

forms with both Federal and State funds, and are responsible for maintaining accountability for local activities consistent with State standards and assessment systems. Therefore, State educational agencies are often in the best position to align waivers of Federal and State requirements with State and local initiatives.

“(5) The Education Flexibility Partnership Demonstration Act [former 20 U.S.C. 5891(e)] allows State educational agencies the flexibility to waive certain Federal requirements, along with related State requirements, but allows only 12 States to qualify for such waivers.

“(6) Expansion of waiver authority will allow for the waiver of statutory and regulatory requirements that impede implementation of State and local educational improvement plans, or that unnecessarily burden program administration, while maintaining the intent and purposes of affected programs, such as the important focus on improving mathematics and science performance under title II of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6601 et seq.] (Dwight D. Eisenhower Professional Development Program), and maintaining such fundamental requirements as those relating to civil rights, educational equity, and accountability.

“(7) To achieve the State goals for the education of children in the State, the focus must be on results in raising the achievement of all students, not process.”

## § 5891b. Education flexibility partnership

### (a) Educational flexibility program

#### (1) Program authorized

##### (A) In general

The Secretary may carry out an educational flexibility program under which the Secretary authorizes a State educational agency that serves an eligible State to waive statutory or regulatory requirements applicable to one or more programs described in subsection (b) of this section, other than requirements described in subsection (c) of this section, for any local educational agency or school within the State.

##### (B) Designation

Each eligible State participating in the program described in subparagraph (A) shall be known as an “Ed-Flex Partnership State”.

#### (2) Eligible State

For the purpose of this section the term “eligible State” means a State that—

(A) has—

(i) developed and implemented the challenging State content standards, challenging State student performance standards, and aligned assessments described in section 1111(b) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311(b)], and for which local educational agencies in the State are producing the individual school performance profiles required by section 1116(a)(3) of such Act;<sup>1</sup> or

(ii)(I) developed and implemented the content standards described in clause (i);

(II) developed and implemented interim assessments; and

(III) made substantial progress (as determined by the Secretary) toward developing

and implementing the performance standards and final aligned assessments described in clause (i), and toward having local educational agencies in the State produce the profiles described in clause (i);

(B) holds local educational agencies and schools accountable for meeting the educational goals described in the local applications submitted under paragraph (4) and for engaging in technical assistance and corrective actions consistent with section 1116 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6316], for the local educational agencies and schools that do not make adequate yearly progress as described in section 1111(b)(2) of such Act [20 U.S.C. 6311(b)(2)]; and

(C) waives State statutory or regulatory requirements relating to education while holding local educational 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.

### (3) State application

#### (A) In general

Each State educational agency desiring to participate in the educational flexibility program under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Each such application shall demonstrate that the eligible State has adopted an educational flexibility plan for the State that includes—

(i) a description of the process the State educational agency will use to evaluate applications from local educational agencies or schools requesting waivers of—

(I) Federal statutory or regulatory requirements as described in paragraph (1)(A); and

(II) State statutory or regulatory requirements relating to education;

(ii) a detailed description of the State statutory and regulatory requirements relating to education that the State educational agency will waive;

(iii) a description of clear educational objectives the State intends to meet under the educational flexibility plan;

(iv) a description of how the educational flexibility plan is consistent with and will assist in implementing the State comprehensive reform plan or, if a State does not have a comprehensive reform plan, a description of how the educational flexibility plan is coordinated with activities described in section 1111(b) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311(b)];

(v) a description of how the State educational agency will evaluate, (consistent with the requirements of title I of the Elementary and Secondary Education Act of 1965) [20 U.S.C. 6301 et seq.], the performance of students in the schools and local educational agencies affected by the waivers; and

<sup>1</sup> See References in Text note below.

(vi) a description of how the State educational agency will meet the requirements of paragraph (8).

**(B) Approval and considerations**

The Secretary may approve an application described in subparagraph (A) only if the Secretary determines that such application demonstrates substantial promise of assisting the State educational agency and affected local educational agencies and schools within the State in carrying out comprehensive educational reform, after considering—

- (i) the eligibility of the State as described in paragraph (2);
- (ii) the comprehensiveness and quality of the educational flexibility plan described in subparagraph (A);
- (iii) the ability of the educational flexibility plan to ensure accountability for the activities and goals described in such plan;
- (iv) the degree to which the State's objectives described in subparagraph (A)(iii)—

(I) are clear and have the ability to be assessed; and

(II) take into account the performance of local educational agencies or schools, and students, particularly those affected by waivers;

(v) the significance of the State statutory or regulatory requirements relating to education that will be waived; and

(vi) the quality of the State educational agency's process for approving applications for waivers of Federal statutory or regulatory requirements as described in paragraph (1)(A) and for monitoring and evaluating the results of such waivers.

