

In the Senate of the United States,

March 11, 1999.

Resolved, That the bill from the House of Representatives (H.R. 800) entitled “An Act to provide for education flexibility partnerships.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

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

4 ***SEC. 2. FINDINGS.***

5 *Congress makes the following findings:*

6 *(1) States differ substantially in demographics,*
7 *in school governance, and in school finance and fund-*
8 *ing. The administrative and funding mechanisms*
9 *that help schools in 1 State improve may not prove*
10 *successful in other States.*

11 *(2) Although the Elementary and Secondary*
12 *Education Act of 1965 and other Federal education*

1 *statutes afford flexibility to State and local edu-*
2 *catinal agencies in implementing Federal programs,*
3 *certain requirements of Federal education statutes or*
4 *regulations may impede local efforts to reform and*
5 *improve education.*

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

11 (4) *State educational agencies are closer to local*
12 *school systems, implement statewide educational re-*
13 *forms with both Federal and State funds, and are re-*
14 *sponsible for maintaining accountability for local ac-*
15 *tivities consistent with State standards and assess-*
16 *ment systems. Therefore, State educational agencies*
17 *are often in the best position to align waivers of Fed-*
18 *eral and State requirements with State and local ini-*
19 *tiatives.*

20 (5) *The Education Flexibility Partnership Dem-*
21 *onstration Act allows State educational agencies the*
22 *flexibility to waive certain Federal requirements,*
23 *along with related State requirements, but allows only*
24 *12 States to qualify for such waivers.*

1 (6) *Expansion of waiver authority will allow for*
2 *the waiver of statutory and regulatory requirements*
3 *that impede implementation of State and local edu-*
4 *cational improvement plans, or that unnecessarily*
5 *burden program administration, while maintaining*
6 *the intent and purposes of affected programs, and*
7 *maintaining such fundamental requirements as those*
8 *relating to civil rights, educational equity, and ac-*
9 *countability.*

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

13 **SEC. 3. DEFINITIONS.**

14 *In this Act:*

15 (1) *LOCAL EDUCATIONAL AGENCY; STATE EDU-*
16 *CATIONAL AGENCY.—The terms “local educational*
17 *agency” and “State educational agency” have the*
18 *meanings given such terms in section 14101 of the El-*
19 *ementary and Secondary Education Act of 1965.*

20 (2) *OUTLYING AREA.—The term “outlying area”*
21 *means Guam, American Samoa, the United States*
22 *Virgin Islands, the Commonwealth of the Northern*
23 *Mariana Islands, the Republic of Palau, the Republic*
24 *of the Marshall Islands, and the Federated States of*
25 *Micronesia.*

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

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

6 **SEC. 4. EDUCATION FLEXIBILITY PARTNERSHIP.**

7 (a) *EDUCATION FLEXIBILITY PROGRAM.*—

8 (1) *PROGRAM AUTHORIZED.*—

9 (A) *IN GENERAL.*—*The Secretary may*
10 *carry out an education flexibility program under*
11 *which the Secretary authorizes a State edu-*
12 *cational agency that serves an eligible State to*
13 *waive statutory or regulatory requirements ap-*
14 *licable to 1 or more programs or Acts described*
15 *in subsection (b), other than requirements de-*
16 *scribed in subsection (c), for any local edu-*
17 *cational agency or school within the State.*

18 (B) *DESIGNATION.*—*Each eligible State*
19 *participating in the program described in sub-*
20 *paragraph (A) shall be known as an “Ed-Flex*
21 *Partnership State”.*

22 (2) *ELIGIBLE STATE.*—*For the purpose of this*
23 *subsection the term “eligible State” means a State*
24 *that—*

25 (A)(i) *has—*

1 (I) developed and implemented the
2 challenging State content standards, chal-
3 lenging State student performance stand-
4 ards, and aligned assessments described in
5 section 1111(b) of the Elementary and Sec-
6 ondary Education Act of 1965, including
7 the requirements of that section relating to
8 disaggregation of data, and for which local
9 educational agencies in the State are pro-
10 ducing the individual school performance
11 profiles required by section 1116(a) of such
12 Act; or

