



# **FLEXIBILITIES FOR STATES AND DISTRICTS IN THE EVERY STUDENT SUCCEEDS ACT**

**NOVEMBER 7, 2018**

# AGENDA

- Purpose
- State Flexibilities
- School District Flexibilities



# PURPOSE

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## GENERAL

- Highlight basic information about key flexibilities in the Elementary and Secondary Education Act of 1965 (ESEA) so State and local education leaders can do what is best for children while maintaining important protections for historically underserved students



# STATE FLEXIBILITIES

# STATE FLEXIBILITIES

- A. Challenging academic standards and assessments
- B. Statewide accountability system
- C. School support and improvement activities
- D. Direct student services
- E. Institution-wide projects under Title I, Part D, Subpart 1
- F. Charter schools program
- G. Funding transferability for States
- H. Ed-Flex
- I. Consolidation of funds for State administration
- J. Waivers







# **STATE FLEXIBILITIES:**

## **A. ACADEMIC STANDARDS AND ASSESSMENTS**

# A. CHALLENGING ACADEMIC STANDARDS

## ESEA SECTION 1111(b)(1)

- The ESEA requires that each State seeking funds under Title I, Part A develop challenging academic content and achievement standards that specify the knowledge, skills and levels of achievement that a State expects of all its students
- States have broad discretion to establish standards that reflect what the State and stakeholders determines is relevant for students in the State





# A. CHALLENGING ACADEMIC ASSESSMENTS

## ESEA SECTION 1111(b)(2)

- ESEA requires that each State implement a statewide set of annual academic assessments in mathematics, reading or language arts and science
  - A State's assessment system must include all students, including students with disabilities and English learners (ESEA section 1111(b)(2)(B)(vii))
- 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



# A. ACADEMIC ASSESSMENTS

## SUMMARY OF STATE ASSESSMENT FLEXIBILITIES

1. Eighth grade mathematics exception
2. Locally selected, nationally recognized high school academic assessments
3. Innovative assessment and accountability demonstration authority
4. Alternate academic achievement standards and alternate assessments for students with the most significant cognitive disabilities
5. Adaptive testing



# A.1. EIGHTH GRADE MATH EXCEPTION

## ESEA SECTION 1111(b)(2)(C)

- 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
- Applies to States that give end-of-course mathematics tests
- Avoids double testing 8<sup>th</sup> grade students in mathematics provided that, when a student reaches high school, the student must take a more advanced high school mathematics assessment



# A.2. HIGH SCHOOL ACADEMIC ASSESSMENTS

ESEA SECTION 1111(b)(2)(H); 34 C.F.R. § 200.3

- 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
  - The district must use the same nationally recognized assessment for all its high school students
  - These assessments must be reviewed by the State and then peer reviewed by the Department
  - A district must make parents aware of its selection and administer the assessment to all its high school students



# A.3. INNOVATIVE ASSESSMENT DEMONSTRATION AUTHORITY

ESEA SECTION 1204; 34 C.F.R. §§ 200.104-200.108

- State may apply to implement an innovative assessment system in some of its districts, with the aim of scaling up the innovative assessment statewide
- May allow students to demonstrate mastery or proficiency and allow a district to differentiate student support based on individual learning needs
  - The system could include competency-based, instructionally embedded, interim, cumulative year-end, or performance-based assessments
  - Assessments must result in an annual summative determination for a student



# A.3. INNOVATIVE ASSESSMENT DEMONSTRATION AUTHORITY

ESEA SECTION 1204; 34 C.F.R. §§ 200.104-200.108

- Louisiana and New Hampshire received approval beginning in school year 2018-2019. More information about their proposals is available on the website.
- States interested in applying may do so now. Applications are due **December 17, 2018**
- Additional information is available at <https://www2.ed.gov/admins/lead/account/iada/index.html>.





