

ESEA Recent Guidance

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ESEA Guidance Under the Trump Administration



Recent Guidance

- [Title I flexibility guidance](#)
- [Unsafe School Choice guidance](#)
- [Letter on using school improvement to expand school choice](#)
- [Dear Colleague on Equitable Services](#)
- [Letter on prohibition on using federal funds for lobbying](#)
- [Dear Colleague on ESEA Flexibilities](#)
- [Dear Colleague Letter on Ed-Flex](#)

Letter on Title I Flexibility

- Sent to State chiefs on March 31st
- Does not set new policy; highlights certain areas of flexibility under Title I re: parental choice
- Discusses two areas under ESEA:
 - Direct Student Services (Sec. 1003A)
 - Title I-A options



Letter on Title I Flexibility - DSS

- Highlights the Direct Student Services optional State set-aside
 - Allows States to set aside up to three percent of their Title I allocation to provide funds to LEAs for direct student services
 - Only one State currently takes the DSS set-aside
- Reiterates allowable activities from ESEA:
 - Transportation to another public school for students in CSI schools (only if not using Title I-A funds for this purpose);
 - Tutoring;
 - Advanced placement coursework and related fees;
 - Credit recovery;
 - Participation in academic courses not otherwise available at a school

Letter on Title I Flexibility - DSS

- Notes area for flexibility within DSS:
 - “While a State cannot direct or limit the use of these funds by LEAs, the State could establish priorities to award these funds to LEAs that align with the State’s priorities and goals.”
 - A State “could award points in its competitive process for those activities that it believes or has evidence the activity will provide parents the most choices and maximize the impact of these funds.”

Letter on Title I flexibility – Title I-A

- Notes areas for flexibility under schoolwide/targeted assistance programs:
 - Schools operating schoolwide programs “could choose to implement a program that identifies activities that improve the academic program in the school and which allows parents to choose the best activity to meet their child’s educational needs.”
 - Must be consistent with needs assessment and SW plan
 - “A school could identify a range of dual enrollment opportunities, academic tutoring programs, and career and technical education activities that are available for students and let parents select the best option for their child.”
 - LEA may use homeless reservation to serve those students and provide these choices to parents

Letter on Unsafe School Choice Option

- Dear Colleague sent to States on May 7th reminding them of existing requirement
- Under Sec. 8532 of ESEA, States must offer choice of school to students who:
 1. Attend a public school that has been determined based on State criteria to be “persistently dangerous”
 2. Have been victims of a “violent criminal offense” as determined by State law.
- States must establish and implement standards to define “persistently dangerous” and institute a policy to allow school transfer



Letter on Using School Improvement to Expand School Choice

- As part of school improvement plans, LEAs/schools can identify activities to improve outcomes that allow parents to choose the best activity to meet their child's educational needs
 - States can provide guidance/templates/other TA to LEAs and schools to ensure parents get opportunity for meaningful feedback on plan
- LEA can offer school choice to student enrolled in CSI school to transfer to a non-CSI identified school served by LEA*
 - LEA can use up to 5% of I-A allocation to pay for extra costs of transporting those students

*If State prohibits such transfers, then federal flexibility not available to LEAs

Letter on Using School Improvement to Expand School Choice

- Section 1003 funds under ESEA are awarded to LEAs with CSI, TSI, and ATSI schools on competitive or formula basis (up to State)
 - Used to implement school improvement activities in identified schools
- An LEA supporting an identified school with 1003 funds could use funds to offer public school choice for students to transfer from a CSI, TSI, or ATSI school as part of its support and improvement plan or for providing info to parents about public school choice options*
 - *If an LEA uses I-A funds for this purpose, then it cannot use Sec. 1003 funds for it
- State could prioritize LEA applications that provide a menu of options for students in the prioritized school that allow parents to choose the best activity to meet their child's educational needs

