



**BILL LEE**  
GOVERNOR

STATE OF TENNESSEE  
**DEPARTMENT OF EDUCATION**  
NINTH FLOOR, ANDREW JOHNSON  
TOWER  
710 JAMES ROBERTSON PARKWAY  
NASHVILLE, TN 37243-0375

**PENNY SCHWINN**  
COMMISSIONER

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

March 20, 2020

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

Assistant Secretary Brogan:

The Tennessee Department of Education (TDOE) is seeking a waiver from the requirements in section 4109(b) of the Every Student Succeeds Act (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).”

Specifically, Tennessee requests flexibility and removal of the 15% technology cap on the Title IV, part A-Student Support and Academic Enrichment grant to allow districts and local education agencies (LEAs) to purchase devices, equipment, connectivity, platforms, and adaptive software applications in order to ensure that the 973,659 students across Tennessee have access to and can participate in distance learning as we address the national and state emergencies in Tennessee.

The state continues to address both the COVID-19 outbreak and the state of emergency resulting from recent tornadoes across Tennessee. Our state experienced seven EF3 and EF4 tornadoes on March 2 and 3 which destroyed numerous homes, schools, and lives—the second deadliest tornado outbreak in Tennessee history. We are continuing to support our district and school leaders in recovering from this natural disaster, and the impact on communities is significant. As a result, on March 3, Governor Bill Lee declared a state of emergency.

While in this state of emergency, Tennessee continues to have a growing number of districts with confirmed cases of COVID-19; in one week, we now have cases in twice as many districts. Governor Bill Lee announced that all public schools in Tennessee would close through the end of March—a decision that would be reevaluated and possibly extended later in the month. Our state is beginning to see more long-term closure decisions made locally, with one large suburban district announcing closure at least until May 1.

As long-term closures are being announced, districts are working to develop and implement continuity of instruction plans, and technology is a critical component in these plans. However, many of our largest urban and suburban districts, serving over 500,000 of Tennessee's students, also serve most of the state's highest poverty schools where many students do not currently have access in their homes. Further, we have heard from superintendents in our state's rural districts that students also do not have the infrastructure, connectivity, or technology to support continuity of instruction plans for extended closure. For context, 90 of Tennessee's 147 districts are serving fewer than 5,000 students. This waiver would provide needed flexibility for all districts—urban, suburban, and rural—to utilize Title IV more directly aligned with the emergent need we are current facing and will continue to face based on current data.

Due to the evolving nature and scope of the current crises Tennessee is facing, we did not provide public notice prior to submission of this waiver request. We will actively communicate this request and provide appropriate follow-up communication with stakeholders.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Penny Schwinn", with a long horizontal flourish extending to the right.

Penny Schwinn, Ph.D.  
Commissioner, Tennessee Department of Education

CC: Eve Carney, Chief Districts and Schools Officer  
Katie Houghtlin, Chief of Whole Child  
Brinn Obermiller, Senior Director of ESEA Oversight  
Sam Percy, Chief Operating Officer  
Deborah Thompson, Assistant Commissioner of Federal Programs and Oversight