

EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999

APRIL, 20, 1999.—Ordered to be printed

Mr. GOODLING, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 800]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 800), to provide for education flexibility partnerships, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Education Flexibility Partnership Act of 1999”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) *States differ substantially in demographics, in school governance, and in school finance and funding. The administrative and funding mechanisms that help schools in 1 State improve may not prove successful in other States.*

(2) *Although the Elementary and Secondary Education Act of 1965 and other Federal education statutes afford flexibility to State educational agencies and local educational agencies in implementing Federal programs, certain requirements of Federal education statutes or regulations may impede local efforts to reform and improve education.*

(3) *By granting waivers of certain statutory and regulatory requirements, the Federal Government can remove impediments for local educational agencies in implementing educational reforms and raising the achievement levels of all children.*

(4) *State educational agencies are closer to local school systems, implement statewide educational reforms 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 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 (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.*

SEC. 3. DEFINITIONS.

In this Act:

(1) **LOCAL EDUCATIONAL AGENCY; STATE EDUCATIONAL AGENCY; OUTLYING AREA.**—*The terms “local educational agency”, “State educational agency”, and “outlying area” have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965.*

(2) **ELIGIBLE SCHOOL ATTENDANCE AREA; SCHOOL ATTENDANCE AREA.**—*The terms “eligible school attendance area” and “school attendance area” have the meanings given the terms in section 1113(a)(2) of the Elementary and Secondary Education Act of 1965.*

(3) **SECRETARY.**—*The term “Secretary” means the Secretary of Education.*

(4) **STATE.**—*The term “State” means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each outlying area.*

SEC. 4. 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 1 or more programs described in subsection (b), other than requirements described in subsection (c), 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, 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; 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, for the local educational agencies and schools that do not make adequate yearly progress as described in section 1111(b)(2) of such Act; 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;

(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), the performance of students in the schools and local educational agencies affected by the waivers; and

(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 2 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 the date of enactment of this Act 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) 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.

(c) *WAIVERS NOT AUTHORIZED.*—The Secretary and the State educational agency may not waive under subsection (a)(1)(A) 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;

(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, 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 educational agency that meets the requirements of such subsections (a) and (b);

(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 educational 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 the date of enactment of this Act, 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).

(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), 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.

SEC. 5. FLEXIBILITY TO DESIGN CLASS SIZE REDUCTION PROGRAMS.

Section 307 of the Department of Education Appropriations Act, 1999, is amended—

(1) in subsection (b)(2), by inserting “(except as provided in subsection (c)(2)(D))” before the period; and

(2) in subsection (c)(2), by adding at the end the following:

“(D) If a local educational agency has already reduced class size in the early grades to 18 or fewer children and intends to use funds provided under this section to carry out professional development activities, including activities to improve teacher quality, then the State shall make the award under subsection (b) to the local educational agency without requiring the formation of a consortium.”.

SEC. 6. ALTERNATIVE EDUCATIONAL SETTING.

(a) IN GENERAL.—Section 615(k)(1)(A)(ii)(I) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(k)(1)(A)(ii)(I)) is amended to read as follows:

“(I) the child carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or a local educational agency; or”.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to conduct occurring not earlier than the date of enactment of this Act.

And the Senate agree to the same.

BILL GOODLING,
PETER HOEKSTRA,
MICHAEL N. CASTLE,
JAMES GREENWOOD,
MARK SOUDER,
BOB SCHAFFER,

Managers on the Part of the House.

JIM JEFFORDS,
JUDD GREGG,
BILL FRIST,
MIKE DEWINE,
MICHAEL B. ENZI,
TIM HUTCHINSON,
SUSAN COLLINS,
SAM BROWNBACK,
CHUCK HAGEL,
JEFF SESSIONS,
TED KENNEDY,
CHRIS DODD,
TOM HARKIN,
BARBARA A. MIKULSKI,
JEFF BINGAMAN,
PATTY MURRAY,
JACK REED,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 800) to provide for education flexibility partnerships, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

SHORT TITLE

1. Both the House bill and the Senate amendment are identical in this section.

FINDINGS

2. The findings are identical in both the House bill and the Senate amendment except for finding (6). See note 3.

Descriptive note.