Letter on Equitable Services

- Issued in August
- Emphasizes consultation requirements for Title I equitable services
- Encourages States to provide a guide/rubric to private school officials and LEAs to make the consultation process more efficient
- Reminds LEAs of parent and family engagement responsibilities for non-publics
- Suggests LEAs build a menu of options for activities that private school parents can choose from

Updated Guidance on Lobbying

- Issued end of Sept. to ED grantees
- Reminder of current requirements
 - “Although grantees may belong to professional or trade organizations, including national associations that support students and institutions participating in federal grant programs, the use of federal grant dollars to engage in or subsidize lobbying remains strictly prohibited.”
- Prohibition applies to both direct lobbying by grantees and indirect support through payments to third parties
- Grantee must ensure that any membership fee funds are not used for lobbying, even when the organization’s primary purpose is not lobbying

ESEA Flexibility Guidance and Updates



Letter on ESEA Flexibility

- Highlights multiple areas of flexibility throughout ESEA:
 - Innovative Assessment and Accountability Demonstration Authority
 - State discretion with respect to high schools
 - Transferability
 - Consolidation of funds for State administration
 - Waiver authority in Sec. 8401

What are ESEA Waivers?

PART D—WAIVERS

SEC. 8401. [20 U.S.C. 7861] WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

(a) IN GENERAL.—

(1) REQUEST FOR WAIVER BY STATE OR INDIAN TRIBE.—A State educational agency or Indian tribe that receives funds under a program authorized under this Act may submit a request to the Secretary to waive any statutory or regulatory requirement of this Act.

ESEA Waiver Process

- Who can submit an ESEA waiver?
 - State educational agencies
 - Indian tribes
 - Local educational agencies
 - Schools
- For schools, the request must be submitted to the LEA, then the SEA
- For LEAs, the request must be submitted to the SEA
- SEA or LEA (for schools) may reject the request if it determines that the waiver is not “appropriate”



What Requirements Can be Waived?

(3) RECEIPT OF WAIVER.—Except as provided in subsection (b)(4) or (c), the Secretary may waive any statutory or regulatory requirement of this Act for which a waiver request is submitted to the Secretary pursuant to this subsection.



Restrictions on ESEA Waiver Authority – Secretary CANNOT Waive...



- Allocation or distribution of funds
- Maintenance of effort
- Comparability of services
- Supplement, not supplant
- Equitable services
- Parental participation and involvement
- Requirement for a charter school under Title IV, Part C
- Applicable civil rights requirements
- Title VIII, Subpart 2, Part F prohibitions
- Prohibitions regarding use of funds for religious worship or instruction under equitable services programs
- Activities in Sec. 8526 (prohibited uses of funds)
- The selection of a school attendance area or school under Title I-A (with one exception)

What Must Be Included in a Waiver Request?

- A plan that:
 - Identifies the program(s) impacted by the request
 - Describes the statutory or regulatory requirements to be waived
 - Describes how the waiver will advance student academic achievement
 - Describes the method the recipient will use to monitor and regularly evaluate the effectiveness of the plan's implementation



What Must Be Included in a Waiver Request?

- A plan that: (cont.)
 - Only includes information related to the request
 - Describes how schools will continue to provide assistance to the same populations served by the programs for which waivers are requested
 - And if request is related to Title I-A standards and assessment requirements or annual report cards, how the recipient 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 Title I-A”

Stakeholder Engagement Requirements

- SEAs (whether submitting on behalf of themselves or an LEA/school) must:
 - Provide the public and any interested LEA in the State with notice and reasonable opportunity to comment and provide input (to the extent that the request impacts the LEA)
 - In the same manner that the SEA usually provides notice and comment to the public
 - Submit the public comments/input to the Secretary and describe how State addressed the comments
 - If it is a waiver request on behalf of an LEA/school, the State should also include its own comments (if any)

How Long Are Waivers Applicable, If Granted?



- Not to exceed four years
- BUT the Secretary can extend the period if:
 - The waiver has been effective in enabling the recipient to carry out the activities for which the waiver was granted AND it has contributed to improved student achievement; AND
 - The extension is in the public interest.

