

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

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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): Nathan Williamson	Telephone: 317-232-6671
Mailing Address: 115. W. Washington St. Suite 600 South Tower Indianapolis, IN 46204	Email Address: nwilliamson@doe.in.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) Kelly Wittman	Telephone: 317-234-4703
Signature of Authorized SEA Representative 	Date: 12-03-2019

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).

If Congress changes federal law or the U.S. Department of Education (ED) waives federal regulations, IDOE will subsequently adjust its enforcement and flexibility. With an approved ED-FLEX application that allows Indiana to waive certain federal regulations, the below Indiana statute will permit the state to carry out the federal program in this manner.

IC 20-19-3-2.1 Administration of federal grant programs

Sec. 2.1. (a) As used in this section, "school corporation" includes:

- (1) any local public school corporation established under Indiana law;
- (2) a charter school; and
- (3) an eligible school (as defined in [IC 20-51-1-4.7](#));

that are otherwise entitled to receive federal funds under federal and state law.

(b) If, by any act of Congress, funds are provided as federal aid to education to the several states and the disposition of the funds is not otherwise provided for by or under the act of Congress or by or under any Indiana law, the apportionment and distribution of those funds to school corporations shall, insofar as consistent with the requirements prescribed by the federal law and implementing rules and regulations, be governed by the standards set forth in this section.

(c) Except as otherwise provided in this title, the department is responsible for the general administration of federal grant programs under the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

(d) The department shall make timely application for any federal funds made available for school corporations in Indiana, and shall, under the federal law and this section, direct the allocation and apportionment of the federal funds received fairly, equitably, and in a timely manner to all school corporations in accordance with federal law and this section. The department must ensure that sufficient personnel are assigned to its federal grants program to enable the department to comply with subsection (c).

(e) Whenever the department provides federal formula grant funding to a school corporation, the department must also provide to the school corporation the formula and the data used to calculate the funding amount.
As added by P.L.169-2016, SEC.2

ED Feedback 2/11/20 ” A more detailed description of the process for how IDOE works to review statutory and regulatory requirements that may be waived, and how IDOE implements the State statute referenced in the IDOE response is needed

IDOE Response: IDOE has enacted a federal advisory board to comply with the need for a committee of practitioners under Sec. 1603(b) of the ESSA but also to facilitate the feedback from a wide array of stakeholders to ensure that all regulatory and statutory indicators are reviewed, compliant, and in this case suggested for waiver. IDOE reviewed the ED-FLEX application with the board, and conducted a brainstorming session to identify root causes that could be addressed through improved flexibility. Those root causes led to the creation of a needs assessment that served as the impetus for this request. The full work of the board can be found here: <https://www.doe.in.gov/grants/federal-programs-advisory-board>.

The detailed process regarding how the SEA will review LEA requests for waivers is included in the below section 1 of this waiver request. IDOE will embed the waiver request as part of its consolidated application process, so that the LEA can request the specific indicators to be waived, the rationale and supporting data, along with alignment to improved outcomes for students. LEAs with approved waiver requested will collect information according to the approved performance measures (required for each LEA request) and will report upon those performance measures in annual performance monitoring to ensure continued waiver approval.

As for the more detailed response regarding the state statute reference, IDOE conducts the administration in a manner that is approvable according to federal statute and regulation. When regulations further define or change IDOE’s implementation, or in this case the approval of the federal waiver that removes certain statutory or regulatory requirements, then IDOE subsequently updates its monitoring and implementation status of the grants. There is no state law that bars Indiana from implementing changes in federal law or regulations, or waiver of the law/regulations, as the state law requires Indiana to administer the funding according to (c) *Except as otherwise provided in this title, the department is responsible for the general administration of federal grant programs under the Elementary and Secondary Education Act of 1965 (ESEA), as amended.* As amended reflects future iterations of ESEA, but also waivers and federal court rulings that change the implementation.

To further strengthen this argument, IC-20-19-3-5 allows IDOE to exercise powers granted by statute, and no are restrictions regarding this power. As such, if the U.S. Department of approves this waiver request, to grant IDOE the power to waiver this activities if requested by an LEA with sufficient justification, then IDOE will carry out the waiver process as detailed within this application.

