

ESEA Hot Topics

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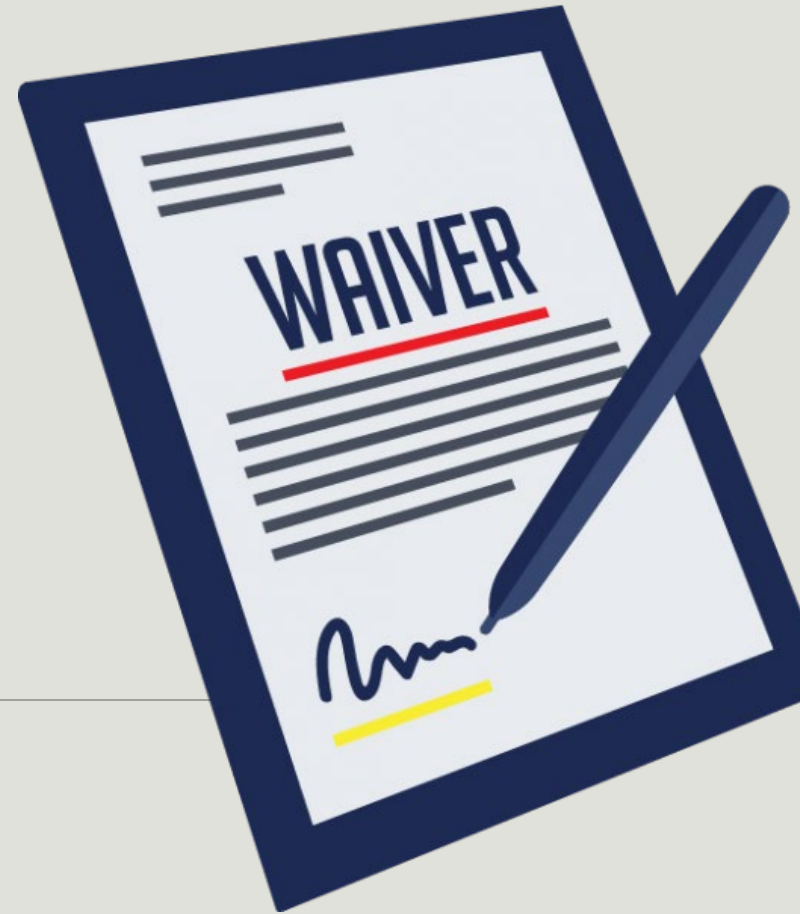
March 2023



Agenda

- ESSA Waivers
- Allocations by Formula
- Rank and Serve
- ED Prior Approval
- Supplement, not Supplant
- Maintenance of Effort
- Timeliness of Spending
- ESEA Monitoring and Recent Findings

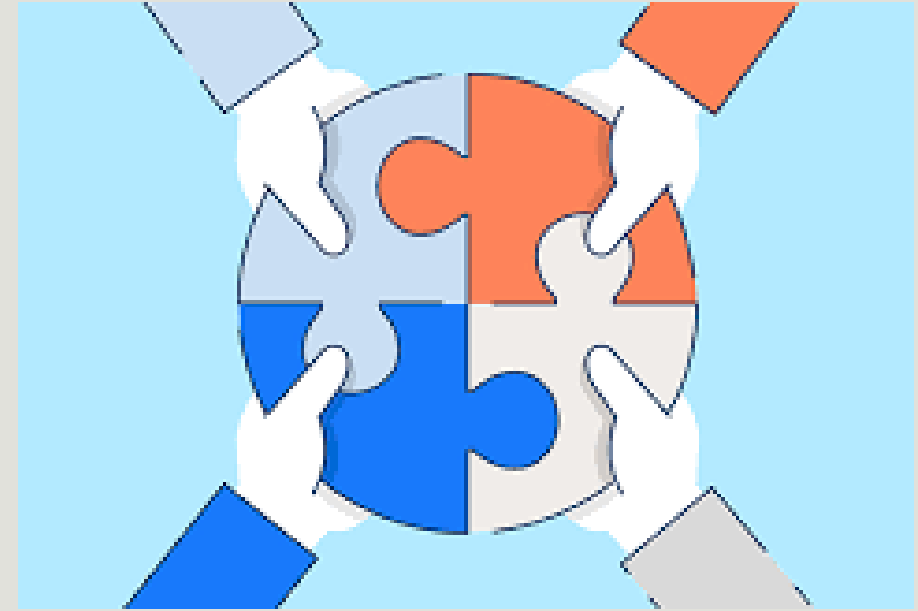
ED Waivers



ESSA Waivers?



