# Flexibility and Innovation

## Issue #9: Should the new ESEA provide greater flexibility to states and school districts to deviate from the law's requirements?

## Current Law

1. **Transferability.** This authority permits local school districts to transfer up to 50 percent of funds from one ESEA formula program to another. Funds may not be transferred out of Title I, but they may be transferred into it.
2. **Local-Flex.** Under local performance agreements, local school districts may consolidate and use formula federal funds for any educational purpose authorized under the ESEA. Unlike the school-district performance agreements under State-Flex (which are between state departments of education and local school districts), the flexibility agreements under Local-Flex are directly between the U.S. Department of Education and local districts.
3. **State-Flex.** The state flexibility authority is a program that authorizes the secretary of education to grant flexibility authority to as many as seven eligible states. With this authority, a state may (1) consolidate and use federal funds reserved for state administration and state-level activities for any educational purpose authorized under the ESEA; (2) specify how school districts in the state use Innovative Program funds under Part A of Title V; and (3) enter into performance agreements with four to ten districts in the state, permitting those districts to consolidate certain federal funds and to use those funds for any ESEA purpose consistent with the state's State-Flex plan.
4. **Ed-Flex.** This authority permits states to approve waiver requests from school districts without seeking approval from the U.S. Department of Education. It also permits states to issue "statewide waivers" of certain requirements.
5. **Secretarial waivers.** Under Title IX, states may apply to the secretary to waive certain ESEA provisions. The statute specifies which types of waivers may not be granted, such as waiving within state formula allocations of Title I.
6. **Rural-Flex (REAP-Flex).** REAP-Flex allows eligible rural districts to consolidate their non–Title I formula grant programs and use them for any purpose authorized under Titles I–V of ESEA.
7. **Title I schoolwides.** The schoolwide authority permits Title I schools with at least 40 percent low-income students to consolidate all federal funds, including IDEA, at the building level to upgrade the quality of the entire school.
8. **Consolidation of state and local administrative funds.** ESEA permits states and local districts to consolidate their administrative funds under ESEA programs. Local districts must obtain permission from their states first.
9. **Consolidated applications.** Districts and states may submit one application to receive all formula funds under ESEA, rather than filling out a separate application for each program.

## Background

In 2001, President Bush proposed, as part of NCLB, significant program consolidations and flexibility. At the end of congressional negotiations, however, few programs were eliminated, and the new state flexibility authority was significantly scaled back.

Nevertheless, there were quite a few new authorities (listed above) that did allow for significant new flexibility for states and school districts. Since 2002, some states and districts have taken advantage of the flexibility options, but not nearly as many as are eligible. Table 2 shows the extent to which states and districts did and did not make use of the options during the 2005-06 school year.[18]

### Table 2. Use of New Flexibility Authorities Created by NCLB 2005-06 School Year

| Participants | State Flex | Local Flex | Transferability | REAP |
|---|---|---|---|---|
| States (number) | None [19] | None | 8 | None |
| School Districts | None | 1 LEA (Seattle Public Schools) | 12 to 20 percent (estimate) | 51 percent (4,781 LEAs) |

The Department of Education has studied the use of these flexibility provisions to gain insight into why they were, or were not, useful to states or districts. Many districts reported that using REAP or transferability enabled them to better tailor federal funding levels to the needs of the districts. In particular, they used funds to help schools meet AYP goals.[20] Those that did not use REAP or transferability reported that they lacked information from their state, or found that they didn't need the authorities to meet their goals—that is, they already had sufficient flexibility. Many LEAs were confused about which authorities allowed transfers or consolidation.

In the case of Local-Flex, which provided the most significant flexibility option to nonrural districts, many officials reported that the application requirements were too daunting. Furthermore, completely consolidating federal program dollars would have required potential accounting changes at the state and local level. Seattle was the lone district that stepped up to the plate to use Local-Flex to better target federal dollars to its districtwide strategic plan. According to Seattle, Local-Flex has "changed the way the district focused on strategic planning, helped to deploy resources to the schools and students most in need through expanded programs, and encouraged greater collaboration within the district office and with public and private schools."[21]

18 The data in the table are from U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *Evaluation of Flexibility Under No Child Left Behind: Volume I— Executive Summary of Transferability, REAP Flex, and Local-Flex* (Washington, D.C.: U.S. Department of Education, 2007), 3–4, http://www2.ed.gov/rschstat/eval/disadv/flexibility/index.html.

19 Florida applied for and was granted a State-Flex agreement, but then decided to withdraw from the program.

20 U.S. Department of Education, *Evaluation of Flexibility Under No Child Left Behind,* 6.

21 Ibid., 7.

One common characteristic of the current flexibility authorities is the focus on program consolidation or moving funds between programs. Local-Flex and REAP allow for complete consolidation of formula funds for use for any purpose authorized by ESEA. However, none of the authorities permits states to change within-state allocation of funds, or in general change how money flows from a state to the school level, particularly for Title I.

