

**STATE BOARD OF EDUCATION**  
**APRIL 13, 2020**

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**SUBJECT**

COVID-19 Pandemic Update and Response

**REFERENCE**

February 2017	Board approved proposed amendments to Section 33-512, Idaho code be submitted to the legislature for consideration. Amendments would allow the Board to waive a portion of the required instructional hours in the case of a state or county emergency when all schools in a school district are impacted by extended closures and when school districts provide assurances that only the minimum hours were being requested for waiver.
March 23, 2020	Board approved ESEA Federal Accountability Waiver and the waiver of provisions of IDAPA 08.02.03 pertaining to senior graduation requirements and administration of the spring 2020 administration of the ISAT.
April 6, 2020	Board extended the public school soft closure through the remainder of the academic school year with the option of an earlier entry under certain criteria. Additional action included recommendations to the Governor on statutory provision suspensions, and waiver of the number of hours of instruction that make up a semester credit.

**APPLICABLE STATUTE, RULE, OR POLICY**

Sections 33-512, 33-522, 33-1602, 33-1615, and 33-1616, Idaho Code  
Idaho Administrative Code, IDAPA 08.02.01.007 and IDAPA 08.02.03.105

**BACKGROUND/DISCUSSION**

At the March 23, 2020 Special Board meeting, the Board set a soft closure for all public schools in Idaho until April 20, 2020. The soft closure restricts schools from holding in-person classes in the buildings in alignment with Center for Disease Control (CDC) social distancing guidelines. The soft closure and subsequent guidelines posted on the Board website (<https://boardofed.idaho.gov/coronavirus-covid-19-resources/>) clarify distance learning expectations for the schools and additional operational areas designed to provide the schools with needed flexibility as they continue to educate Idaho students through this crisis, do their best to help students through the remainder of the school year and set them up to be able to continue their education in fall. In addition to this information the Department of Education has a Frequently Asked Questions page that provides guidance in specific programmatic areas.

At the April 6, 2020 Special Board meeting the Board extended the soft closure through the end of the school. This action included a provision that would allow school districts and charter schools who can meet criteria set by the Board in

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consultation with our state public health officials to return to normal operation prior to the end of the academic school year. Re-entry criteria is being developed in conjunction with state health officials and will be considered by the Board at the April 16, 2020 Board meeting.

As the pandemic has progressed, additional models and guidance from state public health officials indicate the virus is likely to peak in Idaho in late April to early May. Up to date projections can be viewed at the following links:

- <https://covid19.healthdata.org/projections> (select Idaho from the drop-down menu)
- <https://boisestate.maps.arcgis.com/apps/opsdashboard/index.html#/2d27bfd0cb8144438679cb1d0fade2f4>

As part of the discussions with the K-12 Emergency Council, the Board was asked to provide guidance on the impact of various grading scenarios that could impact students planning to attend a postsecondary institution in the fall. At the April 6, 2020 Special Board meeting, the Board's Instruction, Research and Academic Affairs Committee was asked to pull together this information for dissemination to the school districts and charter schools. The Board's Chief Academic Officer will provide an update on this work to the Board.

Pursuant to IDAPA 08.04.01.102.01., all Idaho Digital Learning Academy (IDLA) courses require the student take a comprehensive final exam at an approved site under proctored conditions. At this time, it is not possible for IDLA to conduct all final exams under proctored condition. IDLA is requesting the Board waive this provision for the remainder of the academic year.

**IMPACT**

Board action will provide school districts and charter schools with an option for returning to classroom instruction prior to the end of the school year if their school and community meet certain criteria.

**STAFF COMMENTS AND RECOMMENDATIONS**

The Board has been requested to consider the waiver of an additional section of administrative rule requiring students taking IDLA courses to have a proctored final. These proctored exams are typically done at the schools. While schools could still serve in a limited capacity as approved sites during the soft closure, based on the schools' current operating procedures, that would not be able to be accomplished for all IDLA students. By waiving the proctored exam requirement, IDLA can provide for different methods for assuring students have met the requirements of the course and learned the content.

Staff recommends approval.

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**BOARD ACTION**

I move to waive IDAPA 08.04.01.102.01. proctored final exam requirement for the remainder of the 2019-2020 academic school year.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

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**STATE DEPARTMENT OF EDUCATION**

**SUBJECT**

U.S. Department of Education CARES Act ESEA Flexibility Waivers

**REFERENCE**

April 6, 2020      The Board received an update from the State Superintendent of Public Instruction on the availability of additional waivers from the US Department of Education.

