

# 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.

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| <b>Contact Information and Signatures</b>   |  |
|---|--|
| <b>SEA Contact</b> (Name and Position):<br><br>Anne Bordonaro, Division Director, Federal and Education Support Programs  | Telephone:<br><br>802-479-1191                   |
| Mailing Address:<br><br>219 N Main St Suite 402, Barre, VT 05641  | Email Address:<br><br>anne.bordonaro@vermont.gov |
| <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><br><br>Dan French, Secretary, VT Agency of Education  | Telephone:<br><br>802-828-1130                   |
| <b>Signature of Authorized SEA Representative</b>   | Date:  |

## 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.

**Vermont's ESSA plan was approved in August 2017. The state's plan includes challenging academic standards and aligned assessments in the required areas of English language arts, mathematics, and science, as well as physical education. English language learners and students with disabilities are integrated within the state's assessment system per ESSA regulations. Assessment results are disaggregated as required. Indeed, because of its small student population, which yields very small N-sizes for some equity calculations, Vermont has elected to disaggregate two additional sub-group categories in order to better track equity gaps in student performance.**

**The first report cards produced since the plan's approval were issued on June 20, 2019, using data from the 2017-2018 school year. The state's report card, called the Annual Snapshot, includes elements required under section 1111(h) of ESSA, as well as additional state-developed indicators of school and LEA performance. The press release may be viewed here**

**<https://education.vermont.gov/sites/aoe/files/documents/edu-press-release-annual-snapshot.pdf>**

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.

**The State implements a comprehensive Education Quality Review process to guide improvement in all of its LEAs and schools. This process is described in the State's approved ESSA plan. Through this process, the State has made the first round of determinations of schools in need of Comprehensive Support and Improvement and Targeted Support and Improvement as required under section 1111(d) of ESSA. The SEA provides additional funding and substantial technical assistance to support implementation of effective needs assessment, improvement planning, and evaluation processes in each of the identified schools.**

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).

**Title 16 of the Vermont Statutes, Chapter 3 (3 V.S.A. §164) specifies that the State Board of Education (VSBE) is responsible for the establishment, advancement, and evaluation of public education policy in Vermont. Included within this charge is authority to adopt, amend, or repeal education rules or procedures. Additionally, under VSBE Rule 1260, the State Board may waive its own rules “when necessary for school districts to carry out locally established objectives.” In order to carry out its responsibilities, the State Board also may delegate its authority to waive rules in specified instances to the Secretary of Education. More broadly, the Secretary of Education also may initiate recommendations for adoption, amendment, repeal, or waiver of State Board rules. Impetus for such recommendations may come from the field, Agency staff, or members of the public at large.**

## **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.

**The SEA has been granted Ed Flex waiver authority by the Department for a number of years. The SEA intends to continue to use its existing process, which has proven effective, to evaluate waiver applications from LEAs. Under this process, applications for waivers pertaining to ESSA program requirements are submitted to the FESP Assistant Division Director who also is the leader of the Consolidated Federal Programs Team via a paper application process. Applications are reviewed by the Assistant Division Director, and additional designees, as appropriate, to determine whether a requirement that the LEA is requesting be waived falls within a permissible area of waiver authority granted to the SEA under Ed Flex and/or within the SEA’s waiver authority under state statute and regulation. The stated rationale for the waiver and prior performance of the LEA in meeting federal and state requirements also are considered by the Assistant Division Director. Applications from LEAs that have been determined to be High Risk based upon past performance will receive additional scrutiny and may be reviewed by the FESP Division Director and the Secretary of Education, based upon recommendation of the Assistant Division Director. The Agency of Education will continue to exercise discretion in approving or not approving individual waiver requests.**

**A similar process is followed for any waiver request pertaining to a Perkins requirement, with the Assistant Division Director of the Student Pathways Division who also is the leader of the Career and Technical Education Team leading the review process as described above.**

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

**The Vermont Agency of Education does not anticipate receiving any requests to waive any State regulatory requirements that might impede waiver of Consolidated Federal Programs or Perkins requirements but will consider any such waivers it may receive through the process described above.**

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.

**Vermont is a small state for purposes of federal funding and therefore, receives the “small state minimum” under many federal programs. The SEA strives to ensure that collaborative, integrated approaches are used at the school and LEA level to maximize use of all local, state, and federal funds. Through its approval processes, guidance documents, technical assistance, and monitoring activities, the SEA seeks to incentivize collaboration with local partners (e.g., parents, community members, local businesses, community and technical colleges) to identify innovative practices, solve problems, and leverage resources in ways that improve program efficiencies and provide maximum educational benefit to students. In addition, the State has a history of innovation and local control in education. As such, the SEA seeks to grant LEAs maximal flexibility to meet the accountability goals laid out in Vermont’s approved ESSA State Plan and approved Perkins Plan and in state statute and regulations via means that are most efficient and responsive to each locale’s needs and circumstances.**

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.

