

# Board of Education Agenda Item

Item: I.

Date: September 26, 2007

**Topic:** First Review of A Report on the Federal No Child Left Behind Act Waiver Requests Made by the Virginia Board of Education (SB 1212 and HB 2542)

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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:

House Bill (HB) 2542 and Senate Bill (SB) 1212 directed the Board of Education to continue to seek waivers from compliance with those provisions of the *No Child Left Behind Act of 2001* (NCLB) that are fiscally and programmatically burdensome to school divisions and are not instructionally sound or in the best interest of children. The bill also requested that the Board report on the status of its waivers to the chairmen of the Senate Education and Health Committee and the House Education Committee no later than October 1, 2007.

In October 2006, and January 2007, the Board approved the most recent waiver requests related to certain provisions in NCLB. The attached report provides a summary of the requests and the responses received from the United States Department of Education (USED).

## **Summary of Major Elements:**

Through a focused statewide educational reform effort, Virginia has had a rigorous set of content standards in the Standards of Learning (SOL) program and accompanying assessment system for over ten years. As a result, Virginia supports the primary goal and basic tenets of NCLB since they are in direct alignment with the system of standards and accountability already established in the state. The challenges Virginia faces in meeting the requirements of NCLB relate to the policies and procedures required by USED in implementation of the components of the law. Virginia believes that certain policies and procedures have resulted in unintended consequences and are not representative of sound educational practice. These unintended consequences have served as the foundation for Virginia's requests for flexibility to USED on an annual basis.

Since the passage of NCLB, Virginia has been blending the requirements of NCLB with its accountability system. This alignment has created confusion among state and local administrators as well as the public. Schools that meet one accountability rating may not meet the other, leading to misperceptions about the quality of educational programs in Virginia's schools.

The overall challenges Virginia has faced in implementation of the legislation and submitted as waiver requests for 2007 fall into the following two categories.

- Submissions to satisfy the USED requests as a result of the peer review of the standards and assessment system.
- Submissions to minimize unintended consequences in implementation of Adequate Yearly Progress (AYP) policies.

## **Superintendent's Recommendation:**

The Superintendent of Public Instruction recommends that the Board of Education waive first review and approve the report on the Federal No Child Left Behind Act Waiver Requests Made by the Virginia Board of Education (SB 1212 and HB 2542).

## **Impact on Resources:**

The responsibility can be absorbed by the agency's existing resources at this time. If the agency is required to absorb additional responsibility related to this activity, other services may be impacted.

## **Timetable for Further Review/Action:**

Following approval, the report will be forwarded to the Governor and General Assembly as required by SB 1212 and HB 2542.



**VIRGINIA BOARD OF EDUCATION**

**REPORT TO THE GENERAL ASSEMBLY**

**Report to the Governor and General Assembly on  
The Federal No Child Left Behind Act Waiver Requests  
Made by the Virginia Board of Education (SB 1212 and HB  
2542)**

**PRESENTED TO**

**VIRGINIA BOARD OF EDUCATION**

**SEPTEMBER 26, 2007**

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### Virginia's Challenges in Implementing the *No Child Left Behind Act of 2001*

Through a focused statewide educational reform effort, Virginia has had a rigorous set of content standards in the Standards of Learning (SOL) program and accompanying assessment system for over ten years. As a result, Virginia supports the primary goal and basic tenets of the *No Child Left Behind Act of 2001* (NCLB) since they are in direct alignment with the system of standards and accountability already established in Virginia. The following list shows the components of NCLB that are in direct alignment with Virginia's established system of standards and accountability:

- A statewide goal of requiring all students to achieve proficiency in academic content standards and graduate from high school.
- Rigorous academic content standards and assessments.
- A statewide system of support for low-performing divisions and schools.
- Rigorous teacher licensing requirements to ensure highly qualified teachers.
- Reporting of state, school, and division academic achievement through a Web-based report card.

