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April 24, 2020

To: BOCES District Superintendents  
School District Superintendents  
School District Business Officers  
Charter School Leaders  
Title I Coordinators

From: Jason Harmon, Assistant Commissioner

RE: Flexibility in the Use of Funds Associated with Approved 2019-20 Consolidated Applications for ESSA-Funded Programs During District and School Closures due to COVID-19

### **Purpose/Background**

Pursuant to Executive Order 202.4, school districts, charter schools, and nonpublic schools were directed to close no later than Wednesday, March 18, 2020, as a result of the outbreak of the Novel Coronavirus (COVID-19) occurring in New York State.

In response to the mandated closures, the New York State Education Department (NYSED, or “the Department”) has issued guidance on general fiscal flexibilities for all federal funding sources. Entitled “*Guidance on Federal Funds Affected by COVID-19*,” this guidance provides information on flexibilities that Local Educational Agencies (LEAs) can apply to all federal funds and their associated programs. Topics addressed in the guidance include, but are not limited to:

- The potential impact of school closures on federal funds.
- Salary and wages of staff paid with federal funds.
- Changes to current federal grant allocations.
- The allowability of costs not normally chargeable to awards.
- Extension of financial, performance, and other reporting.

LEA staff are encouraged to review “*Guidance on Federal Funds Affected by COVID-19*,” posted on the Department’s [COVID-19 website](#).

The information provided in this memo and the attached Q&A document is intended to further clarify the use of funds associated with approved 2019-20 Consolidated Applications for ESSA-Funded Programs during the period of district and school closures due to COVID-19.<sup>1</sup> Specifically, those funds include:

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<sup>1</sup> For those LEAs that received Title I School Improvement funds during the 2019-20 school year, additional information about potential carryover of those funds into 2020-21 are detailed in the April 13, 2020 memorandum from Stephen Earley, Director of School and District Field Support Services. That memo was distributed via email on Monday, April 13, 2020 from [FieldSupport@nysed.gov](mailto:FieldSupport@nysed.gov).

<b>Fund Source</b>	<b>2019-20 Project Number</b>
Title I, Part A	0021-20-XXXX
Title I, Part D	0016-20-XXXX
Title II, Part A	0147-20-XXXX
Title III, Part A-Immigrant	0149-20-XXXX
Title III, Part A ELL	0293-20-XXXX
Title IV, Part A	0204-20-XXXX
Title V, Part B	0006-20-XXXX

On April 6, 2020, the United States Department of Education (USDE) offered states the ability to apply for waivers related to the expenditure of School Year (SY) 2018-19 and 2019-20 funds. NYSED pursued several waivers in order to ensure that LEAs could be afforded the maximum flexibilities that were available. These waivers included, but were not limited to, waiving the statutory limit on carryover for Title I, Part A funds; flexibility under Title II, Part A to provide professional development for educators to meet the immediate needs of children whose education has been severely disrupted by school closures; and increased flexibility in the use of Title IV, Part A funds to support continuity of services.

This memo will highlight the new flexibilities that are available as a result of approved USDE waivers submitted by NYSED on behalf of all LEAs, while the Q&A provides increased guidance on allowable uses of funds.

New Flexibilities as a result of USDE Waivers

As a result of these USDE-approved waivers, LEAs are now able to take advantage of the following flexibilities:

- The period of availability for school year SY 2018-19 funds has been extended through the end of school year 2020-21. LEAs will continue to have access to 2018-19 funds through the carryover process by submitting an FS-10A budget amendment.
- LEAs may carryover up to 100% of 2019-20 Title I, Part A funds to use during the 2020-21 school year to meet new identified needs without submitting a waiver request to NYSED.
- For school year 2019-20 Title II, Part A funds, flexibility has been granted to the meaning of professional development as defined in section 8101(42) of ESEA. Therefore, LEAs are not required to provide only sustained professional development activities, but may also provide one-time, stand-alone training (if needed) to better meet the needs of teachers and students during this time.
- For SY 2019-20 funds, LEAs with Title IV, Part A allocations of \$30,000 or more are no longer required to conduct a formal needs assessment in order to be eligible to receive the LEA's allocation or make changes to planned use of funds.

