

Board of Education Agenda Item

Item: J.

Date: February 23, 2005

Topic: Report on Status of Proposed 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:

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 suggests 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 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.

Summary of Major Elements:

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. A copy of the letter is attached. 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.

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.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

FEB - 1 2005



The Honorable Thomas M. Jackson, Jr.
President
Virginia Board of Education
227 North Main Street
Hillsville, Virginia 24343

Dear President Jackson:

I appreciate your candid explanation of Virginia's amendment request during our meeting last Friday. The conversation I shared with you, Dr. DeMary and Dr. Wright deepened my understanding of why Virginia makes the requests that you have submitted. The information in this letter presents feedback from Department staff and reflects the No Child Left Behind Act of 2001 (NCLB) and final U.S. Department of Education (ED) regulations. As we discussed, a couple of the amendments you requested can be approved as submitted, or with slight modifications. I have listed those below and will address all other amendments in separate correspondence once they have been given full consideration.

Acceptable amendment

We have reviewed your request to amend the Virginia accountability plan that was fully approved on July 8, 2004, and found the following amendment acceptable:

- Graduation rate - Virginia requests that for purposes of calculating graduation rate, the standard number of years be determined by a student's individualized education plan (IEP) for a student with disabilities, and a limited English proficient (LEP) student's school-based LEP team. Any changes in Virginia's workbook should reflect how the standard number of years will be documented in these cases.

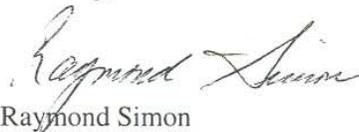
Acceptable amendment with modifications

The following amendment may be acceptable with modifications:

- New minimum "n" - Virginia requests to change the minimum subgroup size at the division and state level only to 50 students or 1 percent of the enrolled student population, whichever is greater. This may be an acceptable amendment if it also applied to schools, pending a review of impact data. Neither statute nor regulations allow for a different n-size at the division versus the school level. Please provide my staff with data showing the impact of this proposal on subgroup inclusion.

Thank you for the opportunity to review the proposed amendments to your State accountability plan. I look forward to our continued conversations regarding the other requests you have made. As soon as we have reached a decision on their acceptability, I will contact you with further instructions on submitting an amended accountability workbook. My staff and I are willing to discuss these decisions with you in greater detail. Darla Marburger (Darla.Marburger@ed.gov) or Carlos Martinez (Carlos.Martinez@ed.gov) can answer any questions you might have about these issues and how we can help you through this process. We hope this information will be useful to the Virginia Department of Education as it refines its accountability system to ensure that no child is left behind.

Sincerely,

A handwritten signature in cursive script that reads "Raymond Simon".

Raymond Simon

cc: Governor Mark Warner
Dr. Jo Lynne DeMary, Superintendent of Public Instruction