## A.4. ALTERNATE ACHIEVEMENT

### STANDARDS & ALTERNATE ASSESSMENTS

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)

- A State may adopt alternate academic achievement standards and aligned alternate assessments for students with the most significant cognitive disabilities
- These alternate achievement standards must:
  - Be aligned with the State's academic content standards
  - Promote access to the general education curriculum, and
  - Reflect professional judgment as to the highest possible standards achievable by such students
- A State may assess up to one percent of its tested population with an alternate assessment



## A.5. ADAPTIVE TESTING

ESEA SECTION 1111(b)(2)(J); 34 C.F.R. § 200.2(c)

- 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
- States must report student results on grade-level achievement (proficiency) standards





**STATE FLEXIBILITIES:**  
**B. STATEWIDE**  
**ACCOUNTABILITY SYSTEM**

## B. STATEWIDE ACCOUNTABILITY SYSTEM

ESEA SECTIONs 1111(b)(3), (c) and (d)

- The ESEA requires each State to develop and use a statewide system of accountability for public schools to improve academic achievement and school success
- The ESEA requires measuring academic achievement, using another academic measure, including graduation rate, considering the progress of English learners in achieving English language proficiency, and using at least one measure of school quality or student success
- States have broad discretion over the design of the accountability system



# B. STATEWIDE ACCOUNTABILITY SYSTEM

ESEA SECTIONS 1111(b)(3), (c) and (d)

- State accountability systems vary widely. Some have “summative” school ratings, like a letter grade or star rating, while others use “dashboards,” presenting school performance on various indicators. Variation can support State and local priorities
- Approved State plans include accountability systems and are available at <https://www2.ed.gov/admins/lead/account/stateplan17/index.html>.



# B. STATEWIDE ACCOUNTABILITY SYSTEM

ESEA SECTIONS 1111(b)(3), (c) and (d)

1. Exception for recently arrived English learners
2. English learner subgroup (former English learners)





# B.1. RECENTLY ARRIVED ENGLISH LEARNERS (RAELS)

ESEA SECTION 1111(b)(3)(A)

- A State has 3 options for how to include in its accountability system those English learners who have been enrolled in a school in one of the 50 States or DC for less than 12 months (RAELs):
  - Exclude RAELs from 1 administration of the reading/language arts test, give and report on RAEL performance on the tests in the other tested subjects but do not include those results for accountability purposes;
  - Assess and report on performance on each test in year 1 but do not include for accountability purposes; in year 2 include ONLY growth measures in accountability
  - A combination of the first two options



## B.2. ENGLISH LEARNER SUBGROUP

ESEA SECTION 1111(b)(3)(B)

- The ESEA allows a State to include the results of students who were previously identified as English learners and have exited English learner status as part of the English learner student subgroup for the purposes of calculating student performance on the reading/language arts or mathematics assessments
- A State may include such students for a State-determined number of years that may not exceed four years





# **STATE FLEXIBILITIES: C. SCHOOL SUPPORT AND IMPROVEMENT ACTIVITIES**

# C. SCHOOL SUPPORT AND IMPROVEMENT

ESEA SECTION 1111(d)

1. State discretion with respect to alternative high schools
2. School improvement funds



# C.1. STATE DISCRETION WITH REGARD TO ALTERNATIVE HIGH SCHOOLS

ESEA SECTION 1111(d)(1)(C)

- A State may allow **differentiated improvement** options for high schools that require comprehensive support due to a graduation rate of 67% or less if they are:
  - Dropout recovery schools or
  - Credit recovery programs
- A State may **forego** improvement activities for a high school identified for comprehensive support due to a graduation rate of 67% or less if the school has a total enrollment of fewer than 100 students



# C.2. SCHOOL IMPROVEMENT FUNDS

## ESEA SECTION 1003

- Under ESEA section 1003(a), a State must reserve a portion of its Title I, Part A funds to support school improvement activities
- A State has discretion over whether to distribute those funds on a formula or competitive basis
- A State determines the length of the sub-grants it awards, up to a period of 4 years
- A State determines what additional information, if any, it requires in a district's application for school improvement funds beyond the minimum information required by section 1003(e)





# C.2. SCHOOL IMPROVEMENT FUNDS

## ESEA SECTION 1003

- If a State determines that the amount of funds it reserves under 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 funds either:
  - Based on the relative allocations of Title I, Part A funds across districts for that fiscal year OR
  - In accordance with any other criteria established by the State





**STATE & DISTRICT  
FLEXIBILITIES:  
D. DIRECT STUDENT SERVICES**

# D. DIRECT STUDENT SERVICES – STATE FLEXIBILITIES

## ESEA SECTION 1003A

- A State determines whether to reserve up to 3% of its Title I, Part A funds for direct student services
- If a State chooses to reserve funds for this purpose, the State determines how to award such funds, consistent with the parameters in section 1003A(b)
- A State determines what additional information, if any, it requires in a district's application for funds for direct student services beyond the minimum information required by section 1003A(d)



