

MEMORANDUM

TO: Brian Talbott, Kari Arfstrom, Association of Educational Service Agencies

FROM: Leigh Manasevit; Kristin Tosh Cowan; Alice Maginnis

DATE: 4/9/2002

RE: Eligibility of Educational Service Agencies for No Child Left Behind Programs

Below is the background discussion on eligibility of educational service agencies (ESAs) to participate in Elementary & Secondary Education Act programs, as reauthorized and amended in the No Child Left Behind Act of 2001 (“Act”). Per your request, this memorandum discusses the legislative history surrounding ESA program eligibility. It also identifies issues in question and provides a legal argument for the broadest inclusion of ESAs for participation in No Child Left Behind Educational Programs.

Please do not hesitate to contact us if you have further questions or require additional information.

I. DEFINITION OF THE TERM “EDUCATIONAL SERVICE AGENCY”

The term ‘educational service agency’ (“ESA”) is defined in the Act to be:

A regional public multi-service agency authorized by state statute to develop, manage and provide services or programs to local educational agencies.

See Act §9101(17).

ESAs are also listed in the definition of ‘local education agency’ (“LEA”) included in Title IX of the Act, the general provisions of the statute that apply to the majority of federal education programs. The Act revised the definition of LEA to specifically include three additional entities that could qualify for LEA status: educational service agencies, consortia of educational service agencies and state educational agencies. See Act §9101(26)(D). Since the enactment of the Elementary and Secondary School Act (“ESEA”) in 1965, Congress made few changes to the definition of LEA. A LEA was generally defined to be:

A public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district or other political subdivision of a state, or of or for a combination of school districts or counties that is recognized in a state as an administrative agency for its public elementary schools or secondary schools.

See Act §9101(26)(A).

Following the enactment of the Improving America's School Act in 1994, Congress began to revise the definition of LEA on a program-by-program basis. For example, in the State Grants for Drug and Violence Prevention Program, a 'local educational agency' was specifically defined to include educational service agencies or consortia of such agencies. See 20 USCA §7111(B)(4) (2000). More recently, educational bills began to incorporate the revised LEA definition into the general definition provisions applied to all ESEA programs. For example, the Educational Opportunities To Protect & Invest In Our Nations Students (ED OPTIONS Act), H.R. 4141, 106th Congress, incorporated this change as part of a legislative effort to give local education agencies more flexibility in how they used and allocated federal funds. The ED OPTIONS Act was ultimately defeated in the House Education and the Workforce Subcommittee in 1999. However, when the House version of the No Child Left Behind Act, H.R. 1, was introduced in early 2001, the bill used the revised definition of local education agency. See H.R. Rep. No. 106-608 (2001). The Senate version of the law did not include the revised definition, but eventually the House's language prevailed in the conference committee and was included in the Act. The legislative history on the No Child Left Behind Act does not specifically indicate the reason for the change in terminology. See H.R. Rep. 107-334 (107th Congress, Dec. 21, 2001).

On the face of the statute, the revised language allows ESAs to be eligible recipients for a far wider range of federal program funds than they could under the previous law. However, please note that the eligibility of ESAs for program funding is entirely dependent on their respective state-defined mandates. See Act §§9101(17), 9101(26). Under the Act, an LEA generally is responsible for management or control of a district's schools. While an ESA could be given this responsibility by a state, this has generally not been the case. ESAs are typically given more limited responsibilities such as provision of support services to LEAs or SEAs. This practice defers to individual states' decisions of what entity should administer ESEA funds at the local level and gives states sufficient flexibility to implement that decision.¹ In order to receive funding, all LEAs, regardless of their state title or description, must meet the overriding general requirement of the definition of LEA in §9101(26)(A). Under the new law, an ESA will be eligible to participate in federal education programs covered by this definition to the same extent that LEAs would do so, only if the state recognizes that the ESA is the administrative agency responsible for a) direction or control of a school district, b) performance of a service function for a school district or c) fulfills both functions. Conversely, if state law limits the ESA so that it cannot function as an LEA, that ESA would not meet the federal

¹ See 111 Cong. Rec. S7, 309-7, 310; S.Rep. No. 146, 89th Cong., 1st Sess. (1965), *reprinted in* 1965 U.S.C.A.N. 1446, 1498; Pub. L. No. 89-10, Title VI, §601(f).

general definition of LEA, would not be eligible for general grant funding as an LEA, but will have a more limited role as described herein.