The challenges Virginia faces in meeting the requirements of NCLB relate to the policies and procedures required by the United States Department of Education (USED) in implementing the components of the law. Virginia believes that certain policies and procedures have resulted in unintended consequences and are not representative of sound educational practice. These unintended consequences have served as the foundation for Virginia's requests for flexibility to USED on an annual basis. Additionally, Virginia has worked collaboratively with other states through the Council of Chief State School Officers (CCSSO) to develop position papers related to these unintended consequences for the purpose of influencing USED's interpretation of the statute as well as the scheduled 2007 reauthorization of the law.

NCLB is not a new federal program; rather, it is the reauthorization of the Elementary and Secondary Education Act (ESEA) that has provided federal funds to states and localities since the 1960s. However, the 2001 reauthorization known as the *No Child Left Behind Act of 2001* imposed additional requirements on state and local programs. In an effort to assist states in meeting new requirements, additional federal funds were allocated to help states expand student achievement testing and invoke sanctions if benchmarks were not achieved.

NCLB requires each state that accepts the federal funds to implement a single statewide accountability system. In Virginia, the requirements of NCLB have been aligned with the state's well-established system of assessment, accountability, and support. One of the major challenges in aligning the two systems has been addressing the differences between the existing state accreditation procedures and the federal measure of Adequate Yearly Progress (AYP). As a result, since the passage of NCLB, Virginia has been blending the requirements of NCLB with its accountability system. This alignment has created confusion among state and local administrators as well as the public. Schools that meet one accountability rating may not meet the other, leading to misperceptions about the quality of educational programs in Virginia's schools.

The overall challenges Virginia has faced in implementation of the legislation and submitted as waiver requests for 2007 fall into the following two categories.

- Submissions to satisfy the USED requests as a result of the peer review of the standards and assessment system.
- Submissions to minimize unintended consequences in implementation of Adequate Yearly Progress (AYP) policies.

### **Virginia's Implementation of the *No Child Left Behind Act of 2001***

Virginia has made a good faith effort to implement the provisions of NCLB as outlined in Virginia's Consolidated State Application and Accountability Workbook [<http://www.doe.virginia.gov/VDOE/nclb/VA-AcctWbk.pdf>]. However, given Virginia's experience in over ten years of intensive work with standards, assessments, and school accountability, the Department of Education has identified certain procedures in implementing the federal policies that result in unintended consequences. In addition to requirements placed on Title I schools, NCLB places requirements and sanctions on non-Title I schools even though these schools receive no federal funding or other support from this title.

The Virginia Board of Education has made frequent and consistent attempts to work with USED to seek waivers and other tolerances permitted within the law to require school divisions to provide the most effective teachers and instruction to students while recognizing that every student, teacher, school, division, and state in the nation has unique circumstances that make it difficult to operate schools in an environment scripted by statute.

Despite the fact that many of the provisions of NCLB are already integral components of Virginia's accountability system and that Virginia's requests have been founded in the actual experience of past practice rather than on policy developed by non-educators, USED has time and again refrained from exercising Section 9401 of the statute that permits states to request, and the U.S. Secretary of Education to approve waivers to requirements of the law.

### **Reauthorization of the *No Child Left Behind Act of 2001***

The *No Child Left Behind Act of 2001* is scheduled to come before the United States Congress for reauthorization in fall 2007. Virginia, along with most other states, and many other entities, hopes to influence the provisions of the law during this reauthorization. Each year since 2003, Virginia has worked with its Congressional delegation to highlight requirements of the law that are not practical for implementation at a state and local level, or that do not constitute good instructional practice. Additionally in 2007, the Board prepared its own proposal for reauthorization to address the requirements that constitute components of NCLB that are not an integral or necessary component of the Commonwealth's own Standards of Quality, Standards of Accreditation, or Standards of Learning.

### **General Summary of No Child Left Behind Requests**

Appendix A contains a summary of all requests and their status from calendar year 2004 to calendar year 2007.