3. The House bill, but not the Senate amendment, mentions the important focus on math and science in the Eisenhower Professional Development Program as an example of the intent and purposes of programs to be maintained under Ed-Flex.

The Senate recedes.

DEFINITIONS

4. The House bill, but not the Senate amendment, contains two additional definitions. Those are: “attendance area” because this term is mentioned in (c)(F), which defines an unauthorized Title I school eligibility waiver and “Ed-Flex Partnership State” in order to make clear that the term refers to an eligible state. The Senate amendment, but not the House bill includes a definition of “outlying areas”. The House bill refers to this definition under ESEA.

The Senate recedes on attendance area. The House recedes on Ed-Flex Partnership State and the Senate recedes with an amendment to include cross-reference to the definition of “outlying area.”

EDUCATION FLEXIBILITY PARTNERSHIP PROGRAM

5. The Senate amendment, but not the House bill, in Part (a)(1)(A) does not permit the State to waive requirements on itself. The House recedes.

ELIGIBLE STATE

6. The House bill requires a state to have implemented more of their Title I plan than the Senate amendment. See Notes 7 and 8. The House bill and the Senate amendment differ in how they measure the performance of local applicants. See Note 9.

7. The Senate amendment but not the House bill, includes the phrase, “including the requirements of that section relating to disaggregation of data.” The House bill refers to disaggregation of data by reference.

The Senate recedes. Provisions regarding disaggregation of data are included in the portion of section 1111(b) of the Elementary and Secondary Education Act which deals with assessments. These provisions were highlighted in the Senate bill, but specific reference to them was not included in the conference agreement. Conferees were concerned that a specific reference to only one of the requirements of section 1111(b) could create the inaccurate impression that States wanting to participate in the educational flexibility programs would be held to requirements beyond those currently in the law.

8. The House bill requires content standards and interim assessments to be in place, in addition to having made substantial progress towards developing and implementing performance standards and final aligned assessments. The Senate amendment requires substantial progress for content and performance standards as well as final aligned assessments.

The Senate recedes. The Conferees would like to clarify congressional intent with respect to State compliance with the Elementary and Secondary Education Act (ESEA) Title I, Part A, standards and assessment requirements (Sec. 1111(b)) as an eligibility criterion both for Ed-Flex authority under H.R. 800 and for participation in ESEA, Title 1, Part A. Under both Ed-Flex and Title 1, Part A, uniform State standards and uniform State assessments are not required as a condition for either being granted Ed-Flex authority or continuing to receive financial assistance under Title 1, Part A. However, if a State does not have uniform State standards and assessments, the State must have in effect, or be making substantial progress toward having in effect, local standards and assessments approved by the State in order for the State to be granted Ed-Flex authority. The Conferees expect the Department of Education to maintain its current interpretation of the provisions of ESEA, Title 1, Section 1111(b) as published in the policy guidance in 1997. This guidance reflects the understanding of the Conferees that States, such as Nebraska and Iowa, can comply with section 1111(b) of Title 1, Part A if the State has implemented uniform statewide standards and assessments, has a statewide system with local standards and assessments approved by the State; or has local standards or assessments approved by the State on the basis of models or criteria to ensure challenging standards and high quality, aligned assessments.

9. The House bill requires states to hold LEAs and schools accountable for meeting goals listed in waiver applications to be eligible. The Senate amendment has an additional requirement that States are implementing corrective action measures under Title I for schools that fail to make adequate yearly progress.

The Senate recedes with an amendment to insert the words “and for engaging in the technical assistance and corrective actions consistent with section 1116 of the Elementary and Secondary Education Act of 1965, for the local educational agencies and schools

that do not make adequate yearly progress as described in section 1111(b) of that Act” after “paragraph (4)”

STATE APPLICATION

10. The House bill and Senate amendment differ in how States are to measure and set objectives. See Note 11–14.

11. The House bill, but not the Senate amendment, requires states to describe specific objectives in their application.

The Senate recedes with an amendment to delete “specific” and insert “clear.”

12. The Senate amendment, but not the House bill requires state applications to reference State comprehensive plans or Section 1111(b) of ESEA (Title I standards and assessments).

