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House Bill 4760 (Substitute H-3 as passed by the House)
Sponsor: Representative Tom Meyer
House Committee: Education
Senate Committee: Education

Date Completed: 1-28-02

CONTENT

The bill would create the "Education Flexibility and Empowerment Law" within the Revised School Code to permit school districts to apply for an "Education Flexibility and Empowerment Contract", which would allow the State Superintendent of Public Instruction to waive certain statutes, rules, and requirements for a district for up to five years.

The State statutes and rules to be waived would be part of a performance-based contract that required clearly defined and measurable performance goals. A school district also could apply to the State Superintendent for a waiver of certain Federal requirements, in accordance with Federal law allowing educational waivers. (Please see **BACKGROUND** for more information on Federal waivers.)

The proposed law would be repealed five years after it took effect.

Planning Committee

Before applying for an Education Flexibility and Empowerment (Ed-Flex) Contract, the board of a school district would have to establish an Ed-Flex planning committee that included a representative of the district's teacher collective bargaining unit. The committee would be required to work with the board to develop a resolution indicating the board's intent to apply for the contract; the committee also would have to develop the Ed-Flex application.

The resolution would have to specify the school or schools in the district to be covered by the Ed-Flex contract, if the contract were not intended to cover the entire school

district. Before adopting the resolution, the board would have to hold at least one public hearing at which the types of waivers sought and the need for them were explained and public comment allowed.

Application

A school district would have to submit an application for an Ed-Flex contract to the State Superintendent. The application would have to contain at least all of the following:

- A specific listing of the requirements proposed to be waived. If the application were intended to serve also as an application for Federal waivers under Federal law, it would have to include a specific listing of the Federal requirements proposed to be waived.
- A statement specifying the need for a waiver for each requirement proposed to be waived, including the purpose and intended results for each waiver.
- A description, for each school year and for the overall term of the contract, of the specific measurable goals for improved pupil performance in the school district or school. These goals would have to include, but would not be limited to, goals for improving MEAP scores. ("MEAP scores" would mean the scores achieved by the pupils of a school district or school, as applicable, on all Michigan Educational Assessment Program tests administered to pupils of the district or school.)
- An explanation of how the contract and the waivers would assist the school district or school in achieving its specified performance goals.
- A fiscal impact statement that estimated how the waiver or waivers would increase or reduce program costs.

- If the contract were not intended to cover the entire school district, the specific schools to be covered.
- A copy of the required resolution. If the application were intended to serve also as an application for Federal waivers, it would have to explain how the public notice requirements of Federal law had been met.

Approval

Upon receipt, the State Superintendent would have 60 days to approve or disapprove an Ed-Flex application and notify the school district of the decision. Upon notification to the school district, however, the State Superintendent could take an additional 30 days to consider the application.

If approved, the State Superintendent promptly would have to enter into an Ed-Flex contract with the district. If disapproved, the State Superintendent's notification to the district would have to explain the specific reasons for the disapproval, and the school district could submit a revised application. If the State Superintendent did not notify a school district within 90 days of receiving an application, the application would be considered approved, and the Superintendent would have to enter into the proposed Ed-Flex contract with the district.

The State Superintendent could approve an application only if three standards were met. Specifically, the State Superintendent would have to find that the performance goals were sufficiently specific and would, if met, constitute improved pupil achievement; that the contract would allow the school district to enhance learning and to operate in a more effective, efficient, or economical manner; and that the district was meeting its financial obligations and fiscal responsibilities.

In approving submitted applications, the State Superintendent would have to give priority to applications focused on reducing pupil achievement gaps based on race, gender, and socioeconomic status.

Contract

The Michigan Department of Education (MDE) would have to prescribe the form of an Ed-Flex contract, which would have to contain at least all of the following:

- All matters addressed in the application.
- Assurance that the school district would report its annual progress toward its performance goals.
- An agreement that, in order for the contract to be renewed, the MEAP scores or other performance measurements identified in the application for the school district or school would have to demonstrate adequate annual progress toward meeting the performance goals and attaining a specific measurable benchmark by the end of the contract.
- An agreement on the contents of the empowerment report to be filed by the school district at the end of the contract term. (An "empowerment report" would be the final evaluation report required to be filed at the end of the term of an Ed-Flex contract.) The empowerment report would have to summarize the performance goals achieved during the term of the contract and the programs, curriculum, or other innovative approaches used to achieve these goals.
- The term of the contract, which could not exceed five years.

The State Superintendent could terminate an Ed-Flex contract before the end of its term if he or she determined that the school district or school had experienced two consecutive years of declining pupil performance, based on the performance goals and measurements set in the contract. The State Superintendent would not be required to terminate an Ed-Flex contract if he or she determined that the decline was due to exceptional or uncontrollable circumstances.

At the conclusion of the term of an Ed-Flex contract, the school district would have to submit an empowerment report, describing how the district or school met or did not meet the performance goals set forth in the contract. The State Superintendent could renew the Ed-Flex contract if the performance goals were met.