**The Federal No Child Left Behind Act Requests Made by the Virginia Board of Education**

**Summary of NCLB Requests for 2007**

Virginia’s proposed amendments for 2007 fall under two categories: 1) those submitted as a result of the United States Department of Education’s (USED) request based on the peer review of Virginia’s standards and assessment system; and 2) those submitted to minimize unintended consequences in implementation of Adequate Yearly Progress (AYP) policies. The amendments submitted in the first category satisfied requests from USED on March 22, 2006, and June 28, 2006, and resulted in elevating the rating of the state’s standards and assessment system from “Approval Pending” to “Approval Expected”. This change in rating removes the state from mandatory oversight by USED. The requests related to the peer review of the standards and assessment system are as follows: 1) elimination of the Stanford English Language Proficiency (SELP) assessment as a reading proxy for certain limited English proficient (LEP) students; 2) removal of scores of certain substitute tests and the Virginia Substitute Evaluation program (VESP) from the calculation of AYP; and 3) expansion of the Virginia Grade Level Alternative (VGLA) to include limited English proficient (LEP) students at levels 1 and 2 of English language proficiency.

The requests in the second category asked USED to exercise its waiver authority to minimize unintended consequences in implementation of AYP policies. These waiver requests were as follows: 4) reversing the order of the public school choice and supplemental educational services sanctions; 5) extending flexibility in AYP calculations for students with disabilities (SWD); 6) modifying testing and AYP calculation policies for limited English proficient (LEP) students; 7) identifying targets for graduation rate for certain years; and 8) expanding options for the other academic indicator.

The chart below provides the requests for 2007, the date of submission to the United States Department of Education USED by the Board, and the status of the request based on responses received from USED.

Requests	Request Submitted to USED	Status
<b>Category One: Peer Review Requirements</b>		
1. <b>Discontinued Use of SELP as a Proxy</b> – Virginia will discontinue use of the SELP test as the state-approved assessment instrument linked directly to the reading Standards of Learning (SOL) for use with limited English proficient (LEP) students at levels 1 and 2 of English language proficiency.	12/06	Approved via USED letter on 1/31/07
2. <b>Discontinued Inclusion of VSEP in AYP Calculations</b> – Virginia will no longer include the scores of students who participate in the Virginia Substitute Evaluation Program (VSEP) in the participation rate or pass rate calculation for AYP.	12/06	Approved via USED letter on 1/31/07

Requests	Request Submitted to USED	Status
<p><b>3. Discontinued Inclusion of EOC Scores in AYP Calculations</b> – Virginia will no longer include the scores of students who take certain tests approved by the Virginia Board of Education as substitutes for end-of-course Standards of Learning tests in the participation or pass rate calculation of AYP with the exception of advanced placement (AP) or International Baccalaureate (IB ) exams.*</p>	12/06	Approved via USED letter on 7/16/07
<p><b>4. Expanded Use of VGLA</b> – Virginia will expand the Virginia Grade Level Alternative (VGLA) to assess the reading skills of LEP students.</p>	12/06	Approved via USED letter on 7/16/07
<b>Category Two: Unintended Consequences</b>		
<p><b>5. Reversing the Order of Title I School Improvement Sanctions</b> – Virginia will allow schools the flexibility to reverse the order of sanctions in the first two years of Title I school improvement. Supplemental educational services may be offered to eligible students attending Title I schools in improvement in the first year and public school choice in the second year.</p>	1/07	Approved for 7 pilot divisions via USED letter on 8/1/07 (Pilot divisions are: Fairfax County, Fauquier County, Greene County, Hampton City, Henrico County, Henry County, and Newport News City.)
<p><b>6. Assessing Students with Disabilities</b> – Virginia will continue to implement the United State’s Secretary of Education’s Transition Option Number 1 (2 percent proxy) for the inclusion of students with disabilities in the calculation of AYP for the 2007-2008 school year, based on assessments that will be administered to those students during the 2006-2007 school year. The proxy will be calculated in accordance with guidance disseminated by USED on May 10, 2005. In addition, Virginia requests an exception of 1.1 percent to the 1 percent cap on the number of proficient and advanced scores from alternative assessments based on alternate achievement standards that may be included in AYP.</p>	1/07	Approved via USED letter on 7/16/07