# D. DIRECT STUDENT SERVICES – DISTRICT FLEXIBILITIES

## ESEA SECTION 1003A

- For example, a district may use funds for:
  - Transportation costs to allow a student enrolled in a comprehensive support and improvement school to transfer to another public school that has not been identified as comprehensive support and improvement if the district is not reserving funds under ESEA section 1111(d)(1)(D)(v) for this purpose
  - 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





**STATE FLEXIBILITIES:  
E. TITLE I, PART D,  
SUBPART 1**

# **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 may use funds under Title I, Part D, Subpart 1 to operate an institution-wide project that serves all children in, and upgrades the entire educational effort of, the institution or program
- Such agency must develop a comprehensive plan consistent with section 1416 that the State approves







# **STATE FLEXIBILITIES: F. CHARTER SCHOOLS PROGRAM**

# F. CHARTER SCHOOLS PROGRAM

ESEA SECTION 4301 ET SEQ.

- The Department awards funds through the Expanding Opportunity through Quality Charter Schools Program (CSP) to:
  - Support creation of new charter schools
  - Support replication and expansion of high-quality charter schools
- Specific State entities are eligible entities, as are charter management organizations. Charter school developers that reside in States that do not have active CSP State entity grants are also eligible



# F. CHARTER SCHOOLS PROGRAM

ESEA SECTION 4301 ET SEQ.

- Applicants have substantial flexibility in developing charter school programs
- CSP grantees and subgrantees have flexibility to request waivers, subject to the Secretary's approval, of any statutory or regulatory requirement over which the Secretary exercises administrative authority, except the requirements related to the definition of "charter school" in section 4310(2)





**STATE & DISTRICT  
FLEXIBILITIES:  
G. FUNDING  
TRANSFERABILITY**

# G. FUNDING TRANSFERABILITY

## ESEA SECTION 5103

- Both States and school districts have broad flexibility to transfer some or all of their funds under certain ESEA programs to other eligible ESEA programs to better meet State and local needs
- A State or district does not need prior approval from the Department to implement transferability, but it must engage in timely and meaningful consultation with private school officials before taking such action



# G. FUNDING TRANSFERABILITY

## ESEA SECTION 5103

- Transferability does not affect the overall amount of ESEA funds a State or district receives
- Funds may only be transferred OUT of
  - Title II, Part A,
  - Title IV, Part A, and
  - At the State-level, Title IV, Part B
- Funds may be transferred INTO Title I, Parts A, C, or D; Title II, Part A; Title III, Part A; Title IV, Part A; or Title V, Part B



# G. FUNDING TRANSFERABILITY

## ESEA SECTION 5103

- 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)







# **STATE FLEXIBILITIES:**

## **H. ED-FLEX**



# H. ED-FLEX

## EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999

- The Education Flexibility Partnership Act of 1999 (Ed-Flex) was amended by the ESSA
- Ed-Flex allows the Department to delegate to States the authority to waive certain Federal education requirements
- Ed-Flex helps districts, educational service agencies (ESAs) and schools implement reforms to raise achievement of all children by providing flexibility from some Federal requirement



# H. ED-FLEX

## EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999

- In the 2018-2019 school year, 10 States that were previously approved are continuing to offer this flexibility
- The Department intends to make State applications for this flexibility available to all States during the 2018-2019 school year



# **STATE FLEXIBILITIES:**

## **I. CONSOLIDATION OF ADMINISTRATIVE FUNDS**

# I. CONSOLIDATING ADMINISTRATIVE FUNDS

## ESEA SECTION 8201(a)

- A State that can demonstrate that the majority of its resources are derived from non-Federal sources may consolidate funds available for administration under any ESEA program
- A State that consolidates administrative funds does not need to keep separate records for affected administrative funds



# I. CONSOLIDATING ADMINISTRATIVE FUNDS

## ESEA SECTION 8201(a)

- Such consolidated administrative funds may be used to administer the programs included in the consolidation, carry out activities to coordinate those programs, or develop standards and assessments
- If a State does not use all consolidated administrative funds in a particular year, it may carry over the unused funds during the applicable period of availability as funds available under one or more of the programs included in the consolidation





# **STATE & DISTRICT FLEXIBILITIES: J. WAIVERS**

# J. WAIVERS

## ESEA SECTION 8401

- This flexibility applies to both States and districts
- Section 8401 of the ESEA authorizes the Secretary to waive certain statutory and regulatory requirements for ESEA programs
- A State must submit waiver requests on behalf of a school or district in addition to submitting its own State-level waiver requests
- A State may apply for a waiver via email or mail; we encourage you to reach out to your program officer in the Department



