

## SECRETARIAL WAIVERS:

### Waiver Guidance for Waivers Available under the Goals 2000: Educate America Act, Elementary and Secondary Education Act, School-to-Work Opportunities Act



#### Editor's Note

*This guidance is out of date in many respects. In particular, the Goals 2000 Act has been repealed and the School-to-Work Act has expired. However, it is the only official guidance available on the Secretarial waiver process under the Elementary and Secondary Education Act (ESEA), and many ESEA-related elements of this guidance remain in effect. New guidance will be sent to Title I Handbook subscribers when it is issued by the U.S. Department of Education.*

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## INTRODUCTION

With the enactment of three laws in 1994 — the Goals 2000: Educate America Act, the School-to-Work Opportunities Act, and the reauthorized Elementary and Secondary Education Act (ESEA),<sup>1</sup> States, school districts, and schools now have much more flexibility in how they can use Federal education dollars and other resources to improve teaching and learning and to make progress toward achieving the National Education Goals. This new legislative framework promotes effective education reform efforts based on challenging academic standards for all students and encourages educators to adapt Federally funded programs to address local needs with locally designed solutions. It also stresses accountability for improving student academic achievement and strengthening school improvement efforts through building local partnerships with parents, businesses and school communities.

### Example

In a small, rural school district, a schoolwide planning team composed of teachers, parents, the school principal, and other school staff conducted a thorough needs assessment at a particular elementary school. Based on the results of this needs assessment, the team determined that the school would be able to use its Federal funds more effectively as a schoolwide program. Subsequently, the district requested and was granted a waiver of section 1114(a)(1)(B) of the ESEA, allowing the elementary school to use Title I funds to implement a schoolwide program, even though the school's poverty rate is three percentage points below the statutory poverty threshold for implementing schoolwide programs

Two aspects of the new laws offer enhanced flexibility to educators, parents, and others in developing and implementing comprehensive education improvement plans. The first consists of opportunities for increased flexibility written directly into the legislation. For example, under the reauthorized ESEA, schools operating Title I schoolwide programs may now combine most of their Federal education program funds, not just their Title I funds, to support comprehensive school reform that helps all students in the schools

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1. Goals 2000: Educate America Act, P.L. 103-227 (Mar. 31, 1994) (20 USC 5801 *et seq.*); School-to-Work Opportunities Act, P.L. 103-239 (May 4, 1994) (20 USC 6101 *et seq.*); the Elementary and Secondary Education Act, as reauthorized by the Improving America's Schools Act of 1994 (IASA), P.L. 103-382 (Oct. 20, 1994) (20 USC 6301 *et seq.*).

learn core academic subjects and perform at high levels of academic achievement. In addition, States and school districts may submit a single plan for most Federal funds supporting elementary and secondary education and may consolidate administrative funds under Title I and certain other programs. Moreover, districts, schools, and/or consortia of schools may use up to five percent of their ESEA funds to carry out coordinated services projects to meet the needs of students and their families.

### Example

Under the Goals 2000 waiver authority, a State Department of Education was granted a four-year waiver of certain regulations that apply to the Carl D. Perkins Vocational and Applied Technology Education Act. The waiver allows regional consortia of school districts and community colleges to qualify for and receive Federal funds under Title II-C of the Perkins Act. The waiver supports the State's Goals 2000 plan to link its elementary and secondary school reform efforts with higher education and school-to-work programs.

The second aspect of the new flexibility pertains to the waiver provisions in Goals 2000, the ESEA, and the School-to-Work Opportunities Act.<sup>2</sup> Even with the increased flexibility afforded by these acts, Federal requirements, in certain cases, may hinder effective innovation and needed improvement. The general waiver provisions in these acts allow the Secretary of Education to waive requirements of most ESEA programs and requirements of the Carl D. Perkins Vocational and Applied Technology Education Act if they impede school improvement efforts.<sup>3</sup> The U.S. Department of Education encourages States, school districts, School-to-Work partnerships, and other eligible entities to seek waivers if, while assessing their educational programs and planning for school improvement, they conclude that a waiver of Federal requirements would support their efforts to improve teaching and learning.

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2. The general waiver authorities are contained in section 311 of the Goals 2000: Educate America Act, section 14401 of the reauthorized ESEA, and sections 501 and 502 of the School-to-Work Opportunities Act.

3. There are separate statutory waiver authorities applicable to the ESEA Public Charter Schools Program, certain maintenance of effort requirements, and the Title I requirements of certain school districts operating under desegregation plans. See pages F-2013 through F-2016 for more detailed descriptions of these waiver authorities.

*Example*

A school district received a waiver in order to complete a longitudinal study of the effectiveness of the Title I program at this one of its lower poverty eligible elementary schools while also concentrating Title I funds in its higher poverty schools. With the waiver of section 1113(c)(1) of the ESEA, the district will provide this elementary school with the additional Title I funds it needs for the final year of the study.

This document, which focuses primarily on the general waiver provisions in Goals 2000, the reauthorized ESEA, and the School-to-Work Opportunities Act, is structured to direct waiver applicants through the process of requesting a waiver. The charts included in the next section provide an overview of the three general waiver authorities and highlight differences among them. Potential applicants may use these charts to determine which waiver authority may best meet their particular needs. For instance, waivers may be granted for four years under the Goals 2000 waiver

authority, as opposed to three years under the ESEA. School districts may apply directly to the Department for waivers under the ESEA, whereas under Goals 2000, SEAs must apply on behalf of districts. Waivers of the Perkins Act may be requested under Goals 2000 and School-to-Work, but not ESEA.

