

# Application for the Educational Flexibility (Ed-Flex) Program



**U.S. Department of Education**  
**Issued: June 13, 2019**

OMB Number: 1810-0737  
Expiration Date: December 31, 2021

**Paperwork Burden Statement** According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0737. The time required to complete this information collection is estimated to average 40 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this collection, please write to: U.S. Department of Education, Washington, DC 20202-4537. If you have comments or concerns regarding the status of your individual submission of this collection, write directly to: Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Ave., S.W., Washington, DC 20202-3118.

## **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

<b>Contact Information and Signatures</b>	
<b>SEA Contact (Name and Position):</b>  Vivian Smyrl Director of Program Implementation	<b>Telephone:</b>  (512) 463-8992
<b>Mailing Address:</b>  1701 N. Congress Avenue Austin, Texas 78701-1494	<b>Email Address:</b>  <a href="mailto:ESSASupport@tea.texas.gov">ESSASupport@tea.texas.gov</a>
<b>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.</b>	
<b>Authorized SEA Representative (Printed Name)</b>  Cory Green, Associate Commissioner Grant Compliance and Administration	<b>Telephone:</b>  (512) 463-8992
<b>Signature of Authorized SEA Representative</b>	<b>Date:</b>

## 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 Commissioner of Education has the authority to waive State statutory and regulatory requirements relating to education, as stated in the Texas Education Code § 7.056.*

## 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.

A. *Federal Waiver Process:*

*All Ed-Flex waivers, when initially proposed, undergo a preliminary review to ensure that the waiver is not prohibited by statute, that the requirements concerning public comment have been met, and that an appropriate evaluation measure for the waiver has been proposed. The waivers are then reviewed by the state's Title I Committee of Practitioners, which also serves as the state's Ed-Flex Committee. The Committee makes a recommendation for approval or denial to the Commissioner of Education, who makes the final decision as to whether to grant the waiver.*

*The Texas Education Agency has identified three types of waivers to make available to LEAs under the Ed-Flex waiver authority: Statewide Administrative Waivers, Statewide Programmatic Waivers, and Individual Programmatic Waivers. Each type of waiver has a different application and review/approval process.*

- *Statewide Administrative Waivers: Statewide Administrative Waivers address the regulations governing the application for funds and certain recordkeeping provisions. Applications of this type generally are proposed by TEA staff with input from LEAs, for the benefit of LEAs. When a new Statewide Administrative Waiver is being considered, the proposed waiver is published on the TEA web site, and a statewide bulletin is distributed to solicit public comment. The proposed waiver, including the preliminary staff review and any public comment received, is then reviewed by the Ed-Flex Committee, which makes a recommendation to the Commissioner. If approved by the Commissioner, such a waiver is automatically ~~granted~~ approved through the Consolidated Federal Grant Application to all LEAs. The General Provisions and Assurances for ESSA and for Perkins, which are accepted by the LEA through the Consolidated Federal Grant Application, contain the required description of the Statewide Administrative waivers, along with the expectations for LEA monitoring. The Statewide Administrative waivers are, ~~as~~ applicable for each grant period, for the duration of the state's waiver authority under Ed-Flex, and contingent on the state meeting the evaluation criteria ~~stated below~~. Evaluation Criteria: The effectiveness of the Statewide Administrative waivers will be evaluated based on student performance on the state assessment in Reading and Math for "All Students" statewide. If student performance fails to improve statewide for two consecutive years, the waivers will be reviewed by the Committee of Practitioners (which serves as the Ed-Flex Committee) to determine if changes should be recommended to the Commissioner. It is anticipated that Statewide Administrative waivers will reduce the administrative burden and provide additional time for instruction and planning, resulting in improved student performance. Public Comment: Because the LEA's Consolidated Application for Federal Funding must be made available for public comment (ESEA section 8306(a)(7)) prior to*

*submission, the required public comment concerning the application for the Statewide Administrative waivers will be met through that process. There will be no need for the LEA to conduct a separate public comment process concerning its application for the Statewide Administrative waivers in order to meet the public comment requirement in Ed-Flex.*

*Statewide Administrative Waivers currently in use waive the following requirements:*

- 1. Submission of an Amendment to Transfer Funds for Training Costs  
This waiver eliminates the need for an amendment to transfer funds budgeted for training costs that are direct payments to trainees as long as the program description in the application remains unchanged.*
- 2. Certification that an Employee is Funded from a Single Fund Source or Cost Objective  
This waiver eliminates the time and effort requirement such as charges for salaries and wages being supported by a semi-annual certification that the employee worked solely on that program for the period covered by the certification. This waiver is allowable as long as the employee's job description clearly states that the employee is assigned 100 percent to the program or single cost objective.*

