

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

cdoi-sasd-sep24item03

# California State Board of Education September 2024 Agenda Item #16

## Subject

Approve Requests to the United States Department of Education for Waivers of Section 421(b) of the General Education Provisions Act [20 U.S.C. 1225(b)] (Tydings Amendment) for Los Angeles Unified School District to extend the Period for Obligation and Expenditure of Federal Funds through September 30, 2025, as follows: An Initial Waiver for Fiscal Year 2022 Title I, Part A, Title III, and Title IV, Part A funds; and an extension of existing Waivers for Fiscal Years 2019, 2020, and 2021 Title I, Part A and Title IV, Part A funds.

## Type of Action

Action, Information

## Summary of the Issue(s)

The California Department of Education (CDE) recommends that the California State Board of Education (SBE) approve the requests to waive Section 421(b) of the General Education Provisions Act (GEPA) [20 U.S.C. Section 1225(b)] (the Tydings Amendment), to be submitted to the United States Department of Education (ED), for fiscal year (FY) 2022 and to extend the waivers for FYs 2019, 2020, and 2021 (a) to facilitate implementation of certain corrective actions imposed on the Los Angeles Unified School District (LAUSD); and (b) to ensure the continued availability of funds pending resolution of three pending complaints.

From 2016 to 2023, the CDE has received a total of ten complaints under the Elementary and Secondary Education Act of 1965 (ESEA) sections 1117(b)(6)(A) (Title I, timely and meaningful consultation), 1117(c)(1) (Title I, calculation of low-income data for private school students), 8501 (Titles III and Title IV, Part A, timely and meaningful consultation; timely services) and 8503 (complaint process), against LAUSD related to the provision of equitable services under Title I, Part A, Title III, and Title IV, Part A. ESEA Sections 1117(a) and 8501 require any local educational agency (LEA), which receives Title I, Part A, Title III, and Title IV, Part A funds to provide eligible children attending private elementary and secondary schools their teachers, parents and families, with services or other benefits that are equitable in comparison to those provided to eligible public school children, their teachers, and families. Moreover, funds to provide such services must be allocated under Title I, Part A proportionally based on the number of private school children from low-income families residing in the LEA's attendance area [Section 1117(c)], or, in the case of Titles III and Title IV, Part A, equal, taking into account the number and educational needs of the children to be served, to the expenditures for participating public school children [Section 8501(a)(4)(A)].

The ten complaints were filed by three private school organizations: Los Angeles Torah Consortium of Schools, Builders of Jewish Education (BJE) consortium, and the Archdiocese of Los Angeles (ADLA).

The period to resolve these complaints has been significantly longer than the statutory timeline in which Title I, Part A, Title III, and Title IV, Part A funds must be obligated and expended, due to the complexity of the complaints, the initial decision, and the ED appeal process.[[1]](#footnote-1) As such, the FY 2022 Tydings waiver would allow Title I, Part A, Title III, and Title IV, Part A funds allocated to LAUSD with the current expiration date of September 30, 2024, to remain available until September 30, 2025, to provide equitable services to contribute to improved student achievement for vulnerable, academically eligible students. 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 any requests if mediation arises. To ensure that the FY 2022 Title I, Part A, Title III, and Title IV, Part A funds can be expended based on the outcome of the review, the CDE is requesting a Tydings waiver through September 30, 2025.

The FY 2019, 2020, and 2021 Tydings Amendment waiver extensions would allow for Title I, Part A and Title IV, Part A funds allocated to LAUSD to carry out the activities for which the original waivers were requested and to contribute to improved student achievement for eligible students in the BJE IV, BJE V, BJE VI and ADLA II complaints. The waiver will permit LAUSD to continue to advance eligible ADLA and BJE students’ academic achievement through the provision of Title I, Part A and Title IV, Part A.

In general, Section 421(b) of GEPA, known as the Tydings Amendment, permits any federal funds that are not obligated and expended during the federal fiscal year (October 1 to September 30) for which such funds were appropriated to remain available for obligation and expenditure during the succeeding fiscal year. Waiver of the Tydings Amendment permits the period for obligation and expenditure of the funds to be extended for a maximum of four additional years. These proposed extensions apply to the effective years, which is necessary to support the future resolution of these complaints and to ensure that any corrective actions imposed upon LAUSD are resolved in a timely manner utilizing funds originally appropriated for the years to which the complaints relate. While the CDE recognizes that these types of requests are not ideal, the additional time will 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 school district or State to pull funds from other priorities to meet its obligations.[[2]](#footnote-2)

