

Board of Education Agenda Item

Item: J.

Date: April 20-21, 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*

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Origin:

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

Previous review/action
date January 19, 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.

States are permitted to revise their Consolidated State Application Accountability Workbook by submitting requests for review and approval to USED. Guidance from USED suggested an April 1 deadline for requesting changes that would impact AYP determinations in the current academic year. Based on two years of implementing NCLB, the Virginia Department of Education has identified certain procedures in implementing AYP policies that may result in unintended consequences.

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.

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.

Summary of Major Elements:

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: Raising overall achievement and closing the achievement gap;
- Making the school system accountable: Including all students in all schools and districts in the state; ensuring all students are part of a state's accountability system and are tested in reading and math in grades three through eight and once in high school by the 2005-06 school year; providing data on student achievement by subgroup;
- Ensuring information is accessible and parents have options: Informing parents in a timely manner about the quality of their child's school and their school choice options, identifying

schools and districts that need to improve, developing a dynamic list of after-school tutors, encouraging public school choice and the creation of charter schools, and creating easily accessible and understandable school and district report cards; and

- Improving teacher quality: Providing parents and the public with accurate information on the quality of their local teaching force, implementing a rigorous system for ensuring teachers are highly qualified and making aggressive efforts to ensure all children are taught by highly qualified teachers.

Secretary Spellings announced that the first example of this new approach for implementing NCLB would be to permit states to use modified assessments for students with disabilities “who need more time and instruction to make substantial progress toward grade-level achievement.” Scores from these modified assessments would be limited to 2 percent of all tested students. This 2 percent would be in addition to the 1 percent cap on allowed passing scores on alternative assessments taken by students with significant cognitive disabilities. This new provision will be released in a notice of proposed rulemaking later this spring and therefore would not be available to states until 2005-2006, at the earliest.

The Virginia Department of Education is waiting for details of the process USED will develop and follow to identify states that qualify. 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. As of April 8, 2005, Virginia has not received an official response to the remaining waiver requests.

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.