Allocations by Formula



Title I Allocations



States receive the total amount of grant allocations for all LEAs in the State under four formulas:

- Basic Grants
- Concentration Grants
- Targeted Grants
- Education Finance Incentive Grants

All are based on number and concentration of children in poverty along with other factors

With the addition of:

- State minimum grants
- LEA hold harmless

“Formula Count” Children

The number of children to be counted for purposes of this section is the aggregate of—

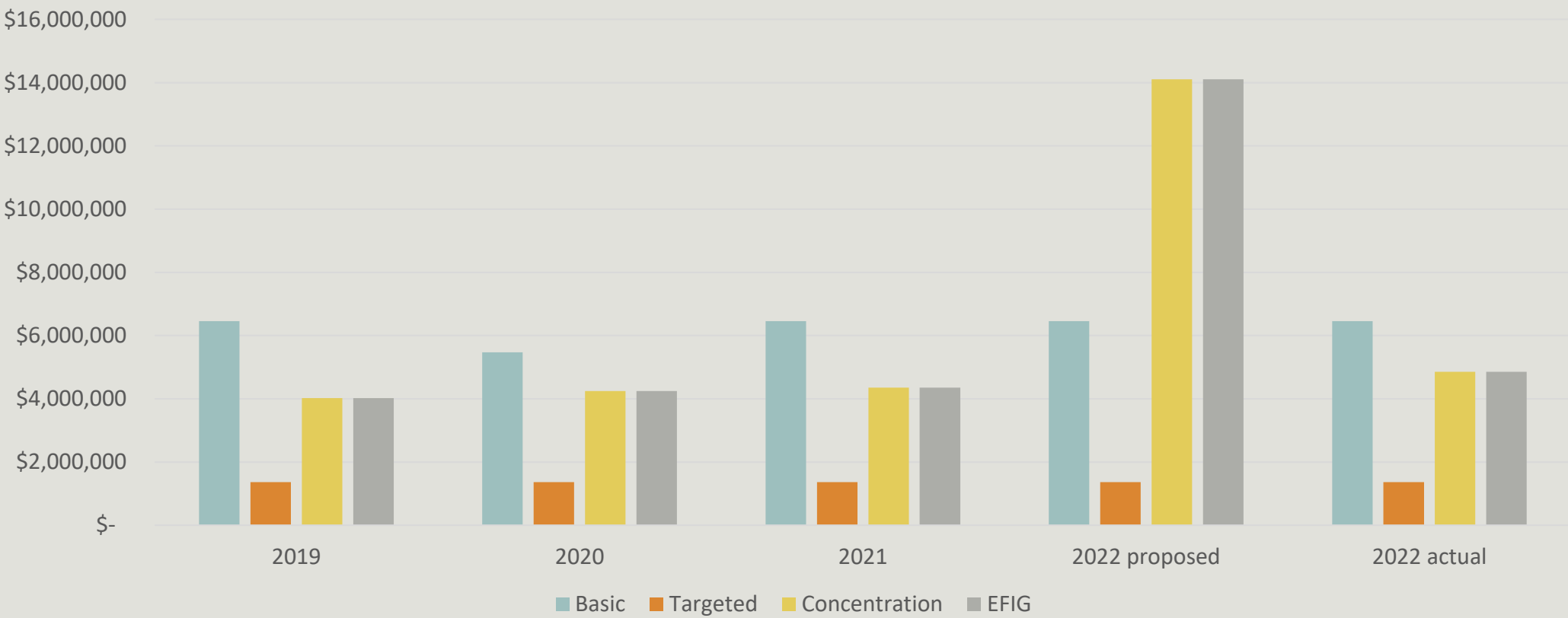
(A) the number of children aged 5 to 17, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2);

(B) the number of children (determined under paragraph (4) for either the preceding year as described in that paragraph, or for the second preceding year, as the Secretary finds appropriate) aged 5 to 17, inclusive, in the school district of such agency in institutions for neglected and delinquent children (other than such institutions operated by the United States), but not counted pursuant to subpart 1 of part D for the purposes of a grant to a State agency, or being supported in foster homes with public funds; and

(C) the number of children aged 5 to 17, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (4).

