

## **Secretary of Education Waiver Authority Overview and Frequently Asked Questions (FAQ)**

**Background:** Beginning in spring 2025, the U.S. Department of Education (ED) has provided State Education Agencies (SEAs) with [guidance documents](#) promoting the Secretary of Education’s (Secretary) waiver authority under the Elementary and Secondary Education Act (ESEA). This authority is outlined in Title VIII of the ESEA and allows the Secretary to grant waivers of certain ESEA statutory and regulatory requirements. As intended by Congress, the waiver authority is designed to offer states and tribal governments targeted flexibility when such waivers can support the goal of “advancing student academic achievement.”

SEAs and Indian Tribes may apply for certain waivers on behalf of themselves or local educational agencies (LEAs). Waiver requests must be grounded in evidence that the proposed flexibility will contribute to improved student achievement. Applicants are required to identify specific federal programs and statutory or regulatory provisions to be waived, explain the rationale for the request, and outline how the waiver will be implemented, monitored, and evaluated. They must also ensure that the intended beneficiaries of the waived programs will continue to receive appropriate support. Prior to submission to ED, SEAs are required to provide an opportunity for the public to review and provide input to the waiver request.

**Impact on COPAA Members:** COPAA helped negotiate the ESEA waiver authority prior to the law’s passage in 2015 and has a vested interest in ensuring that the Secretary works to ensure that states and districts meet all the requirements, including in proposals to waive certain requirements under the ESEA. In particular, this summary is designed to:

- Remind advocates of ESEA’s waiver requirements and how they may/may not impact students with disabilities
- Encourage advocates to sign-up for state and district notifications of public stakeholder process(es) -as required by the law- to ensure waiver proposals do not harm students with disabilities as participants in the general student population or otherwise.

### **FAQ:**

**Q:** Is there previous precedent for ED to offer states waivers under the ESEA?

**A:** Yes, 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 SEAs/LEAs waivers from annual state testing in reading and mathematics [and school accountability] after the widespread closures of public schools.

**Q:** Do local/state stakeholders know when states are requesting waivers under ESEA?

**A:** Yes. SEAs and Tribes must give “notice and a reasonable opportunity to comment and provide input” using their “customary” procedures. This process often includes a notice posted on an SEA website. SEAs and Tribes must address feedback from the public before submitting a waiver to

ED. 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. 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 a request.

Q: Can all requirements be waived?

A: No. The Secretary cannot waive the fundamental provisions of ESEA including the allocation of formula funds to states, civil rights requirements, and comparability of services.

Q: Which state waivers under ESEA most commonly impact students with disabilities?

A: ESEA waivers most commonly requested -and allowed under the law- relate to SEAs request to exceed the 1% statewide cap on the administration of alternate assessments on alternate achievement standards for students with the most significant cognitive disabilities.

Q: Can the Secretary waive requirements of other education laws through ESEA?

A: No. The waiver authority under ESEA does not give the Secretary the ability to waive requirements and conditions of different federal education laws and regulations, such as the Individuals with Disabilities Education Act (IDEA), the McKinney-Vento Homeless Assistance Act, or the Higher Education Act.

Q: Can ESEA waivers alter or weaken IDEA protections?

A: No. ESEA waivers cannot alter or weaken IDEA protections, including access to a Free Appropriate Public Education (FAPE), the use of Individualized Education Programs (IEPs), and placement in the Least Restrictive Environment (LRE).

Q: Are there any guardrails on the Secretary as ED considers SEA/LEA requests for waivers of ESEA requirements?

A: Yes. Even when granted, waivers that affect assessment and accountability must include clear plans to maintain or enhance reporting transparency for all student subgroups—particularly students with disabilities. These waivers cannot obscure performance data or undermine the visibility and rights of these students in public reporting systems.

**Conclusion:** While ESEA waiver authority offers states some flexibility, it must be exercised within a narrow scope that continues to uphold equity, accountability, and civil rights for all students.

To learn more about waivers promoted to SEAs/LEAs by the Secretary of Education visit: <https://www.ed.gov/about/news/press-release/us-department-of-education-encourages-states-maximize-opportunity-improve-academic-achievement>

To learn more about ESEA waiver authority, including considerations for advocates please use this resource: <https://all4ed.org/publication/esea-waivers-101/>

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