

Union Calendar No. 26

106TH CONGRESS
1ST SESSION

H. R. 800

[Report No. 106-43]

To provide for education flexibility partnerships.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1999

Mr. CASTLE (for himself, Mr. ROEMER, Mr. BOEHNER, Mr. DEAL of Georgia, Mr. DEFazio, Mr. DEMINT, Mr. DIAZ-BALART, Mr. DOOLEY of California, Mr. DREIER, Mr. FORBES, Mr. GOODLING, Mr. GRAHAM, Mr. GREENWOOD, Mr. HILLEARY, Mr. HOBSON, Mr. HOEKSTRA, Ms. HOOLEY of Oregon, Mr. SAM JOHNSON of Texas, Mrs. MALONEY of New York, Mr. MORAN of Virginia, Mr. NORWOOD, Mr. PETRI, Mr. SESSIONS, Mr. SHOWS, Mr. SMITH of Washington, Mr. SOUDER, Mrs. TAUSCHER, Mr. UPTON, and Mr. WEYGAND) introduced the following bill; which was referred to the Committee on Education and the Workforce

MARCH 8, 1999

Additional sponsors: Mr. KOLBE, Mr. BARTON of Texas, Mr. GREEN of Texas, Mr. MALONEY of Connecticut, Mr. KUYKENDALL, Mr. HOYER, Mr. REGULA, Mr. DAVIS of Florida, Mrs. JOHNSON of Connecticut, Mr. SHAYS, Mr. MOORE, Mr. WU, Mr. FORD, Ms. PRYCE of Ohio, Mr. PETERSON of Pennsylvania, Mr. TERRY, Mr. UNDERWOOD, Mr. PHELPS, Mr. FROST, Mr. HERGER, Mr. HOEFFEL, Mr. TRANCEDO, Mr. KIND, Mr. LUCAS of Kentucky, Mr. LARGENT, Mr. FLETCHER, Mr. McKEON, Mr. CLEMENT, Mr. SHERMAN, Mrs. MYRICK, Mr. PORTMAN, Ms. STABENOW, Ms. DUNN, Ms. GRANGER, Mr. SMITH of Michigan, Mrs. BIGGERT, and Mr. LATOURETTE

MARCH 8, 1999

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 23, 1999]

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Education Flexibility*
 5 *Partnership Act of 1999”.*

6 **SEC. 2. FINDINGS.**

7 *Congress makes the following findings:*

8 *(1) States differ substantially in demographics,*
 9 *in school governance, and in school finance and fund-*
 10 *ing. The administrative and funding mechanisms*
 11 *that help schools in 1 State improve may not prove*
 12 *successful in other States.*

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

1 (3) *By granting waivers of certain statutory and*
2 *regulatory requirements, the Federal Government can*
3 *remove impediments for local educational agencies in*
4 *implementing education reforms and raising the*
5 *achievement levels of all children.*

6 (4) *State educational agencies are closer to local*
7 *school systems, implement statewide education re-*
8 *forms with both Federal and State funds, and are re-*
9 *sponsible for maintaining accountability for local ac-*
10 *tivities consistent with State standards and assess-*
11 *ment systems. Therefore, State educational agencies*
12 *are often in the best position to align waivers of Fed-*
13 *eral and State requirements with State and local ini-*
14 *tiatives.*

15 (5) *The Education Flexibility Partnership Dem-*
16 *onstration Act allows State educational agencies the*
17 *flexibility to waive certain Federal requirements,*
18 *along with related State requirements, but allows only*
19 *12 States to qualify for such waivers.*

20 (6) *Expansion of waiver authority will allow for*
21 *the waiver of statutory and regulatory requirements*
22 *that impede implementation of State and local edu-*
23 *cational improvement plans, or that unnecessarily*
24 *burden program administration, while maintaining*
25 *the intent and purposes of affected programs, such as*

1 *the important focus on improving math and science*
 2 *performance under title II of the Elementary and*
 3 *Secondary Education Act of 1965, (Dwight D. Eisen-*
 4 *hower Professional Development Program), and*
 5 *maintaining such fundamental requirements as those*
 6 *relating to civil rights, educational equity, and ac-*
 7 *countability.*

8 *(7) To achieve the State goals for the education*
 9 *of children in the State, the focus must be on results*
 10 *in raising the achievement of all students, not process.*

11 **SEC. 3. DEFINITIONS.**

12 *In this Act:*

13 *(1) ATTENDANCE AREA.—The term “attendance*
 14 *area” has the meaning given the term “school attend-*
 15 *ance area” in section 1113(a)(2)(A) of the Elemen-*
 16 *tary and Secondary Education Act of 1965.*

17 *(2) ED-FLEX PARTNERSHIP STATE.—The term*
 18 *“Ed-Flex Partnership State” means an eligible State*
 19 *designated by the Secretary under section 4(a)(1)(B).*

