

# Congress of the United States

Washington, DC 20515

May 8, 2025

The Honorable Linda McMahon  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Secretary McMahon:

We are writing to express significant concerns about reports that states are seeking waivers of requirements in the *Elementary and Secondary Education Act* (ESEA) that violate that law. We ask that you reject any unlawful waivers and write to remind you of ESEA's longstanding restrictions preventing the Secretary from waiving critical guardrails. We also caution you against issuing any other waivers that abdicate the federal government's responsibility to hold states accountable for meeting their statutory and regulatory obligations under ESEA.

The federal role in education acts as an accountability measure to ensure states provide all children with high-quality education that is not limited by race, color, nationality, gender, ability, immigration status, or socioeconomic class. Any negligence or misuse of secretarial authority risks perpetuating disparities and failing the very students these provisions aim to support. Therefore, we remind you of your duty to follow the law as written and reject any unlawful waivers.

The recent actions by the Administration give rise to concerns that such waivers are imminent. States and local districts already make virtually all education decisions, and, as noted in both the U.S. Department of Education's (Department) March 31 letter to Chief State School Officers<sup>1</sup> and recent report<sup>2</sup>, significantly underutilize existing funding flexibility permitted under ESEA. Meanwhile, the Administration's efforts to 'return education to the states'<sup>3</sup> and the elimination of nearly half of the Department's workforce<sup>4</sup> indicate that the Administration may not have the willingness or capacity to enforce ESEA or related laws.

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<sup>1</sup> Letter from Principal Deputy Assistant Secretary and Acting Assistant Secretary Sanon to Chief State School Officers (Mar. 31, 2025), <https://www.ed.gov/sites/ed/files/2025-03/OESE%20Letter%20to%20State%20Chiefs-%20Title%20I%20Part%20A%20Guidance%20%28March%2031%2C%202025%29%20.pdf>

<sup>2</sup> Ann Webber, et al., U.S. Dep't of Educ., *State and District Use of Title II, Part A Funds in 2022–23* <https://www.ed.gov/sites/ed/files/2024/05/Title-IIA-UseOfFundsReport-22-23.pdf>

<sup>3</sup> Press Release, U.S. Dep't of Educ., Statement on President Trump's Executive Order to Return Power Over Education to States and Local Communities (Mar. 20, 2025), <https://www.ed.gov/about/news/press-release/statement-president-trumps-executive-order-return-power-over-education-states-and-local-communities>.

<sup>4</sup> <https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force>

On January 28, 2025, twelve state education chiefs wrote to you seeking significant changes to ESEA implementation, including the option to unlawfully block grant federal education funds and alter how States distribute funds to school districts.<sup>5</sup> However, the letter acknowledged that the Department is limited in the scope of actions it may take unilaterally and that congressional action is required to effectuate some of the actions requested in the letter.<sup>6</sup>

More recently, at least two states reportedly submitted a plan for consideration by the Department seeking to block grant ESEA funds. One state requested to consolidate funds designated for “high-poverty schools, English learners, and afterschool programs with funds from seven other federal programs.” That state is also seeking to waive aspects of the *McKinney-Vento Homeless Assistance Act* (McKinney-Vento), the law providing educational services for children and youth experiencing homelessness.<sup>7</sup> Another state is seeking to consolidate all its federal funding into a single grant with no publicly available details of how funds would be allocated to best serve students.<sup>8</sup> These and any similar requests must be summarily denied. Neither ESEA nor McKinney-Vento gives the Secretary discretion to change the formula and process for allocating funding under ESEA nor waive parts of McKinney-Vento or any other education law.

Section 8401 of ESEA provides the Secretary with limited waiver authority to waive certain statutory and regulatory requirements if such waivers would “advance student academic achievement.”<sup>9</sup> At the same time, Congress established guardrails for such waivers, including requirements that states must follow relating to the application process, such as describing how any waivers will advance student achievement, how the state will monitor and regularly evaluate its waiver plan, and how the schools in the state will continue to provide assistance to the same populations of students served by programs for which the waivers are requested. Furthermore, states must provide the public and districts in the state with notice and a reasonable opportunity to comment on the waiver request. In addition, states must submit those comments to the Department and explain how they addressed those comments in their waiver application.