13 (II) made substantial progress, as de-
14 termined by the Secretary, toward develop-
15 ing and implementing the standards and
16 assessments, and toward having local edu-
17 cational agencies in the State produce the
18 profiles, described in subclause (I); and

19 (ii) holds local educational agencies and
20 schools accountable for meeting educational goals
21 and for engaging in the technical assistance and
22 corrective actions consistent with section 1116 of
23 the Elementary and Secondary Education Act of
24 1965, for the local educational agencies and
25 schools that do not make adequate yearly

1 *progress as described in section 1111(b) of that*
2 *Act; and*

3 *(B) waives State statutory or regulatory re-*
4 *quirements relating to education while holding*
5 *local educational agencies or schools within the*
6 *State that are affected by such waivers account-*
7 *able for the performance of the students who are*
8 *affected by such waivers.*

9 (3) *STATE APPLICATION.*—

10 *(A) IN GENERAL.*—*Each State educational*
11 *agency desiring to participate in the education*
12 *flexibility program under this section shall sub-*
13 *mit an application to the Secretary at such time,*
14 *in such manner, and containing such informa-*
15 *tion as the Secretary may reasonably require.*
16 *Each such application shall demonstrate that the*
17 *eligible State has adopted an educational flexi-*
18 *bility plan for the State that includes—*

19 *(i) a description of the process the*
20 *State educational agency will use to evalu-*
21 *ate applications from local educational*
22 *agencies or schools requesting waivers of—*

23 *(I) Federal statutory or regu-*
24 *latory requirements as described in*
25 *paragraph (1)(A); and*

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

3 (ii) *a detailed description of the State*
4 *statutory and regulatory requirements relat-*
5 *ing to education that the State educational*
6 *agency will waive;*

7 (iii) *a description of how the edu-*
8 *cational flexibility plan is consistent with*
9 *and will assist in implementing the State*
10 *comprehensive reform plan or, if a State*
11 *does not have a comprehensive reform plan,*
12 *a description of how the educational flexi-*
13 *bility plan is coordinated with activities de-*
14 *scribed in section 1111(b) of the Elementary*
15 *and Secondary Education Act of 1965;*

16 (iv) *a description of how the State edu-*
17 *cational agency will meet the requirements*
18 *of paragraph (8); and*

19 (v) *a description of how the State edu-*
20 *cational agency will evaluate, (consistent*
21 *with the requirements of title I of the Ele-*
22 *mentary and Secondary Education Act of*
23 *1965), the performance of students in the*
24 *schools and local educational agencies af-*
25 *ected by the waivers.*

1 (B) *APPROVAL AND CONSIDERATIONS.*—*The*
2 *Secretary may approve an application described*
3 *in subparagraph (A) only if the Secretary deter-*
4 *mines that such application demonstrates sub-*
5 *stantial promise of assisting the State edu-*
6 *cational agency and affected local educational*
7 *agencies and schools within the State in carry-*
8 *ing out comprehensive educational reform, after*
9 *considering—*

10 (i) *the eligibility of the State as de-*
11 *scribed in paragraph (2);*

12 (ii) *the comprehensiveness and quality*
13 *of the educational flexibility plan described*
14 *in subparagraph (A);*

15 (iii) *the ability of such plan to ensure*
16 *accountability for the activities and goals*
17 *described in such plan;*

18 (iv) *the significance of the State statu-*
19 *tory or regulatory requirements relating to*
20 *education that will be waived; and*

21 (v) *the quality of the State educational*
22 *agency's process for approving applications*
23 *for waivers of Federal statutory or regu-*
24 *latory requirements as described in para-*

1 *graph (1)(A) and for monitoring and evalu-*
2 *ating the results of such waivers.*

3 *(4) LOCAL APPLICATION.—*

4 *(A) IN GENERAL.—Each local educational*
5 *agency or school requesting a waiver of a Federal*
6 *statutory or regulatory requirement as described*
7 *in paragraph (1)(A) and any relevant State*
8 *statutory or regulatory requirement from a State*
9 *educational agency shall submit an application*
10 *to the State educational agency at such time, in*
11 *such manner, and containing such information*
12 *as the State educational agency may reasonably*
13 *require. Each such application shall—*

14 *(i) indicate each Federal program af-*
15 *ected and the statutory or regulatory re-*
16 *quirement that will be waived;*

17 *(ii) describe the purposes and overall*
18 *expected results of waiving each such re-*
19 *quirement;*

20 *(iii) describe for each school year spe-*
21 *cific, measurable, and educational goals for*
22 *each local educational agency or school af-*
23 *ected by the proposed waiver;*

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

4 (v) in the case of an application from
5 a local educational agency, describe how the
6 local educational agency will meet the re-
7 quirements of paragraph (8).