The revised definition of LEA is a broad description of the types of entities that could be eligible for funding, but individual state law will control the actual degree to which ESAs will be able to participate as LEAs. The difficulties facing ESAs in implementation of the No Child Left Behind Act center on this issue – the definition of “local education agency.” It would be helpful to obtain guidance from the Department of Education through the regulatory process, however individual states remain free to narrow their interpretation of the broad definition in order to best administer their federal education dollars.

II. ELIGIBILITY OF EDUCATIONAL SERVICE AGENCIES FOR ESEA PROGRAMS

The No Child Left Behind Act specifies those individuals or entities eligible to receive assistance for each education program. Some individual programs specifically reference the term ‘educational service agencies’ when indicating the entities eligible to apply for or receive funding. However, the majority of federal education formula grant programs simply delineate funding eligibility between state education agencies or local education agencies. Because of the revision to the definition of ‘local education agency’, ESAs are eligible as grantees for the majority of these programs. In addition, some federal education programs continue to base eligibility on other criteria such as ability or expertise of the agency.

The discussion below is divided into five sections based on how an ESA is considered to be eligible to participate in federal education grant programs. Section A identifies programs in which the Act specifically references the term “educational service agencies” among the list of eligible entities. Section B identifies programs in which the Act references the term ‘local education agencies’ and to which the general definition of LEA described above applies. Section C identifies programs in which the Act references the term ‘local education agencies’ but for which the general definition provision does not apply. Section D identifies programs for which ESAs may be eligible to participate as ‘public agencies’ or ‘public entities.’ Finally, Section E identifies programs in which ESAs may be eligible participants on other bases. Each section includes a legal argument supporting ESA program eligibility.

A. Eligibility as ‘Educational Service Agencies’

The following programs are those provisions in the Act in which ESAs are specifically referenced or otherwise authorized to receive assistance:

- Title I – Part A Basic Program Requirements – State and Local Activities

In order to receive basic Title I - Part A funds, each SEA must develop a statewide plan to provide technical assistance to LEAs. The state plan must describe how the state will

provide: technical assistance for school support and recognition activities under Section 1117, technical assistance relating to parental involvement activities under Section 1118, and professional development activities to help develop qualified teachers and paraprofessionals under Section 1119. A state can elect to provide these services through an ESA where they exist. See Act §1111(c)(4)-(5)(A).

- Title I – Part A - School Improvement Activities

Each state must reserve 2% of its Title I Part A allocation for school improvement activities. Each state must allocate at least 95 % of that amount directly to local education agencies responsible for schools identified for school improvement, corrective action, and restructuring. With the approval of the LEA, the state can direct that the local school improvement activities be implemented through a school support team or an educational service agency. See Act §1003(b)(2). SEAs may also provide specific technical assistance to LEAs identified for school improvement. Local school improvement activities can include assistance in analyzing data from assessments, implementing parental involvement requirements, implementing professional development requirements, and generally address solutions to help LEAs meet their responsibilities under the school correction plan. See Act §1116(b)(4).

- Title I – Part A - School Support and Recognition

Pursuant to this section, each SEA must establish a statewide system of intensive and sustained support and improvement for local educational agencies receiving funds for school improvement. The statewide system should utilize the use of school support teams and ESAs to carry out school support activities. Some of those activities may include: review all facets of a school’s operation and develop recommendations for improvement, collaborate with parents and school staffs, evaluate the effectiveness of school personnel and make additional recommendations as necessary. SEAs are authorized to use educational service agencies as integral components of the school support team or to devise additional approaches to provide assistance described above through educational service agencies or other local consortia. See Act §1117(a)(4).

- Title I – Part A – Parental Involvement

States may use funds to build capacity school districts for parental involvement activities in each district. LEAs are authorized to use funds for the following activities: to provide assistance to increase parental understanding of the state’s academic achievement standards, to provide materials and training to help parents improve student academic achievement, literacy training, and other similar activities. ESAs are authorized to use funds under this section to provide technical assistance to LEAs, schools and parents. See Act §1118.

- Title I – Part A – Qualifications for Teachers

LEAs and ESAs are required to use between 5-10% of funds received under this section for professional development activities to ensure teachers who are not highly qualified attain that status by the end of the 2005-2006 school year. See Act §1119(l). SEAs can fund ESAs to provide technical assistance to LEAs to help them reach this goal.

- Title II – Part A - Teacher and Principal Training and Recruiting Fund

The government can issue grants under this section to ‘eligible partnerships’ in order to increase student academic achievement through professional development activities. These activities are intended to hold LEAs and schools accountable for improvements in student academic achievements by providing adequate training. These partnerships can use funds for professional development activities in core academic subjects. An eligible partnership includes a private or state institution of higher education, a school of arts and sciences and a high need local education agency, and may include an ESA. See Act §2131.

