

School Choice and Section 1003(b): It's In There!



By [Christy Wolfe](#) 05/26/2016

One of my biggest concerns about ESSA has been its lack of a meaningful “safety valve” for kids in failing schools. There is no getting around the fact that this version of ESEA does not spell out parent-directed education options the same way No Child Left Behind did, with its explicit provisions for supplemental educational services and school choice. When ESSA eliminated the “cascade of sanctions” for schools deemed “in need of improvement”, explicit references to closing schools and reopening them as charters also disappeared. There are no requirements (let alone incentives) for choice and transportation.

[What we learned from NCLB](#), though, is that unwanted mandates don't usually lead to much real access to seats in better schools. Washington can tell a district it must offer school choice [regardless of capacity](#), but in the real world the absence of high-quality school options means that parents are still stuck. And when the Obama administration attempted to jump-start stalled interventions under NCLB with redesigned School Improvement Grants, we learned yet again that even a convoluted [“rule of nine”](#) can't “make” districts choose the turnaround options that they find most challenging (even if those are the options with the strongest odds of doing well by kids).



ESSA has real potential, though, for states and districts that want to leverage Title I to expand choice and enlarge their capacity to serve students otherwise stuck in struggling schools. “Sleeper” language embedded in the legislation could allow states to increase access to high-quality seats and transform entrenched failure in schools or districts by:

Replacing a school identified for comprehensive support and improvement with one or more charter schools

Opening new charter schools or expanding successful schools

Developing a comprehensive district choice program that includes expanding the number of high-quality seats through replication and expansion of high-quality charter schools.

Yes, these are options, not mandates. But they are clear and present options for places that have the savvy and courage to make use of them.

Choice 101: States should set parameters on school improvement funds—not just hand them out by formula!

ESSA lets states choose whether to allocate school improvement funds by formula or via competition (or both, as under NCLB). States that want to play a significant role in directing the use of 7 percent of their Title I funds for school improvement should allocate them competitively, whenever possible. Running a competition allows the state to establish priorities and eligibility requirements to shape the local use of funds. But even where political or practical reasons make a formula more compelling, states need not automatically turn those funds over to districts. They should set eligibility requirements (determining how district applications will be funded) that reflect the state's priorities for assisting its lowest-performing schools. Yes, Section 1111 gives districts wide latitude to design comprehensive support

and improvement activities, but the potential efficacy of such interventions can be influenced—or dictated—by state-set parameters. The state can set expectations that districts will reopen schools as charters under certain conditions, for instance, or that districts will open new schools to increase their capacity to serve students otherwise stuck in their lowest-performing schools. SEAs could even require LEAs to use 5 percent of their Title I allocation for public school choice transportation. (Yes, that, too, is permitted under ESSA.) They could link monetary awards to the use of [direct student services](#) and provide additional funding for choice opportunities through the competitive grant framework.

Choice 201: SEAs can engage directly with other partners to expand choice within districts

We all know that some (maybe many) districts lack the capacity or will (or both) to make fundamental changes to offer choice—even when alternative options are sought by parents and would be appropriate in the context of a given district. Section 1003(b)(1)(B) is for districts that need heavier state “direction” than they would otherwise receive through a competitive grant process (under Choice 101). This section declares that state education agencies “may, with the approval of the local educational agency, directly provide for these activities or arrange for their provision through other entities such as...nonprofit or for-profit external providers with expertise in using evidence-based strategies to improve student achievement, instruction, and schools.” (*Section 1003(b)(1)(B)*)

Doesn't that mean the LEA must approve any outsiders receiving funds? Yes—but the SEA holds the funds. Ideally, the SEA and LEA would work together, but the LEA will ultimately need to go along with the SEA's conditions for funding interventions. The statute clearly says that funds could go to a non-profit, which includes charter operators and management organizations (CMOs) chosen to replicate or expand schools. This provision opens the door to implementing district-wide strategies focused on improving the quality of education provided in schools that are identified for comprehensive support and improvement.

And if identified schools in an LEA don't make sufficient progress to meet state “exit” requirements, Section 1111(b)(3) (B) broadens state authority to act directly—potentially without LEA approval—to “take additional improvement actions” to implement “alternative evidence-based State-determined strategies” for improving the district's comprehensive and targeted improvement schools.

Choice 301: SEAs can widen pipelines for better schools in hard-to-serve areas

Section 1003(b)(2)(C) also encourages SEAs to “reduce barriers and provide operational flexibility for schools.” This creates opportunities for states to offer additional autonomies so as to attract high-performing networks that might not otherwise consider putting down stakes in particular districts. Additional funding is also possible through the state's 5 percent set-aside of Section 1003(b) funds. Through the provision to work directly with private organizations, funds could be used to recruit and train high-potential school leaders to serve in areas where it's hard to attract talent.

As states look for ways to expand choice and capacity, the key is to jump on Choice 101 and take an active role in promoting the creation of excellent alternatives for students in struggling schools. You can be sure that the U.S. Department of Education won't take the lead in figuring out all of the choice potential that exists with ESSA. States have to activate the sleeper provisions on their own—and push the law as far as it will go. The opportunities are there, however, and any state serious about doing right by its educationally neediest children will seize them.

Here's a quick cheat sheet for implementing choice under ESSA:

Title I Strategy	ESSA
Convert an existing school identified under Section 1111(c) into a public charter school.	Section 1003(b)(1)(B)
Prioritize strategies that incorporate charter school conversion, replication, or expansion in applications for Section 1003(b) sub-grants.	Section 1003(b)
Award funds directly to proven public charter operators to open new schools serving students who currently attend eligible schools.	Section 1003(b)(1)(B) Section 1111(d)(3)(B)(i)-(ii)
Award expansion grants to high-quality charters to expand their capacity to serve students attending eligible schools.	Section 1003(b)(1)(B) Section 1111(d)(3)(B)(i)-(ii)
Attract high-performing networks to open schools in an LEA with significant numbers of students attending eligible schools (or to restart low-performing schools).	Section 1003(b)(1)(B) Section 1003(b)(2)(C)
Award grants to LEAs or nonprofits to attract and develop high-potential school leaders, such as through a leadership development program.	Section 1003(b)(1)(B) Section 1003(b)(2)(C) Section 1111(d)(3)(B)(i)-(ii)

—Christy Wolfe

Christy Wolfe is a senior policy advisor at the National Alliance for Public Charter Schools. This post originally appeared on [the website of the Fordham Institute](#). It was a submission to [Fordham's 2016 Wonkathon](#). Fordham asked assorted education policy experts to answer this question: What are the “sleeper provisions” of ESSA that might encourage the further expansion of parental choice, at least if advocates seize the opportunity? Of the eleven submissions, this one was selected as the winner by a poll of readers.

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