

From: [OCO Intergovernmental](#)
Subject: U.S. Department of Education - Invitation to States to Request SES Waivers
Date: Thursday, March 31, 2011 11:04:22 AM
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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

Dear Chief State School Officer:

For the past two years, the U.S. Department of Education (Department) has invited States to request two waivers of certain statutory and regulatory requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. In order to help States and their local educational agencies (LEAs) continue to exercise certain flexibility with respect to the operation of their Title I, Part A programs, I am pleased to invite States to request these waivers again for the 2011---2012 school year.

Specifically, I am inviting each State educational agency (SEA) to request the following one-year waivers for the 2011-2012 school year:

- (1) A waiver of the provision that prohibits an SEA from approving as a provider of supplemental educational services (SES) a school identified for improvement, corrective action, or restructuring or an LEA identified for improvement or corrective action (34 C.F.R. § 200.47(b)(1)(iv)(A), (B)).
- (2) A waiver that would provide an LEA with the flexibility to offer SES to eligible students in Title I schools in year one of improvement (a year earlier than the law normally requires), in addition to offering public school choice options to students in those schools, and to count the costs of providing SES to those students toward meeting the LEA's "20 percent obligation."

Additional information regarding requests for each of these waivers is set forth below.

Requests for Waivers of the Prohibition on Approving a School or LEA Identified for Improvement, Corrective Action, or Restructuring (Identified School or LEA) as an SES Provider

I am inviting any interested SEA to request a waiver of 34 C.F.R. § 200.47(b)(1)(iv) (A), (B) so that it may approve as an SES provider for the 2011–2012 school year an identified school or LEA. This waiver would allow, but not require, an SEA to approve an identified school or LEA as an SES provider. The decision about which SES providers to approve would remain a decision for the SEA. The waiver would not constitute approval of a particular identified school or LEA to serve as an SES provider, nor would it constitute a waiver of any State law or policy that prohibits all or certain identified schools or LEAs from serving as an SES provider.

An SEA that intends to apply for this waiver may invite identified schools and LEAs to apply to the SEA for conditional approval to be an SES provider. The conditional approval to serve as an SES provider would become final upon receipt of this waiver. To receive conditional approval, an identified school or LEA must, like any prospective SES provider, follow the SEA's application process and meet all of the SEA's customary approval requirements.

Prior to granting conditional approval to any identified schools or LEAs, the SEA and affected schools and LEAs should be aware that approval cannot become final unless and until the waiver is granted. In other words, an identified school or LEA may not begin to serve as an SES provider until the SEA has received a waiver, but receipt of conditional approval may enable the school or LEA to begin planning its provision of services. If an SEA's waiver request ultimately is not approved by the Department, the SEA must consider the conditional approval granted to an identified school or LEA to be null and void.

An SEA that receives this waiver must submit to the Department by September 30, 2012 a report containing:

§ The total number of LEAs identified for improvement or corrective action that were approved to be an SES provider for the 2011–2012 school year; and

§ The total number of schools identified for improvement, corrective action, or restructuring that were approved to be an SES provider for the 2011–2012 school year.

An example of a request to waive the regulatory provision that prohibits an SEA from approving as an SES provider an identified school or LEA is enclosed with this letter.

Requests for Waivers to Allow An LEA to Offer SES in Addition to Public School Choice to Eligible Students in Title I Schools in the First Year of School Improvement

I am also inviting any interested SEA to request a waiver for the 2011–2012 school year to allow any LEA in the State to offer SES in addition to public school choice to eligible students in Title I schools in the first year of improvement and to count the costs of providing SES to those students toward the LEA’s “20 percent obligation.”

Under section 1116(b)(10) of the ESEA and 34 C.F.R. § 200.48, an LEA with one or more schools in improvement, corrective action, or restructuring must spend an amount at least equal to 20 percent of its Title I, Part A, Subpart 2 allocation on public school choice-related transportation and SES (“20 percent obligation”). In the absence of a waiver, in determining whether an LEA has met its 20 percent obligation, an LEA may not count the funds that it spends on providing SES to students attending schools in the first year of improvement because the LEA has no statutory or regulatory obligation to provide SES to students attending those schools. (See ESEA section 1116(b)(5)(B), (b)(7)(C)(iii), and (b)(8)(A)(ii), requiring SES only for eligible students attending schools in the second year of school improvement, in corrective action, or in restructuring.)

