

# Application for the Educational Flexibility (Ed-Flex) Program



**U.S. Department of Education**  
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## **Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0737. Public reporting burden for this collection of information is estimated to average 40 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit under section 9207 of the Every Student Succeeds Act (ESSA). If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact the Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Washington, DC 20202-3118 at [OESE.titlei-a@ed.gov](mailto:OESE.titlei-a@ed.gov).

## **Introduction**

The Educational Flexibility (Ed-Flex) program is authorized under the Education Flexibility Partnership Act of 1999 and was reauthorized by section 9207 of the Every Student Succeeds Act (ESSA). The Ed-Flex program allows the Secretary to authorize a State educational agency that serves an eligible State to waive statutory or regulatory requirements applicable to one or more the included programs for any local educational agency (LEAs), educational service agency, or school within the State.

## **Designation**

Each eligible State participating in the Ed-Flex program shall be designated an Ed-Flex Partnership State.

## **Covered Programs**

This program permits Ed-Flex States to waive requirements of the following State-administered formula grant programs:

- Title I, Part A: Improving Basic Programs Operated by LEAs (other than section 1111);
- Title I, Part C: Education of Migratory Children;
- Title I, Part D: Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-risk
- Title II, Part A: Supporting Effective Instruction
- Title IV, Part A: Student Support and Academic Enrichment Grants
- The Carl D. Perkins Career and Technical Education Act.

## **Duration of Ed-Flex**

The Secretary will approve the applications for a period of not more than five years. The Secretary may extend the authority of an Ed-Flex Partnership State if the Secretary determines that the authority of the SEA to grant waivers has been effective in enabling the State or affected LEAs, educational service agencies, or schools to carry out their State or local reform plans and to continue to meet the accountability requirements, and has improved student performance.

## **Waivers Not Authorized**

The Ed-Flex program does not authorize an SEA to waive any statutory or regulatory requirements relating to:

1. Standards, Assessments, and Accountability requirements under section 1111 of the 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<sup>1</sup> 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.

An SEA may not grant any statutory or regulatory waiver unless the underlying purposes of the statutory requirements of the program for which a waiver is sought are met. Furthermore, requirements of the Individuals with Disabilities Education Act, or of any programs other than the ESEA programs referenced above and the Perkins program, may not be waived under the Ed-Flex waiver authority.

### **State Oversight**

Each Ed-Flex Partnership State must annually monitor the activities of LEA, educational service agencies, and schools receiving waivers through the Ed-Flex program.

### **Report**

Each Ed-Flex Partnership State must submit to the Department an annual report on the results of monitoring activities and the impact of the waivers on school and student performance. Each such State must include data demonstrating the degree to which progress has been made toward meeting the State's educational objectives. The data, when applicable, must include:

1. Information on the total number of waivers granted for Federal and State statutory and regulatory requirements, including the number of waivers granted for each type of waiver;
2. Information describing the effect of the waivers on the implementation of State and local educational reforms pertaining to school and student performance;
3. Information describing the relationship of the waivers to the performance of schools and students affected by the waivers; and
4. An assurance from State program managers that the data reported are reliable, complete, and accurate, as defined by the State, or a description of a plan for improving the reliability, completeness, and accuracy of such data as defined by the State.

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<sup>1</sup> 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).

## **Public Notice and Comment**

Each SEA seeking waiver authority and each LEA, educational service agency, or school seeking a waiver under the Ed-Flex program must:

1. Provide the public with adequate and efficient notice of the proposed waiver authority or waiver, consisting of a description of the agency's application for the proposed waiver authority or waiver on each agency's website, including a description of any improved student performance that is expected to result from the waiver authority or waiver;
2. Provide the opportunity for parents, educators, school administrators, and all other interested members of the community to comment regarding the proposed waiver authority or waiver;
3. Provide the opportunity in accordance with any applicable State law specifying how the comments may be received, and how the comments may be reviewed by any member of the public; and
4. Submit the comments received with the application of the agency or school to the Secretary or the SEA, as appropriate.