March 23, 2020      The Board waived the requirement for the spring 2020 ISAT administration and approved the waiver to be submitted to the U.S. Department of Education requesting flexibility in the ESEA accountability provisions.

**APPLICABLE STATUTE, RULE, OR POLICY**

Elementary and Secondary Education Act of 1965, reauthorized as the Every Student Succeeds Act sections 1127(a) and (b), 4106(d), 4106(e)(2)(C),(D),(E), 4107, 4108, 4109, and 4109(b), 8101(42); General Education Provisions Act, section 421(b)

**BACKGROUND/DISCUSSION**

In response to the COVID-19 pandemic, Governor Little declared a state of emergency. The proclamation directs state agencies to use state resources to do everything reasonably possible to assist people affected by the virus.

During these unprecedented times, the Department seeks to strike the appropriate balance between the Board's oversight and accountability responsibilities, along with commonsense flexibility that local education agencies (LEAs) need to support educators and families at this time.

**IMPACT**

This action item provides students and LEAs with maximum flexibility during this unprecedented time including removal of the carryover limitation for Title I-A for funds that become carryover on October 1, 2020, extending the period of availability of funds for FY 2018 for all ESEA programs in which Idaho participates under its approved consolidated State plan until September 30, 2021, waiving Title IV-A requirements for the 2019-2020 school year for a needs assessment, content area spending requirements, and lifting the 15% limit on the use of funds to purchase technology infrastructure, and to waive the definition of professional development. It further seeks the maximum flexibility allowed by the US Department of Education of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA).

**ATTACHMENTS**

Attachment 1 - U.S. Department of Education Letter

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Attachment 2 - Idaho 2020 CARES Act ESEA Waiver

**STAFF COMMENTS AND RECOMMENDATIONS**

Pursuant to Section 33-110, Idaho Code, the State Board of Education is designated as the State Education Agency (SEA) which is authorized to negotiate, and contract with, the federal government, and to accept financial and other assistance from the federal government. As the SEA the Board is responsible for approving and submitting the State Consolidated Plan for meeting the ESEA requirements and responsible for approving any waivers to those requirements.

Under the provisions of the CARES Act, SEA's are invited to request waivers of the following sections of the ESSA:

- Section 1127(a) of Title I, Part A, states that not more than 15% of the funds allocated to a LEA for any fiscal year, may remain available for obligation and expenditure for one additional fiscal year. All remaining funds not expended or obligated by September 30 of the succeeding fiscal year shall be returned. According to ESSA Section 1127(b), a SEA may waive the 15% carryover limitation, only once every three years. Through this waiver the Board would be able to approve a LEA to carry over more than 15% of its Title I, Part A funds, even if the LEA had received approval in the prior three years.
- Section 421(b) of the General Education Provisions Act (GEPA) limits the amount of time these federal funds may be used, waiver of this provision would allow the Board to extend the availability of FY 2018 federal funds for programs under the approved Consolidated State Plan until September 30, 2021.
- Section 4106(d) of Title IV, Part A of the ESEA would allow the Board to waive the requirement for the LEA to conduct a needs assessment to justify the use of the funds for the 2019-2020 school year.
- Section 4106(e)(2)(C), (D), and (E) of Title IV, Part A of the ESEA would allow the Board to waive content area specific spending requirements for FY 2018 and 2019 Title IV, Part A funds.
- Section 4109(b) of Title IV, Part A of the ESEA would allow the Board to waive spending limitation for technology infrastructure for FY 2018 and FY 2019 Title IV, Part A funds.
- Section 8101(42) of the ESEA, defines "professional development," as:
  - A. are an integral part of school and local educational agency strategies for providing educators (including teachers, principals, other school leaders, specialized instructional support personnel, paraprofessionals, and, as applicable, early childhood educators) with the knowledge and skills necessary to enable students to succeed in a well-rounded education and to meet the challenging State academic standards; and
  - B. are sustained (not stand-alone, 1-day, or short-term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused, and may include additional numerated activities defined in this section.

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This waiver would allow the Board to waive this definition and allow funds to be used for training during the 2019-2020 school year to quickly train school leaders and teachers on topics like effective distance learning techniques.