The House recedes.

13. The House bill, but not the Senate amendment, requires local *progress* to be measured by using the local applicants’ objectives, as defined by the section of the bill (a)(4)(A)(iii) requiring local applicants to set specific and measurable goals for schools and groups of students affected by waivers. The Senate amendment, but not the House bill, requires States to evaluate the *performance* of local applicants and students affected by waivers in general, not defined by local applications.

The House recedes.

14. Both the House bill and the Senate amendment require States to describe how they will notify the public of waivers granted. The House bill requires States to provide assurances that it will provide notice with a minimum requirement of 30 days or in accordance with state law. The Senate amendment requires “adequate and efficient” notice and opportunity for comment. See note 18 for local comment and notice.

The House recedes.

APPROVAL AND CONSIDERATIONS

15. The Senate amendment, but not the House bill, explicitly requires the Secretary to consider a state’s eligibility for Ed-Flex in approving their application. The House bill, but not the Senate amendment requires the Secretary to evaluate their objectives according to their specificity and their connection to students, schools and districts.

The Senate recedes with an amendment to add (B)(i) from the Senate bill and to revise (B)(iii) of the House bill to read as follows: “(iii) 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.”

LOCAL APPLICATION

16. Both the House bill and the Senate amendment are identical with the exception of (iii) and (v). See notes 17 and 18.

17. The House bill, but not the Senate amendment, requires goals for each *group of students* affected by a proposed waiver, in addition to the LEA or school.

The Senate recedes with an amendment to revise “(iii)” to read as follows:

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

18. Local public notice and comment: See Note 14.
The House recedes.

EVALUATION OF APPLICATIONS

19. Both the House bill and the Senate amendment are identical.

20. The Senate amendment stipulates that the SEA should consider how a waiver will help improve school and student performance when evaluating applications. The House bill requires the SEA to be satisfied that the LEA or school will continue to meet the underlying purposes of the statutes included in this legislation.

The House and Senate recede taking both provisions.

21. The House bill requires a statistically significant decrease for two consecutive years until waivers can be terminated. The Senate amendment requires termination if performance has been “inadequate” to justify continuing the waiver.

The House recedes with an amendment to have the title read “Termination” and to insert at the end of (5)(B) of the Senate bill the following: “or 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).”

OVERSIGHT AND REPORTING

22. The House bill entitles this section OVERSIGHT AND REPORTING. The Senate amendment entitles this section “MONITORING AND PERFORMANCE REVIEW.”

The Senate recedes.

23. The House bill, but not the Senate amendment, stipulates that monitoring “shall include a review of relevant audit, technical assistance, evaluation, and performance reports.” Both the House bill and the Senate amendment require states to submit an annual report, but the House bill states this in (ii) and the Senate amendment states this in (i).

The Senate recedes with an amendment to strike “Such monitoring shall include a review of relevant audit, technical assistance, evaluation, and performance reports.” While not listing in statute the specific reports to be reviewed, the conferees anticipate that State educational agencies will utilize these resources in their monitoring of local educational agencies and schools which have received waivers.

24. The House bill and the Senate amendment require states to submit performance data. However, the House bill, but not the Senate amendment, requires States to submit performance data after two years of being an Ed-Flex state.

The Senate recesses.

PROGRESS REPORTS

25. The House bill requires the Secretary to report to Congress on an annual basis the impact of Ed-Flex on performance objectives and to make state reports available to Congress. The Senate amendment requires a report to Congress after the first year and biennially thereafter. In general, the Senate amendment requires the Secretary to report what the House bill prescribes for the states. The Senate amendment in (1) requires the Secretary to describe the federal statutes and regulations for which they have received waiver authority. The House bill but not the Senate amendment specifies the type of information to be reported on waivers granted. The Senate amendment only requires information on waivers of state regulations and statutes. The House bill, but not the Senate amendment requires specific data on types of waivers granted and requires a report on the relationship between the waivers and meeting objectives. The Senate amendment in 3 and 4 requires that they describe “the effect” on implementation of reforms and student performance. (cf. Note 38).