## **Completing and Submitting an Application**

Each SEA must address all of the requirements identified below in its application for Ed-Flex. The Department will review applications as they are received.

Complete applications should be submitted to the Title I mailbox at [OESE.TitleI-A@ed.gov](mailto:OESE.TitleI-A@ed.gov).

## **Application Review**

Within 90 days of receipt of a complete application, the Department will issue a written decision that explains why such application has been approved or disapproved, and the process for revising and resubmitting the application for reconsideration.

The Department may approve an application only if it determines that the application demonstrates substantial promise of assisting the SEA and affected LEAs, educational service agencies, and schools within the State in carrying out comprehensive educational reform, after considering:

1. The eligibility of the State
2. The comprehensiveness and quality of the educational flexibility plan
3. The educational flexibility plan ensures accountability for the activities and goals described in such plan;
4. The degree to which the State's objectives:
  - a. Are clear and can be assessed; and
  - b. Take into account the performance of LEA, educational service agencies, or schools, and students, particularly those affected by waivers;
5. The significance of the State statutory or regulatory requirements relating to education that will be waived; and
6. The quality of the SEA's process for approving applications for waivers of Federal statutory or regulatory requirements and for monitoring and evaluating the results of such waivers.

## Cover Page

<b>Contact Information and Signatures</b>	
SEA Contact (Name and Position):	Telephone:
Mailing Address:	Email Address:
<b>By signing this document, I assure that all application contents are true and complete to the best of my knowledge, and I affirm each assurance listed at the end of the document.</b>	
Authorized SEA Representative (Printed Name)	Telephone:
Signature of Authorized SEA Representative	Date:

## Eligibility Information

*Please check the assurances and provide the necessary information below to demonstrate eligibility for the Ed-Flex program.*

1.  The SEA has:
  - a. Developed and implemented the challenging State academic standards, and aligned assessments, described in section 1111(b) of the ESEA, and is producing the report cards required by section 1111(h) of such Act; or
  - b. If the State has adopted new challenging State academic standards under section 1111(b)(1) of the ESEA, made substantial progress toward developing and implementing such standards and toward producing the report cards required under section 1111(h) of such Act.
  
2.  The SEA will hold LEAs, educational service agencies, and schools accountable for meeting the educational goals described in the local applications and for engaging in technical assistance and, as applicable and appropriate, implementing comprehensive support and improvement activities and targeted support and improvement activities under section 1111(d) of the ESEA.
  
3.  The SEA has waived or will waive State statutory or regulatory requirements relating to education while holding LEAs, educational service agencies, or schools within the State that are affected by such waivers accountable for the performance of the students who are affected by such waivers.
  - a. Describe the State's authority to waive State statutory or regulatory requirements relating to education (i.e. provide legal citations to relevant statute or regulation).

[South Dakota Administrative Rule 24:43:08](#) governs the waiver process for certain administrative rules and Department of Education policies. The SEA cannot waive state statute.

## Descriptions

1. Describe the process the SEA will use to evaluate applications from LEAs, educational service agencies, or schools requesting waivers of
  - A. Federal statutory or regulatory requirements; and
  - B. State statutory or regulatory requirements relating to education.

As a small SEA with teams aligned to develop expertise in regions of the state, SD DOE is well positioned to understand the needs of local districts and the conditions of Local Education Agencies (LEAs) requesting waivers. This deep background knowledge forms the foundation for both programmatic and fiscal staff to evaluate waiver applications, understanding both the benefits as well as the risks, informed by current conditions and prior practices.

A school district may apply to the SD DOE for a waiver from a state administrative rule governing school accreditation in order to implement an alternative plan to meet the administrative rule that will better meet local learning goals, enhance education opportunities, promote equity, or increase accountability. The most common waiver request is to offer a high school level course, taught by a high school certified teacher, to students below grade nine for high school graduation credit. LEAs cannot request nor can the Secretary of Education grant waivers of state statutory requirements pursuant to SDCL § 13-5-34. [South Dakota Administrative Rules Chapter 24:43:08](#) governs the waiver process for certain administrative rules and Department of Education policies.

