

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

gad-may20item01

California State Board of Education  
**May 2020 Agenda**  
**Item #03**

## Subject

Request to Ratify a Waiver of Assessment, Accountability, and School Identification and Federal Funding Flexibility Requirements Pursuant to the Elementary and Secondary Education Act.

## Type of Action

Action, Information

## Summary of the Issue(s)

Beginning in March 2020 nearly all schools in California closed in response to California Governor Gavin Newsom’s Executive Order N-33-20, which issued a Statewide “shelter in place” to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19. Additionally, on March 18, 2020, Governor Newsom issued Executive Order N-30-20 announcing California’s intent to pursue a federal waiver of testing requirements. In this Executive Order, Governor Newsom acknowledged that California’s schools were currently in the middle of the testing window and therefore it was necessary to waive state requirements to administer annual statewide assessments in order to allow local educational agencies (LEAs) to take appropriate actions to mitigate the COVID-19 threat.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed by President Trump on March 27, 2020, allows states and school districts to devote more of their federal resources to technology infrastructure to support distance learning for students and for professional development for teachers who are teaching remotely, many for the first time. By providing a streamlined process to obtain funding flexibilities, states are able to quickly make decisions to meet the needs of their students.

### Waiver of Assessments and Accountability

On March 20, 2020, U.S. Department of Education (ED) Secretary Betsy DeVos, pursuant to authority under section 8401(b) of the Elementary and Secondary Education Act (ESEA), invited states to request a waiver, for the 2019–20 school year, of the assessment requirements in section 1111(b)(2) of the ESEA, the accountability and school identification requirements in sections 1111(c)(4) and 1111(d)(2)(C)-(D), and certain reporting requirements related to assessments and accountability in section 1111(h).

Through these waivers, states would not need to administer statewide assessments to all students, to make annual accountability determinations, to identify schools for support and improvement, or to provide data on its State and local report cards for assessment and accountability information.

On March 26, 2020, State Superintendent of Public Instruction (SSPI) Tony Thurmond and State Board of Education (SBE) President Linda Darling-Hammond submitted, on behalf of the California Department of Education (CDE) and SBE, the Assessment and Accountability Waiver for the 2019–20 school year of the following sections under ESEA Section 8401(b):

* Assessment requirements in section 1111(b)(2);
* Accountability and school identification requirements in sections 1111(c)(4) and 1111(d)(2)(C)-(D); and
* Reporting requirements related to assessments and accountability in section 1111(h).

A public comment period was open through April 15, 2020 for interested parties and members of the public to submit comments or questions concerning this Waiver request. A summary of these comments for this waiver are detailed in Attachment 1.

On March 26, 2020, ED gave the CDE informal approval of the Assessment and Accountability Waiver for the 2019–20 school year. On March 27, 2020, the CDE received formal approval for the Waiver. All 50 states have applied for and received approval for this Waiver.

### Waiver for Federal Funding Flexibility

On April 3, 2020, the ED invited states to request a waiver which would allow for additional flexibilities of federal funds for the 2019–20 school year pursuant to the CARES Act.

Through these waivers, the CDE would be able to approve an LEA to carry over more than 15 percent of its Title I, Part A funds, even if the LEA had received approval to exceed this limitation in the past three years. The CDE would be able to extend for itself and its subgrantees the period of availability of fiscal year (FY) 2018 funds for programs included in the consolidated State plan to allow additional time to obligate those funds. The State would also be able to permit an LEA or consortium of LEAs to use its Title IV, Part A funds to best meet its needs without regard to content-area spending requirements, spending limits on technology infrastructure, or completing a needs assessment. Finally, by waiving the definition of professional development, the CDE and subgrantees would be able to conduct time-sensitive, one-time or stand-alone professional development focused on supporting California’s educators to provide effective distance learning.

On April 10, 2020, SSPI Tony Thurmond and SBE President Linda Darling-Hammond submitted, on behalf of the CDE and SBE, the 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 your 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 2019 Title I, Part A funds.
* Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of FY 2018 funds for programs in which your 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 local educational agency (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.

A public comment period was open through May 1, 2020, for interested parties and members of the public to submit comments or questions concerning this Waiver request. A summary of these comments is detailed in Attachment 2.

On April 13, 2020, ED gave the CDE informal approval of the Federal Funding Flexibility Waiver for the 2019–20 school year. On April 22***,*** 2020the CDE received formal approval for the Waiver.