- Title II – Part D Enhancing Education Through Technology – State and Local Technology Grants

The grants provide assistance to states and localities to support and implement a comprehensive system that effectively uses technology to improve student academic achievement. Eligible local partnerships can apply for these funds from the SEA. Eligible local partnerships are defined to be i) one high-need local educational agency; ii) an LEA that can demonstrate effective integration of technology into instruction; iii) an institution of higher education; iv) a for-profit business with experience in the application of technology in instruction or other public or private nonprofit organization with similar experience. ESAs can be included in these eligible partnerships. See Act §2403(2).

- Title IX General Provisions – Part E, Subpart 1 Private Schools

Areas serviced by ESAs as well as LEAs must provide requisite educational services to children in private schools. See Act §9501(a)(1).

- Title X, Part D Native American Education Improvement, Bureau of Indian Affairs

The Department can provide technical and financial assistance to BIA funded schools to enable such schools to meet required accreditation standards. This assistance may be provided through an ESA. See Act §1120.

B. ELIGIBILITY AS ‘LEA’ FOR COVERED PROGRAMS

The general provisions of the Act, Title IX §9101(26), define a local education agency to include educational service agencies. This definition applies to the majority of federal education programs authorized by the Elementary and Secondary Education Act. However, please note, the limitations on the definition of LEA described above become

especially important when determining funding eligibility for these covered programs. While ESAs can be eligible for LEA status, the ESA must also meet the general requirements of the definition of LEA in the Act. See Act §9101(26)(A). The ESA must be legally constituted, according to state law, to be the administrative agency responsible for control or direction of a particular school district or perform a service function for that district. Individual state law will control the degree to which ESAs will be eligible to participate as LEAs, based on the functions and needs the ESA was designed to meet.

This distinction is critical to determine eligibility for formula grant programs. For example, a formula grant program may receive its allocation of Title I funds based on the student population within the district meeting the requisite poverty criteria. An ESA and LEA serving the same school district would not both be eligible to apply for funding under the same grant program. This would double count the children and lead to a distorted distribution of grant funds to entities serving the same student population.

Alternatively, consider if a state established an ESA to be the primary agency responsible for provision special services to children with limited English proficiency within several counties. In this scenario, the ESA might be eligible to receive funds as the LEA, because their state-defined function is to perform a service function for a combination of school districts our counties, and is recognized by the state as the administrative agency responsible for provision of this function for its public elementary and secondary schools. The final decision belongs to the state. Thus, any ESA should consider the following three points to determine whether it is eligible for federal education grant money as an LEA: i) whether the ESA meets the definition of LEA listed above, ii) what is the state-defined function of that ESA, and iii) how has the state determined that ESEA funds should be administered to the schools.

In addition, some specific grant programs mandate additional programmatic requirements that LEAs or ESAs must meet in order to qualify as entities eligible for funding. However, provided the state recognizes the ESA as an LEA, and the ESA falls within the programmatic requirements, ESAs can be considered LEAs for the purposes of funding eligibility. Below are the programs covered by this definition for which LEAs could be considered eligible for funding if recognized by the state as the administrative agency for that district or performing a function of that district.

- Title I - Part A – Basic Grants, Concentration Grants, Targeted Grants, and Education Finance Incentive Grants

Eligible entities include LEAs. See Act §§1124, 1124A, 1125, 1125A.

- Title – Part B – Subpart 3 – Even Start Family Literacy Programs

This program defines eligible entities to include the following: an LEA, a nonprofit community-based organization, a public agency other than a local education agency, an institution of higher education, or a public or private nonprofit organization other than an LEA. See Act §1236.

- Title I - Part C – Education of Migratory Children - State Programs; Grants For Improvement of Coordination of Migration Education Activities

Eligible entities are defined as ‘local operating agencies’. A local operating agency is one of the following: a) local education agency to which a SEA makes a subgrant; b) public or nonprofit private agency which a state makes an arrangement; or c) an SEA that operates migrant education program or projects directly. See Act §1309.

- Title I – Part D – Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent or At-Risk – Subpart 1 - Transition Services

Eligible entities include LEAs. See Act §1418.

- Title I – Part D - Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent or At-Risk, Subpart 2

Grants are awarded to LEAs with high numbers or percentages of children and youth residing in locally operated (including county operated) correctional facilities for children and youth (including facilities involved in community day programs). See Act §§1822, 1826.