# J. WAIVERS

## ESEA SECTION 8401

- A waiver request must include:
  - The statutory or regulatory requirements to be waived;
  - How waiving the requirements will advance student academic achievement;
  - The methods by which the State, district, school, or Indian tribe (entity) will monitor and evaluate effectiveness;
  - If the waiver relates to provisions of assessments or State or district report cards, how the entity will maintain or improve transparency for parents and the public, including regarding the achievement of student subgroups; and
  - 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







**QUESTIONS?**



# DISTRICT FLEXIBILITIES

# DISTRICT FLEXIBILITIES

- A. Consolidation of funds for local administration
- B. Student-centered Funding Pilot
- C. Locally selected, nationally recognized high school academic assessments
- D. District and school discretion regarding school improvement
- E. School improvement funds
- F. Public school choice
- G. Supplement not supplant
- H. Consolidation of funds in a schoolwide program
- I. Funding transferability for districts
- J. Waivers
- K. SRSA alternative uses of funds





# **DISTRICT FLEXIBILITIES:**

## **A. CONSOLIDATION OF FUNDS FOR LOCAL ADMINISTRATION**

# A. CONSOLIDATING ADMINISTRATIVE FUNDS

## ESEA SECTION 8203

- A district, with State approval, may consolidate funds available for administration under one or more ESEA programs provided the amount set aside under each program is equal to or less than the amount the statute allows for administration
- A district that consolidates administrative funds does not need to keep separate records for affected administrative funds