IC 20-19-3-5 Powers of department

Sec. 5. The department may:

- (1) exercise the powers granted by statute;
- (2) with the approval of the budget agency, employ experts and consultants to assist the department in carrying out its functions;

- (3) with the consent of other state agencies, use the services and facilities of other state agencies without reimbursements;
- (4) accept in the name of the department, for use in carrying out the functions of the department, money received by gift, grant, bequest, or otherwise;
- (5) accept voluntary and uncompensated services; and
- (6) expend funds made available to the department according to policies established by the budget agency.

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 original LEA grant application will contain an item which allows the LEA to ask for any waivers needed during the initial grant application process. IDOE will also publish this item as a separate form, to be filed individually or as part of a grant amendment process.

In the initial application or amendment, the LEA must state the following:

- The regulation(s) or portion of federal statute which the LEA wishes to be waived
- The purpose of waiving the regulation, and how it will directly tie to increased levels of achievement and performance
- Applicable evidence, if any, which indicates that the waiver will improve student performance and achievement;
- The performance measures the LEA will use to track effectiveness of the waiver request and how that effectiveness will be measured and reported;
- The alignment between the LEA's stated performance measures and the long-term goals and accountability metrics stated within Indiana's approved ESSA plan.

An IDOE federal grants specialist will review the waiver request for completeness and quality. The grants specialist will also ensure that the provisions to be waived are provisions which IDOE is empowered to waive under Ed-Flex.

If initially approved, an IDOE supervisor conduct a second review. The supervisor will approve the waiver request after review, provided there are no additional concerns. Reviews are typically conducted within 10 business days.

LEAs will include an end of year report regarding the progress toward the stated outcomes in the annual performance report or financial end report, which is no more than 90 days after the award year to which the waiver applies. IDOE will utilize this information to determine eligibility for future waive requests. The waiver request process will occur on an annual basis and will cover one school year or fiscal year, depending on the waiver requested (programmatic or fiscal).

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

The IDOE will waive the following upon an approved waiver request:

- 1) Sec. 1127(a) of ESEA (Title I) limits the carryover to 15% of funds allocated in a fiscal year.
- 2) Sec. 1111(g)(2)(M) of ESEA (Title I) requires NCLB paraprofessional high-quality requirements to remain in place rather than solely allowing the state to determine

what constitutes high-quality, as ESSA allows for teachers.

3) Sec. 1418(a) of ESEA (Title I, D) requires transition services to constitute at least 15% but not more than 30% of the state agency’s Neglected/Delinquent funds.

4) Sec. 4106(e)(2)(C-E) (Title IV,A) requires LEAs with an allocation of \$30,000 or more to utilize 20%, 20%, and some funds on well-rounded education, safe and healthy education, and technology integration respectively.

5) Sec. 421(b) of the General Education Provisions Act limits the ability to provide a Tydings Amendment (additional fiscal year) by the U.S. Department of Education alone. IDOE does not currently have this authority to award a Tydings Amendment to LEAs.

- 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.

Following the same numbering in Question #2, the below table provides the rationale and objectives for each of the indicators that the State would like to waive:

Current Rule	Objective	Rationale
1) Title I carryover limitation of 15%	Allow Title I carryover limitation of 25%	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 Indiana 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 near 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.
2) High-quality paraprofessional requirements still are dictated by NCLB rules	The state will formally set the qualification requirements alone without being required to follow the federally prescribed paraprofessional requirements through rulemaking of the Title I Committee of Practitioners.	ESSA trusts Indiana to set its own licensure and quality requirements for teachers, counselors, social workers etc., but still dictates federal requirements for paraprofessionals despite a higher-impact on outcomes through teachers. The federal rules/regulations are too prescriptive that do not allow a wider range of options that can demonstrate the quality of paraprofessionals to support instruction. This will also ease the paraprofessional shortage while not reducing quality. Furthermore, certain schools eligible for Title I schoolwide status avoid transitioning to schoolwide, despite its numerous benefits, due to this rule alone. The greater value add would include adjusting this rule so that schools are not hesitant to switch to schoolwide status.
3) Title I D allows Indiana Department of	Increase the upper limit to 65%.	The IDOC (state agency for delinquent) has local funds that cover the basic educational program for these students. The Title I, D funds are most effectively used in supporting the transition of students in the juvenile facilities back to their LEAs when they have fulfilled the court requirements.