20 *(3) LOCAL EDUCATIONAL AGENCY; STATE EDU-*
 21 *CATIONAL AGENCY.—The terms “local educational*
 22 *agency” and “State educational agency” have the*
 23 *meaning given such terms in section 14101 of the Ele-*
 24 *mentary and Secondary Education Act of 1965.*

1 (4) *SECRETARY.*—*The term “Secretary” means*
 2 *the Secretary of Education.*

3 (5) *STATE.*—*The term “State” means each of the*
 4 *50 States, the District of Columbia, the Common-*
 5 *wealth of Puerto Rico, and each of the outlying areas.*

6 **SEC. 4. EDUCATION FLEXIBILITY PARTNERSHIP.**

7 (a) *EDUCATION FLEXIBILITY PROGRAM.*—

8 (1) *PROGRAM AUTHORIZED.*—

9 (A) *IN GENERAL.*—*The Secretary may*
 10 *carry out an education flexibility program under*
 11 *which the Secretary authorizes a State edu-*
 12 *cational agency that serves an eligible State to*
 13 *waive statutory or regulatory requirements ap-*
 14 *plicable to 1 or more programs or Acts described*
 15 *in subsection (b), other than requirements de-*
 16 *scribed in subsection (c), for the State edu-*
 17 *cational agency or any local educational agency*
 18 *or school within the State.*

19 (B) *DESIGNATION.*—*The Secretary shall*
 20 *designate each eligible State participating in the*
 21 *program described in subparagraph (A) to be an*
 22 *Ed-Flex Partnership State.*

23 (2) *ELIGIBLE STATE.*—*For the purpose of this*
 24 *subsection the term “eligible State” means a State*
 25 *that—*

1 (A)(i) has—

2 (I) developed and implemented the
3 challenging State content standards, chal-
4 lenging State student performance stand-
5 ards, and aligned assessments described in
6 section 1111(b) of the Elementary and Sec-
7 ondary Education Act of 1965, and for
8 which local educational agencies in the
9 State are producing the individual school
10 performance profiles required by section
11 1116(a) of such Act; or

12 (II) developed and implemented con-
13 tent standards and interim assessments and
14 made substantial progress, as determined by
15 the Secretary, toward developing and imple-
16 menting performance standards and final
17 aligned assessments, and toward having
18 local educational agencies in the State
19 produce the profiles, described in subclause
20 (I); and

21 (ii) holds local educational agencies and
22 schools accountable for meeting the educational
23 goals described in the local applications submit-
24 ted under paragraph (4); and

1 (B) waives State statutory or regulatory re-
2 quirements relating to education while holding
3 local educational agencies or schools within the
4 State that are affected by such waivers account-
5 able for the performance of the students who are
6 affected by such waivers.

7 (3) STATE APPLICATION.—

8 (A) IN GENERAL.—Each State educational
9 agency desiring to participate in the education
10 flexibility program under this section shall sub-
11 mit an application to the Secretary at such time,
12 in such manner, and containing such informa-
13 tion as the Secretary may reasonably require.
14 Each such application shall demonstrate that the
15 eligible State has adopted an education flexibil-
16 ity plan for the State that includes—

17 (i) a description of the process the
18 State educational agency will use to evalu-
19 ate applications from local educational
20 agencies or schools requesting waivers of—

21 (I) Federal statutory or regu-
22 latory requirements as described in
23 paragraph (1)(A); and

1 (II) *State statutory or regulatory*
2 *requirements relating to education;*
3 *and*

4 (ii) *a detailed description of the State*
5 *statutory and regulatory requirements relat-*
6 *ing to education that the State educational*
7 *agency will waive;*

8 (iii) *a description of specific edu-*
9 *cational objectives the State intends to meet*
10 *under such a plan;*

11 (iv) *a description of the process by*
12 *which the State will measure the progress of*
13 *local educational agencies in meeting spe-*
14 *cific goals described in subsection*
15 *(a)(4)(A)(iii); and*

16 (v) *an assurance that, not less than 30*
17 *days prior to waiving any Federal statu-*
18 *tory or regulatory requirement, or in ac-*
19 *cordance with State law, the State edu-*
20 *cational agency 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 grant such a waiver,*
24 *a description of the Federal statutory or*
25 *regulatory requirements that the State edu-*

1 cational agency proposes to waive, any im-
2 proved performance of students that is ex-
3 pected to result from the waiver, and the
4 State official—

5 (I) to whom comments on the pro-
6 posed waiver may be sent by interested
7 individuals and organizations; and

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

11 (B) *APPROVAL AND CONSIDERATIONS.*—The
12 Secretary may approve an application described
13 in subparagraph (A) only if the Secretary deter-
14 mines that such application demonstrates sub-
15 stantial promise of assisting the State edu-
16 cational agency and affected local educational
17 agencies and schools within such State in carry-
18 ing out comprehensive education reform, after
19 considering—

