

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

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): Jennifer Kammerud Senior Policy Advisor Director, Legislative and Policy Outreach Team Office of the State Superintendent	Telephone: (608) 266-7073
Mailing Address: Wisconsin Department of Public Instruction 125 S Webster Street Madison, WI 53707-7841	Email Address: jennifer.kammerud@dpi.wi.gov
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) Michael Thompson Deputy State Superintendent	Telephone: (608) 266-3584
Signature of Authorized SEA Representative 	Date: January 17, 2020

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.

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.

2. 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).

Under Wis. Stat. § 118.38(1)(a), a school board may request the department to waive any school board or school district requirement in Wis.Stat. chapters 115 to 121 or in administrative rules promulgated by the department under the authority of those chapters with certain limited exceptions, such as the health or safety of pupils. Under Wis.Stat. § 118.38(2)(am) In determining whether to grant the waiver, the department shall consider all of the following factors and may consider additional factors:

1. Whether the requirement impedes progress toward achieving a local improvement plan developed under sec. 309(a)(3) of PL 103-227.
2. If the school board has adopted educational goals for the school district, whether the requirement impedes progress toward achieving the goals.

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 Wisconsin Department of Public Instruction (WDPI) currently has procedures in place to evaluate applications from LEAs requesting waivers of state or federal law (such as a waiver of the 15 percent carryover limit, once every three years, under Title I, Part A). WDPI will use these procedures to establish the process for applications from LEAs, educational service agencies, or schools requesting waivers under the Ed-Flex authority. These procedures include:

- Review by legal team to ensure waiver requests are allowed under federal or state law.
- Review by education consultant to ensure likelihood of carrying out educational reforms and raising achievement levels of all children.
- The application will include a clear description of how the waiver request will help local educational agencies (LEAs), and schools carry out educational reforms and raise the achievement levels of all children, including alignment with both Wisconsin's approved consolidated ESEA State Plan and the approved ESSA LEA Plan.
- All waiver requests of federal statutory or regulatory requirements must be approved by an ESEA program director.
- All waiver requests of state statutory or regulatory requirements must be approved by the appropriate administrative director.

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

Under Wis.Stat. § 118.38(1)(a), a school board may request the department to waive any school board or school district requirement in Wis.Stat. chapters 115 to 121 or in administrative rules promulgated by the department under the authority of those chapters with certain limited exceptions such as the health or safety of pupils. Under Wis.Stat. § 118.38(2)(am), in determining whether to grant the waiver, the department shall consider all of the following factors and may consider additional factors:

1. Whether the requirement impedes progress toward achieving a local improvement plan developed under sec. 309(a)(3) of PL 103-227.
2. If the school board has adopted educational goals for the school district, whether the requirement impedes progress toward achieving the goals.

Since 2009, the WDPI granted over 158 waiver requests from school districts. Waiver requests were submitted to the WDPI from school districts to exempt school districts from certain requirements of the Student Achievement Guarantee in Education (SAGE) program, the school start date, and the required days of instruction. All waivers were granted since they were requested to improve student outcomes.

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.

WDPI will use this educational flexibility to continue to focus on the clear educational objectives described in Wisconsin's approved ESEA State Plan. The WDPI plans to use these flexibilities to help school districts leverage resources and improve program efficiencies so the state will meet its ambitious goals of cutting achievement gaps in half in six years. The WDPI supports a continuous improvement process with districts to make the work more manageable and meaningful, and these flexibilities will allow districts to overcome certain administrative barriers that interfere with the educational objective to improve student outcomes.

In addition, WDPI will ensure that any waivers requested by districts align with the goals and objectives in their LEA plans, specifically:

Wisconsin's Goal: Reduce the achievement gap by half for each subgroup within six years.

Objective 1: LEAs will provide every student access to a well-rounded education that meets their learning needs in an appropriate, healthy, and safe environment.

Objective 2: LEAs will provide professional growth and improvement opportunities for all teachers, principals, and other school leaders to further a high quality education for all students.

Objective 3: LEAs will utilize evidence-based interventions and support services to ensure every student graduates from high school prepared for their college or career plans.

Objective 4: LEAs will make progress on closing the achievement gap for all subgroups in English language arts, and math so all students meet challenging academic standards.