The section entitled “Preparing Waiver Requests” defines and provides examples of key elements of compelling waiver requests. Finally, the last section, a series of questions and answers about waivers, elaborates on the information provided in earlier sections. U.S. Department of Education staff are prepared to assist States, school districts, and other potential waiver applicants as they explore how legislative provisions apply to them and whether a waiver would help strengthen their educational programs. For additional information on waivers and how to apply, please contact the relevant program office or William Wooten, (202) 260-1922, [william.wooten@ed.gov](mailto:william.wooten@ed.gov). This guidance is also available in the Department’s on-line library at <http://www.ed.gov/flexibility/resources.html>.

**COMPARISON OF THE GENERAL WAIVER PROVISIONS IN THE GOALS 2000: EDUCATE AMERICA ACT, THE ELEMENTARY AND SECONDARY EDUCATION ACT, AND THE SCHOOL-TO-WORK OPPORTUNITIES ACT<sup>1</sup>**

<b>WHAT REQUIREMENTS DO THE GENERAL WAIVER AUTHORITIES COVER?</b>		
<b>GOALS 2000</b>	<b>ESEA</b>	<b>SCHOOL-TO-WORK</b>
Any statutory or regulatory requirement of the following programs: ESEA Title I — Helping Disadvantaged Children Meet High Standards ESEA Title II — Eisenhower Professional Development ESEA Title IV — Safe and Drug-Free Schools and Communities ESEA Title VI — Innovative Education Program Strategies ESEA Title VII, Part C — Emergency Immigrant Education The Carl D. Perkins Vocational and Applied Technology Education Act	Any statutory or regulatory requirement of the ESEA, except requirements under Title VIII — Impact Aid	Any statutory or regulatory requirement of the following programs: ESEA Title I — Helping Disadvantaged Children Meet High Standards ESEA Title II — Eisenhower Professional Development ESEA Title IV — Safe and Drug-Free Schools and Communities ESEA Title VI — Innovative Education Program Strategies ESEA Title VII, Part C — Emergency Immigrant Education The Carl D. Perkins Vocational and Applied Technology Education Act The School-to-Work Act also permits the Secretary of Labor to waive certain requirements of the Job Training Partnership Act

1. Section 311 of the Goals 2000: Educate America Act; Section 14401 of the Elementary and Secondary Education Act of 1965 as amended; Sections 501 and 502 of the School-to-Work Opportunities Act.

<b>FOR WHAT PERIOD MAY WAIVERS BE GRANTED?</b>		
<b>GOALS 2000</b>	<b>ESEA</b>	<b>SCHOOL-TO-WORK</b>
Up to 4 years  May be extended if waiver has been effective in enabling State or affected LEAs to carry out reform plans  May be terminated if performance of SEA, LEA, or school affected by waiver is inadequate to justify continuation	Up to 3 years  May be extended if waiver has been effective in enabling recipient to carry out activities for which waiver was requested, waiver has contributed to improved student performance, and is in public interest  May be terminated if performance of State or other recipient has been inadequate to justify continuation or if it is no longer necessary to achieve original purposes	Up to 5 years  May be extended if waiver has been effective in enabling State or partnership to carry out purposes of STW Act  May be terminated if performance of State, partnership, or LEA affected by waiver has been inadequate to justify continuation, or if State fails to waive similar requirements of State law as required or agreed to

<b>WHAT REQUIREMENTS MAY NOT BE WAIVED UNDER THE GENERAL WAIVER AUTHORITIES?</b>		
<b>GOALS 2000</b>	<b>ESEA</b>	<b>SCHOOL-TO-WORK</b>
Requirements of the previously-listed programs relating to:	Requirements of the ESEA relating to:	Requirements of the previously-listed programs relating to:
Maintenance of effort	Maintenance of effort	Maintenance of effort
Comparability	Comparability	Comparability
Equitable participation of students and staff in private schools	Equitable participation of students and teachers in private schools	Equitable participation of students in private schools
Parental participation and involvement	Parental participation and involvement	Student and parental participation and involvement
Distribution of funds to States and LEAs	Distribution of funds to States, LEAs, or other recipients	Distribution of funds to States and LEAs
Civil rights requirements and health and safety requirements	Civil rights requirements and health and safety requirements	Public health or safety, labor, standards civil rights, occupational safety or health, environmental protection
	Supplement, not supplant	Eligibility of an individual for participation in a program
	Title X, Part C charter school requirement	Prohibitions or restrictions regarding construction
	Prohibitions regarding State aid or use of funds for religious worship or instruction	Requirements relating to basic purposes or goals of program

<b>WHO MAY APPLY FOR A WAIVER?</b>		
<b>GOALS 2000</b>	<b>ESEA</b>	<b>SCHOOL-TO-WORK</b>
The following entities may apply for a waiver if the State has an approved Goals 2000 State plan or if the State participates in Goals 2000 through the alternative submission process authorized in 1996	The following entities may apply for an ESEA waiver:	The following entities may apply for waiver if the State has an approved School-to-Work State plan:
SEA acting on its own behalf	SEA acting on its own behalf	State acting on its own behalf
SEA on behalf of an LEA or school that receives funds under Title III of Goals 2000, if SEA approves waiver request	SEA on behalf of LEA or school	State on behalf of local partnership
	LEA on its own behalf, after SEA has had opportunity to comment	Local partnership, if State fails to make determination to submit or not to submit request within 30 days of receiving application
	LEA on behalf of a school, after SEA has had opportunity to comment	
SEA on behalf of an LEA or school with reform efforts comparable to Section 306 activities, if SEA approves waiver request	Indian tribe on behalf of schools operated by tribe	

