

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

sib-gad-sep23item01

# California State Board of EducationSeptember 2023 AgendaItem #05

## Subject

Request to Approve a Waiver for Los Angeles Unified School District Fiscal Year 2021 Title I, Part A, Title IV, A, and General Education Provisions Act Funding and to Approve a Waiver to Extend the Period for Expenditure of certain fiscal year (FY) 2018, 2019, and 2020 Title I, Part A funds.

## Type of Action

Action, Information, Consent

## Summary of the Issue(s)

The California Department of Education (CDE) recommends that the California State Board of Education approve the waiver to be submitted for FY 2021 and extend the waivers for FY 2018, 2019, and 2020 to the United States Department of Education (ED) for Section 421(b) of the General Education Provisions Act [20 U.S.C. Section 1225(b)], also known as the Tydings Amendment, to facilitate implementation of certain corrective actions imposed on the Los Angeles Unified School District (LAUSD).

From 2016 to 2020, the CDE received a total of nine State complaints under the Elementary and Secondary Education Act of 1965 (ESEA) sections 1117(b)(6)(A) and 8503) against Los Angeles Unified School District related to the provision of equitable services under Title I, Part A, and Title IV, Part A. ESEA Sections 1117(a) and 8501 require any LEA which receives Title I, Part A and Title IV funds to provide eligible children attending private elementary and secondary schools, their teachers, and their families with Title I and Title IV services or other benefits that are equitable in comparison to those provided to eligible public school children, their teachers, and families. Moreover, funds to provide such services must be allocated proportionally based on the number of private school children from low-income families residing in the LEA's attendance area. The eight complaints were filed by three private school organizations Los Angeles Torah Consortium of Schools, Builders of Jewish Education consortium, and the Archdiocese of Los Angeles. In the case of Torah Consortium of Schools, Builders of Jewish Education-I, -II -III, and, now IV, corrective actions against Los Angeles Unified School District were upheld on appeal by the U.S. Department of Education. Initial decisions by CDE in Builders of Jewish Education -V and -VI are currently under consideration.

The timeframe to resolve these complaints due to their complexity, both the initial decision and the ED appeal process, has been significantly longer than the statutory timeline in which Title I and Title IV funds must be expended. As such, the FY 2021 Tydings waiver would allow Title I, Part A and Title IV, Part A funds allocated to Los Angeles Unified School District, with the current expiration date of September 30, 2023, to remain available until September 30, 2024, to provide equitable services to contribute to improved student achievement for vulnerable, academically-eligible students in the Builders of Jewish Education VI complaint, as the matter is currently under review for decision by the CDE. It is also highly likely that the decision will be appealed to the U.S. Department of Education, which could take over a year to resolve. In this case, additional time will be needed to ensure that the legally-mandated equitable services can be fairly and adequately provided to students in a way that meets their academic and social-emotional needs without requiring the district or State to pull funds from other priorities to meet its obligations. The students to be served will remain the same populations identified through the district policy, in consultation with representatives from non-public schools and as amended per any requests if mediation arises. To ensure that the FY 2021 Title I, Part A and Title IV, Part A funds can be expended based on the outcome of the review, the CDE is requesting a Tydings waiver through September 30, 2024. The waiver will permit Los Angeles Unified School District to continue to advance eligible Builders of Jewish Education students’ academic achievement through the provision of Title I, Part A and Title IV, Part A academic services as requested and originally agreed to by the Builders of Jewish Education schools.

The FY 2018, 2019, and 2020 Tydings waivers would allow for Title I, Part A funds allocated to Los Angeles Unified School District to carry out the activities for which the original waivers were requested and to contribute to improved student achievement for vulnerable, academically eligible students in the Builders of Jewish Education II, Builders of Jewish Education III, Builders of Jewish Education IV, and Archdiocese of Los Angeles II complaints. Archdiocese of Los Angeles II remains on appeal with the U.S. Department of Education. The parties in the Builders of Jewish Education (BJE II and –III) complaints have reached a tentative resolution following mediation in 2022. However, technical issues regarding the interplay of agreed additional FY 2018 and 2019 funds with FY 2023 funds remain to be resolved. Resolution of the Builders of Jewish Education V complaint is dependent on resolution of the Builders of Jewish Education II and III settlement in order to make a final decision on Builders of Jewish Education’s request for the CDE to take over provision of services. In all cases, additional time will be needed to ensure that the legally mandated equitable services can be fairly and adequately provided to students in a way that meets their academic and social-emotional needs without requiring the district or State to pull funds from other priorities to meet its obligations.

Per the requirements of Section 8401 (20 U.S.C. §7861) of the Elementary and Secondary Education Act (ESEA), the CDE will provide the public and members of the public with notice of the proposed waiver and an opportunity to comment up to September 14, 2023.

The CDE has established an internal group to find a resolution to the equitable services complaints brought against Los Angeles Unified School District and to support mediation between the district and the private schools to ensure that a fair and timely settlement is reached.

