# Attachment 3: Requirements and Timeline for the Approval of State Plans and Waivers Under the Every Student Succeeds Act

During the March 2018 State Board of Education (SBE) meeting, SBE members asked about the approval process for State Plans submitted to the U.S. Department of Education (ED) and requests for waivers under the Every Student Succeeds Act (ESSA). This attachment summarizes the ESSA statutes that govern State Plan approval and waiver requests, including relevant timelines.

The Attachment concludes by addressing the practical implications of submitting the State Plan for approval now or deferring submission of the State Plan until any waiver requests are resolved. In short, deferring submission of the State Plan makes no practical difference in the potential outcomes, *except* that delaying submission of the State Plan until after the resolution of the waiver process creates a risk that California would not receive the approximately $2.4 billion in federal ESSA funds, including the local educational agency (LEA) subgrants, for the upcoming fiscal year and could result in withholding of state administration funds.

## Review and Approval of State Plans

Two statutes govern the review and approval of State Plans under the ESSA.

First, Section 1111 of the Elementary and Secondary Education Act (ESEA), as reauthorized by the ESSA, addresses State Plans for Title I grants. The relevant provisions are summarized below:

* States must file a State Plan with the Secretary of Education to be eligible to receive a Title I grant.
* The Secretary is authorized to disapprove a State Plan only if the Secretary:
  + determines that the State Plan fails to meet the requirements for Title I State Plans;
  + provides written notice to the State of the rationale for the decision;
  + offers the State an opportunity to revise and resubmit the State Plan; and
  + provides the opportunity for a hearing.
* The Secretary may disapprove a State Plan after following the steps above and determining that the revised State Plan does not meet the requirements for Title I State Plans.
* The Secretary is explicitly authorized to withhold funds for State administration if a State fails to meet any of the requirements of Section 1111.

Notably, the standard for final disapproval is the same as initial disapproval: whether the State Plan meets the requirements for Title I State Plans. The statute provides no further detail regarding this standard, so the determination is likely within the Secretary’s sound discretion.

Second, Section 8451 of the ESEA, as reauthorized by the ESSA, addresses the approval process for consolidated State Plans. The relevant provisions are summarized below:

* The Secretary shall approve a plan unless the Secretary makes a written determination that the plan is not in compliance with the statutory provisions governing the relevant federal funds.
* The Secretary shall not finally disapprove a plan without providing the State notice and an opportunity for a hearing, as follows:
  + upon initial disapproval, provide a detailed description of the specific provisions that the Secretary determined fail to meet the statutory requirements;
  + offer the State an opportunity to resubmit the plan within 45 days; and
  + conduct a hearing within 30 days of resubmission.
* The Secretary shall approve a resubmitted plan unless the Secretary determines that the plan does not meet the statutory requirements that govern the relevant federal funds.

Notably, the standard for final disapproval is the same as initial disapproval: whether the plan meets the statutory requirements for relevant federal programs. The statute provides no further detail regarding this standard, so the determination is likely within the Secretary’s sound discretion.

Section 1111, which applies only to Title I, does not include specific timelines for resubmission of a State Plan that the Secretary initially disapproves or for conducting a hearing on the resubmitted plan. It is likely that the timelines specified in Section 8451 would apply to ensure a uniform process across the federal programs included in a consolidated State Plan.

## Review and Approval of Waivers

Section 8401 of the ESEA, as reauthorized by the ESSA, addresses waivers. It authorizes States to submit a request to the Secretary to waive any statutory or regulatory requirement under the ESEA. The statute specifies that waiver requests must:

* identify the Federal programs affected by the requested waiver;
* describe which Federal statutory or regulatory requirements are to be waived;
* describe how the waiving of such requirements will advance student academic achievement;
* describe the methods the State educational agency, local educational agency, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan;
* include only information directly related to the waiver request; and
* describe how schools will continue to provide assistance to the same populations served by programs for which waivers are requested and, if the waiver relates to the statewide assessment and report card requirements under Title I, describes how the State educational agency, local educational agency, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the student groups.