[Paragraph (4) refers to children eligible for TANF]

Funding by Formula



New Census Data = New Funding Numbers



FY 2023 allocations will incorporate 2021 Census/ SAIPE data

Solidifies changes from 2020 Census

- Those changes were mitigated by ESSER money
- LEAs will start feeling the impact of changes plus ESSER spend down in 2024

Rank and Serve



Rank and Serve

If Title I funds are “insufficient” to serve all schools in the LEA, district must rank schools in order of concentration of poverty, and serve schools with Title I funds in that order

Concentrations of poverty determined by (LEA choice):

- Census counts of children from families below the poverty level (this is the same data used by the federal government to allocate Title I-A funds to districts).
- Counts of children eligible for free and reduced-price school meals.
- Counts of children whose families receive assistance under the federal welfare program Temporary Assistance for Needy Families (TANF).
- Counts of children eligible for Medicaid
- A combination of two or more of these data sources.
- Can use a “feeder pattern” for high schools

Rank and Serve

Rank and serve rules:

- Comes after required set-asides
 - E.g. Homeless, Parent and family engagement, equitable services
- All schools over 75% poverty must be served, regardless of grade span
 - Can lower threshold to 50% for high schools
- Then determine amount of funding for each remaining school (or grade span grouping) to be served
- Exceptions: districts with less than 1,000 students or one school per grade span

Rank and Serve

Choosing allocation amounts

- If a school below 35% is served, all schools being served must receive at least 125% of average per pupil allocation
- Not required to allocate same amount to each school, **but:**
 - Must allocate a higher per-child amount to areas or schools with higher poverty rates than to areas or schools with lower poverty rates
 - “The per-child allocation amount must be large enough to provide a reasonable assurance that a school can operate a Title I program of sufficient quality to achieve that purpose. “

Rank and Serve

LEA may choose not to serve (“skip”) a school that:

- Meets the Title I comparability requirements;
- Is receiving supplemental funds from other State or local sources that are spent according to the requirements of Sections 1114 or 1115; and
- The funds expended from such other sources equal or exceed the amount that would be provided under Title I, Part A.



ED Prior Approval

Dec. 2022

[HTTPS://OESE.ED.GOV/FILES/2022/12/OESE-PAC-PSC-PRIOR-APPROVAL-DEAR-COLLEAGUE-LETTER-TO-POST.PDF](https://oese.ed.gov/files/2022/12/OESE-PAC-PSC-Prior-Approval-Dear-Colleague-Letter-to-Post.pdf)

Pre-Award Cost (PAC)

The SEA may award pre-award costs.

- Approval for an SEA to permit a subgrantee to charge PACs, so long as they are necessary and reasonable for carrying out the program, consistent with all applicable statute and regulations, and are for obligations incurred during the period of availability of the SEA's grant.

Pre-award costs are those incurred prior to the effective date of the Federal award and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work.

- Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. 2 CFR 200.458.

Participant Support Costs (PSC)

ED permitting participate support costs of \$5,000 or less per participate per event.

- Must be associated with an ESEA approved formula grant program.

Participant Support Costs are “direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.” (2 CFR 200.1.)

- Examples: Parents to attend a program-related conference or training, or
- Private school teachers as part of equitable services to attend a training or conference, or
- For students’ expenses for travel to a program-related conference or training.

Prior Approval

With this approval, an SEA is no longer required to submit individual requests for prior approval of qualifying PACs or PSCs to the Department.

