

# STATE AND LOCAL FLEXIBILITY OPTIONS IN NO CHILD LEFT BEHIND

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## Introduction

The reauthorized Elementary and Secondary Education Act (ESEA), also known as The No Child Left Behind Act of 2001 (NCLB), gives states and local school districts unprecedented flexibility in the use of Federal education funds. The legislation provides the following opportunities:

- New flexibility provisions allow states and local education agencies (LEAs) to transfer up to 50 percent of federal funds among several education programs.
- States and LEAs are permitted to enter into “flexibility partnerships” that allow them to combine their new flexibility to ensure maximum benefit for students.
- The Rural Education Initiative provides additional flexibility and expanded eligibility to small, rural districts.
- The minimum poverty threshold required for implementing Title I schoolwide programs has been lowered from 50 to 40 percent poverty.

This report explains, in detail, the flexibility provisions included in the NCLB legislation. It also includes examples of how states and LEAs can direct funds to meet education priorities.

## State and Local Transferability (Title VI, Part A)

NCLB allows states and LEAs to transfer a portion of Federal funds from one program to other Federal programs, including Title I, in order to effectively address their unique needs.

### State Transferability

All states are eligible to transfer up to 50 percent of non-Title I state activity funds between eligible formula grant programs, or into (but not from) Title I, Part A grants to LEAs (state activity funds are funds that are required to be allocated at the state level instead of being allocated to local school districts). Funds that are transferred must be used in accordance with all of the requirements of the program to which they are transferred.

Eligible formula grant programs:

- Improving Teacher Quality Grants (Title II, Part A);
- Enhancing Education Through Technology (Title II, Part D);
- Safe and Drug-Free Schools and Communities (Title IV, Part A)<sup>1</sup>;
- 21<sup>st</sup> Century Community Learning Centers (Title IV Part B); and
- Innovative Programs Block Grant (Title V Part A).

The flexibility provision allows states to transfer 50 percent of *state* activity funds only among eligible programs. The percentage of each grant available for state activities varies (see table on page 3).

A state that makes a transfer of funds must modify its state application for Federal funds to account for the transfer, notify the Secretary of Education of the transfer at least 30 days

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<sup>1</sup> According to Section 6123, state funds can be transferred from Safe and Drug-Free Schools and Communities, “with the agreement of the governor.”

before the effective date of the transfer, and submit a copy of the modified application to the Secretary within 30 days of the transfer. If the transfer involves funds from a program that provides for equitable participation of students and staff in private schools, the state must conduct consultations with private school representatives.

## Transferable Money Available to SEAs

The following table outlines the amount of transferable money available to a given state from each program for Federal Fiscal Year (FY) 2003 – the 2003-04 school year. The following table uses the example of the State of Illinois.

Eligible Program	Percent of program funds available as “State Activity Funds”	State Activity Funds	Available for Transfer (50% of State Activity Funds)
Improving Teacher Quality (Title II, Part A)	<b>Illinois</b> 2.5% of \$117,358,738 =	\$2,933,950	\$1,466,975
Enhancing Education Through Technology (Title II, Part D) <sup>2</sup>	<b>Illinois</b> 5% of \$25,908,318 =	\$1,295,416	\$647,708
Safe and Drug-Free Schools and Communities (Title IV, Part A) <sup>3</sup>	<b>Illinois</b> 20% of \$18,780,930 =	\$3,756,186	\$1,878,093
21 <sup>st</sup> Century Community Learning Centers (Title IV, Part B)	<b>Illinois</b> 3% of \$22,814,072 =	\$684,422	\$342,211
Innovative Programs Block Grant (Title V, Part A)	<b>Illinois</b> 5% of \$16,256,758 =	\$812,838	\$406,419

Hypothetical examples of Illinois’ flexibility options:

\*States can transfer any percentage (0-100%) of money designated as “Money Available for Transfer” (see last column of chart above).

- If Illinois already had strong school technology programs, yet needed more money for teacher training and comprehensive school reform (CSR), the state could re-

<sup>2</sup> States may designate up to 5% of their total Title II, Part D allocation - before funds are split between formula and competitive funds (see footnote 5) - as State Activity Funds.

<sup>3</sup> See footnote 1.

allocate up to \$647,708 from its Enhancing Education through Technology fund into other eligible programs. Illinois could transfer 20 percent of these funds (\$130,000) into the Teacher and Principal Quality Training and Recruiting fund, and 50 percent (\$324,000) into Title I programs (including CSR). The state would still have 30 percent of the original amount, a total of \$193,708, to use for technology programs.

