

ESEA Federal Programs Frequently Asked Questions

Last Updated April 2, 2020

Please note: The information is changing rapidly and Alaska Department of Education and Early Development (DEED) will continue to update/correct outdated information as it becomes available. DEED is committed to working with Alaska school districts and grantees to the maximum operational flexibility necessary to continue operations during the COVID-19 pandemic.

1. Question: What waivers are available to districts?

Answer: The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes a new Secretarial waiver authority for ESEA, under which the U.S. Department of Education (US ED) can waive certain provisions, upon request by a state, Indian tribe, or district due to the COVID-19 emergency. States, Indian tribes, and districts may also request waivers on a different set of provisions under a streamlined waiver process. Waivers under this process must be approved or disapproved within 30 days and this process requires an applicant to provide an assurance of how negative consequences, if any, of the waiver will be mitigated. Provisions which may be waived under this process include:

- The poverty threshold necessary to operate a schoolwide program,
- Maintenance of effort,
- Restrictions on carry over limitations (unused funds from one year to the next),
- Certain requirements under the Student Supports and Academic Enrichment Grants program, including the needs assessment, spending certain percentages among the three programmatic focuses, and the limitation on technology spending, and
- Requirements related to the definition of professional development.

As of April 2, 2020 US ED has not issued this waiver application.

2. Question: Can a district receive a Title I-A 15% excess carryover waiver from 2019-2020 into 2020-2021 even if the district has received a waiver in the past 3 years and would normally not be eligible?

Answer: Lawmakers and the White House have come to an agreement over a legislative package (CARES Act) to provide economic relief in response to the impact of the COVID-19 pandemic. The legislation authorizes the Secretary of Education to waive a number of ESEA requirements including the Title I-A 15% carryover limitation. The legislation limits the applicability of any waivers to the 2019-2020 school year. US ED is moving forward on designing a streamlined waiver template (similar to the recent waiver on assessments and accountability) regarding certain fiscal requirements. DEED plans to submit a waiver request on behalf of our districts to the Secretary of Education as soon as this template is made available.

3. Question: Can districts continue to pay district and school staff out of federal funds during the period of mandated school closures?

Answer: *Response below based on March 13, 2020 memorandum from the Council of Chief State School Officers (CCSSO).*

Federal regulations require that any expense charged to federal grant funds “be consistent with policies and procedures that apply uniformly to both federally-financed and other activities.”¹ In other words, when spending federal funds, states, school districts, and other recipients should follow the same policies and procedures they apply when spending state, local, or other non-federal funds.

This requirement applies to employee compensation policies and procedures. To be supported with federal funds, employee compensation must “[conform] to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities.”²

Accordingly, US ED has taken the position that if a state, district, or other recipient has a policy of paying employees during a closure, it should follow that policy for its federally-funded staff as well. In other words, the state, district, or other recipient may use federal funds to pay its federally-funded staff during a closure if it uses state or local funds to pay state- and locally-funded staff during the closure. For example, if state funds will pay state-funded staff during a closure, then Title I-A funds can pay Title I-A-funded staff, Title II-A funds can pay Title II-A-funded staff, IDEA funds can pay IDEA-funded staff, etc. These employees should return to the duties for which the grant funds were provided as soon as possible, and to the extent practicable, should work on project activities during the time the school is closed.

4. Question: What are expectations for English Learner (EL) identification during the period of mandated school closures?

Answer: *While we await further guidance from the US ED, DEED is providing the following guidance:*

Upon receipt of a Home Language Survey that indicates the student may be an EL, the district may, if feasible, reach out to conduct a phone interview with the family and the student as well. If the conversation leads the interviewer to believe that the student is likely an EL, the student may be “identified” and served as such until they may be formally identified with an approved screener assessment. If the district is unable to conduct a phone interview, the district may serve the student as they see fit until formal identification is possible. Once normal school resumes, districts should work to formally identify potential ELs using one of the approved screeners. This procedure was also supported by WIDA.

5. Question: Due to the cancellation of several events and planned activities, must we amend our FY20 ESEA Consolidated Application?

Answer: Generally, yes. If an activity is different than what is stated within your grant, then an amendment must be submitted. If the district needs more or less funds for an activity already approved within a grant, remember that an overage of 10% for any allowable grant activity is automatically approved and no amendment is needed. All activities must be reasonable, necessary, and allocable to the program.³

¹ 2 CFR § 200.403(c).

² 2 CFR § 200.430(a)(1).

³ 2 CFR § 200.403-405

6. Question: What is the allowability of using Federal Title Program funding to pay for internet to provide remote instruction to students?

Answer: GCI has special offers in response to COVID-19. Visit www.gci.com to learn about [free internet plan upgrades](#) for current customers and [free entry level internet until May 31, 2020](#) for households without current GCI internet. ACS is offering free unlimited internet through the end of the school year. Visit <https://www.alaskacommunications.com/Coronavirus> for further information.