Once approved to grant waivers, SD DOE will ensure districts are aware of the opportunity to seek a waiver and how it could benefit aligning spending with priorities. SD DOE will accept Educational Flexibility (Ed-Flex) waiver applications from LEAs seeking to waive requirements of the *Every Student Succeeds Act* in a separate process from administrative rule waiver requests.

SD DOE staff will evaluate applications through both a fiscal and programmatic lens. Staff will work with districts to ensure applications are complete and align with ESSA goals. Requests meeting all required elements will be evaluated and undergo final review and determination. Approved requests will be communicated through the SD DOE's traditional practice.

Applications for waivers are not the end of the process, however. SD DOE is committed to continuing its robust fiscal compliance processes to ensure that funds are used in an appropriate manner to benefit students.

2. Describe the State statutory and regulatory requirements relating to education that the State educational agency will waive.

South Dakota is seeking Ed-Flex waivers under the Education Flexibility Partnership Act of 1999, reauthorized by Section 9207 of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA). This authority allows the SD DOE to waive specific statutory or regulatory requirements on behalf of LEAs to provide flexibility in the use of federal funds to better meet the needs of schools and students. Flexibility in three areas of the law will accomplish this goal:

1. Title I Part A Carryover Waiver. South Dakota is requesting the ability to waive at the SEA level the limit that an LEA can only carry over more than 15 percent of its Title I allocation once in a three-year period. Currently this authority rests with the U.S. Department of Education. Yet, the SD DOE is closest to the school districts and understands their needs and circumstances. Granting the SD DOE the ability to waive this cap eliminates a layer of bureaucracy and red tape unnecessary to funding programs that serve the needs of students.

SD DOE will evaluate waiver requests from LEAs under this provision using processes already in place to apply for a waiver. In the request, an LEA must provide:

- The specific federal statute to be waived;
- The federal program(s) affected;
- Why the LEA is requesting the waiver;
- The LEA's funding spend-down plan.

This waiver authority will help the state's largest districts covering the majority of students in the state. Specifically, granting this authority to SD DOE therefore also levels the playing field for all districts receiving Title I federal funding.

2. Title IV, Part A Funding Distribution: SD DOE is requesting to waive the mandatory minimum allocations required under ESSA for use of funds in this area. Current law requires LEAs receiving more than \$30,000 to allocate at least 20 percent of their funding in this area to well-rounded education, 20 percent on safe and healthy students, and a portion on effective use of technology.

SD DOE is seeking flexibility to allow the 17 LEAs with funding above \$30,000 to align spending in this area with actual needs, including as identified in the LEA's Comprehensive Needs Assessment, irrespective of the percentages set in law. Similar to the above requested waiver, this authority levels the playing field in the state and allows all districts to spend federal funds consistent with SD DOE's priorities: improving literacy through adoption of Science of Reading and improving math instruction through implementation of new standards and a move to the explicit instruction instructional methodology. Waiving the required percentages in Title IV, Part A is consistent with focusing control closer to the students the funding will serve.

Districts for whom this flexibility will apply will see the funding parameters in the consolidated grant management system automatically adjusted, therefore reflecting an application for this section that mirrors what the other 130 districts in the state see. Districts will still identify the budget category of spending requests but without the strict parameters in place prior to this waiver authority.

3. Consolidation of State-Level Activities Funds: Current regulation requires states to set aside portions of funds for:
  - Title I, Part B – State Assessments
  - Title II, Part A – Supporting Effective Instruction
  - Title III, Part A – English Language Acquisition
  - Title IV, Part A – Student Support and Academic Enrichment
  - Title IV, Part B – 21st Century Community Learning Centers

SD DOE is requesting a waiver of this requirement to remove barriers currently present to the SEA's ability to focus on priority areas of literacy, family engagement, and mathematics instruction. This will in turn produce a more cohesive use of federal funding. This in turn will also advance student academic achievement and therefore improve student outcomes.

In consolidating these funds SD DOE will separately track use of state-level administrative funds from state-level activities to preserve statutory distinction among the funding streams.