Approval/Denial of Waiver Requests

- Secretary must issue a written determination within 120 days of submission date
- If denied, it must be based on the fact that:
 - The request does not meet the requirements of Sec. 8401;
 - The waiver is not permitted under ESEA;
 - The request does not provide sufficient information regarding how it will advance student academic achievement; or
 - The request does not provide for adequate evaluation to ensure review and continuous improvement of the plan.

Approval/Denial of Waiver Requests

If initially denied, the Secretary must:

- Provide detailed reasons for determination in writing to the public; and
- Offer opportunity to revise and resubmit within 60 days after determination.
- If denied after resubmission, State/LEA/school/Indian Tribe may request a hearing within 30 days after date of resubmission
- Secretary is permitted to terminate approved waivers under certain circumstances
 - If the Secretary presents a rationale and supporting information that demonstrates the waiver is not contributing to improved academic achievement; or
 - The Secretary determines the waiver is no longer necessary to achieve its original purpose.

A New Crop of Waivers??



Iowa Request

- Allow state administrative and state activities set-aside funds to be consolidated based on existing statutory formulas.
- Allow school district formula and competitive funds to be consolidated based on existing statutory formulas utilizing expanded transferability flexibilities.
- Allow the IDOE to calculate and retain the equitable services proportionate share in all relevant ESEA programs for school districts and nonpublic schools that opt in through meaningful consultation to provide equitable services to nonpublic school students and teachers through a third-party provider(s).
- Explore opportunities to best support school districts in prioritizing schools most in need of support through revised USED administrative interpretations. (Appears to request a waiver of “rank and serve”).
- Use TIA’s methodology for supplement, not supplant implementation across multiple ESEA programs.

Indiana Request

- Requests waiving allowable use provisions under:
 - Title I, Part B - State Assessment Grants
 - Title I, Part C - Education of Migratory Children
 - Title I, Part D - Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent or at Risk
 - Title II, Part A - Supporting Effective Instruction
 - Title III, Part A - English Language Acquisition, Language Enhancement, and Academic Achievement Act
 - Title IV, Part A - Student Support and Academic Enrichment Grants
 - Title IV, Part B - 21st Century Community Learning Centers

Indiana Request (cont.)

- Does not request a waiver of funding formulas / allocations, only allowable uses, to provide flexibility to treat funding more as a block grant
- Requests a waiver on federal accountability requirements in favor of a unified school grading system
- Requests waiving school improvement and support requirements to facilitate school choice by redirecting funds from schools identified for support, and instead, using the funds to allow student zoned in those schools to access other choice options

Oklahoma Request



- Requests waiver to peer review assessments and annual assessment requirements in ESSA
- Instead, districts could replace testing with “approved benchmark assessments”

Waiver Takeaways:

- Current administration will entertain more and broader requests
- Some States pushing for more flexibility than previously granted
- Nothing approved yet
- ED responses will tell us more about what they are willing to approve

Letter on Ed-Flex

- Issued in September
- Provides overview of Ed-Flex program
- Outlines the application process
- Discusses what can be waived and restrictions
- 12 states have approval



What is Ed-Flex?

- Program that allows Secretary to delegate authority to States to waive certain statutory or regulatory education requirements
- First established as a demonstration program in 1994
 - Education Flexibility Partnership Act of 1999 extended the program
 - Reauthorized by ESSA in 2015

Who is eligible to participate?

- States (including D.C., Puerto Rico, and U.S. Territories) that:
 - Have developed and implemented the challenging State academic standards and assessments required under ESEA Title I-A and are producing the required report cards or have made substantial progress toward doing so;
 - Will hold LEAs, ESAs, and school accountable for meeting the goals described in local Ed-Flex applications and for providing TA;
 - Implement CSI and TSI activities under Title I-A; and
 - Have waived or will waive State statutory or regulatory requirements while holding LEAs, ESAs, and schools accountable for the performance of students affected by the waivers.