Also, lawmakers and the White House have come to an agreement over a legislative package (CARES Act) to provide economic relief in response to the impact of the COVID-19 pandemic. The legislation gives substantial local authority and discretion for purchasing educational technology.

7. Question: Can districts use Federal Title Program funding to pay for the salary of district and school staff that are sent to the lower 48 during the period of mandated school closures?

Answer: This would be a district decision. If district and school staff are teleworking, their physical location shouldn't be a factor.

8. Question: In the event that schools are closed for an extended period of time to mitigate the risk of COVID-19 exposure, what are a school district's obligation for providing educational services for other specific subgroups with dedicated federal programs/funding streams – e.g. homeless students? Any best practices or guidance for reaching these students?

Answer: *Response below based on CCSSO COVID-19 (coronavirus) Frequently Asked Questions as of March 24, 2020.*

- USED has not issued any guidance on the topic of homelessness. However, US ED also has not waived any of the McKinney-Vento Act's requirements. Therefore, the law remains in effect. In terms of McKinney-Vento funding, districts that have McKinney-Vento funds must continue to use those funds to support their McKinney-Vento programs and to support children and youth experiencing homelessness. We have heard from McKinney-Vento liaisons that they are seeking to amend their program budgets to reallocate funds toward urgent needs of homeless children and youth. For example, funds that were intended for professional development that will no longer take place, transportation to schools that are closed for the year, and other budget line items that are no longer relevant or necessary, could be reallocated to support internet hotspots, devices, transportation to deliver food and other items, increased staff time for outreach and support, and other services for homeless students that are needed at this time. SEAs could consider offering a streamlined and fast process to funded districts to amend their budgets, as long as new uses for funds fall under one of the 16 allowable uses of McKinney-Vento funds found in 42 USC 11433(d).
- In terms of McKinney-Vento services, schools must enroll McKinney-Vento students immediately, even during this pandemic. 42 USC 11432(g)(3)(C). Enrollment means "attending classes and participating fully in school activities." 42 USC 11434a(1). If the school is offering no services or activities whatsoever to any students at this time, then the student would not receive services at this time. In that context, enrollment may mean simply putting the student into the school database, with a flag or other identification as McKinney-Vento eligible. That kind of identification is required and

important, even if schools are completely closed and offering no services, because it will allow the school to reach out to homeless students quickly upon reopening.

- All districts that receive Title I-A funds are required to do a set-aside. Given an anticipated increase in homelessness, and a documented increase in the needs of homeless children and youth, districts should revisit the amount of their Title I-A set-asides and how those funds are being used to support homeless students.
- School staff will need to maintain contact with families and youth to know where to provide food and other services. The following resources from [Schoolhouse Connection](#) can be provided to districts to support their efforts to provide needed supports to students experiencing homelessness.
 - Checklist for districts and local early childhood providers to support students experiencing homelessness: <https://www.schoolhouseconnection.org/wp-content/uploads/2020/03/COVID19-and-Homelessness-Checklist.pdf>
 - Strategies for schools and early learning programs on supporting students experiencing homelessness: <https://www.schoolhouseconnection.org/wp-content/uploads/2020/03/COVID-19-and-Homelessness.pdf>
 - Q & A and Discussion on COVID-19 and Homeless Students: <https://www.schoolhouseconnection.org/covid19-and-homelessness/#questions>

9. Question: Is it appropriate to allow small group tutoring via Zoom meetings for specific groups such as English learners, migratory children, etc. delivered by paraprofessionals, when they cannot control who is in the room with the students? Is this a FERPA violation?

Answer: Group tutoring via Zoom can be done but with considerations.

- Although not specific to tutors, Scenario #4 in the attached [FERPA and Virtual Learning During Covid-19](#) webinar addresses part of the concern. “Can non-students observe a virtual lesson? -
 - Assuming that during the virtual lesson, PII from student education records is not disclosed, FERPA would not prohibit a non-student from observing the lesson.
 - As a best practice, educational agencies and institutions should discourage non-students from observing virtual classrooms in the event that PII from a student’s education record is, in fact, disclosed in such virtual classrooms.
 - Schools may wish to include instructions for students participating in the virtual classroom regarding not sharing or recording any PII from education records that may be disclosed in the virtual classroom or to obtain prior written consent to permit any such sharing of PII from education records.”
- Additionally, the following link contains several more federal resources related to FERPA and eLearning: https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20%20Virtual%20Learning%20032020_FINAL.pdf. Some key pieces from these resources:
 - From the [Protecting Student Privacy While Using Online Educational Services: Requirements and Best Practices](#) document—
 - “Consider that parental consent may be appropriate. Even in instances where FERPA does not require parental consent, schools and districts should consider whether consent is appropriate. These are individual determinations that should be made on a case-by-case basis.”

- “Be transparent with parents and students. The Department encourages schools and districts to be as transparent as possible with parents and students about how the school or district collects, shares, protects, and uses student data.”
- From the [Letter to Ms. Mamas](#): “FERPA does not protect the confidentiality of information in general; rather, FERPA applies to the *disclosure* of tangible records and of information derived from tangible records.”