Requests	Request Submitted to USED	Status
<p><b>7. Inclusion of Scores of Former SWD Students –</b> Including in AYP ratings tests scores for students previously identified within the students with disabilities subgroup of up to two years after special education services are no longer received. This request is in response to regulations recently proposed by USED which permit states to count the scores of special education students in the students with disabilities subgroup for up to two years after they are no longer labeled as a student with disabilities.</p>	Submitted in prior years	Approved through release of Special Education Regulations on April 9, 2007
<p><b>8. Exemption of Certain LEP Students from Reading/Language Arts SOL Assessments –</b> Virginia will exempt recently arrived LEP students at levels 1 and 2 of English language proficiency from the state reading/language arts assessment for two consecutive years.</p>	1/07	Not approved via USED letter on 7/31/07
<p><b>9. Interim Graduation Rate Calculation –</b> Virginia will recalculate the graduation rate and annual measurable objective (AMO) using the formula and methodology approved by USED in 2003 in the Consolidated State Application Accountability Workbook. Current graduation data will be used to recalculate the AMO. This interim AMO will be used for graduation rate through 2008 AYP calculations when the statewide individual student record system is able to provide a more accurate accounting of the graduation rate in Virginia. As required by USED, this represents the percent of on-time graduates who receive a Standard or Advanced Studies Diploma only.</p>	1/07	Approved via USED letter on 7/16/07
<p><b>10. Other Academic Indicator –</b> Virginia will allow school divisions to choose, for each of its elementary and middle schools and schools without a graduating class, attendance or performance on state science, writing, or history and social science assessments as the other academic indicator. The choice of using either attendance or performance on state science, writing, or history and social science as the other academic indicator will also apply to the “safe harbor” AYP calculation methodology.</p>	1/07	Approved via USED letter on 1/31/07 with clarification on 2/8/07

**Summary of Approved No Child Left Behind Requests for 2004 through 2006**

Listed below is a summary of the approved requests from 2004 through 2006 in the following categories: 1) policies for calculating adequate yearly progress (AYP); 2) criteria to identify schools and divisions for school improvement and the accompanying sanctions; 3) revisions in funding calculations; and 4) highly qualified teachers.

Requests	Request Submitted to USED	Status
<b>Category One: AYP</b>		
1. <b>Other Academic Indicator</b> – using either attendance or performance on the Standards of Learning assessments for science as the other academic indicator for elementary and middle schools. <b>Approved if divisions choose the indicator prior to the start of the school year.</b>	3/04	Approved via USED letter on 5/25/04
2. <b>Attendance Rate and Science Targets</b> – maintaining an attendance rate target of 94 percent instead of increasing to 97 percent by 2014 and requesting a performance target of 70 percent for science. <b>Approved.</b>	3/04	Approved via USED letter on 5/25/04
3. <b>First score requirement</b> – counting a student’s passing score on an expedited retake of the Standards of Learning test in the calculation of AYP as well as the passing scores of students who retake tests needed for graduation. <b>Approved for first administration in 2004. Expanded beyond first administration in 2005.</b>	3/04 and 1/05	Approved via USED letters on 5/25/04 on 6/13/05
4. <b>Graduation rate and other academic indicator</b> – defining “standard number of years for graduation” as four years or less except for students with disabilities and LEP students. <b>Approved.</b>	1/05	Approved via USED letter on 6/13/05
5. <b>Annual Measurable Objectives</b> – revising the annual AYP proficiency targets for reading and mathematics. The targets previously increased from 61 percent in reading and 59 percent in mathematics in 2003-2004 to 70 percent in reading and mathematics in 2004-2005. Beginning with 2004-2005, the revised proficiency target for reading was 65 percent and the revised proficiency target for mathematics was 63 percent with increases in increments of 4 until 2013-2014. <b>Approved.</b>	6/05	Approved via USED letter on 8/19/05
6. <b>Grade levels included in AYP calculations</b> – calculating participation rate for 2006-2007 AYP scores using tests administered in grades 3 <u>through</u> 8 and end-of-course for all subgroups. Performance calculations for student subgroups will be based on tests administered in grades 3, 5, <u>and</u> 8. Newly administered tests in grades 4, 6, and 7 will only be included in AYP performance if test performance improves ratings. <b>Denied as written, but approved to exercise the flexibility outlined in guidance provided on March 7, 2006.</b>	3/06	Approved through USED guidance letter on 3/7/06