3. Describe the clear educational objectives the State intends to meet under the educational flexibility plan, which may include innovative methods to leverage resources to improve program efficiencies that benefit students.

SD DOE is doubling down on the basics of instruction that have served our republic well for decades – literacy, numeracy, and civics – and supporting educators and families with effective tools to advance those areas. In line with those priorities, SD DOE is seeking to align federal funding resources with the state's priorities to meet the needs of students. Specifically: *OR: SD DOE is looking for measurable gains in ELA proficiency within three years and math proficiency in five years.*

- Improved ELA proficiency, including a 9 percent gain in literacy over 3 years.
- Improved math proficiency, including a 15 percent gain over 5 years.

SD DOE will use the flexibilities to help districts leverage resources and improve outcomes by aligning funding with priorities on the ground, rather than priorities set in Washington, D.C. By staying laser focused on these areas and leveraging the federal resources in that direction will result in better outcomes for students and youth to meet the demands of South Dakota's economy and workforce.

4. Describe how the educational flexibility plan is coordinated with activities described in the Title I, Part A section of the SEA's approved consolidated State plan, consistent with subsections (b), (c), and (d) of section 1111 of the ESEA.

SD DOE is well-versed in this coordination; Ed-Flex will further enhance the SEA's ability on this front. SD DOE provides a district needs assessment that is evidence-based for districts to evaluate their use of funds. Districts must provide a detailed plan of activities that are funded through ESEA and are required to complete an annual budget through the consolidated grants management system ensuring allowability. Budgets are reviewed for integration with activities related to challenging academic standards and academic assessments, the state's accountability system, and school improvement activities as outlined in the approved ESSA State Plan.

5. Describe how the SEA will evaluate (consistent with the requirements of Title I of the Elementary and Secondary Education Act of 1965) the performance of students in the schools, educational service agencies, and LEAs affected by the waivers.

SD DOE values the role of data collection and analysis in determining effective strategies. The opportunity for an Ed-Flex waiver comes at a fortuitous time of renewed emphasis on data collection and analysis. Consistent with efforts to extend and expand the state's State Longitudinal Data System (SLDS), SD DOE has enhanced data collection, quality, and use at the school and LEA levels. This perfectly positions SD DOE to evaluate the performance of students in schools and LEAs that receive waivers. South Dakota does not have educational service agencies.

Additionally, the SD DOE will also utilize the state's accountability system as detailed in its ESSA State Plan to evaluate districts that receive waivers and compare against non-waiver districts' performance. The SD DOE will also adhere to required reporting requirements encompassed in Ed-Flex to evaluate outcomes.

The flexibility provided to LEAs will be evaluated and monitored on an annual basis examining the effective use of funds specific to district and student needs. SD DOE will also ensure that by eliminating the bureaucratic red tape, staff is working with the LEAs to enhance or develop strategies that best meet their desired outcomes.

6. Describe how the SEA met the requirements for Public Notice and Comment to:
  - A. Provide the public with adequate and efficient notice of the proposed waiver authority, consisting of a description of the agency's application for the proposed waiver authority, including a description of any improved student performance that is expected to result from the waiver authority.

The SD DOE will undertake the following steps to ensure a robust opportunity for public input:

- Hold a Committee of Practitioners (COP) meeting to brief this key stakeholder group and receive their input and feedback.
- Distribute the Ed-Flex waiver plan for public comment, including the SD DOE's customary routes and timelines for advertising ESSA public comment opportunities and collecting input.

- B. Provide the opportunity for parents, educators, school administrators, and all other interested members of the community to comment regarding the proposed waiver authority in accordance with any applicable State law specifying how the comments may be received, and how the comments may be reviewed by any member of the public.

The SD DOE will make the Ed-Flex waiver available to the public through its customary ESSA public comment routes. This includes sending notice to the field and posting the opportunity for comment via social media channels. Comments will be collected in both written and electronic form.

7. Submit as an attachment the comments received from Public Notice and Comment with the application of the SEA to the Department.

SD DOE will provide an attachment with all applicable comments received.