# A. CONSOLIDATING ADMINISTRATIVE FUNDS

## ESEA SECTION 8203

- A State must 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





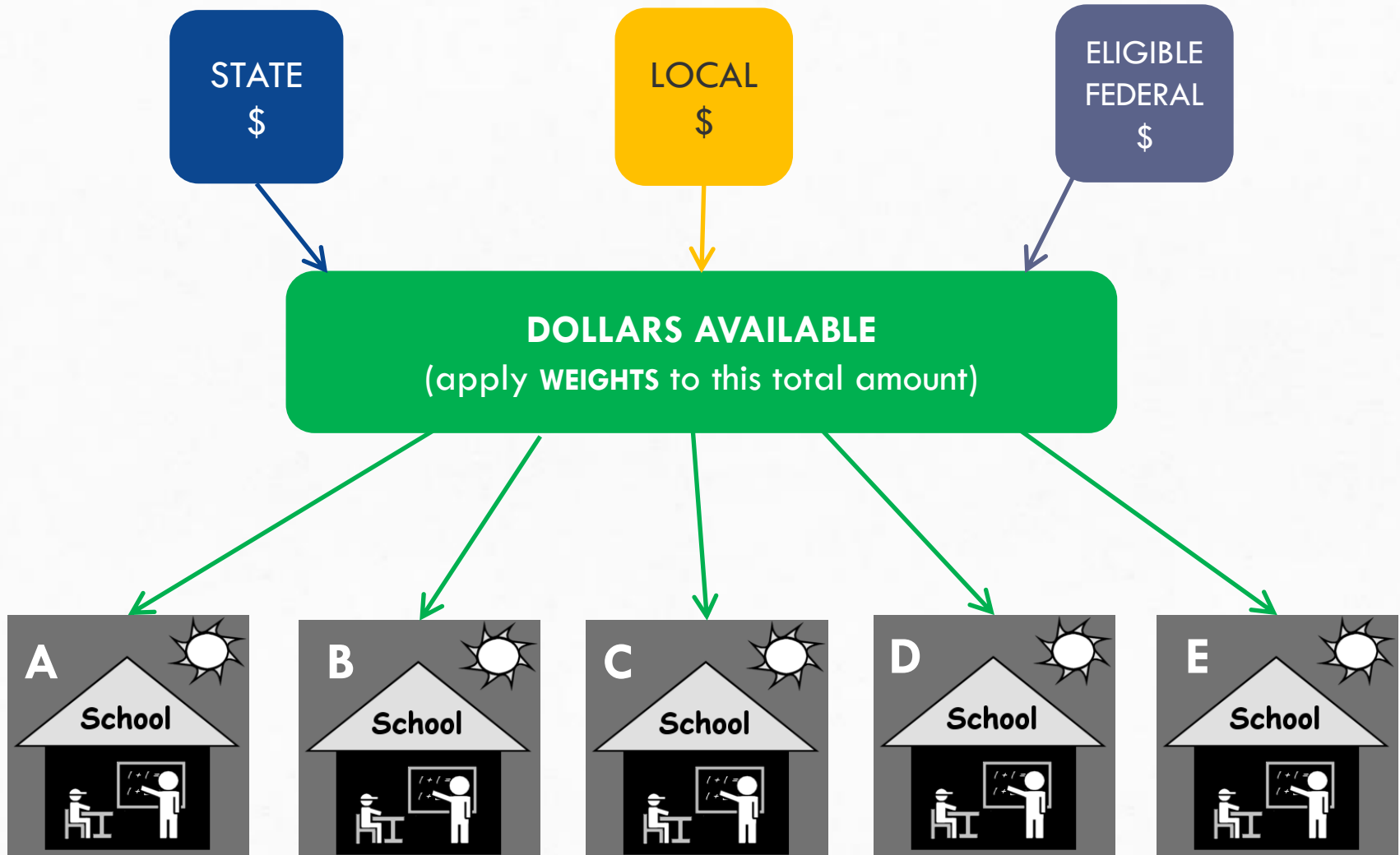


# **DISTRICT FLEXIBILITIES:**

## **B. STUDENT-CENTERED FUNDING PILOT**

# B. STUDENT-CENTERED FUNDING PILOT

ESEA SECTION 1501





# B. STUDENT-CENTERED FUNDING PILOT

## ESEA SECTION 1501

- Section 1501(d)(2)(A)(ii) requires a district operating under this flexibility to use weights or allocation amounts that allocate substantially more funding to English learners and students from low-income families, at a minimum
- A district may also use weights for students with any other characteristics associated with education disadvantage, at its discretion



# B. STUDENT-CENTERED FUNDING PILOT

## RESOURCES

- District receives flexibility from many Federal requirements, including separately tracking funds
- This flexibility does not relieve any State-level requirements or State requirements delegated to the district
- More information is available at:  
[www2.ed.gov/policy/elsec/leg/essa/scfp/studentcentered.html](http://www2.ed.gov/policy/elsec/leg/essa/scfp/studentcentered.html)
- Please send questions to  
[WeightedFundingPilot@ed.gov](mailto:WeightedFundingPilot@ed.gov)





**DISTRICT FLEXIBILITIES:  
C. LOCALLY SELECTED,  
NATIONALLY RECOGNIZED  
HIGH SCHOOL ASSESSMENTS**

# C. LOCALLY SELECTED, NATIONALLY RECOGNIZED HIGH SCHOOL ASSESSMENTS

ESEA SECTION 1111(b)(2)(H); 34 C.F.R. § 200.3

- If a State permits its districts to administer a locally selected, nationally recognized high school academic assessment in place of the high school-level statewide academic assessment, a district may apply to the State for this option
- A district must make parents aware of its decision to select and administer the assessment to all its high school students



# C. LOCALLY SELECTED, NATIONALLY RECOGNIZED HIGH SCHOOL ASSESSMENTS

ESEA SECTION 1111(b)(2)(H); 34 C.F.R. § 200.3

- 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





**DISTRICT & SCHOOL  
FLEXIBILITIES:  
D. SCHOOL IMPROVEMENT  
ACTIVITIES**

# D. SCHOOL IMPROVEMENT ACTIVITIES

ESEA SECTIONS 1111(d)(1)(B) and (d)(2)(B)

- A **district** determines which evidence-based interventions to include in each **comprehensive support** and improvement plan
- A **school** required to implement a **targeted support** and improvement plan determines which evidence-based interventions to include
- Plans focus on local needs







# **DISTRICT FLEXIBILITIES: E. SCHOOL IMPROVEMENT FUNDS**



# E. SCHOOL IMPROVEMENT FUNDS

## ESEA SECTION 1003

- A district with one or more schools identified for comprehensive or targeted support and improvement may apply to the State for school improvement funds
- The district has substantial flexibility with regard to its request for school improvement funding, including over such things as:
  - How much funding to request
  - How to propose using the funds
  - Whether to request funds for district-level activities