Requests	Request Submitted to USED	Status
7. <b>Minimum “n” and division accountability</b> – using either 50 students or one percent of the enrolled student population for purpose of calculating AYP and applying the 95 percent participation rate. <b>Approved with modification (cap of 200 students).</b>	1/05	Approved via USED letter on 6/13/05
8. <b>Assessing students with disabilities and two percent proxy</b> – continuing to implement current federal policy of using a two percent proxy for the inclusion of students with disabilities in AYP calculations for the 2006-2007 school year. Virginia also requested and received an exception of 1.1 percent to the current 1 percent cap on the number of proficient and advanced scores from alternate assessments. <b>Approved.</b>	1/05	Approved via USED letter on 6/13/05
9. <b>Assessing students with Limited English Proficiency</b> – applying USED flexibility for Limited English Proficient (LEP) students regarding a one-time exemption from inclusion in the calculation of AYP in reading/language arts for newly arrived LEP students and inclusion of formerly LEP students in AYP calculations for two consecutive years. <b>Approved.</b>	3/04	Approved via USED letter on 5/25/04
<b>Category Two: School Improvement and the Accompanying Sanctions</b>		
10. <b>Appeals Process for Title I Schools or School Divisions</b> – requiring the local educational agency to approve the appeals of school improvement designations before consideration by the state. <b>Approved.</b>	3/04	Approved via USED letter on 5/25/04
11. <b>Division accountability</b> – identifying divisions for improvement only when they do not make AYP in the same subject, same subgroup, and all grade spans for two consecutive years. <b>Approved with modification (not same subgroup.)</b>	1/05	Approved via USED letter on 6/13/05
12. <b>Reversing order of school improvement sanctions</b> – offering supplemental services before public school choice. Virginia will allow schools the flexibility to reverse the order of NCLB sanctions in the first two years of school improvement. <b>Denied as written. USED approved a pilot program for four school divisions in Virginia for the 2005-2006 and 2006-2007 school years. The pilot has been expanded to seven school divisions for 2007-2008.</b> The pilot divisions for 2007-2008 are: Fairfax County, Fauquier County, Greene County, Hampton City, Henrico County, Henry County, and Newport News City.	1/05 and 3/06 and 1/07	Approved for pilot school divisions via USED letters on 8/05 7/06 8/07

Requests	Request Submitted to USED	Status
<b>Category Three: Funding Calculations</b>		
13. <b>Immigrant children and youth funding formula (Title III)</b> – revising state set-aside from 15 percent to 5 percent. Virginia will revise the state reservation for Immigrant Children and Youth Funding under Title III: Language Instruction for Limited English Proficient and Immigrant Students. <b>Approved</b>	1/05	Approved via USED letter on 2/05
<b>Category Four: Highly Qualified Teachers</b>		
14. <b>Highly Qualified Teachers</b> – allowing teachers to become highly qualified through the use of the Highly Objective Uniform State Standard of Evaluation (HOUSSE) approved by the Virginia Board of Education on April 20, 2005. <b>Approved until June 2008 through submission of revised State Plan on Highly Qualified Teachers.</b>	4/05	Approved via USED letter on 12/06

**Summary of Denied No Child Left Behind Requests from 2004 - 2006**

Listed below is a summary of the denied waiver requested from 2004 through 2006 in the following categories: 1) policies for calculating adequate yearly progress (AYP); 2) assessment policies; and 3) criteria to identify schools and divisions for school improvement and the accompanying sanctions.