The statute explicitly prohibits waivers of certain statutory requirements, but none of the proposed revisions to the Title I accountability sections of the State Plan are covered by this prohibition. The statute also specifies general procedural requirements that States must follow prior to submitting a waiver request:

* provide the public and any interested local educational agency in the State with notice and a reasonable opportunity to comment and provide input on the request, to the extent that the request impacts the local educational agency;
* submit the comments and input to the Secretary, with a description of how the State addressed the comments and input; and
* provide notice and a reasonable time to comment to the public and local educational agencies in the manner in which the applying agency customarily provides similar notice and opportunity to comment to the public.

The statute specifies the following procedures for the Secretary’s approval or disapproval of waiver requests:

* Within 120 days of submission, the Secretary must issue a written determination regarding the initial approval or disapproval of a waiver.
* If initially disapproved, the Secretary shall immediately notify the State of the initial disapproval, provide detailed reasons for such determination in writing, and offer the State an opportunity to revise and resubmit the waiver request within 60 days.
* If the Secretary determines that a resubmitted waiver does not meet the requirements of this section, the Secretary shall conduct a hearing within 30 days, if requested by the State.

The statute also specifies the standards that govern initial disapproval and ultimate disapproval of a waiver request:

* The Secretary shall initially disapprove a waiver request only based on the determination that:
  + the waiver request does not meet the requirements of the waiver statute;
  + the waiver is not permitted (as noted, this is not relevant here);
  + the waiver request provides insufficient information to demonstrate that the waiving of such requirements will advance student academic achievement; or
  + the waiver request does not provide for adequate evaluation to ensure review and continuous improvement of the plan.
* The Secretary may ultimately disapprove a waiver request only after following the procedures specified above and determining that the revised waiver request does not meet the requirements of the waiver statute.

Notably, the standard for ultimate disapproval is the same as initial disapproval: whether the waiver meets the statutory requirements for waivers, including the demonstration that the waiver will advance student academic achievement and the waiver request provides for adequate evaluation to ensure review and continuous improvement of the plan. The statute provides no further detail regarding this standard, so the determination is likely within the Secretary’s sound discretion.

## Practical Implications

As noted, SBE members asked for more information about the different options for plan approval and/or submission of one or more waiver requests. There are two primary options: (1) approve the State Plan for resubmission to ED with the proposed revisions and direct staff to prepare one or more waiver requests; or (2) direct staff to prepare one or more waiver requests and defer submission of the State Plan until the waiver(s) are resolved.

As noted in the Item, ED staff have indicated that they will recommend approval of the State Plan if the SBE approves the proposed revisions. For other states that have gone through a similar process of back-and-forth about proposed revisions with ED staff, the Secretary has approved state plans promptly after resubmission of the revised state plan.

If the SBE delegates authority to staff to prepare and submit a waiver request on the English learner proficiency indicator, consistent with the staff recommendation, staff believe it will be possible to submit that waiver request prior to the May 2018 SBE meeting. Below is an approximate timeline for resolution of the waiver request, based on the statutory timelines:

**May 7, 2018:** Submit waiver request following public comment period

**September 7, 2018:** Secretary must initially approve or disapprove the waiver request

* If approved, process is complete

**November 7, 2018:** Resubmission deadline, if initially disapproved

**December 7, 2018:** Hearing (final determination expected)

The hearing and final determination would occur sooner if the waiver is resubmitted earlier than the 30-day resubmission deadline. Similarly, the timeline would be delayed if staff are unable prepare a waiver request and complete the public comment period prior to the May 2018 SBE meeting, potentially pushing final resolution into 2019 if submission of a waiver occurs after June 1, 2018.