- If Illinois wanted to increase funding available to 21<sup>st</sup> Century Learning Centers, but not disproportionately impact other programs, the state could transfer 5% of all available funds from the other four programs (Teachers, Technology, Safe and Drug-Free Schools, and Innovative Programs) into 21<sup>st</sup> Century Learning Centers. Illinois could increase funding for 21<sup>st</sup> Century Learning Centers by \$219,960, increasing the program's current funding (\$684,422) by 32 percent.
- If Illinois decided to implement a statewide laptop computer program in middle schools, the state could use its new flexibility option under NCLB to channel transferable money into the Enhancing Education through Technology program. In the most extreme example, Illinois could increase technology funding by \$4,093,698 by transferring all available money from the other four grant programs into technology.

## Local Transferability

Under NCLB, LEAs are permitted to transfer up to 50 percent of eligible grants among four programs or into (but not from) Title I, Part A programs without soliciting special approval from the state.<sup>4</sup> Before NCLB, LEAs were only able to transfer up to five percent of program funds to another Federal education program, and only provided they received state approval.

Eligible grant programs:

- Improving Teacher Quality (Title II, Part A);
- Enhancing Education Through Technology (Title II, Part D);
- Safe and Drug-Free Schools and Communities (Title IV, Part A); and
- Innovative Programs Block Grant (Title V, Part A).

**Please note:** If an LEA transfers a portion of Federal funds from one program to another program, all required set-asides apply to the adjusted total amount of a program after the transfer of funds (regardless of whether the program is *receiving* funds, or *losing* funds).

For example, LEAs are required to spend at least 25% of their Enhancing Education Through Technology (Title II, Part D) funds for professional development activities. If an LEA transfers a portion of these funds to the Safe and Drug-Free Schools and Communities program, the 25% requirement for professional development applies to the amount of Title II, Part D funds remaining after the transfer of funds to the Safe and Drug-Free Schools and Communities program.

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<sup>4</sup>Section 6122 states, "The purpose of this subpart is to allow States and local educational agencies the flexibility-- (1) to target Federal funds to Federal programs that most effectively address the unique needs of States and localities; and (2) to transfer Federal funds allocated to other activities to allocations for certain activities authorized under title I." Section 6123 states, "In accordance with this subpart and subject to the percentage limitation described in subparagraph (A) or (B), as applicable, a local educational agency may transfer funds allocated to such agency under any of the provisions listed in paragraph (2) for a fiscal year to its allocation for part A of title I for that fiscal year."

## Transferable Money Available to LEAs

The following table outlines the amount of transferable money available to an actual LEA. This example uses FY 2003 allocations for the Denver County Schools in Denver, Colorado.

Eligible Program	LEA's Program Funds	Available for Transfer (50% of LEAs share of funds)
Teacher and Principal Quality Training and Recruiting Fund (Title II, Part A)	\$5,274,202	\$2,637,101
Enhancing Education Through Technology (Title II, Part D)	\$592,333	\$296,167
Safe and Drug-Free Schools and Communities (Title IV, Part A)	\$653,404	\$326,702
Innovative Programs Block Grant (Title V, Part A)	\$707,953	\$353,976

### Restrictions on LEAs Identified as in Need of Improvement or Corrective Action

LEAs identified as in need of improvement — those that fail to meet state AYP requirements for two consecutive years — may transfer up to 30 percent of their Federal funds from eligible programs, rather than 50 percent, but only into school improvement activities. LEAs in corrective action — those who fail to meet state AYP requirements for four or more consecutive years — may not transfer any funds.

### Examples of Transferability Options

\*LEAs can transfer any percentage (0-100%) of money designated as "Money Available for Transfer" (see last column of chart above).

- If the Denver Public Schools wanted to implement Comprehensive School Reform programs in its lowest performing schools, which were eligible for Title I Schoolwide Authority, it could transfer all of its available transferable funds from its Safe and Drug Free Schools (\$326,702) and Innovative Programs grants (\$353,976) into Title I, Part A for a total \$680,678 additional funds for Title I reform efforts.

