

## **Subpart 3—State and Local Flexibility Demonstration**

### **SEC. 6131. SHORT TITLE.**

This subpart may be cited as the 'State and Local Flexibility Demonstration Act'.

### **SEC. 6132. PURPOSE.**

The purpose of this subpart is to create options for selected State educational agencies and local educational agencies—  
(1) to improve the academic achievement of all students, and to focus the resources of the Federal Government upon such achievement;

(2) to improve teacher quality and subject matter mastery, especially in mathematics, reading, and science;

(3) to better empower parents, educators, administrators, and schools to effectively address the needs of their children and students;

(4) to give participating State educational agencies and local educational agencies greater flexibility in determining how to increase their students' academic achievement and implement education reforms in their schools;

(5) to eliminate barriers to implementing effective State and local education reform, while preserving the goals of opportunity for all students and accountability for student progress;

(6) to hold participating State educational agencies and local educational agencies accountable for increasing the academic achievement of all students, especially disadvantaged students; and

(7) to narrow achievement gaps between the lowest and highest achieving groups of students so that no child is left behind.

### **SEC. 6133. GENERAL PROVISION.**

For purposes of this subpart, any State that is one local educational agency shall be considered a State educational agency and not a local educational agency.

## **CHAPTER B—LOCAL FLEXIBILITY DEMONSTRATION**

### **SEC. 6151. LOCAL FLEXIBILITY DEMONSTRATION AGREEMENTS.**

(a) **AUTHORITY.**—Except as otherwise provided in this chapter, the Secretary shall, on a competitive basis, enter into local flexibility demonstration agreements—

(1) with local educational agencies that submit approvable proposed agreements under subsection (c) and that are selected under subsection (b); and

(2) under which those agencies may consolidate and use funds in accordance with section 6152.

(b) **SELECTION OF LOCAL EDUCATIONAL AGENCIES.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the Secretary shall enter into local flexibility demonstration agreements under this chapter with not more than 80 local educational agencies. Each local educational agency shall be selected on a competitive basis from among those local educational agencies that—

(A) submit a proposed local flexibility demonstration agreement under subsection (c) to the Secretary and demonstrate, to the satisfaction of the Secretary, that the agreement—

(i) has a substantial promise of assisting the local educational agency in meeting the State’s definition of adequate yearly progress, advancing the education priorities of the local educational agency, meeting the general purposes of the programs included under this chapter and the purposes of this part, improving student achievement, and narrowing achievement gaps in accordance with section 1111(b);

(ii) meets the requirements of this chapter; and

(iii) contains a plan to consolidate and use funds in accordance with section 6152 in order to meet the State’s definition of adequate yearly progress and the local educational agency’s specific, measurable goals for improving student achievement and narrowing achievement gaps; and

(B) have consulted and involved parents and other educators in the development of the proposed local flexibility demonstration agreement.

(2) **GEOGRAPHIC DISTRIBUTION.**—

(A) **INITIAL AGREEMENTS.**—The Secretary may enter into not more than three local flexibility demonstration agreements under this chapter with local educational agencies in each State that does not have a grant of flexibility authority under chapter A.

(B) **URBAN AND RURAL AREAS.**—If more than three local educational agencies in a State submit approvable local flexibility demonstration agreements under this chapter, the Secretary shall select local educational agencies with which to enter into such agreements in a manner that ensures an equitable distribution among such agencies serving urban and rural areas.

(C) **PRIORITY OF STATES TO ENTER INTO STATE FLEXIBILITY DEMONSTRATION AGREEMENTS.**—Notwithstanding any other provision of this part, a local educational agency

may not seek to enter into a local flexibility demonstration agreement under this chapter if that agency is located in a State for which the State educational agency—

- (i) has, not later than 4 months after the date of enactment of the No Child Left Behind Act of 2001, notified the Secretary of its intent to apply for a grant of flexibility authority under chapter A and, within such period of time as the Secretary may establish, is provided with such authority by the Secretary; or
- (ii) has, at any time after such period, been granted flexibility authority under chapter A.

(C) REQUIRED TERMS OF LOCAL FLEXIBILITY DEMONSTRATION

AGREEMENT.—Each local flexibility demonstration agreement entered into with the Secretary under this chapter shall contain each of the following terms:

(1) DURATION.—The local flexibility demonstration agreement shall be for a term of 5 years.

(2) APPLICATION OF PROGRAM REQUIREMENTS.—The local flexibility demonstration agreement shall provide that no requirements of any program described in section 6152 and included by a local educational agency in the scope of its agreement shall apply to that agency, except as otherwise provided in this chapter.

