

Public Law 106-25
106th Congress

An Act

To provide for education flexibility partnerships.

Apr. 29, 1999

[H.R. 800]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) States differ substantially in demographics, in school governance, and in school finance and funding. The administrative and funding mechanisms that help schools in one State improve may not prove successful in other States.

(2) Although the Elementary and Secondary Education Act of 1965 and other Federal education statutes afford flexibility to State educational agencies and local educational agencies in implementing Federal programs, certain requirements of Federal education statutes or regulations may impede local efforts to reform and improve education.

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

(4) State educational agencies are closer to local school systems, implement statewide educational reforms with both Federal and State funds, and are responsible for maintaining accountability for local activities consistent with State standards and assessment systems. Therefore, State educational agencies are often in the best position to align waivers of Federal and State requirements with State and local initiatives.

(5) The Education Flexibility Partnership Demonstration Act allows State educational agencies the flexibility to waive certain Federal requirements, along with related State requirements, but allows only 12 States to qualify for such waivers.

(6) Expansion of waiver authority will allow for the waiver of statutory and regulatory requirements that impede implementation of State and local educational improvement plans, or that unnecessarily burden program administration, while maintaining the intent and purposes of affected programs, such as the important focus on improving mathematics and science performance under title II of the Elementary and

Education Flexibility Partnership Act of 1999. Inter-governmental relations. 20 USC 5801 note. 20 USC 5891b note.

Secondary Education Act of 1965 (Dwight D. Eisenhower Professional Development Program), and maintaining such fundamental requirements as those relating to civil rights, educational equity, and accountability.

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

20 USC 5891a.

SEC. 3. DEFINITIONS.

In this Act:

(1) LOCAL EDUCATIONAL AGENCY; STATE EDUCATIONAL AGENCY; OUTLYING AREA.—The terms “local educational agency”, “State educational agency”, and “outlying area” have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965.

(2) ELIGIBLE SCHOOL ATTENDANCE AREA; SCHOOL ATTENDANCE AREA.—The terms “eligible school attendance area” and “school attendance area” have the meanings given the terms in section 1113(a)(2) of the Elementary and Secondary Education Act of 1965.

(3) SECRETARY.—The term “Secretary” means the Secretary of Education.

(4) STATE.—The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each outlying area.

20 USC 5891b.

SEC. 4. EDUCATION FLEXIBILITY PARTNERSHIP.

(a) EDUCATIONAL FLEXIBILITY PROGRAM.—

(1) PROGRAM AUTHORIZED.—

(A) IN GENERAL.—The Secretary may carry out an educational flexibility program under which the Secretary authorizes a State educational agency that serves an eligible State to waive statutory or regulatory requirements applicable to one or more programs described in subsection (b), other than requirements described in subsection (c), for any local educational agency or school within the State.

(B) DESIGNATION.—Each eligible State participating in the program described in subparagraph (A) shall be known as an “Ed-Flex Partnership State”.

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

(A) has—

(i) developed and implemented the challenging State content standards, challenging State student performance standards, and aligned assessments described in section 1111(b) of the Elementary and Secondary Education Act of 1965, and for which local educational agencies in the State are producing the individual school performance profiles required by section 1116(a)(3) of such Act; or

(ii)(I) developed and implemented the content standards described in clause (i);

(II) developed and implemented interim assessments; and

(III) made substantial progress (as determined by the Secretary) toward developing and implementing the performance standards and final aligned assessments described in clause (i), and toward having local

educational agencies in the State produce the profiles described in clause (i);

(B) holds local educational agencies and schools accountable for meeting the educational goals described in the local applications submitted under paragraph (4) and for engaging in technical assistance and corrective actions consistent with section 1116 of the Elementary and Secondary Education Act of 1965, for the local educational agencies and schools that do not make adequate yearly progress as described in section 1111(b)(2) of such Act; and

(C) waives State statutory or regulatory requirements relating to education while holding local educational 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.

