



# ESSA Flexibilities

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October 2018

## **ESSA Flexibilities**

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## **Purpose of this Document**

The Every Student Succeeds Act (ESSA) passed in December 2015 with broad bipartisan support, reauthorized the Elementary and Secondary Education Act of 1965 (ESEA),<sup>1</sup> as amended. The ESEA initially offered grants to districts serving low-income students, Federal grants for textbooks and library books and scholarships for low-income college students. Additionally, the law provided Federal grants to State educational agencies (SEAs) to improve the quality of elementary and secondary education. The ESEA has been periodically reauthorized by Congress, with the last version prior to the ESSA being the No Child Left Behind Act of 2001 (NCLB).

The ESEA, as amended by the ESSA, provides greater flexibility for State and local education leaders to do what is best for children while maintaining important protections for historically underserved students, including economically disadvantaged students, students with disabilities, and English learners. The law requires States to ensure that all students have equitable access to effective teachers and safe learning environments with necessary supports to prepare them for success in college, a career and life.

In addition to reauthorizing the ESEA, the ESSA reauthorized and amended the Education Flexibility Partnership Act of 1999 (Ed-Flex Act), which provides another potential source of flexibility for States and districts.

The purpose of this document is to highlight basic information about key flexibilities in the ESEA and the Ed-Flex Act, as amended by the ESSA. It does not impose any requirements beyond those included in the ESEA and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person. We encourage States and districts to share this information with stakeholders and consider how to leverage these opportunities to best meet the needs of their students and schools.

When implementing the flexibilities described in this document, States and districts must continue to comply with Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age. These laws include Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, the Age Discrimination Act of 1975, and the Equal Educational Opportunities Act of 1974.

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<sup>1</sup> Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

If you are interested in commenting on this document, please email us your comments at [OESE.feedback@ed.gov](mailto:OESE.feedback@ed.gov) or write to us at the following address:

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## **I. State Flexibilities**

### **A. Challenging Academic Standards and Assessments (ESEA section 1111(b))**

The ESEA requires that each State seeking funds under Title I, Part A develop challenging academic content and achievement standards. These standards specify the knowledge, skills, and levels of achievement that a State expects of all its students. A State has broad discretion to establish standards that reflect what the State, in consultation with a wide range of stakeholders, and with input from peer reviewers, determines is relevant for students in the State. (ESEA section 1111(b)(1)). The U.S. Department of Education (Department) may not mandate State standards, including with respect to the Common Core State Standards developed by States under the Common Core State Standards Initiative, although a State may adopt the Common Core standards at its discretion. (*See* ESEA sections 1111(b)(1)(G); 8526A(a)).

Additionally, the ESEA requires that each State that seeks Title I, Part A funds implement a statewide set of annual academic assessments in mathematics, reading or language arts, and science. A State has broad discretion to select the assessments and assessment items that are aligned with its academic content standards and measure what the State expects students in the State to know and be able to do. The Department may not prescribe specific assessments or assessment items. (ESEA sections 1111(b)(2); 1111(e)(1)(B)(iii)(II)). A State's assessment system must include all students, including students with disabilities and English learners (ESEA section 1111(b)(2)(B)(vii)).

The ESEA contains a number of specific areas of flexibility with respect to statewide academic assessments:

#### **1. Eighth Grade Mathematics Exception (ESEA section 1111(b)(2)(C))**

A State may exempt any 8<sup>th</sup> grade student from the mathematics assessment the State administers in 8<sup>th</sup> grade if the student takes the end-of-course mathematics assessment the State typically administers in high school for Federal accountability purposes. This flexibility avoids double testing 8<sup>th</sup> grade students in mathematics. When a student reaches high school, the student must take a more advanced high school mathematics assessment. (ESEA section 1111(b)(2)(C)).

#### **2. Locally Selected, Nationally Recognized High School Academic Assessments (ESEA section 1111(b)(2)(H))**

A State may permit its districts to administer a locally selected, nationally recognized high school academic assessment in place of the high school-level statewide academic assessment. These assessments must be peer reviewed. A district that elects to administer a nationally recognized high school academic assessment must make parents aware of its selection and administer the assessment to all its high school students. A “nationally recognized high school academic assessment” is an assessment of high school students' knowledge and skills that is administered in multiple States and is recognized by institutions of higher education in those or

other States for the purposes of entrance or placement into courses in postsecondary education or training programs. (ESEA section 1111(b)(2)(H); 34 C.F.R. § 200.3).

### **3. Innovative Assessment and Accountability Demonstration Authority (ESEA section 1204)**

A State may apply to the Department to implement an innovative assessment system in some of its districts instead of the statewide assessments, with the goal of scaling up the innovative assessment for statewide administration. Such a system may include competency-based assessments, instructionally embedded assessments, interim assessments, cumulative year-end assessments, or performance-based assessments that combine into an annual summative determination for a student. Innovative assessments may allow students to demonstrate mastery or proficiency and allow a district to differentiate student support based on individual learning needs. (ESEA section 1204; 34 C.F.R. §§ 200.104-200.108).