This waiver would provide an LEA with the flexibility to offer SES to eligible students in Title I schools in year one of improvement (a year earlier than the law normally requires), in addition to offering public school choice options to students in those schools, and to count the costs of providing SES to those students toward meeting the LEA’s 20 percent obligation. Note that an LEA that implements this waiver may not offer *only* SES to eligible students in schools in the first year of improvement, but may offer SES *in addition to* public school choice to eligible students in those Title I schools.

In order to receive this waiver, an SEA must include an assurance that the SEA will implement the waiver only with respect to an LEA that will meet all statutory and regulatory requirements related to SES for the 2011–2012 school year (other than the particular requirement being waived). An SEA that receives this waiver must submit to the Secretary, by September 30, 2012, a report that includes the name and NCES District Identification Number for each LEA implementing the waiver.

(Independent of this reporting requirement, an SEA must submit certain information regarding LEAs' implementation of public school choice and SES requirements through *EDFacts*.)

An example of a request for this waiver is enclosed with this letter.

For additional information about the general requirements for waiver requests under section 9401 of the ESEA, please consult Section A of the Department's Non-Regulatory Guidance on Title I, Part A Waivers (available at: <http://www2.ed.gov/policy/gen/leg/recovery/programs.html>).

Although there is no due date by which an SEA must submit its request for either or both of these waivers, I encourage you to submit your requests as soon as possible. In the meantime, if you have any questions, please contact Victoria Hammer of my staff at Victoria.Hammer@ed.gov or 202-260-1438 or Sharon Hall at Sharon.Hall@ed.gov or 202-260-0998. Thank you again for your efforts on behalf of the students in your State.

Sincerely,

Michael Yudin
Deputy Assistant Secretary
for Policy and Strategic Initiatives

Enclosures

cc: State Title I Directors

**Example of Request to Waive Prohibition on Approving an Identified School
or LEA as an SES Provider**

Dear Assistant Secretary:

I am writing on behalf of [State] to request a one-year waiver of the Title I, Part A regulatory provision that prohibits a State from approving as providers of

supplemental educational services (SES) schools identified for improvement, corrective action, or restructuring and local educational agencies (LEAs) identified for improvement or corrective action (34 C.F.R. § 200.47(b)(1)(iv)(A), (B)).

Under the law, [State] may approve as an SES provider only an entity that has a demonstrated record of effectiveness in increasing student academic achievement. [State] believes that identified schools and LEAs may be able to establish that they have an effective program that can help improve academic achievement of students and should not be prevented automatically from gaining approval simply because of their improvement status.

[State] has set the following annual measurable objectives (AMOs) in reading and mathematics, subjects that are among those covered by SES providers in [State] for the 2011–2012 school year:

[Insert table of [State]'s AMOs]

[State] will determine adequate yearly progress (AYP) based on assessments administered in the 2011–2012 school year in accordance with the requirements of section 1111(b)(2) of the Elementary and Secondary Education Act of 1965 (ESEA)

^[1]
[and in accordance with the growth model approved by the Department]. [State] believes that, ultimately, allowing some identified schools or LEAs to serve as SES providers may help more students within [State] to reach the State's proficiency objectives.

If [State] is granted the requested waiver, [State] will ensure that only those LEAs and schools that meet the State's requirements for SES providers are approved to be on the State's list of approved SES providers for the 2011–2012 school year.

Prior to submitting this waiver request, [State] provided all LEAs in the State with notice and a reasonable opportunity to comment on this request. [State] provided such notice by *[insert description of notice, e.g., sending a letter to each LEA on [date] or sending an email to each LEA on [date]]* (see copy of notice attached). Copies of all comments that [State] received from LEAs in response to the notice are attached hereto. [State] has also provided notice and information regarding this waiver request to the public in the manner in which [State] customarily provides such notice and information to the public *[insert description of notice, e.g., by publishing a notice of the waiver request in the following newspapers; by posting information regarding the waiver request on its Web site]* (see attached copy of public notice).