(3) LIST OF PROGRAMS.—The local flexibility demonstration agreement shall list which of the programs described in section 6152 are included in the scope of the agreement.

(4) USE OF FUNDS TO IMPROVE STUDENT ACHIEVEMENT.—

The local flexibility demonstration agreement shall contain a 5-year plan describing how the local educational agency intends to consolidate and use the funds from programs included in the scope of the agreement for any educational purpose authorized under this Act to advance the education priorities of the local educational agency, meet the general purposes of the included programs, improve student achievement, and narrow achievement gaps in accordance with section 1111(b).

(5) LOCAL INPUT.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will provide parents, teachers, and representatives of schools with notice and an opportunity to comment on the proposed terms of the local flexibility demonstration agreement.

(6) FISCAL RESPONSIBILITIES.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds consolidated and used under the agreement.

(7) CIVIL RIGHTS.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will meet the requirements of all applicable Federal civil rights laws in carrying out the agreement and in consolidating and using the funds under the agreement.

(8) PRIVATE SCHOOL PARTICIPATION.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency agrees that in consolidating and using funds under the agreement—

(A) the local educational agency, will provide for the equitable participation of students and professional staff in private schools consistent with section 9501; and  
(B) that sections 9502, 9503, and 9504 shall apply to all services and assistance provided with such funds in the same manner as such sections apply to services and assistance provided in accordance with section 9501.

(9) SUPPLANTING.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency will, for the duration of the grant of authority, use funds consolidated under section 6152 only to supplement the amount of funds that would, in the absence of those Federal funds, be made available from non-Federal sources for the education of students participating in programs assisted with the consolidated funds, and not to supplant those funds.

(10) ANNUAL REPORTS.—The local flexibility demonstration agreement shall contain an assurance that the local educational agency shall, not later than 1 year after the date on which the Secretary enters into the agreement, and annually thereafter during the term of the agreement, disseminate widely to parents and the general public, transmit to the Secretary, and the State educational agency for the State in which the local educational agency is located, distribute to print and broadcast media, and post on the Internet, a report that includes a detailed description of how the local educational agency used the funds consolidated under the agreement to improve student academic achievement and reduce achievement gaps.

(d) PEER REVIEW.—The Secretary shall—

(1) establish a peer review process to assist in the review of proposed local flexibility demonstration agreements under this chapter; and

(2) appoint individuals to the peer review process who are representative of parents, teachers, State educational agencies, and local educational agencies, and who are familiar with educational standards, assessments, accountability, curriculum, instruction and staff development, and other diverse educational needs of students.

(e) AMENDMENT TO PERFORMANCE AGREEMENT.—

(1) IN GENERAL.—In each of the following circumstances, the Secretary shall amend a local flexibility demonstration agreement entered into with a local educational agency under this chapter:

(A) REDUCTION IN SCOPE OF LOCAL FLEXIBILITY DEMONSTRATION AGREEMENT.—Not later than 1 year after entering into a local flexibility demonstration agreement, the local educational agency seeks to amend the agreement to remove from the scope any program described in section 6152.

(B) EXPANSION OF SCOPE OF LOCAL FLEXIBILITY DEMONSTRATION AGREEMENT.—Not later than 1 year after entering into the local flexibility demonstration agreement, a local educational agency seeks to amend the agreement to include in its scope any additional program described in section 6251 or any additional achievement indicators

for which the local educational agency will be held accountable.

(2) APPROVAL AND DISAPPROVAL.—

(A) DEEMED APPROVAL.—A proposed amendment to a local flexibility demonstration agreement pursuant to paragraph (1) shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the proposed amendment, that the proposed amendment is not in compliance with this chapter.

(B) DISAPPROVAL.—The Secretary shall not finally disapprove the proposed amendment, except after giving the local educational agency notice and an opportunity for a hearing.

(C) NOTIFICATION.—If the Secretary finds that the proposed amendment is not in compliance, in whole or in part, with this chapter, the Secretary shall—

(i) give the local educational agency notice and an opportunity for a hearing; and  
(ii) notify the local educational agency of the finding of noncompliance and, in such notification, shall—

(I) cite the specific provisions in the proposed amendment that are not in compliance; and  
(II) request additional information, only as to the noncompliant provisions, needed to make the proposed amendment compliant.

(D) RESPONSE.—If the local educational agency responds to the Secretary's notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, and resubmits the proposed amendment with the requested information described in subparagraph (C)(ii)(II), the Secretary shall approve or disapprove such proposed amendment prior to the later of—

(i) the expiration of the 45-day period beginning on the date on which the proposed amendment is resubmitted;  
or

(ii) the expiration of the 120-day period described in subparagraph (A).

