

Exercising Ed Flex to Meet Needs During COVID-19

Guidance for Districts | April 2021



Overview

COVID-19 has profoundly changed how schools and districts operate. Schools have pivoted from in-person to virtual to hybrid learning models to promote student health and safety. Schools are experiencing significant staffing shortages in the effort to meet various instructional demands upon teachers and support staff and accommodate quarantines. Professional learning efforts have been rethought, rescheduled, or paused indefinitely. Fiscal staff continue to navigate emergency funding applications and requirements, delaying normal budgetary activities and timelines.

District leaders have asked CDE for flexibilities during these trying times. In turn, CDE has identified options for districts – namely those provided via the [Colorado Ed Flex Program](#). Ed-Flex authorizes states to waive certain requirements of the grant programs, for which Colorado has applied and has been awarded for the following programs:

- Title I, Part A: Improving Basic Programs Operated by LEAs (other than section 1111)
- Title I, Part C: Education of Migratory Children¹
- Title I, Part D: Prevention and Intervention Programs for Children who are Neglected, Delinquent, or At-risk
- Title II, Part A: Supporting Effective Instruction
- Title IV, Part A: Student Support and Academic Enrichment Grants
- The Carl D. Perkins Career and Technical Education Act

Districts interested in waiving certain federal requirements based on local needs are encouraged to submit the Colorado Ed Flex waiver application available on the [Ed Flex web page](#) to CDE. This guidance document outlines three specific flexibilities that district leaders have identified as needs and provides information to facilitate application waivers.

Possible Waivers for Consideration

Below is a table outlining key needs districts have identified during the pandemic, waiver options available via Ed Flex, and additional information to consider if securing a waiver:

Summary of Identified Need	Statutory Waiver available via Ed Flex	Additional information
Districts have scrambled to leverage emergency COVID-19 funding for schools. Simultaneously, many activities under Title I – the largest program funding stream—have been delayed or rethought. Districts need the flexibility to carryover more than 15% of their Title I budget.	15% Carryover limitation [ESSA §1127(b)]	Title I, Part A is the only ESEA Title Program with a carryover limitation. In April 2020, USDE granted a blanket waiver to states from FY19 15% carryover limit. Prior to this and still available to LEAs, a waiver request may be submitted to CDE to allow greater than 15% carryover of Title I, Part A funds once every 3 years . Should an LEA need multiple years waived within a 3-year period, Ed Flex can be used to secure this flexibility if needed (e.g. for FY20 and beyond).

¹ A small number of districts are Title I, Part C subgrantees. If your district receives these funds and is seeking a waiver, please reach out to the office of Migrant Education Programs Director, Tomas Mejia [mejia_t@cde.state.co.us].



<p>In light of pressures COVID-19 has placed on schools to implement health and safety standards and bring staff up to speed with safety protocols and virtual learning, typical professional learning efforts have been delayed, rethought, or cancelled altogether. Districts have requested flexibility to implement professional development.</p>	<p>Specific professional development requirements under Title I, Part A; Title II, Part A; and Title IV, Part A</p>	<p>While districts cannot waive the general professional development requirements under ESSA §8101(42) via Ed Flex, they can pursue a waiver from professional development requirements under specific Title Programs as needed.² For example, professional development references under Title I, Part A §1114 Schoolwide Programs, §1115 Targeted Assistance Schools, Title II, Part A §2103 Local Uses of Funds, and Title IV, Part A §4106 Local Education Agency Applications.³</p> <p>LEAs should also consider using Elementary and Secondary School Emergency Relief (ESSER) funds for professional development that is:</p> <ul style="list-style-type: none"> • Short term (one day/workshop) • Related to COVID safety and cleaning measures, health supports • Delivering instruction remotely to meet needs of students
<p>Districts report significant staffing shortages due to increased workload to implement virtual and hybrid forms of learning, staff quarantine procedures, and premature separations. Many staff have been assigned new roles that may not demonstrate alignment to the subject taught, impacting the Equitable Distribution of Teachers (EDT) in-field indicator (guidance on staff reporting during COVID here). Challenges in retaining staff and ambiguity in the teacher evaluation process impact experience and effectiveness indicators. Districts request flexibility to use pre-COVID EDT results for planning purposes while dealing with pandemic needs.</p>	<p>Equitable Distribution of Teachers (EDT) [ESEA §1112(b)(2)]</p>	<p>Under 1111(g)(1)(b), state education agencies are required to analyze the rates of minority and low-income students' access to in-field, experienced, and effective teachers. CDE will continue to analyze EDT data based on the most recent October Count and HR Data Pipeline submissions completed by districts. However, districts can apply for flexibility from using the most recent data, the results of which may present aberrations or generate competing priorities with addressing immediate needs during the pandemic. Districts securing an Ed Flex waiver would provide an update on efforts to address gaps based on previous (SY2019-20) EDT data in the 2021-22 Consolidated Application but would not be required to address more recent data (SY2020-21) impacted by COVID. Districts newly identified and awarded a waiver would be held harmless from 20-21 results.</p>

Guidance on Developing and Submitting an Ed Flex Application

The application template to secure a Local Education Agency (LEA) waiver from ESEA program requirements is available on this [web page](#). The application is five pages in length; some sections merit additional guidance to facilitate LEA action:

² ESSA provides a general definition of professional development under §8101 (42): The term “professional development” means activities that— (A) are an integral part of school and local educational agency strategies for providing educators (including teachers, principals, other school leaders, specialized instructional support personnel, paraprofessionals, and, as applicable, early childhood educators) with the knowledge and skills necessary to enable students to succeed in a well-rounded education and to meet the challenging State academic standards; and (B) are sustained (not stand-alone, 1-day, or short term workshops), intensive, collaborative, job-embedded, data-driven, and classroom-focused[.]

