

Calendar No. 37

106TH CONGRESS
1ST Session

H. R. 800

AN ACT

To provide for education flexibility partnerships.

MARCH 11, 1999

Received; read twice and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

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AN ACT

To provide for education flexibility partnerships.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Education Flexibility
3 Partnership Act of 1999”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) States differ substantially in demographics,
7 in school governance, and in school finance and
8 funding. The administrative and funding mecha-
9 nisms that help schools in 1 State improve may not
10 prove successful in other States.

11 (2) Although the Elementary and Secondary
12 Education Act of 1965 and other Federal education
13 statutes afford flexibility to State and local edu-
14 cational agencies in implementing Federal programs,
15 certain requirements of Federal education statutes
16 or regulations may impede local efforts to reform
17 and improve education.

18 (3) By granting waivers of certain statutory
19 and regulatory requirements, the Federal Govern-
20 ment can remove impediments for local educational
21 agencies in implementing education reforms and
22 raising the achievement levels of all children.

23 (4) State educational agencies are closer to
24 local school systems, implement statewide education
25 reforms with both Federal and State funds, and are
26 responsible for maintaining accountability for local

1 activities consistent with State standards and assess-
2 ment systems. Therefore, State educational agencies
3 are often in the best position to align waivers of
4 Federal and State requirements with State and local
5 initiatives.

6 (5) The Education Flexibility Partnership Dem-
7 onstration Act allows State educational agencies the
8 flexibility to waive certain Federal requirements,
9 along with related State requirements, but allows
10 only 12 States to qualify for such waivers.

11 (6) Expansion of waiver authority will allow for
12 the waiver of statutory and regulatory requirements
13 that impede implementation of State and local edu-
14 cational improvement plans, or that unnecessarily
15 burden program administration, while maintaining
16 the intent and purposes of affected programs, such
17 as the important focus on improving math and
18 science performance under title II of the Elementary
19 and Secondary Education Act of 1965, (Dwight D.
20 Eisenhower Professional Development Program),
21 and maintaining such fundamental requirements as
22 those relating to civil rights, educational equity, and
23 accountability.

24 (7) To achieve the State goals for the education
25 of children in the State, the focus must be on results

1 in raising the achievement of all students, not proc-
2 ess.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) ATTENDANCE AREA.—The term “attend-
6 ance area” has the meaning given the term “school
7 attendance area” in section 1113(a)(2)(A) of the El-
8 elementary and Secondary Education Act of 1965.

9 (2) ED-FLEX PARTNERSHIP STATE.—The term
10 “Ed-Flex Partnership State” means an eligible State
11 designated by the Secretary under section
12 4(a)(1)(B).

13 (3) LOCAL EDUCATIONAL AGENCY; STATE EDU-
14 CATIONAL AGENCY.—The terms “local educational
15 agency” and “State educational agency” have the
16 meaning given such terms in section 14101 of the
17 Elementary and Secondary Education Act of 1965.

18 (4) SECRETARY.—The term “Secretary” means
19 the Secretary of Education.

20 (5) STATE.—The term “State” means each of
21 the 50 States, the District of Columbia, the Com-
22 monwealth of Puerto Rico, and each of the outlying
23 areas.

24 **SEC. 4. EDUCATION FLEXIBILITY PARTNERSHIP.**

25 (a) EDUCATION FLEXIBILITY PROGRAM.—

1 (1) PROGRAM AUTHORIZED.—

2 (A) IN GENERAL.—The Secretary may
3 carry out an education flexibility program under
4 which the Secretary authorizes a State edu-
5 cational agency that serves an eligible State to
6 waive statutory or regulatory requirements ap-
7 plicable to 1 or more programs or Acts de-
8 scribed in subsection (b), other than require-
9 ments described in subsection (c), for the State
10 educational agency or any local educational
11 agency or school within the State.

12 (B) DESIGNATION.—The Secretary shall
13 designate each eligible State participating in the
14 program described in subparagraph (A) to be
15 an Ed-Flex Partnership State.