(3) STATE APPLICATION.—

(A) IN GENERAL.—Each State educational agency desiring to participate in the educational flexibility program under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Each such application shall demonstrate that the eligible State has adopted an educational flexibility plan for the State that includes—

(i) a description of the process the State educational agency will use to evaluate applications from local educational agencies or schools requesting waivers of—

(I) Federal statutory or regulatory requirements as described in paragraph (1)(A); and

(II) State statutory or regulatory requirements relating to education;

(ii) a detailed description of the State statutory and regulatory requirements relating to education that the State educational agency will waive;

(iii) a description of clear educational objectives the State intends to meet under the educational flexibility plan;

(iv) a description of how the educational flexibility plan is consistent with and will assist in implementing the State comprehensive reform plan or, if a State does not have a comprehensive reform plan, a description of how the educational flexibility plan is coordinated with activities described in section 1111(b) of the Elementary and Secondary Education Act of 1965;

(v) a description of how the State educational agency 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 and local educational agencies affected by the waivers; and

(vi) a description of how the State educational agency will meet the requirements of paragraph (8).

(B) APPROVAL AND CONSIDERATIONS.—The Secretary may approve an application described in subparagraph (A)

only if the Secretary determines that such application demonstrates substantial promise of assisting the State educational agency and affected local educational agencies and schools within the State in carrying out comprehensive educational reform, after considering—

(i) the eligibility of the State as described in paragraph (2);

(ii) the comprehensiveness and quality of the educational flexibility plan described in subparagraph (A);

(iii) the ability of the educational flexibility plan to ensure accountability for the activities and goals described in such plan;

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

(I) are clear and have the ability to be assessed; and

(II) take into account the performance of local educational agencies or schools, and students, particularly those affected by waivers;

(v) the significance of the State statutory or regulatory requirements relating to education that will be waived; and

(vi) the quality of the State educational agency's process for approving applications for waivers of Federal statutory or regulatory requirements as described in paragraph (1)(A) and for monitoring and evaluating the results of such waivers.

(4) LOCAL APPLICATION.—

(A) IN GENERAL.—Each local educational agency or school requesting a waiver of a Federal statutory or regulatory requirement as described in paragraph (1)(A) and any relevant State statutory or regulatory requirement from a State educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require. Each such application shall—

(i) indicate each Federal program affected and each statutory or regulatory requirement that will be waived;

(ii) describe the purposes and overall expected results of waiving each such requirement;

(iii) describe, for each school year, specific, measurable, educational goals for each local educational agency or school affected by the proposed waiver, and for the students served by the local educational agency or school who are affected by the waiver;

(iv) explain why the waiver will assist the local educational agency or school in reaching such goals; and

(v) in the case of an application from a local educational agency, describe how the local educational agency will meet the requirements of paragraph (8).

(B) EVALUATION OF APPLICATIONS.—A State educational agency shall evaluate an application submitted

under subparagraph (A) in accordance with the State's educational flexibility plan described in paragraph (3)(A).

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

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

(ii) the waiver of Federal statutory or regulatory requirements as described in paragraph (1)(A) will assist the local educational agency or school in reaching its educational goals, particularly goals with respect to school and student performance; and

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

(D) TERMINATION.—The State educational agency shall annually review the performance of any local educational agency or school granted a waiver of Federal statutory or regulatory requirements as described in paragraph (1)(A) in accordance with the evaluation requirement described in paragraph (3)(A)(v), and shall terminate any waiver granted to the local educational agency or school if the State educational agency determines, after notice and an opportunity for a hearing, that the local educational agency or school's performance with respect to meeting the accountability requirement described in paragraph (2)(C) and the goals described in paragraph (4)(A)(iii)—

(i) has been inadequate to justify continuation of such waiver; or

(ii) has decreased for two consecutive years, unless the State educational agency determines that the decrease in performance was justified due to exceptional or uncontrollable circumstances.