- If the school system was facing a serious teacher shortage and the district wanted to implement a \$50,000 teacher signing bonus program, the school district could transfer \$15,000 from the Innovative Programs Block Grant, \$20,000 from Safe and Drug-Free Schools, and \$15,000 from the Enhancing Education Through Technology program into the Teacher and Principal Quality Training and Recruiting Fund.

An LEA that makes a transfer of funds must modify its local plan or application to account for the transfer, notify its State Education Agency (SEA) of the transfer at least 30 days before the effective date of the transfer, and submit a copy of the modification to the SEA within 30 days of the transfer. If the transfer involves funds from a program that provides for equitable participation of students and staff in private schools, the LEA must conduct the appropriate consultations with private school representatives.

## Flexibility Demonstration Programs (Title VI, Part A)

NCLB allows demonstration projects to be established across the country to show the effectiveness of giving states and local school districts broad flexibility in deciding how Federal education funds will be spent.

### **State Flexibility Demonstration Program (State-Flex)**

The State Flexibility Demonstration program (State-Flex) is a new program that authorizes the Secretary to grant flexibility authority to up to seven eligible SEAs, selected on a competitive basis.

With this authority, an SEA may:

- Consolidate and use certain Federal funds reserved for state administration and state-level activities for any educational purpose authorized under NCLB;
- Specify how LEAs in the state use Innovative Program funds under Part A of Title V;
- Enter into performance agreements with four to ten LEAs in the state, permitting those LEAs to consolidate certain Federal funds and to use those funds for any NCLB purpose consistent with the SEA's State-Flex plan (see State-Local "Flexibility Partnerships" for more info).

Selected states will have the authority to consolidate the entire amount available for state administration and state activity funds under the following programs:

- Title I, Part A;
- Reading First, except for the amount reserved for state-level professional development activities (Title I, Part B);
- Even Start (Title I, Part B);
- Teacher and Principal Quality Training and Recruiting Fund (Title II, Part A);
- Enhancing Education Through Technology (Title II, Part D);
- Safe and Drug-Free Schools and Communities (Title IV, Part A), including programs reserved for the Governor's Program (with the consent of the governor);
- 21<sup>st</sup> Century Community Learning Centers (Title IV, Part B); and
- Innovative Programs Block Grant (Title V, Part A).

Participating states must enter into 5-year performance agreements with the Secretary of Education covering the use of the consolidated funds, including required annual reports to the Secretary.

Participating states are not required to meet higher student achievement levels than non-participating states. A state will not need to meet any new accountability requirements in order to participate, nor will the state be required to enter into a more rigorous “performance agreement” with the U.S. DOE. However, states will lose the State-Flex authority if they fail to meet state AYP requirements for two consecutive years.<sup>5</sup>

## **State-Local “Flexibility Partnerships”**

The seven states participating in Flexibility Demonstration projects receive the authority to enter into at least four and up to ten local performance agreements with LEAs. These State-Local Flexibility Partnerships will allow states and local school districts to jointly address their students’ unique needs.

LEAs chosen by states (*a maximum of 70 LEAs if each participating state selects 10 LEAs each*) will enjoy the same level of flexibility granted under the separate Local Flexibility Demonstration Program. At least half of the LEAs given the flexibility authority in a state must have child-poverty rates of at least 20 percent.

The use of all Federal funding (state administration, state activity, and local funds) awarded on a formula basis among the following programs can be coordinated for any purpose allowed under the NCLB Act:

- Teacher and Principal Quality Training and Recruiting Fund (Title II, Part A);
- Enhancing Education Through Technology (Title II, Part D)<sup>6</sup>;
- Safe and Drug-Free Schools and Communities (Title IV, Part A); and
- Innovative Programs Block Grant (Title V, Part A).

Also, the state can combine the money with Title I, Part A administrative funds, as well as activity and administrative funds for Reading First, Even Start, and after-school learning programs.

In any participating state, a coordinated State-Local approach can be implemented whereby the newly freed-up funds can be used to meet the testing requirements of NCLB. A state that is already doing well on its assessments can coordinate its state and local flexibility to further improve its accountability system. Alternatively, a state experiencing budgetary challenges can coordinate with its neediest school districts to provide those districts with additional resources. For example, if a governor is undertaking an effort to improve teacher quality in the state’s schools, the governor can work with the ten largest or ten neediest local school districts in the state to coordinate state and local flexibility and greatly increase the amount of funds available to enhance teacher quality in those schools.