- This prior approval does not preclude the SEA from requiring its subgrantees to request prior approval from the SEA for all pre-award costs and participant support costs or for any participant support cost that exceeds a threshold as determined by the state.

If an individual participant support cost exceeds \$5,000 for a conference, training, or event, your agency must request prior approval from the Department.

- This approval does not apply to expenditures for “equipment” as defined in 2 CFR § 200.1.

This prior approval does not mean that a particular PAC or PSC is deemed an allowable cost under an applicable program.

Supplement, not Supplant



[HTTPS://WWW2.ED.GOV/POLICY/ELSEC/LEG/ESSA/SNSFINAL
GUIDANCE06192019.PDF](https://www2.ed.gov/policy/elsec/leg/essa/snsfinalguidance06192019.pdf)

SNS Requirements

Programs

SNS Standard	Title I,A	Migrant Education	Title II,A	Title III,A	Title IV,A	REAP/ SRSA	21 st CCLC	IDEA	ESSER
State and Local Funds	ESSA Sec. 1118(b)	ESSA Sec. 1304(c)(2)							---
Non-Federal Funds			ESSA Sec. 2301		ESSA Sec. 4110				---
Federal, State and Local Funds				ESSA Sec. 3115(g)		ESSA Sec. 5232	ESSA Sec. 4204 Subs Non-federal funds (4202(b)(2)(G))	34 CFR 300.164 (a) (SEA); 300.202(a) (LEA)	---

ESSA Title I, A Sec. 1118

- To demonstrate compliance, a LEA must demonstrate that it has a methodology (e.g., through written procedures) and uses it to allocate **state and local funds to each Title I school** [and] ensures that the school receives all of the state and local funds it would otherwise receive if it were not receiving Part A funds—i.e., the LEA’s methodology may not take into account a school’s Title I status
 - ED frames this as “Title I neutral”

Applies to LEAs and Educational Service Agencies (ESAs) if the ESA obtains Title I, A funding on behalf of LEAs for allocation.

What is a compliant methodology?

One that results in Title I schools receiving “all the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds”

- Can differentiate by grade span, size of school, student enrollment, etc.
- Suggested models in guidance:
 - Weighted funding based on student characteristics (certain \$ amount per student based on estimated needs)
 - Staffing/ supplies (e.g. 1 principal, 1 teacher per 20 students, estimated amount for supplies technology)
 - Combination of methodologies

Does this mean that State/local spending has to be equal in Title I/ non-Title I schools?

No

- However, requirement will most often result in higher spending for the Title I schools within that same district
- ED may not mandate equalized spending
- Schools and grade spans have different concentrations of students
- Having higher spending in non-Title I schools is not necessarily an indicator of violation so long as methodology is appropriate

What About District-level Activities?

- The LEA must conduct activities with those funds in a manner that does not take into account a school's Title I status.
- For example, the LEA reserves the State and local funds for a social worker at the district level.
 - The LEA deploys the social worker to different schools throughout the school year on an as-needed basis.
 - Access to or assignment of the social worker must be Title I neutral in order to comply with the general SNS requirement.

SNS Guidance Section VI.

Are there any SNS exceptions?



- Excluded from SNS Methodology Test:
 - Single School LEAs;
 - LEAs with only Title I schools.
 - A grade span that contains only: a single school, non-Title I schools, or Title I schools.

SNS Guidance Q&A 26

Title I vs. non-Title I Programs

For programs outside of Title I-A, can still use:

- Specific cost test
- Presumptions of supplanting



Presumptions of Supplanting

Presumptions of Supplanting

1. Used Federal funds to provide services that are required under other Federal, State or local laws.
2. Used non-federal funds in prior year.
3. Used federal funds to provide services for participating children and non-federal funds for nonparticipating children.

These presumptions are rebuttable if the SEA or LEA can demonstrate that it would not have provided the services in question with non-federal funds had the federal funds not been available.

*NOT APPLICABLE to Title I

Evidence of Compliance

The LEA must maintain documentation to demonstrate that the LEA allocated State and local funds to schools in accordance with its methodology

An LEA must keep records to show compliance with program requirements and facilitate an effective audit. (34 C.F.R. 76.730-76.731)

Examples: written methodology, calculations performed by the LEA to implement the methodology.

