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**Department of Education**

# **New Hampshire Department of Education Elementary and Secondary Education Act (ESEA) Federal Programs Requirement Waiver**

*Bureau of Instructional Support*  
Office of ESEA Programs  
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## Purpose

According to the Elementary and Secondary Education Act (ESEA), a local educational agency (LEA) and/or a school may request a waiver of statutory and regulatory requirements under this Act. To ensure LEAs have the guidance to submit such a waiver, the New Hampshire Department of Education (NHED) has developed the following ESEA Federal Title Programs Requirement Waiver.

## Guidance

### Order of Waiver Submission

ESEA Section 8401(b)(2) may be developed and submitted accordingly –

- I. by LEAs on behalf of the agency and the LEAs schools to State educational agency (SEA) and
- II. by SEA on behalf of, and based on the requests of, LEAs in the State to the Secretary.

A LEA that receives funds under a program authorized by the ESEA and desires a waiver of any statutory or regulatory requirement of this Act shall submit a request to the NHED. The SEA may then submit the request to the Secretary if the SEA determines the waiver meets all statutory and/or regulatory requirements.

Schools must submit their requests to their LEA prior to submission to the SEA. Submissions directly from a school to NHED will not be considered.

### Required Waiver Plan

According to ESEA Section 8401(b), a SEA acting on behalf of a LEA shall submit a waiver request to the Secretary, which shall include a plan that—

- A. identifies the Federal programs affected by the requested waiver;
- B. describes which Federal statutory or regulatory requirements are to be waived;
- C. describes how the waiving of such requirements will advance student academic achievement;
- D. describes the methods the SEA, LEA, school, or will use to monitor and regularly evaluate the effectiveness of the implementation of the plan;
- E. includes only information directly related to the waiver request; and
- F. describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describes how the SEA or LEA school will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi).

### Opportunity for Public Comments

Prior to submission to the Secretary, the following action for public comments must take place per ESEA Section 8401(b)(2) -

1. In the case of a waiver request submitted by a LEA to the SEA that receives funds under this Act—
  - (i) the request shall be reviewed and approved by the SEA before being submitted to the Secretary and be accompanied by the comments, if any, of the SEA and the public; and
  - (ii) notice and a reasonable opportunity to comment regarding the waiver request shall be provided to the SEA and the public by the LEA requesting the waiver in the manner in which that agency customarily provides similar notice and opportunity to comment to the public.
2. In the case of a waiver request submitted by a SEA acting on behalf of a LEA in the State the SEA shall—
  - (i) provide the public and any interested LEA in the State with notice and a reasonable opportunity to comment and provide input on the request, to the extent that the request impacts the LEA;

- (ii) submit the comments and input to the Secretary, with a description of how the State addressed the comments and input; and
- (iii) provide notice and a reasonable time to comment to the public and LEA in the manner in which the applying agency customarily provides similar notice and opportunity to comment to the public.

### **Waiver Determination, Demonstration and Revision**

The Secretary shall issue a written determination regarding the initial approval or disapproval of a waiver request not more than 120 days after the date on which such a request is submitted. Initial disapproval of such a request shall be based on the determination of the Secretary in accordance with ESEA Section 8401(b)(4)(A)—

- i. the waiver request does not meet the requirements of ESEA Section 8401;
- ii. the waiver is not permitted under subsection (c) of Section 8401;
- iii. the description required in the waiver plan provides insufficient information to demonstrate that the waiving of such requirements will advance student academic achievement consistent with the purposes of this Act; or
- iv. the waiver request does not provide for an adequate evaluation to ensure review and continuous improvement of the plan.

### **Opportunity for Waiver Revision**

Upon the initial determination of disapproval of a waiver the Secretary shall immediately—

- i. notify the SEA, LEA (through the SEA), and/or school (through the LEA), as applicable, of such determination; and
- ii. provide detailed reasons for such determination in writing to the applicable entity, as outlined above, to the public, such as posting in a clear and easily accessible format to the Department's website;
- iii. offer the SEA, LEA (through the SEA), and/or school (through the LEA), an opportunity to revise and resubmit the waiver request by a date that is not more than 60 days after the date of such determination,
- iv. if the Secretary determines that the resubmission does not meet the requirements, at the request of the SEA, LEA, or school, conduct a hearing not more than 30 days after the date of such resubmission.