- Statewide Programmatic Waivers: Statewide Programmatic Waivers address the design and delivery of federal programs covered under Ed-Flex. These waivers allow educators the flexibility to use federal program funds in ways that may result in significant gains in student performance. When a new Statewide Programmatic Waiver is being considered, the proposed waiver is published on the TEA web site, and a statewide bulletin is distributed inviting public comment. The proposed waiver, including the preliminary staff review and any public comment received, is then reviewed by the Ed-Flex Committee, which makes a recommendation to the Commissioner. If approved by the Commissioner, such a waiver may be requested by an individual LEA through the LEA's original ESSA Consolidated Federal Grant Application. The waiver request is reviewed by the Grants Administration Division to determine its applicability and is approved or denied during the negotiation process for the Consolidated application.*

*Statewide Programmatic Waivers currently in use waive the following requirements:*

- 1. Threshold for Eligibility to Implement Title I, Part A, Schoolwide Programs [ESSA, Section 9207]  
This waiver allows any campus otherwise eligible to receive Title I, Part A, funds to implement a Title I, Part A, schoolwide program regardless of the percentage of students from low-income families.*
  - 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.*
- Individual Programmatic Waivers: Individual programmatic waivers provide LEAs and campuses flexibility in the use of federal program funds based on the barriers preventing student achievement. To request an individual programmatic waiver, an LEA must*



*submit a separate Ed-Flex waiver application, available at [https://tea.texas.gov/Finance\\_and\\_Grants/Grants/Ed-Flex\\_Waivers/](https://tea.texas.gov/Finance_and_Grants/Grants/Ed-Flex_Waivers/).*

*TEA staff will review each waiver application to ensure that it was approved by the local board of trustees, signed by the superintendent, includes comments of the appropriate site-based decision-making committee, and identifies a technical assistance provider that will be used if the required annual gains in student performance are not met. A written staff analysis will be forwarded with the waiver to the Ed-Flex Committee for consideration. The committee's recommendation regarding the approval of the waiver, as well as the evaluation criteria that must be met, will be forwarded to the Commissioner of Education for final action.*

*B. State Waiver Process:*

*The Commissioner of Education has the authority to waive State statutory and regulatory requirements relating to education, as stated in the Texas Education Code §7.056 . Waiver applications for some, but not all, waivers of state statutory or regulatory requirements are coordinated through the agency's state waivers division. After local board approval, LEA authorized users draft, and superintendents submit, the appropriate application along with required supporting and supplemental documentation through the agency's waivers web application. All Expedited, Attendance, and Class Size Exception waiver applications are evaluated against established criteria (detailed within each application) and acted upon by waivers division staff. General waivers (including "other") are routed by waivers staff through the web application to the appropriate agency division responsible for overseeing the statutory and regulatory requirements associated with each respective general waiver application. Upon division and/or commissioner determination, each application is routed back to waivers division staff to input approval/denial information and any accompanying correspondence. Regardless of the waiver type, if no action is taken by agency staff within 30 days, the application is automatically approved. LEA determination notifications are automatically communicated via email. State waiver applications that are available but not detailed below are received, evaluated, and acted upon by the respective division staff responsible for the associated requirement using their own established processes, mechanisms and timelines.*