### **4. Alternate Academic Achievement Standards and Alternate Assessments for Students with the Most Significant Cognitive Disabilities(AA-AAAS) (ESEA sections 1111(b)(1)(E), 1111(b)(2)(D))**

A State may adopt alternate academic achievement standards and aligned alternate assessments for students with the most significant cognitive disabilities, as permitted under section 1111(b)(1)(E) of the ESEA. Alternate academic achievement standards must be aligned with the State's challenging academic content standards, promote access to the general education curriculum, and reflect professional judgment as to the highest possible standards achievable by such students. Alternate academic achievement standards are designated in each student's individualized education program, and are aligned to ensure that a student who meets those standards is on track to pursue postsecondary education or competitive integrated employment. A State may assess up to one percent of its tested population with an alternate assessment. (ESEA sections 1111(b)(1)(E), 1111(b)(2)(D); 34 C.F.R. §§ 200.2(b)(3)(ii)(B)(2), 200.6(c)-(d)).

### **5. Adaptive Testing (ESEA section 1111(b)(2)(J))**

The ESEA allows a State to administer its statewide assessments in the form of computer-adaptive assessments. A computer-adaptive assessment may measure a student's academic proficiency and growth using items above or below the student's grade level provided it also measures the student's academic proficiency based on the standards for the grade in which the student is enrolled. (ESEA section 1111(b)(2)(J); 34 C.F.R. § 200.2(c)).

### **B. Statewide Accountability System (ESEA sections 1111(c)(4)(C))**

The ESEA requires each State to develop a statewide system of accountability for all public elementary and secondary schools to improve student academic achievement and school success, but provides broad discretion to a State in the design of the accountability system. (ESEA section 1111(c)). A State's system includes indicators that measure academic achievement, another

academic measure, graduation rates, the progress of English learners in achieving English language proficiency, and school quality or student success. While the ESEA lays out some specifics for State accountability systems, each State has discretion to determine how certain measures are calculated and how many measures to include in order to evaluate school performance. Specifically, each State has discretion to determine a valid and reliable other academic indicator (e.g., student growth) as well as discretion to determine how many indicators of school quality or student success (e.g., educator engagement) it will include in its system and what those indicators will be.

A State's accountability system must be used to identify schools for comprehensive, targeted, and additional targeted support and improvement, but a State has discretion to determine precisely how it will design its system, including how it will combine all of the indicators, to identify schools (ESEA sections 1111(c)(4)(C), (D); 1111(d)(2)).

The ESEA contains a number of specific areas of flexibility with respect to statewide accountability systems:

**1. Exception for Recently Arrived English Learners (ESEA section 1111(b)(3)(A))**

A State has the flexibility to determine how to include in its statewide accountability system recently arrived English learners who have been enrolled in a school in one of the 50 States in the United States or the District of Columbia for less than 12 months. This flexibility allows a State to choose either to include recently arrived English learners in its accountability system like all other English learners or to choose among three exceptions:

- 1) Exclude a recently arrived English learner from one administration of the statewide reading or language arts assessment and, for any other required statewide assessment, report the results of that student but do not include the results of that student in the statewide accountability system; OR
- 2) Assess and report the performance of a recently arrived English learner on the reading or language arts and mathematics assessments beginning in the first year of the student's enrollment in a school, and, in the second year, include a measure of student growth (but not proficiency) on the reading or language arts and mathematics assessments in the statewide accountability system; OR
- 3) Apply both exceptions and, in the State plan, describe how the State will apply each exception to recently arrived English learners across the State. (ESEA section 1111(b)(3)(A)).

**2. English Learner Subgroup (Former English Learners) (ESEA section 1111(b)(3)(B))**

A State also has the flexibility to include the results of students who were previously identified as English learners and have exited English learner status on the statewide reading or language arts and mathematics assessments in the English learner student subgroup for no more than four years in the State-determined system of annual meaningful differentiation. This allows a State to determine the number of years (up to four) that a former English learner who has already achieved English language proficiency will have his or her scores on the reading or language arts and mathematics assessments count for purposes of determining the performance of the English learner subgroup in a school within the statewide accountability system. (ESEA section 1111(b)(3)(B)).

### **C. School Support and Improvement Activities (ESEA section 1111(d))**

#### **1. State Discretion with Respect to High Schools (ESEA section 1111(d)(1)(C))**

A State has significant flexibility with respect to the improvement activities it may permit to be implemented in certain high schools that the State identifies for comprehensive support and improvement based on the schools' failure to graduate one-third or more of their students. (ESEA section 1111(d)(1)(C)(i)). In particular, a State may allow differentiated improvement activities for high schools that are identified based on their graduation rate and that predominantly serve students who are returning to education after having left school without a regular high school diploma (i.e., dropout recovery schools), as well as for those that predominantly serve students who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet the State's high school graduation requirements (e.g., credit recovery programs). (ESEA section 1111(d)(1)(C)).

