



Wyoming Department of Education

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MEMORANDUM NO: 2009-105

TO: School District Superintendents

FROM: Brian Wright, Title I Program Director
Federal Programs Unit 

DATE: August 7, 2009

SUBJECT: Title I Waiver Requests

FOR YOUR INFORMATION

The US Department of Education (USED) has recently released Non-Regulatory Guidance on submitting requests to waive certain regulations recently adopted by the USED and to waive certain requirements associated with the American Recovery and Reinvestment Act (ARRA) funds. The Wyoming Department of Education will be submitting waiver requests and are required to provide all Local Education Agencies (LEAs) in Wyoming with notice and a reasonable opportunity to comment on the requests.

The waivers the WDE will be requesting are as follows:

- 14 – Day Notice Requirement for Public School Choice
- Prohibition on Approving an Identified School or LEA as an SES Provider
- Allow LEAs to Offer SES, in Addition to Public School Choice, to Eligible Students in Title I School in the First Year of School Improvement
- Exclude Title I, Part A ARRA Funds in Determining an LEA's 20% Obligation for Choice-Related Transportation and SES
- Exclude Title I, Part A ARRA Funds in Determining the 10% Professional Development Set-Aside for an LEA in Improvement
- Exclude Title I, Part A ARRA Funds in Determining the 10% Professional Development Set-Aside for a School in Improvement

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- Exclude Title I, Part A ARRA Funds in Determining the Per-Pupil Amount for SES
- Waive the Provision that Prohibits an SEA From Granting to an LEA a Waiver of the Carryover Limitation More Than Once Every Three Years

A detailed description of each of these waivers is attached to this memo.

On August 3, 2009, the WDE began notifying LEAs of these waiver requests by announcements at meetings, via e-mail and followed with this Superintendents Memo. Copies of all comments that the WDE receives from LEAs in response to this notice will be compiled and attached to the waiver requests. Public comments will be accepted until close of business on August 17, 2009. If you wish to make public comments on any of these waiver requests, please feel free to contact me, Brian Wright, State Title I Director, at 307-777-5792 or bwright@educ.state.wy.us. All public comments will be compiled and submitted to the US Department of Education with these waiver requests.

Thank you for your time and consideration.

BW:hs

Attachment

**REQUEST TO WAIVE 14-DAY NOTICE
REQUIREMENT FOR PUBLIC SCHOOL CHOICE**

Wyoming will request a one-year waiver of the Title I, Part A requirement for a local educational agency (LEA) to provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the school year (34 C.F.R. § 200.37(b)(4)(iv)). This waiver would apply only with respect to students in schools that are newly identified for improvement for the 2009-2010 school year or that could possibly have exited improvement, corrective action, or restructuring for the 2009-2010 school year but did not.

Wyoming hereby assures that, if it is granted the requested waiver, it and its LEAs will meet the following conditions:

- LEAs within the State will provide notice of public school choice less than 14 days before the school year only with respect to students in schools that are newly identified for improvement for the 2009–2010 school year (based on results of assessments administered in the 2008–2009 school year) or that could possibly have exited improvement, corrective action, or restructuring for the 2009–2010 school year (based on results of assessments administered in the 2008–2009 school year) but did not;
- All LEAs within the State will comply with the 14-day notice requirement with respect to students in schools that are already identified for improvement, corrective action, or restructuring and cannot exit that status for the 2009–2010 school year;
- All LEAs within the State will comply with the statutory requirement in section 1116(b) to provide notice of public school choice before the start of the school year;
- The State will encourage all LEAs to provide notice of public school choice as early as possible and, ideally, at least 30 days before the start of the school year;
- LEAs that offer public school choice earlier to students in some schools than to students in other schools will reserve a portion of the available transportation slots for students in the schools who receive the later notice, in accordance with the Department’s Public School Choice Non-Regulatory Guidance; and
- The State will take all steps necessary to ensure that its assessment schedule and test vendor contract for the 2009–2010 school year (and beyond) will permit LEAs within the State to provide notice of public school choice sufficiently in advance of, but no later than 14 days before, the start of the 2010–2011 school year (and all subsequent school years).

**REQUEST TO WAIVE PROHIBITION ON APPROVING AN IDENTIFIED SCHOOL OR LEA AS AN SES
PROVIDER**

Wyoming will request a one-year waiver of the Title I, Part A regulatory provision that prohibits a State from approving as providers of supplemental educational services (SES) schools identified for improvement, corrective action, or restructuring and local educational agencies (LEAs) identified for improvement or corrective action (34 C.F.R. § 200.47(b)(1)(iv)(A), (B)).