<b>WHAT ARE THE REPORTING REQUIREMENTS OF THE WAIVER RECIPIENT?</b>		
<b>GOALS 2000</b>	<b>ESEA</b>	<b>SCHOOL-TO-WORK</b>
No specific requirements	LEA that receives waiver submits a report to SEA at end of second year, and each subsequent year; SEA submits annual report to Secretary based on LEA reports  Indian tribe submits annual report to Secretary	No specific requirements

<b>WHAT INFORMATION MUST BE INCLUDED IN A WAIVER APPLICATION?</b>		
<b>GOALS 2000</b>	<b>ESEA</b>	<b>SCHOOL-TO-WORK</b>
Identification of the requirements requested to be waived and goals recipient intends to achieve, including demonstration that the requirements impede ability to carry out State or local improvement plan	Identification of the Federal programs affected  Description of the requirements to be waived and how waivers would increase quality of instruction or improve academic performance	Identification of specific requirements to be waived, including demonstration that requirements impede ability to carry out STW Act
Description of action SEA has taken to remove State barriers identified in LEA applications for waivers, including agreement to waive similar requirements of State law	If applicable, description of which similar State and local requirements would be waived, and how waivers would help achieve stated objectives	Assurance that State waives, or agrees to waive, similar requirements of State law
Description of the goals of waiver and expected programmatic results, and a timetable for implementation of the waiver	Description of specific, measurable educational improvement goals and expected outcomes for all affected students	Description of specific, positive outcomes expected from waiver, and why outcomes cannot be achieved while complying with requirement
Description of the number and types of students impacted by the waiver	Description of how schools would continue to provide assistance to same populations served by programs for which waivers are requested	Identification of the amount of State resources that would be used to implement School-to-Work plan
Description of the process for SEA monitoring, on biannual basis, the progress in implementing the waiver	Description of methods to be used to measure progress in meeting goals and outcomes	Description of process to be used in monitoring progress in implementing waiver
For statewide waivers, assurance that SEA has provided LEAs and parent organizations opportunity to comment, and submission of any LEA comments to Secretary	For SEA seeking waiver on its own behalf, assurance that interested LEAs and the public were provided reasonable opportunity to comment on request, and submission of LEA comments	Assurance that State has provided relevant partnerships and LEAs with opportunity to comment on State request
For LEA waivers, assurance that parents, community groups, and advocacy or civil rights groups were provided opportunity to comment	For LEAs or schools seeking waivers, assurance that SEA had opportunity to review request, and submission of any SEA comments. Also, assurance that public was provided opportunity to comment on the request	Assurance that State has provided, to extent feasible, students, parents, advocacy and civil rights groups, and labor and business organizations opportunity to comment on State request  Comments of partnerships and LEAs concerning the waiver request

## PREPARING WAIVER REQUESTS

This section is designed to provide waiver applicants with a better understanding of the kind of information they should include in preparing compelling waiver requests under the general waiver authorities in Goals 2000, the ESEA, and the School-to-Work Opportunities Act.

There are five requirements that, although statutorily expressed in slightly different ways, are common to the three general waiver authorities:

A. Identify the statutory or regulatory requirements for which a waiver is requested.

B. Describe why the waiver is needed to improve student performance and what goals would be achieved under the waiver.

C. Describe how progress that would result from implementing the waiver would be measured.

D. Describe how interested parties were notified of the waiver request.

E. Describe how similar State requirements would be waived.

Along with the following discussion of each requirement, examples of information that would be responsive and help form a full and persuasive waiver request are provided.

### A. IDENTIFY THE STATUTORY OR REGULATORY REQUIREMENTS FOR WHICH A WAIVER IS REQUESTED

#### EXAMPLE

A State has adopted new academic standards in social studies that will be implemented during the next school year. In its waiver application, the SEA states that a one-year waiver of section 2206(b) of the ESEA would support its efforts to implement the new standards. This section requires States to ensure that a major portion of Eisenhower Professional Development funds allocated for local activities be spent on mathematics and science professional development. The State has participated in the National Science Foundation State Systemic Initiative for several years to build its mathematics and science capacity. The SEA indicates that a waiver of section 2206(b) would enable its school districts to devote substantial professional development resources

to implement the social studies standards during the coming school year.

Applicants should *specify the particular Federal requirements, either statutory or regulatory*, that they would like waived and how the requirements form a barrier to teaching and learning to high standards. Applicants should also *specify the length of time for which the waiver is requested*. In some cases, waivers have been requested for State or district initiatives that do not require waivers. Focusing on the specific provisions can help clarify whether an applicant needs a waiver to achieve its education improvement objectives.

### B. DESCRIBE WHY THE WAIVER IS NEEDED TO IMPROVE STUDENT PERFORMANCE AND WHAT GOALS WOULD BE ACHIEVED UNDER THE WAIVER

The most effective applications for waivers demonstrate why a waiver is needed and what the waiver, if granted, would accomplish. *Descriptive information about the applicant's educational system and the circumstances for which the waiver is requested* often provides a strong start for a request. For example, useful background information may include a description of the State, school district, or schools that the waiver would affect; relevant information on school reform efforts; poverty rankings; the numbers of low-income and Title I eligible students and the number of Title I eligible students served, if applicable to the request; any outstanding features of the student populations; and how these and other factors shaped the waiver request.