What if a State doesn't have authority to waive statutory and regulatory requirements?

- States only need authority to waive one or the other
- If State does not have authority to waive either, then it is not eligible for Ed-Flex
 - Secretary cannot waive eligibility requirements

What can be waived under Ed-Flex?

- Approved States have authority to waive a wide range of requirements under the following programs:
 - ESEA
 - Title I-A (but NOT section 1111)
 - Title I-C, Education of Migratory Children
 - Title I-D, Neglected and Delinquent program
 - Title II-A, Supporting Effective Instruction program
 - Title IV-A, Student Support and Academic Enrichment program
 - Perkins
 - GEPA/EDGAR (but only in relation to the allowable programs)

What **CANNOT** be waived under Ed-Flex?

- State cannot grant waivers that undermine the purposes of the statutory requirements for a program
- There are also some specific restrictions on what a State can waive, including:
 - Standards, assessments, and accountability requirements under Sec. 1111
 - Maintenance of effort
 - Comparability of services
 - Equitable services
 - Family engagement
 - Distribution of funds to LEAs



What **CANNOT** be waived under Ed-Flex?

There are some restrictions on what a State can waive, including:

- Serving eligible school attendance areas in rank order (Sec. 1111(a)(3))
- Selection of school attendance areas
- Selection of eligible school attendance areas/schools
 - BUT State can grant waiver to allow attendance area or school to participate in Title I if the percentage of students from low-income families is not more than 10 percentage points below lowest percentage for any school attendance area or school
- Supplement, not supplant
- Civil rights requirements
- Requirements that apply to the SEA

How does a State get Ed-Flex approval?

- Must submit an application to the Secretary
- Template: <https://www.ed.gov/media/document/ed-flexapplication2023update-pdf-form-110377.pdf>
- Includes statutorily-required information
- ED has 90 days to review and issue a written decision
 - If disapproved, ED will provide info about revision/resubmission process
- LEAs then submit applications to State for waiver requests

State Monitoring and Oversight

- States have to hold LEAs/ESAs/schools accountable for student performance impacted by approved waivers
- Must annually monitor activities of approved entities and measure performance against goals included in local applications
- States must terminate waivers if waste, fraud, or abuse is found; performance is inadequate; achievement has decreased; or substantial progress toward goals has not been made
 - Must provide notice and opportunity for a hearing if waiver is terminated

What are States waiving?

- 12 States currently approved for Ed-Flex
- Some common local waivers granted (based on 2024 report):
 - Title I-A 15% carryover limitation
 - Title IV-A required category spending
 - Title I-A 125% rule
 - Eligible Title I-A school attendance areas

New ED Grant Priorities



What is a grant priority?

- Specific goals/criteria set by the U.S. Department of Education that apply to competitive grants
- Can be designated as mandatory or optional
 - If optional, then it often results in additional points on application if applicant meets the priority
- Typically change from one administration to the next
- Does NOT impact formula funds, like Title I-A

Proposed Priorities for Competitive Grants

Final:

- Evidence-Based Literacy
- Educational Choice
- Returning Education to the States

Proposed:

- Artificial Intelligence
- Patriotic Education
- Expanding Career Pathways and Workforce Readiness
- Supporting Meaningful Learning Opportunities for Students

Evidence-Based Literacy

- Defines “evidence-based literacy instruction”:
 - Literacy instruction that relates to explicit, systematic and intentional instruction in phonological awareness, phonic decoding, vocabulary, language structure, reading fluency, and reading comprehension; promotes knowledge- rich materials; and is backed by” strong or moderate evidence
- Responsive to NAEP scores for literacy
- Requires the incorporation only of those activities backed by “strong” or “moderate” evidence

Educational Choice

- Priority for applicants that demonstrate efforts to increase access to charter schools and other non-traditional models, including:
 - Expand or replicate schools with a specific focus on a number of areas, including STEM, career and technical education, “patriotic education,” and “classical education,”
 - Support education savings accounts, tax credit scholarships, homeschooling, etc.
 - Expand access to K-12 schools through open enrollment or course-based choice
 - Provide/expand access to dual enrollment and similar programs, and CTE/workforce programs
 - Expand access to education services that accelerate learning such as high-impact tutoring

Returning Education to the States

- Prioritizing proposals carried out by State agencies and workforce development boards,
- “As the Department transitions toward closure, it is more critical than ever for States to rise to the occasion and lead with urgency and vision.”