**BOARD ACTION**

I move approve the waiver request of provisions in the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA) and funding flexibility pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act as provided in attachment 2 and authorize the State Superintendent of Public Instruction to submit the waiver request on behalf of the State Board of Education.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

April 3, 2020

Dear Chief State School Officer:

The President recently signed into law the [Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#), Pub. L. No. 116-136 (March 27, 2020), which provides substantial relief to children and educators who have been profoundly affected by the Novel Coronavirus Disease (COVID-19). I understand that many of you have questions about the CARES Act, especially available funding, and we will be providing additional information to you as soon as possible. In the interim, you are welcome to submit CARES Act questions by e-mail to [COVID-19@ed.gov](mailto:COVID-19@ed.gov).

The purpose of today's message is to discuss flexibility in K-12 education funding, in particular the Elementary and Secondary Education Act of 1965 (ESEA), as the CARES Act authorizes the Secretary to provide additional flexibility through waivers of specific requirements. As you know, on March 20, 2020, Secretary DeVos provided flexibility with respect to certain requirements in Title I, Part A of the ESEA regarding statewide assessments, accountability and school improvement, and some reporting requirements for the 2019-2020 school year due to the unprecedented challenges you are facing due to COVID-19. In light of this on-going national emergency declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and to help you in your planning for how to resume education, today I am writing to offer additional flexibilities under the CARES Act.

Pursuant to the authority under the CARES Act, I am inviting you to request waivers of the following provisions:

- Section 1127(b) of Title I, Part A of the ESEA so that your State educational agency (SEA) may waive, more than once every three years, if necessary, the 15 percent carryover limitation in ESEA section 1127(a) for fiscal year (FY) 2019 Title I, Part A funds.
- Section 421(b) of the General Education Provisions Act (GEPA) to extend the period of availability of FY 2018 funds for programs in which your SEA participates under its approved consolidated State plan until September 30, 2021.
- Section 4106(d) of Title IV, Part A of the ESEA related to local educational agency (LEA) needs assessments for the 2019-2020 school year.
- Section 4106(e)(2)(C), (D), and (E) of Title IV, Part A of the ESEA with respect to content-area spending requirements for FYs 2018 and 2019 Title IV, Part A funds.
- Section 4109(b) of Title IV, Part A of the ESEA with respect to the spending limitation for technology infrastructure for FYs 2018 and 2019 Title IV, Part A funds.
- Section 8101(42) of the ESEA, which defines "professional development," for activities funded for the 2019-2020 school year.

Through these waivers, your SEA would be able to approve an LEA to carry over more than 15 percent of its Title I, Part A funds, even if the LEA had received approval to exceed this limitation in the past three years. Your SEA would be able to extend for itself and its subgrantees the period of availability of FY 2018 funds for programs included in your consolidated State plan to allow additional time to obligate those funds. Your SEA would also be able to permit an LEA or consortium of LEAs to use its Title IV, Part A funds to best meet its needs without regard to content-area spending requirements, spending limits on technology infrastructure, or completing a needs assessment. Finally, by waiving the definition of professional development, your SEA and subgrantees would be able to conduct time-sensitive, one-time or stand-alone professional development focused on supporting your educators to provide effective distance learning.

400 MARYLAND AVE., SW, WASHINGTON, DC 20202  
<http://www.ed.gov/>

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

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I want to continue to thank you for the work you are doing to help ensure learning continues for all your State's students in this difficult time. The U.S. Department of Education is committed to supporting you with every tool at our disposal and extending all flexibilities within our control.

If you are interested in receiving one or more of these waivers on behalf of your SEA and its subgrantees, please submit your request to [OESE.TitleI-a@ed.gov](mailto:OESE.TitleI-a@ed.gov). I am enclosing a streamlined template for your convenience that includes a checklist to designate the waivers you desire. My staff is committed to providing a response within one business day to any SEA that submits a waiver request using this optional waiver template. I recognize that you have many questions and will need additional supports, including the possibility of additional waivers, as you deal with the COVID-19 national emergency.

If you have additional questions or concerns regarding these waivers, contact us at [OESE.TitleI-a@ed.gov](mailto:OESE.TitleI-a@ed.gov). We are also interested in your input on other requirements for which you anticipate a need for a waiver that are not currently covered by the CARES Act. If you have suggestions, please submit those to [COVID-19@ed.gov](mailto:COVID-19@ed.gov). If you have general questions regarding COVID-19 and how the Department can best support you, please contact [COVID19@ed.gov](mailto:COVID19@ed.gov). I encourage you to continue to monitor information regarding COVID-19 from the Centers for Disease Control and Prevention at [www.cdc.gov/coronavirus/](http://www.cdc.gov/coronavirus/) and at our website, [www.ed.gov/coronavirus](http://www.ed.gov/coronavirus).