#### EXAMPLE

A large, urban district identified four very high-poverty, inner-city elementary schools for top-to-bottom reform based on low achievement on State assessments as well as other factors. As part of its efforts to raise student achievement at these schools, the district planned to establish schoolwide programs, reorganize staff, lengthen the school year, focus heavily on reading and math, provide extensive professional development, and strengthen links to the community. Although all four of the schools are above 90% poverty, they are not the district's four highest poverty schools. The district requests a waiver of section 1113(c)(1) of the ESEA in order to target extra Title I dollars to these four schools.

In its application, the district explains how, as a part of its long-term school improvement strategy, the four schools were identified for reform. The district also provides information regarding the poverty levels, numbers of poor students, and Title I allocations (both with and without the waiver) for all schools affected by the request (not just the four receiving additional funds). In addition, because the district's schools vary considerably in terms of racial and ethnic composition, the district provides demographic data for the affected schools.

### EXAMPLE

A district seeks a waiver of certain Title I provisions under the special waiver provisions in section 1113(a)(7) of the ESEA for districts with State- or court- ordered desegregation plans. In its application, the district describes, among other matters, the background on its court-ordered desegregation plan, the racial composition of the affected schools, and per pupil allocations both with and without the waiver. The district also provides the educational justification supporting the waiver, including measurable improvement goals, and the methods that will be used to measure progress towards these goals.

### EXAMPLE

A State that has developed a performance-based student assessment and accountability system to match its challenging content and student performance standards requests a waiver of ESEA sections 1116(c)(1)(C) and 1116(d)(3)(A)(ii) in order to align the ESEA Title I accountability requirements with those in the State system. The State accountability system is based on biennial periods of review in which two years' data are averaged while accountability under Title I is based on annual reviews for two consecutive years.

The waiver supports the purposes of Title I by promoting high academic expectations for all children and focusing on accountability and improvement.

*Next, the applicant should describe the specific educational improvement goals it seeks to achieve and how the waiver it requests would remove barriers to achieving those goals. While improvements need not be solely attributable to waivers, applicants should make clear how the waiver would contribute to improvements in teaching and learning by citing expectations such as improved student achievement on State assessments, better prepared teachers, a lower dropout*

rate, more students engaged in work-based learning, or reduced substance abuse among students. To the extent possible, these goals should be based on research, be specific and measurable, be evaluated against available baseline data, and be directly related to the proposed waiver.

### EXAMPLE

A rural school district seeks a waiver under the ESEA waiver authority on behalf of one of its middle schools. At 45 percent poverty, the middle school is below the 50 percent poverty threshold set by the ESEA for implementing schoolwide programs. The middle school has undergone the necessary planning in order to become a schoolwide program and developed a plan that addresses each of the statutory components for schoolwide programs. The district seeks a waiver of section 1114(a)(1)(B) of the ESEA to qualify the school for schoolwide program status, enabling it to use its Title I funds, as well as other Federal education funds, to improve education for all of its students.

As a result of its comprehensive reform strategy, of which the waiver is an integral part, the middle school expects the rate of student proficiency on the State's eighth-grade mathematics assessment to improve from 58 percent to 70 percent over the first two years of the waiver, reaching 75 percent in year three. The school also expects that the percentage of students reaching advanced levels on the assessment will increase from 5 percent to 20 percent over the full period of the waiver. In order for the improvements to occur, by the end of the first year of the waiver, the school will train all three of its math teachers to teach the State's challenging new math standards.

Waiver applications should *identify what may be given up as a result of the waiver* (for example, which students, teachers, or academic subjects would receive fewer resources or less emphasis if the waiver is granted), discuss whether the applicant has alternative strategies for addressing those needs, and provide a compelling rationale to justify the net result. For instance, devoting more resources to professional development in social studies or English/language arts may mean fewer teachers receiving preparation in math or science. Similarly, a waiver allowing a district to shift funds to an expensive, but successful, reading program may result in cuts in supplemental assistance for educationally disadvantaged students in upper grades or

fewer resources for additional instruction in other academic subjects. Providing information about trade-offs gives a much clearer understanding of what the applicant wants to accomplish and demonstrates that the applicant has thoroughly reviewed the educational needs of its students.

### EXAMPLE

A middle-sized school district, as part of its comprehensive school improvement strategy aligned with State standards, seeks a waiver of ESEA section 1113(a)(3)(A). The waiver will allow the district to concentrate its Title I funds on an effective early intervention program serving students in pre-K through third grade in eleven elementary schools, rather than fund a high-poverty middle school that it would otherwise be required to serve. In its application, the district describes its extensive plan for providing enhanced services to educationally disadvantaged students at the middle school. The district intends to devote substantial non-Title I resources to the school, including funds from Goals 2000, the Eisenhower Professional Development program, Title VI, and Safe and Drug-Free Schools, as well as State and local funds.

*Descriptions of the process the waiver applicant engaged in while deciding to seek a waiver* also frequently contribute to a more persuasive waiver request. Information about school-based decision making efforts, school- or district-level needs assessments, input from parents, and letters from principals of affected schools may help illustrate why a waiver is needed to improve teaching and learning

### EXAMPLE

In developing a comprehensive school improvement strategy for high school students, a middle-sized school district conducts a needs assessment of its two highest-poverty high schools. The district and the high schools survey staff, convene parent groups, and hold a town meeting to gather community input. The district and high schools determine that they need to provide substantially more work-based learning opportunities, establish expanded computer labs, and provide intensive mentoring. Under the School-to-Work waiver authority, the district seeks a waiver of 34 C.F.R. 80.32(c)(1-2) of the U.S. Department of Education's general administrative regulations (EDGAR), and 34 C.F.R. 403.197(b)(2) of the regulations implementing section 235(c)(3)(B) of the

Perkins Act, both of which affect the purchase and use of computer equipment under Perkins. These regulations require that equipment purchased with Perkins funds be used by vocational education or, in limited circumstances, other programs supported by Federal funds. In its application, the district describes how, while still focusing primarily on students enrolled in vocational education, waiving these regulations would permit the high schools to fully implement their improvement strategy through allowing continuous use of the computer labs by all students, not just those enrolled in vocational education programs or other Federally funded programs.

