

# APPENDIX 12

## Appendix 12

### Education Flexibility Partnership Act (Ed-Flex)

#### Ed-Flex Authority

Texas received approval from the U.S. Department of Education to continue its Ed-Flex waiver authority under the Education Flexibility Partnership Act of 1999, as amended, on April 13, 2006, effective until such time as Title I, Part A of NCLB is reauthorized.

#### Covered Programs

As an Ed-Flex state, Texas has the authority to waive provisions of the following federal programs in order to assist school districts in designing and implementing the programs in ways that best meet the needs of their students and communities.

No Child Left Behind Act of 2001

- Title I, Part A (except sections 1111 and 1116)
- Title I, Parts C, D, and F
- Title II, Part A, Subparts 2 and 3
- Title II, Part D, Subpart 1
- Title III, Part B, Subpart 4
- Title IV, Part A, Subpart 1
- Title V, Part A

Carl D. Perkins Vocational and Technical Education Act of 1998.

#### Provisions That Cannot Be Waived

Under the Education Flexibility Partnership Act of 1999 (P. L. 106-25) as amended, the following statutory or regulatory requirements may not be waived:

- ◆ maintenance of effort;
- ◆ comparability of services;
- ◆ equitable participation of students and professional staff in private schools;
- ◆ parental participation and involvement;
- ◆ distribution of funds to States or to local educational agencies;
- ◆ applicable civil rights requirements;
- ◆ serving eligible school attendance areas in rank order under P.L. 103-382, Section 1113(a)(3) of the Elementary and Secondary Education Act of 1965;
- ◆ 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, 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 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 education agency that meets the requirements of such subsections (a) and (b);
- ◆ use of Federal funds to supplement, not supplant, non-Federal funds; and
- ◆ 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.

Appendix 12—continued

Types of Waivers Available

Three types of waivers are available to LEAs: Statewide Administrative Waivers, Statewide Programmatic Waivers, and Individual Programmatic Waivers. Each type of waiver has a different application and evaluation procedure.

1. Statewide Administrative Waivers

The following statewide **administrative waivers** address the regulations governing the application for funds and various recordkeeping provisions. These administrative waivers have been automatically granted to all LEAs, as applicable, for the duration of the state's waiver authority under Ed-Flex, contingent on the state's meeting the evaluation criteria stated below. It is anticipated that these waivers will reduce the administrative burden and provide additional time for instruction and planning, resulting in improved student performance:

1. **Submission of a Request for Specific Approval of Certain Items** [34 CFR 74.25(c)(6) and 74.27, or 80.22 and 80.30(b), as applicable; OMB Circulars A-87, A-21, or A-122, as applicable]

This waiver eliminates the need to request specific approval in the application for items budgeted in class/object codes 6200, 6300, and 6400.

2. **Submission of an Amendment to Transfer Funds for Training Costs** [34 CFR 74.25(c)(7) or 80.30(c)(1)(iii), as applicable]

This waiver eliminates the need for an amendment to transfer funds budgeted for training costs that are direct payments to trainees as long as the program description in the application remains unchanged.

3. **Certification that an Employee is Funded from a Single Fund Source or Cost Objective** [OMB Circular A-87, Attachment B, Number 11(h)(3)]

This waiver eliminates the requirement that charges for salaries and wages be supported by a semi-annual certification that the employee worked solely on that program for the period covered by the certification. This waiver is allowable as long as the employee's job description clearly states that the employee is assigned 100 percent to the program or single cost objective.

**Note:** OMB Circulars A-21 and A-122 do not offer the certification option in lieu of keeping time and effort. Therefore, no waiver comparable to this administrative waiver is possible for applicants following OMB Circular A-122 or A-21. Refer to **Appendix 2—Documentation Required for Charges to Payroll** for clarification of the time and effort requirements as they relate to OMB Circulars A-21 and A-122.

Evaluation Criteria for Statewide Administrative Waivers

The Statewide Administrative Waivers are evaluated based on student performance on TAKS Reading and TAKS Math for "All Students" statewide. If student performance fails to improve statewide for two consecutive years, the waivers will be reviewed by the Ed-Flex Committee to determine if changes should be recommended to the Commissioner.