Except as otherwise provided in the bill, any requirement placed on a school district under the Revised School Code or the State School Aid Act, or any rule promulgated under the Code or the Act, would be subject to waiver under an Ed-Flex contract. The State Superintendent could not waive health and safety requirements; statutory teacher

certification requirements; or requirements under Part 6a of the Revised School Code (which provides for the organization, administration, and staffing of public school academies). Section 503(6) of Part 6a could be waived, however, if doing so were necessary to waive a requirement *outside* of Part 6a, and if the same provision could be waived for a public school. If both were true, the following acts or provisions would be subject to waiver:

- The Open Meetings Act.
- The Freedom of Information Act.
- Provisions prohibiting labor strikes by public school employees.
- Requirements for student identification at the time of enrollment in a school.
- A requirement that schools tag the records of missing students.
- Provisions governing requests for school records.
- A section prohibiting the separation of students into different schools or departments based on race, color, or sex.
- Provisions for bilingual instruction.
- Provisions requiring school buildings to meet construction codes.
- A law guaranteeing a prevailing wage for employees working under a State contract.
- Policies governing the procurement of supplies, materials, and equipment by school districts.

A waiver could not affect requirements for the equitable participation of children enrolled in nonpublic schools.

Annual Report

The State Superintendent would have to submit an annual report to the Legislature on the status of the Educational Flexibility and Empowerment Program, including a report on Ed-Flex contracts issued during the year, and on progress made toward attainment of performance goals.

As the initial Ed-Flex contract expired, the MDE would have to post information on its website on the educational innovations and best practices used to achieve pupil performance goals under the contracts.

Proposed MCL 380.1294

BACKGROUND

The Federal Ed-Flex plan began in 1994 as a "demonstration program" in the Goals 2000: Educate America Act. The program allowed the Secretary of Education to delegate to six states the authority to waive certain Federal education requirements if those requirements were seen as impeding local efforts at school reform. In 1996, amendments to the legislation authorized the Secretary to delegate Ed-Flex waiver authority to six additional states for up to five years. Michigan became an Ed-Flex state at that time; its authority will expire at the end of the 2001-2002 school year. Under this program, the State of Michigan became the authority that permitted local districts, individual schools, or intermediate school districts (ISDs) to waive Federal law.

In 1999, Congress paused the Ed-Flex Partnership Act, which allows *any* state educational agency that meets certain eligibility criteria to receive Ed-Flex authority for up to five years. The 1999 Ed-Flex law contains broader accountability provisions for states than its predecessor statute. The demonstration and the 1999 programs are running concurrently, until the last Ed-Flex demo state's authority expires in 2002.

To date, three Federal waivers have been granted in Michigan. The first, however, was sponsored by the MDE on behalf of 173 school building administrators, who were seeking to reduce eligibility criteria for Title I programs from a 50% poverty level to 35%. (Currently, in order for a school to be eligible for Title I funds, 50% of its students must come from low-income households.) The waiver was granted, thus allowing more schools to be eligible for the Federal funds. The other two waivers pertained to the spending limitation on Title II Eisenhower Professional Development funds. Currently, there is a requirement that 75% of the funds be spent on math and science professional development, with not more than 25% spent on teacher training in language arts and social studies. The Mott-Commerce ISD and the South Lyon school district sought waivers to redistribute the Eisenhower funds in order to target four core curriculum areas, areas that student achievement data indicated needed to be improved.

Michigan passed similar legislation in Public Act 289 of 1995. The Act amended the Revised School Code to provide a limited time waiver from a State board or Department of Education rule (MCL 380.1281(3)). Under the Act, the State Superintendent may grant a waiver if a district demonstrates that it can address the intent of the rule in a more effective, efficient, or economical manner, or if it would stimulate improved pupil performance. The law took effect on July 1, 1996; as of May 2001, the Department had approved almost 1,200 waivers. An example of a rule commonly waived is R340.1749a(1), which requires that special education resource room teachers have two years of classroom experience, one year of which must be special ed experience. The rule pertains to "eligible handicapped students who...need...two or less of the instructional content areas of language arts, mathematics, science, and social studies taught solely by the resource teacher". Because of the shortage of special education teachers, schools presumably find it easier to staff a resource room without this requirement.

Legislative Analyst: C. Layman

FISCAL IMPACT

The Department of Education could face increased administrative costs associated with reviewing and processing Ed-Flex waivers if this legislation resulted in increased waiver requests.

This legislation would not force school districts to apply for Ed-Flex waivers, but would allow for their application. The net resulting fiscal impact on districts would depend on which statutes or rules were waived, and how the districts proceeded with the increased flexibility.

In other words, if a waiver resulted in new programs, then it is likely the district would face increased costs. If a waiver resulted in greater efficiency of existing programs, it is likely that the district would experience reduced costs. Either scenario, however, would be a result of the district's voluntary decision to apply for an Ed-Flex waiver.

Fiscal Analyst: K. Summers-Coty

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.