

Board of Education Agenda Item

Item: _____ L. _____

Date: September 22, 2011

Topic: Report on Potential U.S. Department of Education Waivers from Certain Requirements of the *No Child Left Behind Act of 2001*

Presenter: Mrs. Veronica Tate, Director, Office of Program Administration and Accountability

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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 _____

action _____

Background Information:

The *Elementary and Secondary Education Act of 1965* (ESEA), as amended by the *No Child Left Behind Act of 2001* (NCLB), was scheduled for reauthorization by Congress in 2007 after five years of the law's enactment. Since 2007, Congress has failed to reach agreement on a reauthorization of ESEA. In early 2011, President Barack Obama urged Congress to reauthorize ESEA in time for the 2011-2012 school year to provide states with relief from the law's rigid and punitive accountability requirements. In response to deteriorating Congressional reauthorization discussions, U.S. Secretary of Education Arne Duncan announced in June 2011 that flexibility would be offered to states in the form of waivers from certain NCLB requirements.

On August 8, 2011, Secretary Duncan announced that President Obama's administration "...will provide a process for states to seek relief from key provisions of the law, provided that they are willing to embrace education reform." The August press release stated "The administration's proposal for fixing NCLB calls for college- and career-ready standards, more great teachers and principals, robust use of data, and a more flexible and targeted accountability system based on measuring annual student growth."

While final conditions for requesting regulatory relief were not available at the time this boilerplate was created, early indications are that in order to receive the waivers, states would need to agree to advance specific education reform efforts as described below:

1. To waive the Section 1111 deadline for all students to be proficient in reading and mathematics by 2013-2014, states would have to adopt college- and career-ready standards and assessments.
2. To waive the Section 1116 system of sanctions for Title I schools failing to meet adequate yearly progress (AYP) targets, states would have to propose their own differentiated accountability systems that would: 1) incorporate growth; 2) establish new performance targets; and 3) more accurately meet the needs of schools with different challenges.
3. To waive the Section 1119 highly qualified teacher requirements, states would have to adopt evaluation systems for teachers and principals that are based on growth, and hold local educational agencies (LEAs) accountable for implementing the systems with fidelity.

It is anticipated that interested states would be required to apply to the U.S. Department of Education (USED) for approval of a comprehensive accountability plan (i.e., states would not have the option of choosing only certain waivers), and waiver applications will be reviewed through a peer review process.

In September, the U.S. Department of Education is expected to release the final conditions, application process, and timeline for states to request NCLB regulatory relief. The Department of Education will share this information with the Board of Education during the September 22 Board meeting.

Summary of Major Elements:

Only 38 percent, or 697 of Virginia's 1,839 schools made AYP based on results from the 2010-2011 assessments, compared to 61 percent of schools that made AYP in the previous year. Only four of Virginia's 132 divisions made AYP based on 2010-2011 assessments, compared with 12 divisions that made AYP in the previous year. The AYP targets were five points higher (86 percent) in reading and six points higher in mathematics (85 percent) than the targets for assessments taken by students during 2009-2010. As a consequence, 342 schools that made AYP in the previous year, and would have made AYP had the targets not increased, were identified as not meeting AYP.

With AYP targets scheduled to increase an additional five points in both reading and mathematics for the 2012 assessment cycle, it is anticipated that an even greater disproportionate percentage of schools and divisions will be misidentified as underperforming during the 2012-2013 year.

In Governor Robert McDonnell's letter of August 24, 2011, to Secretary Duncan (Attachment A), he points out the flaws of NCLB and noted that "A model that increasingly misidentifies schools as low performing and confuses the public about the quality of their schools does not advance the cause of reform or accountability."

The Department of Education proposes to work with the Board of Education and stakeholders in the Commonwealth to draft an alternate federal accountability model that is based on Virginia's successful Standards of Learning accountability program, including, but not limited to:

- College- and career-ready Standards of Learning and corresponding assessments being implemented in Virginia's mature and validated Standards of Accreditation (SOA) accountability program;
- Annual determinations for schools and divisions that make valid and meaningful performance distinctions and recognize overall student and subgroup growth;
- Accountability provisions that accurately identify schools and divisions most in need of support or interventions and recognize and reward exemplary performance;
- Support and interventions, identified through diagnostic reviews, designed to remedy the specific conditions that may cause schools and divisions to underperform;
- Capacity-building to allow divisions to support their underperforming schools in sustainable ways; and
- Aggressive reform for the lowest-performing schools and divisions.

The Superintendent of Public Instruction will engage the Board of Education members in discussing process options and parameters for developing a request for federal regulatory relief while maintaining or strengthening Virginia's educational accountability program.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education accept the report and authorize the Department of Education to proceed in gathering input from stakeholder representatives on a new federal accountability plan.

Impact on Resources:

This responsibility can be absorbed by the agency's existing resources at this time.

Timetable for Further Review/Action:

The Department of Education will assist the Board of Education in inviting input from stakeholders on the major elements of a NCLB waiver proposal. The waiver proposal would apply to the 2011-2012 assessment results and ratings to be announced in fall 2012. The Board of Education could use monthly meetings of its School and Division Accountability Committee to review draft proposals and receive public input. The Department would then prepare a final proposal for a revised accountability system for approval by the Board of Education and submission to the USED. The timetable will depend on the U.S. Department of Education's submission deadlines.



