

Education Waivers 101: A Quick Guide for Advocates

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In our K12 education system, most policy – as well as roughly 90 percent of funding – comes from state and local governments, not Congress or the U.S. Department of Education (ED). This is especially true after a bipartisan effort to rewrite the Elementary and Secondary Education Act (ESEA) in 2015: the Every Student Succeeds Act (ESSA). One of the goals of ESSA was to [give more flexibility](#) to states and school districts, while maintaining critical guardrails on assessments, accountability, and school improvement. ESSA also modified one of the key – and most complicated – federal policy tools: the Secretary of Education’s **ESEA waiver authority**.

This tool, laid out in Title VIII of ESEA, allows the Secretary to waive certain ESSA requirements. Every administration, Republican or Democrat, over the last 25 years has used waivers to grant states flexibility in some form. For example, during the Covid-19 pandemic, both the Trump and Biden administrations invited waivers from state testing and school accountability after the widespread closures of public schools. **But waivers cannot – and should not – be used recklessly. ESSA lays out limitations on how the Secretary can use waivers and includes specific requirements waiver requests and approvals have to meet.**

[All4Ed](#) and [Education First](#) developed this guide to help advocates understand (1) what the waiver request process looks like and (2) what requirements can and cannot be waived.

What’s the purpose of waivers?

Waivers are meant to “advance student academic achievement” by providing flexibility to states, Indian tribes, districts, and/or schools from certain ESSA requirements. The Secretary’s decision to grant a waiver is made on these grounds, as well as the request meeting other requirements.

Who can ask for a waiver?

Only state education agencies (SEAs) and Indian tribes – not individual schools or districts – may request waivers. An SEA can submit a waiver on behalf of a school district or group of districts.

Are states required to seek public comment on waivers?

Yes. SEAs and Indian tribes must address feedback from the public before submitting a waiver. Specifically, SEAs must give “notice and a reasonable opportunity to comment and provide input” using their customary procedures. Comments must be shared in the request, along with a description of the process and how the SEA or tribe addressed the input received. Failure to seek public comment on a waiver would be grounds for ED to deny an SEA or tribe’s request.

What must be in a waiver request?

On top of describing how the waiver will “advance student academic achievement” and

summarizing how the SEA addressed public comments, each waiver request must:

- Identify the affected programs and the requirements that would be waived.
- Describe the plan to monitor and evaluate the effectiveness of the waiver's implementation.
- Describe how schools will continue to provide assistance to the same populations served by the programs for which waivers are requested. For example, if the waiver focuses on Title I, Part A, the waiver should address continuing supports for low-achieving students in Title I schools.
- **If the waiver request is related to requirements for state testing or data reporting**, the request must also show how the waiver will **"maintain or improve transparency in reporting to parents and the public on student achievement and school performance."** This includes transparency in reporting for students from each major racial and ethnic group; students from low-income backgrounds compared to their wealthier peers; students with disabilities compared to students without disabilities; English learners; and migrant students (as well as reporting by gender).

Which laws and regulations can be waived?

The waiver authority in ESSA does not give the Secretary the ability to permit states or districts to bypass requirements and conditions of different federal education laws and regulations. For example, the Individuals with Disabilities Education Act (IDEA) has a far more limited waiver authority, while the McKinney-Vento Homeless Assistance Act does not permit waivers at all.

Which ESSA requirements cannot be waived?

*By law, the **Secretary is prohibited from waiving ten core provisions** – including the formulas and distribution rules for formula grants (like Title I and Title III), the rules defining Title I schools and serving them in rank order, other key fiscal requirements, civil rights protections, and limitations on the Secretary's executive power. The ten Un-Waive-Able provisions are on the next page.*

When is a waiver required?

States often do not need waivers to accomplish their policy goals, given the flexibility already included in ESSA – such as the ability for states to set their own academic targets, select certain accountability indicators, and develop unique school improvement strategies. When changing these kinds of policies, a state needs to submit an amended ESSA state plan to ED for approval.

How does a waiver get approved?

ED has 120 days to respond to an SEA, and there is a process for a state to revise and resubmit the waiver if it's not approved. Waivers cannot be rejected "based on conditions outside the scope of the waiver request," and the Secretary cannot require states to include or delete "specific" standards, tests or test items, elements of accountability systems, or elements of teacher evaluation systems as a condition of approving a waiver.

Want to learn more? Read our full ESEA Waivers 101 explainer [here](#).

If you have questions, want more information, or would like to discuss a specific scenario where the waiver authority may – or may not – be appropriate, please reach out to Anne Hyslop (ahyslop@all4ed.org) and Dave Powell (dpowell@education-first.com).

The Ten ESSA Provisions the Secretary Cannot Waive

Un-Waive-Able Provision	Description Of What Cannot be Waived
1. The allocation or distribution of funds to states, districts, Indian tribes, or other grantees	The formulas and rules in the law that determine how much funding states and districts receive under each ESSA Title program (e.g., Title I, Title II, Title III). This means the Secretary cannot use waivers to transform a formula program into a block grant or allow funds to go to different recipients like non-public schools.
2. Maintenance of effort	The requirements to maintain state and local spending as a condition of receiving federal dollars (except two specific cases where districts may receive a waiver). In general, grantees must maintain state and local spending at roughly 90 percent of what they spent in the prior year to continue receiving federal Title funds.
3. Comparability of services	The requirement for districts to provide comparable services in Title I and non-Title I schools in order to receive Title I funds (e.g., by demonstrating they use a district-wide salary schedule).
4. Supplement, not supplant	The requirements for states and districts to show that federal funds provide extra resources and do not supplant state and local funds (e.g., in Title I by showing the district's method of allocating state and local funds leads to each Title I school getting all state and local funding it would receive if it were not a Title I school).
5. Equitable participation of private school students and teachers	Provisions that ensure districts provide services to support private school students and educators under certain ESSA programs, including Title I (e.g., by offering professional development). However, no federal funds directly flow to non-public schools.
6. Parental participation and involvement	Statutory requirements for parent and family involvement included in many ESSA programs.
7. Civil rights requirements	Civil rights requirements in other laws that apply to education, like the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and the Americans with Disabilities Act.
8. The requirement for a "charter school" in Title IV, Part C of ESSA	The definition of a "charter school;" federal funds cannot support entities that are religious or sectarian, noncompliant with State charter laws and federal civil rights laws, or refuse to be subject to the same accountability and oversight as other public schools.
9. Prohibitions in Title VIII of ESSA	Multiple limitations on executive authority outlined by Congress in Title VIII of ESSA (e.g., that ED cannot "mandate, direct, or control" state and district curricula and instructional content).
10. The selection of a school attendance area under Title I, Part A	The rank-and-order procedure a district uses to determine which schools are eligible for, and can be served by, Title I funds (with one narrowly defined exception); this keeps districts from using Title I funds in public schools that do not serve the highest shares of students from low-income backgrounds.