## C. DESCRIBE HOW PROGRESS THAT RESULTS FROM IMPLEMENTING THE WAIVER WOULD BE MEASURED

An effective waiver request should outline *how the applicant would measure progress in implementing the waiver and progress towards meeting stated goals and objectives*. For example, if the expected result is a better attendance rate among high school students, how would the school or district measure this? If the expected result is more students beginning the third grade reading proficiently, how would student reading levels be evaluated, and what would the applicant do in order to ascertain whether improvements are sustained into higher grades? If the district has identified certain students or services that might be negatively impacted by a given waiver, how would the district measure progress made by those students or in those academic areas? If the rationale for the waiver rests in part upon past success, how was this success documented, and how would it be measured in the future?

### EXAMPLE

A State seeks a waiver of 34 C.F.R. 403.190 and 403.116(c)(1) of the regulations implementing sections 232 and 240 of the Perkins Act, in order to allow all the high schools and postsecondary institutions in the State to form innovative consortia with each other for the purpose of providing services with Perkins program funds. Without the waiver, consortia including both high schools and community colleges could not apply for Perkins funds. The State anticipates that the comprehensive school-to-work strategies involving these consortia will, by the end of the waiver period, lead to a 10% increase in students continuing on to at least two years of postsecondary education after high school and a decrease of three percentage points in the unemployment rate among

18- to 20-year-olds in the State. In its application, the State education agency describes how it will assess progress towards these established goals and adjust its strategies, if necessary, in order to realize them.

#### **D. DESCRIBE HOW INTERESTED PARTIES WERE NOTIFIED OF THE WAIVER REQUEST**

Compelling waiver requests highlight the genuine awareness and involvement of teachers, principals, parents, and the community in preparing the waiver request. To this end, all waiver applicants must *describe how interested parties, including stakeholders such as officials at private schools and other parties that may be negatively affected by a waiver, were notified of the waiver request.* When applicants have an established process for notifying their communities of important actions, information about the waiver request should be disseminated through that process. Where no such process exists, applicants must provide interested parties with reasonable notice of the request. In either case, appropriate strategies may include letters to parents and school staff, town hall meetings, newspaper articles, and computer bulletin boards.

#### **E. DESCRIBE HOW SIMILAR STATE REQUIREMENTS WOULD BE WAIVED**

When a waiver of Federal law is requested and comparable State requirements exist, the applicant must describe what those State requirements are and how they will be waived. Without such action, efforts to provide greater flexibility may be hindered.

#### **EXAMPLE**

A school district seeks a three-year waiver of the ESEA section 2206(b) requirement in the Eisenhower program that it spend no more than a given percentage of its Title II funds on professional development in subjects other than math and science. Consistent with State and local comprehensive plans, the district's middle schools are adopting a new portfolio approach to assessment in English and plan to conduct a related summer training program for teachers. A State professional development program, similar to Eisenhower, provides funds for training teachers, but only in the sciences. In order to fund its training program, the district will combine both State and Eisenhower funds. Thus, in its application, the district must describe the State requirement and how

it would be waived to allow for professional development in English.

## **QUESTIONS AND ANSWERS**

### **A. THE GENERAL WAIVER AUTHORITIES IN GOALS 2000, THE ESEA, AND THE SCHOOL-TO-WORK OPPORTUNITIES ACT**

#### **What statutory and regulatory requirements may be waived under the three general waiver authorities?**

*[outdated material deleted]*

**ESEA:** Under the ESEA general waiver authority, subject to the restrictions noted below, any statutory or regulatory requirement of the ESEA may be waived, except for provisions under Title VIII — Impact Aid. The ESEA waiver authority also extends to GEPA and EDGAR requirements (except for FERPA and PPRA) applicable to the ESEA programs.

Note: There are separate ESEA provisions governing the waivers of certain requirements applicable to schools operating under State- or court-ordered desegregation plans and to charter schools. (These provisions are discussed separately in this guidance.) There are also separate waiver provisions pertaining to certain maintenance of effort requirements.

#### **Are there certain statutory or regulatory requirements that may not be waived?**

For each of the general waiver authorities, certain requirements may not be waived. These requirements are detailed in the chart earlier in this guidance.

#### **Who is eligible to apply for a waiver?**

Eligibility to apply for a waiver depends on the authority under which the waiver is requested.

*[outdated material deleted]*

**ESEA:** Under the ESEA, an SEA may apply to the Secretary for a waiver on its own behalf. An SEA may also submit waiver requests to the Secretary on behalf of districts or schools. In addition, a school district may apply directly to the Secretary for a waiver on its own behalf or on behalf of a school, after the district or school request has been reviewed by the SEA. Additionally, under the ESEA, an Indian tribe may submit a waiver request to the Secretary on behalf of schools operated by the tribe.

[outdated material deleted]

**How do the general waiver authorities under Goals 2000, the ESEA, and School-to-Work relate to waivers under the Goals 2000 Education Flexibility Partnership Demonstration (Ed-Flex) Program?**

See Ed-Flex guidance, page F-2331.

