Ohio | Department of Education

John R. Kasich, Governor
Michael Sawyers, Acting Superintendent of Public Instruction

Office of Federal Programs
ESEA Flexibility Waiver Title I, Part A Questions and Answers

The following guidance is intended to clarify requirements for the district (LEA) Title I, Part A programs and the Ohio Department of Education's (ODE) approved ESEA Flexibility Waiver. The questions and answers explain the effects of the waiver provisions on LEA programs and an explanation of school and district consequences under the approved state differentiated accountability plan.

Further questions concerning these topics can be addressed to the staff of the Office of Federal Programs at 614-466-4161 or by e-mail to the LEA Federal Programs Consultant. Questions about the School Improvement Grant (SIG and Priority Schools) can be addressed to the School Turnaround Office 614-466-0057. Questions about Focus School requirements can be addressed by the State System of Support contact or the Office of the Ohio Network of Innovation and Improvement at 614-995-1474.

Additionally, information concerning ESEA flexibility can be found on the ODE website home page www.education.ohio.gov and the United States Department of Education's ESEA flexibility webpage www.ed.gov/esea/flexibility.

Definitions
AMO – Annual Measurable Objective
AYP – Adequate Yearly Progress
CCIP – Comprehensive Continuous Improvement Planning
FY – Fiscal Year
ESEA – Elementary and Secondary Education Act
HQT – Highly Qualified Teacher
LEA – Local Educational Agency
ODE – Ohio Department of Education
SEA – State Education Agency
SIG – School Improvement Grant

ESEA Waiver

1. **How long will the waiver be in effect?**

   The Ohio ESEA Flexibility Waiver has a **conditional approval** and will take effect for the 2012 – 2013 school year. Ohio must submit an amended request with the final administrative rules for the A-F school grading system to USDoE by June 30, 2013 in order to continue to receive ESEA Flexibility.

   However, it is important to note that if Congress reauthorizes ESEA between now and the 2014 – 2015 school year, the reauthorized law would take priority over Ohio's waiver.

Waived Set-Asides

2. **Do LEAs have to set-aside 10% of their Title I funds for professional development?**

   No, the Ohio ESEA Flexibility Waiver does not require LEAs in District Improvement or School Improvement to set aside Title I funds for Professional Development.

   District Improvement (DI) and School Improvement (SI) Components in the CCIP Planning Tool are still required for FY13.

3. **Are schools still required to offer Supplemental Educational Services (SES) and Public School Choice (PSC) to parents?**

   No, the Ohio ESEA Flexibility Waiver does not require Title I schools to offer SES or PSC. LEAs no longer have to send PSC/SES parent notification letters.
   LEAs are expected to provide parents with information to explain why SES and transportation for public school choice will no longer be offered beginning in the 2012-2013 school year, explain the interventions, incentives, and supports that will replace those options, and provide other relevant details regarding the termination of the existing services. This information should be provided as early as feasible so that parents may plan accordingly, and should be provided in a language and format that is understandable to parents.

   CCIP note 294 has a sample notification letter that districts can update with their own specific information to inform parents about the changes with SES and PCS.

   Please note that, although LEAs no longer are obligated by federal law to provide transportation for public school choice, a student who is already taking advantage of public school choice must be permitted to remain at his or her school of choice until he or she has completed the highest grade in that school because ESEA flexibility does not waive ESEA section 1116(b)(13). This right should be clearly explained to parents in the information that is provided regarding the changes being made with respect to the provision of SES and public school choice. To enable parents to exercise this right,

LEAs are encouraged to consider providing transportation to these schools of choice beyond the end of the 2011-2012 school year.

ODE no longer approves or maintains a list of SES providers. LEAs must maintain all SES records for at least 3 years *EDGAR 80.42.

HQT Requirements

4. **Does the ESEA Flexibility Waiver impact HQT requirements? How will Highly Effective Teachers be identified?**

   All core academic subject teachers must still meet the Highly Qualified requirements. However, to supplement the Race to the Top and House Bill 153 efforts and encourage the use of evaluation data, ODE will begin a phase-out of Highly Qualified Teacher (HQT) requirements for LEAs that demonstrate they have an evaluation system and policies that align with the state framework.

   The phase-out will occur gradually as LEAs implement the evaluation system, but no later than 2014-2015, all LEAs will use effectiveness ratings in place of HQT to make equitable distribution decisions. At that time, HQT data will be replaced on the Local Report Card by effectiveness ratings for both teachers and principals, and for the number of teachers employed by the LEA that hold senior and lead teacher licenses.