- For SY 2018-19 and SY 2019-20, LEAs with Title IV, Part A allocations of \$30,000 or more are no longer required to meet the content area spending requirements of using at least 20 percent of funds received for Well-Rounded Educational Opportunities, at least 20 percent for Safe and Healthy Students, and a portion of funds for the Effective Use of Technology in section 4106(e)(2)(C), (D), and (E).
- For SY 2018-19 and SY 2019-20, all LEAs that received Title IV, Part A funds are no longer required to limit the expenditure of funds for technology infrastructure to no more than 15% of the portion of funds obligated for the Effective Use of Technology.

The Department remains in close contact with the USDE and will inform the field of any additional flexibilities available to LEAs as a result of the COVID-19 emergency. NYSED has established a [COVID-19 website](#) to provide districts and schools with the most recent guidance related to closures, health department guidance, and issues related to continuity of education.

If you have questions regarding the use of federal funds associated with approved 2019-20 Consolidated Applications for ESSA-Funded Programs during the period of district and school closures due to COVID-19, please contact the Office of ESSA-Funded Programs at [conappta@nysed.gov](mailto:conappta@nysed.gov). For questions related to the use of Title III, Part A funds specifically, please contact the Office of Bilingual Education and World Languages at [OBEWL@nysed.gov](mailto:OBEWL@nysed.gov).

We hope that you and your loved ones are safe and healthy, and we extend our appreciation for the support you continue to provide your students and school communities during this difficult time.

Cc: Kim Wilkins  
Phyllis Morris  
Elisa Alvarez  
Lesli Myers-Small  
Christina Coughlin  
Andrew Klippel  
Tom Walters  
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Lisa Long  
Leon Hovish  
Alexandra Pressley  
Ross Garmil

## **COVID-19 Questions and Answers – Use of Federal Program Funds**

### **Q1. Can federal funds be used to support continuity of learning during school closures?**

A1. Yes. A school operating a schoolwide program may use Title I, Part A funds for any activity that supports the needs of students in the school as identified through the comprehensive needs assessment and articulated in the schoolwide plan. In designing and implementing the schoolwide plan, a school must implement strategies that: (1) provide opportunities for all children to meet challenging State academic standards; (2) use methods and instructional strategies that strengthen the academic program in the school, increase the amount and quality of learning time, and help provide an enriched and accelerated curriculum, which may include programs, activities, and courses necessary to provide a well-rounded education; and (3) address the needs of all students, but particularly those at risk of not meeting challenging State academic standards. These strategies can include, but are not limited to, purchasing computing devices, including Chromebooks, and laptops; providing professional development to support remote learning models; and/or for counseling and other mental health services. [More information on the variety of allowable activities is available on USDE's website.](#)

Title II, Part A program funds can be used to provide one-time virtual professional development opportunities to educators to help support remote learning. Professional development could be provided on use of technology, effective instructional practices for remote learning, and specific strategies for supporting students with disabilities and English language learners in remote learning. LEAs can also use funds to support professional development and creation of technological platforms that educators can use to improve working conditions.

Title III, Part A English Language Learner (ELL) and Immigrant program funds could be used to support student learning during a closure. For example, LEAs can purchase Chromebooks, laptops, and technology infrastructure to support remote learning for ELL or immigrant students, and/or on-line learning programs that would support English language acquisition or home language support. [More information on the examples of allowable activities is available on USDE's website.](#)

In addition, Title IV, Part A program funds could be used to support student learning during a closure. An individual LEA receiving Title IV, Part A funds, regardless of allocation size, may use funds for any of the three content areas in the Student Support and Academic Enrichment (SSAE) program. Within each of these areas, LEAs have broad flexibility to use the SSAE program funds for a variety of activities to improve student outcomes and address the opportunity gaps as a result of the COVID-19 pandemic. For example, LEAs can purchase computing devices, including Chromebooks, laptops, and technology infrastructure, such as mobile hotspots to support remote learning; cleaning and sanitizing supplies to support safe and healthy environments; or mental health programs or professional development to support safe and healthy students. [More information regarding allowable uses of Title IV, Part A funds is available on USDE's website.](#)