The full waivers and letters of approval from ED are available for review on the Every Student Succeeds Act (ESSA) webpage at <https://www.cde.ca.gov/re/es/>.

## Recommendation

The CDE recommends that the SBE take the following actions:

1. Ratify the Assessment and Accountability Waiver for the 2019–20 school year of the following sections under ESEA Section 8401(b)

* Assessment requirements in section 1111(b)(2);
* Accountability and school identification requirements in sections 1111(c)(4) and 1111(d)(2)(C)-(D); and
* Reporting requirements related to assessments and accountability in section 1111(h).

1. Ratify the Federal Funding Flexibility Waiver of the following provisions for the 2019–20 school year under ESEA Section 8401(b):

* Section 1127(b) of Title I, Part A of the ESEA so that the CDE 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 the CDE participates under its approved consolidated State plan until September 30, 2021.
* Section 4106(d) of Title IV, Part A of the ESEA related to local educational agency (LEA) needs assessments for the 2019–2020 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.

## Brief History of Key Issues

**January 2020:** The SBE approved the amendments to the ESSA State Plan for submission to ED. The amended State Plan was submitted to ED on January 31, 2020.

**November 2019:** The SBE (1) clarified the definitions of “ineffective teacher” and “out of field” teacher (2) updated long-term goal and revised Status cut scores for the graduation rate indicator (3) approved status cut scored for the English Learner Progress Indicator and (4) approved the methodology for using the English Learner Progress Indicator for school and LEA identification.

**September 2019**: The SBE raised the low graduation threshold to “below 68 percent.”

**July 2019:** The SBE adopted a combined (also known as an extended) four- and five-year graduation rate for the Graduation Rate Indicator.

**July 2018:** The revised version of the State Plan based on theJune 11, 2018, feedback from ED was posted as a part of the Item. The SBE approved a revised State Plan. The revised State Plan was submitted to the ED on July 11, 2018.

**April 2018:** The revised version of the State Plan based on the February 14, 2018 feedback from the ED was posted as a part of the Item. The SBE approved a revised State Plan and directed the CDE to pursue a waiver related to the English Language Progress Indicator. The revised State Plan was resubmitted to the ED the week of April 16, 2018, and the waiver request was submitted on May 16, 2018.

**March 2018:** The revised version of the State Plan based on the February 14, 2018 feedback from the ED was posted as a part of the Item, and the Board was asked to take action on the full revised version. However, due to ongoing negotiations with the ED, the full Item was posted only days prior to the March 2018, SBE meeting. Due to this fact, the CDE staff presented, and the SBE approved, the following sections of the State Plan: A.5, E.1, I.7.g. The SBE announced plans to hold an additional meeting to take action on the remaining Title I accountability sections of the revised State Plan.

**January 2018:** The CDE staff presented to the SBE a revised version of the State Plan based on the content of the interim feedback letter from the ED. The SBE discussed and approved the revised ESSA State Plan for submission to the ED, with a revision to replace the proposal related to the identification of the lowest performing schools with revised language indicating the SBE will consider a proposed State Plan supplement at its March 2018, meeting for submission to the ED that further describes the approach.

**September 2017:** TheCDE staff presented to the SBE a summary of the feedback from stakeholders and a set of proposed revisions to the draft August 2017 State Plan. The SBE discussed and approved the ESSA State Plan for submission to the ED.

**July 2017:** TheCDE staff presented to the SBE a summary of feedback from the California Practitioners Advisory Group and feedback collected during the 30-day public comment period for the draft State Plan. Based on this feedback and new information regarding ED’s application of the State Plan Peer Review Criteria, staff presented a set of proposed revisions to the draft plan. The SBE discussed and approved most staff recommendations, directing staff to make additional adjustments to the State Plan.

**May 2017:** TheCDE staff presented to the SBE the first complete draft of the ESSA State Plan.

**March 2017:** The CDE staff presented to the SBE an update on the development of the State Plan including a status update on issues that need to be addressed in the State Plan and stakeholder feedback regarding State Plan policy decisions. Additionally, the SBE unanimously approved the CDE recommendation to authorize the SBE President to sign and submit any required ESSA assurances to the ED by the due date established by the ED.

**January 2017:** The CDE staff presented to the SBE an update on the development of the ESSA State Plan including proposed guiding principles and recommended approach for the ESSA State Plan development. The SBE unanimously approved the guiding principles.

