Board of Education Agenda Item

Item: G. **Date:** May 25, 2005

Topic: Report on Status of Proposed Waivers/Amendments to Virginia's Consolidated State Application Accountability Plan Required in the *No Child Left Behind Act of 2001*

Presenter: Dr. Patricia I. Wright, Deputy Superintendent

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Origin:

__x__ Topic presented for information only (no board action required)

___ Board review required by
- __ State or federal law or regulation
- ____ Board of Education regulation
- ____ Other: _____

___ Action requested at this meeting ____ Action requested at future meeting: _____ (date)

Previous Review/Action:

____ No previous board review/action

_x_ Previous review/action
date January 19, 2005/April 20, 2005 action Board approved proposed amendment/waiver requests

Background Information:
The *No Child Left Behind Act of 2001* (NCLB), which is a reauthorization of the Elementary and Secondary Education Act (ESEA), requires all state educational agencies (SEA) to submit for approval to the United States Department of Education (USED) individual program applications or a consolidated state application. A major component of the consolidated application is Virginia's Consolidated State Application Accountability Workbook that describes a single statewide accountability system for the commonwealth. The accountability workbook that describes the policies and procedures that were used to determine Adequate Yearly Progress (AYP) ratings for the 2003-2004 school year are described in the amended workbook dated May 26, 2004.

At its January 19, 2005, meeting the Virginia Board of Education adopted proposed waivers/amendments to the Consolidated State Application Accountability Plan (amended May 26, 2004) required in the *No Child Left Behind Act of 2001 (NCLB)*.

On January 20, 2005, President of the Board Thomas M. Jackson communicated the board's actions to the United States Department of Education (USED) and asked USED to approve the requests as specific waivers permitted in Section 9401 of the federal law. These waivers/amendments are based on two years

of implementing NCLB and identification of certain procedures in implementing AYP policies that may result in unintended consequences.

The statutory authority that permits states to request, and the U.S. Secretary of Education to approve, waivers to requirements in NCLB is found in Section 9401 of the federal law:

> "SEC. 9401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.
> (a) IN GENERAL- Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirement of this Act for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that —
> (1) receives funds under a program authorized by this Act; and
> (2) requests a waiver under subsection (b)."

Virginia's proposed waiver requests are categorized into five major areas:

(1) application of the "other academic indicator" (in addition to performance and participation on the reading and mathematics tests) that is used to make AYP determinations when safe harbor is not invoked,

(2) how states determine if a school or school division makes AYP and enters improvement status,

(3) use of test scores from multiple administrations,

(4) testing and AYP calculation policies for limited English proficient students, and

(5) testing and AYP calculation policies for students with disabilities.

On January 28, 2005, President Jackson, Superintendent of Public Instruction Jo Lynne DeMary, and Deputy Superintendent Patricia Wright met with Assistant Secretary of Education Ray Simon and the new Secretary of Education's Chief of Staff David Dunn to discuss Virginia's waiver requests. During that meeting, USED officials described Virginia's requests in one of three categories: policy, regulatory, or statute.

On February 1, 2005, USED sent a letter to President Jackson indicating the "graduation rate" amendment to be acceptable and the "new minimum n" amendment to be acceptable with modifications. Both of these requests were considered USED policy interpretations and did not require a waiver of regulation or statute. The letter stated USED would get back with Virginia on the remaining amendment/waiver requests as soon as they reach a decision on their acceptability.

On April 4, 2005, USED issued a letter to President Jackson rejecting Virginia's request for a waiver on annually testing the reading and writing skills of limited English proficient (LEP) students in kindergarten and first grade.

On April 7, 2005, Secretary of Education Margaret Spellings promised additional flexibility for states that adhere to what she described as the four key principles of the law:

- Ensuring students are learning
- Making the school system accountable

- Ensuring information is accessible and parents have options
- Improving teacher quality

Summary of Major Elements:
At its April 20, 2005, meeting the Virginia Board of Education affirmed a position stated in the accountability workbook and approved the use of separate starting points and annual measurable objectives in each subgroup (i.e., reporting category) based on actual student performance as a proposed growth model in determining Adequate Yearly Progress for schools, divisions, and the state.

On April 28, 2005, President Jackson communicated to USED this additional waiver/amendment requesting the use of separate starting points and annual measurable objectives in each subgroup in determining AYP.

On May 10, 2005, Secretary Spellings announced a process for seeking approval of additional flexibility for making AYP determinations for the students with disabilities subgroup based on 2004-2005 assessments. States must apply and be approved for this flexibility.

Unclear at this point is how the Secretary's announcement will affect the Board of Education's pending waiver requests, which were submitted to USED at the end of January.

Superintendent's Recommendation: N/A

Impact on Resources: The Virginia Department of Education is working with a consortium of the Council of Chief State School Officers (CCSSO) to identify the cost of implementing NCLB.

Timetable for Further Review/Action: Upon USED approval, Virginia plans to implement the proposed amendments/waivers in determining AYP and improvement status of schools and divisions based on the 2004-2005 test administration.

