

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.

Cover Page

Contact Information and Signatures	
SEA Contact (Name and Position): Doug Boline	Telephone: 785-296-2600
Mailing Address: 900 SW Jackson Street Suite 620 Topeka, KS 66612-1212	Email Address: dboline@ksde.org
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) Dr. Randy Watson	Telephone: (785) 296-3202
Signature of Authorized SEA Representative 	Date: 10/26/2022

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).

The Kansas State Department of Education has little authority to waive State Statutory requirements except for the following:

72-1106 - (f) The state board of education may waive the requirements of law relating to the duration of the school term upon application for such waiver by a school district.

72-9201. Alternative schools; authorization to establish; waiver from certain requirements, how acquired; terms and conditions. The board of education of any school district may establish an alternative school or schools at any of the levels of grade seven or above to provide an educational alternative for students determined by such board of education to be unable to benefit from other schools of the school district. Courses of instruction and other requirements of statutes and rules and regulations shall apply to any such schools to the extent that the same are not obstructive to programs of learning and instruction in such schools. In the event the board of education determines that it is desirable to vary in some manner from the terms and conditions of a statute or the rules and regulations of the state board of education, such board of education shall make application to the state board of education for a complete or partial waiver of such statutory or rule and regulation requirements, and upon approval of such application, or amendment and approval thereof, the board of education shall be authorized to operate such alternative school under the terms and conditions of such waiver

until such time as the waiver may be rescinded or modified by the state board, or by act of the legislature.

72-1906 - (h) If a charter school that has been approved for establishment has sought waiver from any school district policy or state board of education rules and regulations, the board of education of the school district in which the charter school will be established may consider the reasons for which the waivers have been requested. If the board of education determines that the reasons for seeking such waivers are meritorious and legitimately related to successful operation of the charter school, the board of education may grant waiver of school district policy and may make application, on behalf of the charter school, to the state board of education for waiver of state board rules and regulations. The state board may consider the application for waiver and approve, deny, or amend and approve the application. Upon approval or amendment and approval of the application, the charter school may operate under the terms and conditions of the waiver. The manner and method of exercising the rights and performing the responsibilities, duties and functions provided for under any school district policy or state board rules and regulations that are waived under authority of this subsection shall be prescribed in the charter and governed thereby.

72-5538. Federal fund applications by state board of education; direct application by school districts. In the event the designation of a "state education agency" is required by federal laws now or hereafter enacted which make available federal funds for educational purposes, the state board of education is designated as the "state education agency" through which applications, reports, agreements and federal funds are to be channeled; and said "state education agency" is hereby authorized and empowered to do all things necessary to comply with and carry out any such federal law or the rules and regulations promulgated thereunder by the federal government or any agency thereof. Nothing contained in this section shall be construed as preventing any board of education or any educational agency of this state from making direct applications for or receiving directly federal funds made available for educational purposes in those cases where the federal law permits direct applications for and receipt of federal funds by any such board of education or its school district or educational agency of this state.

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.

Any district seeking an Ed-Flex waiver must complete and submit an Ed-Flex Waiver Application to Kansas State Department of Education, Special Education and Title Services, 900 SW Jackson St, Suite 620., Topeka, KS, 66612-1212. KSDE will accept applications from the district and not from individual buildings. The district application may involve several schools and programs.

□ Ed-Flex Waiver Applications may be submitted at any time. The time from submission to KSDE to final action by the Kansas State Board of Education may take six weeks.

□ The Director and an Assistant Director of the Title Programs and Services Team will screen the Ed-Flex Waiver Applications for completeness and appropriateness.

□ Applications passing the initial screening will be submitted to the Ed-Flex Waiver Committee for review and recommendation. The Waiver Committee, which meets as necessary, will consider the following criteria when reviewing an Ed-Flex waiver request:

1. *Is the underlying purpose of the specific program for which the waiver is requested being met?*
2. *Is the waiver requested needed to implement State and local reform initiatives?*
3. *Does the request contribute to helping all students reach high standards and include the needs of high-risk populations?*
4. *To what extent does the waiver enhance the school's ability to implement activities directed toward its school improvement plan as developed through Kansas Education Systems Accreditation?*
5. *To what extent does the waiver assist in improving student achievement?*
6. *Are the educational goals measurable and specific for the schools and for the students affected by the waiver? Does the waiver requested assist in meeting those educational goals?*
7. *Does the applicant sufficiently address each of the Ed-Flex application requirements?*

□ Recommendations of the Waiver Committee will be submitted to the Kansas State Board of Education for final action at a regularly scheduled meeting. The State Board may grant full or partial waiver(s) if multiple waivers and/or programs are submitted. Districts will be notified of the granting or denial of their waiver requests after the meeting..

2. Describe the State statutory and regulatory requirements relating to education that the State educational agency will waive.
 1. *The requirements in ESEA section 1113(a)(3)-(4) and (c)(1) that require an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering.*
 2. *Waiver of Title I, Part A, 15% Roll Forward Limitation [ESSA, Section 9207] An LEA that receives a significant increase in final allocations may apply for/utilize this Ed-Flex waiver if the LEA has already utilized a Title I, Part A statutory roll forward waiver within the last 3 years.*
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.

1. *Would allow LEAs to skip funding high schools with greater than 75% poverty in rank order, as long as it can be verified that Title IA like services were provided through other funding. In Kansas, this is specifically At-Risk supplemental funding.*
 2. *Allows for LEAs to utilize funding more meaningfully by providing additional time that will account for extenuating circumstances: e.g. most Title I funding is tied up in staffing. With Kansas teacher shortages, staffing is sometimes difficult to fill quickly when someone resigns. Instead of the LEA purchasing large amount of supplies/equipment with the unused funds neat the end of the project period, it can increase personnel services once replacement staff is hired to provide additional services to students through additional time.*
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.
 1. *By allowing districts the flexibility to not serve high poverty high schools, districts would be able to focus their Title IA funding on lower grade levels, where the impact of practices may show greater results earlier.*
 2. *The additional carryover period allows for additional time to expend funds when extenuating circumstances arise, which will increase the percentage of funding dedicated to direct services rather than the purchase of supplies/materials to comply with carryover provisions. Qualified people make the difference for students. (c) Accountability: All LEAs, including schools, will still be held accountable for the metrics as dictated in Kansas’s ESSA plan. With the additional or more meaningful services, as described in (b),KSDE believes that the performance of the eligible LEAs will improve as compared to previous performance. The focus of federal funding should be upon effectiveness rather than compliance. Furthermore, all LEA waiver requests will be annually reviewed by the KSDE to measure effectiveness, to ensure that the LEAs are making progress toward stated goals and intended outcomes are occurring.*
 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.

Any district receiving an Ed-Flex waiver will be reviewed annually to evaluate the performance of students in the schools and districts affected by the waivers. Districts receiving waiver authority will be held accountable primarily through the results from State assessments. Student results from the State assessments will be analyzed for positive growth for all students affected by the waivers. Schools not demonstrating the established annual benchmarks for progress within a two-year period will not be granted continued waiver authority.. Schools and districts may, in addition to State assessments, use locally-determined indicators for evaluation.
 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 KSDE met the requirements for Public Notice and Comment by posting its proposed Educational Flexibility (Ed-Flex) program application on its public

Federal Programs website homepage for a 30 day period between September 21, 2022 and October 21, 2022. The public posting included a direct link to the SETS Announcements page [SETS Announcements \(ksde.org\)](https://ksde.org) for the submission, collection, and review of comments.

- 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.

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

The KSDE did not receive any comments during the Public Notice and Comment period.