   LEAs that have not met AYP and AMO for HQT for three consecutive years are **no longer required** to enter into section 2141(c) partnership agreement with ODE starting with FY13.

5. **Are LEAs still required to complete the HQT Component in the CCIP District/Agency Plan?**

   Yes. LEAs will still be required to annually update the four required HQT components in the CCIP District/Agency Plan. The three optional HQT components will also need to be completed by LEAs that receive annual HQT/AMO letter #3, 4 or 5.

Parental Involvement

6. **Is parental involvement still required under the Ohio ESEA Flexibility Waiver?**

   Yes, the parental involvement requirement was not waived and therefore, Title I schools are still required to engage parents and families in their child's educational process.

   LEAs must reserve no less than **1%** of its Title I allocation (if over $500,000) for parental involvement activities, including promoting family literacy and parenting skills; 95% of the 1% is distributed to the schools, 1118(a).

7. **Must the LEA still inform Title I School Parents of their Right-to-Know?**

   Yes. The LEA must notify parents in all Title I-served schools that they may request information regarding the professional qualifications of the student's classroom teachers, 1111(h).

   The LEA must provide timely notice to parents of students in Title I- served schools if the child has been assigned to be taught, or has been taught for four or more consecutive weeks, by a teacher who is not Highly Qualified and provides information on the level of achievement of the parent's child in each of the state academic assessments, 1111(h).

Nonpublic

8. **Are districts required to provide equitable Title services for eligible nonpublic school students?**

   Yes.

9. **Are the Title I, Part A funds that an LEA would otherwise spend for choice-related transportation and supplemental educational services (SES), or for professional development in LEAs identified for improvement, subject to the requirements to provide equitable services to eligible private school children, their teachers, and their families?**

   Yes, to the same extent and under the same conditions as regular Title I, Part A funds. In general, an LEA allocates its Title I, Part A funds in two ways:

   1) It allocates the majority of those funds to its Title I schools consistent with ESEA section 1113(c); and
   2) It reserves some funds off the top of its allocation under 34 C.F.R. § 200.77 for both required and permissible activities.

   An LEA's responsibility to provide equitable services to eligible elementary and secondary private school children, their teachers, and their families depends on the nature of the services provided. Equitable services apply to funds an LEA allocates to its Title I schools under ESEA section 1113(c). They also apply to off-the-top reservations that provide district-wide services to Title I schools. However, they do not apply to reservations from which an LEA provides services to a subgroup of students—e.g., homeless students, neglected and delinquent students—or if an LEA focuses the reserved funds on a specific subset of low-performing schools—e.g., schools in restructuring—because public Title I school students, as a whole, do not benefit from those services either.

   Accordingly, with respect to Title I, Part A funds freed up from not needing to meet the 20% obligation or the set aside for professional development under ESEA flexibility,

the responsibility to provide equitable services depends on how an LEA uses those funds. If, for example, the LEA allocates the funds under ESEA section 1113(c) to its Title I schools, it must also provide equitable services with the funds. Similarly, if the LEA uses the freed up funds for an off-the-top reservation to provide summer school or professional development to all its Title I schools, or all its Title I schools at a particular grade level, the requirement to provide equitable services would apply. On the other hand, if the LEA uses funds from an off-the-top reservation to implement interventions in its *Priority* and/or *Focus* schools, the equitable services requirement would not apply.

New Identifications

10. Where is a list of *Priority*, *Focus*, *Alert* and *Improvement* Schools that have been identified under the waiver?

The list of designated *Priority*, *Focus*, *Alert and Improvement* Schools can be found on the Ohio Department of Education's ESEA Flexibility web page.

Priority Schools

11. How is a school designated as a *Priority* School?

Priority schools include the lowest achieving five percent of Title I served schools and the lowest achieving five percent of Title I eligible secondary schools. In addition to the lowest achieving five percent, any school (Title I served or Title I eligible) that has an average graduation rate less than 60% over a five year period will also be identified as a *Priority* School.

How Priority *Schools are Identified:*

- Title I served and Title I eligible secondary schools are sorted into Tier I and Tier II.
- Each tier is rank ordered based on the *All Student* subgroup's combined percent Reading and Math proficiency over five years. The lowest achieving five percent within each tier will be identified as *Priority* Schools.
- Any school in either tier with an *All Student* subgroup's average graduation rate less than 60% over a five year period that is not already identified will be added to the *Priority* School list.
- Any Cohort 1 or 2 SIG-funded schools that are not already identified will also be added to the *Priority* School list.