20 (i) the comprehensiveness and quality
21 of the education flexibility plan described in
22 subparagraph (A);

23 (ii) the ability of such plan to ensure
24 accountability for the activities and goals
25 described in such plan;

1 (iii) the degree to which the State's ob-
2 jectives described in subparagraph
3 (A)(iii)—

4 (I) are specific and measurable;

5 and

6 (II) measure the performance of
7 local educational agencies or schools
8 and specific groups of students affected
9 by waivers;

10 (iv) the significance of the State statu-
11 tory or regulatory requirements relating to
12 education that will be waived; and

13 (v) the quality of the State educational
14 agency's process for approving applications
15 for waivers of Federal statutory or regu-
16 latory requirements described in paragraph
17 (1)(A) and for monitoring and evaluating
18 the results of such waivers.

19 (4) LOCAL APPLICATION.—

20 (A) IN GENERAL.—Each local educational
21 agency or school requesting a waiver of a Federal
22 statutory or regulatory requirement described in
23 paragraph (1)(A) and any relevant State statu-
24 tory or regulatory requirement from a State edu-
25 cational agency shall submit an application to

1 *the State educational agency at such time, in*
2 *such manner, and containing such information*
3 *as the State educational agency may reasonably*
4 *require. Each such application shall—*

5 *(i) indicate each Federal program af-*
6 *ected and the statutory or regulatory re-*
7 *quirement that will be waived;*

8 *(ii) describe the purposes and overall*
9 *expected results of waiving each such re-*
10 *quirement;*

11 *(iii) describe, for each school year, spe-*
12 *cific, measurable, educational goals for each*
13 *local educational agency, school, or group of*
14 *students affected by the proposed waiver;*

15 *(iv) explain why the waiver will assist*
16 *the local educational agency or school in*
17 *meeting such goals; and*

18 *(v) provide an assurance that, not less*
19 *than 30 days prior to submitting the appli-*
20 *cation to the State educational agency for a*
21 *waiver under this section, or in accordance*
22 *with State law, the local educational agency*
23 *or school shall give public notice in widely-*
24 *read publications, such as large circulation*
25 *newspapers and community newspapers, of*

1 *its intent to request the waiver, a descrip-*
2 *tion of the Federal statutory or regulatory*
3 *requirements that will be waived, any im-*
4 *proved performance of students that is ex-*
5 *pected to result from the waiver, and the*
6 *name and address of the local educational*
7 *agency official—*

8 *(I) to whom comments on the pro-*
9 *posed waiver may be sent by interested*
10 *individuals and organizations; and*

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

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

19 *(C) APPROVAL.—A State educational agen-*
20 *cy shall not approve an application for a waiver*
21 *under this paragraph unless—*

22 *(i) the local educational agency or*
23 *school requesting such waiver has developed*
24 *a local reform plan that is applicable to*
25 *such agency or school, respectively; and*

1 (ii) the waiver of Federal statutory or
2 regulatory requirements described in para-
3 graph (1)(A) will assist the local edu-
4 cational agency or school in meeting its
5 educational goals.

6 (D) *TERMINATION.*—If a local educational
7 agency or school that receives a waiver under
8 this section experiences a statistically significant
9 decrease in the level of performance in achieving
10 the objectives described in paragraph (3)(A)(iii)
11 or goals in paragraph (4)(A)(iii) for 2 consecu-
12 tive years, the State educational agency shall,
13 after notice and an opportunity for a hearing to
14 explain such decrease, terminate the waiver au-
15 thority granted to such local educational agency
16 or school. If, after notice and an opportunity for
17 a hearing, the State educational agency deter-
18 mines that the decrease in performance was jus-
19 tified due to exceptional or uncontrollable cir-
20 cumstances such as a natural disaster or a pre-
21 cipitous and unforeseen decline in the financial
22 resources of the local educational agency or
23 school, the waiver shall not be terminated.

24 (5) *MONITORING.*—

1 (A) *IN GENERAL.*—*Each State educational*
2 *agency participating in the program under this*
3 *section shall annually monitor the activities of*
4 *local educational agencies and schools receiving*
5 *waivers under this section and shall submit an*
6 *annual report regarding such monitoring to the*
7 *Secretary.*

8 (B) *PERFORMANCE DATA.*—*Not later than 2*
9 *years after a State is designated as an Ed-Flex*
10 *Partnership State, each such State shall include*
11 *performance data demonstrating the degree to*
12 *which progress has been made toward meeting*
13 *the objectives outlined in paragraph (3)(A)(iii).*

