



## Waivers under Section 9401 of ESEA

### PUBLIC NOTICE

The following information is being provided to the public for review and comment from July 30, 2009 to August 7, 2009. Comments are encouraged and should be submitted to [Randy.McIntyre@nebraska.gov](mailto:Randy.McIntyre@nebraska.gov) by 5:00 p.m. (Central) on Friday, August 7, 2009.

#### General Information

1. If the NDE requests waivers for the State, districts will submit their requests for waivers to NDE.
2. Each waiver request must:
  - a. Identify the statutory or regulatory requirement for which the waiver is sought;
  - b. Describe how the waiver will increase the quality of instruction and improve the academic achievement of students;
  - c. Describe, for each school year, specific measurable educational goals and the methods used to measure annual progress towards meeting those goals;
  - d. Explain how the waiver will assist the State and districts to reach the goals; and
  - e. Describe how schools will continue to provide assistance to the same populations served by the program(s) for which the waiver is requested.
3. The State must provide public notice to all districts and a reasonable opportunity for all districts to comment on each waiver request. Comments received must be submitted with the waiver request.
4. The State must submit annual reports on the progress made toward the identified goals.
5. Waivers can be granted for up to four years. The available length of time is provided for each waiver.
6. Other documentation may be required for specific waivers.

#### **I. Waivers of the 14-day Notice Requirement**

Title I requires districts to offer public school choice options at least 14 days before the start of the school year. Since this is a new requirement (December, 2008), the U. S. Department of Education (USDE) is offering a waiver to States that needed to work with vendors or adjust testing schedules in order to identify schools as being in need of improvement before the start of the school year. Nebraska's districts had their preliminary identification of Title I schools in need of improvement by July 1, 2009.

Nebraska does not intend to apply for this waiver.

**II. Waiver of the Prohibition on Approving Schools and Districts in Improvement, Corrective Action or Restructuring as Supplemental Educational Service (SES) Providers**

ESEA prohibits an identified school or district from being approved as an SES provider. NDE's application for SES providers was revised to allow districts (that are not identified) or ESUs to apply and receive conditional approval. This waiver would allow the NDE to approve any district to be an SES provider even if the district or school (s) within the district were identified to be in need of improvement, corrective action, or restructuring.

*Special Reporting Requirements:* NDE must report by September 30, 2010, (a) the number of identified schools and districts for 2009-10 and (b) the number of these that have been approved as SES providers.

*Length of Waiver if approved:* This is a one-year waiver as USDE intends to regulate this change.

NDE intends to apply for this waiver.

**III. Allow Districts to offer SES in addition to Public School Choice to eligible students in Year 1 of School Improvement**

Section 1116 (b)(10) requires a district with one or more identified schools to spend an amount equal to 20% of its Title I, Part A allocation on public school choice related transportation and SES. Public School Choice is required in Year 1 of School Improvement. SES is an added requirement in Year 2 of School Improvement. This waiver would allow districts to offer SES, in addition to public school choice, in Year 1 of School Improvement and have the costs included in the 20% obligation.

*Special Reporting Requirements:* NDE must report by September 30, 2010, the name and NCES District number for every district implementing this waiver.

*Length of Waiver if approved:* This is a one-year waiver as USDE intends to regulate this change.

NDE intends to apply for this waiver.

**American Recovery and Reinvestment Act (ARRA) Related Waivers**

**IV. Set-asides for Districts and Schools Identified to be in Need of Improvement**

The following Title I, Part A requirements are affected by the availability of Title I, Part A ARRA funds:

- a) The district's obligation to spend an amount equal to at least 20 percent of its FY 2009 Title I, Part A allocation on transportation for public school choice and on SES (20% obligation);

- b) The responsibility of a school in improvement to spend 10 percent of its Title I, Part A funds on professional development; and
- c) The responsibility of a district in improvement to spend 10 percent of its FY 2009 Title I, Part allocation on professional development.

These set-asides above are calculated on the amount of Title I funds a district receives. The wavier would allow a district to exclude all or any portion of the ARRA Title I funds from these calculations.