12. Is a Title I eligible *Priority* high school with a graduation rate below 60% exempt from the sort order ranking on the Title I Building Eligibility Page?

Yes. The Office of Federal Program consultants will assist with the rank ordering of these schools on the Title I Building Eligibility Page. Per the ESEA Flexibility Waiver, *Priority* schools must be served with Title I funds.

13. Must a *Priority* school that exits *Priority* status by making significant progress in improving student achievement consistent with the SEA's criteria still implement interventions aligned with the turnaround principles?

If a *Priority* school has begun implementing interventions aligned with the turnaround principles and subsequently exits *Priority* status, it must continue implementing those interventions for three years to ensure full and effective implementation. However, if a school exits *Priority* status before beginning implementation of interventions (*e.g.*, if the SEA's plan calls for implementation to begin in the later years of this flexibility), the school does not have to implement those interventions.

14. Must a SIG funded *Priority* High School be Title I served?

If the school is at 75% low income or above, it has to be served per Title I rules. Tier II SIG funded schools are identified as Title I eligible high schools with a graduation rate below 60%. They do not have to be Title I served in order to be eligible for SIG funds. SIG funds are intended to implement the turnaround principles that are required for all identified *Priority* schools using one of the four required intervention models.

However, in order for an LEA to use funds from the Title I ESEA Flexibility Waiver 20% set-aside, **the school must be Title I served**.

15. Must a Non-SIG funded *Priority* school be Title I served?

Yes. Non-SIG funded *Priority* schools, by definition, must be Title I served in order to be identified as a *Priority* school using the methodology outline on page 85 of Ohio's ESEA Waiver.

16. What will *Priority* Schools have to do?

All *Priority* schools will be required to attend technical assistance on a quarterly basis each year conducted by the Office of School Turnaround.

All *Priority* schools will receive a Diagnostic Review during the first year of identification as a *Priority* school.

Priority schools will be provided a list of approved external providers to assist with the implementation of turnaround principles.

For a minimum of three years, each *Priority* school is required to fully and completely implement each of the components of the selected intervention model. The components of each of the Turnaround Models are listed below.

17. What will *Non-SIG funded Priority* Schools have to do?

Requirements for Non-SIG funded *Priority* Schools are available on ESEA Waiver School Requirement Page.

Focus Schools

18. How is a school designated as a *Focus* School?

Focus schools include Title I served schools with the highest subgroup proficiency and graduation rate gaps that have not made sufficient progress in decreasing those gaps over a number of years.

How Focus *Schools are Identified:*

- The current year Reading and Math combined proficiency for each subgroup is compared to the state's *All Student* proficiency.
- The current year graduation rate for each subgroup is also compared to the state's *All Student* graduation rate.
- School subgroups with the highest gaps (proficiency and graduation rate) that have not made sufficient progress over time in reducing those gaps will be identified.
- The progress the subgroup has made (proficiency and graduation rate) over three years is compared to the progress the state's *All Student* subgroup has made over three years. Any subgroup demonstrating less progress than the state is defined as not making sufficient progress.

If a Title I served school has a subgroup identified with a large gap that has not made sufficient progress, the school will be identified as a *Focus* School.

19. What will *Focus* Schools have to do?

Focus Schools requirements are available on ESEA Waiver School Requirement Page.

20. Can an identified *Priority* or *Focus* School become a Title I Schoolwide Building?

Yes, if it is eligible to be a Title I school, the 40% poverty threshold to be eligible to operate a schoolwide program is waived for *Priority* or *Focus* Schools. The schools still have to meet schoolwide program requirements.

Alert Schools

21. How is a school designated as an *Alert* School?

Alert schools include non-Title I served schools with the highest subgroup proficiency and graduation rate gaps that have not made sufficient progress in decreasing those gaps over a number of years.

How Alert *Schools are Identified:*

- Same identification method as *Focus* Schools

22. What will *Alert* Schools have to do?

Requirements for *Alert* Schools are available on the ESEA Waiver School Requirement Page.

Improvement Schools

23. How is a school designated as an *Improvement* Title I School?

For the 2012-2013 school year, Improvement Title I schools are any Title I served buildings that are identified in School Improvement status (including Delay) on the 2011-2012 LRC and not already identified as *Priority*, *Focus*, or *Alert* schools.