Additionally, in October 2021, the CDE established an internal workgroup to find a resolution to the equitable services complaints brought against LAUSD and to support mediation between the district and the private schools to ensure that fair and timely settlements are reached. The workgroup meets biweekly to review the progress of each complaint, discuss support efforts, and formalize next steps. For each of the complaints noted below, the CDE has worked closely with LAUSD leadership to provide technical assistance surrounding the statutory requirements for LEAs pertaining to equitable services. Under Section 8501 of the ESEA, California’s state-designated Ombudsman has been providing mediation and consultation support to both LAUSD and private school organizations, as requested. Furthermore, CDE staff meet monthly with ED representatives to provide a progress update on each complaint, discuss issues arising during implementation of corrective actions, and obtain guidance from ED.

## Per the requirements of Section 8401 (20 U.S.C. §7861) of the ESEA, the CDE will provide the public and members of the public with notice of the proposed waiver and an opportunity to comment up to August 30, 2024.

## Recommendation

The CDE recommends that the SBE approve the request to ED for a Tydings Amendment waiver to extend the period of availability of LAUSD’s FY 2022 Title I, Part A, Title III, and Title IV Part A funds to September 30, 2025.

CDE also recommends that the SBE approve the requests for Tydings Amendment waivers to extend the period for availability of LAUSD’s FY 2019, 2020, and 2021 Title I, Part A, and FY 2021Title IV Part A funds to September 30, 2025.

## Brief History of Key Issues

The CDE has received a total of ten complaints from private schools against LAUSD. To date, five of these cases have been resolved, including implementation of corrective actions. The proposed waiver requests relate to the five remaining complaints, in two of which ED has issued an appeal decision with corrective actions; and the remaining three are in the complaint resolution phase. The following is a status update for each of the ten cases:

### Resolved Cases:

* Los Angeles Torah School Consortium (2015−16 Funding):

* + Complaint made: March 2016, CDE decision: May 8, 2016; ED appeal decision with corrective actions: April 3, 2018
  + Tydings Amendment waiver extensions: FYs 2018, 2019, 2020, 2021, 2022
  + Status: Resolved in August 2022
* ADLA I (2017−18 Funding):
  + Appeal by ADLA of LAUSD's Investigation Report received: May 2018; CDE decision on appeal with corrective actions: November 2018
  + Tydings Amendment waiver extensions: FYs, 2020, 2021, 2022, 2023
  + Status: Resolved in August 2023
* BJE I (2017−18 Funding):
  + Complaint made: May 2018; CDE decision: July 16, 2018; ED appeal decision with corrective actions: January 25, 2019.
  + Tydings Amendment waiver extensions: FYs 2020, 2021, 2022, 2023
  + Status: Resolved in August 2023
* BJE II (2018−19 Funding):
  + Complaint made: September 2018, CDE decision: February 11, 2019; ED decision on appeal: December 16, 2019
  + Tydings Amendment waiver extensions: FYs 2020, 2021, 2022, 2023
  + Status: Resolved by settlement agreement in December 2023
* BJE III (2018−19 Funding):
  + Complaint made: March 2019, CDE decision December 16, 2019; ED appeal decision June 14, 2021
  + Tydings Amendment waiver extensions: FYs 2020, 2021, 2022, 2023
  + Status: Resolved by settlement agreement in December 2023

### Open Cases:

* ADLA II (2018−19 and 2019−20 Funding):
* Complaint made: September 2019; CDE decision June 25, 2021; ED appeal decision with corrective actions: November 16, 2023
* Current Tydings Amendment waiver extensions: FYs 2021, 2022, 2023
* Status: This complaint is currently in settlement negotiations between LAUSD’s and ADLA’s respective counsel to resolve the corrective actions, following mediation by Judicial Arbitration and Mediation Service. According to LAUSD’s counsel, these negotiations are making incremental progress. On June 25, 2021, CDE issued its decision on ADLA's consolidated complaints, requiring various corrective actions to be taken by LAUSD. On July 24, 2021, LAUSD appealed CDE's decision to ED. On November 16, 2023, ED issued its appeal decision ordering LAUSD to take the following corrective actions:

1. With respect to poverty data for school year (SY) 2019–2020, provide ADLA with at least 30 calendar days to submit documentation to support the data submitted to LAUSD in October 2018 and redetermine the poverty count for ADLA based on that documentation without regard to whether a school submitted a needs assessment.