- Title II – Part A Teacher and Principal Training and Recruiting Fund – Subpart 5 National Activities – School Leadership Recruitment Grants, Advanced Certification Grants

The Department can make grants to high-need local educational agencies, a consortium of high-need local educational agencies or partnerships of high-need local education agencies, nonprofit organization and institutions of higher education. A high-need local education agency means an LEA that i) serves more than 10,000 children from families with incomes below the poverty line; or ii) where at least 20% of children served by the agency are from families with income below the poverty line and for which there is a high percentage of teachers not teaching in their trained subject area or with emergency, provisional or temporary certification or licensing. See Act §2151.

- Title III – Part A – English Language Acquisition, Language Enhancement, and Academic Achievement Act – Grants and Subgrants for English Language Acquisition and Language Enhancement

Eligible entities include i) one or more LEA(s) or; ii) one or more LEAs in collaboration with an institution of higher education, community-based organization or state educational agency. In addition, eligible entities must have experienced a significant increase in the percentage or number of immigrant children and youth who have enrolled during the fiscal year for which the subgrant is made in the geographic areas under the jurisdiction of or served by such entities. Eligible entities must also agree to expend

funds to help limited English proficient children meet the state academic content and student academic achievement standards. See Act §3141.

- Title III – Part A – English Language Acquisition, Language Enhancement, and Academic Achievement Act –Subpart 3 National Activities

LEAs are eligible as part of a consortia for this national professional development project. The consortia must consist of institutions of higher education, SEAs and LEAs to provide for professional development activities that will improve classroom instruction for limited English proficient children. See Act §3131.

- Title IV – 21st Century Schools – Part A Safe and Drug-Free Schools and Communities – Subpart 1

Eligible entities include LEAs. See Act §4114.

- Title IV – 21st Century Schools – Part A Safe and Drug-Free Schools and Communities – Subpart 2 – Hate Crime Prevention

Eligible entities include LEAs. See Act §4123.

- Title IV – 21st Century Schools – Part A Safe and Drug-Free Schools and Communities – Subpart 2 – Grants to Reduce Alcohol Abuse.

Eligible entities include LEAs. See Act §4129.

- Title IV – 21st Century Schools – Safe and Drug-Free Schools and Communities – Subpart 2 – National Coordinator Program

Eligible entities are LEAs. See Act §4125.

- Title IV – 21st Century Schools – Safe and Drug-Free Schools and Communities – Subpart 2 – Mentoring Programs

Eligible entities include LEAs, nonprofit community based organization, or partnership of these organizations. See Act §4130.

- Title IV – 21st Century Schools – Part B – 21st Century Community Learning Centers Grants

Eligible entities include an LEA, community-based organizations, or another public or private entity, or a consortium of 2 or more agencies. See Act §4201(b)(3)

- Title V – Part A – Innovative Programs

Eligible entities include LEAs. See Act §§5131, 5133, 5145.

- Title VI – Part B – Subpart 2 – Rural and Low-Income School Program

Eligible entities include LEAs whose population meets one of the following criteria: i) 20% of children ages 5 through 17 are from families below the poverty line; or ii) all schools designated with the LEA jurisdiction are designated school locale code 6, 7, or 8. See Act §6221, et seq.

C. ELIGIBILITY AS ‘LEA’ FOR NON-COVERED PROGRAMS

Below is a list of federal education programs that are not covered by the general definition of LEA located in Title IX of the Act, and for which ESAs are not automatically eligible for funding. However, for each program listed below, the authorizing provision uses the term ‘local educational agency’ in its common meaning when describing entities eligible for funding. Generally, when statutes do not define terms within the specific provision, it is reasonable to interpret the meaning of the term as it has been used throughout the rest of the statute. Therefore, it is arguable that the general definition of local educational agency incorporating ESAs still applies to the programs listed below, unless the programs specifically define LEA in an alternative manner.

There is some question as to whether or not an ESA would fall clearly within the meaning of ‘local education agency’ as it is used in these non-covered provisions. One could argue that by specifically enumerating the programs to which the Title IX definition of LEA applies, Congress expressly exempted the remaining programs from that definition. In addition, the Act distinguishes between LEAs and ESAs by using the term ‘ESA’ in several statutory provisions. Because of this treatment, the argument can be made the Congress did not intend to include ESAs in the definition for ‘local education agency’ for the non-covered programs.

