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Ed-Flex Authority for State Educational Agencies

The Education Flexibility Act of 1999 (Ed-Flex Act, P.L. 106-25) grants the Secretary of Education (hereinafter referred to as “the Secretary”) the authority to provide Ed-Flex authority to state educational agencies (SEAs). This secretarial authority is in addition to the broad waiver authority available to the Secretary in the Elementary and Secondary Education Act (ESEA). Ed-Flex authority permits an SEA to waive, on behalf of its local educational agencies (LEAs), educational service agencies (ESAs), or schools, a range of statutory and regulatory requirements under selected programs authorized by the ESEA and the Carl D. Perkins Career and Technical Education Act (Perkins Act). This In Focus provides a brief legislative history of this authority and discussion of what provisions SEAs having this authority may be able to waive, how SEAs obtain the authority, and how states use the authority in practice.

Brief Legislative History

The Ed-Flex authority has been authorized since 1994. It started out as a demonstration program in the Goals 2000: Educate America Act (Goals 2000, P.L. 103-227). Ed-Flex authority was initially authorized for up to six states. The authority was modified and the cap on the number of participating states was removed by the Ed-Flex Act. The Ed-Flex Act was most recently comprehensively amended by Section 9207 of the Every Student Succeeds Act (ESSA; P.L. 114-95).

Ed-Flex: Current Authority

The Secretary may grant SEAs Ed-Flex authority to waive statutory and regulatory requirements applicable to one or more programs authorized by the ESEA or the Perkins Act for which the Secretary provides funds to states on a formula basis (e.g., the Perkins Act Basic State Grants program). The ESEA programs under which the Secretary may allow requirements to be waived include the following:

- Title I-A; except for provisions in Section 1111, which include requirements for academic standards, assessments, accountability, and SEA, LEA, and school report cards;
- Title I-C: Education of Migratory Children;
- Title I-D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;
- Title II-A: Supporting Effective Instruction; and
- Title IV-A: Student Support and Academic Enrichment Grants.

Provisions That Cannot Be Waived

There are several statutory and regulatory requirements that neither the Secretary nor an SEA may waive. For example, they are prohibited from waiving any statutory or regulatory requirement related to

- maintenance of effort;
- comparability of services;
- equitable participation of students and professional staff in private schools;
- distribution of funds to LEAs;
- use of federal funds to supplement, not supplant, non-federal funds; and
- applicable civil rights requirements.

In addition, an SEA may only grant a waiver to an LEA, ESA, or school if the SEA can demonstrate that the underlying purposes of the statutory requirements of the program for which the waiver is being granted with still be met “to the satisfaction of the Secretary.”

Ed-Flex Partnership States

States having Ed-Flex authority are referred to as Ed-Flex Partnership States. Currently, 12 states hold this authority. Iowa and Colorado have the authority through the 2029-2030 school year. Delaware, Georgia, Indiana, Massachusetts, North Carolina, Pennsylvania, Texas, Vermont, and Wisconsin have the authority through the 2028-2029 school year. Kansas has the authority through the 2027-2028 school year.

Eligible State

A state is eligible to apply for Ed-Flex authority if it meets specific criteria. First, the state must have developed and implemented the challenging state academic standards and aligned assessments required under Title I-A, Section 1111(b) of the ESEA and be producing the report cards required by Section 1111(h). If a state adopted new academic standards following the enactment of the ESSA, it is eligible if it has made “substantial progress” (as determined by the Secretary) toward developing and implementing such standards and producing the required report cards.

In addition, the state must agree to hold LEAs, ESAs, and schools accountable for meeting the educational goals included in their applications for a waiver, engaging in technical assistance, and, if applicable and appropriate, implementing comprehensive support and improvement (CSI) activities and targeted support and improvement (TSI) activities under ESEA Title I-A, Section 1111(d). The state must also agree to waive state statutory or regulatory

requirements related to education while holding LEAs, ESAs, or schools affected by such waivers accountable for the performance of students affected by such waivers.