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.

The WDPI will coordinate this educational flexibility plan with the activities related to challenging academic standards and academic assessment, the statewide accountability system, and school support and improvement activities. Specifically, the WDPI will ensure that any waivers requested by districts support the activities included in Wisconsin's approved consolidated ESEA State Plan. The WDPI will ask districts to explain how their waiver requests will align with the goals and objectives in approved consolidated ESEA State Plan, as part of the application process. Additionally, the WDPI will ask districts applying for waivers how the request will help to meet the goal and objectives described in the LEA Plan. Alignment with both the ESSA State Plan and the ESSA LEA Plan will be necessary for a request to be approved.

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 WDPI will evaluate the performance of all students, including the performance of students in the schools and LEAs affected by the waivers according to the law and process described in Wisconsin's approved ESSA State Plan. Wisconsin's data management system will allow the WDPI to specifically track the performance of students in schools and LEAs affected by the waivers, so the WDPI will be able to compare their performance to students in schools and LEAs not affected by the waivers. More specifically, WDPI will utilize the statewide accountability system described in Wisconsin's approved ESSA State Plan as part of the evaluation process. The WDPI will also use the required reporting metrics for Ed Flex states to help evaluate the impact of the program.

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 WDPI used the same public notice processes used to notify the public of administrative hearings and proposed rule changes. That process is codified under [Wis.Stat. 227.17](#) (see <https://docs.legis.wisconsin.gov/statutes/statutes/227/II/17?view=section>). Records of the public notice for comment are accessible from the Wisconsin Administrative Register at

- [November 25, 2019](#): Publication of public comment notice on the Ed-Flex waiver application in Administrative Register No. 767B.
- [December 2, 2019](#): Publication of amended notice in Administrative Register No. 768A1.

The text of the notice from November 25, 2019 is copied below. Both the November and December notices are available at the hyperlinks above.

PUBLIC NOTICE

Application for the Educational Flexibility (Ed-Flex Program)

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.

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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.

The Department's application for proposed waiver authority is available to review at https://dpi.wi.gov/sites/default/files/imce/esea/pdf/Wisconsin_ed_flex_application_draft_for_public_comment_Nov_2019.pdf.

Written Comments

Public comment on the application described above may be submitted by using the Department's form for submitting comment at <https://forms.gle/S6r9cQ88GHZWfmCA>. Questions or additional comment may be accepted by using the contact information below. Written comments should be submitted no later than December 4, 2019, in order to receive consideration.

Agency Contact Person

Jonas Zuckerman
Director, Title I and School Support Team
Division for Student and School Success
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707-7841
jonas.zuckerman@dpi.wi.gov

The comment period for the rule ended December 11, 2019: Close of public comments on the Ed-Flex program waiver application (extended from the original deadline of December 4).

- 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.

In addition to the public notice noted above (under 6.A.), the department also notified education stakeholders, per usual practice. All comments under state law are available to the public under open records. A copy of this application, along with the comments received, will also be posted and available for public review.

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

All comments received have been attached to this application. WDPI would like to respond to points raised by the one commenter opposed to this application, in order to provide more context and background information. Specifically:

1. WDPI has issued report cards required by ESEA Section 1111(h). The [ESSA Report Card](#) is available in the WISEdash data dashboard.
2. Madison Metropolitan School District was monitored as part of WDPI's consolidated ESEA monitoring process during the 2018-19 school year.
3. The WDPI application does meet the substantive requirements of Section 9207, as described in C-1 of the [Ed-Flex FAQ document](#).
4. The Ed-Flex program is designed to promote and support local innovations; it is not a rigid program that only allows for certain, pre-determined waivers to be granted. As such, WDPI does not know what improved student performance is expected from the waivers that may be requested under this program. Per the parameters of the Ed-Flex program, WDPI is leaving the options for waivers open so local districts can propose waivers that will positively impact student performance. WDPI has explained the process that will be used to evaluate the impact of these waivers.
5. The WDPI did provide an opportunity for public comment, as described in the application. As the commenter notes, WDPI extended the public comment period to account for the Thanksgiving holiday. Furthermore, WDPI did send information on this to education stakeholders, both through the WISEgrants system message board and via email.