**(4) Local application**

**(A) In general**

Each local educational agency or school requesting a waiver of a Federal statutory or regulatory requirement as described in paragraph (1)(A) and any relevant State statutory or regulatory requirement from a State educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may reasonably require. Each such application shall—

(i) indicate each Federal program affected and each statutory or regulatory requirement that will be waived;

(ii) describe the purposes and overall expected results of waiving each such requirement;

(iii) describe, for each school year, specific, measurable, educational goals for each local educational agency or school affected by the proposed waiver, and for the students served by the local educational agency or school who are affected by the waiver;

(iv) explain why the waiver will assist the local educational agency or school in reaching such goals; and

(v) in the case of an application from a local educational agency, describe how the

local educational agency will meet the requirements of paragraph (8).

**(B) Evaluation of applications**

A State educational agency shall evaluate an application submitted under subparagraph (A) in accordance with the State's educational flexibility plan described in paragraph (3)(A).

**(C) Approval**

A State educational agency shall not approve an application for a waiver under this paragraph unless—

(i) the local educational agency or school requesting such waiver has developed a local reform plan that is applicable to such agency or school, respectively;

(ii) the waiver of Federal statutory or regulatory requirements as described in paragraph (1)(A) will assist the local educational agency or school in reaching its educational goals, particularly goals with respect to school and student performance; and

(iii) the State educational agency is satisfied that the underlying purposes of the statutory requirements of each program for which a waiver is granted will continue to be met.

**(D) Termination**

The State educational agency shall annually review the performance of any local educational agency or school granted a waiver of Federal statutory or regulatory requirements as described in paragraph (1)(A) in accordance with the evaluation requirement described in paragraph (3)(A)(v), and shall terminate any waiver granted to the local educational agency or school if the State educational agency determines, after notice and an opportunity for a hearing, that the local educational agency or school's performance with respect to meeting the accountability requirement described in paragraph (2)(C) and the goals described in paragraph (4)(A)(iii)—

(i) has been inadequate to justify continuation of such waiver; or

(ii) has decreased for two consecutive years, unless the State educational agency determines that the decrease in performance was justified due to exceptional or uncontrollable circumstances.

**(5) Oversight and reporting**

**(A) Oversight**

Each State educational agency participating in the educational flexibility program under this section shall annually monitor the activities of local educational agencies and schools receiving waivers under this section.

**(B) State reports**

**(i) Annual reports**

The State educational agency shall submit to the Secretary an annual report on the results of such oversight and the impact of the waivers on school and student performance.

**(ii) Performance data**

Not later than 2 years after the date a State is designated an Ed-Flex Partnership State, each such State shall include, as part of the State's annual report submitted under clause (i), data demonstrating the degree to which progress has been made toward meeting the State's educational objectives. The data, when applicable, shall include—

(I) information on the total number of waivers granted for Federal and State statutory and regulatory requirements under this section, including the number of waivers granted for each type of waiver;

(II) information describing the effect of the waivers on the implementation of State and local educational reforms pertaining to school and student performance;

(III) information describing the relationship of the waivers to the performance of schools and students affected by the waivers; and

(IV) an assurance from State program managers that the data reported under this section 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.

**(C) Secretary's reports**

The Secretary, not later than 2 years after April 29, 1999, and annually thereafter, shall—

(i) make each State report submitted under subparagraph (B) available to Congress and the public; and

(ii) submit to Congress a report that summarizes the State reports and describes the effects that the educational flexibility program under this section had on the implementation of State and local educational reforms and on the performance of students affected by the waivers.

**(6) Duration of Federal waivers****(A) In general**

The Secretary shall not approve the application of a State educational agency under paragraph (3) for a period exceeding 5 years, except that the Secretary may extend such period if the Secretary determines that such agency's authority to grant waivers—

(i) has been effective in enabling such State or affected local educational agencies or schools to carry out their State or local reform plans and to continue to meet the accountability requirement described in paragraph (2)(C); and

(ii) has improved student performance.

