

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

exec-gad-jan23item01

California State Board of Education
**January 2023 Agenda**
**Item #09**

## Subject

Request to Ratify a Waiver for Los Angeles Unified School District Fiscal Year 2020 Title I, Part A and General Education Provisions Act Funding.

## 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 (SBE) ratify the waiver that was submitted to the United States Department of Education (ED) for Section 421(b) of the General Education Provisions Act (GEPA) (20 U.S.C. §1225[b]), also known as the Tydings Amendment, to facilitate implementation of certain corrective actions imposed on the Los Angeles Unified School District (LAUSD), by extending to September 30, 2023, the period in which to obligate and expend LAUSD’s allocation of 2020–21, Title I, Part A funds.

The fiscal year (FY) 2020 waiver would allow for Title I, Part A funds allocated to LAUSD to be extended in order to allow for activities to improve student achievement for students eligible for equitable services.

The CDE has received three complaints filed against LAUSD related to Equitable Services for FY 2020 Title I, Part A funds. The Every Student Succeeds Act (ESSA) Section 1117(a) requires any LEA who receives Title I, Part A funds to provide eligible children attending private elementary and secondary schools, their teachers, and their families with Title I services or other benefits that are equitable to those provided to eligible public school children, their teachers, and their families.

The LAUSD FY 2020 Title I, Part A fund waiver is needed in relation to two complaints that were filed by the Builders of Jewish Education (BJE) consortium and one complaint brought about by the Archdiocese of Los Angeles.

On November 4th, 2022 SSPI Tony Thurmond and SBE President Linda Darling-Hammond submitted, on behalf of the CDE and SBE, the FY 2020 LAUSD Title I, Part A Tydings Waiver to ED.

Per the requirements of Section 8401 (20 U.S.C. §7861) of the Elementary and Secondary Education Act (ESEA), the CDE provided the public and members of the public with notice of the proposed waiver and am opportunity to comment up to December 15th, 2022.

The CDE has put together an internal group that is committed to finding a resolution to the equitable services complaints brought against LAUSD. The CDE internal team has supported mediation between LAUSD and the private schools in order to ensure that a fair settlement is reached. Additionally, time is vital in protecting these funds so that eligible students may receive the necessary services to which they are entitled.

## Recommendation

The CDE recommends that the SBE ratify the Tydings waiver that was submitted to ED in order to extend the period of availability of LAUSD’s FY 2020 Title I, Part A funds to September 30, 2023, in order to allow the district to improve student achievement for students eligible for equitable services.

## Brief History of Key Issues

**September 2021:** The SBE approvedthe 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

The SBE has previously acted on statewide funding waivers when it ratified waivers related to the period of availability for Title I, Part A funds in September 2021, those related to Title IV, Part A funds in January 2021, and the Federal Funding Flexibility Waiver in May 2020.

## Fiscal Analysis

California’s total kindergarten through grade twelve funding from the 2021–22 California Budget Act is $123 billion:

State: $67.6 Billion (54.4 percent)

Local: $36.6 Billion (29.4 percent)

Federal: $18.8 Billion (15.2 percent)

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

## Attachment(s)

* Attachment 1: Submitted Tydings Waiver Request to Extend the Availability of Fiscal Year 2020 Title I, Part A Funds Allocated to Los Angeles Unified School District (3 pages)
* Attachment 2: Public Comment Announcement (1 page)

# Attachment 1

## Submitted Tydings Waiver Request to Extend the Availability of Fiscal Year 2020 Title I, Part A Funds Allocated to Los Angeles Unified School District (2 pages)



**California Department of Education**

**Tony Thurmond**

*State Superintendent of Public Instruction*

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**California State Board of Education**

**Linda Darling-Hammond**

*State Board President*

1430 N Street, Room 5111, Sacramento, CA 95814

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November 4, 2022

Dr. James Lane
Acting Assistant Secretary for Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-6100

Dear Dr. Lane:

Subject: Request for California Tydings Waiver Extensions

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) 2020 funds for expenditure of certain FY 2020 Title I, Part A funds as described below.

Per the requirements of Section 8401 (20 U.S.C. §7861) of the Elementary and Secondary Education Act (ESEA), 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. Because of the urgency of this request, the State is submitting this request contemporaneously with its request for public comment but will forward any comments received and will work with your staff to ensure that public concerns are addressed.

The FY 2020 Tydings waiver 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 three separate complaints to the State’s private school ombudsman (ESEA §8503; 20 U.S.C. §7883) and two by the Builders of Jewish Education (BJE IV and V), LAUSD was ordered to restore funds for the provision of Title I services eligible to BJE. For BJE IV, the matter is on appeal with the U.S. Department of Education (ED). In the BJE V case, it is being determined how services will be provided to BJE students. The third case was brought about by the Archdiocese of Los Angeles (ADLA II). 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 the State to pull funds from other priorities to meet 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 request in mediation.

To ensure that the FY 2020 Title I, Part A funds are expended as directed in the corrective actions, the CDE is requesting a Tydings waiver through September 30, 2023. The waiver will permit LAUSD to continue to advance eligible BJE students’ academic achievement through the provision of Title I 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, 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. 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 Joseph Saenz, Federal Policy Liaison, Government Affairs Division, at 916-591-6391 or jsaenz@cde.ca.gov.

Sincerely,

Tony Thurmond

State Superintendent of Public Instruction

California Department of Education

Linda Darling-Hammond

President

California State Board of Education

TT/LDH:js

# Attachment 2

## Public Comment Public Period for California's Tydings Waiver Request to Extend the Availability of Fiscal Year 2020 Title I, Part A Funds Allocated to Los Angeles Unified School District (LAUSD)

The California Department of Education, 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 § 1225[b]), also known as the Tydings Amendment, to facilitate implementation of certain corrective actions imposed on the LAUSD, by extending to September 30, 2023, the period in which to obligate and expend LAUSD’s allocation of 2020–21, Title I, Part A funds.

The fiscal year 2020 waiver would allow for Title I, Part A funds allocated to LAUSD to carry out the activities for which the previous waivers were requested, and to contribute to improved student achievement for students eligible for equitable services.

A day public comment period is open for interested parties and members of the public to submit comments or questions concerning this Tydings Waiver request. Until **December 15, 2022**, comments or questions may be submitted to the Title I Policy, Program, and Support Office at TitleI@cde.ca.gov.