8 (B) *EVALUATION OF APPLICATIONS.*—A
9 State educational agency shall evaluate an ap-
10 plication submitted under subparagraph (A) in
11 accordance with the State’s educational flexibil-
12 ity plan described in paragraph (3)(A).

13 (C) *APPROVAL.*—A State educational agen-
14 cy shall not approve an application for a waiver
15 under this paragraph unless—

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

20 (ii) the waiver of Federal statutory or
21 regulatory requirements as described in
22 paragraph (1)(A) will assist the local edu-
23 cational agency or school in reaching its
24 educational goals, particularly goals with
25 respect to school and student performance.

1 (5) *MONITORING AND PERFORMANCE REVIEW.*—

2 (A) *MONITORING.*—*Each State educational*
3 *agency participating in the program under this*
4 *section shall annually monitor the activities of*
5 *local educational agencies and schools receiving*
6 *waivers under this section and shall submit an*
7 *annual report regarding such monitoring to the*
8 *Secretary.*

9 (B) *PERFORMANCE REVIEW.*—*The State*
10 *educational agency shall annually review the*
11 *performance of any local educational agency or*
12 *school granted a waiver of Federal statutory or*
13 *regulatory requirements as described in para-*
14 *graph (1)(A) in accordance with the evaluation*
15 *requirement described in paragraph (3)(A)(v),*
16 *and shall terminate any waiver granted to the*
17 *local educational agency or school if the State*
18 *educational agency determines, after notice and*
19 *opportunity for hearing, that the local edu-*
20 *cational agency or school's performance with re-*
21 *spect to meeting the accountability requirement*
22 *described in paragraph (2)(B) and the goals de-*
23 *scribed in paragraph (4)(A)(iii) has been inad-*
24 *equately to justify continuation of such waiver.*

25 (6) *DURATION OF FEDERAL WAIVERS.*—

1 (A) *IN GENERAL.*—*The Secretary shall not*
2 *approve the application of a State educational*
3 *agency under paragraph (3) for a period exceed-*
4 *ing 5 years, except that the Secretary may ex-*
5 *tend such period if the Secretary determines that*
6 *such agency’s authority to grant waivers has*
7 *been effective in enabling such State or affected*
8 *local educational agencies or schools to carry out*
9 *their local reform plans and to continue to meet*
10 *the accountability requirement described in sub-*
11 *section (a)(2)(B), and has improved student per-*
12 *formance.*

13 (B) *PERFORMANCE REVIEW.*—*The Secretary*
14 *shall periodically review the performance of any*
15 *State educational agency granting waivers of*
16 *Federal statutory or regulatory requirements as*
17 *described in paragraph (1)(A) and shall termi-*
18 *nate such agency’s authority to grant such waiv-*
19 *ers if the Secretary determines, after notice and*
20 *opportunity for hearing, that such agency’s per-*
21 *formance has been inadequate to justify continu-*
22 *ation of such authority.*

23 (7) *AUTHORITY TO ISSUE WAIVERS.*—*Notwith-*
24 *standing any other provision of law, the Secretary is*
25 *authorized to carry out the education flexibility pro-*

1 *gram under this subsection for each of the fiscal years*
2 *2000 through 2004.*