14 (6) *DURATION OF FEDERAL WAIVERS.*—

15 (A) *IN GENERAL.*—*The Secretary shall not*
16 *approve the application of a State educational*
17 *agency under paragraph (3) for a period exceed-*
18 *ing 5 years, except that the Secretary may ex-*
19 *tend such period if the Secretary determines that*
20 *such agency's authority to grant waivers has*
21 *been effective in enabling such State or affected*
22 *local educational agencies or schools to carry out*
23 *their local reform plans.*

1 (B) *PERFORMANCE REVIEW.*—Three years
 2 after a State is designated an *Ed-Flex Partner-*
 3 *ship State*, the Secretary shall—

4 (i) review the performance of any State
 5 educational agency in such State that
 6 grants waivers of Federal statutory or regu-
 7 latory requirements described in paragraph
 8 (1)(A); and

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

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

21 (b) *INCLUDED PROGRAMS.*—The statutory or regu-
 22 latory requirements referred to in subsection (a)(1)(A) are
 23 any such requirements under the following programs or
 24 Acts:

1 (1) *Title I of the Elementary and Secondary*
2 *Education Act of 1965.*

3 (2) *Part B of title II of the Elementary and Sec-*
4 *ondary Education Act of 1965.*

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

8 (4) *Title IV of the Elementary and Secondary*
9 *Education Act of 1965.*

10 (5) *Title VI of the Elementary and Secondary*
11 *Education Act of 1965.*

12 (6) *Part C of title VII of the Elementary and*
13 *Secondary Education Act of 1965.*

14 (7) *The Carl D. Perkins Vocational and Tech-*
15 *nical Education Act of 1998.*

16 (c) *WAIVERS NOT AUTHORIZED.—The Secretary may*
17 *not waive any statutory or regulatory requirement of the*
18 *programs or Acts authorized to be waived under subsection*

19 *(a)(1)(A)—*

20 *(1) relating to—*

21 *(A) maintenance of effort;*

22 *(B) comparability of services;*

23 *(C) the equitable participation of students*
24 *and professional staff in private schools;*

1 (D) *parental participation and involve-*
2 *ment;*

3 (E) *the distribution of funds to States or to*
4 *local educational agencies;*

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

17 (G) *use of Federal funds to supplement, not*
18 *supplant, non-Federal funds; and*

19 (H) *applicable civil rights requirements;*
20 *and*

21 (2) *unless the underlying purposes of the statu-*
22 *tory requirements of each program or Act for which*
23 *a waiver is granted continue to be met to the satisfac-*
24 *tion of the Secretary.*

25 (d) *APPLICATION.—*

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

5 (A) *Section 311(e) of the Goals 2000: Edu-*
 6 *cate America Act.*

7 (B) *The proviso referring to such section*
 8 *311(e) under the heading “EDUCATION REFORM”*
 9 *in the Department of Education Appropriations*
 10 *Act, 1996 (Public Law 104–134; 110 Stat. 1321–*
 11 *229).*

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

17 (3) *EFFECTIVE DATE FOR EXISTING ED-FLEX*
 18 *PROGRAMS.*—*This Act shall apply to a State edu-*
 19 *cational agency described in paragraph (2) beginning*
 20 *on the date that such an extension is granted.*

21 (e) *ACCOUNTABILITY.*—

22 (1) *EVALUATION FOR ED-FLEX PARTNERSHIP*
 23 *STATES.*—*In deciding whether to extend a request for*
 24 *a State educational agency’s authority to issue waiv-*
 25 *ers under this section, the Secretary shall review the*

1 *progress of the State educational agency to determine*
 2 *if such agency—*

3 *(A) makes measurable progress toward*
 4 *achieving the objectives described in the applica-*
 5 *tion submitted pursuant to subsection*
 6 *(a)(3)(A)(iii); and*

7 *(B) demonstrates that local educational*
 8 *agencies or schools affected by such waiver or au-*
 9 *thority have made measurable progress toward*
 10 *achieving the desired results described in the ap-*
 11 *plication submitted pursuant to subsection*
 12 *(a)(4)(A)(iii).*

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

21 *(f) PUBLICATION.—A notice of the Secretary’s decision*
 22 *to authorize State educational agencies to issue waivers*
 23 *under this section shall be published in the Federal Register*
 24 *and the Secretary shall provide for the dissemination of*
 25 *such notice to State educational agencies, interested parties,*

1 *including educators, parents, students, advocacy and civil*
2 *rights organizations, other interested parties, and the pub-*
3 *lic.*

4 *(g) EFFECTIVE DATE.—This Act shall be effective dur-*
5 *ing the period beginning on the date of the enactment of*
6 *this Act and ending on the date of the enactment of an Act*
7 *(enacted after the date of the enactment of this Act) that*
8 *reauthorizes the Elementary and Secondary Education Act*
9 *of 1965 in its entirety.*

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