**Q2. Can LEAs implementing Targeted Assistance Programs apply for a waiver to the poverty requirement to become a Schoolwide Program?**

A2. For 2019-20, LEAs implementing a Targeted Assistance Program for eligible children will automatically be granted a waiver to function as a Title I Schoolwide Program, as permitted under section 1114(a)(1)(B) of the ESSA. This waiver will allow a school that serves a Title I eligible school attendance area in which less than 40 percent of the children are from low-income families, or a school for which less than 40 percent of the children enrolled in the school are from such families, to operate a Schoolwide Program to best meet the needs of all of their students during the school closures. If a school wishes to continue to access this flexibility in the 2020-21 school year, the school will need to develop a Schoolwide Program Plan consistent with the requirements under section 1114(b) of ESSA prior to the start of the 2020-21 school year.

**Q3. Will LEAs need to submit a formal waiver request to receive a waiver from the 15% carryover limit on Title I, Part A funds?**

A3. No, LEAs will not need to submit a formal waiver request to receive flexibility from the 15% carryover limit on Title I, Part A funds. A blanket waiver will be issued to all LEAs within the state that receive Title I, Part A funds.

**Q4. Can Title II, Part A program funds be used to pay for a consultant to create online lesson plans for teachers?**

A4. No. Title II, Part A program funds cannot be used to pay for a consultant to create online lesson plans for teachers. However, Title II, Part A program funds can be used to pay a consultant to provide professional development for teachers on the topic of creating effective plans for online instruction.

**Q5. Can Title II, Part A program funds be used to cover the costs of instructional coaches?**

A5. Yes, Title II, Part A program funds can be used to cover the costs of instructional coaches if the instructional coaches are providing coaching services. For example, an instructional coach who was previously providing coaching during face-to-face meetings with instructional staff can deliver coaching services via a virtual model.

**Q6. Can Title IV, Part A program funds be used to cover the costs of mobile hotspots for students who do not have access to high-speed internet?**

A6. Yes, Title IV, Part A program funds can be used to cover the costs of mobile hotspots for all students who do not have access to high-speed internet. USDE has waived the 15% infrastructure limit to accommodate these types of needs during the pandemic.

**Q7. Can an LEA receive a waiver from the minimum expenditure requirements related to the three content areas (Well-Rounded Education, Safe and Healthy Students, and Effective Use of Technology) under Title IV Part A?**

A7. LEAs do not need to seek a waiver for this request. USDE has granted flexibility to all LEAs that received an allocation of \$30,000 or more. Those LEAs do not need to comply with the minimum use of funds requirements for SY 2018-19 or SY 2019-20.

**Q8. Will the Department allow LEAs to carryover federal funds that are not expended due to closures caused by the COVID-19 virus?**

A8. Yes, NYSED will allow LEAs to carryover unused 2018-19 and 2019-20 funds into the 2020-21 school year to the maximum extent allowed under the federal law. For Title I, Part A, a blanket waiver has been granted from the 15% carryover limit, therefore, LEAs may carryover up to 100% of their 2019-20 Title I, Part A allocation into the following year. For other ESSA programs such as Title II Part A; Title III; Title IV Part A; and Title V, an LEA can carryover up to 100% of their allocation consistent with normal program rules.

**Q9. Can LEAs transfer funds from Title II, Part A and/or Title IV, Part A?**

A9. LEAs can transfer up to 100% of the funds received under Title II, Part A and Title IV, Part A to other programs to better address the needs of their unique student populations and to ensure the capacity of delivering a meaningful program. Requirements related to documentation and equitable services, including the requirement to engage in meaningful consultation prior to a transfer, must still be met.