Under the law, Wyoming may approve as an SES provider only an entity that has a demonstrated record of effectiveness in increasing student academic achievement. Wyoming believes that identified schools and LEAs may be able to establish that they have an effective program that can help improve academic achievement of students and should not be prevented automatically from gaining approval simply because of their improvement status.

Wyoming hereby assures that, if it is granted the requested waiver, it will submit to the U.S. Department of Education, by September 30, 2010, a report that provides the total number of LEAs identified for improvement or corrective action that were approved to be an SES provider for the 2009–2010 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 2009–2010 school year.

REQUEST TO ALLOW LEAS TO OFFER SES, IN ADDITION TO PUBLIC SCHOOL CHOICE, TO ELIGIBLE STUDENTS IN TITLE I SCHOOLS IN THE FIRST YEAR OF SCHOOL IMPROVEMENT

Wyoming will request a one-year waiver to allow local educational agencies (LEAs) within Wyoming with one or more schools in improvement, corrective action, or restructuring to offer supplemental educational services (SES), in addition to public school choice, to eligible students in Title I schools in the first year of school improvement and to count the funds spent providing SES to eligible students in those schools toward the LEA’s obligation to spend an amount at least equal to 20 percent of its Title I, Part A, Subpart 2 allocation on SES and choice-related transportation (20 percent obligation). In the absence of such a waiver, an LEA may only count funds spent providing SES to eligible students attending schools in the second year of improvement, in corrective action, or in restructuring toward its 20 percent obligation (ESEA section 1116(b)(10); 34 C.F.R. § 200.48).

Wyoming believes that the requested waiver will increase the quality of instruction for students and improve the academic achievement of students by providing an incentive for an LEA to offer SES to eligible students one year earlier than the law requires, thereby enabling more students within an LEA to enroll in SES. Wyoming believes that parents of children attending schools in the first year of improvement will be eager to enroll their children in SES, and that the increased enrollment in SES thus enabled by the waiver will contribute to improving student achievement.

Wyoming hereby assures that, if it is granted the requested waiver, Wyoming will ensure that it will implement the waiver only with respect to those LEAs that will meet all statutory and regulatory requirements related to SES in the 2009–2010 school year (other than the particular funding requirement being waived).

REQUEST TO EXCLUDE TITLE I, PART A ARRA FUNDS IN DETERMINING AN LEA’S 20 PERCENT OBLIGATION FOR CHOICE-RELATED TRANSPORTATION AND SES

On behalf of all local educational agencies (LEAs) in Wyoming that receive funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), the Wyoming Department of Education will request a waiver for fiscal year (FY) 2009 of the requirement in section 1116(b)(10) of the ESEA and in 34 C.F.R. § 200.48(a)(2) to determine an LEA’s “20 percent obligation” for public school choice-related transportation and supplemental educational services (SES) based on the LEA’s total FY 2009 Title I, Part A allocation (*i.e.*, including both its regular Title I, Part A allocation and its Title I, Part A allocation under the American Recovery and Reinvestment Act of 2009 (ARRA)). Specifically, I am seeking this waiver to allow LEAs within Wyoming to exclude some or all of the Title I, Part A funds they receive under the ARRA in calculating their “20 percent obligation” for choice-related transportation and SES.

Wyoming believes that the requested waiver will increase the quality of instruction for students and improve the academic achievement of students by providing each LEA within Wyoming with flexibility to spend ARRA funds that the LEA would otherwise be obligated to spend on SES or choice-related transportation on other allowable Title I, Part A activities that the LEA believes best address the particular needs of its students.

Wyoming hereby assures that, if it is granted the requested waiver, Wyoming will implement the waiver only with respect to an LEA that provides assurances that:

- It will comply with its statutory and regulatory obligations for the provision of SES and public school choice with respect to its regular Title I, Part A allocation;
- It will use the funds freed up by the waiver to address needs identified based on data, such as Statewide or formative assessment results;
- It 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
- It will submit an application for Title I funds, or, if necessary, an amendment to its existing LEA application, that describes 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.

Wyoming further assures that it will not approve an LEA’s application or amendment to an LEA’s application unless or until it determines that, based on the LEA’s description, the LEA has satisfied its obligation to identify needs based on data and address those needs using evidence-based strategies. Wyoming will not approve an LEA to implement the waiver unless or until the LEA has an approved application (or amended application) that includes the required description of the data on which the LEA relied to identify needs and the evidence that supports the strategies to address those needs. If necessary to carry out these assurances, Wyoming will require an LEA seeking to implement the waiver to amend its application in accordance with [State’s] usual process for changing an LEA’s application.

