July 24, 2026

The Honorable Joseph Graves
Secretary of Education
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501-2235

Dear Secretary Graves:

I am writing in response to the South Dakota Department of Education's (SD DOE's) requests to the U.S. Department of Education (Department) on July 16, 2026, for (1) a waiver of requirements in the Elementary and Secondary Education Act of 1965 (ESEA) to provide greater flexibility for the use of formula funds the State receives from the Department and (2) an application to participate in the Education Flexibility Program (Ed-Flex) under the Education Flexibility Partnership Act of 1999, as amended by the Every Student Succeeds Act (20 U.S.C. § 5891b).

In the request, you state that approval of its requests will allow SD DOE to better support students, families, educators, schools, and communities by streamlining federal requirements, eliminating unnecessary red tape, aligning spending with local priorities and ensuring that flexibility serves its intended purpose – empowering state and local leaders to make the decisions that best serve South Dakota students. This additional flexibility will support SD DOE in improving student proficiency and overall academic achievement, while maintaining rigorous oversight and accountability for outcomes.

Consolidation of State-Level Activities Funds

After careful consideration of SD DOE's request and following discussions between the Department and SD DOE, I am granting a waiver, pursuant to my authority in ESEA section 8401(b), of the restriction that limits the consolidation of State-level funds under ESEA section 8201(a) and (b) to only State administrative funds. As a result, for the funds awarded to SD DOE from Federal fiscal year (FFY) 2026 to 2029, SD DOE may consolidate State-level activities funds for the following programs:

- Title I, Part B of the ESEA (State Assessments).
- Title II, Part A of the ESEA (Supporting Effective Instruction).
- Title III, Part A of the ESEA (English Language Acquisition).
- Title IV, Part A of the ESEA (Student Support and Academic Enrichment).
- Title IV, Part B of the ESEA (21st Century Community Learning Centers).

Please note that if SD DOE consolidates State-level funds, it must separately consolidate administrative funds from State-level activities funds to maintain a consistency with the statutory distinctions described in these programs. I have found that providing this additional flexibility for the State to best determine how to use its State-level funds will advance student academic achievement. SD DOE may consolidate all funds reserved at the State level for each of the programs listed above through FFY 2029 and use the funds for any allowable use in each of the included programs.

As a reminder, under this expanded ESEA section 8201 authority, SD DOE must still meet all programmatic requirements and responsibilities for each of the covered programs.

Additionally, during the period of this waiver, consistent with ESEA section 8401(e), SD DOE must submit an annual report by October 30 each year that includes the following information for the prior year:

1. How the waiver has decreased administrative burden;
2. How SD DOE used consolidated State-level activities funds;
3. How SD DOE's use of funds under the approved waiver differed from its uses of funds prior to the waiver being granted; and
4. How use of the waiver has contributed to improving student academic achievement in South Dakota.

Ed-Flex Authority

After reviewing SD DOE's request, I am pleased to grant Ed-Flex authority to South Dakota. SD DOE's Ed-Flex authority will extend through the 2030-2031 school year, provided that SD DOE continues to comply with all relevant statutory and regulatory requirements. This includes the requirement under 20 U.S.C. § 5891b(a)(5)(B) to submit annual reports to the Secretary on the results of the State educational agency's (SEA's) oversight of the Ed-Flex program and the impact of the waivers on school and student performance.

Please note that Ed-Flex authority applies only to waivers sought by individual school districts and schools; the statute does not give States the authority to waive Federal requirements that apply to SEAs. An SEA is not authorized to waive any statutory or regulatory requirements relating to:

1. Standards, assessments, and accountability requirements under section 1111 of the Elementary and Secondary Education Act of 1965 (ESEA);
2. Maintenance of effort;
3. Comparability of services;
4. Equitable participation of students and professional staff in private schools;
5. Parental participation and involvement;
6. Distribution of funds to LEAs;
7. Serving eligible school attendance areas in rank order in accordance with section 1113(a)(3) of the ESEA;
8. The selection of a school attendance area or school under subsections (a) and (b) of section 1113 of the ESEA, except that an SEA may grant a waiver to allow a school attendance area or school to participate in activities under Part A of Title I if the percentage of children from low-income families in the school attendance area of such

school or who attend such school is not more than[1] 10 percentage points below the lowest percentage of such children for any school attendance area or school of the local educational agency that meets the requirements of such subsections;

9. Use of Federal funds to supplement, not supplant, non-Federal funds;
10. Applicable civil rights requirements; and,
11. Any requirements that apply to the SEA.

In addition, please note that, for any waiver granted, the SEA must be able to demonstrate that the underlying purposes of the statutory requirements of the program for which a waiver is granted continue to be met (20 U.S.C. § 5891b(c)(2)).

I look forward to working with you as you implement this waiver and continue to use the Ed-Flex authority to improve school and student performance in your State. If you have any questions about this waiver or the Ed-Flex authority, please contact my staff at OESE.Titlei-a@ed.gov.

Sincerely,

Kirsten Baesler

Kirsten Baesler
Assistant Secretary
Office of Elementary and Secondary Education

cc: Shannon Malone and Jordan Varilek, SD DOE

[1] 20 U.S.C. 5891b(c)(1)(G) currently prohibits waivers of the selection of a school attendance area or school under subsections (a) and (b) of section 1113 of the ESEA, except that an SEA may grant a waiver to allow a school attendance area or school to participate in activities under Title I, Part A "if the percentage of children from low-income families in the school attendance area of such school or who attend such school **is not less than** 10 percentage points below the lowest percentage of such children for any school attendance area or school…" (emphasis added). We believe the emphasized language is an error and that this prohibition should mirror the language in ESEA section 8401(c)(10), which prohibits waivers of the selection of a school attendance area or school under sections (a) and (b) of section 1113 of the ESEA, except that the Secretary may grant a waiver to participate in activities under Title I, Part A "if the percentage of children from low-income families in the school attendance area or who attend the school **is not more than** 10 percentage points below the lowest percentage of those children for any school attendance area or school…" (emphasis added).