It takes a fair amount of initiative to think outside the box and use flexibility. While states and districts often speak of wanting increased flexibility, specific examples of what they would do with such flexibility are hard to come by. In order to create incentives for states and districts to step out of the "safety" of federal formula funding streams, and their accompanying fiefdoms and regulations, the flexibility they gain must be worth the effort.

Several proposals have been made to significantly expand flexibility. Senator Lamar Alexander proposed legislation in 2007 to expand flexibility through a pilot that could include up to twelve states. To participate in the pilot, a state would have to agree to make its standards more challenging than they are now. The standards would need to be aligned to national and international exams, or to the admissions requirements of the state's public universities. (This was before the development of the Common Core standards; conceivably those would count.) States would then be allowed to determine their own measures of AYP, as well as how the state would intervene in schools that failed to meet AYP goals. (Under our proposal for accountability—see Issues #5 and 6—all states would have these flexibilities.)

Also in 2007, Senators DeMint and Cornyn and Representative Hoekstra introduced similar legislation called the A-PLUS Act. This legislation exempted states from ESEA formula grant requirements in exchange for describing how those states would improve achievement and narrow achievement gaps, maintain current standards and assessments, meet reporting transparency requirements, and comply with fiscal requirements such as maintenance of effort. Plans would have to be approved by the governor, state legislature, and the SEA.

## Options

**Option 9A:** Maintain all flexibility options while improving outreach and technical assistance to states and districts.

| Pros | Cons |
|---|---|
| • Retains transferability and REAP, which have been useful to many districts | • May not go far enough to encourage uptake by states and districts<br>• Doesn't allow for flexibility in accountability requirements, teacher-quality mandates, or within-state allocations of funding—the key issues where states and districts might want to innovate |

**Option 9B:** Authorize performance agreements similar to legislation proposed by Senators Alexander, DeMint, and Cornyn. States would be permitted to enter into flexibility agreements that allow them to consolidate funds and exempt them from formula grant requirements in exchange for holding schools accountable for improving achievement, narrowing achievement gaps, reporting disaggregated data, improving academic achievement, and meeting other requirements to ensure transparency.

| Pros | Cons |
| --- | --- |
| • Provides states with significant flexibility in the use of federal dollars<br>• Focuses federal dollars on state priorities | • Does not ensure that funds continue to flow to high-need districts and schools |

**Option 9C:** Permit states to apply for "flexibility contracts" that would enable them to consolidate non–Title I formula funding streams at the state level to use for any purpose under ESEA, and to alter their within-state allocation of Title I funds to increase the proportion of funds going to higher-poverty districts and charter schools. Permit states to retain additional funds (perhaps up to 10 percent) for statewide initiatives that support reform in five key areas: standards and assessments; teacher effectiveness; state data systems; school choice and charters; and low-performing schools. Only states with standards and assessments in place that meet new requirements for ensuring college and career readiness and that have met Title I accountability transparency requirements (described in Issue #5) would be eligible to apply for this flexibility.

| Pros | Cons |
| --- | --- |
| • Creates significant flexibility for states to tailor the use of federal dollars to their priorities while ensuring that they have critical components in place: college- and career-readiness standards and assessments, and a transparent accountability system<br>• Empowers states to implement statewide reforms regardless of whether RTT is part of ESEA | • Offers new flexibility only to SEAs<br>• Does not include Title I—by far the largest source of federal funds—in programs that states can consolidate<br>• Shifts funding from needy schools to broader purposes through the set-aside for state-level reform |

## The Reform Realism Position: Options 9A and 9C

Options 9A and 9C build on flexibility that is working well for districts while significantly expanding the current menu of options. In particular, unlike current law, option 9C would give states unprecedented flexibility: Funds could be reallocated within a state to increase allocations to high-poverty areas, as well as to provide additional funding for statewide initiatives that can improve the educational outcomes of disadvantaged students. This option would permit the consolidation of non–Title I programs while maintaining a focus on improving the education of disadvantaged students through Title I. While this flexibility is only for states, LEAs could continue to have the option of applying for Local-Flex. And while it doesn't go quite as far as the DeMint bill (which raises questions about within-state allocation of Title I dollars), it pushes on the same themes: providing flexibility and empowering states.

Maintain all flexibility options while improving outreach and technical assistance to improve use by states and districts. Permit states to apply for "flexibility contracts" that would enable them to consolidate non–Title I formula funding streams at the state level to use for any purpose under ESEA, and to alter their within-state allocation of Title I funds to increase the proportion of funds going to higher-poverty districts and charter schools. Permit states to retain additional funds (perhaps up to 10 percent) for statewide initiatives that support reform in five key areas: standards and assessments; teacher effectiveness; state data systems; school choice and charters; and low-performing schools. Only states with standards and assessments in place that meet new requirements for ensuring college and career readiness and that have met Title I accountability transparency requirements (described in Issue #5) would be eligible to apply for this flexibility.