³ In December 2020, USDE made a waiver available to states to secure flexibility under Title IV, Part A: Section 4106(d) related to LEA needs assessments for the 2020-2021 school year, e.g., Section 4106(e)(2)(C), (D), and (E) with respect to content-area spending requirements for Federal fiscal year (FY) 2020 Title IV, Part A funds; and Section 4109(b) with respect to the fifteen percent spending limitation for technology infrastructure for FY 2020 Title IV, Part A funds. CDE is currently pursuing this waiver. Consider that these available waivers may address need for flexibility otherwise sought via Ed Flex; e.g., the waiver from limits on spending on technology infrastructure, which implicitly loosens funding level requirements to deliver professional development to address use of learning technology.

Part 2: Type of Individual Programmatic Waiver Requested: LEAs should refer to the “Possible Waivers for Consideration” table above when completing the Ed Flex application. LEAs must be specific in their request for waiving statutory requirements, naming the specific section and subsection of [ESEA statute](#). While LEAs may pursue additional waivers to accommodate local needs, the above waivers have been verified as possible under Ed Flex by CDE. CDE recommends applying for a district-wide waiver to accommodate all schools and their future needs.

Part 3: Public Comment: LEAs that apply must meet public comment requirements, including but not limited to providing the public –e.g., parents, educators, and all other interested members of the community-- adequate and efficient notice of the proposed waiver authority and the opportunity to comment on the proposed waiver. All comments must be submitted to CDE, with a description of how they were considered or not considered and why. LEAs should follow the three week federal timeline precedent for soliciting comments.

Part 4: Waiver Description: This section is for LEAs to consider any state requirements that may be impacted and provide the purpose and overall expected results of waiving each requirement, including measurable goals and how the waiver will help meet those goals. LEAs will select the purpose of the waiver and number of years the waiver is needed. Districts should consider realistic needs and provide a clear rationale when applying for multiple years. Information in this guidance regarding common reasons why districts are seeking a waiver may be considered and incorporated in the application, if aligning to local circumstances. Districts are also expected to outline evaluation criteria that will inform progress monitoring upon conclusion of the waiver.

Part 5: Evaluation Requirements. Each Ed-Flex waiver that is granted must be evaluated according to clear criteria. Each LEA submitting a waiver will, as part of the application, detail evaluation criteria in alignment with the goals of the waiver. These criteria will be detailed in the waiver approval letter. At the end of the waiver period, the effectiveness of the waiver will be evaluated by the LEA based on these criteria and submitted to CDE.

Good to Know!

The Ed-Flex program does not authorize a state education agency (SEA) to waive any statutory or regulatory requirements related to:

- Standards, Assessments, and Accountability requirements under section 1111 of the ESEA
- Maintenance of effort
- Comparability of services
- Equitable participation of students and professional staff in private schools
- Parental participation and involvement
- Distribution of funds to LEAs
- Serving eligible school attendance areas in rank order in accordance with section 1113(a)(3) of the ESEA
- The selection of a school attendance area
- Use of Federal funds to supplement, not supplant, non-Federal funds
- Applicable civil rights requirements
- Any program requirements that apply to the SEA.

Ed Flex Waiver Application and Timing Considerations

The COVID-19 pandemic has presented numerous challenges to the normal operation of schools and districts. Ed Flex provides possible relief from certain requirements under ESEA.

If your district is experiencing challenges and need for flexibility, please consider submitting an Ed Flex waiver to CDE Federal Programs Office via email to [\[consolidatedapplication@cde.state.co.us\]](mailto:consolidatedapplication@cde.state.co.us).

Waiver Types and Deadlines:

- LEA Ed Flex waiver application(s) should be submitted within 15 months of the initial grant period start date for the relevant program for which the waiver pertains to. CDE encourages timely submission of applications.
- If applying for a waiver for Professional Development activities related to activities detailed in FY20-21 Consolidated Application, please submit by June 15, 2021.



- **If seeking a waiver related to SY20-21 EDT results and implications with FY21-22 Consolidated Application, please submit by July 30, 2021.**
- **If seeking a waiver related to FY20-21 - FY21-22 Title I Carryover 15% limit, please submit by September 30, 2021.**

For all other Ed Flex waiver applications, CDE will review on a rolling basis and respond within two weeks of submission.

If CDE receives multiple and consistent individual LEA requests to waive a regulation or statutory requirement, it may create the opportunity for statewide waivers of that regulation or requirement. Information will be shared with districts if a streamlined means of waiving common requests is available.

If you have questions about this guidance, or seeking an Ed Flex waiver not mentioned above, reach out to your ESEA Programs [Regional Contact](#) at CDE.