State Application

SEAs that want to receive Ed-Flex authority are required to submit an application to the Secretary that demonstrates that the state has adopted an educational flexibility plan (EFP) that includes a description of each of the following:

- the process the SEA will use to evaluate waiver applications of federal or state statutory or regulatory requirements;
- the state statutory and regulatory requirements related to education that will be waived;
- the “clear” educational objectives the state intends to meet under its EFP;
- how the state’s EFP is coordinated with activities included in ESEA Title I-A, Section 1111(b), which focuses on academic standards and assessments; Section 1111(c), which focuses on accountability; and Section 1111(h), which focuses on state, LEA, and school report cards;
- how the SEA will evaluate, in a manner consistent with ESEA Title I-A, student performance in the LEAs, ESAs, and schools affected by the waivers; and
- how the SEA will meet the requirements related to public notice and comment concerning the proposed waiver authority or waivers.

Not later than 90 days after an application is submitted, the Secretary must issue a written decision explaining why an application has been approved or denied and the process for revising and resubmitting the application for reconsideration. The Secretary may only approve an application if they determine that the application demonstrates “substantial promise” of assisting the SEA and affected LEAs, ESAs, and schools in carrying out comprehensive educational reform after considering various factors (e.g., comprehensiveness and quality of EFP).

Duration of SEA Ed-Flex Authority

The Secretary may grant Ed-Flex authority to an SEA for a period of not more than five years. An SEA may request renewal of the authority not later than the date of expiration of the approved authority. Ed-Flex authority is automatically extended until the Secretary has (1) completed a performance review of the SEA’s EFP, and (2) issued a final decision on a pending request for renewal that was submitted by the SEA. If the Secretary determines that the SEA’s performance in meeting its Title I-A achievement goals has not been adequate to justify the continuation of Ed-Flex authority, after notice and an opportunity for a hearing, the Secretary may terminate the authority. The Secretary may also terminate or temporarily suspend the authority of an SEA to grant waivers if there is compelling evidence of systemic waste, fraud, or abuse, or, after notice and the opportunity for a hearing, the SEA’s performance with respect to meeting the objectives of its EFP has been inadequate.

Local Application for a Waiver

Each LEA, ESA, or school requesting a waiver from its SEA of a federal or state statutory or regulatory requirement must submit an application that indicates each federal program affected and each statutory or regulatory provision that will be waived. The application must describe the purposes and overall expected results of waiving each requirement and describe, for each school year, specific, measurable education goals for each LEA, ESA, or school affected by the proposed waiver and for the students served by such LEA, ESA, or school. The application must also explain why the waiver will assist the LEA, ESA, or school in meeting such goals. If the applicant is an LEA or ESA, the application must also address how the agency will meet requirements regarding public notice and comment.

The SEA must evaluate a waiver application in accordance with the SEA’s EFP. An SEA may not approve a waiver request unless the LEA, ESA, or school has developed a local reform plan; the waiver will assist the entity in reaching its educational goals, particularly goals with respect to school and student performance; and the SEA is satisfied that the underlying purposes of the statutory requirements of each program for which a waiver is granted will continue to be met. The SEA is required to annually review the performance of any LEA, ESA, or school granted a waiver of federal statutory or regulatory requirements and shall terminate or temporarily suspend any waiver granted, after notice and opportunity for a hearing, under certain circumstances (e.g., compelling evidence of systemic waste, fraud, or abuse; student achievement has decreased).

Reporting

An SEA with Ed-Flex authority is required to submit an annual report to the Secretary based on the results of its required annual monitoring of waiver recipients. It must also report on the effect of such waivers on school and student performance. Not later than two years after an SEA receives Ed-Flex authority, the SEA annual report must also include data demonstrating the extent to which progress has been made in meeting the state’s educational objectives.

The Secretary must make each submitted state report available to the public and Congress. The Secretary must also submit a report to Congress summarizing the state reports and describing the effects of the Ed-Flex authority on the implementation of state and local reforms and on the performance of students affected by the waivers.

Use of Ed-Flex Authority

In the 2023-2024 school year, ED received reports from 11 states with Ed-Flex authority. Based on these reports, the states approved about 550 waivers in total. The most common use of Ed-Flex authority was to approve LEA waivers of the 15% limit on the carryover of ESEA Title I-A funds from one fiscal year to the next and the requirements that LEAs receiving ESEA Title IV-A grants of at least \$30,000 meet specified spending minimums for various activities.

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