COMMONWEALTH of VIRGINIA

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Thomas M. Jackson, Jr.
President

April 28, 2005

The Honorable Raymond Simon
Assistant Secretary
Office of Elementary and Secondary Education
United States Department of Education
400 Maryland Avenue, S.W.
Washington, D. C. 20202

Dear Assistant Secretary Simon:

On January 20, 2005, the Virginia Board of Education submitted twelve proposed amendment/waiver requests to the Consolidated State Application Accountability Plan (amended May 26, 2004) required in the *No Child Left Behind Act of 2001 (NCLB)*. To date, the state Board of Education has received from the United States Department of Education (USED) an informal letter concerning two of the proposed amendments and a formal rejection of a requested waiver from testing reading and writing skills of limited English proficient (LEP) children in kindergarten and first grade. Since Virginia asked to implement the revised policies beginning in the 2004-2005 school year, it is urgent that USED respond to our requests immediately.

The purpose of this letter is to respond to the U.S. Secretary of Education's recent press release, *Raising Achievement: A New Path for No Child Left Behind*. On April 7, 2005, Secretary of Education Margaret Spellings announced that USED plans to give consideration to the use of growth models in determining Adequate Yearly Progress (AYP). The announcement stated, "…Another example of such flexibility could include a request for the use of growth models; or States may have their own proposals for demonstrating progress and effective implementation…"

I would like to remind USED of language in Virginia's Consolidated State Application Accountability Workbook that has been in place since its original submission in June 2003.

The workbook states:

> *This consolidated application workbook is based on the interpretation of NCLB regulations as mandating a single starting point in both English and math for all reporting categories for purposes of establishing progress benchmarks for AYP between now and 2014. Should the NCLB regulations permit it, in the alternative, the Virginia SEA would request to establish individual starting points in each reporting category which would be based upon actual data of student performance in each reporting category for the prior three years. (Virginia Consolidated State Application Accountability Workbook, Critical Element 3.2(a) (amended May 26, 2004)*

At its April 20, 2005, meeting the state Board of Education affirmed the position stated in the accountability workbook and approved the use of separate starting points and annual measurable objectives in each subgroup (i.e., reporting category) based on actual student performance as a proposed growth model in determining Adequate Yearly Progress for schools, divisions, and the state. Please add Virginia's proposed growth model to the January 20, 2005, amendment/waiver submission (see attachment). Upon receiving a response to all of our requests, the Virginia Board of Education will adopt the specific annual measurable objectives for each reporting category and submit to USED an amended accountability workbook.

Secretary of Education Margaret Spellings has promised additional flexibility for states that adhere to what she described as the four core principles of the law: ensuring students are learning; making the school system accountable; ensuring information is accessible and parents have options; and improving teacher quality. Secretary Spellings' promise of additional flexibility is encouraging. The Virginia Standards of Learning program is based on these four core principles. Unclear at this point, however, is how the Secretary's April 7 announcement will affect the Virginia Board of Education's pending waiver requests, which were submitted to USED at the end of January.

As I stated in my letter of January 20, the success of Virginia's standards-based accountability program is due in large part to the willingness of policymakers to listen to practitioners and take steps to prevent unintended consequences. Virginia embraces the four core principles of NCLB. More importantly, Virginia has established sound educational policies to implement these core principles. The result has been improved student achievement on challenging academic standards. With additional flexibility at the state level to implement the goals and intent of NCLB, Virginia will expand its efforts to close the achievement gap.

Your consideration and approval of Virginia's request are appreciated. If you have questions, please contact me or Dr. Jo Lynne DeMary, Superintendent of Public Instruction, at 804-225-2023.

Sincerely,

Thomas M. Jackson
President, Board of Education

Attachment

cc: Jo Lynne DeMary
Superintendent of Public Instruction

Proposed Amendments to Virginia Consolidated State Application Accountability Plan Required in NCLB

Adopted by Virginia Board of Education: April 20, 2005
Addendum to January 19, 2005 Amendment Request

NCLB Statutory Authority for Amendment Requests:

"SEC. 9401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

(a) IN GENERAL- Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirement of this Act for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that —

(1) receives funds under a program authorized by this Act; and

(2) requests a waiver under subsection (b)."

11. AYP: Growth Model Based on Separate Starting Points and Annual Measurable Objectives in Each Subgroup (Critical Elements 3.2(a), 3.2(b), 3.2(c)

Request: Virginia will establish and implement a growth model for determining Adequate Yearly Progress (AYP) of schools, divisions, and the state using separate starting points and annual measurable objectives in each reporting category (i.e., subgroup) based on actual student performance in each category for the prior three years.

Rationale: Virginia will implement the preferred policy for determining AYP as stated in Virginia's Consolidated State Application Accountability Workbook, which has been in place since its submission in June 2003. The workbook states:

> *This consolidated application workbook is based on the interpretation of NCLB regulations as mandating a single starting point in both English and math for all reporting categories for purposes of establishing progress benchmarks for AYP between now and 2014. Should the NCLB regulations permit it, in the alternative, the Virginia SEA would request to establish individual starting points in each reporting category which would be based upon actual data of student performance in each reporting category for the prior three years. (Virginia Consolidated State Application Accountability Workbook, Critical Element 3.2(a) (amended May 26, 2004)*

NCLB defines AYP primarily on whether each student subgroup achieves the annual measurable objectives (proficiency pass rates) on state assessments in reading and mathematics. The annual measurable objectives in reading and mathematics are derived from the pass rates of students in the aggregate. However, AYP decisions are based on using the same pass rate for all student groups. This model does not fully value progress with subgroups starting significantly below proficiency. Virginia is committed to meeting AYP for all students, but the current system does not sufficiently value the progress Virginia has made with students overall or the progress for lower-performing subgroups.

Permitting states with a history of standards, assessment, and accountability to set separate starting points and trajectories based on actual performance of student subgroups will lead to more valid AYP determinations.