

Application for the Educational Flexibility (Ed-Flex) Program



U.S. Department of Education
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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 a 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 less than 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.

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 begin reviewing applications on July 31, 2019.

Complete applications should be submitted to your OESE, State and Grantee Relations (SGR) State mailbox: [state].oese@ed.gov (e.g., Alabama.oese@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.

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Contact Information and Signatures	
SEA Contact: Laurie Matzke Assistant Superintendent	Telephone: 701-328-2284
Mailing Address: North Dakota Department of Public Instruction 600 East Blvd Ave, Dept 201 Bismarck, ND 58505-0440	Email Address: lmatzke@nd.gov
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.	
Authorized SEA Representative (Printed Name) Kirsten Baesler	Telephone: 701-328-4570
Signature of Authorized SEA Representative 	Date: March 2020

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 111(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).

When deemed appropriate and necessary to implement the Innovative Education Program Implementation Proposals, the superintendent may grant a waiver of all or part of a statute as provided in North Dakota Century Code 15.1-06-08.1(2).

History: Effective January 1, 2018

General Authority: NDCC 28-32-02, 15.1-06-08.1(2)

Law Implemented: NDCC 15.1-06-08.1(2)

NDCC 15.1-06-08.1 says:

- 1. The superintendent of public instruction may not waive any statute, in whole or in part, except as provided for in this section.**
- 2. A school or school district may apply to the superintendent of public instruction for a waiver of chapters 15-20.1, 15.1-06, 15.1-18, 15.1-20, 15.1-21, 15.1-22, 15.1-25, 15.1-32, and 15.1-38, or any associated rules, if the waiver:**
 - a. Improves the delivery of education;**
 - b. Improves the administration of education;**
 - c. Provides increased educational opportunities for students; or**
 - d. Improves the academic success of students.**

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.

The assistant superintendent will be the Ed-Flex Program Manager for the state of North Dakota and is responsible for overseeing the application, approval process, and monitoring of Ed-Flex waivers. Any LEA seeking an Ed-Flex waiver must complete and submit an Ed-Flex waiver application. The North Dakota Department of Public Instruction accepts applications at any time.

An Ed-Flex waiver application will undergo an initial review to ensure the waiver request is consistent with Federal and State statute, that requirements concerning public comment have been met, and that an appropriate evaluation plan for the waiver has been proposed. If all initial requirements are satisfied, the waiver will have a more comprehensive review by the state's Ed-Flex Program Manager as well as additional Federal program staff who manage the areas identified with the waiver. A recommendation for approval or denial is then sent to the State Superintendent who makes the final decision as to whether to grant the waiver.

Districts will be notified of the approval or denial of the waiver request within 30 days of submission.

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

Below is a list of the regulatory requirements relating to the submitted Ed-Flex application the North Dakota Department of Public Instruction may waive.

- **Rank-Ordering Waivers of Schools:** This waiver allows a SEA to authorize schools to be served outside of strict rank order. Without a waiver, the ESEA requires LEAs to serve all schools with more than 75% poverty in strict rank order regardless of grade span before an LEA serves any schools at 75% or below.
- **Title I Carryover Waiver:** This waiver allows a SEA to waive the requirements related to the cap of 15% on carryover of Title I funds from one academic year to the next.
- **Title IV Funding Obligations:** If an LEA receives an allocation of \$30,000 or more in a given year, it must meet the required minimums for each content area – 20% for Well-Rounded Education, 20% for Safe and Healthy Students, and some portion for Effective Use of Technology. This waiver allows the SEA to waive the mandatory minimums for each content area if the LEA has a comprehensive needs assessment demonstrating the need to use the funds in a particular area.

- **Title IV Cap on Technology:** A portion of the Title IV funds must be used for activities to support the effective use of technology. Districts may not spend more than 15% of the funds they use for technology for purchasing technology infrastructure including devices, equipment, software applications, platforms, digital instructional resources and/or other one-time IT purchases (ESSA 419(b)). This waiver allows the SEA to waive the 15% cap on technology if the LEA has a strong needs assessment and can demonstrate the need to exceed the cap in order to meet school goals and improve student outcomes.
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.

The North Dakota Department of Public Instruction has developed a K-12 strategic vision that emphasizes robust student outcomes by focusing on school readiness, quality early childhood education, healthy behaviors, career awareness, exploration and preparation, strong educators, and student-centered instruction.

This strategic vision includes the following six overarching goals:

- Increase students who enter kindergarten prepared to learn
- Increase students who demonstrate reading proficiency in 3rd grade
- Increase students who meet expected learning gains each year
- Increase students who engage in learning
- Increase students who graduate choice ready
- Reduce the disparity in achievement for students in poverty and for Native American students

North Dakota believes the Ed-Flex waiver program can assist the North Dakota Department of Public Instruction and LEAs in meeting these student outcomes and overarching goals by encouraging LEAs to use their resources more efficiently, align their funding to their local needs assessment, and ultimately impact student achievement.

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.

North Dakota has a relatively small state education department with 88 employees. Although it is difficult at times to accomplish the vast amount of work to effectively meet our ambitious goals, our small size also allows for maximum collaboration in coordinating our efforts and working cohesively to align our work. As the Ed-Flex manager, the assistant superintendent also oversees the consolidated application process, as well as, the Office of School Approval & Opportunity which administers the state waiver program. Therefore, our

education flexibility plan is strongly coordinated to align all department initiatives. The North Dakota Department of Public Instruction strives to coordinate all these efforts to increase our department's efficiency and improve student outcomes.

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.

The Ed-Flex waiver process in North Dakota will include the following processes to evaluate the performance of students in the LEAs affected by an Ed-Flex waiver.

- a. LEA Self-Evaluation

The North Dakota Ed-Flex waiver application includes a component which requires LEAs on the front end to identify how they will annually monitor the effect of the waiver on student learning. In addition, at the end of the waiver period, the LEA must submit documentation of effectiveness to demonstrate the positive effect the waiver had on the school and student performance.

- b. State Evaluation

North Dakota's approved ESSA plan includes an overview of our accountability system and outlines the indicators utilized in measuring student performance which include:

- North Dakota State Assessment
- ACT
- Student Engagement Surveys
- Choice Ready
- Graduation Rate

The North Dakota Department of Public Instruction staff will review school accountability indicators as well as reports from LEAs to evaluate the effectiveness of the waivers granted and determine whether the waiver should be recommended for renewal or be discontinued.

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.

Prior to submitting this waiver request, North Dakota provided all LEAs in the State with notice and a reasonable opportunity to comment on this request. North Dakota provided such notice by:

- Sending an email to each LEA via the administrative listserv on March 2, 2020.
- Including multiple notifications in the Weekly Blast, which provides key information to all North Dakota educators in a short quick format.
- Including notification in our monthly department newsletter for March 2020.
- Posting the notice on the department's website for a three-week period.

In addition, the state superintendent has three administrative cabinets (Elementary, High School, Superintendent) where this information was shared and discussed during the spring cabinet meetings.

- 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.

All methods of notification listed above informed all stakeholders and interested parties that comments could be submitted through several mechanisms including email or mail. In addition, LEAs were asked within the communication to share the public notice with parents and parent groups. The state superintendent also has a parent cabinet. The application was forwarded to the members of the parent cabinet for review and comment as well.

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

TBD