In addition, a State may permit a district to completely forego the implementation of improvement activities for any high school identified for comprehensive support and improvement based on failing to graduate one-third or more of its students if the high school has a total enrollment of less than 100 students. (*See* ESEA section 1111(d)(1)(C)(ii)).

#### **2. School Improvement Funds (ESEA section 1003)**

A State has significant discretion with respect to the funds that it must reserve to support school improvement activities in schools identified for comprehensive or targeted support and improvement and for the State's statewide system of technical assistance and support under ESEA section 1003.

First, a State has the flexibility to decide whether to distribute those funds on a formula or competitive basis. (ESEA section 1003(b)).

Second, a State has the discretion to determine the length of the subgrants it awards, up to a period of four years. (ESEA section 1003(c)).



Third, a State has the discretion to determine the information it will require in a district's application for school improvement funds beyond the minimal information required by statute. (ESEA section 1003(e)). If a State determines that the amount of funds it reserves under ESEA section 1003 is greater than the amount needed to serve schools identified for comprehensive or targeted support and improvement, the State must allocate the excess amount to districts, but has the flexibility to make that allocation either based on the relative allocations of Title I, Part A funds the State made to districts for that fiscal year, or in accordance with any other criteria established by the State. (ESEA section 1003(g)).

#### **D. Direct Student Services (ESEA section 1003A)**

##### *State Flexibilities*

A State has the flexibility to determine whether to reserve a portion (up to three percent) of its Title I, Part A funds to support direct student services. (ESEA section 1003A). Consistent with the general parameters established in ESEA section 1003A(b)(2) for how awards are to be prioritized, a State has discretion to determine how it will award any funds that it does choose to reserve under this provision. To that end, under ESEA section 1003A(d), a State has the discretion to determine the information it will require in a district's application for funds for direct student services, beyond the minimal information required by that provision. Further, under ESEA section 1003A(c) and 1003A(d), a district has discretion to determine whether it will apply for these funds and, if so, the direct student services for which it will seek the funds.

If a State chooses to take advantage of this flexibility, a district may use up to one percent of its award under section 1003A for outreach and communications to parents about available direct student services in the district and State, and up to two percent of its award for administrative costs related to such direct student services. (ESEA section 1003A(c)(1), (2)).

##### *District Flexibilities*

A district may support different student services in different schools based on the needs of the students in each school. Examples of direct student services include: credit recovery, enrollment in academic courses not otherwise available in a particular school, academic acceleration courses, components of a personalized learning approach, and assistance for Advanced Placement and International Baccalaureate exam fees. (ESEA section 1003A(c)(3)).

A district may also use section 1003A funds for the costs of transportation to allow a student enrolled in a school identified by the State for comprehensive support and improvement to transfer to another public school (which may include a charter school) that has not been identified by the State for comprehensive support and improvement if the district is not reserving funds under ESEA section 1111(d)(1)(D)(v) for this purpose. (ESEA section 1003A(c)(3)(E)).

### **E. Institution-wide Projects under Title I, Part D, Subpart 1 (ESEA section 1416)**

A State agency that provides free public education for children and youth in an institution for neglected or delinquent children and youth (other than an adult correctional institution) or attending a community day program for such children and youth may use funds received under Title I, Part D, Subpart I of the ESEA to operate an institution-wide project. (ESEA section 1416). An institution-wide project serves all children in, and upgrades the entire educational effort of, the institution or program. If a State agency wishes to implement an institution-wide project, the ESEA requires that the State agency develop, and the State approve, a comprehensive plan that meets the requirements of ESEA section 1416.

### **F. Charter Schools Program (ESEA section 4301 et seq.)**

The Expanding Opportunity Through Quality Charter Schools Program (CSP) authorizes the Department to award grants to various eligible entities (i.e., specific State entities, charter management organizations, and charter school developers) to support the creation of new charter schools as well as the replication and expansion of high-quality charter schools. Grantees and subgrantees may exercise flexibility in developing their charter school programs.

Another key area in which CSP grantees and subgrantees have flexibility relates to waivers. Under ESEA section 4303(d)(5), eligible entities may include in their applications requests for waivers of any statutory or regulatory requirement over which the Secretary exercises administrative authority, except requirements related to the definition of “charter school” in section 4310(2) of the ESEA. These waivers are subject to the Secretary’s approval.

### **G. Funding Transferability for States (ESEA section 5103)**

States and districts have broad flexibility under the ESEA to transfer some or all of their funds under certain ESEA programs to other eligible ESEA programs in order to better meet State and local needs. (*See* ESEA section 5103). Transferability does not affect the overall amount of ESEA funds a State or district receives, but it provides greater flexibility in using some of those funds. States and districts do not need prior approval from the Department to exercise this authority provided they comply with the requirements described in ESEA section 5103. Under ESEA section 5103(e)(2), before a State or district can transfer funds from a program subject to equitable services requirements, it must engage in timely and meaningful consultation with appropriate private school officials.

For more information, see the “Transferability” section in the Fiscal Changes and Equitable Services Requirements under the ESEA non-regulatory guidance, available at <https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf>, and the Guidance on the Transferability Authority, which remains applicable except as modified by the Fiscal Changes guidance, available at [www2.ed.gov/programs/transferability/finalsummary04.doc](http://www2.ed.gov/programs/transferability/finalsummary04.doc).