(5) OVERSIGHT AND REPORTING.—

(A) OVERSIGHT.—Each State educational agency participating in the educational flexibility program under this section shall annually monitor the activities of local educational agencies and schools receiving waivers under this section.

(B) STATE REPORTS.—

(i) ANNUAL REPORTS.—The State educational agency shall submit to the Secretary an annual report on the results of such oversight and the impact of the waivers on school and student performance.

(ii) PERFORMANCE DATA.—Not later than 2 years after the date a State is designated an Ed-Flex Partnership State, each such State shall include, as part of the State's annual report submitted under clause (i), data demonstrating the degree to which progress has been made toward meeting the State's educational objectives. The data, when applicable, shall include—

(I) information on the total number of waivers granted for Federal and State statutory and regulatory requirements under this section, including

the number of waivers granted for each type of waiver;

(II) information describing the effect of the waivers on the implementation of State and local educational reforms pertaining to school and student performance;

(III) information describing the relationship of the waivers to the performance of schools and students affected by the waivers; and

(IV) an assurance from State program managers that the data reported under this section 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.

(C) SECRETARY'S REPORTS.—The Secretary, not later than 2 years after the date of the enactment of this Act and annually thereafter, shall—

(i) make each State report submitted under subparagraph (B) available to Congress and the public; and

(ii) submit to Congress a report that summarizes the State reports and describes the effects that the educational flexibility program under this section had on the implementation of State and local educational reforms and on the performance of students affected by the waivers.

(6) DURATION OF FEDERAL WAIVERS.—

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

(i) has been effective in enabling such State or affected local educational agencies or schools to carry out their State or local reform plans and to continue to meet the accountability requirement described in paragraph (2)(C); and

(ii) has improved student performance.

(B) PERFORMANCE REVIEW.—Three years after the date a State is designated an Ed-Flex Partnership State, the Secretary shall review the performance of the State educational agency in granting waivers of Federal statutory or regulatory requirements as described in paragraph (1)(A) and shall terminate such agency's authority to grant such waivers if the Secretary determines, after notice and an opportunity for a hearing, that such agency's performance (including performance with respect to meeting the objectives described in paragraph (3)(A)(iii)) has been inadequate to justify continuation of such authority.

(C) RENEWAL.—In deciding whether to extend a request for a State educational agency's authority to issue waivers under this section, the Secretary shall review the progress of the State educational agency to determine if the State educational agency—

(i) has made progress toward achieving the objectives described in the application submitted pursuant to paragraph (3)(A)(iii); and

(ii) demonstrates in the request that local educational agencies or schools affected by the waiver authority or waivers have made progress toward achieving the desired results described in the application submitted pursuant to paragraph (4)(A)(iii).

(7) **AUTHORITY TO ISSUE WAIVERS.**—Notwithstanding any other provision of law, the Secretary is authorized to carry out the educational flexibility program under this section for each of the fiscal years 1999 through 2004.

(8) **PUBLIC NOTICE AND COMMENT.**—Each State educational agency seeking waiver authority under this section and each local educational agency seeking a waiver under this section—

(A) shall 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 in a widely read or distributed medium, including a description of any improved student performance that is expected to result from the waiver authority or waiver;

(B) shall provide the opportunity for parents, educators, and all other interested members of the community to comment regarding the proposed waiver authority or waiver;

(C) shall provide the opportunity described in subparagraph (B) 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

(D) shall submit the comments received with the agency's application to the Secretary or the State educational agency, as appropriate.

(b) **INCLUDED PROGRAMS.**—The statutory or regulatory requirements referred to in subsection (a)(1)(A) are any such requirements for programs carried out under the following provisions:

(1) Title I of the Elementary and Secondary Education Act of 1965 (other than subsections (a) and (c) of section 1116 of such Act).

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

(3) Subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (other than section 3136 of such Act).

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

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

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

(7) The Carl D. Perkins Vocational and Technical Education Act of 1998.