## Recommendation

The California Department of Education recommends that the State Board of Education approve the Tydings waiver to extend the period of availability of Los Angeles Unified School District’s FY 2021 Title I, Part A and Title IV Part A funds to September 30, 2024

CDE also recommends that the State Board of Education approve the Tydings waiver to extend the period for availability of Los Angeles Unified School District’s FY 2018, 2019, and 2020 Title I, Part A funds to September 30, 2024.

## Brief History of Key Issues

January 2023: The SBE ratified a Tydings waiver for the 21-22 school year and fiscal year 2020 Title I, Part A funds.

September 2021: The SBE approved 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

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

In January 2023 the SBE approved the Request to Ratify a Waiver for Los Angeles Unified School District Fiscal Year 2020 Title I, Part A and General Education Provisions Act Funding. (<https://www.cde.ca.gov/be/ag/ag/yr23/documents/jan23item09.docx>)

## Fiscal Analysis (as appropriate)

The total 2022-23 overall funding (federal, state, and local) for all TK–12 education programs is $128.6 billion.

State: $80.5 Billion (62.6 percent)

Local: $37.0 Billion (28.8 percent)

Federal: $11.1 Billion (8.6 percent)

LAUSD Title I Part A & D and Title IV allocations:

| **LAUSD** | **2018-19** | **2019-20** | **2020-21** | **2021-22** | **2022-23** |
| --- | --- | --- | --- | --- | --- |
| Title I Part A  | $353,343,076 | $349,400,229  | $362,844,221  | $348,942,256  | $359,255,162 |
| Title I Part D | $975,032  | $937,511 | 0 | 0 | 0 |
| Title IV | $22,159,145 | $26,064,496 | $26,746,322 | $25,863,363 | $27,132,924 |

## Attachment(s)

**Attachment 1:** Submitted Tydings Waiver Request to Extend the Availability of Fiscal Year 2021 Title I, Part A and Title IV Part A Funds Allocated to Los Angeles Unified School District (3 pages)

**Attachment 2:** Submitted Tydings Waiver Extensions Requests for FY 2018, 2019, and 2020 to extend the period of expenditure for Los Angeles Unified School District for Title I, Part A Funds (3 pages)

**Attachment 3:** Public Comment Announcement (1 page) (<https://www.cde.ca.gov/sp/sw/>)

# Attachment 1:Submitted Tydings Waiver Request to Extend the Availability of Fiscal Year 2021 Title I, Part A and Title IV Part A Funds Allocated to Los Angeles Unified School District (2 pages)



**California Department of Education**

**Tony Thurmond**, *State Superintendent of Public Instruction*

1430 N Street, Sacramento, CA 95814-5901

916-319-0800



**California State Board of Education**

**Linda Darling-Hammond**, *State Board President*

1430 N Street, Room 5111, Sacramento, CA 95814

916-319-0827

DRAFT September XX, 2023

VIA EMAIL: OESE:titlei-a@ed.gov

Adam Schott

Deputy Assistant Secretary

Delegated the Authority to Perform the Functions

and Duties of the Assistant Secretary

Office of Elementary and Secondary Education

U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Mr. Schott,

Subject: Request for California Tydings Waiver

On behalf of the California State Board of Education, the California Department of Education (CDE) respectfully requests an extension of the Tydings period pursuant to § 421(b) of the General Education Provisions Act [20 U.S.C. § 1225(b)] to extend the period of availability of fiscal year (FY) 2021 Title I, Part A and Title IV, Part A funds as described below.

The FY 2021 Tydings waiver would allow for Title I, Part A and Title IV, Part A funds allocated to subgrantee Los Angeles Unified School District to carry out the activities to contribute to improved student achievement for vulnerable students eligible for equitable services. As a result of one complaint to the State’s private school ombudsman (ESEA § 8503; 20 U.S.C. § 7883), by the Builders of Jewish Education (BJE VI), the CDE is seeking a waiver because the matter is under review by CDE. These funds have an expiration date of September 30, 2023. In this case, additional time will be needed to ensure that the legally mandated equitable services can be fairly and adequately provided to students in a way that meets their academic and social-emotional needs without requiring the district or State to pull funds from other priorities to meet its obligations. The students to be served will remain the same populations identified through the district policy, in consultation with representatives from non-public schools and as amended per any requests if mediation arises.

To ensure that the FY 2021 Title I, Part A and Title IV, Part A funds can be expended based on the outcome of the review, the CDE is requesting a Tydings waiver through September 30, 2024. The waiver will permit LAUSD to continue to advance eligible BJE students’ academic achievement through the provision of Title I, Part A and Title IV, Part A academic services as requested and originally agreed to by the BJE schools. The CDE is in regular communication with the district and the complainant schools and will continue to monitor implementation of the corrective actions as part of its enforcement powers in accordance with the *California Code of Regulations*, *Title 5*, § 4670. Additionally, CDE staff will be available to provide any necessary technical assistance to all parties in this process.

Per the requirements of Sec. 8401, the State will provide the public and members of the public with notice of the proposed waiver and a reasonable opportunity to comment in the manner customary to the CDE, which is to say through a posting on its website for 30 days. The CDE will forward any comments received and will work with your staff to ensure that public concerns are addressed.