SNS Guidance Q&A 19.

What happens if the LEA does not meet the SNS requirements?

- Audit Finding
- Update methodology
- Enforcement provisions under GEPA and the UGG (2 CFR Part 200)



Maintenance of Effort

[HTTPS://WWW2.ED.GOV/POLICY/ELSEC/LEG/ESSA/ESSAGUIDANCE160477.PDF](https://www2.ed.gov/policy/elsec/leg/essa/ESSAGUIDANCE160477.pdf)

ESSA Maintenance of Effort (MOE)

Sec. 1118(a) and 8521

- The combined fiscal effort per student or the aggregate expenditures of the LEA
- from state and local funds
- from preceding year must not be less than 90% of the second preceding year.

MOE (34 CFR 299.5)

ESSA MOE applies to:

- Title I, Part A (Improving Basic Programs Operated by Local Educational Agencies)
- Title I, Part D (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At Risk)
- Title II, Part A (Improving Teacher Quality)
- Title III, Part A (English Language State Grants)
- Title IV, Part B (21st Century Learning Centers)
- Title V, Part B (Subpart 2, Rural Education Programs)
- Title VI, Part A (Subpart 1 Indian Education)

MOE Calculation

Sec. 1118(a) and 8521

LEAs demonstrate MOE by either:

The combined **fiscal effort per student**

OR

The **aggregate expenditures** (of non-federal funds i.e. state and local funds) of the LEA for preceding year was not be less than 90% of the second preceding year.

MOE Calculation 34 CFR 299.5 (cont.)

Include state and local expenditures for:

- Expenditures for administration
- Instruction
- Attendance and health services
- Pupil transportation services
- Operation and maintenance of plant
- Fixed charges
- Net expenditures to cover deficits for food services and student body activities.

Exclude state and local expenditures for:

- Community services
- Capital outlay
- Debt service
- Supplemental expenditures made as a result of a declared disaster

20/21 MOE Example: Expenditure analysis

MOE Not Met = Reduce by 5.3%

Analysis for Meeting MOE in Previous Year	Fiscal Effort per Student	Aggregate Expenditures
2018-19 Actual Amount	\$6,100	\$1,000,000
90% of 2018-19 Amount	\$5,490	\$900,000
2019-20 Actual Amount	\$5,200	\$850,000
Difference (Shortfall)	(\$290)	(\$50,000)
Percent Shortfall/Reduction in Award for 2021-22	<u>-5.3%</u>	-5.6%

MOE Waiver Sec. 8521(c)

Secretary of Education may waive MOE if “equitable”:

- Exceptional or uncontrollable circumstances, such as a natural disaster; or
- A change in the organizational structure of the LEA; or
- A precipitous decline in the financial resources of the LEA.

Waiver = meeting MOE!

MOE Consequences Sec. 8521(b)

5 Year Penalty-Free

- LEA is not subject to sanctions for failing to maintain 90% effort for one year (either combined fiscal per student or aggregate State and agency expenditures) provided it has not failed to meet MOE for one or more of five immediately preceding fiscal years.



Timely Spending

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Period of Performance, Budget Period, Renewal (200.1)

May have more than one budget period within period of performance; renewal starts a new period of performance (200.1).

Financial Obligations must occur during the period of performance (2 CFR 200.1)

- Period of Performance- The total estimated time interval between the start of an initial Federal award and the planned end date.
 - Does not commit the awarding agency to fund beyond the approved budget period.
- Modifications to Period of Performance (200.309)

When Obligation Occurs 34 CFR 76.707

Type of Obligation	When Obligation Occurs 34 CFR 76.707
Acquisition of Property	Date of binding written commitment
Personal Services by Employee	When services are performed
Personal Services by Contractor	Date of binding written commitment
Travel	When travel is taken
Approved Pre-Agreement Cost	On the first day of the grant or subgrant performance period.

