

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

gad-jan21item02

California State Board of Education  
**January 2021 Agenda**  
**Item #09**

## Subject

Request to Approve a Waiver for Title IV, Part A Funding Flexibilities

## 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. The impact of COVID-19 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.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed by Congress and signed into law on March 27, 2020, authorized the Secretary of Education to have the authority to offer a streamlined waiver process to State educational agencies.

On April 3, 2020, the U.S. Department of Education (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 California Department of Education (CDE) was be able to, among many other things, permit a local educational agency (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.

On April 10, 2020, State Superintendent of Public Instruction (SSPI) Tony Thurmond and the California State Board of Education (SBE) President Linda Darling-Hammond submitted, on behalf of the CDE and SBE, the Federal Funding Flexibility Waiver for the 2019–20 school year. Among the topics covered by the waiver was a Title IV, Part A Funding Flexibility Waiver. On April 22***,*** 2020the CDE received formal approval for the Waiver. This waiver request was approved by the SBE on May 7, 2020.

In December 2020, ED invited states to request a similar waiver under the Elementary and Secondary Education Act (ESEA) section 8401(b) for the 2020-2021 school year and FY 2020 Title IV, Part A funds.

The Title IV, Part A Funding Flexibility Waiver would waive the following requirements for the 2020-2021 school year and FY 2020 Title IV, Part A funds:

* 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 fiscal year (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.

The CDE is required to provide for public comment on this waiver. On December 17, 2020, the CDE sent out a communication to the field informing them that the CDE was accepting comments for this waiver through January 5, 2021. The communication from CDE inviting public comment, the letter from ED inviting states to apply for the waiver, and the waiver template are all housed on the ESSA Coronavirus (COVID-19) Funding Flexibility website. 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.

## Recommendation

The CDE recommends that the SBE ratify the 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 fiscal year (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.

## Brief History of Key Issues

**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 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.

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

The SBE has previously acted on this type of funding flexibility waiver when it ratified the Federal Funding Flexibility Waiver in May 2020.

## Fiscal Analysis

California’s total kindergarten through grade twelve funding from the 2020–21 California Budget Act is $97.6 billion:

State: $52.8 Billion (53.4 percent)

Local: $32.8 Billion (33.1 percent)

Federal: $12 Billion (12.1 percent)

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

## Attachment(s)

* Attachment 1: Waiver Template (2 pages)

# Attachment 1

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| --- |
| *This template is provided as an example that may be used to submit a request for one or more waivers of the requirements listed below. While this template is not required, please note that the U.S. Department of Education will be able to respond in an expedited manner to requests that follow the template and include all necessary information. For assistance, please contact* [*OESE.Title.IV-A@ed.gov*](mailto:OESE.Title.IV-A@ed.gov)*.* |

The Honorable Frank T. Brogan

Assistant Secretary for Elementary and Secondary Education

Office of Elementary and Secondary Education

U.S. Department of Education

400 Maryland Avenue, SW

Washington, DC 20202

Dear Assistant Secretary Brogan:

I am writing to request a waiver on behalf of the State educational agency (SEA) and its subgrantees (i.e., local educational agencies (LEAs)), pursuant to section 8401(b) of the Elementary and Secondary Education Act of 1965 (ESEA), of one or more of the following requirements of Title IV, Part A of the ESEA.

State:

*Please check all that apply:*

* 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 fiscal year (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.

I am requesting this waiver due to the extraordinary circumstances created by the COVID-19 pandemic, for which a national emergency has been declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. As a result of this health crisis, schools and communities are facing unprecedented obstacles as the 2020-2021 school year begins. Providing additional flexibilities in the use of Title IV, Part A funds will advance student academic achievement by helping schools address their critical needs.

In seeking this waiver, I assure that:

* The SEA will use, and ensure that its LEAs use, Title IV, Part A funds in accordance with all other provisions of Title IV, Part A of the ESEA, and all applicable regulations, program plans, and applications.
* The SEA has provided the public and all LEAs in the State with notice of, and the opportunity to provide comments on this request in the manner in which the SEA customarily provides such notice and opportunity to comment and has enclosed with this waiver request the comments received, if any, and a description of how the SEA addressed such comments.

Thank you in advance for your consideration.

Sincerely,

[Chief State School Officer]