24. What will *Improvement* Title I Schools have to do?

Requirements for Improvement Schools are available on the ESEA Waiver School Requirement Page.

Newly Served Title I Schools

25. Our district has one or more Targeted Assistance served Title I schools this year that were not served last year. What Title I requirements apply to these buildings?

These buildings have to comply with all Title I requirements. The list below identifies some of the requirements (for all Title I requirements see the resources section at the end of the FAQ):

- Low income and enrollment documentation
- Students are selected for Title I service based on multi-criteria selection process (1115(b)(1)(B))
- Targeted Assistance services are provided in accordance with ESEA section 1115(c)(1)
- Notice is provided to the parents about their right to know teacher professional qualifications 1111(h)(6)(A)
- Timely parent notice is provided that the child has been assigned to be taught, or has been taught for four or more consecutive weeks, by a teacher who is not highly qualified 1111 (h)(6)(B)
- Annual meeting is convened to inform parents of participating children about Title I services 1118(c)(1)
- School – Parent compacts are distributed to parents of participating children 1118(d)
- School develops parent involvement plan together with parents 1118(b)(1)
- Title I instruction is provided by Highly Qualified teachers 1115(c)(1)(E)
- Principal attests to the qualifications of all teachers and instructional paraprofessionals in the building 1119(i)
- Nonpublic equitable service participation (1120)

- Comparability (if applicable) (1120A(c))
- Supplement Not Supplant (1120A(b))
- Federally funded personnel maintains Time and Effort Documentation (OMB Circular A-87, Attachment B, Section 8 (h))
- McKinney Vento Homeless Assistance Act

26. Our district has one or more Schoolwide served Title I schools this year that were not served last year. What Title I requirements apply to these buildings?

These buildings have to comply with all Title I requirements. The list below identifies some of the requirements (for all Title I requirements see the resources section at the end of the FAQ):

- Low income and enrollment documentation
- Building's schoolwide plan meets requirements of ESEA section 1114(b)
- Notice is provided to the parents about their right to know teacher professional qualifications 1111(h)(6)(A)
- Timely parent notice is provided that the child has been assigned to be taught, or has been taught for four or more consecutive weeks, by a teacher who is not highly qualified 1111 (h)(6)(B)
- Annual meeting is convened to inform parents of participating children about Title I services 1118(c)(1)
- School – Parent compacts are distributed to parents of participating children 1118(d)
- School develops parent involvement plan together with parents 1118(b)(1)
- Principal attests to the qualifications of all teachers and instructional paraprofessionals in the building 1119(i)
- Nonpublic equitable service participation (1120)
- Comparability (if applicable) (1120A(c))
- Supplement Not Supplant (1120A(b))
- Federally funded personnel maintains Time and Effort Documentation (OMB Circular A-87, Attachment B, Section 8 (h))
- McKinney Vento Homeless Assistance Act

20% Set-Aside

27. What is the ESEA Flexibility Waiver 20% Set-Aside?

LEAs are required to direct these funds to their *Priority* School, *Focus* Schools, *Alert* Schools and Improvement Title I schools.

For FY13 only, LEAs classified through Differentiated Accountability as High, Medium or Low Support are also required to direct these funds to Improvement Title I schools. Supports and interventions include:

- *Expanded learning time (see description of expanded learning time in question #28) for K-2 to meet Reading and Language Arts AMO's;

- Other school specific needs as identified through the intervention models and/or School Improvement Plans,
- Implementing college and career readiness,
- Teacher collaboration,
- Expanding the day for traditional instructional time,
- Implementing new schools models (ex: turnaround principles, innovation),
- Collaboration with 21st Century Community Learning Center (CCLC) partners where applicable to plan, implement and evaluate restructuring the rearticulating of the school day.

28. What is meant by ESEA Flexibility Waiver 20% Set-Aside for *Expanded Learning Time?

Increasing the length of the school day, week, or year and/or restructuring the school day to include additional time for instruction in core academic subjects, including English, reading or language arts, mathematics and science.

Additional information on Expanded Learning Time can be found at:

- http://www.ed.gov
- http://whatworks.ed.gov
- http://ies.ed.gov/ncee/

29. If an LEA is identified as High, Medium or Low Support, to which schools must the LEA direct the Title I 20% ESEA Flexibility Waiver funds?

The 20% is to be directed to *Priority*, *Focus*, *Alert* Schools and Improvement Title I served schools that are in School Improvement status. **Title I funds cannot be spent in non-Title I served schools.**

30. What if there are no Title I schools identified as *Priority*, *Focus* or *Alert* Status but the LEA is identified as a High, Medium or Low Support district?