## **H. Educational Flexibility (Ed-Flex) Program (Education Flexibility Partnership Act of 1999)**

The Education Flexibility Partnership Act of 1999, which was most recently amended by the ESSA, authorizes the Department to delegate to States with strong accountability safeguards the authority to waive certain Federal education requirements that may, in particular instances, impede local efforts to reform and improve education. (20 U.S.C. 5891a-b). The Ed-Flex program is designed to help districts, educational service agencies, and schools carry out educational reforms and raise the achievement levels of all children by providing increased flexibility in the implementation of Federal education programs in exchange for enhanced accountability for the performance of students. The Department intends to continue to make this flexibility available through an application process for any interested States during the 2018-19 school year.

### **I. Consolidation of Funds for State Administration (ESEA section 8201(a))**

A State that can demonstrate that the majority of its resources are derived from non-Federal sources has the flexibility to consolidate funds specifically made available to it for State administration under any ESEA program, as well as other programs that the Secretary may designate. (ESEA section 8201(a)). A State that consolidates funds is not required to keep separate records for each individual program included in the consolidation to account for costs related to the administration of the consolidated programs. The consolidated State administrative funds may be used to administer the programs included in the consolidation, carry out activities designed to enhance the effective and coordinated use of funds under those programs such as the examples provided in section 8201(b)(2) of the ESEA, and develop the standards and assessments required under Title I. (ESEA section 8201(b)). If the State does not use all of the funds that it consolidated for a particular year for administration, a State may use those funds during the applicable period of availability as funds available under one or more of the programs included in the consolidation. (ESEA section 8201(e)).

### **J. Waivers (ESEA section 8401)**

Section 8401 of the ESEA authorizes the Secretary to waive certain statutory and regulatory requirements for ESEA programs. Waiver requests may be submitted by a State on its own behalf or on behalf of a district or school. (ESEA section 8401(a)). The ESEA outlines the information that the State must include when it submits waiver requests to the Secretary (ESEA section 8401(b)(1)) and the manner in which States and districts seeking waivers must provide notice and opportunity to comment to the public and affected agencies (ESEA section 8401(b)(3)). This includes a description of:

1. The Federal statutory or regulatory requirements to be waived;
2. How the waiving of such requirements will advance student academic achievement;

3. The methods the State, district, school, or Indian tribe will use to monitor and regularly evaluate the effectiveness of the implementation of the plan;
4. If the waiver relates to provisions of assessments (ESEA section 1111(b)) or State or district report cards (ESEA section 1111(h)), how the State, district, school, or Indian tribe will maintain or improve transparency in reporting to parents and the public on student achievement and school performance, including the achievement of the subgroups of students; and
5. The notice and comment process, including by submitting the comments and input to the Secretary, with a description of how the State addressed the comments and input.

Upon receiving a waiver request, the Secretary has 120 days to review and issue a determination regarding the request. If the waiver is not approved, a State has 60 days to revise and re-submit the waiver. (ESEA section 8401(b)(4)).

States may apply for a waiver via email or mail. Typically, the Department will receive a waiver request sooner if it is submitted via email through the appropriate State mailbox. The State mailbox email address is [\[State\].OESE@ed.gov](mailto:[State].OESE@ed.gov) (for example [Maine.OESE@ed.gov](mailto:Maine.OESE@ed.gov)).

## **II. District Flexibilities**

### **A. Consolidation of Funds for Local Administration (ESEA section 8203)**

A district, with the approval of its State, has the flexibility to consolidate and use for the administration of one or more programs under the ESEA an amount equal to or less than the percentage, established in each program, of the total available to the district for administration of those programs. (ESEA section 8203(a)). A district that consolidates funds is not required to keep separate records for each individual program included in the consolidation to account for costs related to the administration of the consolidated programs. (ESEA section 8203(e)). For example, a district that has a consolidated pool of administrative funds that includes Title III, Part A in the consolidation may use any of the consolidated funds to administer its Title III, Part A program, even though section 3115(b) of the ESEA limits the amount of Title III, Part A funds that may be contributed to the consolidated pool to two percent of a district's Title III, Part A allocation. The ESEA requires a State, in collaboration with districts in the State, to establish procedures for responding to district requests to consolidate administrative funds and for establishing limitations on the amount of funds under those programs that can be used for administration on a consolidated basis. (ESEA section 8203(b)).