*Special Reporting Requirements for the State:* The State must assure, with respect to each specific “set-aside” requirement for which the waiver is requested, that it will only implement a waiver for a district that agrees to the following assurances:

- a) The district will comply with its statutory and regulatory obligations for the set-aside with respect to its regular Title I, Part A allocation;
- b) The district will use the funds freed up by the waiver to address needs identified based on data, such as Statewide or formative assessment results;
- c) The district 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
- d) The district will submit an application for Title I, Part A funds (or amend its existing application) to describe 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.

The State will not approve a district request until the district has satisfied its obligation to identify needs based on data and addressed those needs using evidence-based strategies.

For the waiver related to the 10 percent professional development obligation for a school in improvement, the State must provide an assurance that it will only implement the wavier for a district that provides assurances to the State that:

- a) The district will ensure that its schools comply with their statutory and regulatory obligations for the set-aside so that all schools in improvement are treated equally;
- b) The district 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;
- c) The district 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
- d) The district will ensure that its schools will implement the waiver in accordance with this guidance.

For each of the waivers that are requested by the State, the State must report the district name and NCES district number for each district implementing the waiver. The State must also report the district name and NCES district number for each district that requested a waiver and was denied by the state.

*Special Reporting Requirements for Districts:* The district must provide the amount of its Title I, Part A ARRA allocation for the 20 percent obligation or the professional development obligation that it seeks to exclude from the calculation for which the district is applying.

*Length of Waiver if approved:* One-year (FY 2009)

NDE intends to apply for waivers for all of these ARRA related requirements.

**V. The responsibility of a district to calculate the per-pupil amount for SES based on its FY 2009 Title I, Part A allocation (per-pupil amount for SES).**

Section 1116 (e)(6) of ESEA requires that each student receiving SES receive the lesser of (1) the actual costs or (2) the district's Title I allocation divided by the number of children below the poverty level (census poor data). This waiver would exclude ARRA funds from the calculation of (2) above.

*Special Reporting Requirements:* The State must assure that it will only implement a waiver for a district that agrees to the following assurances:

- a) The district will comply with all of the statutory and regulatory obligations for SES with respect to its regular Title I, Part A allocation; and
- b) The district 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".

*Special Reporting Requirements:* NDE must report by September 30, 2010, the name and NCES District number for every district implementing this waiver.

*Length of Waiver if approved:* One-year (FY 2009)

NDE intends to apply for waivers for all of these ARRA related requirements.

**VI. The prohibition on a State's ability to grant to its districts waivers of the carryover limitation more than once every three years.**

Section 1127 (a) of the ESEA prohibits an district from carrying over to the next fiscal year more than 15% of its Title I, Part A allocation. Section 1127 (b) permits a State to waive the carryover limitation once every three years. This waiver from USDE would enable NDE to waive the carryover limitation more than once every three years.

The forms and process for waiving the carryover limitation are in place. This guidance allows districts to apply early in 2009-10 so as to appropriately plan for spending ARRA funds. The waiver lifts the

limitation and does not put any additional restrictions on the number of times a State may waive the carryover limitation so long as the waiver is granted for the second (or third time) within three years only because the district has excess carryover funds because of ARRA.

*Length of Waiver if approved: Two years*

NDE intends to apply for waivers for all of these ARRA related requirements.

**VII. Waiver of Maintenance-of-Effort for Districts under Section 9521 (c) of the ESEA**

Section 1120 (a) and 9521 of the ESEA allow a district to receive funds under Title I, Part A, including Title I, Part A ARRA funds, for any fiscal year only if the State finds that either the combined fiscal effort per student or the aggregated expenditures of the district and the State with respect to the provision of free public education by the district for the preceding fiscal year were not less than 90% of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

Regarding Section 9521, any State that has received prior approval from the Secretary may treat State Fiscal Stabilization Funds provided through the ARRA and used for elementary and secondary education as non-Federal funds for the purpose of meeting the maintenance-of-effort requirement. [Note: guidance from USDE has not yet been provided on the “prior approval” process.]

NDE intends to apply for this waiver as soon as guidance is provided.