However, the legislative history of the ESEA indicates that Congress intended the definition of ‘local education agency’ to be interpreted broadly. Since the enactment of the Elementary and Secondary School Act in 1965, the definition of LEA included “any other public institution or agency having administrative control and direction of a public elementary or secondary school.” Pub. L. No. 89-10, Title VI §601(f). In Senate hearings on the bill later enacted as Public Law 89-10, H.R. 2362, Senator Morse discussed the definition of LEA. He stated:

Under “Definition,” the names of those agencies vary in title from state to state. Sometimes they are called state boards of education. Sometimes they are called state councils on education. For special public schools, they may be state welfare boards or state universities. Sometimes there is a state law under which the state is divided into regional school districts or county units and the administration is

handled through the regional unified school district or county system. Whatever the policy of school administration is in the state will be the controlling factor, and not the long arm of the Federal Government reaching out from Washington D.C.

111 CONG. REC. S7,309 (Apr. 7, 1965).

It is clear that congressional intent was to include public entities in the LEA definition based on their state-defined functions, regardless of their varying titles. Therefore, whether an ESA falls within the definition for local educational agency is largely dependent on state law. If a state establishes an ESA to act in such a manner that it meets the requirements of the general definition of LEA listed above, it can be argued that ESAs were intended to be included in the use of the term LEA, even when the Title IX definition of LEA does not apply. As with the grant programs covered by the general provision, an ESA's eligibility for these funds depends entirely on whether or not the state recognizes the ESA as the administrative agency responsible for the direction or control of the school district i.e. whether or not the ESA *functions as an LEA*. Should the state make that determination, then it is arguable that ESAs would be able to receive funds for programs using the term LEA, even when those programs are not covered by the general provision.

Below is a list of non-covered programs that use the term LEA to describe entities eligible for funding.

- Title I – Part B – Subpart I – Reading First – Formula Grants

Eligible entities under this section are defined to be LEAs which are a) among the LEAs in the state with highest numbers or percentages of students in K-3 reading below grade level and have b) jurisdiction including an empowerment zone or enterprise community, over a significant percentage of schools identified for school improvement, or c) the highest numbers or percentage of children who are counted under Section 1124(c). Priority awards for these grants are given to LEAs where 15% of children in the district are below the poverty line or 6500 children within the district are from families below the poverty line. See Act §§1202,1204(d), 1206,1208.

- Title I – Part B – Subpart 2 – Early Reading First

Eligible entities for these grants include eligible LEAs as defined above in partnership with public or private organization serving preschool age children based in that LEA. See Act §1221(b)(1).

- Title I – Part B- Subpart 4 - Improving Literacy Through School Libraries – Competitive Grants to Eligible LEAS

Eligible entities include LEAs that have 20% of students below the poverty line. See Act §1251(c)(3).

- Title I – Part B – Subpart 4 – Improving Literacy Through School Libraries – Formula Grants

Eligible entities include LEAs with 15% of students below the poverty line, or if the percentage of students from families below the poverty line is greater than the statewide percentage of children from families below the poverty line. See Act §1251(c)(3).

- Title I - Part E National Assessment of Title I – Demonstrations of Innovative Practices for Demonstration Projects

Eligible entities include SEA, LEAs, other public agencies, nonprofit organizations, or public or private partnerships. See Act §1502.

- Title I – Part F – Comprehensive School Reform – Subgrants to Schools Implementing Comprehensive School Reform

Eligible entities include LEAs. See Act §1605.

- Title I – Part F – Comprehensive School Reform - Quality Initiatives

Eligible entities include LEAs. See Act §1608.

- Title I – Part H – Subpart 2 School Dropout Prevention Initiative

Eligible entities include LEAs that that service students in grades 6 through 12, that have annual school dropout rates that are above the state average annual school dropout rate, grants can be made to coordinate school dropout prevention and reentry programs. LEAs are eligible to receive a subgrant if the LEA meets the description above and serves a student population 50% or more of whom are low-income students or in which a majority of students come from feeder schools that serve students 50% or more of whom are low-income students. See Act §§1821, 1826.

- Title II – Part B – Mathematics and Science Partnerships

ESA can be eligible for this grant provided they meet the definition of a high-need LEA, and if they are part of eligible partnerships. An eligible partnership is comprised of an engineering, mathematics or science department of an institution of higher education and a high-need local educational agency and may include additional LEAs, consortia, etc. A high need local education agency means an LEA that i) serves more than 10,000 children from families with incomes below the poverty line; or ii) where at least 20% of children served by the agency are from families with income below the poverty line. See Act §2301.

- Title II – Part C – Chapter B – Transition to Teaching Program

Eligible entities under this section are i) SEAs or ii) high-need LEA. A high-need local education agency means an LEA that i) serves more than 10,000 children from families with incomes below the poverty line; or ii) where at least 20% of children served by the agency are from families with income below the poverty line. See Act §§2102, 2312.