COMMONWEALTH of VIRGINIA
Office of the Governor

Robert F. McDonnell
Governor

August 24, 2011

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Mr. Secretary:

The just-announced federal Adequate Yearly Progress (AYP) ratings for Virginia schools and school districts illustrate the expanding disconnect between No Child Left Behind (NCLB) and the reality of what is really happening in the states. When an accountability model — regardless of its former utility and the good intentions of its designers — identifies better than six out of every ten Virginia schools as failing, it is time to go review the metrics.

A model that increasingly misidentifies schools as low performing and confuses the public about the quality of their schools does not advance the cause of reform and accountability. NCLB should be dramatically reformed with a new law that restores the proper balance between state and federal authority in public education — while still requiring very high standards and accountability for closing achievement gaps as conditions for receiving federal funds. The goals are good, but the measurements, bureaucracy, and reporting need overhaul.

A reauthorized Elementary and Secondary Education Act (ESEA) should focus on results — including continuous improvement in the performance of student subgroups — rather than prescribing the minutiae of a state testing and school ratings system. States — especially states like Virginia with mature and validated accountability programs — should have the flexibility to implement models that make sense given where their students are on the road to college and career readiness.

Given the progress Virginia's schools have made under the commonwealth's Standards of Learning (SOL) program (which predates NCLB), an accountability model based on individual student growth — with a high floor for minimum acceptable schoolwide and subgroup proficiency — makes more sense than the current system of rapidly escalating benchmarks.

Benchmarks that jump 5-6 points every year based on a rigid formula are not capable of capturing the progress of students in schools with already-high pass rates. In these schools, the ground left to be won is occupied by the most challenging students. An accountability model that focuses on student growth would recognize subtle, but significant, gains in these schools and not leave communities wondering how a school in which achievement actually increased could be judged as failing.

Virginia's robust longitudinal student data system is capable of supporting such a growth model and accurately identifying low-performing schools and schools in which subgroups are not making acceptable progress toward grade-level proficiency. A growth-focused accountability system also could include excellence measures to prevent complacency and promote continuous improvement in high-performing schools.

I was encouraged to hear from Superintendent of Public Instruction Patricia I. Wright of your pledge not to insist on word-for-word adoption of the Common Core State Standards as a condition for receiving a waiver under the short-term flexibility you announced on August 8, 2011.

I fully supported the decision of the Commonwealth's Board of Education to maintain the SOL program as the foundation of instruction and accountability in our classrooms. Board members redoubled their commitment to putting the interests of students and teachers first and resisting any pressure to abandon Virginia's proven standards and adopt the federally created Common Core.

Make no mistake that Virginia has and will continue to look for ways to improve upon our SOL program to meet or exceed the Common Core, as we have personally discussed. Virginia's newly revised reading and mathematics standards are now fully aligned with the Common Core and are of equal, and in some areas, greater rigor. With instruction and assessments in 2011-2012 based on the new mathematics SOL, Virginia will actually be implementing and testing Common Core content, while so-called adoption states continue to await the development of resources and tests.

Because of the State Board's thoughtful exercise of its authority under our constitution to establish and revise learning objectives for our public schools, Virginia students will experience the benefits of rigorous college and career ready standards — without the disruption to instruction and accountability that might have followed word-for-word adoption of the Common Core.

In addition, the Virginia Department of Education, the State Council of Higher Education for Virginia and the Virginia Community College System have approved a joint agreement on performance expectations in English and mathematics that high school graduates must meet to be successful in freshman-level college courses or career training. These college-and-career-ready expectations — which were developed at the direction of the Board of Education and in collaboration with high school educators, college and university faculty and the business community — build upon the solid foundation of the Standards of Learning.

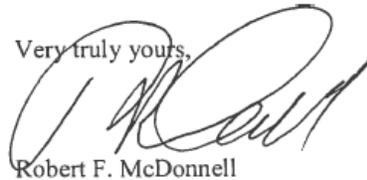
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Virginia has a bipartisan tradition of education reform. Our SOL program has been sustained and strengthened by Governors and legislative majorities of both parties. In the coming months, I will work with Superintendent Wright, the Board of Education, and the legislature to institute additional reforms to ensure Virginia students receive the world-class education they need and deserve to be internationally competitive.

It is in this spirit that I offer you my pledge to support common-sense reform of federal education law that will strengthen accountability while freeing states to innovate and focus resources where they are most needed.

With warm, personal regards I remain

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. McDonnell', written over a light blue horizontal line.

Robert F. McDonnell

RFM/piw/kcc

cc: The Honorable Laura W. Fornash
The Honorable William J. Howell
The Honorable Martin L. Kent
The Honorable Ward L. Armstrong
The Honorable Thomas K. Norment, Jr
The Honorable Richard L. Saslaw
Dr. Patricia I. Wright, Superintendent of Public Instruction
State Board of Education
Virginia Congressional Delegation