Table 1 summarizes the best-case and worst-case scenarios outlined under Options 1 and 2.**Table 1: Best Case Scenario and Worst Case Scenario by Option Numbers**

| **Scenario Type** | **Option 1: Submit Plan and Pursue Waivers** | **Option 2: Defer Plan Submission until Waivers Are Resolved** |
| --- | --- | --- |
| Best-Case Scenario | State Plan approved prior to Governor’s May Budget Revision  LEAs prepare Local Control and Accountability Plan (LCAP) Federal Addenda (LEA plan) for submission by June 30, 2018 based on approved State Plan  Waiver approved prior to September 2018 SBE meeting  2018 California School Dashboard (Dashboard) release incorporates waiver | State Plan is not approved prior to adoption of Budget Act of 2018  LEAs prepare LCAP Federal Addenda (LEA plan) for submission by June 30, 2018 without an approved State Plan in place  Waiver approved prior to September 2018 SBE meeting  SBE approves State Plan for resubmission, reflecting the approved waiver, at September 2018 meeting  State Plan approved prior to end of September 2018  2018 Dashboard release incorporates waiver |
| Worst-Case Scenario | State Plan approved prior to Governor’s May Budget Revision  LEAs prepare LCAP Federal Addenda (LEA plan) for submission by June 30, 2018 based on approved State Plan  Waiver initially and ultimately denied in December 2018, following resubmission and hearing  Dashboard release potentially delayed until early January 2019 pending resolution of the waiver | State Plan is not approved prior to adoption of Budget Act of 2018  LEAs prepare LCAP Federal Addenda (LEA plan) for submission by June 30, 2018 without an approved State Plan in place  Waiver initially and ultimately denied in December 2018, following resubmission and hearing  SBE approves State Plan for resubmission, reflecting the proposed revisions currently before the SBE, at January 2019 meeting  Dashboard release potentially delayed until after January 2019 SBE meeting pending resolution of the waiver and final approval of State Plan |

As the chart highlights, there is little practical difference between the two options under the best-case scenario, in terms of the final result and impact on the 2018 Dashboard. Under either option, to the extent the waiver request would impact the state accountability system and the Dashboard, the waiver would be granted prior to the 2018 Dashboard release.

Additionally, under either the best-case or worst-case scenarios, Option 2 would create significant uncertainty for the upcoming fiscal year:

* Deferring submission of the State Plan risks withholding of all federal ESSA funds for the upcoming fiscal year, including LEA subgrants, and could result in withholding of state administration funds. This is likely to adversely impact the state budget process, as well as local budgeting decisions due to the significance of the state budget process on local decisions.
* Option 2 would also create more uncertainty and potentially disrupt the process for reviewing and approving LEA plans (the LCAP federal addendum). SBE approval of LEA plans is a precondition to receiving local subgrants for federal programs covered by the State Plan.
* Option 1 would avoid uncertainty and these potential consequences.

Under the worst-case scenario, the ultimate outcome is the same under both options: California would ultimately need to implement a State Plan that addresses ED’s reading of the statutes, rather than proceeding under a waiver. There are, however, additional differences between the two options under this scenario:

* Under Option 1, beyond that ultimate outcome, the only additional impact is a potential delay on the 2018 Dashboard release into the 2019 calendar year, to the extent the waiver impacts how one or more indicator is calculated on the Dashboard.
* In contrast, under Option 2, there are numerous additional impacts.
  + As noted, Option 2 would create significant uncertainty for the state budget and local planning and budgeting decisions.
  + Additionally, there would be a potential delay on the 2018 Dashboard release until after the January 2019 SBE meeting (later than under Option 1), to the extent the waiver impacts how one or more indicator is calculated on the Dashboard.
  + Finally, if for any reason the waiver request(s) cannot be submitted before June 1, 2018, it is likely that SBE action to approve the State Plan for submission would be delayed until the March 2019 SBE meeting.

*Prepared by the California Department of Education, April 2018*