Federal Payment 200.305(b)

Written procedures must describe whether non-federal entity uses:

1) Advance Payments

- Limited to minimum amounts needed to meet immediate cash needs
- Subject to cash management requirements 2 CFR 200.305(b)

2) Reimbursement

- Pass through must make payment within 30 calendar days after receipt of the billing
- Initial payments made with state/local funds

Closeout 2 CFR 200.344

Subrecipients must prepare closeout reports and final accounting within 90 days after period; pass-through entities have **120 days**

Unless federal or pass-through gives extension, all financial obligations must be liquidated no later than **120 days** after period ends

- Effectively limit subrecipient liquidation to 90 days

2 CFR 200.343



Recent ESEA Monitoring Findings



STATUS KEY



**Met requirements
with commendation**

High quality
implementation &
compliance



Met requirements

No instances of
noncompliance
identified



**Met requirements with
recommendation**

Satisfactory compliance
with quality concerns



Action required

Significant
compliance &
quality concerns

OESE Monitoring Protocols

SEA Self-Assessment and Protocol

- [Fiscal Cross-Cutting](#)
- [SSA Cross-Cutting](#)
- [Title I](#)
- [Title II](#)
- [Title III](#)
- [EHCY and ARP-HCY](#) (Education for Homeless Children and Youths and American Rescue Plan Homeless Children and Youths)
- [Title I, Part D](#) (Children and Youth Who Are Neglected, Delinquent, or At-Risk)

<https://oese.ed.gov/offices/office-of-formula-grants/school-support-and-accountability/performance-review/>

OESE Consolidated Monitoring Review

Financial Management and Cross-Cutting Requirement Domain

[A. Accounting Systems and Fiscal Controls](#)

[B. Cash Management and Payment Systems](#)

[C. Period of Availability and Carryover](#)

[D. Internal Controls](#)

[E. Audit Requirements](#)

[F. Records and Information Management](#)

[G. Personnel](#)

[H. Procurement](#)

[I. Equipment and Supplies Management](#)

[J. Indirect Costs](#)

[K. Charter School Authorization and Oversight](#)

[L. Local Applications and Plans](#)

[M. Risk Assessment \(External\)](#)

[N. Subrecipient Monitoring](#)

[**SEA Self-Evaluation**](#)

School Support and Accountability (SSA)

SEA Cross-Cutting Financial and Programmatic Self-Assessment and On-site/Desk Review Protocol

School Support and Accountability Performance Review

A. Allocations

B. Maintenance of Effort (MOE)

C. Equitable Services

D. Data Quality

School Support and Accountability (SSA)

SEA Title I Performance Review

Self-Assessment and On-site/Desk Review Protocol

School Support and Accountability Performance Review

A. State Assessment Requirements

B. Statewide Accountability System

C. Identification of Schools

D. Support for School Improvement

E. 1003 School Improvement

F. State and Local Report Cards

G. Schoolwide Programs

H. Targeted Assistance Programs

I. Parent and Family Engagement

J. Direct Student Services

K. Optional Public School Transfer

L. Educational Stability for Students in Foster Care

M. Title I-Specific Fiscal Requirements

N. Other Title I Requirements

STATE	PROGRAM(S)	YEAR	DESCRIPTION
Missouri	Title IV Part B of the ESEA	2022	MDESE Monitoring Report
California	Title I Part A of the ESEA; Title II Part A of the ESEA; Title III Part A of the ESEA; SIG	2022	Re-issued FY 2018 Performance Review
California	Title I Part A of the ESEA	2022	Update on Re-Issued FY 2018 Performance Review and New Grant Condition
Ohio	Consolidated Performance Review	2022	ODE Monitoring Report
Kansas	EHCY and ARP HCY	2022	PDF
Missouri	Title II Part A of the ESEA	2022	PDF
Nebraska	Consolidated Performance Review	2022	FY 2022 Nebraska Consolidated Performance Review Report
Pennsylvania	Title II Part A of the ESEA	2022	PDF
New Hampshire	EHCY and ARP HCY	2022	PDF
South Dakota	EHCY and ARP HCY	2022	PDF
New Jersey	Title I Part A of the ESEA; ECHY	2022	PDF