3 (8) *PUBLIC NOTICE AND COMMENT.*—*Each State*
4 *educational agency granted waiver authority under*
5 *this section and each local educational agency receiv-*
6 *ing a waiver under this section shall provide the pub-*
7 *lic adequate and efficient notice of the proposed waiv-*
8 *er authority or waiver, consisting of a description of*
9 *the agency’s application for the proposed waiver au-*
10 *thority or waiver in a widely read or distributed me-*
11 *dium, shall provide the opportunity for parents, edu-*
12 *cators, and all other interested members of the com-*
13 *munity to comment regarding the proposed waiver*
14 *authority or waiver, shall provide that opportunity in*
15 *accordance with any applicable State law specifying*
16 *how the comments may be received, and shall submit*
17 *the comments received with the agency’s application*
18 *to the Secretary or the State educational agency, as*
19 *appropriate.*

20 (b) *INCLUDED PROGRAMS.*—*The statutory or regu-*
21 *latory requirements referred to in subsection (a)(1)(A) are*
22 *any such requirements under the following programs or*
23 *Acts:*

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

4 (2) *Part B of title II of the Elementary and Sec-*
5 *ondary Education Act of 1965.*

6 (3) *Subpart 2 of part A of title III of the Ele-*
7 *mentary and Secondary Education Act of 1965 (other*
8 *than section 3136 of such Act).*

9 (4) *Title IV of the Elementary and Secondary*
10 *Education Act of 1965.*

11 (5) *Title VI of the Elementary and Secondary*
12 *Education Act of 1965.*

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

15 (7) *The Carl D. Perkins Vocational and Tech-*
16 *anical Education Act of 1998.*

17 (c) *WAIVERS NOT AUTHORIZED.—The Secretary and*
18 *the State educational agency may not waive any statutory*
19 *or regulatory requirement of the programs or Acts author-*
20 *ized to be waived under subsection (a)(1)(A)—*

21 (1) *relating to—*

22 (A) *maintenance of effort;*

23 (B) *comparability of services;*

24 (C) *the equitable participation of students*
25 *and professional staff in private schools;*

1 (D) *parental participation and involve-*
2 *ment;*

3 (E) *the distribution of funds to States or to*
4 *local educational agencies;*

5 (F) *servicing eligible school attendance areas*
6 *in rank order under section 1113(a)(3) of the El-*
7 *ementary and Secondary Education Act of 1965;*

8 (G) *use of Federal funds to supplement, not*
9 *supplant, non-Federal funds; and*

10 (H) *applicable civil rights requirements;*
11 *and*

12 (2) *unless the underlying purposes of the statu-*
13 *tory requirements of each program or Act for which*
14 *a waiver is granted continue to be met to the satisfac-*
15 *tion of the Secretary.*

16 (d) *CONTINUING ELIGIBILITY.—*

17 (1) *IN GENERAL.—Each State educational agen-*
18 *cy that is granted waiver authority under the provi-*
19 *sions of law described in paragraph (2) shall be eligi-*
20 *ble to continue the waiver authority under the terms*
21 *and conditions of the provisions of law as the provi-*
22 *sions of law are in effect on the date of enactment of*
23 *this Act.*

24 (2) *PROVISIONS OF LAW.—The provisions of law*
25 *referred to in paragraph (1) are as follows:*

1 (A) *Section 311(e) of the Goals 2000: Edu-*
2 *cate America Act.*

3 (B) *The proviso referring to such section*
4 *311(e) under the heading “**EDUCATION RE-***
5 ***FORM**” in the Department of Education Appro-*
6 *priations Act, 1996 (Public Law 104–134; 110*
7 *Stat. 1321–229).*

8 (e) *ACCOUNTABILITY.—In deciding whether to extend*
9 *a request for a State educational agency’s authority to issue*
10 *waivers under this section, the Secretary shall review the*
11 *progress of the State education agency, local educational*
12 *agency, or school affected by such waiver or authority to*
13 *determine if such agency or school has made progress to-*
14 *ward achieving the desired results and goals described in*
15 *the application submitted pursuant to clauses (ii) and (iii)*
16 *of subsection (a)(4)(A), respectively.*

17 (f) *PUBLICATION.—A notice of the Secretary’s decision*
18 *to authorize State educational agencies to issue waivers*
19 *under this section, including a description of the rationale*
20 *the Secretary used to approve applications under subsection*
21 *(a)(3)(B), shall be published in the Federal Register and*
22 *the Secretary shall provide for the dissemination of such*
23 *notice to State educational agencies, interested parties, in-*
24 *cluding educators, parents, students, advocacy and civil*

