



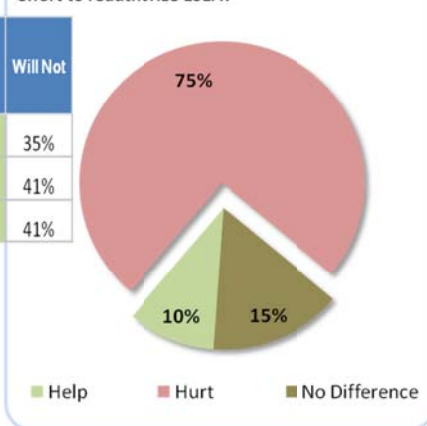
Issue Brief: Reauthorization by Waiver Will Eliminate Free Afterschool Tutoring – March 14, 2011

The Current Threat

- Organizations such as the National Urban League and National Council of La Raza have expressed concern that Secretary Duncan has signaled a willingness to utilize ESEA waiver authority to undermine the role of Congress in reauthorizing the law, and eliminate its free tutoring and choice provisions.
- The Department has indicated that it would utilize waiver authority selectively to not only undercut key NCLB provisions but advance its policy agenda by extracting district and state behaviors in exchange for regulatory relief or flexibility.
- In a recent, bi-partisan poll of education insiders (including White House and U.S. Department of Education leaders, congressional staff, state education leaders, leaders of major reform associations, and think tanks), 76% of respondents believed that the Secretary *should not* waive the requirement mandating SES for students in schools identified of needing improvement – however, 59% feel that Secretary Duncan *will exercise waiver authority* to do so.

The following are areas where some have made arguments in favor of the Secretary using his waiver authority to either eliminate or provide flexibility to various ESEA requirements. Do you believe the Secretary SHOULD or SHOULD NOT waive the following requirements? Do you believe the Secretary WILL or WILL NOT waive any of the following requirements?	Should	Should Not	Will	Will Not
Mandating SES services for students in schools identified as needing improvement	24%	76%	59%	35%
Mandating Public School Choice for students in schools identified as needing improvement	29%	71%	47%	41%
Reserving 20% of Title I funding for SES/Choice options	43%	57%	53%	41%

Would providing regulatory relief help or hurt the effort to reauthorize ESEA?



- Over the last eight years, both the Bush and Obama Administrations have given waivers to states and school districts that are defensible—targeted, specific, and geared toward student achievement. Waiving an entire program serving low-income children that was authorized by Congress circumvents Congressional authority.
- Because most students who participate in SES are minorities, waiver of ESEA accountability provisions, including SES, risks discrimination based on "effects" or the disparate impact theory. *See, Villanueva v. Carere*, 85 F.3d 481 (10th Cir. 1996). According to the latest GAO data (2007), in 40 percent of districts, over half of SES recipients were African-American. In about 30 percent of districts, over half of SES recipients were Hispanic.
- Congress must send a strong signal to the Administration that “reauthorization by waiver” will not be tolerated; executive action that undermines Congressional authority is unconstitutional and fundamentally unfair to minority parents and families that benefit from educational choice programs.

Waivers Enable Bad District Behavior and Limit Parental Options

- Studies presented at the 2008 meeting of the American Education Research Association found that only 7 states notify parents about their children’s eligibility in time for enrollment in September. The US Department of Education and some state Departments of Education have gone out of their way NOT to enforce provisions of the law, enabling districts to withhold funding that Congress intended for low income families and children.
- Waiving SES rewards bad behavior of school districts which often try to limit participation and crush support for the program. For example, New York recently shortened its enrollment window, Chicago received special permission from the Department to “selectively notify” eligible families. Dallas acknowledges that due to “staff delays,” it has not processed enrollment forms for over 10,000 students that sought tutoring in August.

- Smaller enrollment periods equal less students participating; less students participating equals more money for the district.
- Districts have done only the bare minimum in notifying parents of how to sign up for services. Some districts only send out fliers to a portion of the eligible students, often without adequate time to enable sign-up.
- In a March, 2010 letter, seven CBC members expressed support for NCLB, along with concern that district implementation was resulting in “long waiting lists” and preventing “hundreds of thousands of eligible families” from benefiting from these “important services.”

SES is Making a Difference for Children and Families

- Although only a fraction of eligible students are receiving services, the SES program is providing a lifeline for over 650,000 students trapped in failing schools.
- A nationwide study conducted by the Rand Corporation found that student participation in SES in school districts including Baltimore, Chicago, Denver, Long Beach, Los Angeles, Palm Beach, Philadelphia, San Diego, and Washington, D.C. had a statistically significant, positive effect on students’ achievement in reading and math.

SES Enjoys Broad Based Support

- The Washington Post editorial board “worried” in March that “the administration [was] rashly scrapping the requirement that parents in failing schools be offered school choice and free tutoring.”
- Groups ranging from Concerned Women of America to the Urban League of Miami have recently voiced their support in the *Washington Times* and *Miami Herald*.
- Voters Support SES: A pre-election survey found that 69% of likely voters support current law that requires tutoring to be offered to low-income children who attend a school that fails to meet grade level standards for three years in a row.
- Voters Want Tutoring for Students: 78% of likely voters support parents with students in low-performing schools having the option to enroll their student in after school tutoring.
- SES is viewed as Help for Students, Not a Penalty for Schools: 53% of likely voters see schools using a portion of their federal funds to pay for tutoring as providing help to students, not penalizing schools.

Our Coalition

- The Tutor Our Children coalition represents and has helped to animate a national network of private providers, community and faith based organizations, and nonprofits enabled to provide Supplemental Educational Services (SES) under the No Child Left Behind Act.
- Our network currently includes 263 nonprofit SES providers and affiliated organizations from 28 states including the Greater Cincinnati YMCA and Urban League of Miami.
- We have deep roots in, and support from the school choice community, and are collaborating with National School Choice Week, Ed Reform Now, The Education Breakthrough Network, Black Alliance for Educational Options and others.