# E. SCHOOL IMPROVEMENT FUNDS

## ESEA SECTION 1003

- A district may use school improvement funds for any of the following, which are examples:
  - family and community engagement
  - rigorous review of external providers
  - recruiting and hiring staff
  - instructional programs
  - professional development and 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





# **DISTRICT FLEXIBILITIES:**

## **F. PUBLIC SCHOOL CHOICE**

# F. PUBLIC SCHOOL CHOICE

## ESEA SECTION 1111(d)(1)(D)

- A district may offer students enrolled in a school that is identified by the State for comprehensive support and improvement the option to transfer to another public school served by the district
- A district may use up to 5% of its Title I, Part A funds to pay for transportation for students who take advantage of this public school choice option



# F. PUBLIC SCHOOL CHOICE

## ESEA SECTION 1111(d)(1)(D)

- ESEA section 1111(d)(1)(D)(ii)-(iv) outlines the requirements for implementing public school choice
- For example, ESEA section 1111(d)(1)(D)(ii) requires that, in providing the option for public school choice, a district prioritize the lowest-achieving students from low-income families
- Note that any public school choice option provided by a district under these provisions must be consistent with State law





# **DISTRICT FLEXIBILITIES: G. SUPPLEMENT NOT SUPPLANT**

# G. SUPPLEMENT NOT SUPPLANT

## ESEA SECTION 1118(b)(1)

- A district must establish a methodology to allocate State and local funds to each Title I school to ensure that each school receives all the State and local funds it would otherwise receive if it were not receiving Title I funds
- For both schoolwide programs and targeted assistance schools, a district is not required to identify that an individual cost or service supported with Title I, Part A funds is supplemental or to provide services through a particular instructional method or setting







# **DISTRICT FLEXIBILITIES: H. SCHOOLWIDE PROGRAMS**

# H. SCHOOLWIDE PROGRAMS

ESEA SECTION 1114(a)(1)(A), 1114(a)(3)

- If  $\geq 40\%$  of students in a Title I, Part A school are from low-income families, the school may implement a schoolwide program
- A State may grant a waiver for a school with fewer than 40% of students from low-income families to implement a schoolwide program if it 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



# H. SCHOOLWIDE PROGRAMS

ESEA SECTION 1114(a)(1)(A), 1114(a)(3)

- A 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
- A school implementing a schoolwide program must do a comprehensive needs assessment and develop a schoolwide plan



# H. SCHOOLWIDE PROGRAMS

ESEA SECTION 1114(a)(1)(A), 1114(a)(3)

- A school implementing a schoolwide program may consolidate funds from Title I and other Federal education programs with State and local funds 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, please see the ESEA non-regulatory guidance on schoolwide programs, available at <https://www2.ed.gov/policy/elsec/leg/essa/essaswpguidance9192016.pdf>





# **DISTRICT FLEXIBILITIES: K. RURAL SCHOOL USES OF FUNDS**

# K. 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 have flexibility in using the formula grant funds they receive under certain State-administered ESEA programs. This flexibility is the Alternative Fund Use Authority (AFUA)
- A district eligible for AFUA may use formula funds received under Title II, Part A or Title IV, Part A for any allowable activity under Title I, Part A; Title II, Part A; Title III; or Title IV, Parts A or B



# K. SRSA ALTERNATIVE USES OF FUNDS

## ESEA SECTION 5211

- Annually, before exercising AFUA, an eligible district must notify its State of its intent to do so by the notification deadline established by the State
- AFUA is available only to SRSA-eligible districts (it differs in this way from transferability, which is available to all districts)
- While districts exercising transferability actually transfer funds from one program to another, districts exercising AFUA do not





# K. SRSA ALTERNATIVE USES OF FUNDS

## ESEA SECTION 5211

- A district implementing AFUA may use eligible funding for local activities authorized under certain other ESEA programs. However, those eligible funds would not be subject to all of the rules and requirements of the program under which the allowable use is found
- For additional details on AFUA, particularly as it relates to transferability, please see Appendix A of the ESSA Flexibilities document





**QUESTIONS?**



**CLOSING**

# RESOURCES

- More information is available at:  
[www2.ed.gov/policy/elsec/leg/essa/index.html](http://www2.ed.gov/policy/elsec/leg/essa/index.html)
  - Summary of the Flexibilities
  - Parent's Guide to ESSA
  - Content to build your own Parent's Guide
- If you have program-specific questions, please contact your ED program officer for the relevant program or [OESE.feedback@ed.gov](mailto:OESE.feedback@ed.gov).