Patriotic Education

- Defines “patriotic education”:
 - Education that “presents American history in a way that is accurate, honest, and inspiring,” and that “emphasizes a unifying and uplifting portrayal of the nation's founding ideals, highlights the progress the United States has made in living up to those principles, especially the battles fought by civil rights heroes to extend the protections of the U.S. Constitution to all citizens, and affirms that dedication to America's core values is both meaningful and justified.”

Expanding Career Pathways and Workforce Readiness

- Focuses on aligning education with needs in the labor market
- Priority for projects that
 - (a) support workforce development, including building industry partnerships and creating apprenticeships and other work-based learning;
 - (b) provide career and college advising and exploration;
 - (c) help students evaluate the financial impact of college and career paths; and
 - (d) develop “talent marketplaces” that connect students and employers.

Supporting Meaningful Learning Opportunities for Students

- Projects that will be prioritized include those that:
 - Will improve the quality of core instruction and provide teacher training;
 - Expand supports, such as tutoring or staffing models;
 - Connect coursework with career-related activities;
 - Improve assessments; and
 - Engage parents and provide them with resources for home learning.

Artificial Intelligence

- “strong foundation in AI literacy will help ensure students are prepared to navigate and contribute to a society where these technologies play a growing role”
- “AI tools have the potential to support personalized instruction, increase classroom engagement, and improve student outcomes”
- Priority for:
 - Integration of AI literacy into teaching and learning,
 - Expansion of offerings of AI and computer science in K-12 or higher education
 - Embedding AI and computer science in professional development
 - Providing PD on AI in subject areas and standalone computer science courses
 - Partnerships with SEAs on AI
 - Opportunities for high school students to enroll in AI courses and certifications

AI in Education



Executive Order on AI in Education

- Executive Order: “ADVANCING ARTIFICIAL INTELLIGENCE EDUCATION FOR AMERICAN YOUTH” April 2025
 - <https://www.whitehouse.gov/presidential-actions/2025/04/advancing-artificial-intelligence-education-for-american-youth/>
- “It is the policy of the United States to promote AI literacy and proficiency among Americans by promoting the appropriate integration of AI into education, providing comprehensive AI training for educators, and fostering early exposure to AI concepts and technology to develop an AI-ready workforce and the next generation of American AI innovators.”

Executive Order on AI in Education

- Creates AI Task Force
- Within 90 days, instructed to create a Presidential Artificial intelligence Challenge
- Establish public-private partnerships to develop online resources regarding “foundational AI literacy and critical thinking skills”
 - Identify any federal funding sources that could be used in this work
 - Resources should be “ready for use in K-12 instruction” within 180 days of announcement
- Increase participation in AI-related apprenticeships
- Within 120 days, engage partners to identify and promote AI skills education coursework and certifications
 - Including for high school students

Executive Order on AI in Education

- Within 120 days, authorize discretionary grants for teacher training under ESEA Title II and HEA Title II including for:
 - (i) reducing time-intensive administrative tasks;
 - (ii) improving teacher training and evaluation;
 - (iii) providing professional development for all educators, so they can integrate the fundamentals of AI into all subject areas; and
 - (iv) providing professional development in foundational computer science and AI, preparing educators to effectively teach AI in stand-alone computer science and other relevant courses

New Guidance on AI in Education

- Issued July 2025
- Federal funds may be used for:
 - Developing or procuring AI-powered instructional tools
 - Expand access to personalized learning materials
 - Training educators, providers, and families on AI literacy
 - AI-supported tutoring, including AI systems or hybrid models, and related diagnostics
 - Using AI to help students explore careers and career pathways
 - Virtual advising for court planning, financial aid, and postsecondary transitions