16 (2) ELIGIBLE STATE.—For the purpose of this
17 subsection the term “eligible State” means a State
18 that—

19 (A)(i) has—

20 (I) developed and implemented the
21 challenging State content standards, chal-
22 lenging State student performance stand-
23 ards, and aligned assessments described in
24 section 1111(b) of the Elementary and
25 Secondary Education Act of 1965, and for

1 which local educational agencies in the
2 State are producing the individual school
3 performance profiles required by section
4 1116(a) of such Act; or

5 (II) developed and implemented con-
6 tent standards and interim assessments
7 and made substantial progress, as deter-
8 mined by the Secretary, toward developing
9 and implementing performance standards
10 and final aligned assessments, and toward
11 having local educational agencies in the
12 State produce the profiles, described in
13 subclause (I); and

14 (ii) holds local educational agencies and
15 schools accountable for meeting the educational
16 goals described in the local applications submit-
17 ted under paragraph (4); and

18 (B) waives State statutory or regulatory
19 requirements relating to education while holding
20 local educational agencies or schools within the
21 State that are affected by such waivers account-
22 able for the performance of the students who
23 are affected by such waivers.

24 (3) STATE APPLICATION.—

1 (A) IN GENERAL.—Each State educational
2 agency desiring to participate in the education
3 flexibility program under this section shall sub-
4 mit an application to the Secretary at such
5 time, in such manner, and containing such in-
6 formation as the Secretary may reasonably re-
7 quire. Each such application shall demonstrate
8 that the eligible State has adopted an education
9 flexibility plan for the State that includes—

10 (i) a description of the process the
11 State educational agency will use to evalu-
12 ate applications from local educational
13 agencies or schools requesting waivers of—

14 (I) Federal statutory or regu-
15 latory requirements as described in
16 paragraph (1)(A); and

17 (II) State statutory or regulatory
18 requirements relating to education;
19 and

20 (ii) a detailed description of the State
21 statutory and regulatory requirements re-
22 lating to education that the State edu-
23 cational agency will waive;

1 (iii) a description of specific edu-
2 cational objectives the State intends to
3 meet under such a plan;

4 (iv) a description of the process by
5 which the State will measure the progress
6 of local educational agencies in meeting
7 specific goals described in subsection
8 (a)(4)(A)(iii); and

9 (v) an assurance that, not less than
10 30 days prior to waiving any Federal stat-
11 utory or regulatory requirement, or in ac-
12 cordance with State law, the State edu-
13 cational agency shall give public notice in
14 widely-read publications, such as large cir-
15 culation newspapers and community news-
16 papers, of its intent to grant such a waiv-
17 er, a description of the Federal statutory
18 or regulatory requirements that the State
19 educational agency proposes to waive, any
20 improved performance of students that is
21 expected to result from the waiver, and the
22 State official—

23 (I) to whom comments on the
24 proposed waiver may be sent by inter-

1 ested individuals and organizations;
2 and

3 (II) who will make all the com-
4 ments received available for review by
5 any member of the public.

6 (B) APPROVAL AND CONSIDERATIONS.—

7 The Secretary may approve an application de-
8 scribed in subparagraph (A) only if the Sec-
9 retary determines that such application dem-
10 onstrates substantial promise of assisting the
11 State educational agency and affected local edu-
12 cational agencies and schools within such State
13 in carrying out comprehensive education re-
14 form, after considering—

15 (i) the comprehensiveness and quality
16 of the education flexibility plan described
17 in subparagraph (A);

18 (ii) the ability of such plan to ensure
19 accountability for the activities and goals
20 described in such plan;

21 (iii) the degree to which the State's
22 objectives described in subparagraph
23 (A)(iii)—

24 (I) are specific and measurable;
25 and

1 (II) measure the performance of
2 local educational agencies or schools
3 and specific groups of students af-
4 fected by waivers;

5 (iv) the significance of the State stat-
6 utory or regulatory requirements relating
7 to education that will be waived; and

8 (v) the quality of the State edu-
9 cational agency's process for approving ap-
10 plications for waivers of Federal statutory
11 or regulatory requirements described in
12 paragraph (1)(A) and for monitoring and
13 evaluating the results of such waivers.

