United States Department of Education
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

July 29, 2025

Dear Colleague:

The Trump administration's goal is to improve academic achievement, particularly by strengthening literacy and numeracy instruction, empowering parental decision-making, and returning education to the States. Encouraging innovation among States is a critical step to achieving those goals.

The results of the 2024 National Assessment of Educational Progress (NAEP) provided a stark reminder of how poorly our education system serves many American students (see "Statement on the Nation's Report Card"). Over the last five years, parents have shown a desire for change when it comes to their children's education. In response, States have expanded education choice, undertaken major reforms to implement literacy instruction and supports based on the science of reading, and provided opportunities for the creation and expansion of unique school models – including microschools, classical schools, and hybrid homeschooling models.

These actions, combined with the 2024 NAEP results, show that the education sector is at an inflection point. To that end, this letter outlines existing areas of flexibility and the waiver process for State educational agencies (SEAs), established in the *Elementary and Secondary Education Act of 1965* (ESEA), as amended by the *Every Student Succeeds Act of 2015* (ESSA). Despite strides made by the *Every Student Succeeds Act* to provide States with greater flexibility and decision-making, there are still many instances where ESEA requirements hinder rather than help States' efforts to improve academic achievement. The law makes some accommodation for this by granting authority to the Secretary of Education "to waive any statutory or regulatory requirement" related to the administration of the ESEA (section 8401(a)(1)) at the request of an SEA – with the exception of the restrictions listed in section 8401(c).

The U.S. Department of Education, under the leadership of Secretary McMahon and in response to parents desperate for a better education system, invites SEAs, local educational agencies (LEAs), schools, and Tribal leaders to seek creative and effective waivers for improving student academic achievement and maximizing the impact of Federal funds.

I. Existing Flexibility in ESEA

As detailed at greater length in prior guidance (ESSA Flexibility: https://www.ed.gov/sites/ed/files/policy/elsec/leg/essa/essa-flexibilities-document-for-publication.pdf), States and LEAs have important flexibilities within the law that do not require a waiver to enact. This letter will highlight a few of those options, and officials are encouraged to explore the entirety of that guidance for more opportunities.

Innovative Testing to Encourage Improvements in Curriculum

Innovative Assessment and Accountability Demonstration Authority: A State may apply to the Department to implement an innovative assessment system in some of its schools or LEAs instead of the statewide assessments, with the goal of scaling up the innovative assessment for statewide administration. Such a system may include competency-based assessments, instructionally embedded assessments, interim assessments, cumulative year-end assessments, or performance-based assessments that combine into an annual summative determination for a student. Innovative assessments may allow students to demonstrate mastery or proficiency and allow an LEA to provide differentiated student support based on individual learning needs. (*See* ESEA section 1204; 34 C.F.R. §§ 200.104-200.108.)

School Support and Improvement Activities

State Discretion with Respect to High Schools: A State has significant flexibility with respect to the improvement activities it may permit to be implemented in certain high schools that the State identifies for comprehensive support and improvement based on the schools' failure to graduate one-third or more of their students. (*See* ESEA section 1111(d)(1)(C)(i).) In particular, a State may allow differentiated improvement activities for high schools that are identified based on their graduation rate and that predominantly serve students who are returning to education after having left school without a regular high school diploma (i.e., dropout recovery schools), as well as for those that predominantly serve students who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet the State's high school graduation requirements (e.g., credit recovery programs). (*See* ESEA section 1111(d)(1)(C).)

In addition, a State may permit an LEA to completely forego the implementation of improvement activities for any high school identified for comprehensive support and improvement based on failing to graduate one-third or more of its students if the high school has a total enrollment of less than 100 students, though this identification must still be made public on State and local report cards. (*See* ESEA section 1111(d)(1)(C)(ii).)

Funding Flexibility for States

Transferability: States and LEAs have broad flexibility under the ESEA to transfer some or all of their funds under certain ESEA programs to other eligible ESEA programs in order to better meet State

and local needs. (*See* ESEA section 5103.) Transferability does not affect the overall amount of ESEA funds a State or LEA receives, but it provides greater flexibility in using some of those funds. States and LEAs do not need prior approval from the Department to exercise this authority, provided they comply with the requirements described in ESEA section 5103. Under ESEA section 5103(e)(2), before a State or LEA can transfer funds from a program subject to equitable services requirements, it must engage in timely and meaningful consultation with appropriate private school officials, as the transferred funds become subject to the rules and requirements of the destination program. For more information on transferability, see https://www.ed.gov/sites/ed/files/2022/03/ESEA-transferrability-funds-April-2020.pdf.

Consolidation of Funds for State Administration: A State that can demonstrate that the majority of its resources are derived from non-Federal sources has the flexibility to consolidate funds specifically made available to it for State administration under any ESEA program, as well as other programs that the Secretary may designate. (*See* ESEA section 8201(a).) A State that consolidates funds is not required to keep separate records for each individual program included in the consolidation to account for costs related to the administration of the consolidated programs. The consolidated State administrative funds may be used to administer the programs included in the consolidation, carry out activities designed to enhance the effective and coordinated use of funds under those programs, and develop the standards and assessments required under Title I. (*See* ESEA section 8201(b).) If the State does not use all of the funds that it consolidated for a particular year for administration, a State may use those funds during the applicable period of availability as funds available under one or more of the programs included in the consolidation. (*See* ESEA section 8201(e).)

II. Waiver Authority in ESEA

When the existing flexibilities for States, LEAs, and schools are insufficient, Title VIII of the ESEA allows for the Secretary to issue waivers for statutory and regulatory requirements to any program authorized under the ESEA, with certain limitations listed at the end of this document. State and local leaders are encouraged to think creatively about how Federal funds may be best leveraged to respond to parents' concerns about the quality of education delivered in our public schools.