**In the past, the SEA primarily received requests for waivers of the 40% low-income threshold for Schoolwide programs and the 15% Title I carry over limit. In upcoming years, the SEA anticipates receiving a limited number of waiver requests primarily concerning the following two ESSA provisions: the 15% limit on Title I Part A carry over funding and the minimum percentage requirements pertaining to use of Title IV Part A funding. The SEA is in the midst of implementing a number of simultaneous and substantial long-term improvement initiatives intended to ensure system efficiency and sustainability and improve students’ outcomes. (Please see for example this link to information on two of these major initiatives: Act 46 <https://education.vermont.gov/vermont-schools/school-governance/act-46-state-board-final->**



plan) and Act 173 <https://education.vermont.gov/vermont-schools/education-laws/act-173/supporting-reports>. We recognize that management of such changes is challenging at all levels and seek to assist our LEAs in successfully navigating such transitions. For some LEAs, waivers of certain ESSA or Perkins requirements may aid their ability to successfully navigate such transitions while keeping their focus on student outcomes. For example, the Title IV Part A program promises to provide much needed assistance to Vermont LEAs to extend their efforts to promote safe and healthy school environments and to provide comprehensive learning opportunities for all students. (Each of these is required in the State's Education Quality Standards.) In order to concentrate their efforts on their most urgent areas of needs, as identified through their local comprehensive needs assessments and Continuous Improvement Planning processes, we anticipate that some LEAs may seek to focus their Title IV Part A funds on a limited number of improvement strategies in a single year, and we encourage such focused efforts.

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.

The SEA has a comprehensive student performance assessment system that is ~~thoroughly~~ described in its approved ESSA State Plan. ~~In addition, the State has chosen to assess student performance and to seek student feedback on additional dimensions of education quality including physical education and school climate respectively. Student performance will be evaluated in any school or LEA receiving a waiver using the comprehensive criteria and procedures outlined in the SEA's approved ESSA Plan. This system includes measures of Academic Proficiency in English Language Arts (ELA), math, science, and physical education (PE). In Vermont, waiver requests are almost always for permission to carry forward more than 15% in Title I funds. The CFP team currently uses a risk assessment tool to determine priority for annual monitoring. Two criteria are related to timely expenditure of Title funds, with the presumption that timely use of funds is directly related to LEA performance and indirectly related to student performance. Risk points are awarded for expending less than 85% of the LEA's allocated Title I funds and less than 75% of its Title II funds in the given year. Beginning with the current school year (2019-2020), the CFP team will add an additional risk criterion for requesting a waiver of the same ESSA provision for two years in a row. In addition, the AOE annually reports academic proficiency data via the State Report Card described in our ESSA State Plan. Beginning with the 2020-2021 school year, the AOE will analyze potential relationships between waiver status and student performance by comparing LEA level "Performance Change" and "Equity Change Index" determinations for each of the four Academic Proficiency indicators (ELA, math, science, and PE) for LEAs requesting waivers for two consecutive years for the same ESSA provision, for 1 year for any provision, and not requesting any waiver in the given year. Based upon the outcomes of this analysis, additional criteria may be added to the waiver review and approval process described in #1~~

**above. The information also will be shared with the Continuous Improvement Team for use in their continuous improvement work with LEAs.**

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.

**As is our customary practice with such matters, public notice of the opportunity to comment on the State’s Ed Flex application will be posted on SEA website for 10 business days. Such notice also will be provided to LEA administrators through the Secretary’s Weekly Field Memo. Comments will be submitted to the Division Director of Federal and Education Support Programs (FESP). In addition, the CFP Team will solicit feedback on the State’s application from its Community of Practitioners (COP) in a regular meeting to be held during the comment period. Vermont’s COP includes superintendents, parents, teachers, Title program directors, representatives of private schools, English language coordinators, and other stakeholders. The FESP Division Director will compile the feedback received from all three sources for review by the Secretary. Based on prior experience (please refer, for example, to Vermont’s April 22, 2016 Ed Flex Report), LEAs that were granted waivers under the SEAs recently expired Flex authority saw gains in achievement and reductions in equity gaps. We anticipate this trend will continue. For example, anticipated waivers of the 15% carry forward limit would enhance students’ performance by enabling LEAs to fully implement their approved investments, some of which are quite innovative and will require additional time. Furthermore, anticipated requests for waivers of IVA percentage requirements would allow applicable LEAs to concentrate their funds and efforts on a limited range of improvement strategies, thereby increasing their likelihood of successful implementation.**

- 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.

**The opportunities for public comment described in the above paragraph allow for parent, educator, school administrator and other community stakeholder feedback.**

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

**Requests for public comment were publicized in the October 2, 2019 and October 16, 2019 Secretary's Weekly Field Memos. In addition, one has been posted on the Agency's website continuously since September 30, 2019. Finally, a request for comment was sent to members of the CFP Community of Practitioners via email on October 8, 2019. Only one comment was received from these various requests. It read as follows:**

**10/2/19 – “On the bottom of page seven the last sentence should say "in" instead of "is." This is really good work! Some really good thinking on display - whenever we can give appropriate flexibility we need to do so.” (Submitted by an individual representing the Vermont Principals' Association)**