Thank you for your continued commitment to our nation's students during these extraordinary circumstances.

Sincerely,



Frank T. Brogan  
Assistant Secretary  
for Elementary and Secondary Education

Enclosure

cc: Council of Chief State School Officers  
State Title I, Part A Directors  
State Title I, Part C Directors  
State Title I, Part D Directors  
State Title II, Part A Directors  
State Title III, Part A Directors  
State Title IV, Part A Directors  
State Title IV, Part B Directors  
State Title V, Part B, Subpart 2 Directors  
State Assessment Directors  
McKinney-Vento Homeless Assistance Directors

This template is an example that may be used for the submission of a request for waivers of the requirements noted below. Note that the Department will accept, process, and approve any appropriate waiver request; for assistance please contact [OESE.TitleI-a@ed.gov](mailto:OESE.TitleI-a@ed.gov). However, the Department plans to respond in one business day to a State educational agency that follows this example and provides all necessary information in an accessible way.

The Honorable Frank T. Brogan  
Assistant Secretary for Elementary and Secondary Education  
Office of Elementary and Secondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Assistant Secretary Brogan:

I am writing to request waivers, pursuant to section 3511 of Division A of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116-136 (H.R. 748), 34 Stat. 281 (Mar. 27, 2020), of the requirement(s) enumerated below on behalf of the State educational agency (SEA) and its subgrantees (e.g., local educational agencies (LEAs)).

State:

*Please check all that apply:*

- Carryover limitation in section 1127(b) of the Elementary and Secondary Education Act of 1965 (ESEA) for Federal fiscal year (FY) 2019 Title I, Part A funds (i.e., the Title I, Part A funds that will become carryover funds on October 1, 2020): the requirement that limits an SEA's ability to grant to its LEAs a waiver of the 15 percent Title I, Part A carryover limitation in section 1127(a) more than once every three years.

Period of availability of funds in section 421(b) of the General Education Provisions Act (GEPA): to extend the period of availability of FY 2018 funds for programs in which the SEA participates under its approved consolidated State plan until September 30, 2021. The programs are (check all that apply):

- Title I, Part A of the ESEA (Improving Basic Programs Operated by LEAs), including the portions of the SEA's Title I, Part A award used to carry out section 1003 school improvement, section 1003A direct student services, if applicable, and Title I, Part D, Subpart 2
- Title I, Part B of the ESEA (State Assessment Formula Grants)
- Title I, Part C of the ESEA (Education of Migratory Children)
- Title I, Part D, Subpart 1 of the ESEA (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At Risk)
- Title II, Part A of the ESEA (Supporting Effective Instruction)

- Title III, Part A of the ESEA (English Language Acquisition, Language Enhancement, and Academic Achievement)
- Title IV, Part A of the ESEA (Student Support and Academic Enrichment Grants)
- Title IV, Part B of the ESEA (21<sup>st</sup> Century Community Learning Centers)
- Title V, Part B, Subpart 2 of the ESEA (Rural and Low-Income School Program)
- McKinney-Vento Education for Homeless Children and Youth Program

The following requirements in Title IV, Part A of the ESEA (check those that apply). Note: These requirements are only applicable to LEAs that received \$30,000 or more in Title IV, Part A funds:

- Needs assessment requirements in section 4106(d) for the 2019-2020 school year.
- Content area spending requirements in section 4106(e)(2)(C), (D), and (E): the requirements to use a minimum percentage of Title IV, Part A funds for activities under sections 4107, 4108 and 4109 for FY 2019 funds and any available FY 2018 carryover funds.
- Spending limitation in section 4109(b): the 15 percent limit on the use of funds under section 4109 to purchase technology infrastructure for FY 2019 funds and any available FY 2018 carryover funds.
  
- The definition of professional development in section 8101(42) of the ESEA for the 2019-2020 school year.

I am requesting these waiver/waivers because it is not possible to obligate funds on a timely basis as originally planned due to extensive school closures in the State. In addition, my State needs increased flexibility in the use of Title IV, Part A funds to support continuity of services due to these school closures. The school closures also present unique needs with respect to professional development for educators to meet the immediate needs of children whose education has been severely disrupted by school closures. These closures are in response to extraordinary circumstances for which a national emergency has been duly declared by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and will protect the health and safety of students, staff, and our communities.