- Title II – Part C – Subpart 4 – Teaching of Traditional American History

Eligible entities are LEAs, provided they enter into a required partnership with an institution of higher education, a nonprofit history or humanities organization, or a library or museum. See Act §2351.

- Title III – Part B – Improving Language Instruction Educational Programs – Native American Grant Programs

If ESA operates elementary schools, secondary schools and postsecondary schools for Native American children and youth, an Indian tribe, a tribally sanctioned educational authority, a Native Hawaiian or Native American Pacific Islander, or an elementary or secondary school operated or funded by the BIA. See Act §3216.

- Title III – Part B - Subpart 1 Program Development and Enhancement Activities

Eligible entities include: i) one or more LEA; ii) one or more LEA in collaboration with an institution of higher education, a community-based organization or iii) state educational agency that has an application approved by the LEA to participate in programs carried out under this subpart by enhancing early childhood education or family education programs or conducting instruction programs that supplement the educational services provided by LEAs. See Act §3212(2)(c).

- Title III – Part B – Subpart 1 – Program Development and Enhancement – Comprehensive School and Systemwide Improvement Activities

Eligible entities include LEAs. See Act §3213.

- Title III – Part B – Subpart 2 – Research, Evaluation and Dissemination – Data Collection & Research Grants

Eligible Entities include institutions of higher education, nonprofit organizations, state educational agencies and LEAs. See Act §3221.

- Title III – Part B – Subpart 2 – Research, Evaluation and Dissemination – Academic Excellence Awards

Eligible entities include LEAs and other public and nonprofit entities whose programs have demonstrated significant progress in assisting L.E.P. children learn English, etc. See Act §3223.

- Title III – Part B – Subpart 2 – Research, Evaluation and Dissemination – Instructional Materials Development

Eligible entities include LEAs that have experience in the development of instruction materials in languages indigenous to the U.S. See Act §3225.

- Title III-Part B – Subpart 3 –Professional Development Grants

Eligible entities include LEAs. See Act §3231(b)(1).

- Title III-Part B – Subpart 4– Emergency Immigrant Education Program

Eligible entities include LEAS that experience large increases in their student population due to immigration. An eligible LEA is one for which the sum of the number of immigrant children and youth who are enrolled in public elementary schools or secondary schools is equal to at least 500 or 3% or the total number of children enrolled in the school during the year. See Act §3224(b)(2).

- Title V – Part C – Magnet Schools Assistance

Eligible entities include an LEA or consortium of such agencies when purpose is to implement a plan requiring desegregation or is implementing a voluntary desegregation plan. See Act §5145.

- Title V – Part D – Fund for the Improvement of Education – Subpart 1

Eligible entities include LEAs and other public and private agencies, organizations and institutions. See Act §5411.

- Title V – Part D – Subpart 2 Elementary and Secondary School Counseling Programs

Eligible entities include LEAs.

- Title V – Part D – Subpart 3 Partnerships in Character Education

An eligible entity is an SEA in partnership with one or more LEA, or ii) an SEA in partnership with one or more LEA, or other nonprofit organizations and public entities. See Act §5431(a)(2).

- Title V – Part D – Subpart 4 – Smaller Learning Communities

Eligible entities include LEAs. See Act §5441.

- Title V – Part D – Subpart 6 – Gifted and Talented Students

Eligible entities include LEAs, SEAs or other public agencies or public entities. See Act §5464.

- Title V – Part D – Subpart 7 – Star Schools Program

LEAs are eligible to participate in partnerships with agencies established for the purpose of developing an operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers and other entities. LEAs must serve a significant number of elementary and secondary schools eligible for Title I Part A assistance, or BIA schools. See Act §5477.

- Title V – Part D – Subpart 7 – Star Schools Program – Special Local Network

LEAs are able to participate as part of the consortium of agencies described above to enable the consortium to establish a high-tech demonstration program. See Act §5475(b).

- Title V – Part D – Subpart 9 – Foreign Language Assistance Program

Eligible entities include LEAs. See Act §5492.

- Title V – Part D – Subpart 10 – Physical Education

Eligible entities include LEAs and community-based organizations. See Act §5503.

- Title V – Part D – Subpart 11 Community Technology Centers

Eligible applicants are: a public or private entity, or an LEA, that has capacity to significantly expand access to computers and related services for disadvantaged residents of economically distressed urban and rural communities. See Act §5512.

