to receive an ESEA waiver was a plan to improve effective instruction and leadership. To this end, Maryland's application included the State's new teacher and principal evaluations system, which was established by the Education Reform Act of 2010 (Chapter 189) and subsequent regulations. As a result, all local school systems must implement new teacher and principal evaluation systems that assign "significant value" to measurable student growth by 2013-2014, except for Frederick and Montgomery counties which did not participate in the federal Race to the Top grant and, thus, have an additional year to meet this requirement.

Another requirement to receive an ESEA waiver was that MSDE had to describe its plan to transition to and implement no later than the 2013-2014 school year college and career ready (CACR) standards statewide in at least reading/language arts and mathematics for all students and schools. MSDE also had to demonstrate that the State was transitioning, developing, and administering annual, statewide, aligned, high-quality CACR assessments, and corresponding academic achievement standards, that measure student growth in at least grades three through eight and at least once in high school. In addition, MSDE had to explain how this transition plan is likely to lead to all students, including English learners, students with disabilities, and low-achieving students, gaining access to and learning content aligned with such standards. MSDE indicated on its waiver application that they had adopted and were implementing the Common Core State Standards and using the Partnership for Assessments of Readiness for College and Careers (PARCC) assessments to meet this requirement.

#### *Maryland ESEA Flexibility Waiver*

Maryland submitted its ESEA flexibility waiver request in February 2012 and was approved on May 29, 2012. Maryland is one of 34 states and the District of Columbia to receive approval of its ESEA flexibility waiver request.

After the first ESEA flexibility waiver was granted in May 2012, MSDE has requested or has made plans to request several amendments to its waiver. In November 2013 USDE approved a waiver amendment regarding the elements of Maryland's system of differentiated recognition, accountability, and support. MSDE's amendment request to allow the PARCC field test to meet the federal requirement that all students be assessed annually in grades three through eight and high school in specific subjects, so that students would not be double tested, was approved in February 2014.

Maryland's current approved ESEA flexibility waiver expires at the end of 2013-2014 school year. MSDE reports that it has been meeting with education stakeholders over the past several months to develop a one-year ESEA flexibility waiver extension that USDE has offered as an option for states to request. MSDE submitted a draft extension request to the State Board of Education at its February meeting with approval anticipated at the

March meeting and subsequent submission to USDE. However, per direction from USDE, MSDE cannot submit its extension request until it receives a written report with the results of a recent USDE Part B monitoring visit of the current ESEA waiver. The monitoring was completed on December 17, 2013, and MSDE received the written report on March 20, 2014. The extension request must address any concerns noted in the monitoring report. Per USDE, the ESEA flexibility waiver extension request must be submitted within 60 days of receipt of the Part B monitoring report, so that the request can be approved by the end of this school year.

One of the key provisions in the extension request will be delaying the use of student growth data on State assessments to count for personnel decisions for teacher and principal evaluations until the 2016-2017 school year. Specifically, MSDE plans to request that the State student growth data will not count for personnel decisions for the 2013-2014 school year; will only be used to inform, but not determine, personnel decisions during the 2014-2015 and 2015-2016 school years; and will count for personnel decisions beginning in the 2016-2017 school year.

#### *Stakeholder Engagement and Notice and Comment Requirements for ESEA Waiver Requests*

According to USDE, each State Education Agency (SEA) must engage diverse stakeholders and communities in the development of its waiver request. Prior to submitting a request, each SEA must provide all interested local education agencies (LEAs) in the state with notice and a reasonable opportunity to comment on the request. The SEA must submit all comments it receives from LEAs to the Secretary of USDE with its waiver request, and the Secretary will consider the comments when considering whether to grant the request. The SEA must also provide notice and information on the waiver request to the public in the manner in which the SEA customarily provides notice and information to the public, such as through a public website.

By engaging relevant stakeholders at the outset of the planning and implementation process, an SEA can ensure they have input in shaping the SEA's comprehensive plan, which will help ensure successful implementation of the SEA's plan. Ideally, an SEA will solicit input from stakeholders representing diverse perspectives, experiences, and interests, including those that will be impacted by and implement the policies included in the SEA's plan, and will strengthen its request by revising it based on this input.

Each SEA must provide a description of how the SEA meaningfully engaged and solicited input on its request from teachers and their representatives. Each SEA must also provide a description of how the SEA meaningfully engaged and solicited input on its request from other diverse communities, such as students, parents, community-based organizations, civil rights organizations, organizations representing students with

disabilities and English Learners, business organizations, and Indian tribes. Finally, each SEA must provide an assurance that it has consulted with the State's Committee of Practitioners (COP) regarding the information set forth in its request.

Title I of the ESEA requires each SEA that receives Title I funds to create a State COP to advise the State in carrying out its responsibilities under Title I. Each COP must include: as a majority of its members, representatives from local educational agencies; administrators, including the administrators of programs described in other parts of this title; teachers, including vocational educators; parents; members of local school boards; representatives of private school children; and pupil services personnel.

The duties of the COP include a review, before publication, of any proposed or final State rule or regulation pursuant to this title. In an emergency situation where such rule or regulation must be issued within a very limited time to assist local school systems with the operation of the program under this title, the SEA may issue a regulation without prior consultation, but must immediately thereafter convene the State committee of practitioners to review the emergency regulation before issuance in final form. Maryland's 2013-2014 COP roster includes 22 members, and has met twice thus far.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 910 (Senator Madaleno, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** U.S. Department of Education, Maryland State Department of Education, Department of Legislative Services

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