Wyoming hereby assures that, if it is granted the requested waiver, it will submit, by September 30, 2010, a report that sets forth the name and NCES District Identification Number for each LEA implementing the waiver.

REQUEST TO EXCLUDE TITLE I, PART A ARRA FUNDS IN DETERMINING THE 10 PERCENT PROFESSIONAL DEVELOPMENT SET-ASIDE FOR AN LEA IN IMPROVEMENT

On behalf of all local educational agencies (LEAs) in Wyoming that are identified for improvement under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), the Wyoming Department of Education will request a waiver for fiscal year (FY) 2009 of the requirement in section 1116(c)(7)(A)(iii) of the ESEA to determine an LEA’s 10 percent professional development set-aside based on the LEA’s total FY 2009 Title I, Part A allocation (*i.e.*, including both its regular Title I, Part A allocation and its Title I, Part A allocation under the American Recovery and Reinvestment Act of 2009 (ARRA)). In particular, I am seeking this waiver to allow LEAs within Wyoming that are identified for improvement to exclude some or all of the Title I, Part A funds they receive under the ARRA in calculating their 10 percent professional development set-aside.

Wyoming believes that the requested waiver will increase the quality of instruction for students and improve the academic achievement of students by providing each LEA within Wyoming with flexibility to spend ARRA funds that the LEA would otherwise be obligated to spend on professional development on other allowable Title I, Part A activities that the LEA believes best address its particular needs. Wyoming believes that the basic 10 percent set-aside, which LEAs will still have to provide, is substantial and that requiring significantly more funds to be spent on professional development, absent actual need, may actually be counter-productive by overwhelming teachers, many of whom are already over-scheduled and cannot meaningfully absorb substantially more professional development. Through the waiver, each LEA can determine whether its professional development needs warrant expending Title I, Part A ARRA funds to meet those needs.

Wyoming hereby assures that, if it is granted the requested waiver, Wyoming will implement the waiver only with respect to an LEA that provides assurances that:

- It will comply with its statutory and regulatory obligations for the professional development set-aside with respect to its regular Title I, Part A allocation;
- It will use the funds freed up by the waiver to address needs identified based on data, such as Statewide or formative assessment results;
- It 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
- It will submit an application for Title I funds (referred to herein as “LEA application”), or, if necessary, an amendment to its existing LEA application, that describes 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.

Wyoming further assures that it will not approve an LEA’s application or amendment to an LEA’s application unless or until it determines, based on the LEA’s description, that the LEA has satisfied its obligation to identify needs based on data and address those needs using evidence-based strategies. Wyoming will not approve an LEA to implement the waiver unless or until the LEA has an approved application (or amended application) that includes the required description of the data on which the LEA relied to identify needs and the evidence that supports the strategies to address those needs. If necessary to carry out these assurances, Wyoming will require an LEA seeking to implement the waiver to amend its application in accordance with Wyoming’s usual process for changing an LEA’s application.

REQUEST TO EXCLUDE TITLE I, PART A ARRA FUNDS IN DETERMINING THE 10 PERCENT PROFESSIONAL DEVELOPMENT SET-ASIDE FOR A SCHOOL IN IMPROVEMENT

On behalf of all local educational agencies (LEAs) in Wyoming with schools that are identified for improvement under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), the Wyoming Department of Education (WDE) will request a waiver for fiscal year (FY) 2009 of the requirement in section 1116(b)(3)(A)(iii) of the ESEA to determine a school’s 10 percent professional development set-aside based on the total amount of funds made available to the school under section 1113 of the ESEA for FY 2009 (*i.e.*, including funds made available from both the LEA’s regular Title I, Part A allocation and its Title I, Part A allocation under the American Recovery and Reinvestment Act of 2009 (ARRA)). In particular, the WDE is seeking this waiver to allow Title I schools within Wyoming that are identified for improvement to calculate their 10 percent professional development set-aside in accordance with the following formula:

the amount of Title I, Part A funds received by the school under section 1113 of the ESEA

multiplied by

the portion of the LEA’s FY 2009 Title I, Part A allocation provided through the regular FY 2009 appropriation / the LEA’s total FY 2009 Title I, Part A allocation, including Title I, Part A ARRA funds

multiplied by

10 percent.

As long as it complies with the requirements of section 1113 of the ESEA with respect to serving eligible school attendance areas with its FY 2009 Title I, Part A allocation (consisting of Title I, Part A funds received through the ARRA and the regular FY 2009 appropriation), an LEA has discretion with respect to how it will allocate its Title I, Part A funds to its Title I schools. Accordingly, Wyoming believes that the requested waiver will increase the quality of instruction for students and improve the academic achievement of students by ensuring that no school within an LEA that implements this waiver will be obligated to spend a disproportionate amount of the Title I, Part A funds available to it on professional development activities. Wyoming believes that the basic 10 percent set-aside, which schools in improvement will still have to provide, is substantial and that requiring significantly more funds to be spent on professional development may actually be counter-productive by overwhelming teachers, many of whom are already over-scheduled and cannot meaningfully absorb substantially more professional development.