**(B) Performance review**

Three years after the date a State is designated an Ed-Flex Partnership State, the Secretary shall review the performance of the State educational agency in granting waivers of Federal statutory or regulatory requirements as described in paragraph

(1)(A) and shall terminate such agency's authority to grant such waivers if the Secretary determines, after notice and an opportunity for a hearing, that such agency's performance (including performance with respect to meeting the objectives described in paragraph (3)(A)(iii)) has been inadequate to justify continuation of such authority.

**(C) Renewal**

In deciding whether to extend a request for a State educational agency's authority to issue waivers under this section, the Secretary shall review the progress of the State educational agency to determine if the State educational agency—

(i) has made progress toward achieving the objectives described in the application submitted pursuant to paragraph (3)(A)(iii); and

(ii) demonstrates in the request that local educational agencies or schools affected by the waiver authority or waivers have made progress toward achieving the desired results described in the application submitted pursuant to paragraph (4)(A)(iii).

**(7) Authority to issue waivers**

Notwithstanding any other provision of law, the Secretary is authorized to carry out the educational flexibility program under this section for each of the fiscal years 1999 through 2004.

**(8) Public notice and comment**

Each State educational agency seeking waiver authority under this section and each local educational agency seeking a waiver under this section—

(A) shall 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 in a widely read or distributed medium, including a description of any improved student performance that is expected to result from the waiver authority or waiver;

(B) shall provide the opportunity for parents, educators, and all other interested members of the community to comment regarding the proposed waiver authority or waiver;

(C) shall provide the opportunity described in subparagraph (B) 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

(D) shall submit the comments received with the agency's application to the Secretary or the State educational agency, as appropriate.

**(b) Included programs**

The statutory or regulatory requirements referred to in subsection (a)(1)(A) of this section are any such requirements for programs that are authorized under the following provisions and under which the Secretary provides funds to State educational agencies on the basis of a formula:

(1) The following provisions of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.]:

(A) Part A [20 U.S.C. 6311 et seq.] (other than sections 1111 and 1116 [20 U.S.C. 6311, 6316]), subpart 3 of part B [20 U.S.C. 6381 et seq.], and parts C, D, and F [20 U.S.C. 6391 et seq., 6421 et seq., 6511 et seq.] of title I.

(B) Subparts 2 and 3 of part A of title II [20 U.S.C. 6621 et seq., 6631 et seq.].

(C) Subpart 1 of part D of title II [20 U.S.C. 6761 et seq.].

(D) Subpart 4 of part B of title III [20 U.S.C. 6961 et seq.], if the funding trigger in section 3001 of such Act [20 U.S.C. 6801] is not reached.

(E) Subpart 1 of part A of title IV [20 U.S.C. 7111 et seq.].

(F) Part A of title V [20 U.S.C. 7201 et seq.].

(2) The Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.).

**(c) Waivers not authorized**

The Secretary and the State educational agency may not waive under subsection (a)(1)(A) of this section any statutory or regulatory requirement—

(1) relating to—

(A) maintenance of effort;

(B) comparability of services;

(C) equitable participation of students and professional staff in private schools;

(D) parental participation and involvement;

(E) distribution of funds to States or to local educational agencies;

(F) serving eligible school attendance areas in rank order under section 1113(a)(3) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6313(a)(3)];

(G) the selection of a school attendance area or school under subsections (a) and (b) of section 1113 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6313(a), (b)], except that a State educational agency may grant a waiver to allow a school attendance area or school to participate in activities under part A of title I of such Act [20 U.S.C. 6311 et seq.] 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 (a) and (b) of this section;

(H) use of Federal funds to supplement, not supplant, non-Federal funds; and

(I) applicable civil rights requirements; and

(2) unless the underlying purposes of the statutory requirements of the program for which a waiver is granted continue to be met to the satisfaction of the Secretary.

**(d) Treatment of existing Ed-Flex Partnership States**

**(1) In general**

Except as provided in paragraphs (3) and (4), this section shall not apply to a State edu-

cational agency that has been granted waiver authority under the provisions of law described in paragraph (2) for the duration of the waiver authority.

**(2) Applicable provisions**

The provisions of law referred to in paragraph (1) are as follows:

(A) Section 311(e) of the Goals 2000: Educate America Act.

