

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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California State Board of Education  
**September 2021 Agenda**  
**Item #07**

## Subject

Request to Ratify a Waiver for Title I, Part A and General Education Provisions Act Flexibilities

## Type of Action

Action, Information

## Summary of the Issue(s)

The impact of COVID-19 has required educators, administrators, students, and families to adjust to a new learning environment in a short timeframe. This new learning environment created the urgency to redefine and adjust the approach to how services are being provided to California’s 6.2 million students. This challenge, along with the large amount of new state and federal educational funding that has been provided to California’s schools has required increased flexibility for local educational agencies (LEAs) in order to best meet the needs of their students.

On July 2, 2021, the U.S. Department of Education (ED) invited states to request a waiver which would allow for additional flexibilities of federal funds. Through this waiver, the California Department of Education (CDE) would be able to, among many other things, permit a LEA or consortium of LEAs to carry over more than 15 percent of its fiscal year (FY) 2020 Title I, Part A funds, even if the LEA has received a waiver from its state educational agency (SEA) to exceed this limitation for its FY 2018 or FY 2019 Title I, Part A funds. Additionally, the waiver would allow California to extend for itself and its subgrantees the period of availability of FY 2019 funds for programs included in the consolidated State Plan to allow additional time to obligate those funds.

The waiver allows for states to waive the following specific requirements under the Elementary and Secondary Education Act (ESEA) Section 8401(b):

* Section 1127(b) of Title I, Part A of the ESEA so that a SEA may waive, more than once every three years, if necessary, the 15 percent carryover limitation in ESEA section 1127(a) for FY 2020 Title I, Part A funds.
* Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of FY 2019 funds for programs in which the SEA participates under its approved consolidated State plan until September 30, 2022.

On July 28, 2021, the CDE provided the public and interested LEAs notice and an opportunity to comment. The public comment period was open to the public and LEAs through August 16, 2021. Additionally, the CDE is required to provide ED a copy of any comments received and a description of how the comments were addressed. The waiver application does not have a deadline, although it is recommended that states wishing to take advantage of the waiver submit the template as soon as possible.

On August 18, 2021, SSPI Tony Thurmond and SBE President Linda Darling-Hammond submitted, on behalf of the CDE and SBE, the Federal Funding Flexibility Waiver for the 2020-2021 school year and fiscal year 2020 Title I, Part A funds, in addition to a waiver for the period of availability of 2019 fiscal year funds described in the GEPA:

* Section 1127(b) of Title I, Part A of the ESEA so that CDE may waive, more than once every three years, if necessary, the 15 percent carryover limitation in ESEA section 1127(a) for FY 2020 Title I, Part A funds.
* Section 421(b) of the GEPA to extend the period of availability of FY 2019 funds for programs in which CDE participates under its approved consolidated State plan until September 30, 2022. These programs are:
  + Title I, Part A of the ESEA (Improving Basic Programs Operated by LEAs), including the portion of the SEA’s Title I, Part A award used to carry out section 1003 school improvement, section 1003A direct student services, if applicable, and Title I, Part D, Subpart 2
  + Title I, Part B of the ESEA (State Assessment Formula Grants)
  + Title I, Part D, Subpart 1 of the ESEA (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk)
  + Title II, Part A of the ESEA (Supporting Effective Instruction)
  + Title III, Part A of the ESEA (English Language Acquisition, Language Enhancement, and Academic Achievement)
  + Title IV, Part A of the ESEA (Student Support and Academic Enrichment Grants)
  + Title IV, Part B of the ESEA (21st Century Community Learning Centers)
  + Title V, Part B, Subpart 2 of the ESEA (Rural and Low-Income School Program)
  + McKinney-Vento Education for Homeless Children and Youth Programs

Although offered, the CDE will not be taking advantage of the portion of the GEPA waiver that would allow for the extension of the period of availability for the funding for Title I, Part C of the ESEA (Education of Migratory Children).