In seeking these waivers, I assure that:

- The SEA will use, and ensure that its subgrantees use, funds under the respective programs in accordance with the provisions of all applicable statutes, regulations, program plans, and applications not subject to these waivers.
- The SEA will work to mitigate, and ensure that its subgrantees work to mitigate, any negative effects, if any, that may occur as a result of the requested waivers.
- The SEA will provide the public and all LEAs in the State with notice of, and the opportunity to comment on, this request by posting information regarding the waiver request and the process for commenting on the State website.

Thank you for your consideration.

Sincerely,

Chief State School Officer (or Authorized  
Representative)

Digital Signature

OR

Typed Name and Date

By typing my name here, I am affirming  
submission of this waiver on behalf of the State.

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**STATE DEPARTMENT OF EDUCATION**

**SUBJECT**

Revised Standards of the Idaho Public Driver Education Program Manual

**REFERENCE**

June 16, 2016

Board approved Idaho Public Driver's Education Program Manual, an incorporated by reference document and approved proposed rule incorporating the manual by reference into IDAPA 08.02.02.004.

November 28, 2016

Board approved pending rule Docket 08-0202-1604.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Code 33-1702; IDAPA 08.02.02 – Rules Governing Uniformity, Idaho Driver Education Program Manual, Section 2.2.4 and 2.2.6

**BACKGROUND/DISCUSSION**

IDAPA 08.02.02. subsection 004, incorporates the Idaho Public Driver Education Program Manual, the manual outlines the requirements for school district driver's education programs as authorized by Section 33-1702, Idaho Code, Driver's Training Courses. The Idaho Public Driver Education Program Manual provides guidance on instructional delivery requirements. Specifically, sections 2.2.4 and 2.2.6 of the Driver Education Program Manual requires that classroom instruction and behind-the-wheel instruction be delivered concurrently and sequentially, and that classroom instruction shall not be substantially completed or completed before starting in-car practice. In response to the COVID-19 pandemic, additional flexibility is needed to allow for online instruction that is not concurrent and sequential with behind-the-wheel instruction, and to allow for students to continue with their learning by allowing for online instruction that can be completed prior to starting in-car practice.

**IMPACT**

The suspension of sections 2.2.4 and 2.2.6 for the period of April 2020 through December 2020 will allow districts to continue offering driver's education. During these unprecedented times, LEAs need flexibility to support students, educators and families. This action item suspends sections of the Idaho Public Driver Education Program Manual incorporated by reference document defining public program instructional requirements.

**STAFF COMMENTS AND RECOMMENDATIONS**

Documents incorporated by reference into Administrative Code (rule) have the force and effect of law and are treated the same as the language in administrative code. In order to amend an incorporated by reference document, other than technical corrections, it must go through the applicable rulemaking process for either a temporary rule change or the negotiated rulemaking process. All

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temporary rules must meet one of three statutory requirements and be approved by the Governor. IDAPA 08.02.01.007 authorizes the Board to waive any education rule not required by state or federal law. This authorization grants the Board the authority to provide school districts and charter schools with added flexibility to respond to the COVID-19 pandemic over a limited time period without going through the full rulemaking process. This authorization does not allow the Board to amend a rule, only waive limited provisions.

The Operating Procedures for Idaho Public Driver Education Programs as approved by the Board on June 16, 2016 requires:

- 2.2.4 Students shall be regularly scheduled for concurrent and sequential classroom and behind-the-wheel instruction. Every student will receive instruction for the required number of hours.
- 2.2.5 Each behind-the-wheel lesson shall be taught in the classroom prior to practicing the lesson during behind-the-wheel instruction.
- 2.2.6 Classroom instruction shall not be substantially completed or completed before starting in-car practice.

The proposed waiver would waive the provisions in subsection 2.2.4 and 2.2.6 for the remainder of the calendar year. This waiver would allow student to complete the in-car practice after the social distancing restrictions are lifted or amended.

**BOARD ACTION**

I move to waive the subsection 2.2.4 and 2.2.6 or the Operating Procedures for Idaho Public Driver Education Programs, incorporated by reference into IDAPA 08.02.02.004 for the remainder of the 2020 calendar year.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_