[State] hereby assures that, if it is granted the requested waiver, it will submit to the U.S. Department of Education, by September 30, 2012, a report that provides the total number of LEAs identified for improvement or corrective action that were approved to be an SES provider for the 2011–2012 school year and the total number of schools identified for improvement, corrective action, or restructuring that were approved to be an SES provider for the 2011–2012 school year.

Please feel free to contact me by phone or email at [*contact information*] if you have any questions regarding this request. Thank you for your consideration.

Example of Request to Allow LEAs to Offer SES, in Addition to Public School Choice, to Eligible Students in Title I Schools in The First Year of School Improvement

Dear Assistant Secretary:

I am writing on behalf of [State] to request a one-year waiver to allow local educational agencies (LEAs) within [State] with one or more schools in improvement, corrective action, or restructuring to offer supplemental educational services (SES), in addition to public school choice, to eligible students in Title I schools in the first year of school improvement and to count the funds spent providing SES to eligible students in those schools toward an individual LEA's obligation to spend an amount at least equal to 20 percent of its Title I, Part A, Subpart 2 allocation on SES and choice-related transportation (20 percent obligation). In the absence of such a waiver, an LEA may only count funds spent providing SES to eligible students attending schools in the second year of improvement, in corrective action, or in restructuring toward its 20 percent obligation (ESEA section 1116(b)(10); 34 C.F.R. § 200.48).

[State] believes that the requested waiver will increase the quality of instruction for students and improve the academic achievement of students by providing an incentive for an LEA to offer SES to eligible students one year earlier than the law requires, thereby enabling more students within an LEA to enroll in SES. [State] believes that parents of children attending schools in the first year of improvement will be eager to enroll their children in SES, and that the increased enrollment in SES thus enabled by the waiver will contribute to improving student achievement.

[State] has set the following annual measurable objectives (AMOs) in reading and mathematics, which are among the subjects that are covered by SES providers in

[State], for the 2011–2012 school year:

[Insert table of [State]’s AMOs]

[State] will determine adequate yearly progress (AYP) based on assessments administered in the 2011–2012 school year in accordance with the requirements of section 1111(b)(2) of the ESEA *[and in accordance with the growth model*

[2]
approved by the Department]. [State] believes that, ultimately, allowing LEAs to offer SES to eligible students in Title I schools in the first year of improvement and count the costs of providing SES to those students toward an individual LEA’s 20 percent obligation may help more students within the State to reach the State’s proficiency objectives.

[State] hereby assures that, if it is granted the requested waiver, [State] will implement the waiver only with respect to those LEAs that provide an assurance that they will meet all statutory and regulatory requirements related to SES in the 2011–2012 school year (other than the particular funding requirement being waived).

Prior to submitting this waiver request, [State] provided all LEAs in the State with notice and a reasonable opportunity to comment on this request. [State] provided such notice by *[insert description of notice, e.g., sending a letter to each LEA on [date] or sending an email to each LEA on [date]]* (see copy of notice attached). Copies of all comments that [State] received from LEAs in response to this notice are attached hereto. [State] has also provided notice and information regarding this waiver request to the public in the manner in which the State customarily provides such notice and information to the public *[e.g., by publishing a notice of the waiver request in the following newspapers; by posting information regarding the waiver request on its website]* (see attached copy of public notice).

[State] hereby assures that, if it is granted the requested waiver, it will submit to the U.S. Department of Education, by September 30, 2012, a report that sets forth the name and NCES District Identification Number for each LEA implementing the waiver.

Please feel free to contact me by phone or email at *[contact information]* if you have any questions regarding this request. Thank you for your consideration.

[\[1\]](#) The language in brackets is only applicable to a State with a Department-approved growth model.

[\[2\]](#) The language in brackets applies only to a State with a Department-approved growth model.