(E) FAILURE TO RESPOND.—If the local educational agency does not respond to the Secretary's notification described in subparagraph (C)(ii) during the 45-day period beginning on the date on which the agency received the notification, such proposed amendment shall be deemed to be disapproved.

(3) TREATMENT OF PROGRAM FUNDS WITHDRAWN FROM AGREEMENT.—Beginning on the effective date of an amendment executed under paragraph (1)(A), each program requirement of each program removed from the scope of a local flexibility demonstration agreement shall apply to the use of funds made available under the program by the local educational agency.

**SEC. 6152. CONSOLIDATION AND USE OF FUNDS.**

(a) IN GENERAL.—

(1) AUTHORITY.—Under a local flexibility demonstration

agreement entered into under this chapter, a local educational agency may consolidate Federal funds made available to the agency under the provisions listed in subsection (b) and use such funds for any educational purpose permitted under this Act.

(2) PROGRAM REQUIREMENTS.—Except as otherwise provided in this chapter, a local educational agency may use funds under paragraph (1) notwithstanding the program requirements of the program under which the funds were made available to the agency.

(b) ELIGIBLE PROGRAMS.—Program funds made available to local educational agencies on the basis of a formula under the following provisions may be consolidated and used under subsection (a):

- (1) Subpart 2 of part A of title II.
- (2) Subpart 1 of part D of title II.
- (3) Subpart 1 of part A of title IV.
- (4) Subpart 1 of part A of title V.

**SEC. 6153. LIMITATIONS ON ADMINISTRATIVE EXPENDITURES.**

Each local educational agency that has entered into a local flexibility demonstration agreement with the Secretary under this chapter may use for administrative purposes not more than 4 percent of the total amount of funds allocated to the agency under the programs included in the scope of the agreement.

**SEC. 6154. PERFORMANCE REVIEW AND PENALTIES.**

(a) MIDTERM REVIEW.—

(1) FAILURE TO MAKE ADEQUATE YEARLY PROGRESS.—If, during the term of a local flexibility demonstration agreement, a local educational agency fails to make adequate yearly progress for 2 consecutive years, the Secretary shall, after notice and opportunity for a hearing, promptly terminate the agreement.

(2) NONCOMPLIANCE.—The Secretary may, after providing notice and an opportunity for a hearing (including the opportunity to provide information as provided for in paragraph (3)), terminate a local flexibility demonstration agreement under this chapter if there is evidence that the local educational agency has failed to comply with the terms of the agreement.

(3) EVIDENCE.—If a local educational agency believes that the Secretary's determination under this subsection is in error for statistical or other substantive reasons, the local educational agency may provide supporting evidence to the Secretary, and the Secretary shall consider that evidence before making a final early termination determination.

(b) FINAL REVIEW.—If, at the end of the 5-year term of a local flexibility demonstration agreement entered into under this chapter, the local educational agency has not met the requirements described in section 6151(c), the Secretary may not renew the agreement under section 6155 and, beginning on the date on which such term ends, the local educational agency shall be required to comply with each of the program requirements in effect on such date for each program included in the local flexibility demonstration agreement.

**SEC. 6155. RENEWAL OF LOCAL FLEXIBILITY DEMONSTRATION AGREEMENT.**

(a) IN GENERAL.—Except as provided in section 6154 and

in accordance with this section, the Secretary shall renew for one additional 5-year term a local flexibility demonstration agreement entered into under this chapter if the local educational agency has met, by the end of the original term of the agreement, the requirements described in section 6151(c).

(b) NOTIFICATION.—The Secretary may not renew a local flexibility demonstration agreement under this chapter unless, not less than 6 months before the end of the original term of the agreement, the local educational agency seeking the renewal notifies the Secretary of its intention to renew.

(c) EFFECTIVE DATE.—A renewal under this section shall be effective at the end of the original term of the agreement or on the date on which the local educational agency seeking renewal provides to the Secretary all data required under the agreement, whichever is later.

**SEC. 6156. REPORTS.**

(a) TRANSMITTAL TO CONGRESS.—Not later than 60 days after the Secretary receives a report described in section 6151(b)(10), the Secretary shall make the report available to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

(b) LIMITATION.—A State in which a local educational agency that has a local flexibility demonstration agreement is located may not require such local educational agency to provide any application information with respect to the programs included within the scope of that agreement other than that information that is required to be included in the report described in section 6151(b)(10).