**B. APPLICATION REQUIREMENTS**

**Is there a specific waiver application form?**

There is no specific form that waiver applicants must complete. Instead, waiver applicants should submit requests in the manner that best meets their needs and circumstances while addressing the specific requirements of the appropriate waiver authorities.

**What kind of supporting documentation must be submitted with a waiver request?**

The individual waiver authorities contain criteria for granting waivers and application requirements that should guide applicants in preparing their waiver submissions. The type of supporting documentation that must be submitted to meet these requirements and satisfy the criteria varies depending on the nature of the waiver sought. The Department will work with waiver applicants in addressing any concerns that they may have about a request. For further information on this topic, see the application requirements section of the comparison chart earlier in this guidance.

**Is there a deadline for submitting waiver requests?**

Contact William Wooten for information on deadlines: (202) 260-1922, william.wooten@ed.gov.

**Is a waiver applicant required to obtain State approval before its waiver request is submitted to the department?**

[outdated material deleted]

**ESEA:** No. Although an ESEA waiver request by a district (on its own behalf or on behalf of one or more schools) must be submitted to the SEA for review, it is not necessary for the district or school to obtain SEA approval of the request. After providing the SEA with an opportunity to comment, the district may submit the request to the Secretary for consideration. An SEA may also submit waiver requests to the Secretary on behalf of districts or schools.

[outdated material deleted]

**What does the State or SEA review process entail?**

The State or SEA should review waiver requests of districts and local partnerships to determine whether the concerns raised are appropriately addressed by waiving Federal requirements, and whether the requests are consistent with the State’s Goals 2000 State Plan, State School-to-Work Plan, or other comprehensive education improvement plans. In some instances, an applicant may wish to revise a waiver request in light of SEA or State comments.

The Secretary suggests that an SEA act upon requests for waivers under Goals 2000 or the ESEA within 60 days of receiving the request. Under Goals 2000, once an SEA has approved a district’s or school’s waiver request, the SEA forwards the request to the Secretary. In contrast, under the ESEA, State approval is not a precondition for granting a waiver to a district. If an SEA has not provided comments on a district’s waiver request for an ESEA waiver within 60 days of the request, the district may submit the request to the Secretary (either on its own behalf or on behalf of a school). Comments provided by the SEA after the request has been submitted but before a decision is made will be considered by the Secretary. States should act upon waiver requests made under the School-to-Work waiver authority within 30 days. The School-to-Work statute permits a local partnership to submit its waiver request directly to the Secretary if the State does not act by the end of this period.

**C. THE TITLE I DESEGREGATION WAIVER AUTHORITY**

**What is the scope of the Title I desegregation waiver authority?**

The Title I desegregation waiver authority — section 1113(a)(7) of the ESEA — permits the Secretary to waive, under certain circumstances, the requirements of section 1113(a) and section 1113(c) of the ESEA for school districts operating under particular desegregation plans. These requirements govern the identification and selection of eligible Title I attendance areas and schools, and the allocation of Title I funds to participating school attendance areas and schools.<sup>1</sup>

**Who may apply for a waiver under the Title I desegregation waiver authority?**

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A school district is eligible to apply for a waiver under the desegregation waiver authority if it has one or more schools:

- operating under a State-ordered or court-ordered desegregation plan or a plan that continues to be implemented in accordance with a State-ordered or court-ordered desegregation plan; and
- in which the number of children from low-income families in such schools is at least 25 percent of the school's total enrollment.

An SEA may also apply on behalf of an eligible school district.

### **What statutory criterion governs Title I desegregation waiver requests?**

In order to be granted a Title I desegregation waiver, the eligible district must demonstrate that approval of the waiver would further the purposes of Part A of Title I of the ESEA.

### **What information should a district include in its waiver request in order to demonstrate that the statutory criterion has been met?**

A district is encouraged to include the following information in a Title I desegregation waiver request:

- Identification of the school or schools for which the waiver is requested.
- A copy of the district's ranking of school attendance areas and schools, indicating which schools the district would fund if the waiver is granted and which schools the district would fund absent a waiver.
- A brief explanation of the district's desegregation plan (indicating the date of the plan and whether it is State-ordered or court-ordered, or continues to be implemented in accordance with a State-ordered or court-ordered plan), how the desegregation plan affects the schools for which the waiver is requested (including, if available, the plan's impact on the concentrations of poverty in those schools), and how the plan would be furthered by the waiver.

- An explanation of the educational justification supporting the waiver request, including measurable educational improvement goals and expected outcomes for affected students and the methods to be used to measure progress in meeting those goals and outcomes.
- If the district proposes to skip eligible schools in order to serve schools under a waiver, an explanation of why the waiver would further the purposes of the Title I program to serve the schools for which the waiver is requested, rather than the schools that would be skipped, including a description of the services to be provided and the number of children who would benefit.
- If the district is requesting a waiver of Section 1113(c), the per pupil amount(s) the district intends to allocate to the schools for which the waiver is requested and the per pupil amount(s) the district intends to allocate to its other schools.
- An explanation of how the district will continue to ensure the equitable participation of eligible private school children if the waiver is granted, including a description of how it consulted with private school officials in the development of the waiver request.

### **Should a district seek public comment on its Title I desegregation request?**

The Secretary encourages all eligible districts, in preparing their requests, to seek comments from interested parties, including the SEA and private school officials, if appropriate.