- Title V – Part D – Subpart 13 – Excellence in Economic Education

LEAs are eligible to participate as sub-grantees. See Act §5533.

- Title V – Part D – Subpart 14 – Grants to Improve the Mental Health of Children

Eligible entities include LEAs. See Act §5541.

- Title V – Part D – Subpart 14 – Grants to Improve the Mental Health of Children – Foundation for Learning Grants to LEAs

Eligible entities include LEAs or other public or nonprofit private entities. See Act §5542.

- Title V – Part D – Subpart 15 – Arts in Education

Eligible entities include SEAs, LEAs, public or private institutions, agencies or organizations. See Act §5551.

- Title V – Part D – Subpart 16 – Parental Assistance and Local Family Information Centers

Eligible entities include nonprofit organizations, and consortia of organizations and local education agencies to establish school-linked or school-based parental information and resource centers that provide comprehensive training and information and support to parents. See Act §§5562, 5566.

- Title V – Part D – Subpart 17 – Combatting Domestic Violence

Eligible entities include LEAs with experience working with domestic violence experts to provide training on issues of children who experience or witness domestic violence. See Act §5571.

- Title V – Part D – Subpart 18 – Healthy High-Performance Schools

Subgrants to LEAs to permit them to reduce energy use meet Federal & Safety codes, and support efficient, environmentally sound practices. See Act §5594.

- Title V – Part D – Subpart 19 – Grants for Capital Expenses of Providing Equitable Services for Private School Students

LEAs are eligible to apply for subgrants from their SEA. See Act §§5592, 5594.

- Title V – Part D – Subpart 20 – Additional Assistance for Certain LEAs Impacted by Federal Property Acquisition

LEAs are eligible grantees provided they received Impact Aid payments under both §§8002 and 8003 for fiscal year 1996; provided free public education to eligible children and had a military installation located within the geographic boundaries of LEA that was closed as a result of base closure or realignment, and remains responsible for free public education of children residing in housing on federal property, etc. See Act §5602.

- Title VI – Flexibility and Accountability – Subpart 3 – Local Flexibility Demonstration

Eligible entities include LEAs. Note only 80 LEAs may apply. See Act §6151.

- Title VI – Part B Rural Education Initiative – Subpart 1 Small Rural School Achievement Program

LEAs are eligible for grants if the total number of students in average daily attendance at all of the schools is fewer than 600, or each county has a total population density of fewer

than 10 persons per square mile, and all schools within the LEA's district are designated with a school locale code of 7 or 8, or the agency meets criteria established by Secretary. See Act §6212.

- Title VII – Indian, Native Hawaiian and Alaska Native Education – Part A Indian Education – Subpart 1 Formula Grants to LEAs

LEAs are eligible for formula grants provided that the LEA has at least 10 eligible Indian children, or at least 25% of the total number of individuals enrolled in the schools of such agency are qualified for assistance in the program. See Act §7112.

- Title VII – Indian, Native Hawaiian and Alaska Native Education – Part A Indian Education – Subpart 2 – Special Programs and Projects to Improve Educational Opportunities for Indian Children & Professional Development

Eligible entities include SEAs, LEAs, Indian tribe, organization, Indian institution or consortium of such agencies. See Act §§7121, 7122.

- Title VII – Indian, Native Hawaiian and Alaska Native Education – Part A Indian Education – Subpart 3 National Activities – National Research Activities

Eligible entities include LEAs. See Act §7131.

- Title VII – Indian, Native Hawaiian and Alaska Native Education – Part A Indian Education – Subpart 3 National Activities In-Service Training for Teachers of Indian Children

LEAs are eligible to participate as part of a consortia or agencies. See Act §7132.

- Title VII – Indian, Native Hawaiian and Alaska Native Education – Part A Indian Education – Subpart 3 National Activities – Improvement of Educational Opportunities for Adult Indians

Eligible entities include LEAs. See Act §7136.

- Title VIII – Impact Aid Program

A qualified LEA is one whose district encompasses land held in trust by Secretary of the Interior, for which the LEA has no taxing authority, and has not received an Impact Aid payment for fiscal year 2001. See Act, Title VIII, §802.

- Title X – Part C – Homeless Education

Eligible entities include LEAs. See Act, Title X, Part C, §723.

D. ELIGIBILITY AS PUBLIC AGENCIES OR PUBLIC ENTITIES

ESAs are eligible for other federal education programs because they are “public agencies” or “public entities.” Although the Act does not define the terms ‘public agency’ and ‘public entity’, an ESA, by definition is a public agency and public entity. The term ‘educational service agency’ means a regional public multi-service agency. See Sec. 9101(17). Note, some programs allow both LEAs and public agencies to apply for funding. The programs that allow both types of entities to apply for funding are listed in Parts B and C of the memorandum. The following is a list of programs that ESAs are eligible for funding as public entities or public agencies.