## Appendix 12—continued

### 2. Statewide Programmatic Waivers

The following statewide **programmatic waivers** address the design and delivery of federal programs covered under Ed-Flex. The statewide programmatic waivers must be applied for through the LEA's **original** Consolidated NCLB Application for Federal Funding (SAS-NCLB-AA). These waivers allow educators the flexibility to use federal program funds in ways that may result in significant gains in student performance.

#### 1. Threshold for Eligibility to Implement Title I, Part A Schoolwide Programs [P.L. 107-110, Section 1114(a)(1)]

This waiver allows any campus otherwise eligible to receive Title I, Part A funds to implement a Title I, Part A schoolwide program regardless of the percentage of students from low-income families.

If approved, this Statewide Programmatic Waiver of Schoolwide Eligibility will be valid for one year. After the one-year waiver is implemented, the campus may continue to implement a schoolwide program for as long as the campus remains an eligible Title I, Part A attendance area.

After the one-year implementation of this waiver, the campus will continue to identify that it was an Ed-Flex waiver schoolwide campus in the SC5000 schedule of the consolidated NCLB application until such school year that the campus has a low income percentage of 40.00% or greater. At that point, the campus no longer selects "Ed-Flex" on the SC5000.

Although there is no evaluation of this Statewide Programmatic Waiver of Schoolwide Eligibility beyond the one-year waiver period, TEA will track and report to USDE the performance of all campuses granted this waiver until the point the campus has a low-income percentage of 40.00% or greater.

#### 2. Waiver of Title I, Part A 15% Roll Forward Limitation [P. L. 107-110, Section 1127(b)]

LEAs that receive a significant increase in Maximum Entitlement may apply for/utilize this Ed-Flex waiver if the LEA has already utilized a Title I Part A statutory roll forward waiver within the last 3 years.

This waiver is valid for one year and may be renewed each year the statutory waiver is not available that the LEA receives a significant increase at Maximum Entitlement.

**Individual programmatic waivers** provide LEAs and campuses the flexibility in the use of federal program funds based on the barriers preventing student achievement.

### 3. Individual

Appendix 12—continued

Programmatic  
Waivers

To request an individual programmatic waiver, LEAs must submit a separate Ed-Flex waiver application. A copy of the Ed-Flex waiver application is available on the Ed-Flex web site at: <http://www.tea.state.tx.us/edflex/>

Application  
Process

The deadlines for submitting an application for an individual programmatic waiver for 2009-2010 are as follows:

Application  
Deadline

**June 1, 2009**, for a start date of July 1, 2009, if approved by the Ed-Flex Committee and Commissioner.

**August 15, 2009**, for a start date of October 1, 2009, if approved by the Ed-Flex Committee and Commissioner.

No Ed-Flex Waiver applications received after the August 15 deadline will be considered for the 2009-2010 school year.

Application  
Review and  
Approval

TEA staff will review each waiver application to ensure that it was approved by the local board of trustees, signed by the superintendent, includes comments of the appropriate site-based decision-making committee, and identifies a technical assistance provider that will be used if the required annual gains in student performance are not met.

A written staff analysis will be forwarded with the waiver to the Texas Ed-Flex Committee for consideration. The committee's recommendation regarding the approval of the waiver, as well as the evaluation criteria that must be met, will be forwarded to the Commissioner of Education for final action. A letter transmitting the commissioner's decision will be sent to the LEA.

Duration of  
Waiver

If approved, these Individual Programmatic waivers will be granted for a maximum of three years effective school year 2009-2010 and ending 2011-2012. If the evaluation criteria established by the Ed-Flex Committee are met, the LEA may reapply for the waiver. However, if the evaluation criteria have not been met at the end of the waiver period, the waiver is terminated. **If the waiver is terminated, the campus is ineligible to reapply for this waiver until school year 2012-2013.**

Evaluation  
Criteria for  
Individual  
Programmatic  
Waivers

Evaluation criteria for each individual programmatic waiver will be established by the Ed-Flex Committee.