14 (4) LOCAL APPLICATION.—

15 (A) IN GENERAL.—Each local educational
16 agency or school requesting a waiver of a Fed-
17 eral statutory or regulatory requirement de-
18 scribed in paragraph (1)(A) and any relevant
19 State statutory or regulatory requirement from
20 a State educational agency shall submit an ap-
21 plication to the State educational agency at
22 such time, in such manner, and containing such
23 information as the State educational agency
24 may reasonably require. Each such application
25 shall—

1 (i) indicate each Federal program af-
2 fected and the statutory or regulatory re-
3 quirement that will be waived;

4 (ii) describe the purposes and overall
5 expected results of waiving each such re-
6 quirement;

7 (iii) describe, for each school year,
8 specific, measurable, educational goals for
9 each local educational agency, school, and
10 group of students affected by the proposed
11 waiver;

12 (iv) explain why the waiver will assist
13 the local educational agency or school in
14 meeting such goals; and

15 (v) provide an assurance that, not less
16 than 30 days prior to submitting the appli-
17 cation to the State educational agency for
18 a waiver under this section, or in accord-
19 ance with State law, the local educational
20 agency or school shall give public notice in
21 widely-read publications, such as large cir-
22 culation newspapers and community news-
23 papers, of its intent to request the waiver,
24 a description of the Federal statutory or
25 regulatory requirements that will be

1 waived, any improved performance of stu-
2 dents that is expected to result from the
3 waiver, and the name and address of the
4 local educational agency official—

5 (I) to whom comments on the
6 proposed waiver may be sent by inter-
7 ested individuals and organizations;
8 and

9 (II) who will make all the com-
10 ments received available for review by
11 any member of the public.

12 (B) EVALUATION OF APPLICATIONS.—A
13 State educational agency shall evaluate an ap-
14 plication submitted under subparagraph (A) in
15 accordance with the State’s education flexibility
16 plan described in paragraph (3)(A).

17 (C) APPROVAL.—A State educational
18 agency shall not approve an application for a
19 waiver under this paragraph unless—

20 (i) the local educational agency or
21 school requesting such waiver has devel-
22 oped a local reform plan that is applicable
23 to such agency or school, respectively;

24 (ii) the waiver of Federal statutory or
25 regulatory requirements described in para-

graph (1)(A) will assist the local educational agency or school in meeting its educational goals; and

(iii) the State educational agency is satisfied that the underlying purposes of the statutory requirements of each program or Act for which a waiver is granted continue to be met.

(D) TERMINATION.—If a local educational agency or school that receives a waiver under this section experiences a statistically significant decrease in the level of performance in achieving the objectives described in paragraph (3)(A)(iii) or goals in paragraph (4)(A)(iii) for 2 consecutive years, the State educational agency shall, after notice and an opportunity for a hearing to explain such decrease, terminate the waiver authority granted to such local educational agency or school. If, after notice and an opportunity for a hearing, the State educational agency determines that the decrease in performance was justified due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local edu-

1 cational agency or school, the waiver shall not
2 be terminated.

3 (5) OVERSIGHT AND REPORTING.—

4 (A) IN GENERAL.—

5 (i) OVERSIGHT.—Each State edu-
6 cational agency participating in the edu-
7 cation flexibility program under this sec-
8 tion shall annually monitor the activities of
9 local educational agencies and schools re-
10 ceiving waivers under this section. Such
11 monitoring shall include a review of rel-
12 evant audit, technical assistance, evalua-
13 tion, and performance reports.

14 (ii) REPORTING.—The State edu-
15 cational agency shall submit to the Sec-
16 retary an annual report on the results of
17 such oversight and its impact on the im-
18 provement of education programs.