Corrections (IDOC) funds to be used for transition at a minimum of 15%, but not more than 30%.		The 30% limits the ability for the State agency (IDOC) to collaborate at a high-level with LEAs for re-entry of students.
4) Title IV 20%/20%/something rule for LEAs over \$30,000	Remove % requirement so that all LEAs can spend Title IV according to needs assessment.	The percentages are arbitrary and the data-driven needs assessment should dictate how the funds are used in order to increase effectiveness. The LEA may already be implementing a well-rounded education with state/local funds and would like to dedicate all Title IV funding to social-emotional needs or technology integration needs. Based upon feedback received, IDOE will maintain the 15% equipment and device limitation.
5) ED alone can grant Tydings waivers to SEAs and LEAs	SEA gains authority to grant Tydings waivers for LEAs. IDOE can grant more time to an LEA, as long as they meet conditions for a Tydings Waiver.	This will provide more time in extenuating circumstances (e.g. lack of use by a previous LEA administration, and new team needs more time to use the funding at the highest level). IDOE will place safeguards upon the Tydings waiver requests, such as only approving waivers that are requested prior to the liquidation deadline of the respective grants.

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.

Indiana’s ED-FLEX application aligns to the approved consolidated State plan in the following manner:

(b) Standards and assessments: Indiana has adopted challenging state standards, which have been nationally commended by the Fordham institute. Furthermore, Indiana’s assessments are peer reviewed to ensure alignment to the State’s challenging standards. In order for students to achieve the high-expectations, the federal funding is vital in providing additional services for students, educators, and families. All of the specific waiver requests are requested so that funding is utilized in an efficient manner to increase student outcomes. The additional carryover period (Waiver #1) 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 Indiana’s ESSA plan. With the additional or more meaningful services, as described in (b), IDOE 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 IDOE to measure effectiveness, to ensure that the LEAs are making progress toward stated goals and intended outcomes are occurring. (d) School support and improvement activities: Indiana's Comprehensive Support and Improvement (CSI) and Targeted Support and Improvement (TSI) LEAs receive priority of services from IDOE in accordance with our ESSA plan. IDOE assigns federal grants specialists to each LEA to manage their Title I, II, and School Improvement Grant applications. The waiver requests regarding the aforementioned activities will be handled by the assigned specialist to ensure all aligns with the respective plans. Each of the federal grants, such as Title I, require the LEA to detail how the plans support CSI and TSI schools and target their specific needs. As such, when a waiver changes the plans, then LEAs will dictate how the waiver request will impact student outcomes, including as it relates to their CSI, ATSI, and TSI schools.

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.

All LEAs, including those who request waivers, will be held accountable according to the accountability and long-term goals as dictated in Indiana's ESSA plan. When an individual LEA requests a waiver, the LEA must detail the following, which IDOE will utilize to evaluate the requests in order to approve or renew:

 - The regulation(s) which the LEA wishes to waive
 - The purpose of waiving the regulation, and how it will directly tie to increased levels of achievement and performance
 - The performance measures the LEA will use to track effectiveness of the waiver request
 - The alignment between the LEA's stated performance measures and the long-term goals and accountability metrics stated within Indiana's approved ESSA plan.
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.

IDOE requested preliminary feedback on [8-21-19](#) from the Title I Committee of Practitioners (titled Federal Programs Advisory Board in Indiana), prior to release. This informed IDOE's release to the general public. Attachment A has a summary of the feedback received by the Federal Programs Advisory Board, which was delivered via webex to board members. Subsequently, IDOE shared the draft of the request through the general public listserv on [10-25-19](#), including a survey feedback tool (Dr. McCormick's Weekly Message). Thousands of stakeholders receive this weekly and have a direct message to their inbox with the information to review. After 30 days, IDOE closed the survey tool, and collated the responses in order to inform any amendments to the draft. Attachment B has the feedback received from the general public feedback tool. 84% of respondents strongly agreed with IDOE's request for an ED-FLEX waiver, and the finalized

waiver requested were overwhelmingly supported by the Title I Committee of Practitioners and the general public.

- 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.

IDOE included a survey feedback tool for the general public to submit comments via the [10-25-19](#) general public listserv. A summary of comments along with the finalized ED-FLEX application will be made public via public records request to interested parties. The finalized plan approved by the U.S. Department of Education will be posted on the Title Grants and Support website, along with information regarding the process for LEAs to request waivers from IDOE. Due to feedback received by the public, IDOE removed original waiver request #2, and therefore now have five (5) total waiver requests in its ED-FLEX application.
7. Submit as an attachment the comments received from Public Notice and Comment with the application of the SEA to the Department.