## Recommendation

The CDE recommends that the SBE ratify the waiver for the 2020-2021 school year related to the following requirements:

Section 1127(b) of Title I, Part A of the ESEA so that CDE may waive, more than once every three years, if necessary, the 15 percent carryover limitation in ESEA section 1127(a) for FY 2020 Title I, Part A funds.

Section 421(b) of the GEPA to extend the period of availability of FY 2019 funds for programs in which CDE participates under its approved consolidated State plan until September 30, 2022.

## Brief History of Key Issues

**January 2021:**  The SBE Approved California’s Title IV, Part A Funding Flexibility Waiver of the following provisions for the 2020-2021 school year and FY 2020 Title IV, Part A funds under ESEA Section 8401(b):

* Section 4106(d) of Title IV, Part A of the ESEA, related to LEA needs assessments for the 2020-2021 school year.
* Section 4106(e)(2)(C), (D), and (E) of Title IV, Part A of the ESEA, with respect to content-area spending requirements for Federal FY 2020 Title IV, Part A funds.
* Section 4109(b) of Title IV, Part A of the ESEA, with respect to the fifteen percent spending limitation for technology infrastructure for FY 2020 Title IV, Part A funds.

**May 2020:** The SBE approved California’s Federal Funding Flexibility Waiver for the 2019–20 school year of the following sections under ESEA Section 8401(b):

* Section 1127(b) of Title I, Part A of the ESEA so that a SEA may waive, more than once every three years, if necessary, the 15 percent carryover limitation in ESEA section 1127(a) for FY 2019 Title I, Part A funds.
* Section 421(b) of the GEPA to extend the period of availability of FY 2018 funds for programs in which an SEA participates under its approved consolidated State plan until September 30, 2021.
* Section 4106(d) of Title IV, Part A of the ESEA related to LEA needs assessments for the 2019–20 school year.
* Section 4106(e)(2)(C), (D), and (E) of Title IV, Part A of the ESEA with respect to content-area spending requirements for FYs 2018 and 2019 Title IV, Part A funds.
* Section 4109(b) of Title IV, Part A of the ESEA with respect to the spending limitation for technology infrastructure for FYs 2018 and 2019 Title IV, Part A funds.
* Section 8101(42) of the ESEA, which defines “professional development,” for activities funded for the 2019–20 school year.

## Summary of Previous State Board of Education Discussion and Action

The SBE has previously acted on these types of funding flexibility waiver when it ratified the ED provided waiver related to Title IV, Part A funds in January 2021 and the Federal Funding Flexibility Waiver in May 2020.

## Fiscal Analysis

California’s total kindergarten through grade twelve funding from the 2021–22 California Budget Act is $123 billion:

State: $67.6 Billion (54.4 percent)

Local: $36.6 Billion (29.4 percent)

Federal: $18.8 Billion (15.2 percent)

ESSA funds are a portion of the total federal funding amount.

## Attachment(s)

* Attachment 1: Waiver Public Comment Summary (1 page)

# Attachment 1

## Public Comment Summary for California's Waiver for Title I, Part A and General Education Provisions Act (GEPA) Flexibilities

On July 2, 2021 the U.S. Department of Education (ED) invited states to submit a streamlined waiver under the Elementary and Secondary Education Act (ESEA) Section 8401(b) for Section 1127(b) of Title I, Part A of the ESEA so that a state educational agency (SEA) may waive, more than once every three years, if necessary, the 15 percent carryover limitation in ESEA section 1127(a) for FY 2020 Title I, Part A funds. Additionally, a state would be able Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of FY 2019 funds.

The California Department of Education (CDE) opened a public comment window for all stakeholders, ranging July 28, 2021- August 16, 2021. Information about this public comment period was made available online at <https://www.cde.ca.gov/re/es/covid19fundflex.asp>, and stakeholders of the programs impacted by this waiver were notified through CDE listservs.  
  
The CDE received 17 comments in total, all supporting the submission of this waiver. There have been no comments opposed to the submission or requesting any changes. There was one question clarifying the programs covered by the waiver, but this message did not express support or opposition.