Recent Monitoring Findings

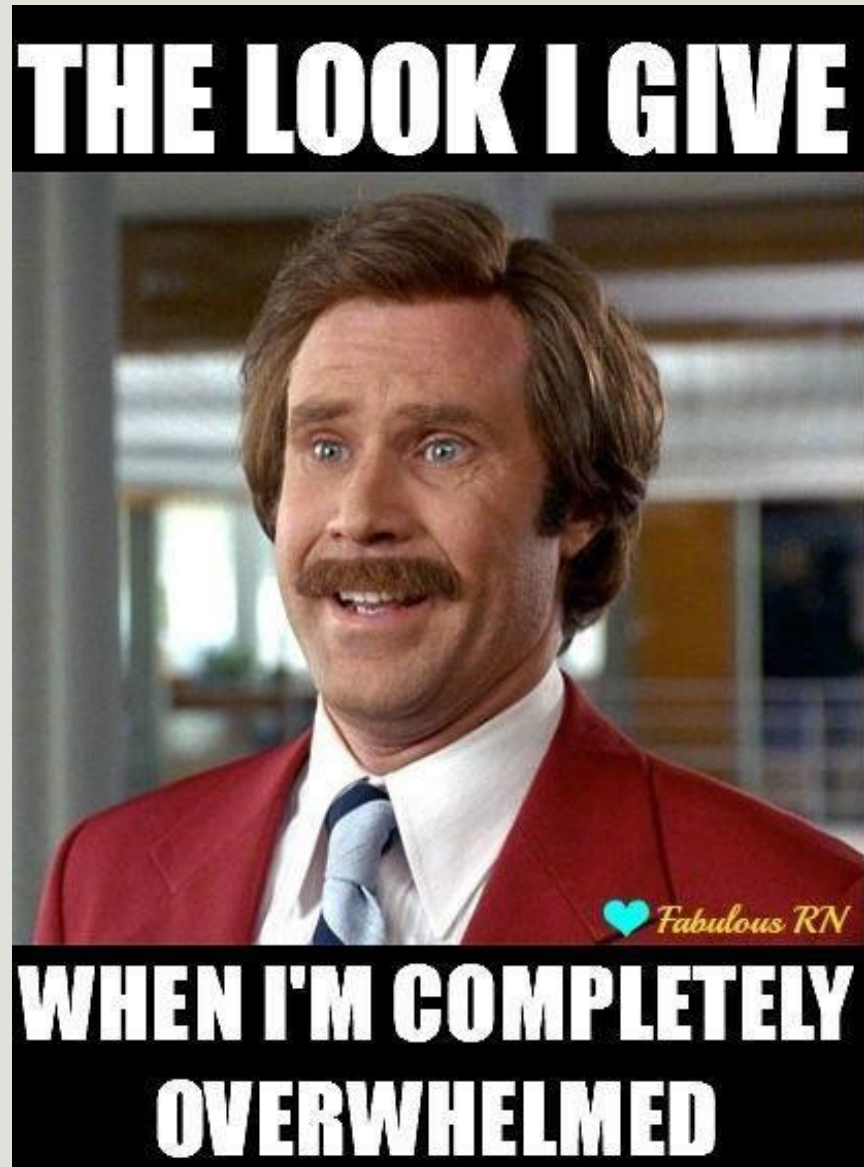
Financial Management and Cross-Cutting

- Lack of internal risk assessment
- Inventory occurring more than once every 2 years
- Missing assurances under ESEA Sec. 8306
- MOE missing programs re: compliance requirements
- Failure to ensure that every new or significantly expanded charter school, receives the Federal funding for which it is eligible not later than 5 months after it opens or significantly expands.
- Improperly identifying schools for improvement

Recent Monitoring Findings

Title I, A

- Local plans missing elements
- Report card are missing requirements
- Failing to provide required parent notices
- Missing parent and family engagement policies
- Failure to evaluate and/or publicly report on progress the state is making towards ensuring that low-income and minority children in Title I schools are not served at disproportionate rates by ineffective, out-of-field, and inexperienced teachers.



Questions??

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