Development of Waiver Request

Before submitting a waiver request to the Department on behalf of itself or on behalf of LEAs under ESEA Section 8104(a)(2), an SEA must:

- Provide the public and any interested LEA in the State, to the extent the request impacts an LEA, with notice and a reasonable opportunity to comment and provide input on the request in the manner in which the SEA customarily provides similar notice and opportunity to comment; and

- Submit the comments and input to the Secretary with a description of how the SEA addressed the comments and input. (*See* ESEA section 8401(b)(3)(A).)

SEAs are encouraged, in soliciting public comment, to work with impacted LEAs to ensure that parents are provided with reasonable notice of their opportunity to provide public comment on any proposed waiver.

To obtain a waiver, the ESEA requires that an SEA, LEA (through its SEA), Indian Tribe (on behalf of itself or its schools), or school (through its LEA and SEA) submit a request to the Secretary. Section 8401(b) of the ESEA requires an SEA (on behalf of the SEA or on behalf of, and based on the requests of, LEAs in the State) or Indian Tribe (on behalf of schools operated by the Tribe) to include in its waiver request a plan that:

- Identifies the Federal program(s) affected by the requested waiver;
- Describes which Federal statutory or regulatory requirements are to be waived;
- Describes how the waiving of such requirements will advance student academic achievement;
- Describes the methods the SEA, LEA, school, or Indian Tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the waiver;
- Includes only information directly related to the waiver request;
- Describes how schools will continue to assist the same populations served by the program for which the waiver is requested; and
- If the waiver relates to section 1111(b) or (h) of the ESEA, describes how the SEA, LEA, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of student subgroups.

In the case of a waiver request submitted by an LEA, the request must be reviewed and approved by the SEA in accordance with ESEA section 8401(a)(2) before being submitted to the Secretary. The LEA must also provide notice and a reasonable opportunity to comment on the waiver request to the SEA and the public in the manner in which the LEA customarily provides similar notice and opportunity to comment to the public. (*See* ESEA section 8401(b)(3)(B).) Any comments received from the SEA and public must accompany the request when submitted to the Department.

Department Review of Waiver Request

The Department has 120 days to review and issue a final determination on each submitted waiver. The Department may approve a waiver for up to four years. The State may request that the Department subsequently extend the waiver if the State demonstrates that the waiver has been effective in enabling the State or affected recipient to carry out the activities for which the waiver

was requested and the waiver has contributed to improved student achievement and the extension is in the public interest.

Consistent with ESEA section 8401(b)(4)(A), the Department can, or sometimes must, issue an initial disapproval of a waiver if:

- It does not meet the waiver requirements (listed above) or is not permitted (as noted under the prohibitions below);
- The description provided insufficient information to demonstrate that the waiver will advance student academic achievement; or
- It does not provide for adequate evaluation to ensure review and continuous improvement of the plan.

If the Department issues such an initial disapproval of a waiver, ESEA section 8401(b)(4)(B) requires the Secretary to:

- Notify the requesting entity and publicly provide detailed reasons for such determination in writing (e.g., on the Department's website); and
- Offer the requesting entity an opportunity to revise and resubmit the waiver request by no more than 60 days after the date of the denial.

If the State resubmits its waiver request and the Department determines that the resubmission does not meet the requirements for approval of a waiver, the Department must offer the State (or requesting entity) the opportunity for a hearing, which must be held not more than 30 days after the date of the resubmission.

Limitations of Waiver Authority

ESEA section 8401(c) restricts the requirements for which the Department may consider waivers under section 8401. The statutory and regulatory provisions for which the Department *may not* grant waivers under this section include requirements related to the following:

- The allocation or distribution of funds to States, LEAs, Indian Tribes, or other recipients of funds under the ESEA;
- Maintenance of effort (section 8521 of the ESEA gives the Department the authority to waive this requirement under certain circumstances);
- Comparability of services;
- Use of Federal funds to supplement, not supplant, non-Federal funds;
- Equitable participation of private school students and teachers;
- Parental participation and involvement;
- Applicable civil rights requirements;

- The requirement for a charter school under Part C of Title IV of the ESEA;
- The prohibitions—
    - In Subpart 2 of Part F of Title VIII of the ESEA;
    - Regarding use of funds for religious worship or instruction in ESEA Section 8505; and
    - Regarding activities in ESEA Section 8526 (prohibited uses of funds); and
- The selection of a school attendance area or school under subsections (a) and (b) of ESEA Section 1113, except that the Secretary may grant a waiver to allow a school attendance area or school to participate in activities under Part A of Title I if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the LEA that meets the requirements of subsections (a) and (b) of section 1113.

In addition, the ESEA section 8401 waiver authority does not apply to the Impact Aid Program (ESEA Title VII). (*See* ESEA section 8102.)

States are encouraged to seek informal and non-binding assistance from the Department by email (OESE.TitleI-A@ed.gov) in the development of waiver proposals that meet the criteria of the ESEA and the spirit of education improvement called for by the President.

The status quo is not working. The Department stands ready to assist SEAs, LEAs, schools, and Indian Tribes seeking to empower parents, better serve students, and make education great again in America.

Sincerely,

Hayley B. Sanon

Hayley B. Sanon
Principal Deputy Assistant Secretary
and Acting Assistant Secretary
Office of Elementary and Secondary Education

Please note that this document is non-binding and subject to revision or revocation at any time without prior notice. This document describes statutory and regulatory provisions, but to the extent that any conflict exists between this document and those provisions, the text of such statutes or regulations is controlling.