New Guidance on AI in Education

- Principles for responsible use:
 - Educator-led (support teachers, providers, and others)
 - Ethical (evaluate validity of AI, understand appropriate use in context of social media)
 - Accessible (to those who need accommodations)
 - Transparent and explainable (understand how systems function and allow stakeholders to “participate meaningfully in decisions about” adoption)
 - Data protective (systems must comply with FERPA and other applicable laws)
- “apply sound judgment”

How does ED use AI?

- Agency “Inventory” web page: <https://www.ed.gov/about/ed-overview/artificial-intelligence-ai-guidance>
- The boring: “The IPAC Workflow bot downloads a date range csv file from the Treasury's IPAC system, adjusts the entries to fit the ED system, and uploads them to the ED SharePoint sites and the Financial system.”
- The hmmmmm: OCFO’s CAISY is designed to enhance decision-making and operational efficiency by delivering real-time insights, predictive analytics, and intelligent automation.
- The hope-this-works: AIDan, the federal student aid chatbot
- The “Hey! Wait a minute”: OESE uses AI for “public policy analysis, templates for written materials, sample paragraphs, and drafts of memos”



Is this AI?

ED's Semi-Annual Regulatory Agenda



ED's Semi-Annual Regulatory Agenda

- For [Spring 2025](#) (published September 2025)
- Focus on two larger issues:
 - DEI/racial and ethnic discrimination (Title VI)
 - Gender identity (Title IX)

Agency Rule List - Spring 2025

Department of Education

<u>Agency</u>	<u>Agenda Stage of Rulemaking</u>	<u>Title</u>	<u>RIN</u>
ED/OESE	Proposed Rule Stage	Innovative Assessment Demonstration Authority	1810-AB60
ED/OESE	Proposed Rule Stage	Impact Aid Program--Technical Corrections	1810-AB66
ED/OPE	Prerule Stage	Accreditation Issues	1840-AD82
ED/OPE	Prerule Stage	Title IV Eligibility issues	1840-AD92
ED/OPE	Proposed Rule Stage	Documentation of Foreign Source Gifts and Contracts, Section 117 of the Higher Education Act of 1965	1840-AD50
ED/OPE	Proposed Rule Stage	Public Service Loan Forgiveness	1840-AD91
ED/OCR	Proposed Rule Stage	Elimination of Disparate Impact Theory Under Title VI of the 1964 Civil Rights Act	1870-AA20
ED/OCR	Proposed Rule Stage	Procedures for Investigations and Enforcement of Title VI Violations	1870-AA21
ED/OPEPD	Proposed Rule Stage	Protection of Pupil Rights Amendments	1875-AA13
ED/OPEPD	Proposed Rule Stage	Family Educational Rights and Privacy Act	1875-AA15

ED's Semi-Annual Regulatory Agenda

- “Procedures for Investigations and Enforcement of Title VI Violations” (draft rule expected September 2025)
 - “streamlining the process by which OCR seeks termination of Federal financial assistance to institutions that intentionally violate Federal civil rights laws and refuse to voluntarily come into compliance”
- “Elimination of Disparate Impact Theory” (draft rule expected August 2025)
 - “align Department regulations with Supreme Court precedent that requires Title VI violations to rest upon intentional discrimination.”
- “Family Educational Rights and Privacy Act” (draft rule expected January 2026)
 - “clarifying the definition of education record,” the provisions governing non-consensual disclosure of personally identifiable information in education records to third parties (including commercial vendors)”

ED's Semi-Annual Regulatory Agenda

- Proposals align with current action and Executive Orders from the administration re: civil rights enforcement
 - Shift away from DEI, racial preferences
 - Focus on gender binary
- Estimated publish dates in agenda are often inaccurate (regulations come months later sometimes)
- Regulations must go through proposed rule phase first, with public comment, before becoming final

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