1 *rights organizations, other interested parties, and the pub-*
2 *lic.*

3 **SEC. 5. PROGRESS REPORTS.**

4 *The Secretary, not later than 1 year after the date of*
5 *enactment of this Act and biennially thereafter, shall submit*
6 *to Congress a report that describes—*

7 *(1) the Federal statutory and regulatory require-*
8 *ments for which waiver authority is granted to State*
9 *educational agencies under this Act;*

10 *(2) the State statutory and regulatory require-*
11 *ments that are waived by State educational agencies*
12 *under this Act;*

13 *(3) the effect of the waivers upon implementation*
14 *of State and local educational reforms; and*

15 *(4) the performance of students affected by the*
16 *waivers.*

17 **SEC. 6. FLEXIBILITY TO DESIGN CLASS SIZE REDUCTION**
18 **PROGRAMS.**

19 *(a) FINDINGS.—Congress finds that if part B of the*
20 *Individuals with Disabilities Education Act (20 U.S.C.*
21 *1411 et seq.) were fully funded, local educational agencies*
22 *and schools would have the flexibility in their budgets to*
23 *design class size reduction programs, or any other programs*
24 *deemed appropriate by the local educational agencies and*

1 *schools that best address their unique community needs and*
2 *improve student performance.*

3 (b) *AMENDMENT.*—Section 307 of the Department of
4 *Education Appropriations Act, 1999, is amended by adding*
5 *after subsection (g) the following:*

6 “(h) *Notwithstanding subsections (b)(2), and (c)*
7 *through (g), a local educational agency may use funds re-*
8 *ceived under this section to carry out activities under part*
9 *B of the Individuals with Disabilities Education Act (20*
10 *U.S.C. 1411 et seq.) in accordance with the requirements*
11 *of such part.”.*

12 **SEC. 7. FLEXIBILITY TO DEVELOP DROPOUT PREVENTION**
13 **PROGRAMS.**

14 (a) *FINDINGS.*—Congress finds that if part B of the
15 *Individuals with Disabilities Education Act (20 U.S.C.*
16 *1411 et seq.) were fully funded, local educational agencies*
17 *and schools would have the flexibility in their budgets to*
18 *develop dropout prevention programs, or any other pro-*
19 *grams deemed appropriate by the local educational agencies*
20 *and schools, that best address their unique community needs*
21 *and improve student performance.*

22 (b) *AMENDMENT.*—Section 307 of the Department of
23 *Education Appropriations Act, 1999, is amended by adding*
24 *after subsection (g) the following:*

1 “(h) Notwithstanding subsections (b)(2), and (c)
2 through (g), a local educational agency may use funds re-
3 ceived under this section to carry out activities under part
4 B of the Individuals with Disabilities Education Act (20
5 U.S.C. 1411 et seq.) in accordance with the requirements
6 of such part.”.

7 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

8 In addition to other funds authorized to be appro-
9 priated to carry out part B of the Individuals with Disabil-
10 ities Education Act (20 U.S.C. 1411 et seq.), there are au-
11 thorized to be appropriated \$150,000,000 to carry out such
12 part.

13 **SEC. 9. FLEXIBILITY TO DEVELOP AFTERSCHOOL PRO-**
14 **GRAMS.**

15 (a) *FINDINGS.*—Congress finds that if part B of the
16 Individuals with Disabilities Education Act (20 U.S.C.
17 1411 et seq.) were fully funded, local educational agencies
18 and schools would have the flexibility in their budgets to
19 develop afterschool programs, or any other programs
20 deemed appropriate by the local educational agencies and
21 schools, that best address their unique community needs and
22 improve student performance.

23 (b) *AMENDMENT.*—Section 307 of the Department of
24 Education Appropriations Act, 1999, is amended by adding
25 after subsection (g) the following:

- 1 *thorized to be appropriated \$500,000,000 to carry out such*
- 2 *part.*

Attest:

Secretary.

106TH CONGRESS
1ST SESSION

H. R. 800

AMENDMENT