19 (B) PERFORMANCE DATA.—

20 (i) STATE REPORTING.—Not later
21 than 2 years after a State is designated as
22 an Ed-Flex Partnership State, each such
23 State shall include, as part of their report
24 to the Secretary under clause (ii) of sub-
25 paragraph (A), performance data dem-

1 onstrating the degree to which progress
2 has been made toward meeting the objec-
3 tives outlined in section 3(A)(iii). The re-
4 port to the Secretary shall, when applica-
5 ble, include—

6 (I) information on the total num-
7 ber of waivers granted, including the
8 number of waivers granted for each
9 type of waiver;

10 (II) information describing the
11 types and characteristics of waivers
12 granted and their relationship to the
13 progress of local educational agencies
14 and schools toward meeting their per-
15 formance objectives; and

16 (III) an assurance from State
17 program managers that the data used
18 to measure performance of the edu-
19 cation flexibility program under this
20 section are reliable, complete, and ac-
21 curate, as defined by the State, or a
22 description of a plan for improving
23 the reliability, completeness, and accu-
24 racy of such data.

1 (ii) SECRETARY REPORT.—The Sec-
2 retary shall—

3 (I) make each State report avail-
4 able to Congress and the general pub-
5 lic;

6 (II) submit to Congress a report,
7 on a timely basis, that addresses the
8 impact that the education flexibility
9 program under this section has had
10 with regard to performance objectives
11 described in paragraph (3)(A)(iii).

12 The Secretary shall include in the report to
13 Congress an assurance that the data used
14 to measure performance of the education
15 flexibility program under this section are
16 complete, reliable, and accurate or a plan
17 for improving the reliability, completeness,
18 and accuracy of such data.

19 (6) DURATION OF FEDERAL WAIVERS.—

20 (A) IN GENERAL.—The Secretary shall not
21 approve the application of a State educational
22 agency under paragraph (3) for a period ex-
23 ceeding 5 years, except that the Secretary may
24 extend such period if the Secretary determines
25 that such agency's authority to grant waivers

1 has been effective in enabling such State or af-
2 fected local educational agencies or schools to
3 carry out their local reform plans.

4 (B) PERFORMANCE REVIEW.—Three years
5 after a State is designated an Ed-Flex Partner-
6 ship State, the Secretary shall—

7 (i) review the performance of any
8 State educational agency in such State
9 that grants waivers of Federal statutory or
10 regulatory requirements described in para-
11 graph (1)(A); and

12 (ii) terminate such agency's authority
13 to grant such waivers if the Secretary de-
14 termines, after notice and opportunity for
15 a hearing, that such agency has failed to
16 make measurable progress in meeting the
17 objectives outlined in paragraph (3)(A)(iii)
18 to justify continuation of such authority.

19 (7) AUTHORITY TO ISSUE WAIVERS.—Notwith-
20 standing any other provision of law, the Secretary is
21 authorized to carry out the education flexibility pro-
22 gram under this subsection for each of the fiscal
23 years 1999 through 2004.

24 (b) INCLUDED PROGRAMS.—The statutory or regu-
25 latory requirements referred to in subsection (a)(1)(A) are

1 any such requirements under the following programs or
2 Acts:

3 (1) Title I of the Elementary and Secondary
4 Education Act of 1965.

5 (2) Part B of title II of the Elementary and
6 Secondary Education Act of 1965.

7 (3) Subpart 2 of part A of title III of the Ele-
8 mentary and Secondary Education Act of 1965
9 (other than section 3136 of such Act).

10 (4) Title IV of the Elementary and Secondary
11 Education Act of 1965.

12 (5) Title VI of the Elementary and Secondary
13 Education Act of 1965.

14 (6) Part C of title VII of the Elementary and
15 Secondary Education Act of 1965.

16 (7) The Carl D. Perkins Vocational and Tech-
17 nical Education Act of 1998.