The Senate recesses with an amendment to: (a) change (B)(i)(II) to read as follows—“information describing the effect of waivers granted on the implementation of State and local educational reforms pertaining to school and student performance;” (b) add a new (B)(i)(III) to read as follows—“information describing the relationship of waivers granted to the performance of schools and students affected by the waivers.” (c) add a new (B)(i)(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.” (d) change (B)(ii)(II) to read as follows—“submit to Congress a report that summarizes the State reports ensuring that such reports address the effect that the educational flexibility program under this section has had on the implementation of State and local educational reforms and on the performance of students affected by the waivers.”

DURATION OF FEDERAL WAIVERS

26. The Senate amendment, but not the House bill, requires that states “continue to meet the accountability requirements described in subsection (a)(2)(B), and has improved student performance” in order for authority to be extended.

The House recesses.

PERFORMANCE REVIEW

27. The House bill requires that the Secretary review the performance of States after three years of being an Ed-Flex State. The Senate amendment requires the Secretary to review the performance of States “periodically.”

The House recedes with an amendment specifying that the review be conducted three years after designation and to insert “, including meeting the objectives described in paragraph (3)(A)(iii),” after “performance”.

AUTHORITY TO ISSUE WAIVERS

28. The House bill authorizes this program beginning in FY 1999. The Senate amendment begins this authorization in FY 2000. The Senate recedes.

PUBLIC NOTICE AND COMMENT

29. See Notes 14 and 18.

The House recedes with an amendment to insert after “waiver” in line 6 “, including a description of any improved performance of students that is expected to result from the waiver authority or waiver,” and to insert after “received” on line 11 “and made available for review by any member of the public,”.

INCLUDED PROGRAMS

30. The House bill and the Senate amendment are identical except that subsection 4(b)(1) of the Senate amendment excludes the Local Review and School Improvement sections of Title I.

The House recedes. It is the intent of the conferees that, if an LEA has higher standards than the State standard, then locally approved standards may be used for purposes of determining schools in need of improvement or need for corrective action.

WAIVERS NOT AUTHORIZED

31. The Senate amendment specifies that the Secretary and the State may not waive these provisions. The House bill only addresses the Secretary.

The House recedes.

TITLE I WAIVERS

32. The House bill prohibits Title I school eligibility waivers unless they are marginally below the necessary poverty level. The Senate amendment prohibits waivers of Title I rank-order requirements for schools with more than 75% poverty.

The House recedes on Senate language and the Senate recedes on House language with an amendment changing the low-income percentage from within 5 percentage points to 10 percentage points, and clarifying the applicable subsections of section 1113 of Title I, Part A of the Elementary and Secondary Education Act.

TREATMENT OF EXISTING ED-FLEX STATES

33. The House bill protects the authority of current Ed-Flex States by stating that this Act does not apply to them until they apply to renew their authority. The Senate amendment permanently exempts existing Ed-Flex States from being affected by this statute.

The Senate recedes with an amendment which makes clear that the performance of the current 12 Ed-Flex States will be judged, when they re-apply for Ed-Flex status at the end of their

current 5 year period, on the basis of section 311(e) of the Goals 2000: Educate America Act. The application itself, must conform to the new requirements of the Education Flexibility Partnership Act. The amendment also provides that, upon enactment of this Act, the 12 existing Ed-Flex States may exercise Ed-Flex waiver authority with respect to the technology programs under subpart 2 of part A of Title III of the Elementary and Secondary Education Act (other than section 3136 of such Act).

RENEWAL

34. The House bill stipulates when renewing Ed-Flex Authority, the Secretary must determine whether SEAs have made measureable progress in accordance with their measurable objectives, as well as whether SEAs demonstrate that LEAs or schools have made measurable progress. The House bill also exempts current Ed-Flex States (see Note 33). The Senate amendment requires the Secretary to review generally the progress of those affected by Ed-Flex authority or waivers towards meeting goals set in local applications.

The Senate recedes with an amendment striking the word “measurable” in (e)(1)(A) and (B) and changing the word “Accountability” in the heading to “Renewal”.

35. The House bill, but not the Senate amendment, clarifies that when current Ed-Flex States apply to renew their authority, their progress should be measured in accordance with the terms under which they were granted their authority. However, when their authority expires and they receive renewed authority this law will apply to them.