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

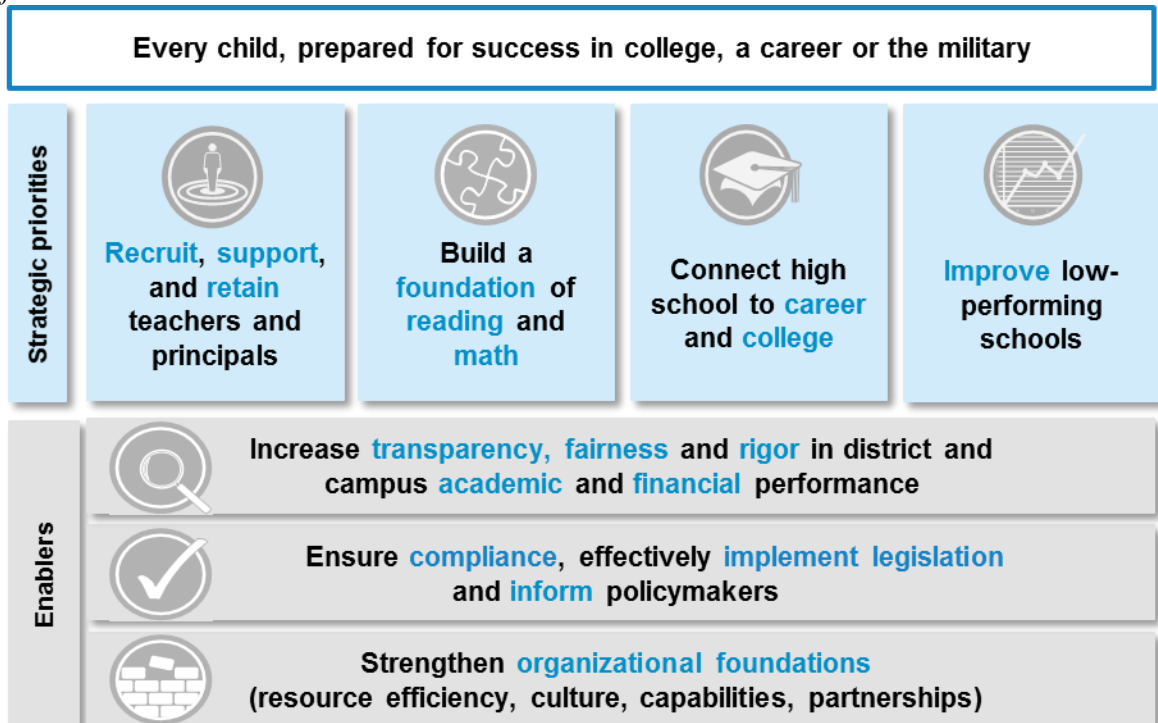
*The waivers division receives and the agency considers applications for the following types of state waivers:*

- *Expedited*
  - *Staff Development Minutes*
  - *Modified Schedule for State Assessment Testing Days*
  - *Foreign Exchange Student (5 or more)*

- *Timeline for Accelerated Instruction*
- *Teacher Data Portal of the Texas Assessment Management System*
- *General*
  - *Course Requirement*
  - *Course Requirement (Career and Technical Education)*
  - *Teacher Certification*
  - *Superintendent Certification*
  - *Pregnancy Related Services on Campus*
  - *Foreign Exchange Student (less than 5)*
  - *Other Specific Waiver*
- *Attendance*
  - *Missed School Days*
  - *Low Attendance Days*
- *Class Size Exception*

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.

*In the fall of 2016, the Texas Education Agency (TEA) announced a new comprehensive strategic plan outlining the Agency’s transformative effort to improve alignment, focus, and performance in service of strengthening academic outcomes for over five million students in public schools across Texas. This effort, which included extensive research and stakeholder engagement, resulted in the development of a new mission supported by four strategic priorities and three enablers that will drive and focus TEA’s work going forward.*



*The waivers that TEA seeks to implement under Ed-Flex support this strategic plan. By reducing administrative burdens, TEA will be able to provide LEAs with opportunities to use their resources more efficiently and maximize the effectiveness of the programs provided to students in greatest need.*

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.

*TEA's educational flexibility plan is coordinated with activities described in the Title I, Part A section of the state's approved Consolidated State Plan. All waivers granted under Ed-Flex are tied in some way to helping students reach the state's challenging academic standards, whether directly at the individual LEA or campus level, or by improving the effectiveness or efficient use of resources by all LEAs to support that goal. For example, the Statewide Administrative waivers promote efficiencies that can be achieved by streamlining or eliminating paperwork-intensive requirements that take time away from the implementation of the actual program. The Statewide Programmatic and Individual Programmatic waivers offer LEAs increased program flexibility in exchange for increased accountability by requiring improvement in student performance, either as a whole or for targeted student groups, as established by the Ed-Flex Committee.*

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.

*Each Ed-Flex waiver includes an evaluation component that is recommended by the Ed-Flex Committee in order to determine the effectiveness of the waiver. Depending on the type of waiver, evaluation components have included student performance, attendance rates, or graduation rates, consistent with section 1111 of the ESEA. At the end of each waiver period, or at intermediate points set by the Ed-Flex Committee, TEA staff will evaluate the effectiveness of the waivers granted to determine whether the waiver should be recommended for renewal or 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.

*In order to meet the requirements for Public Notice and Comment, TEA posted this application for the proposed waiver authority on its web site for a minimum of two weeks prior to submitting it to the USDE for review. An online link was provided to facilitate the submission of comments by interested parties to the Federal Program Compliance Division of TEA. A statewide notice was disseminated in the form of a "To The Administrator Addressed" letter, informing all LEAs in the state about TEA's intent to apply and the opportunity to provide comment in advance of the submission.*

- 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.

*A bulletin describing the waiver application and opportunity to comment was also distributed through TEA's ESSA Program Support listserv, which has more than 23,000 subscribers statewide. In addition, the notice was disseminated to all 20 regional education service centers for distribution to LEAs, educators, and parents within their respective regions.*

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