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<sup>5</sup> “State-Flex” is separate from the pre-existing “Ed-Flex” program. Under Ed-Flex, the Secretary of Education can authorize states to waive certain Federal education requirements that impede local efforts to reform and improve education. Ed-Flex is designed to help districts and schools carry out educational reforms by providing increased flexibility in the implementation of Federal education programs. In exchange, states are required to demonstrate enhanced accountability for the performance of all students.

<sup>6</sup> Only 50 percent of Title II, Part D program funds are eligible for transferability because half of Title II, Part D funds are allocated by formula, and the other half are allocated competitively.



## **Local Flexibility Demonstration Projects (Local-Flex)**

The competitive Local Flexibility Demonstration Program (Local-Flex) is a new flexibility program that authorizes the Secretary to enter into local flexibility demonstration agreements with a total of up to 80 LEAs in states that do not have State-Flex authority.

Like LEAs that have entered into performance agreements in State-Flex states, Local-Flex LEAs may consolidate and use funds received on a formula basis under any of the following programs and, consistent with the purposes of the Local-Flex program, use those funds for any educational purpose permitted under the NCLB:

- Teacher and Principal Quality Training and Recruiting Fund (Title II, Part A);
- Enhancing Education Through Technology (Title II, Part D);
- Safe and Drug-Free Schools and Communities (Title IV, Part A); and
- Innovative Programs Block Grant (Title V, Part A).

Unlike the LEA performance agreements under State-Flex (which are between SEAs and LEAs), the flexibility agreements under Local-Flex are directly between the Secretary of Education and LEAs.

Among local flexibility demonstration projects there must be an equitable distribution of LEAs serving urban and rural areas and initially, there cannot be more than three LEAs from any one state.

Participating LEAs will receive a virtual waiver from Federal education rules and requirements associated with the programs in exchange for signing a 5-year performance agreement with the Secretary of Education, in which the school district would agree to improve student achievement. LEAs will lose the authority if they fail to meet state AYP requirements for two consecutive years.

## **New Flexibility for America's Rural Schools (Title VI, Part B)**

The Rural Education Achievement Program (REAP) provides rural school districts with increased flexibility and eligibility to enhance academic achievement. Because rural school districts receive grant allocations in amounts too small to be effective in meeting their intended purposes and lack the personnel and resources to compete effectively for Federal competitive grants, REAP includes three initiatives designed specifically for these LEAs. The three initiatives include the REAP Alternative Uses of Funds Authority; the Small, Rural School Grant Program; and the Rural and Low-Income School Program.

### **REAP Alternative Uses of Funds Authority/REAP-Flex**

The REAP Alternative Uses of Funds Authority is a flexibility provision that allows eligible LEAs to combine applicable funding from certain federal programs (Column A on the following chart) and use funds to carry out local activities authorized under certain federal programs (Column B). Unlike the general flexibility provisions for LEAs, under REAP-Flex, LEAs do not *transfer* funds from one program to another. Instead, eligible LEAs can *use* designated program funds for alternative purposes. Under REAP-Flex, an LEA is not required to meet all of the requirements of the programs under which the funds are used.



For example, an eligible LEA could use funds under the Safe and Drug-Free Schools and Communities program for activities authorized under the Enhancing Education Through Technology program.

Before NCLB, districts were authorized to consolidate funds under the Eisenhower Professional Development<sup>7</sup>, Innovative Education Program Strategies (current Title VI), and Safe and Drug-Free Schools programs.

## **REAP Alternative Uses of Funds Authority**

<b>COLUMN A</b>	<b>COLUMN B</b>
Use funds from following programs:	Funds can be used for activities authorized under the following programs:
<ul style="list-style-type: none"> <li>• Improving Teacher Quality (Title II, Part A);</li> <li>• Enhancing Education Through Technology (Title II, Part D);</li> <li>• Safe and Drug-Free Schools and Communities (Title IV, Part A);</li> <li>• Innovative Programs (Title V, Part A).</li> </ul>	<ul style="list-style-type: none"> <li>• Title I, Part A;</li> <li>• Improving Teacher Quality (Title II, Part A);</li> <li>• Enhancing Education Through Technology (Title II, Part D);</li> <li>• Language Instruction for Limited English Proficient Student (Title III);</li> <li>• Safe and Drug-Free Schools and Communities (Title IV, Part A);</li> <li>• 21<sup>st</sup> Century Community Learning Centers (Title IV, Part B); and</li> <li>• Innovative Programs (Title V, Part A).</li> </ul>

