

January 28, 2016

Dear Colleague:

I appreciate the work you are doing to transition to the new Every Student Succeeds Act (ESSA), which the President signed into law on December 10, 2015, and which reauthorizes the Elementary and Secondary Education Act of 1965 (ESEA). The ESSA provides an extraordinary opportunity to secure educational equity for all children, and I look forward to working closely with you and your team to ensure that this promise is realized. Last month, I wrote to you about some of the most time sensitive transition questions for the 2015-2016 school year. Today, I am writing to address some additional, pressing questions concerning the 2016-2017 school year. Specifically, I would like to take this opportunity to articulate the flexibilities available to you in the 2016-2017 school year designed to ensure an orderly transition to the ESSA.

As the U.S. Department of Education (ED) continues to analyze the ESSA, we will provide additional information at www.ed.gov/essa. Additionally, I encourage you to sign up to receive updates on ESSA transition guidance by clicking here. [https://public.govdelivery.com/accounts/USED/subscriber/new?topic_id=USED_5]

Please also know that specific information about the School Improvement Grants program in fiscal years (FY) 2015 and 2016 will be provided in the coming weeks.

In General: Use of FY 2016 Formula Funds in the 2016-2017 School Year

Under the ESSA transition provisions, as clarified by the Consolidated Appropriations Act, 2016, FY 2016 formula grant funds will be awarded and administered in accordance with the ESEA as in effect on the day before the date of enactment of the ESSA (*i.e.*, the requirements promulgated under the No Child Left Behind Act of 2001 (NCLB)). This means that ED formula grant allocations to States and local educational agencies (LEAs), as well as State subgrants allocated by formula to LEAs under ESEA formula grant programs, will be made in FY 2016, for the 2016-2017 school year, in the same manner and using the same allocation formulas as for the 2015-2016 school year. It also means that, with the exceptions described below, formula grant recipients will continue to operate in the 2016-2017 school year under the plans, procedures, and requirements that are in place for the 2015-2016 school year.

Exceptions: Ensuring an Orderly Transition to the ESSA in the 2016-2017 School Year

Consistent with the transition provisions in the ESSA, including our authority to ensure an orderly transition to the ESSA, ED is and will endeavor to enable States, LEAs, and schools to focus resources on continuing and refining the activities that remain most relevant during the transition. To this end, during the 2016-2017 school year, there are certain exceptions to the general rule, described above, regarding formula funds; these relate to school and LEA interventions and supports; interventions for English learners; and additional information regarding orderly transition from NCLB provisions that are not in the ESSA.

1. School Interventions and Supports in the 2016-2017 School Year

a. For States Operating Under ESEA Flexibility

For States currently operating under ESEA flexibility, ESSA section 5(e)(2)(ii) requires that, in the 2016-2017 school year, a school that is identified as a priority or focus school in 2015-2016 must continue to implement interventions applicable to such school. In my letter last month, dated December 18, 2015, I explained that, consistent with ESSA's orderly transition provisions and in order to support States during this transition year, States have the option to choose between (1) freezing their existing priority and focus school lists as of December 10, 2015, for use in the 2016-2017 school year or (2) refreshing their lists by March 1, 2016. Please refer to that letter for additional detail. As described in that letter, each State with ESEA flexibility should inform ED, through an e-mail to its State e-mail address, OSS.[STATE]@ed.gov, by Friday, January 29, 2016, of which of the above options it has selected.

In order to ensure that LEAs in States that are implementing ESEA flexibility in the 2015-2016 school year are able to comply with the ESSA transition requirement to continue to implement interventions applicable to priority and focus schools during the 2016-2017 school year, ED will not require those States or LEAs to comply with the requirements in the following sections of the ESEA if they impede a priority or focus school from being able to continue to implement appropriate interventions in 2016-2017: 1003(a), which requires an SEA to distribute at least 95 percent of the funds it reserves to LEAs for use in Title I schools in improvement, corrective action, or restructuring; 1114(a)(1), which requires that a school have at least a 40 percent poverty rate to be eligible to operate a schoolwide program; 6213(b), which limits the amount of certain federal funds an LEA may transfer between programs; 6224(e), which requires an SEA to permit an LEA that fails to make adequate yearly progress to continue to receive a Small, Rural School Achievement grant only if the LEA uses funds to carry out ESEA section 1116; and 1113(a)(3)-(4) and (c)(1), which requires an LEA to rank and serve eligible schools according to poverty and allocate Title I funds to schools in rank order of poverty. Again, this allowance under the orderly transition authority is consistent with the flexibility allowed under ESEA flexibility to enable States to support intervention in priority and focus schools.