- Title II – Part A – Subpart 5 National Activities Early Childhood Educator Professional Development Grants

Grants can be awarded to public or private entities that provide professional development. See Act §2151(e)(c)(a).

- Title V – Part B Public Charter Schools – Subpart 2 – Credit Enhancement Initiatives To Assist Charter School Facility, Acquisition, Construction & Renovation

Eligible entities include: public entities, private nonprofit entities or a consortium of entities. See Act §5230.

- Title V – Part B Public Charter Schools – Subpart 3 – Voluntary Public School Choice Programs

Eligible entities include a partnership of one or more state educational agency, one or more LEA, and a mandatory partnership of other public or nonprofit entities. See Act §5247.

- Title V – Part D – Subpart 21 – Women’s Educational Equity Act

Grants can be awarded to public agencies, organizations, or other public institutions. See Act §5613.

- Title VII – Indian, Native Hawaiian and Alaska Native Education – Part B Native Hawaiian Education

Grants can be awarded to public and private nonprofit organizations with experience in developing or operating Native Hawaiian programs or programs of instructions. See Act §7205.

- Title VII – Indian, Native Hawaiian and Alaska Native Education – Part C Alaska Native Education

Eligible entities include educational entities with experience in developing or operating Alaska Native programs. See Act §7304.

E. ELIGIBILITY ON OTHER BASES

There are other federal education programs for which an ESA may be eligible to participate provided that it is an eligible entity listed in statutory provisions for that program. These programs are listed below.

- Title II – Part C – Subpart 2 – National Writing Project

National Writing Project can enter into contracts with ‘other nonprofit educational providers.’ See Act §2332.

- Title V – Part B Public Charter Schools – Subpart 1

States can apply for grants under this program if charter schools are considered an LEA under state law. Eligible applicants are those charters authorized to operate a charter school by an authorized public chartering authority. An authorized public chartering agency means an SEA, LEA or other public entity that has authority pursuant to state law and approved by the secretary to authorize or approve a charter school. Therefore, for ESAs to qualify as eligible applicants for these grants, they must be recognized under state law as either an authorized chartering authority, or recognized by that authorized public chartering authority. The federal law will defer to the state definitions and charter provisions, and eligibility must be determined on that basis. See Act §5210.

- Title V – Part D – Subpart 8 – Ready to Teach

To be an eligible entity under this program, an ESA must qualify as a local public telecommunications entity which a demonstrated capacity for the development and distribution of educational and instructional television programming of high quality. See Act §5481.

- Title V – Part D – Subpart 12 – Educational Cultural Apprenticeship and Exchange Programs for Alaska Natives, Native Hawaiians and Their Historical Whaling and Trading Partners in Massachusetts

Eligible entities include cultural and educational organizations with experience in developing or operating programs that illustrate and interpret the contributions of Alaska Natives, Native Hawaiians, the whaling industry, etc. See Act §5523.

III. CONCLUSION

ESAs are eligible to receive funding for a number of federal education programs. These provisions allow for technical assistance, information and assistance, and professional development programs to be provided either directly by an SEA or an LEA or indirectly by an ESA. In addition, the No Child Left Behind Act revised the definition of ‘local education agency’ to specifically include ESAs. If an ESA is recognized by the state to serve as an LEA i.e. serve as the administrative agency that controls, directs or performs a service function for public elementary schools or secondary schools in a city, county, township or school district, that ESA can be considered to be an LEA under the Act. By virtue of this change, ESAs are eligible to participate in a larger number of education programs. As described above, it is critical that the ESA be legally constituted under state law to act as the administrative agency for its constituent schools i.e. to act as an LEA, for without that determination, an ESA would not be eligible for federal funding. The controlling factors to determine if an ESA can apply for federal funds as an LEA will be i) the state-defined function of the ESA; ii) the role of the ESA in the state’s public education system; and iii) the purpose for which the grant funds must be used.

In addition, ESAs should be aware that the simple fact that ESAs are considered to be LEAs under the law does not automatically make them eligible for participation in all grant programs for which LEAs are eligible grantees. Each individual grant program may require an agency to possess additional qualifications or expertise in addition to LEA status. We attempted to note the major additional funding requirements for the federal education programs listed above. However, please check the individual program requirements to make sure that the ESAs fall within the definition of eligible entity for that specific program.