### **Small, Rural School Grant Program**

The Small, Rural School Grant Program authorizes the Secretary of Education to award formula grants directly to eligible LEAs (i.e., those LEAs eligible under the alternative uses of funds program described above) to carry out activities authorized under one or more of the following Federal programs:

- Improving the Academic Achievement of Disadvantaged Children (Title I, Part A);
- Improving Teacher Quality (Title II, Part A);
- Enhancing Education Through Technology (Title II, Part D);
- Language Instruction for Limited English Proficient Students (Title III);
- Safe and Drug-Free Schools and Communities (Title IV, Part A);
- 21<sup>st</sup> Century Community Learning Centers (Title IV, Part B); and
- Innovative Programs (Title V, Part A).

Eligible LEAs will receive a grant amount ranging from \$20,000 to \$60,000.

<sup>7</sup> The Eisenhower Professional Development program has been incorporated into Teacher and Principal Training and Recruiting (Title II, Part A).

## Rural and Low-Income School Program

Under the Rural and Low-Income School Program, the U.S DOE awards grant funds, on a formula basis, to SEAs. States, in turn, award subgrants to eligible LEAs either competitively or on a formula basis.

An LEA is eligible to receive a grant under this program if it meets the following criteria:

- Twenty percent or more of the children ages 5 through 17 served by the LEA are from families with incomes below the poverty line;
- The LEA has an average daily attendance of fewer than 600 students, or serve only schools located in counties with a population density of fewer than ten persons per square mile;
- All of the schools served by the LEA have a school locale code of 6, 7, or 8, or the Secretary of Education determines the LEA is located in an area defined as rural by a government agency of the state; and
- The LEA is not eligible to receive a Small, Rural School Grant

Funds under this program may be used for the following:

- Teacher recruitment and retention;
- Teacher professional development;
- Enhancing Education Through Technology (Title II, Part D);
- Parental involvement activities;
- Activities authorized under Safe and Drug-Free Schools and Communities (Title IV, Part A);
- Activities authorized under Title I, Part A; and
- Activities authorized under Language Instruction for Limited English Proficient Students (Title III)

If an SEA chooses not to participate in the program, the U.S. DOE may use the SEA's allotment to award grants directly to eligible LEAs in that state either competitively or by formula for the purposes defined above.

## Title I Schoolwide Programs (Title I, Part A)

Schools with a poverty rate of 40 percent may now use Title I grants to operate programs that improve education for all students in their school, rather than "targeted assistance" programs that address only the lowest-achieving students. Previously, only schools with a poverty rate of at least 50 percent could operate such Title I "schoolwide" programs. The purpose of schoolwide programs is to allow a school to use resources effectively and efficiently to undertake comprehensive reform of the entire educational program in the school, and to assist all children to meet the high state academic achievement standards.

LEAs can consolidate Title I funds along with other Federal, state, and local funds in order to provide programs to schools that serve an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children *enrolled in the school* are from low-income families.

The authorization for schoolwide programs calls for those programs to include the following components:

- A comprehensive needs assessment of the entire school in relation to state academic and student standards;
- The use of effective methods and instructional strategies that are based on scientifically based research;
- The strengthening the core academic program in the school;
- An increase in the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs and opportunities;
- Individual student academic assessment results for parents; and
- The coordination and integration of Federal, state, and local services and programs.

Any eligible school that desires to operate a schoolwide program shall first develop a plan for such a program in consultation with the LEA and its school support team or other technical assistance provider.

### **About School Funding Services**

*School Funding Services (SFS) is a service of New American Schools (NAS), a leading provider of professional services and investment in K-12 education whose mission is to help all students succeed by shaping, supporting, and sustaining system-wide innovation and improvement in learning. As a business-led, nonprofit, nonpartisan organization, NAS and its strategic partners provide support to state departments of education, school districts, charter authorizers, and networks of schools. Our goal is to offer key stakeholders the tools and external assistance needed to facilitate and sustain both student and adult learning. Through New American Schools' work over the past 10 years, we have identified inadequate funding as one of the major obstacles to implementing high-quality school improvement activities. School Funding Services was designed to be the answer to that funding block.*

*For more information on New American Schools, visit our Web site at [www.newamericanschools.org](http://www.newamericanschools.org).*