(B) The proviso referring to such section 311(e) under the heading “EDUCATION REFORM” in the Department of Education Appropriations Act, 1996 (Public Law 104-134; 110 Stat. 1321-229).

**(3) Special rule**

If a State educational agency granted waiver authority pursuant to the provisions of law described in subparagraph (A) or (B) of paragraph (2) applies to the Secretary for waiver authority under this section—

(A) the Secretary shall review the progress of the State educational agency in achieving the objectives set forth in the application submitted pursuant to section 311(e) of the Goals 2000: Educate America Act; and

(B) the Secretary shall administer the waiver authority granted under this section in accordance with the requirements of this section.

**(4) Technology**

In the case of a State educational agency granted waiver authority under the provisions of law described in subparagraph (A) or (B) of paragraph (2), the Secretary shall permit a State educational agency to expand, on or after April 29, 1999, the waiver authority to include programs under subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (other than section 3136 of such Act).<sup>1</sup>

**(e) Publication**

A notice of the Secretary’s decision to authorize State educational agencies to issue waivers under this section, including a description of the rationale the Secretary used to approve applications under subsection (a)(3)(B) of this section, shall be published in the Federal Register and the Secretary shall provide for the dissemination of such notice to State educational agencies, interested parties (including educators, parents, students, and advocacy and civil rights organizations), and the public.

(Pub. L. 106-25, § 4, Apr. 29, 1999, 113 Stat. 42; Pub. L. 107-110, title X, § 1073, Jan. 8, 2002, 115 Stat. 2090; Pub. L. 109-270, § 2(e), Aug. 12, 2006, 120 Stat. 747.)

REFERENCES IN TEXT

Section 1116(a)(3) of such Act, referred to in subsec. (a)(2)(A)(i), means section 1116(a)(3) of Pub. L. 89-10. Section 1116 of Pub. L. 89-10, which was classified to section 6317 of this title, was omitted in the general amendment of subchapter I (§ 6301 et seq.) of chapter 70 of this title, and a new section 1116, which is classified to section 6316 of this title, was enacted, by Pub. L. 107-110, title I, § 101, Jan. 8, 2002, 115 Stat. 1439. The new section 1116 does not contain a subsec. (a)(3).

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a)(3)(A)(v), (b)(1), and

(c)(1)(G), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of this title. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of this title. Part A of title I of the Act is classified generally to part A (§6311 et seq.) of subchapter I of chapter 70 of this title. Subpart 3 of part B of title I is classified generally to subpart 3 (§6381 et seq.) of part B of subchapter I of chapter 70 of this title. Parts C, D, and F of title I are classified generally to parts C (§6391 et seq.), D (§6421 et seq.), and F (§6511 et seq.), respectively, of subchapter I of chapter 70 of this title. Subparts 2 and 3 of part A of title II are classified generally to subparts 2 (§6621 et seq.) and 3 (§6631 et seq.), respectively, of part A of subchapter II of chapter 70 of this title. Subpart 1 of part D of title II is classified generally to subpart 1 (§6761 et seq.) of part D of subchapter II of chapter 70 of this title. Subpart 4 of part B of title III is classified generally to subpart 4 (§6961 et seq.) of part B of subchapter III of chapter 70 of this title. Subpart 1 of part A of title IV is classified generally to subpart 1 (§7111 et seq.) of part A of subchapter IV of chapter 70 of this title. Part A of title V is classified generally to part A (§7201 et seq.) of subchapter V of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

The Carl D. Perkins Career and Technical Education Act of 2006, referred to in subsec. (b)(2), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 109-270, §1(b), Aug. 12, 2006, 120 Stat. 683, which is classified generally to chapter 44 (§2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

Section 311(e) of the Goals 2000: Educate America Act, referred to in subsec. (d)(2), (3)(A), is section 311(e) of Pub. L. 103-227, which was classified to section 5891(e) of this title and was repealed by Pub. L. 106-113, div. B, §1000(a)(4) [title III, §310(i)], Nov. 29, 1999, 113 Stat. 1535, 1501A-265.

The proviso referring to such section 311(e) under the heading "EDUCATION REFORM" in the Department of Education Appropriations Act, 1996, referred to in subsec. (d)(2)(B), is Pub. L. 104-134, title I, §101(d) [title III], Apr. 26, 1996, 110 Stat. 1321-211, 1321-229; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327, which is set out as a note below.

Subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965, referred to in subsec. (d)(4), means subpart 2 of part A of title III of Pub. L. 89-10, as added by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3644, which related to State and local programs for school technology resources, and was classified generally to subpart 2 (§6841 et seq.) of part A of subchapter III of this chapter prior to the general amendment of title III of Pub. L. 89-10 by Pub. L. 107-110, title III, §301, Jan. 8, 2002, 115 Stat. 1689, which enacted a new subpart 2 of part A, relating to accountability and administration.

Section 3136 of such Act, referred to in subsec. (d)(4), means section 3136 of Pub. L. 89-10, as added by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3648, which was classified to section 6846 of this title prior to the general amendment of title III of Pub. L. 89-10 by Pub. L. 107-110, title III, §301, Jan. 8, 2002, 115 Stat. 1689.

#### CODIFICATION

Section was enacted as part of the Education Flexibility Partnership Act of 1999, and not as part of the Goals 2000: Educate America Act which comprises this chapter.

#### AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109-270 substituted "Carl D. Perkins Career and Technical Education Act of 2006" for "Carl D. Perkins Vocational and Technical Education Act of 1998".

2002—Subsec. (b). Pub. L. 107-110 reenacted heading without change and amended text generally. Prior to

amendment, text read as follows: "The statutory or regulatory requirements referred to in subsection (a)(1)(A) of this section are any such requirements for programs carried out under the following provisions:

"(1) Title I of the Elementary and Secondary Education Act of 1965 (other than subsections (a) and (c) of section 1116 of such Act).

"(2) Part B of title II of the Elementary and Secondary Education Act of 1965.

"(3) Subpart 2 of part A of title III of the Elementary and Secondary Education Act of 1965 (other than section 3136 of such Act).

"(4) Title IV of the Elementary and Secondary Education Act of 1965.

"(5) Title VI of the Elementary and Secondary Education Act of 1965.

"(6) Part C of title VII of the Elementary and Secondary Education Act of 1965.

"(7) The Carl D. Perkins Vocational and Technical Education Act of 1998."

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

#### EDUCATIONAL FLEXIBILITY PROGRAM EXTENSION

Pub. L. 109-211, §1, Mar. 24, 2006, 120 Stat. 320, provided that:

"(a) EXTENSION AUTHORITY.—Notwithstanding any other provision of law, the Secretary of Education is authorized to carry out the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999 (20 U.S.C. 5891b), until the date of enactment of an Act that reauthorizes programs under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), for any State that was an Ed-Flex Partnership State on September 30, 2004.

"(b) DESIGNATION.—

"(1) IN GENERAL.—Any designation of a State as an Ed-Flex Partnership State that was in effect on September 30, 2004, shall be extended until the date of enactment of an Act that reauthorizes programs under part A of title I of the Elementary and Secondary Education Act of 1965, if the Secretary of Education makes the determination described in paragraph (2).

"(2) DETERMINATION.—The determination referred to in paragraph (1) is a determination that the performance of the State educational agency, in carrying out the programs for which the State has received a waiver under the educational flexibility program, justifies the extension of the designation."

#### ADDITIONAL STATE EDUCATIONAL AGENCIES AUTHORIZED TO WAIVE FEDERAL REQUIREMENTS

Pub. L. 104-134, title I, §101(d) [title III], Apr. 26, 1996, 110 Stat. 1321-211, 1321-229; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part: "That notwithstanding section 311(e) of Public Law 103-227 [20 U.S.C. 5891(e)], the Secretary is authorized to grant up to six additional State education agencies authority to waive Federal statutory or regulatory requirements for fiscal year 1996 and succeeding fiscal years".

#### §§ 5892 to 5895. Repealed. Pub. L. 106-113, div. B, §1000(a)(4) [title III, §310(i)], Nov. 29, 1999, 113 Stat. 1535, 1501A-265

Section 5892, Pub. L. 103-227, title III, §312, Mar. 31, 1994, 108 Stat. 178; Pub. L. 104-134, title I, §101(d) [title VII, §§703(a)(12), 705(d)], Apr. 26, 1996, 110 Stat. 1321-211, 1321-253, 1321-257; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327, related to progress reports.

Section 5893, Pub. L. 103-227, title III, §313, Mar. 31, 1994, 108 Stat. 179, related to technical and other assistance regarding school finance equity.