

Title I, Part A Waivers

The Secretary of the US Department of Education is inviting waivers of certain Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) statutory and regulatory provisions. It is the intent of the New Hampshire Department of Education (NHDOE) to request waivers for the provisions summarized below. The following table summarizes the current provisions for which waivers are available and program implications if a waiver is granted. For additional information, please reference the Non Regulatory Guidance on Title I, Part A Waivers at <http://www.ed.gov/programs/titleiparta/title-i-waiver.doc>. The NHDOE is accepting Local Education Agency (LEA) and general public comments regarding the waivers that the NHDOE is considering submitting an application for. All comments received will be considered during the waiver application process. Please send any comments that you have to the following: TitleI@ed.state.nh.us by Wednesday (8/12/09).

Current Provision <i>(Excerpts from Non Regulatory Guidance)</i>	Waiver Implications <i>(Excerpts from Non Regulatory Guidance)</i>
<p><u>Requests for waivers to allow an Local Education Agency (LEA) to offer Supplemental Education Services (SES) in addition to public school choice to eligible students in Title I schools in the first year of school improvement</u> Under section 1116(b)(10) of the ESEA and 34 Code of Federal Regulations (C.F.R.) § 200.48, an LEA with one or more schools in improvement, corrective action, or restructuring must spend an amount at least equal to 20 percent of its Title I, Part A, Subpart 2 allocation on public school-choice related transportation and SES (“20 percent obligation”). In determining whether an LEA has met its 20 percent obligation, an LEA may not count the funds that it spends on providing SES to students attending schools in the first year of improvement because the LEA has no statutory or regulatory obligation to provide SES to students attending those schools.</p>	<p>This waiver would provide an LEA with the flexibility to offer SES to eligible students in Title I schools in year one of improvement (a year earlier than the law normally requires), in addition to offering public school choice options to students in those schools, and to count the costs of providing SES to those students toward meeting the LEA’s 20 percent obligation.</p>
<p><u>Requests for waivers to allow exclusion of Title I, Part A American Recovery and Reinvestment Act (ARRA) funds in “set-aside” calculations</u> <i>(3 provisions)</i></p>	<p>The availability of waivers provides for three provisions in the “set-aside” calculations for required reserves, and allows the calculation to exclude some or all of funding provided under Title I ARRA. The three “set-aside” provisions are the 20 percent reserve for public school choice related transportation and SES; the 10 percent reserve for professional development for districts in need of improvement; and the 10 percent reserve of its school level allocation for schools in need of improvement.</p>
<ul style="list-style-type: none"> ▪ <u>I.</u> The requirement to calculate an LEA’s 20 percent obligation for public school choice-related transportation and SES based on the LEA’s total FY 2009 Title I, Part A allocation (regular allocation <i>and</i> ARRA). 	<p>A waiver related to either the 20 percent obligation for public school choice-related transportation and SES or the 10 percent set-aside for professional development for a district or school in improvement would permit a district/school, if it so chooses, to exclude some or all of its Title I, Part A ARRA funds in calculating these “set-aside” amounts.</p>

<ul style="list-style-type: none"> ▪ <u>2.</u> The requirement to calculate the 10 percent set-aside for professional development for an LEA in improvement based on the LEA’s total FY 2009 Title I, Part A allocation (regular allocation <i>and</i> ARRA). 	<p>A waiver related to the 10 percent set-aside for professional development for a district/school in improvement would allow a district/school to calculate this set-aside in a way that takes into account some or all of the LEA’s Title I, Part A ARRA funds.</p> <p>For a request for a waiver related to either the 20 percent obligation for choice-related transportation and SES or the 10 percent professional development obligation for a district/school in improvement, a State Education Agency (SEA) must include the following assurances with respect to the specific “set-aside” requirement for which the waiver is requested:</p> <ul style="list-style-type: none"> ▪ That the SEA will only implement the waiver for an LEA that provides assurances to the SEA that: <ul style="list-style-type: none"> ○ The LEA will comply with its statutory and regulatory obligations for the set-aside with respect to its regular Title I, Part A allocation; ○ The LEA will use the funds freed up by the waiver to address needs identified based on data, such as Statewide or formative assessment results; ○ The LEA will comply with all of its other Title I, Part A statutory and regulatory obligations, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that “use effective methods and instructional strategies that are based on scientifically based research”; and ○ The LEA will submit an application for Title I, Part A funds (referred to herein as “LEA application”) or, if necessary, an amendment to its existing LEA application that describes the data on which it relied to identify needs that will be addressed using the funds freed up by the waiver and the evidence that supports the strategies it intends to use to address those needs. ▪ That the SEA will not approve an LEA’s application or amendment to an LEA’s application unless or until it determines, based on the LEA’s description, that the LEA has satisfied its obligation to identify needs based on data and address those needs using evidence-based strategies. ▪ That the SEA will not approve an LEA to implement the waiver unless or until the LEA has an approved application (or amended application) that includes the required description of the data on which the LEA relied to identify needs and the evidence that supports the strategies to address those needs. ▪ That, if necessary to carry out the assurances above, the SEA will require an LEA seeking to implement the waiver to amend its application in accordance with the SEA’s usual process for changing an LEA’s application.
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<ul style="list-style-type: none"> ▪ 3. The requirement to calculate the 10 percent set-aside for professional development for a school in improvement based on the total amount of FY 2009 Title I, Part A funds the school receives under section 1113 (from the LEA’s regular allocation <i>and</i> ARRA). 	<p>For a request for a waiver related to the 10 percent professional development obligation for a school in improvement, an SEA must provide an assurance that it will only implement the waiver for an LEA that provides assurances to the SEA that:</p> <ul style="list-style-type: none"> ○ The LEA will ensure that its schools comply with their statutory and regulatory obligations for the set-aside with respect to the funds that are not “factored out” in accordance with C-9; ○ The LEA will ensure that its schools use the funds freed up by the waiver to address needs identified based on data, such as Statewide or formative assessment results or; ○ The LEA will comply with all of its other Title I, Part A statutory and regulatory obligations, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that “use effective methods and instructional strategies that are based on scientifically based research”; and ○ The LEA will ensure that its schools will implement the waiver in accordance with C-9.
<p><u>Requests for waivers to allow exclusion of Title I, Part A ARRA funds in determining the per-pupil amount for SES</u></p> <p>Under section 1116(e)(6) of the ESEA, an LEA must make available, for each student receiving SES, the lesser of: (1) the actual costs of the services; or (2) the LEA’s Title I, Part A, Subpart 2 allocation divided by the number of children from families below the poverty level in the LEA, as determined by census data (<i>i.e.</i>, the “per-pupil amount for SES”).</p>	<p>Granting this waiver to an SEA would permit its LEAs, if they so choose, to exclude some or all of their Title I, Part A ARRA funds in calculating the per-pupil amount for SES and thus allow them to provide SES to a greater number of eligible students.</p>
<p><u>Waivers related to the carryover limitation in section 1127(b) of the ESEA</u></p> <p>Section 1127(a) of the ESEA prohibits an LEA from carrying over to the next fiscal year more than 15 percent of its Title I, Part A, Subpart 2 allocation. Section 1127(b) permits an SEA to waive this limitation once every three years if: (1) the LEA’s request is reasonable and necessary; or (2) a supplemental Title I, Part A appropriation becomes available.</p>	<p>The waiver for which the Secretary is inviting requests would enable an SEA to waive the carryover limitation more than once every three years for an LEA that needs the additional waiver because of the ARRA, which provided a supplemental Title I, Part A appropriation.</p>