2. With respect to the proportional share for both SYs 2018–2019 and 2019–2020—Review, in consultation with ADLA officials, the surveys received to determine whether they constitute a representative sample sufficient to allow for extrapolation. If a representative sample is available, use it to extrapolate complete data for those schools that used surveys. If a representative sample is not available, consult with ADLA to identify another source or sources of data that can be used in lieu of or in addition to the survey data received.

3. Recalculate the proportional share using the complete data and provide that information to ADLA, including how said amount was calculated. This must be completed either (a) within 60 calendar days of the date of this determination if a representative sample is available, or (b) within 60 calendar days from when LAUSD, in consultation with ADLA, identifies the additional source(s) of poverty data it will use if a representative sample is not available.

4. Through consultation with ADLA, identify the services LAUSD will provide to ADLA schools using the recalculated proportional share, considering services that were previously applied during the respected school years.

5. Provide the agreed-upon services to eligible students in ADLA schools within 90 calendar days of the date of this determination or by another date agreed upon during consultation with ADLA.

6. Consult with ADLA prior to making any decision regarding whether to pool Title I funds to provide equitable services to students in ADLA’s schools and document the results of that consultation, including LAUSD’s rationale for its decision.

7. Consult with ADLA throughout the implementation of equitable services regarding the size and scope of equitable services to be provided, the proportion of funds allocated for services, and how that proportion is determined. Such consultation must include periodic discussion of the amount of funds for services used and not used.

* ADLA III (2022−23 Funding):
* Complaint made: May 2023
* Current Tydings Amendment waiver: FY 2025
* Status: This complaint is currently undergoing review by CDE staff and contains allegations pertaining to Title I, Part A, Title III, and Title IV, Part A funds. The allegations consist of lack of timely and meaningful consultations relative to the proportional share, pooling, and services. It is also highly likely that the decision will be appealed to ED, which could take over a year to resolve. It is the CDE’s understanding that there is a reasonable prospect that once ADLA II has been resolved settlement negotiations will follow on regarding ADLA III.
* BJE IV (2019−20 Funding):
  + Complaint made: February 2020
  + Current Tydings Amendment waiver extensions: FYs 2021, 2022, 2023,
  + Status: This complaint has been in protracted settlement negotiations between LAUSD and BJE to resolve the corrective actions. On August 7, 2024, it is understood that the parties reached agreement and are drafting a settlement agreement. To facilitate implementation of that agreement, it is essential that the period of availability of FY 2019 funds be extended through September 30, 2025, as under the agreement those funds will be utilized first to provide services.
  + On November 10, 2021, the CDE issued a decision on BJE's complaint. On December 19, 2021, LAUSD appealed the decision to ED. On August 23, 2023, ED issued its appeal decision. ED ordered LAUSD to take the following corrective actions:

1.Review, in consultation with BJE officials, the family income surveys received to determine whether they constitute a representative sample sufficient to allow for extrapolation. If a representative sample is available, use it to extrapolate complete data for the eight schools that submitted addresses. If a representative sample is not available, consult with BJE to identify another source or sources of poverty data for the eight schools that submitted addresses that can be used in lieu of or in addition to the survey data received.

2. Recalculate the proportional share for SY 2020−2021 using the complete data and provide that information to BJE, including how the amount was calculated. This must be completed either (a) within 60 calendar days of the date of this determination if the representative sample above is available, or b) within 60 calendar days from when LAUSD, in consultation with BJE, identifies the additional source(s) of poverty data it will use if a representative sample is not available.

3. Through consultation with BJE, identify the services LAUSD will provide to BJE using the recalculated proportional share, considering services that were already provided during school year 2020−2021.

4. Provide the agreed-upon services to eligible BJE students, which must begin within 90 calendar days of the date of this determination or by another date agreed upon during consultation with BJE.

* BJE V (2020-21 Funding):
  + Complaint made: July 2020
  + Current Tydings Amendment waiver extensions: FYs 2022, 2023
  + Status: This complaint alleges that LAUSD delayed in providing virtual online services due to the closure of schools at the start of the pandemic in March 2020. Additionally, LAUSD did not engage in timely and meaningful consultation regarding BJE’s repeated requests for details of funding allocated for equitable services and supporting fiscal documentation as well as the delivery of services. This complaint is unique as BJE requests that CDE provide direct Title I services under ESEA Section 1117(b)(6) (c), which allows, if certain conditions are met, a state educational agency to provide services directly or through contracts to eligible private school students.
  + Resolution of this complaint has previously been deferred pending resolution of existing BJE complaints. Now that BJE IV has reached a settlement pending execution of a formal settlement agreement, serious consideration will be given to issuing a decision without waiting for resolution of BJE VI.
* BJE VI (2021-22 Funding)
  + Complaint made: June 2022
  + Current Tydings Waiver extension: FY 2023
  + Status: This complaint is currently undergoing review by CDE staff and contains allegations pertaining to Title I, Part A and Title IV, Part A funds. The allegations consist of lack of timely and meaningful consultations relative to the proportional share, pooling, and services.