### **B. Student-centered Funding Pilot (ESEA section 1501)**

A district may apply for extensive flexibility from many district-level program and fiscal requirements related to eligible Federal programs if the district wishes to combine those eligible Federal funds with State and local funds in order to allocate resources to schools based on the

number of students and their corresponding levels of educational need as determined by the district. Specifically, a district may include funds under any of the following programs authorized under the ESEA: Title I, Parts A, C, and D; Title II; Title III; Title IV, Part A; and Title V, Part B. (ESEA section 1501(1)). A district taking advantage of the flexibility would need to design and implement a system that uses weights to provide substantially more funding to students from low-income families, English learners, and any other educationally disadvantaged student groups identified by the district. Notably, the flexibility does not relieve an approved district of any State-level requirements. Provided a district meets all requirements of the program, it would receive substantial relief from both fiscal requirements (such as separately tracking Federal funds) and programmatic requirements for those programs the district includes in the weighted funding system. Additional information, including an application, is available at <https://www2.ed.gov/policy/elsec/leg/essa/scfp/studentcentered.html>.

**C. Locally Selected, Nationally Recognized High School Academic Assessments (ESEA section 1111(b)(2)(H); 34 C.F.R. § 200.3)**

If permitted by the State, a district may administer a nationally recognized high school academic assessment in place of the statewide academic assessment in any subject. A district that elects to administer a nationally recognized high school academic assessment must make parents aware of its selection and administer the assessment to all its high school students. A “nationally recognized high school academic assessment” is an assessment of high school students’ knowledge and skills that is administered in multiple States and is recognized by institutions of higher education in those or other States for the purposes of entrance or placement into courses in postsecondary education or training programs. (ESEA section 1111(b)(2)(H); 34 C.F.R. § 200.3)

**D. District and School Discretion with Respect to School Improvement Activities (ESEA section 1111(d)(1)(B) and (d)(2)(B))**

A district has the flexibility to determine the evidence-based interventions it will include in each comprehensive support and improvement plan it develops for its schools. (ESEA section 1111(d)(1)(B)). Similarly, a school that is implementing a targeted support and improvement plan has the flexibility to determine the evidence-based interventions it will include in its school support and improvement plan. (ESEA section 1111(d)(2)(B)). School Improvement Funds (ESEA section 1003)

Any district with one or more schools identified for comprehensive support and improvement under ESEA section 1111(c)(4)(D)(i) or implementing a targeted support and improvement plan under ESEA section 1111(d)(2) is eligible to apply to the State for school improvement funds.

The ESEA provides significant flexibility to districts regarding school improvement funds reserved under section 1003 of the ESEA for schools identified for comprehensive or targeted support and improvement, including discretion to determine how much school improvement

funding it will seek, the schools for which it will seek such funding (e.g., all identified schools or only those identified for comprehensive support and improvement), and whether to seek any funding for district-level activities.

Possible activities that a district may carry out using school improvement funds include the following: family and community engagement, rigorous review of external providers, recruiting and hiring staff, instructional programs, and professional development and support. A district may also use the funds to support other allowable activities, including those that are part of a plan for comprehensive or targeted support and improvement, which must include one or more evidenced-based interventions.

#### **E. Public School Choice (ESEA section 1111(d)(1)(D))**

A district has the discretion to offer students enrolled in a school that is identified by the State for comprehensive support and improvement with the option to transfer to another public school served by the district. (ESEA section 1111(d)(1)(D)(i)). Furthermore, a district may use up to five percent of its Title I, Part A funds to pay for transportation for students who take advantage of this public school choice option. (ESEA section 1111(d)(1)(D)(v)). If a district chooses to offer this option to its students, ESEA section 1111(d)(1)(D)(ii)-(iv) outlines the requirements for implementation. Note that any public school choice option provided by a district under these provisions must be consistent with State law. (ESEA section 1111(d)(1)(D)(i)).

#### **F. Supplement Not Supplant (ESEA section 1118(b)(1))**

A district now demonstrates compliance with the Title I, Part A supplement not supplant requirement just by using a methodology to allocate State and local funds to each Title I school that ensures that each school receives all the State and local funds it would otherwise receive if it were not receiving Title I funds. The district's methodology must be Title I neutral. Unlike prior to ESSA, a district is not required to identify that any individual cost or service supported with Title I, Part A funds is supplemental. This provision applies to both schoolwide programs and targeted assistance schools. (ESEA section 1118(b)).

#### **G. Consolidation of Funds in a Schoolwide Program (ESEA section 1114(a)(1)(A), (3))**

A Title I schoolwide program is a comprehensive reform strategy designed to upgrade the entire educational program in a Title I school in order to improve the achievement of the lowest-achieving students by coordinating services funded from a variety of sources into a comprehensive framework. Title I schools that have a poverty percentage of at least 40 percent have significant flexibilities available to them through the operation of a schoolwide program. (ESEA section 1114(a)(1)(a)). In addition, a State may grant a waiver for a Title I school with a poverty percentage below 40- percent to operate a schoolwide program after considering how a schoolwide program will best serve the needs of students in the school who are failing, or at risk of failing, to meet the challenging State academic standards. (ESEA section 1114(a)(1)(B)). To encourage this approach and better leverage all available funding, a schoolwide program school

has the flexibility to consolidate funds from Title I and other Federal education programs with State and local funds. (ESEA section 1114(a)(1)(A), (3)). Consolidating Federal, State and local funds in a schoolwide program offers significant flexibility to a school to use all of its funds to meet the specific needs of its students identified through a needs assessment and included in the schoolwide plan.