### **May a district whose schools are operating under a voluntary desegregation plan seek a waiver of the Title I eligibility and allocation provisions (i.e., ESEA Sections 1113(a) and (c))?**

A district whose schools are operating under a voluntary desegregation plan, rather than a State- or court-ordered plan, is not eligible to seek a waiver under the desegregation waiver authority in ESEA Section 1113(a)(7). However, such a district may apply for a waiver under the ESEA general waiver authority, assuming that it meets the criteria.

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1. For more information on the Title I desegregation waiver authority, see 60 *Federal Register* 52818 (Oct. 10, 1995).

## **D. THE CHARTER SCHOOLS WAIVER AUTHORITY**

### **What waivers may be granted under the charter schools waiver authority of the ESEA?**

The Secretary has broad authority under Part B of Title V of the ESEA to waive requirements applicable to public charter schools. The Secretary may waive any statutory or regulatory requirement over which he exercises administrative authority except those requirements relating to the elements of a charter school described in section 5210(1) of the ESEA, if the waiver is requested in an “approved application,” and the Secretary determines that granting the waiver will promote the purposes of the ESEA charter schools provisions.

### **What are the specific requirements that may not be waived under the charter schools waiver authority?**

Under the charter schools waiver authority, any requirement relating to the elements of a charter school described in section 5210(1) of the ESEA may not be waived. In particular, a charter school must be a non-sectarian public school that does not charge tuition. It must comply with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act. In addition, a charter school may not obtain waivers of requirements of the Americans with Disabilities Act.

### **What is meant by requiring the waiver requests to be included in an “approved application”?**

To be considered by the Secretary, waiver requests must be included in a charter schools application of an SEA (or other eligible applicant) that is approved for funding by the Secretary. An SEA that receives funding under the ESEA charter schools provisions may request waivers on behalf of charter schools that receive a subgrant under this authority, as well as on behalf of other charter schools in the State. The waivers may be requested in either the SEA’s original charter schools application or in an amended application. An SEA may amend its application simply by sending the Secretary a request for waivers not sought previously.

### **Who is eligible to submit an application for funding to the Secretary under the charter schools program?**

In the initial competition, SEAs were eligible to apply to the Secretary for funding under the Public Charter Schools Program. If an SEA elected not to apply or applied and did not receive funding, “eligible applicants” within that State, as defined in section 5210(1) of the ESEA, could apply directly to the Secretary.

### **What entities are eligible for waivers under the charter schools program?**

The entities eligible to receive waivers under the charter schools waiver authority are: charter schools receiving funding under this program from an SEA whose application is approved by the Secretary; other charter schools in a State whose application is approved by the Secretary, if the schools meet the definition of charter schools contained in section 5210(1) of the ESEA; and charter schools that receive funding under this program directly from the Secretary.

### **What requirements govern waiver requests under the charter schools provisions?**

For waivers to be considered by the Secretary, a charter schools application must contain: (1) a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes would facilitate the successful operation of the charter school; and (2) a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school. The requested waiver also must promote the purposes of the ESEA charter schools provisions.

### **What notice requirements govern requests for waivers under the charter schools waiver authority?**

Although the charter schools provisions do not expressly require an SEA or other eligible applicant to provide the public with notice and an opportunity to comment on waiver requests, the Secretary encourages applicants to do so.

### **What is the duration of a waiver under the charter schools waiver authority?**

Waivers will initially be granted for up to three years. The Secretary may extend this period if he determines that the waivers have enabled the charter schools to achieve their objectives and if continuation is in the public interest. On the other hand, the Secretary may terminate any waivers if he determines that the results obtained are no longer adequate to justify continuation

or if the waivers are no longer needed to achieve their original purposes.

## **E. U.S. DEPARTMENT OF EDUCATION REVIEW OF WAIVER REQUESTS**

For general information on review and approval of waivers contact William Wooten, (202) 260-1922, William.Wooten@ed.gov.

Where appropriate, the Department may approve portions of a waiver request. By permitting approval of part of a waiver request, the Department encourages applicants to consolidate individual requests.

### **APPENDIX: A GUIDE FOR PREPARING TITLE I SCHOOLWIDE AND TARGETING WAIVER REQUESTS**

#### **SCHOOLWIDE WAIVER REQUESTS**

Title I Part A, of the ESEA focuses resources on schools serving economically disadvantaged children. In schools with large concentrations of students from low-income families, disadvantaged students may be served best by improving the entire school, rather than by operating separate programs that target additional resources to individual students. *Schoolwide programs* allow schools to use Federal education program funds to upgrade the entire educational program of schools in order to raise academic achievements for all the students.

Title I permits schools in which at least 50 percent of the children are from low-income families to use Title I, in combination with most of their other federal education funds, to operate schoolwide programs. A number of districts with schools below the 50 percent poverty threshold have requested waivers to implement schoolwide programs in those schools.

Schools that want to operate as schoolwide programs must engage a wide range of stakeholders in one year of planning for a schoolwide program and develop a schoolwide program that meets the requirements of ESEA section 1114(b). These requirements can be found in the Department's *Policy Guidance for Title I, Part A — Improving Basic Programs Operated by Local Education Agencies*.

In accordance with the five requirements listed on page 8 of this guidance, the following is an outline of information that is most helpful when provided by applicants requesting waivers to implement schoolwide

programs. While waiver applicants should provide certain information regarding their schoolwide plans, *it is not necessary to submit copies of the schoolwide plan to the Department.*

- Submit a brief description of the schoolwide planning process, including who was involved and how in planning the schoolwide program.
- Outline how the school went about conducting a comprehensive needs assessment and report the results of the needs assessment.
- Outline the proposed schoolwide plan to be implemented, including an explanation of how the plan would address the needs identified through the needs assessment.
- Explain the school's rationale for wanting to operate a schoolwide program, including a description of how a schoolwide program would better meet the needs of low performing students than a targeted assistance program.
- Outline measurable educational improvements the school expects to achieve under the waiver and a description of methods to be used to measure progress toward these goals.
- Indicate the percent of children from low-income families at the school that would implement the schoolwide program.
- Provide documentation of the State's (SEA) comments on the waiver request.
- Verify that the public was provided with an opportunity to comment on the waiver request and provide comments received as a result of public notice.
- Describe the impact (if any) the waiver would have on private school students.
- If applicable, describe how any similar State or local requirements would be waived.