### **Waiver Disapproval**

The Secretary may ultimately disapprove a waiver request if —

- i. the SEA, LEA, or school, has been notified and offered an opportunity to revise and resubmit the waiver request; and
- ii. the SEA, LEA (through the SEA), or school (through the LEA) —
  - (I) does not revise and resubmit the waiver request; or
  - (II) revises and resubmits the waiver request, and the Secretary determines that such waiver request does not meet the requirements of this section after a hearing conducted, if such a hearing is requested.

### **Restrictions**

The Secretary shall not waive under ESEA section 8401 any statutory or regulatory requirements relating to—

- 1) the allocation or distribution of funds to States, LEA, or other recipients of funds under this Act;
- 2) maintenance of effort;
- 3) comparability of services;
- 4) use of Federal funds to supplement, not supplant, non-Federal funds;
- 5) equitable participation of private (non-public) school students and teachers;
- 6) parental participation and involvement;

- 7) applicable civil rights requirements;
- 8) the requirement for a charter school under part C of title IV;
- 9) the prohibitions—
  - (A) in subpart 2 of part F;
  - (B) regarding use of funds for religious worship or instruction in section 8505; and
  - (C) regarding activities in section 8526; or
- 10) the selection of a school attendance area or school under subsections (a) and (b) of 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.

### **Waiver Duration**

A waiver approved by the Secretary under this section may be for a period not to exceed 4 years. The Secretary may extend the period if the State demonstrates that—

- (A) 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
- (B) the extension is in the public interest.

### **Reporting**

A SEA, LEA, or school, receiving a waiver under this section shall describe, as part of, and pursuant to, the required annual reporting under section 1111(h)—

- (1) the progress of schools covered under the provisions of such waiver toward improving student academic achievement; and
- (2) how the use of the waiver has contributed to such progress.

### **Termination of Waivers**

The Secretary shall terminate a waiver under this section if, after notice and an opportunity for a hearing, the Secretary—

- (A) presents a rationale and supporting information that clearly demonstrates that the waiver is not contributing to the progress of schools described in subsection; or
- (B) determines that the waiver is no longer necessary to achieve its original purposes.

### **Publication of Waivers**

A notice of the Secretary's decision to grant each waiver shall be published in the Federal Register and the Secretary shall provide for the dissemination of the notice to SEAs, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.



## ESEA Federal Programs Requirement Waiver Request

This document provides LEAs and their schools with the opportunity to request a waiver of statutory and regulatory requirements under ESEA Title programs. Please ensure that all requested information is fully and accurately completed before submitting to NHED for consideration.

Submit completed waiver requests to Emily Shoemaker by email at [Emily.A.Shoemaker@doe.nh.gov](mailto:Emily.A.Shoemaker@doe.nh.gov).

### ***SECTION 1: Identifying Information***

**Order of Waiver Submission – identify the appropriate course of action (select one):**

- This waiver is submitted on behalf of the LEA
- This waiver is submitted on behalf of the school within the LEA

District Name (LEA):

Applicable School(s)

Superintendent Name:

Superintendent Phone Number:

Superintendent Email:

### ***SECTION 2: Required Waiver Plan***

**Please address each of the following sections as it pertains to the waiver request. If you need additional space please attach to this form.**

Identify the Federal programs that will be affected by the requested waiver;

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Describe which Federal statutory or regulatory requirements you are requesting to be waived;

Describe how the waiving of such requirements will advance student academic achievement;

Describe the methods the SEA, LEA, school, will use to monitor and regularly evaluate the effectiveness of the implementation of the plan;

Describe how the school(s) will continue to provide assistance to the same populations served by programs for which the waiver is requested and, if the waiver relates to provisions of subsections (b) or (h) of section 1111, describes how the SEA or LEA school will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students identified in section 1111(b)(2)(B)(xi).