**Q10. Do LEAs still have to meet equitable services requirements and consult with nonpublic schools regarding use of funds?**

A10. Yes, LEAs are obligated to satisfy all equitable services requirements, which includes engaging the nonpublic schools in on-going meaningful consultation and providing an equitable services program as it relates to applicable federal funding programs. The model for engaging in timely and meaningful consultation may change to accommodate social distancing and stay at home orders. For example, an LEA may engage nonpublic school leaders through virtual methods, such as video conferencing or tele-conferencing.

**Q11. For nonpublic schools, is there flexibility to carryover SY 19-20 Title II, Part A funds into SY 2020-21 if planned professional development was cancelled due to COVID-19?**

A11. Yes, if the LEA does not fully expended the nonpublic school share of funding during the 2019-20 project period, a nonpublic school with carryover from SY 19-20 Title II, Part A funds may carryover the funds to provide services nonpublic school into SY 20-21.

**Q12. Can Title I, Part A homeless set-aside funds be used for remote learning for students who are homeless?**

A12. Yes, if a school district is closed due to the novel coronavirus, Title I homeless set-aside funds may be used to ensure that students identified as homeless have access to the remote learning opportunities being offered by the district. For example, the district could use Title I homeless set-aside funds to purchase a computing device and/or mobile hotspot/internet access for students experiencing homelessness.

**Q13. Can Title I homeless set-aside funds or McKinney-Vento grant funds be used for emergency food for students who are homeless while schools are closed?**

A13. Title I set-aside funds can be used for meals that are supplemental to the meals the LEA is required to provide. Many districts are providing meals to students during school closures and will be reimbursed for such meals. If the LEA has students who are homeless and are food insecure even with the school meals, districts may use Title I homeless set-aside funding for emergency food for students who are homeless.

**Q14. What is the best way for an LEA to make budget changes during the closures?**

A14. The LEA should submit an amendment (FS-10A) form for all proposed budgetary modifications via email, with a hard copy mailed to the appropriate program office. The Department is currently processing the electronic copies to ensure LEAs can maximize the flexibilities being afforded during this time. The hard copies will need to be received and processed once normal operations resume to ensure compliance with federal and state auditing requirements.

Title Program	Email Address	Mailing Address
Title I, Part A	<a href="mailto:conappta@nysed.gov">conappta@nysed.gov</a>	Office of ESSA-Funded Programs 89 Washington Avenue, EB 320 Albany, NY 12234
Title II, Part A	<a href="mailto:conappta@nysed.gov">conappta@nysed.gov</a>	
Title IV, Part A	<a href="mailto:conappta@nysed.gov">conappta@nysed.gov</a>	
Title V, Part B	<a href="mailto:conappta@nysed.gov">conappta@nysed.gov</a>	
Title I School Improvement	<a href="mailto:SIGA@nysed.gov">SIGA@nysed.gov</a>	
Title III, Part A	<a href="mailto:OBEWL@nysed.gov">OBEWL@nysed.gov</a>	Office of Bilingual Education and World Languages 89 Washington Avenue, EB 505 West Albany, NY 12234

**Q15. What will happen if my district does not meet ESSA Maintenance of Effort requirements?**

A15. Section 8521(c) of ESSA provides two situations (an exceptional or uncontrollable circumstances or a precipitous decline in the financial resources of an LEA) that warrant the Secretary’s granting a waiver of maintenance of effort. NYSED will collaborate with any LEA that does not meet maintenance of effort requirements in order to develop a waiver request for submission to USDE. If an LEA receives a waiver of the maintenance of effort requirement from USDE for a given fiscal year, the LEA has effectively maintained effort for that fiscal year.

Accordingly, in determining whether the LEA had failed to maintain effort for one or more of the five immediately preceding fiscal years, the SEA would count the year in which the LEA received a waiver as a year of maintaining effort.

**Q16. Where can I find additional information related to flexibilities around all federal grant funding for SY 19-20?**

A16. Additional information related to flexibility around federal grant funding can be found at the departments dedicated [COVID-19](#) resource page.

**Q17. Where can I find more information related to additional funding streams that can be utilized for technology purchases to support remote learning?**

A17. The Office of Educational Design and Technology's website provides information on [Funding Educational Technology](#), including a Funding Matrix that compares information on funding streams.