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Asst. Secretary Brogan
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

December 20, 2018

RE: Waiver Request – Section 4109(b), Every Student Succeeds Act (ESSA)

Assistant Secretary Brogan:

The Tennessee Department of Education is seeking a waiver from the requirements in section 4109(b) of ESSA, which states “A local educational agency, or consortium of such agencies, shall not use more than 15 percent of funds for purchasing technology infrastructure as described in subsection (a)(2)(B), which shall include technology infrastructure purchased for the activities under subsection (a)(4)(A). Tennessee requests this requirement be waived and allow LEAs to utilize more than 15 percent, where appropriate, beginning with funding for the 2019-20 school year, would impact Title IV programming among LEAs in Tennessee in purchasing devices, equipment, platforms, and software applications in order to address readiness shortfalls and in carrying out blended learning projects.

The department requests allowing each LEA the ability to request funds within the Consolidated Funding Application to be spent on technology infrastructure above the 15 percent cap. Any LEA making this request must demonstrate need based on the needs assessment and planning to determine the appropriate amount of funds to spend on technology infrastructure, which then would be approved (or denied) by the SEA.

This waiver would allow LEAs that have previously transferred funds out of Title IV due to these restrictions to begin providing services to public and private schools out of Title IV as intended.

The department requests allowing each LEA, if the LEA so chooses, and subject to approval of their Consolidated Funding Application by the SEA and based upon their needs assessment and planning, to determine the appropriate amount of funds to be spent on technology infrastructure as described in subsection (a)(2)(B), which shall include technology infrastructure purchased for the activities under subsection (a)(4)(A). This waiver would allow LEAs that have previously transferred funds out of Title IV due to the restrictions to begin providing services to public and private schools out of Title IV.

Tennessee is believes in granting LEAs local control where allowable, and we allow LEAs significant autonomy in funding and programmatic decisions within the parameters of the law. The special rule on activities to support the effective use of technology is a barrier for Tennessee LEAs and has inadvertently led to LEAs transferring their Title IV funds to other programs such as Titles I and II. As such, Title IV is not being implemented as Congress intended – to provide enrichment and student supports for a well-rounded education.

In 2018, 62 of Tennessee’s 147 LEAs opted to transfer funds out of Title IV, which represents 42% percent of our LEAs. This waiver would allow LEAs to utilize Title IV for technology that aligns with their needs and with what our data have shown to be effective.

Tennessee districts not only request additional infrastructure but the SEA has also identified it as a need to support successful annual assessment administration. In 2018, test scheduling, logistics, and preparation for the online platform tools are more difficult to address in schools without adequate technology access. Educators in schools with one-to-one student to technology devices did not face the same issues of getting students scheduled and moved in and out of computer labs. Adequate access to technology in classroom teaching allows for better preparation and comfort with the online environment for students and teachers. More importantly, it provides students with the exposure and familiarity they will need as colleges and businesses increasingly require students to use technology. Access to a one-to-one technology environment varies considerably across the state and carries with it a large cost. The challenges of scheduling the test were only exacerbated when the technology did not perform in the 2018 spring testing window, particularly in districts that were not one-to-one. Educators spoke of working relentlessly to prepare for the transition to computer-based testing only to be frustrated when online delivery of the test did not meet expectations. Additional information can be found in the Governor's Assessment Listening Tour report [here](#).

In addition, this waiver would decrease the burden on LEAs with regard to private schools that participate in equitable services for Title IV - providing more LEAs the opportunity and incentive to utilize their Title IV funds to serve both public and non-public students more effectively. With the incentive currently in place to transfer Title IV to other programs, private schools have not been able to participate fully as ESSA intended. The cap has frequently created conflict between the LEAs and private school officials. Because LEAs are not allowed to leave any funding in Title IV to provide equitable services (when all other funds are transferred by the LEA due to the cap), there are private schools in the state whose students and teachers are missing out on the services. This may also create an incentive for LEAs to transfer the funds in order to avoid their equitable services obligations.

Granting this waiver would allow all LEAs in Tennessee the autonomy to choose the appropriate spending level on technology infrastructure to support students' digital literacy and computer-based assessment experience while also improving relationships among private schools and like LEAs. The SEA would also commit to providing targeted technical assistance specific to initiatives for LEAs that have previously transferred all of their Title IV funds to other programs.

The waiver was posted for public comment on the state's website for 10 days, the manner and time in which the state most typically posts items for comment.

Thank you for your consideration of this waiver request. Should you have questions regarding this request, please reach out to Eve.Carney@tn.gov.

Sincerely,

Candice McQueen, Ph.D.
Commissioner, Tennessee Department of Education