Wyoming hereby assures that, if it is granted the requested waiver, Wyoming will implement the waiver only with respect to an LEA that provides assurances that:

- It will ensure that its schools will implement the waiver in accordance with the formula above;
- It will ensure that all schools in improvement within the LEA will comply with all statutory and regulatory requirements regarding their professional development obligations with respect to the funds that are not “factored out” in accordance with the formula above;
- It 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; and
- It and its schools in improvement will comply with all of their 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.

REQUEST TO EXCLUDE TITLE I, PART A ARRA FUNDS IN DETERMINING THE PER-PUPIL AMOUNT FOR SES

On behalf of all local educational agencies (LEAs) in Wyoming that receive funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), the Wyoming Department of Education will request a waiver for fiscal year (FY) 2009 of the requirement in section 1116(e)(6)(A) of the ESEA and in 34 C.F.R. § 200.48(c)(1) to determine the per-pupil amount for supplemental educational services (SES) based on an LEA’s total FY 2009 Title I, Part A allocation (*i.e.*, including both its regular Title I, Part A allocation and its Title I, Part A allocation under the American Recovery and Reinvestment Act of 2009 (ARRA)). Specifically, I am seeking this waiver to allow LEAs within Wyoming to exclude some or all of the Title I, Part A funds they receive under ARRA in calculating the per-pupil amount for SES. Wyoming believes that the requested waiver, by reducing the per-pupil amount, will allow LEAs to provide SES to a greater number of students.

If Wyoming is granted the requested waiver, Wyoming will implement the waiver only with respect to an LEA that provides assurances that:

- (1) It will comply with all of the statutory and regulatory requirements regarding the provision of SES with respect to its regular FY 2009 Title I, Part A allocation; and
- (2) It will comply with all other Title I, Part A statutory and regulatory requirements (to the extent they are not waived), including the requirements in sections 1114 and 1115 of the ESEA to have schoolwide and targeted assistance programs that “use effective methods and instructional strategies that are based on scientifically based research.”

**REQUEST TO WAIVE THE PROVISION THAT PROHIBITS AN SEA FROM GRANTING TO AN LEA A
WAIVER OF THE CARRYOVER LIMITATION MORE THAN ONCE EVERY THREE YEARS**

Wyoming will request a waiver of the limitation in section 1127(b) of the Elementary and Secondary Education Act of 1965 (ESEA) that prohibits a State educational agency (SEA) from granting to a local educational agency (LEA) a waiver of the carryover limitation in section 1127(a) of the ESEA more than once every three years. Section 1127(b) permits an SEA to waive the limitation in section 1127(a) once every three years if: (1) the LEA's request is reasonable and necessary; or (2) a supplemental Title I, Part A appropriation becomes available. In accordance with these provisions, I am requesting a waiver to allow Wyoming to waive the carryover limitation more than once every three years for an LEA that needs the additional waiver(s) because of its Title I, Part A funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA), which is, by definition, a supplemental Title I, Part A appropriation. I am requesting this waiver for a period of three years to apply to LEA requests to carry over fiscal year (FY) 2009 Title I, Part A funds, FY 2010 Title I, Part A funds, and FY 2011 Title I, Part A funds in excess of the carryover limitation.

Wyoming believes that the requested waiver will provide the State with the ability to grant an LEA the flexibility it needs to spend its Title I, Part A ARRA funds thoughtfully over the course of two years on activities that are most likely to improve the academic achievement of students. Accordingly, Wyoming believes that, ultimately, the requested waiver may help more schools and LEAs within the State make AYP by enabling them to direct their funds thoughtfully to activities that will help their students meet the AMOs set forth above.

Wyoming will ensure that an LEA that is interested in obtaining a waiver of the carryover limitation in section 1127(a) so that it can carry over more than 15 percent of its Title I, Part A FY 2009, FY 2010, or FY 2011 allocation and has already received such a waiver within the prior three years (or receives such a waiver with respect to its FY 2009 funds), applies to the SEA in accordance with Wyoming's regular procedures for waivers of the carryover limitation. Wyoming hereby assures that it will implement the requested waiver only with respect to an LEA that needs a waiver of the carryover limitation for the second (or third) time within three years because of its ARRA funds.