The Senate recedes. The conferees have addressed renewal for the 12 Ed-Flex States in note 33.

PUBLICATION

36. The Senate amendment, but not the House bill, requires the Secretary to include the rationale for granting a State Ed-Flex authority when publishing notice in the Federal Register.

The House recedes.

EFFECTIVE DATE

37. The House bill, but not the Senate amendment, sunsets this law when ESEA reauthorization is enacted.

The House recedes. The Conferees believe that when the Congress considers the Elementary and Secondary Education Act it will have to take into consideration the changes made to this Act and make whatever changes and adjustments are required to ensure that both laws operate in a coordinated fashion so as to provide as much flexibility as possible to States and local educational agencies.

FLEXIBILITY TO DESIGN CLASS SIZE REDUCTION

38. The Senate amendment, but not the House bill, includes findings stating the impact of fully funding IDEA and amends the 1999 Omnibus Appropriations Act to allow LEAs to use class size reduction funds for IDEA part B.

The Senate recedes with an amendment providing that, if a local educational agency has a class size in grades 1 through 3 of 18 or fewer children, the local educational agency may use the funds made available for class-size reduction under the Department of Education Appropriations Act for fiscal year 1999 for professional development without entering into a consortia.

Currently, a local educational agency that is eligible for amounts less than the starting salary for a teacher must form a consortium in order to receive any class-size reduction funds. Under the conference agreement, such an agency would still have to form a consortium if it does not meet the criteria of having a class size in grades 1 through 3 of 18 or fewer children or if it plans to use the funds to reduce class size. Such an agency would not have to form a consortium if it has a class size in grades 1 through 3 of 18 or fewer children and plans to use the funds for professional development.

In addition, the conferees note that—under current law—any local educational agency that has a class size of 18 or fewer children may use class-size-reduction funds made available to take further class size reductions in grades 1 through 3, to reduce class size in kindergarten, or other grades, or to carry out activities to improve teacher quality—including professional development.

FLEXIBILITY TO DESIGN DROPOUT PREVENTION PROGRAMS

39. The Senate amendment, but not the House bill includes findings stating that fully funding IDEA would free up funds at the local level to develop dropout programs to best address their needs and amends the 1999 Omnibus Appropriations Act to allow LEAs to use class size reduction funds for IDEA part B.

The Senate recedes.

AUTHORIZATION OF APPROPRIATIONS

40. The Senate amendment, but not the House bill authorizes \$150 million in additional funds for IDEA.

The Senate recedes.

FLEXIBILITY TO DEVELOP AFTER SCHOOL PROGRAMS

41. The Senate amendment, but not the House bill includes findings stating that fully funding IDEA would free up funds at the local level to develop after-school programs to best address their needs and amends the 1999 Omnibus Appropriations Act to allow LEAs to use class size reduction funds for IDEA part B.

The Senate recedes.

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS

42. The Senate amendment, but not the House bill, authorizes \$600 million in additional appropriations for IDEA part B.

The Senate recedes.

FLEXIBILITY TO DEVELOP PROGRAMS TO REDUCE SOCIAL PROMOTION AND ESTABLISH SCHOOL ACCOUNTABILITY PROCEDURES

43. The Senate amendment, but not the House bill includes findings stating that fully funding IDEA would free up funds at the

local level to develop programs to reduce social promotion, establish school accountability programs or any other programs to best address their needs and amends the 1999 Omnibus Appropriations Act to allow LEAs to use class size reduction funds for IDEA part B.

The Senate recedes.

ALTERNATIVE EDUCATIONAL SETTING

44. The Senate amendment, but not the House bill, includes an amendment to IDEA that subjects a child with a disability to the discipline provisions if they *possess* a weapon at school, in addition to *carrying* a weapon to school (current law) and applies this new provision to conduct occurring not earlier than the date of enactment of this Act.

The House recedes.

FURTHER AUTHORIZATION OF APPROPRIATIONS

45. The Senate amendment, but not the House bill, authorizes \$500 million in additional appropriations for IDEA part B.

The Senate recedes.

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PETER HOEKSTRA,
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BOB SCHAFFER,

Managers on the Part of the House.

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