18 (c) WAIVERS NOT AUTHORIZED.—The Secretary
19 may not waive any statutory or regulatory requirement of
20 the programs or Acts authorized to be waived under sub-
21 section (a)(1)(A)—

22 (1) relating to—

23 (A) maintenance of effort;

24 (B) comparability of services;

1 (C) the equitable participation of students
2 and professional staff in private schools;

3 (D) parental participation and involve-
4 ment;

5 (E) the distribution of funds to States or
6 to local educational agencies;

7 (F) the selection of schools to participate
8 in part A of title I of the Elementary and Sec-
9 ondary Education Act of 1965, except that a
10 State educational agency may grant waivers to
11 allow schools to participate in part A of title I
12 of such Act if the percentage of children from
13 low-income families in the attendance area of
14 such school or who actually attend such school
15 is within 5 percentage points of the lowest per-
16 centage of such children for any school in the
17 local educational agency that meets the require-
18 ments of section 1113 of the Act;

19 (G) use of Federal funds to supplement,
20 not supplant, non-Federal funds; and

21 (H) applicable civil rights requirements;
22 and

23 (2) unless the underlying purposes of the statu-
24 tory requirements of each program or Act for which

1 a waiver is granted continue to be met to the satis-
2 faction of the Secretary.

3 (d) APPLICATION.—

4 (1) IN GENERAL.—Except as provided in para-
5 graphs (2) and (3), this Act shall not apply to a
6 State educational agency that has been granted
7 waiver authority under the following provisions of
8 law:

9 (A) Section 311(e) of the Goals 2000:
10 Educate America Act.

11 (B) The proviso referring to such section
12 311(e) under the heading “EDUCATION RE-
13 FORM” in the Department of Education Appro-
14 priations Act, 1996 (Public Law 104–134; 110
15 Stat. 1321–229).

16 (2) EXCEPTION.—If a State educational agency
17 that has been granted waiver authority, pursuant to
18 paragraph (1)(A) or (B), applies to the Secretary to
19 extend such authority, the provisions of this Act, ex-
20 cept subsection (e)(1), shall apply to such agency.

21 (3) EFFECTIVE DATE FOR EXISTING ED-FLEX
22 PROGRAMS.—This Act shall apply to a State edu-
23 cational agency described in paragraph (2) begin-
24 ning on the date that such an extension is granted.

25 (e) ACCOUNTABILITY.—

1 (1) EVALUATION FOR ED-FLEX PARTNERSHIP
2 STATES.—In deciding whether to extend a request
3 for a State educational agency’s authority to issue
4 waivers under this section, the Secretary shall review
5 the progress of the State educational agency to de-
6 termine if such agency—

7 (A) makes measurable progress toward
8 achieving the objectives described in the appli-
9 cation submitted pursuant to subsection
10 (a)(3)(A)(iii); and

11 (B) demonstrates that local educational
12 agencies or schools affected by such waiver or
13 authority have made measurable progress to-
14 ward achieving the desired results described in
15 the application submitted pursuant to sub-
16 section (a)(4)(A)(iii).

17 (2) EVALUATION FOR EXISTING ED-FLEX PRO-
18 GRAMS.—In deciding whether to extend a request for
19 a State educational agency described in subsection
20 (d)(2) to issue waivers under this section, the Sec-
21 retary shall review the progress of the agency in
22 achieving the objectives set forth in the application
23 submitted pursuant to subsection (a)(2)(B)(iii) of
24 the Goals 2000: Educate America Act.

1 (f) PUBLICATION.—A notice of the Secretary’s deci-
2 sion to authorize State educational agencies to issue waiv-
3 ers under this section shall be published in the Federal
4 Register and the Secretary shall provide for the dissemina-
5 tion of such notice to State educational agencies, inter-
6 ested parties, including educators, parents, students, advo-
7 cacy and civil rights organizations, other interested par-
8 ties, and the public.

9 (g) EFFECTIVE DATE.—This Act shall be effective
10 during the period beginning on the date of the enactment
11 of this Act and ending on the date of the enactment of
12 an Act (enacted after the date of the enactment of this
13 Act) that reauthorizes the Elementary and Secondary
14 Education Act of 1965 in its entirety.

Passed the House of Representatives March 11,
1999.

Attest:

JEFF TRANDAHL,

Clerk.