**November 2016:** TheCDE staff presented to the SBE an update on the development of the ESSA State Plan including the ESSA Consolidated State Plan Development Draft Timeline; the first draft sections of the ESSA Consolidated State Plan; and the communication, outreach, and consultation CDE staff conducted in September and October 2016. SBE members approved CDE staff recommendations to authorize the SBE President to submit a joint letter with the SSPI in response to ESSA regulations for supplement, not supplant under Title I, Part A.

**September 2016:** The CDE staff presented to the SBE an update on the development of the ESSA State Plan including an overview of ESSA programs, an overview of ESSA Consolidated State Plan requirements and related decision points, a preliminary status of various decisions, and areas where final regulations will be needed to address plan requirements.

**July 2016:** The CDE staff presented to the SBE an update on the development of the ESSA State Plan including opportunities in the ESSA to support California’s accountability and continuous improvement system, an update on proposed ESSA regulations, and a description of stakeholder outreach and communications activities. SBE members approved CDE staff recommendations to authorize the SBE President to submit joint letters with the State Superintendent of Public Instruction in response to ESSA regulations for accountability, data reporting, submission of state plans, and assessments.

**May 2016:** TheCDE staff presented to the SBE an update on the development of the ESSA State Plan including Title I State Plan requirements described in the ESSA, outreach and consultation with stakeholders, and a draft State Plan development timeline. The SBE also approved the ESSA 2016–17 School Year Transition Plan and two federal ESSA waiver requests to address double testing in science and Speaking and Listening assessment requirements.

**March 2016:** The SBE approved appointments to the California Practitioners Advisory Group.

**January 2016:** The CDE staff presented to the SBE an update on issues related to California’s implementation of the ESEA, including information regarding ESSA, and the implications for state accountability and state plans.

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

The SBE has not previously acted on this type of assessment and accountability or federal spending flexibility waiver.

## Fiscal Analysis

California’s total kindergarten through grade twelve funding from the 2019–20 California Budget Act is $102 billion:

State $59.0 billion

Local $34.2 billion

Federal $8.8 billion

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

## Attachment(s)

* Attachment 1: Summary of Public Comments for the Federal Assessment and Accountability Waiver (2 pages)
* Attachment 2: Summary of Public Comments for the Federal Funding Flexibility Waiver. This attachment will be provided as an Item Addendum.

# Attachment 1

## Summary of Public Comments for the Federal Assessment and Accountability Waiver

**Background**

The United States Department of Education (ED) approved California’s Assessment and Accountability Waiver request on March 27, 2020. Under the Elementary and Secondary Education Act (ESEA) Section 8401(b), California requested a waiver for the 2019–20 school year of the following sections:

* Assessment requirements in section 1111(b)(2);
* Accountability and school identification requirements in sections 1111(c)(4) and 1111(d)(2)(C)-(D); and
* Reporting requirements related to assessments and accountability in section 1111(h)

**Summary**

The State held a public comment period for all stakeholders and local education agencies (LEAs) through April 15, 2020. Forty comments were submitted from schools, school districts, county offices of education, organizations, and parents to show support, opposition, or provide feedback.

**Support**

The overwhelming majority of public comments are supportive of the waiver. Stakeholders appreciate the State’s focus on health, safety, and well-being of students. If tests were administered, there would not be sufficient instructional time and the results would likely be inaccurate. Many LEAs expressed current challenges they are undertaking while transitioning to distance learning: establishing procedures, developing curriculum and distributing technology; they are grateful that the burden of assessment is lifted.

The Local Control Funding Formula (LCFF) Equity Coalition also submitted a letter in support. The LCFF Equity Coalition’s letter stated, in part, “During this challenging period, school districts are appropriately focused on maintaining the health of our students, their families and our communities. This focus results in school districts not being able to meet these assessment and accountability requirements. Thus, we support the approval of this waiver request.”

**Opposition**

One comment was submitted in opposition. The stakeholder expressed concern over accountability and suggested that assessments should be postponed until students return to school instead of waived.

**Feedback**

Roughly one-third of the public comments received included feedback for assessment and accountability for the 2019–20 school year. Common themes include:

* English Language Proficiency Assessments for California (ELPAC) scores should count for students who have already taken the assessment
* Include more assessments and accountability in the waiver, such as:
* Advanced Placement (AP) exams
* Comprehensive Support and Improvement [Section 1111(d)1]
* Dashboard metrics
* Local Control Accountability Plans (LCAPs)
* Waive testing for the 2020–21 school year

# Attachment 2

## Summary of Public Comments for the Federal Funding Flexibility Waiver

**Background**

This information will be provided once the public comment period concludes on May 1, 2020.