For more information on schoolwide programs in general and the advantages of consolidation funds in particular, see the ESEA non-regulatory guidance on schoolwide programs, available at <https://www2.ed.gov/policy/elsec/leg/essa/essaswpguidance9192016.pdf>.

#### **H. Funding Transferability for Districts (ESEA section 5103(b))**

For information on the transferability provisions, please see section I.G., which covers transferability for both States and districts.

#### **I. Waivers (ESEA section 8401)**

Districts may apply for waivers of Federal ESEA program requirements by applying through their State. (ESEA section 8401(b)(3)(B)). For information on the waiver authority generally, please see section I.J, which discusses waivers for both States and districts.

#### **J. SRSA Alternative Uses of Funds (ESEA section 5211)**

Districts eligible for the Small, Rural School Achievement (SRSA) program under Title V, Part B of the ESEA (ESEA section 5211(b)) have considerable flexibility in using the formula grant funds they receive under certain State-administered ESEA programs. This flexibility, referred to as the Alternative Fund Use Authority (AFUA), allows eligible districts to use the formula funds they receive under Title II, Part A and Title IV, Part A for any activities authorized under Title I, Part A; Title II, Part A; Title III; or Title IV, Parts A or B. Before exercising AFUA, section 5211(a)(2) of the ESEA requires an eligible district to annually notify its State of its intent to do so by the notification deadline established by the State.

Appendix A compares the AFUA and transferability authorities for districts eligible for either SRSA or the Rural and Low-Income School (RLIS) program, the other formula grant program under Title V, Part B of the ESEA, the Rural Education Achievement Program (REAP).

## Appendix A: AFUA and Transferability Guidelines for REAP Districts

Districts eligible for SRSA have great flexibility in using the formula grant funds they receive under certain State-administered Federal programs. This flexibility, referred to as AFUA, is similar to the flexibility available to all districts—not just SRSA-eligible districts— under the transferability provisions at section 5103(b) of the ESEA. Under the transferability authority, all districts have the authority to transfer funds from certain ESEA formula programs to others. Unlike AFUA, however, districts exercising their transferability authority actually transfer the funds from one program’s allocation into another program’s allocation, and those funds become funds of the program to which they are transferred and are subject to all of the rules and requirements of that program.

The chart below compares the AFUA and transferability authorities for districts eligible for either SRSA or RLIS. Please note that while the information in the transferability column is correct as applied to all districts, not just REAP-eligible districts, the information provided is tailored for REAP grantees. Also note that this chart discusses the transferability authority available to districts, not the transferability authority available to States, which is discussed above in sections I and G.

	<b>AFUA</b>	<b>Transferability</b>
<b>1. Summary</b>	Eligible districts are given flexibility in the use of certain Federal formula funds; funds are not actually transferred from one program to another. While the eligible funding may be used for local activities authorized under other ESEA programs, it is not subject to all of the rules and requirements of those programs.	Districts may transfer all or a portion of the funds they receive by formula under certain programs to other programs to better address local needs. When a district transfers funds, those funds become funds of the program to which they are transferred and are subject to the rules and requirements of the program.
<b>2. Which districts can exercise this authority?</b>	<u>Districts eligible for SRSA.</u> Only districts eligible for the SRSA program may exercise AFUA. This does not mean that the district must receive an SRSA grant award, but only that the district must meet the statutory eligibility criteria for the SRSA program. For example, a district that is eligible for an SRSA award but receives a \$0 allocation may exercise AFUA. For more information about SRSA eligibility, see <a href="http://www2.ed.gov/programs/reapsrsa/eligibility.html">the SRSA program website: www2.ed.gov/programs/reapsrsa/eligibility.html</a> .	<u>All districts.</u> All districts, including both SRSA- and RLIS-eligible districts, as well as districts that are not eligible for REAP, may exercise transferability. However, a district may only transfer eligible funds into a program for which that district receives an allocation in a particular fiscal year. This means that only districts that receive REAP funds—either SRSA or RLIS— may transfer funds into their REAP allocation in a particular fiscal year.