b. For States Not Operating Under ESEA Flexibility

For States not operating under ESEA flexibility in school year 2015-2016, ESSA section 5(e)(2)(i) requires a school or LEA that was identified in 2015-2016 by the State as in need of improvement, corrective action, or restructuring under ESEA as it existed prior to the enactment of ESSA (*i.e.*, under NCLB) to continue to implement the same interventions in the 2016-2017 school year. During the 2016-2017 school year, these States may, but are **not** required to, ensure that LEAs are providing supplemental educational services, public school choice and the related notice to parents for the 2016-2017 school year. If these States choose not to require that their LEAs provide supplemental educational services and public school choice in the

2016-2017 school year, they must, in order to ensure an orderly transition to the ESSA, develop and implement a one-year transition plan for ensuring that their LEAs provide alternative supports for the students eligible for supplemental educational services and the schools with the greatest need (*e.g.*, schools with large numbers or percentages of students eligible for supplemental educational services). I am sending an additional letter with more information to the eight affected States in the coming days.

2. *LEA Interventions and Supports for English Learners in the 2016-2017 School Year*

In my letter on December 18, 2015, I explained that, in order to facilitate an orderly transition to the ESSA, States will not be required to hold LEAs accountable for their performance against Annual Measurable Achievement Objectives (AMAOs) 1, 2, and 3 under Title III of the ESEA, as reauthorized by NCLB, for the 2014-2015 and 2015-2016 school years. Accordingly, States must freeze district accountability under Title III based on the most recent AMAO calculations, and continue to provide those LEAs with the corresponding supports and interventions in the remaining months of the 2015-2016 school year and the 2016-2017 school year.

3. *Additional Orderly Transition from NCLB Provisions Not in ESSA*

In addition to the AMAOs mentioned above and the annual measurable objectives (AMOs) mentioned in my letter of December 18, 2015, there are additional provisions of the ESEA, as reauthorized by NCLB, along with their implementing regulations, that States are **not** required to implement in the 2016-2017 school year in order to facilitate an orderly transition to the ESSA. These provisions are as follows: section 1119, which requires all teachers of core academic subjects in the State to be “highly qualified”^{1,2}; section 2141, which requires LEAs not making progress toward all teachers being “highly qualified” to create and implement an improvement plan and requires the State to provide technical assistance to such LEAs; and section 1117, which requires States to provide certain types of school supports and recognition.

Please note that the State Plans to Ensure Equitable Access to Excellent Educators that States submitted in spring 2015 to address ESEA section 1111(b)(8)(C), which requires that States ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, remain in effect for the 2015-2016 and 2016-2017 school years.

Thank you for your ongoing commitment to improving educational outcomes for all students. I look forward to our continued partnership as we move ahead with this critical work.

Sincerely,

Ann Whalen

Delegated the Authority to Perform the Functions and Duties of Assistant Secretary for
Elementary and Secondary Education

cc: State Title I Directors
State Title III Directors
State ESEA Flexibility Leads
Council of Chief State School Officers

¹ The ESSA amended the Individuals with Disabilities Education Act (IDEA) by removing the definition of “highly qualified” in section 602(10) and the requirement in section 612(a)(14)(C) that special education teachers be “highly qualified” by the deadline established in section 1119(a)(2) of the ESEA, as amended by NCLB. Accordingly, during the 2016-2017 school year, States are not required to ensure that special education teachers are “highly qualified” as defined in the ESEA. However, the ESSA also amended section 612(a)(14)(C) of the IDEA by incorporating the requirement previously in section 602(10) (B) that a person employed as a special education teacher in elementary school, middle school, or secondary school has obtained full certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination and holds a license to teach in the State as a special education teacher, the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis, and the teacher holds at least a bachelor’s degree. States must continue to comply with these certification requirements during the 2016-2017 school year.

² Please note that, except as provided in my letter of December 18, 2015, reporting requirements related to the 2014-2015 and 2015-2016 school years remain unchanged, including reporting requirements related to highly-qualified teachers (HQT).