#### **TARGETING AND ALLOCATION WAIVER REQUESTS**

Based on the demonstrated correlation between low academic achievement and poverty, several provisions in Title I require districts to target funds to schools with the highest percentages of children from low-income families. In certain cases, however, these approaches to targeting have not been the best way to

meet the needs of the students in a particular district. To accommodate such exceptions, a number of school districts have requested waivers of the Title I targeting requirements. Based on the Department's experience with requests for waivers of targeting requirements, certain kinds of information appear to be most useful in outlining how a waiver might impact teaching and learning.

- Identify the targeting provisions for which a waiver is sought and why. Provide a brief description of what the waiver would allow the applicant to do and how a waiver would help improve teaching and learning in the affected schools.
- Compare academic needs among students in affected schools, including achievement data by school. Discuss how these comparative needs pertain to the waiver request.
- Describe the specific instructional approaches included in the Title I program that would be used to address the needs of students in the identified schools. Attach a table that includes: the districtwide poverty rate; a list of district schools with enrollments, and numbers and percentages of low-income students; building and per pupil allocations with and without the waiver; the district's 125% minimum, per pupil allocation; the amount of Title I funds set aside for administration or other centrally provided services.
- Outline the measurable educational improvement goals expected to be achieved under the waiver and a description of method to be used to measure progress toward these goals. Identify instruments with which progress will be measured.
- Provide documentation of State's (SEA) comments on the waiver request.
- Verify that the public was provided with an opportunity to comment on the waiver request and provide comments received as a result of public notice.
- Describe the impact (if any) the waiver would have on private school students.
- If applicable, describe how any similar State or local requirements would be waived.

## DRAFT

### LESSONS LEARNED

#### WAIVER REQUEST SELF CHECK

*Editor's note: While this is not official guidance, U.S. Department of Education officials routinely provide this information to districts applying for waivers.*

**The following self-check list should help you determine whether your waiver request is complete. Use the questions in Part I for all waiver requests. In addition, ask yourself the questions in Part II if you are requesting a waiver of specific provisions concerning schoolwide eligibility or school eligibility.**

#### **I. Items applicable to all waiver requests:**

- Have you provided a brief description of the district's demographics, including any relevant information that would explain why the district needs the waiver for which it is applying?
- Have you specified the school year(s) for which the waiver is requested?
- Have you specified the federal requirement(s) that is (are) requested to be waived?
- Have you described how the waiver will increase the quality of instruction or improve the academic performance of low-achieving students?
- Have you described the specific, measurable educational improvement goals and expected outcomes for all affected students and how these outcomes will be measured?
- Have you provided data showing the most recent student performance in the school(s) for which

## Secretarial Waivers

the waiver is requested and in the other schools that would be affected by the waiver?

- Are there any schools in the district in school improvement status?
- Are eligible Title I children in private schools impacted as a result of the waiver?
- How did you give public notice of the waiver request and were any comments received as a result of the notice?
- Have you included comments on the waiver request from your state department of education?
- Is this a request to extend a previously approved waiver? If so, have you included data to support the effectiveness of that waiver and how it has contributed to improved student performance?

### **II. Items applicable to requests for waivers of schoolwide eligibility (Section 1114 of Title I) or school eligibility (Section 1113 of Title I).**

#### **A. In addition, if you are applying for schoolwide program status:**

- What is the poverty percentage of each affected school?
- For each affected school, did you explain the school's rationale for wanting to operate a schoolwide program? In particular, how would low-achieving students be better served by a schoolwide program than in a targeted assisted program?
- Have you described how the schoolwide program would upgrade the entire instructional program in the school, including specific curriculum/instruction changes, new programs, teaching strategies, professional development etc., to be implemented and how they will result in improved teaching and learning to benefit the lowest-achieving children?
- Have you included a summary of how the planners conducted a comprehensive needs assessment and have you briefly described how

you used the results of this needs assessment to make decisions?

- From what source(s) did you secure technical assistance?
- Does your proposed schoolwide program address all of the statutory components?
- If you are applying to continue a previously approved waiver, have you included achievement data disaggregated by gender, race, limited English proficient status, students with disabilities, and economically disadvantaged students for the most recent years and over sufficient time to show a trend?
- Have you identified the federal, state, and local resources available to implement the schoolwide program?

#### **B. In addition, if you are applying to serve a school that does not meet the Title I eligibility requirement:**

- Have you explained exactly why you need the waiver?
- Have you provided a description of your current Title I program?
- Have you submitted achievement data in the aggregate in the district and by building, including the most recent testing data (in at least reading/language arts and mathematics) to show how the lowest-performing students are achieving in relation to all other students?
- Have you provided a table showing the total enrollment and number of children from low-income families in each school, the ranking of all schools, the district poverty level average, the district Title I allocation to each school with and without the waiver, and any set asides or carryover?
- How will you make sure that the needs of low-performing students in schools whose allocations would be decreased under a waiver will be met?

[Next page is Tab F, page 2101.]