

## **Public Notices for OSPI Title I Waiver Requests to U.S. Department of Education**

### **Notice to the Public of OSPI's Intent To Apply to the United States Department of Education for two Waivers**

For the past two years, the U.S. Department of Education (Department) has invited States to request two waivers of certain statutory and regulatory requirements under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. In order to help States and their local educational agencies (LEAs) continue to exercise certain flexibility with respect to the operation of their Title I, Part A programs. The Department has invited States to request these waivers again for the 2011-2012 school year. Specifically, each State educational agency (SEA) may request the following one-year waivers for the 2011-2012 school year:

- (1) A waiver of the provision that prohibits an SEA from approving as a provider of supplemental educational services (SES) a school identified for improvement, corrective action, or restructuring or an LEA identified for improvement or corrective action (34 C.F.R. § 200.47(b)(1)(iv)(A), (B)).
- (2) A waiver that 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."

Additional information regarding requests for each of these waivers is set forth below.

#### **Requests for Waivers of the Prohibition on Approving a School or LEA Identified for Improvement, Corrective Action, or Restructuring (Identified School or LEA) as an SES Provider**

Any interested SEA may request a waiver of 34 C.F.R. § 200.47(b)(1)(iv)(A), (B) so that it may approve as an SES provider for the 2011–2012 school year an identified school or LEA. This waiver would allow, but not require, an SEA to approve an identified school or LEA as an SES provider. The decision about which SES providers to approve would remain a decision for the SEA. The waiver would not constitute approval of a particular identified school or LEA to serve as an SES provider, nor would it constitute a waiver of any State law or policy that prohibits all or certain identified schools or LEAs from serving as an SES provider.

An SEA that intends to apply for this waiver may invite identified schools and LEAs to apply to the SEA for conditional approval to be an SES provider. The conditional approval to serve as an SES provider would become final upon receipt of this waiver. To receive conditional approval, an identified school or LEA must, like any prospective SES provider, follow the SEA's application process and meet all of the SEA's customary approval requirements.

Prior to granting conditional approval to any identified schools or LEAs, the SEA and affected schools and LEAs should be aware that approval cannot become final unless and until the waiver is granted. In other words, an identified school or LEA may not begin to serve as an SES provider until the SEA has received a

waiver, but receipt of conditional approval may enable the school or LEA to begin planning its provision of services. If an SEA's waiver request ultimately is not approved by the Department, the SEA must consider the conditional approval granted to an identified school or LEA to be null and void.

An SEA that receives this waiver must submit to the Department by September 30, 2012 a report containing:

The total number of LEAs identified for improvement or corrective action that were approved to be an SES provider for the 2011–2012 school year; and

The total number of schools identified for improvement, corrective action, or restructuring that were approved to be an SES provider for the 2011–2012 school year.

### **Requests for Waivers to Allow An LEA to Offer SES in Addition to Public School Choice to Eligible Students in Title I Schools in the First Year of School Improvement**

Any interested SEA to request a waiver for the 2011–2012 school year to allow any LEA in the State to offer SES in addition to public school choice to eligible students in Title I schools in the first year of improvement and to count the costs of providing SES to those students toward the LEA's "20 percent obligation."

Under section 1116(b)(10) of the ESEA and 34 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 the absence of a waiver, 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. (See ESEA section 1116(b)(5)(B), (b)(7)(C)(iii), and (b)(8)(A)(ii), requiring SES only for eligible students attending schools in the second year of school improvement, in corrective action, or in restructuring.)

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. Note that an LEA that implements this waiver may not offer *only* SES to eligible students in schools in the first year of improvement, but may offer SES *in addition to* public school choice to eligible students in those Title I schools.

In order to receive this waiver, an SEA must include an assurance that the SEA will implement the waiver only with respect to an LEA that will meet all statutory and regulatory requirements related to SES for the 2011–2012 school year (other than the particular requirement being waived). An SEA that receives this waiver must submit to the Secretary, by September 30, 2012, a report that includes the name and NCES District Identification Number for each LEA implementing the waiver.