The law also specifies how the Department shall make determinations to approve or disapprove of waiver applications.<sup>10</sup> Congress very clearly limited the Secretary’s waiver authority by explicitly delineating statutory and regulatory requirements that may not be waived, including the allocation or distribution of funds to States, local educational agencies, Indian tribes, or other recipients of funds, equitable participation of private school students and teachers, applicable

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<sup>5</sup> Linda Jacobson, The 74, 12 Education Chiefs Ask McMahon for More Control over Federal Funds (Feb. 6, 2025), <https://www.the74million.org/article/exclusive-12-education-chiefs-ask-mcmahon-for-more-control-over-federal-funds/>.

<sup>6</sup> Letter from 12 Education Chiefs to Administrator McMahon (Jan. 28, 2025), [https://www.the74million.org/wp-content/uploads/2025/02/State\\_Chief\\_Memo\\_1-28-25\\_Final\\_t74.pdf](https://www.the74million.org/wp-content/uploads/2025/02/State_Chief_Memo_1-28-25_Final_t74.pdf).

<sup>7</sup> Linda Jacobson, The 74, Iowa Submits Plan to Combine Federal Education Funds, and Experts are Skeptical (Mar. 27, 2025), <https://www.the74million.org/article/iowa-submits-plan-to-combine-federal-education-funds-and-experts-are-skeptical/>.

<sup>8</sup> Brooke Schultz, Education Week, Oklahoma Asks Trump for Sweeping Flexibility in How It Spends School Funding (Mar. 26, 2025), <https://www.edweek.org/policy-politics/oklahoma-asks-trump-for-sweeping-flexibility-in-how-it-spends-school-funding/2025/03>

<sup>9</sup> 20 U.S.C. 7861(b)(1)(C).

<sup>10</sup> 20 U.S.C. 7861.

The Honorable Linda McMahon

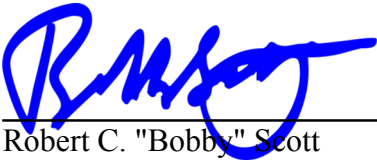
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civil rights requirements, parental participation, prohibitions against using funds for specific uses such as religious worship or instruction, contraceptive distribution, federal input over curricula and instructional content, and several other statutory requirements.<sup>11</sup> Moreover, ESEA does not grant authority to waive statutory or regulatory requirements under other federal education laws including the *Individuals with Disabilities Education Act* (IDEA), the *McKinney-Vento Homeless Assistance Act*, and the *Higher Education Act* (HEA).<sup>12</sup>

Adherence to the statutory and regulatory requirements outlined in ESEA is not optional. The law is clear. The Secretary has limited authority to grant waivers for specific purposes as long as the waivers are in compliance with the law. We urge the Department to ensure that ESEA remains a robust mechanism for promoting educational equity and excellence, without compromising transparency, consistency, or fairness in its implementation.

Sincerely,



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Robert C. "Bobby" Scott  
Member of Congress  
Ranking Member, Committee  
on Education and Workforce



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Bernard Sanders  
United States Senator  
Ranking Member, Committee  
on Health, Education, Labor,  
and Pensions



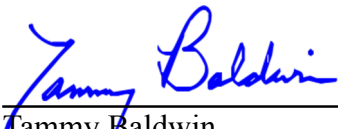
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Rosa L. DeLauro  
Member of Congress  
Ranking Member, Committee  
on Appropriations



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Patty Murray  
Vice Chair  
Senate Committee on  
Appropriations



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Tammy Baldwin  
Ranking Member  
Appropriations Subcommittee  
on Labor, Health and Human  
Services, Education, and  
Related Agencies

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<sup>11</sup> 20 U.S.C. 7861(c).

<sup>12</sup> Anne Hyslop and Dave Powell, ESEA Waivers 101, All4Ed (Mar. 2025), <https://all4ed.org/wp-content/uploads/2025/03/ESEA-Waivers-101.pdf>.