(c) **WAIVERS NOT AUTHORIZED.**—The Secretary and the State educational agency may not waive under subsection (a)(1)(A) any statutory or regulatory requirement—

(1) relating to—

- (A) maintenance of effort;
- (B) comparability of services;
- (C) equitable participation of students and professional staff in private schools;
- (D) parental participation and involvement;
- (E) distribution of funds to States or to local educational agencies;

(F) serving eligible school attendance areas in rank order under section 1113(a)(3) of the Elementary and Secondary Education Act of 1965;

(G) the selection of a school attendance area or school under subsections (a) and (b) of section 1113 of the Elementary and Secondary Education Act of 1965, except that a State educational agency may grant a waiver to allow a school attendance area or school to participate in activities under part A of title I of such Act 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 (a) and (b);

(H) use of Federal funds to supplement, not supplant, non-Federal funds; and

(I) applicable civil rights requirements; and

(2) unless the underlying purposes of the statutory requirements of the program for which a waiver is granted continue to be met to the satisfaction of the Secretary.

(d) TREATMENT OF EXISTING ED-FLEX PARTNERSHIP STATES.—

(1) IN GENERAL.—Except as provided in paragraphs (3) and (4), this section shall not apply to a State educational agency that has been granted waiver authority under the provisions of law described in paragraph (2) for the duration of the waiver authority.

(2) APPLICABLE PROVISIONS.—The provisions of law referred to in paragraph (1) are as follows:

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

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

(3) SPECIAL RULE.—If a State educational agency granted waiver authority pursuant to the provisions of law described in subparagraph (A) or (B) of paragraph (2) applies to the Secretary for waiver authority under this section—

(A) the Secretary shall review the progress of the State educational agency in achieving the objectives set forth in the application submitted pursuant to section 311(e) of the Goals 2000: Educate America Act; and

(B) the Secretary shall administer the waiver authority granted under this section in accordance with the requirements of this section.

(4) TECHNOLOGY.—In the case of a State educational agency granted waiver authority under the provisions of law described in subparagraph (A) or (B) of paragraph (2), the Secretary shall permit a State educational agency to expand, on or after

the date of the enactment of this Act, the waiver authority to include programs under subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (other than section 3136 of such Act).

(e) PUBLICATION.—A notice of the Secretary's decision to authorize State educational agencies to issue waivers under this section, including a description of the rationale the Secretary used to approve applications under subsection (a)(3)(B), shall be published in the Federal Register and the Secretary shall provide for the dissemination of such notice to State educational agencies, interested parties (including educators, parents, students, and advocacy and civil rights organizations), and the public.

Federal Register,
publication.
Public
information.

SEC. 5. FLEXIBILITY TO DESIGN CLASS SIZE REDUCTION PROGRAMS.

Section 307 of the Department of Education Appropriations Act, 1999, is amended—

(1) in subsection (b)(2), by inserting “(except as provided in subsection (c)(2)(D))” before the period; and

(2) in subsection (c)(2), by adding at the end the following: “(D) If a local educational agency has already reduced class size in the early grades to 18 or fewer children and intends to use funds provided under this section to carry out professional development activities, including activities to improve teacher quality, then the State shall make the award under subsection (b) to the local educational agency without requiring the formation of a consortium.”

112 Stat.
2681-375.

SEC. 6. ALTERNATIVE EDUCATIONAL SETTING.

(a) IN GENERAL.—Section 615(k)(1)(A)(ii)(I) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(k)(1)(A)(ii)(I)) is amended to read as follows:

“(I) the child carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or a local educational agency; or”.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to conduct occurring not earlier than the date of the enactment of this Act.

20 USC 1415
note.

Approved April 29, 1999.

LEGISLATIVE HISTORY—H.R. 800 (S. 271) (S. 280):

HOUSE REPORTS: Nos. 106-43 (Comm. on Education and the Workforce) and 106-100 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 145 (1999):

Mar. 10, considered in House.

Mar. 11, considered and passed House; passed Senate, amended, in lieu of S. 280.

Apr. 21, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 35 (1999):

Apr. 29, Presidential remarks.