	However, districts that are eligible for SRSA Hold Harmless awards under section 5212(b)(4) of the ESEA may not exercise AFUA.	
<b>3. Which funds are eligible for this flexibility?</b>	<u>Title II, Part A and Title IV, Part A.</u> Eligible districts may use some or all of their formula Title II-A and IV-A funds for activities authorized under certain other Federal programs (see Question 4). Please note that in order to receive its funds under Titles II-A or IV-A, a district must meet the relevant application and eligibility requirements, regardless of whether it intends to use the funds for alternative uses under AFUA.	<u>Title II, Part A and Title IV, Part A.</u> All districts may choose to transfer their formula Title II-A or IV-A funds into their allocations under certain other Federal programs (see Question 4). Please note that in order to receive its funds under one of these programs, a district must meet the relevant application and eligibility requirements, regardless of whether it intends to transfer those funds to other program allocations.
<b>4. How may districts exercising this flexibility spend the eligible funds?</b>	<u>On local activities authorized under eligible ESEA programs.</u> An eligible district may spend some or all of its formula Title II-A or IV-A funds on local activities authorized under one or more of these ESEA programs: <ul style="list-style-type: none"> <li>• Part A of Title I</li> <li>• Part A of Title II</li> <li>• Title III</li> <li>• Parts A or B of Title IV</li> </ul> While Title II, Part A or Title IV, Part A funds may be used for local activities authorized under these programs, those funds are not subject to all of the rules and requirements of these programs. For example, these funds would not be subject to the set-aside requirements of those programs, such as the requirement that a district receiving \$30,000 or more of Title IV-A funds use not less than 20% to support well-rounded education; 20% to support safe and healthy students; and a portion to support the effective use of technology (ESEA section 4106(e)(2)(C)-(E)).	<u>Under eligible ESEA programs into which the district has transferred funds.</u> A district may transfer some or all of its formula Title II-A or IV-A funds into its allocation under one or more of these ESEA programs: <ul style="list-style-type: none"> <li>• Parts A, C, or D of Title I</li> <li>• Part A of Title II</li> <li>• Part A of Title III</li> <li>• Part A of Title IV</li> <li>• Part B of Title V</li> </ul> When a district transfers funds, those funds become funds of the program to which they are transferred and are subject to all of the rules and requirements of that program. For example, a district that receives RLIS funds could transfer all of its Title II-A funds into its Title V-B allocation. Those funds would then be considered RLIS funds and would be subject to the rules and requirements of the RLIS program. For more information about RLIS allowable activities, see <a href="https://www2.ed.gov/programs/reaprlisp/index.html">https://www2.ed.gov/programs/reaprlisp/index.html</a>  A district must receive an allocation in a particular fiscal

	<p>Additionally, a district does not have to receive funds under one of these programs in order to spend its Title II-A or IV-A funds on an allowable local activity under this program. For example, a district exercising AFUA that does not receive funds under Part A of Title I may nonetheless use its formula Title II-A or IV-A funds for Title I activities.</p>	<p>year in order to transfer its Title II-A or IV-A funds for that fiscal year into that program. For example, only districts that receive REAP funds (Title V, Part B) may transfer funds into an SRSA or RLIS allocation.</p>
<p><b>5. What rules apply to the funds?</b></p>	<p><u>Eligible funds are not subject to all rules and requirements of the programs that authorize the activities for which funds are spent.</u> If a district exercises AFUA with respect to its Titles II-A or IV-A funds, those funds may be spent on local activities authorized under the programs listed in Question 4, but those funds are not subject to all of the rules and requirements of those programs. See Question 4 for more information and examples. This means, for example, that an eligible district exercising AFUA with respect to its formula Title IV-A funds may use those funds for any allowable activity under Title IV-A; it does not need to meet the requirements under Title IV-A that certain percentages of Title IV-A funds be spent on specific types of activities.</p> <p>When completing financial reports, a district should report its Titles II-A and IV-A funds as expenditures under those programs, even if it exercises AFUA to spend those funds on authorized activities under other programs listed under Question 4.</p>	<p><u>Rules and requirements of programs into which funds are transferred apply.</u> The rules and requirements of the programs into which funds are transferred apply to the transferred funds. See Question 4 for more information and examples.</p> <p>When completing financial reports, a district should report any transferred funds as expenditures under the programs to which funds are transferred.</p>

<p><b>6. Does a district need to receive funds under a given program in order to spend eligible funds under that program?</b></p>	<p><u>No.</u> An eligible district does not have to receive funds under one of these programs in order to spend its Title II-A or IV-A funds on an allowable local activity under this program. For example, a district exercising AFUA that does not receive funds under Part A of Title I may nonetheless use its formula Title II-A or IV-A funds for Title I-A activities.</p>	<p><u>Yes.</u> A district must receive an allocation in a particular fiscal year in order to transfer its Title II-A or IV-A funds into that program. For example, only districts that receive REAP funds (Title V, Part B) in a particular fiscal year may transfer funds into an SRSA or RLIS allocation in that fiscal year.</p>
<p><b>7. What are a districts responsibilities for providing equitable services under this authority?</b></p>	<p><u>Districts must provide equitable services relative to Titles II-A and IV-A funds.</u> Participation in AFUA does not relieve a district of its responsibility to provide for equitable services for private school students and teachers relative to its Title II-A and IV-A funds. A district participating in AFUA with its Title II-A and/or IV-A funds must reserve for the benefit of private school students and teachers the proportion of its Title II-A and IV-A funds that is equal to the expenditures (including those under AFUA authority) for the public school program, taking into account the number and educational needs of the children to be served.</p> <p>After timely and meaningful consultation with private school officials (<i>see</i> ESEA section 8501(c)), a district exercising AFUA determines how the reserved funds will be expended for the benefit of private school students and teachers. A district may exercise AFUA with the respect to the reserved funds to use those funds on local activities under the ESEA programs listed in Question 4 for the benefit of private school students and teachers.</p>	<p><u>Districts must provide equitable services based on funds remaining after transfer.</u> A district must provide private school students and teachers equitable services under the program(s) to which, and from which, the funds are transferred based on the total amount of funds available to each program after the transfer. A district may not reserve Title II-A or IV-A funds solely to provide equitable services.</p> <p>Please note that a district must engage in timely and meaningful consultation with appropriate private school officials before transferring funds (ESEA section 5103(e)(2)). Per the Title VIII Uniform Provisions (ESEA section 8501) governing the equitable services requirements of Title II-A and Title IV-A, the goal of consultation is agreement and the district must give due consideration to the views of private school representatives. For more information about programs subject to the equitable services requirements, please see <i>Fiscal Changes and Equitable Services Requirements under the ESEA, as amended by ESSA</i> (issued 2016, section V on Equitable Services) [available at <a href="https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf">https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf</a>] and <i>Title IX, Part E Uniform Provisions, Subpart I</i></p>