In that case, the LEA would be required to direct the Title I 20% ESEA Flexibility Waiver funds to Improvement Title I **served** schools that are not identified as *Priority*, *Focus* or *Alert* Schools but are in School Improvement status year 1 or above, including delay status.

31. What if there are no *Priority*, *Focus*, *Alert* or Improvement Title I Served Schools that are in School Improvement Status but the LEA is identified as a High, Medium or Low Support district?

The LEA decides which of their Improvement Title I served schools to direct these funds.

32. If the LEA is not a High, Medium or Low Support district, has no schools that are identified as *Priority*, *Focus* or *Alert*, but has a school identified in School Improvement status, must the LEA set aside the Title I 20% ESEA Flexibility?

Yes, if the school is Title I served. If the poverty for the school is at or above 75%, the school must be Title I served.

Fiscal Questions

33. Can Title I served schools that are identified as *Priority*, *Focus*, *Alert* or are in School Improvement Status be designated as a Title I comparable served school on the CCIP Consolidated Title I Building Eligibility Page?

Yes, providing the ESEA Waiver of 20% is set-aside and directed to these schools and that the comparable service requirements of Title I are documented in the CCIP History Log. LEAs may elect to not serve an eligible school attendance area or eligible school that has a higher percentage of children from low-income families if:

- The school meets the comparability requirements of No Child Left Behind Act, Sec. 1120A(c);
- The school is receiving supplemental funds from other state or local sources that are spent according to the requirements of Sec. 1114 and 1115, including nonpublic school service; and
- The funds expended from other sources equal or exceed the amount that would be provided under this part, Sec. 1113(b)(1)(D)(2).

Document in the CCIP History Log, the amount of supplemental funds being used to provide supplemental Title I services. The amount required is determined by multiplying the district PPA amount found on the Title I School Allocation PPA Page times the number of low income students in that school. Also describe the supplemental services being provided that meets the requirements of a Title I program.

A LEA may reduce the amount of funds allocated for a school attendance area or school by the amount of any supplemental state and local funds expended in the school attendance area or school for programs that meet the requirements of Sec. 1114 or 1115, and Sec. 1113(c)(2)(B).

For comparability purposes, comparable buildings are considered Title I-served schools. The LEA must also provide an assurance statement in the CCIP Log that it has established and implemented (a) a LEA-wide salary schedule; (b) a policy to ensure equivalence among schools in teachers, administrators, and other staff; and (c) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies, Sec. 1120A(c)(2)(A).

34. How can the transfer of funds from other programs help support Title I?

The ESEA Flexibility Waiver permits LEAs to transfer up to 100% of its Title II-A program funds into Title I, Part A. Requirements for the equitable participation of private school students, parents and teachers must be met prior to any transfer of funds. The waiver permits an LEA to exclude funds transferred into Title I-A from its base allocation in calculating any set-aside percentages. No funds, however, can be transferred out of Title I, Part A into another program. All transfers are implemented on the Allocation Page of the Consolidated Application in the CCIP.

35. Do the *supplement, not supplant* requirements of Title I, Part A apply if an LEA uses Title I, Part A funds to implement an SEA's ESEA flexibility request?

Yes, in the same manner and to the same extent that the supplement, not supplant requirements apply to the use of Title I, Part A funds for other activities.

Additional Resources

- ED.gov/policy
- CCIP Doc Library
- Help links in CCIP Planning Tool and Consolidated Funding Application Pages
- **Title I U.S. Department of Education (ED.gov) Non-Regulatory Guidance:** Title I Services to Eligible Private School Children, October 2003; Ensuring Equitable Services to Private School Children, A Title I Resource Kit; Preschool, April 2012; Identification/Selection of School Attendance Areas and Allocation of Title I Funds, 2003; Fiscal, Revised February 2008; Parent Involvement, 2004; Schoolwide, March 2006; Title I, Part C Migrant Education, October 2010; Title I, Part D: Neglected, Delinquent, and At-Risk Youth, 2006; Title I Paraprofessionals, March 2004)
- OMB Circular A-87 Cost Principles
- Education for Homeless Children and Youth Program, Title VII-B of the McKinney-Vento Homeless Assistance Act, U.S. Department of Education Guidance, July 2004
- Title IX, Part E Uniform Provisions Subpart 1 – Private Schools, U.S. Department of Education, August 2005