If additional information regarding this request is needed, please contact Natasha Middleton, Federal Policy Liaison, Government Affairs Division, by phone at 916-319-0570 or by email at nmiddleton@cde.ca.gov.

Sincerely,

Tony Thurmond

State Superintendent of Public Instruction

California Department of Education

Linda Darling-Hammond

President

California State Board of Education

# Attachment 2:Submitted Tydings Waiver Extensions Requests for FY 2018, 2019, and 2020 to extend the period of expenditure for Los Angeles Unified School District for Title I, Part A Funds (2 pages)



**California Department of Education**

**Tony Thurmond**, *State Superintendent of Public Instruction*

1430 N Street, Sacramento, CA 95814-5901

916-319-0800



**California State Board of Education**

**Linda Darling-Hammond**, *State Board President*

1430 N Street, Room 5111, Sacramento, CA 95814

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Adam Schott

Deputy Assistant Secretary

Delegated the Authority to Perform the Functions

and Duties of the Assistant Secretary

Office of Elementary and Secondary Education

U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-

Dear Mr. Schott,

Subject: Request for California Tydings Waiver Extensions

On behalf of the California State Board of Education, the California Department of Education (CDE), under the Elementary and Secondary Education Act (ESEA) Section 8401 (20 U.S.C. § 7861), respectfully requests an extension of the Tydings waivers pursuant to § 421(b) of the General Education Provisions Act [20 U.S.C. § 1225(b)] to extend the period for expenditure of certain fiscal year (FY) 2018, 2019, and 2020 Title I, Part A funds as described below.

The FY 2018, 2019, and 2020 Tydings waivers would allow for Title I, Part A funds allocated to subgrantee, Los Angeles Unified School District (LAUSD) to carry out the activities for which the original waivers were requested and to contribute to improved student achievement for vulnerable students eligible for equitable services. As a result of five separate complaints to the State’s private school ombudsman (ESEA § 8503; 20 U.S.C. § 7883), four by the Builders of Jewish Education (BJE II, III, IV, and BJE V) and one by the Archdiocese of Los Angeles (ADLA II), which are consortia of private faith schools located in LAUSD’s attendance areas. ADLA II and BJE IV are on appeal with the US Department of Education. For BJE II and III, the matter is being mediated between the parties under the supervision of CDE and for BJE V it is being determined how services will be provided to BJE students. In all cases, additional time will be needed to ensure that the legally mandated equitable services can be fairly and adequately provided to students in a way that meets their academic and social-emotional needs without requiring the district or State to pull funds from other priorities to meet its obligations.

To ensure that the FYs 2018, 2019, and 2020 Title I, Part A funds are expended by LAUSD as directed in the corrective actions, the CDE is requesting an extension of the Tydings waivers through September 30, 2024. The waiver will permit LAUSD to continue to advance eligible BJE and ADLA students’ academic achievement through the provision of Title I academic services as requested and originally agreed to by the BJE and ADLA schools. The CDE is in regular communication with the district and the complainant schools and will continue to monitor implementation of the corrective actions as part of its enforcement powers in accordance with the *California Code of Regulations*, *Title 5*, § 4670. Additionally, the CDE is optimistic that the mediation being conducted will result in an amicable resolution moving forward that will not require additional intervention by the State.. In order to monitor the resolution process, the CDE will stay in regular communication with all parties and will provide ED with regular updates on the process. Additionally, CDE staff will be available to provide any necessary technical assistance to all parties in this process.

If additional information regarding this request is needed, please contact Natasha Middleton, Federal Policy Liaison, Government Affairs Division, by phone at 916-319-0570 or by email at nmiddleton@cde.ca.gov.

Sincerely,

Tony Thurmond

State Superintendent of Public Instruction

California Department of Education

Linda Darling-Hammond

President

California State Board of Education

# Attachment 3:Public Comment Period for California's Tydings Waiver Request to Extend the Availability of Fiscal Year (FY) 2021 Title I, Part A and Title IV, Part A Funds Allocated to Los Angeles Unified School District (LAUSD)

The California Department of Education (CDE), on behalf of the State Board of Education, is submitting to the United States Department of Education, a request for a waiver of Section 421(b) of the General Education Provisions Act (20 United States Code [U.S.C.] § 1225[b]), also known as the Tydings Amendment for LAUSD. These funds have an expiration date of September 30, 2023. In this case, by extending to September 30, 2024, the period in which to obligate and expend LAUSD’s allocation of FY 2021–22, Title I, Part A and Title IV, Part A funds, additional time will be needed to ensure that the legally mandated equitable services can be fairly and adequately provided to students.

The FY 2021 waiver would allow for Title I, Part A, and Title IV, Part A funds allocated to LAUSD to carry out the activities and to contribute to improved student achievement for students eligible for equitable services.

A public comment period is open for interested parties and members of the public to submit comments concerning this Tydings Waiver request until September 14, 2023. All inquiries should be addressed to Carrie Lopes and submitted at TitleI@cde.ca.gov.