	<p>Funds for private school students and teachers need not be expended under the same programs as funds for public school students and teachers and should serve to meet the needs of the private school students and teachers. For example, a district exercising AFUA may use its Titles II-A and IV-A funds for school improvement activities for public schools under Title I-A, but use the Title II-A and IV-A funds reserved for the benefit of private schools for professional development for private school teachers under Title II-A.</p> <p>For more information about equitable services, please see the guidance documents <i>Fiscal Changes and Equitable Services Requirements under the ESEA, as amended by ESSA</i> (issued 2016, section V on Equitable Services) [available at <a href="https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf">https://www2.ed.gov/policy/elsec/leg/essa/essaguidance160477.pdf</a>] and <i>Title IX, Part E Uniform Provisions, Subpart 1 – Private Schools</i> (revised 2009) [available at <a href="http://www2.ed.gov/policy/elsec/guid/equitableservicesguidance.doc">http://www2.ed.gov/policy/elsec/guid/equitableservicesguidance.doc</a>].</p>	<p>– <i>Private Schools</i> (revised 2009) [available at <a href="http://www2.ed.gov/policy/elsec/guid/equitableservicesguidance.doc">http://www2.ed.gov/policy/elsec/guid/equitableservicesguidance.doc</a>]</p>
<p><b>8. May districts exercise this flexibility with respect to their Title IV-A funds received through a competition?</b></p>	<p><u>It depends.</u> If an SRSA-eligible district that receives a competitive Title IV-A subgrant exercises AFUA with respect to its Title IV-A funds, it must continue to carry out the scope and objectives, at a minimum, at the level described in the district’s approved application under Title IV-A. When possible, in applying for Title IV-A competitive grant funds, an SRSA-eligible district would indicate in its application that it intends to exercise AFUA with respect to some of its Title</p>	<p><u>No.</u> A district that receives a competitive Title IV-A subgrant may not transfer funds into or out of that award. Section 5103(b) of the ESEA applies only to funds received through a formula allocation, not to funds awarded competitively.</p> <p>For more information about Title IV-A subgrants received through a competition, please see additional information at <a href="https://safesupportivelearning.ed.gov/sites/default/files/Subgranting_FY_2017_Title_IV_A_LEAs_QA.pdf">https://safesupportivelearning.ed.gov/sites/default/files/Subgranting_FY_2017_Title_IV_A_LEAs_QA.pdf</a>.</p>

	<p>IV-A funds. If the SRSA-eligible district is able to carry out the scope and objectives of its approved Title IV-A application, it may be able to exercise AFUA with respect to some of its Title IV-A funds. The Department encourages districts to contact to their States if they have questions about the effect of AFUA with respect to their Title IV-A competitive subgrants.</p> <p>For more information about Title IV-A subgrants received through a competition, please see additional information at <a href="https://safesupportivelearning.ed.gov/sites/default/files/Subgranting_FY_2017_Title_IV_A_LEAs_QA.pdf">https://safesupportivelearning.ed.gov/sites/default/files/Subgranting_FY_2017_Title_IV_A_LEAs_QA.pdf</a>.</p>	
<p><b>9. What steps does an eligible district need to take to exercise this flexibility?</b></p>	<p><u>Notify State.</u> An SRSA-eligible districts may exercise AFUA without the approval of either its State or the Department. However, before exercising AFUA, an eligible district must annually notify its State of its intent to do so by the notification deadline established by the State.</p>	<p><u>Notify State and modify and submit local applications.</u> Before transferring funds, a district must conduct timely and meaningful consultation with appropriate private school officials (see Question 7), modify each affected local plan or application to reflect the transfer, notify its State of the transfer at least 30 days before the transfer’s effective date, and submit the modified local plan or application to its State within 30 days of the transfer. See ESEA section 5103(d)(2).</p> <p>For more information, please see the guidance document <i>Fiscal Changes and Equitable Services Requirements under the ESEA, as amended by ESSA</i> (issued 2016, section VI on Transferability) [available at <a href="https://www2.ed.gov/policy/elsec/leg/essa/essguidance160477.pdf">https://www2.ed.gov/policy/elsec/leg/essa/essguidance160477.pdf</a>].</p>