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

In January 2023, the SBE ratified a waiver for Los Angeles Unified School District Fiscal Year 2020 Title I, Part A and General Education Provisions Act Funding. (<https://www.cde.ca.gov/be/ag/ag/yr23/documents/jan23item09.docx>)

In September 2023, the SBE ratified a waiver for Los Angeles Unified School District Fiscal Year 2021 Title I, Part A, Title IV, A, and General Education Provisions Act Funding and to Ratify a Waiver to Extend the Period for Expenditure of certain FY 2018, 2019, and 2020 Title I, Part A funds. (<https://www.cde.ca.gov/be/ag/ag/yr23/documents/sep23item05.docx>)

In September 2021, the SBE ratified a waiver for Title I, Part A and General Education Provisions Act Flexibilities. (<https://www.cde.ca.gov/be/ag/ag/yr21/documents/sep21item07.docx>)

## Fiscal Analysis (as appropriate)

The total 2023-24 overall funding (federal, state, and local) for all TK–12 education programs is $ 129.7 Billion.

State: $78.3 Billion (60.4 percent)

Local: $41.5 Billion (32 percent)

Federal: $8.5 Billion (6.5 percent)

Lottery: $1.4 billion (1.1 percent)

LAUSD Title I Part A, Title III, and Title IV allocations:

| **LAUSD** | **2019−20** | **2020−21** | **2021−22** | **2022−23** | **2023−24** |
| --- | --- | --- | --- | --- | --- |
| Title I Part A | $349,400,229 | $362,844,221 | $348,942,256 | $359,255,162 | $360,973,719 |
| Title III | $11,322,390 | $11,821,453 | $12,429,936 | $12,479,175 | $11,989,389 |
| Title IV | $26,064,496 | $26,746,322 | $25,863,363 | $27,132,924 | $28,261,247 |

## Attachment(s)

**Attachment 1:** Submitted Tydings Waiver Request to Extend the Availability of FY 2022 Title I, Part A, Title III, and Title IV Part A Funds Allocated to Los Angeles Unified School District (2 pages).

**Attachment 2:** Submitted Tydings Waiver Extensions Requests for FY 2019, 2020, and 2021 to extend the period of expenditure for Los Angeles Unified School District for Title I, Part A and Title IV, Part A Funds (2 pages).

**Attachment 3:** Public Comment Announcement (1 page) (<https://www.cde.ca.gov/sp/sw/> )



**California Department of Education**

**Tony Thurmond**, *State Superintendent of Public Instruction*

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916-319-0800



**California State Board of Education**

**Linda Darling-Hammond**, *State Board President*

1430 N Street, Room 5111, Sacramento, CA 95814

916-319-0827

September 12, 2024

VIA EMAIL: OESE:titlei-a@ed.gov

Adam Schott

Deputy Assistant Secretary

Delegated the Authority to Perform the Functions

and Duties of the Assistant Secretary

Office of Elementary and Secondary Education

U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Mr. Schott,

Subject: Request for California Tydings Waiver

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) 2022 Title I, Part A, Title III, and Title IV, Part A funds as described below.

The FY 2022 Tydings waiver would allow for Title I, Part A, Title III, and Title IV, Part A funds allocated to subgrantee Los Angeles Unified School District to carry out the activities to contribute to improved student achievement for vulnerable students eligible for equitable services. As a result of one complaint to the State’s private school ombudsman (ESEA § 8503; 20 U.S.C. § 7883), by the Archdiocese of Los Angeles (ADLA III), the CDE is seeking a waiver because the matter is under review by CDE. These funds have an expiration date of September 30, 2024. In this case, 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 State to pull funds from other priorities to meet its 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 any requests if mediation arises.

To ensure that the FY 2022 Title I, Part A, Title III, and Title IV, Part A funds can be expended based on the outcome of the review, the CDE is requesting a Tydings waiver through September 30, 2025. The waiver will permit LAUSD to continue to advance eligible ADLA students’ academic achievement through the provision of Title I, Part A, Title III, and Title IV, Part A academic services as requested and originally agreed to by the ADLA 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, CDE staff will be available to provide any necessary technical assistance to all parties in this process.

Per the requirements of Section 8401, 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. The CDE will forward any comments received and will work with your staff to ensure that public concerns are addressed.

If additional information regarding this request is needed, contact Natasha Middleton, Federal Policy Liaison, Government Affairs Division, by phone at 916-319-0570 or by email at [nmiddleton@cde.ca.gov](mailto:nmiddleton@cde.ca.gov).

Sincerely,

Tony Thurmond

State Superintendent of Public Instruction

California Department of Education

Linda Darling-Hammond

President

California State Board of Education



**California Department of Education**

**Tony Thurmond**, *State Superintendent of Public Instruction*

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**Linda Darling-Hammond**, *State Board President*

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September 12, 2024

VIA EMAIL: OESE:titlei-a@ed.gov

Adam Schott

Deputy Assistant Secretary

Delegated the Authority to Perform the Functions

and Duties of the Assistant Secretary

Office of Elementary and Secondary Education

U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-

Dear Mr. Schott,

Subject: Request for California Tydings Waiver Extensions

On behalf of the California State Board of Education, the California Department of Education (CDE), under the Elementary and Secondary Education Act (ESEA) Section 8401 (20 U.S.C. § 7861), respectfully requests an extension of the Tydings waivers pursuant to § 421(b) of the General Education Provisions Act [20 U.S.C. § 1225(b)] to extend the period for expenditure of certain fiscal year (FY) 2019, 2020, and 2021 Title I and Title IV Part A funds as described below.

The FY 2019, 2020, and 2021Tydings waivers would allow for Title I and Title IV 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 four separate complaints to the State’s private school ombudsman (ESEA § 8503; 20 U.S.C. § 7883), three by the Builders of Jewish Education (BJE IV, BJE V, and BJE VI) and one by the Archdiocese of Los Angeles (ADLA II), which are consortia of private faith schools located in LAUSD’s attendance areas. ADLA II terms are currently being negotiated between LAUSD and ADLA. For BJE IV the matter is being mediated

between the parties. For BJE V it is being determined how services will be provided to BJE students and for BJE VI the case is currently under review at CDE. 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 State to pull funds from other priorities to meet its obligations.

To ensure that the FYs 2019, 2020, and 2021 Title I and Title IV Part A funds are expended by LAUSD as directed in the corrective actions, the CDE is requesting an extension of the Tydings waivers through September 30, 2025. The waiver will permit LAUSD to continue to advance eligible BJE and ADLA students’ academic achievement through the provision of Title I, Part A and Title IV, Part A academic services. 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 on the process. 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 Natasha Middleton, Federal Policy Liaison, Government Affairs Division, by phone at 916-319-0570 or by email at [nmiddleton@cde.ca.gov](mailto:nmiddleton@cde.ca.gov).

Sincerely,

Tony Thurmond

State Superintendent of Public Instruction

California Department of Education

Linda Darling-Hammond

President

California State Board of Education

# Attachment 3: Public Comment Period for California's Tydings Waiver Request to Extend the Availability of Fiscal Year (FY) 2022 Title I, Part A, Title III, and Title IV, Part A Funds Allocated to Los Angeles Unified School District

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 [U.S.C.] § 1225[b]), also known as the Tydings Amendment for the Los Angeles Unified School District (LAUSD). These funds have an expiration date of September 30, 2024. In this case, by extending to September 30, 2025, the period in which to obligate and expend LAUSD’s allocation of Fiscal Year (FY) 2022–23, Title I, Part A, Title III, and Title IV funds, additional time will be granted to ensure that the legally mandated equitable services can be fairly and adequately provided to students.

The FY 2022–23 waiver would allow for Title I, Part A, Title III, and Title IV funds allocated to LAUSD to carry out the activities and to contribute to improved student achievement for students eligible for equitable services.

A 30-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 August 31, 2024. All inquiries should be addressed to Carrie Lopes and emailed to [CLopes@cde.ca.gov](mailto:CLopes@cde.ca.gov).

1. For example, ED took from December 9, 2021, to August 23, 2023, to issue an appeal decision in BJE IV. This reflects the factual and legal complexity of the issues involved, many of which are unprecedented and fall within the interstices of the applicable statutes, regulations and ED’s guidance. [↑](#footnote-ref-1)
2. Extending the availability of funds is consistent with ED’s decision dated January 25, 2019, in *Builders of Jewish Education v. LAUSD*, in which ED approved the carryover of funds to support implementation of corrective actions. [↑](#footnote-ref-2)