Requests	Request Submitted to USED	Status
<b>Category One: AYP</b>		
1. <b>Separate Starting Points for Individual Subgroups</b> – allowing separate adequate yearly progress starting points and targets for individual subgroups.	1/05	Denied via USED letter on 6/13/05
2. <b>Other academic indicator</b> – using other academic indicator for safe harbor only. AYP determinations will be based primarily on meeting or exceeding the annual measurable objectives for reading and mathematics and the 95 percent participation rate requirement. The other academic indicators will be applied only when "safe harbor" is invoked. (Safe Harbor = If a school or a subgroup does not meet its targeted test score goal, an analysis is undertaken to determine if significant improvement has been made. If a school or a subgroup demonstrates a 10% reduction in the percentage of non-proficient students and other criteria are met, AYP is met.)	3/04 and 1/05	Denied via USED letters on 5/25/04 and 6/13/05

Requests	Request Submitted to USED	Status
<p>3. <b>Growth model based on separate starting points and annual measurable objectives in each subgroup</b> – permitting Virginia to use a growth model for determining AYP of schools, divisions, and state. Approved as a pilot program for all states – <b>Virginia does not meet all criteria for participation at this time.</b></p>	<p>4/2005</p>	<p>Approved via USED letter as a pilot program for all states on 11/2005 and 10/2006</p>
<p>4. <b>Inclusion of Limited English Proficient (LEP) students in state assessments</b> – allowing the reading component of the English Language Proficiency (ELP) Assessment and the plain language forms of the statewide mathematics assessments as the academic assessments under NCLB. These assessments will be used to hold a school/division/state accountable for LEP students’ academic achievement during their first 1-3 years of enrollment in the U.S. Students who do not achieve a passing score on the mathematics assessment or the reading component of the ELP test would not be counted in the AYP pass rate calculation, but would be counted toward the 95 percent participation rate calculation. This change will allow Virginia to continue implementing testing policies exempting newly arrived LEP students that are in state regulations and had previously been in effect prior to NCLB.</p>	<p>1/05 and 3/06</p>	<p>Denied via USED letters on 6/13/05 and 7/27/06</p>
<p><b>Category Two: Assessment Policies</b></p>		
<p>5. <b>Assessing students with disabilities</b> – allowing Individualized Education Program (IEP) teams to make determinations about appropriate Standards of Learning assessments for special education students whose instructional level is one to three years below grade level.</p>	<p>1/05</p>	<p>Denied via USED letter on 6/13/05</p>
<p>6. <b>ELP Assessment</b> – excluding kindergarten and first grade LEP students from reading and writing ELP assessment requirement. The English language proficiency of kindergarten and first grade LEP students will be assessed only on listening and speaking skills.</p>	<p>1/05</p>	<p>Denied via USED letter on 4/4/05</p>
<p><b>Category Three: School Improvement and the Accompanying Sanctions</b></p>		
<p>7. <b>Choice and supplemental services</b> – targeting subgroup(s) and individual students most in need of help. Virginia will target supplemental educational services and public school choice for Title I schools in School Improvement only to the subgroup(s) and individual students not meeting AYP targets. <b>Denied.</b></p>	<p>1/05 and 3/06</p>	<p>Denied via USED letters on 6/13/05 and 7/27/06</p>

Requests	Request Submitted to USED	Status
<p>8. <b>Consecutive years same subject and same subgroup</b> – identifying for improvement only those schools that fail to make Adequate Yearly Progress (AYP) for two consecutive years in the same subject and for the same subgroup. <b>Denied.</b></p>	<p>1/05 and 3/06</p>	<p>Denied via USED letters on 6/13/05 and 7/27/06</p>

**LEGISLATIVE MANDATE – 2007 GENERAL ASSEMBLY**

Be it enacted by the General Assembly of Virginia:

§ 1. *A. Pursuant to § 9401 of the federal No Child Left Behind Act (NCLB), Public Law [107-110](#), the Board of Education shall continue to seek waivers from compliance with those provisions of NCLB that are fiscally and programmatically burdensome to school divisions and are not instructionally sound or in the best interest of children.*

*The Board shall report on the status of its waivers from compliance to the chairmen of the Senate Education and Health Committee and the House Education Committee no later than October 1, 2007. Such report shall contain a summary of the waivers requested from the United States Department of Education during the calendar year 2007, a summary of the responses from the United States Department of Education, and a timeline providing the submission date of every waiver request and the date that a response was provided.*

*B. In the event that any or all waiver requests are not approved by the United States Department of Education, the Board shall transmit a summary of all requests not approved to the Virginia Congressional delegation for its consideration in the reauthorization of the Elementary and Secondary Education Act. Such report or reports shall be submitted in a manner prescribed by the Board.*

*If the reauthorization of the Elementary and Secondary Education Act does not provide the necessary revisions in the federal law to grant states and localities the flexibilities requested in Virginia's waiver requests, the Board shall make a recommendation to the General Assembly on Virginia's continued implementation of NCLB.*

*C. The Board of Education and Office of the Attorney General of Virginia may bring suit against the United States Department of Education if, as a result of the Commonwealth's withdrawal from the voluntary NCLB, funds that are not directly related to NCLB and that help children from low-income families meet challenging academic content and achievement standards are withheld.*

**PUBLIC LAW 107-110**

**THE NO CHILD LEFT BEHIND ACT OF 2001**

**SECTION 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).*

**State Education Activity (SEA) Revenues for NCLB  
Virginia Department of Education**

Summary of Federal Grants Directly Related to NCLB Virginia Allocation – Includes Funding for Virginia Department of Education and Local School Divisions				
*Please note: The majority (over 93%) of funding is provided to school divisions.				
Summary of SEA Allocations	7/04- 9/05 Actual Awards	7/05 – 9/06 Actual Awards	7/06 – 9/07 Actual Awards	7/07 -9/08 Actual Awards
Title I, Part A , Academic Achievement of the Disadvantaged	\$195,588,567	\$216,517,554	\$208,011,647	\$204,733,095
School Improvement Grants	0	0	0	\$1,952,521
Title I, Part B , Reading First	\$16,928,231	\$18,720,005	\$16,695,489	\$16,023,323
Title I, Part B, Even Start	\$3,483,029	\$3,413,489	\$1,427,833	\$1,191,897
Title I, Part C , Migrant Education	\$1,057,027	\$804,230	\$778,696	\$795,099
Title I, Part D, Neglected or Delinquent Children	\$951,488	\$996,972	\$771,344	\$1,535,246
Title I, Part F – Comprehensive School Reform	\$3,752,370	\$3,377,279	0	0
Title II, Part A, Improving Teacher Quality	\$52,577,308	\$52,736,901	\$51,710,156	\$51,305,921
Title II, Part B, Mathematics and Science Partnerships	\$2,388,059	\$3,001,229	\$2,887,237	\$2,764,540
Title II, Part D, Enhancing Education Through Technology	\$10,334,465	\$8,009,082	\$4,217,200	\$4,118,049
Title III, Part A, English Language Acquisition	\$7,273,394	\$9,222,809	\$9,823,062	\$10,294,698
Title IV, Part A, Safe and Drug-Free	\$8,174,905	\$8,144,758	\$6,414,756	\$6,414,756
Title IV, Part B, 21 <sup>st</sup> Century Community Learning Centers	\$15,100,777	\$15,191,284	\$16,181,378	\$15,391,238
Title V, Part A, Innovative Programs	\$6,927,544	\$4,633,788	\$2,312,223	\$2,292,710
Title VI, Part A, State Assessments, Improving Academic Achievement	\$8,565,602	\$8,808,255	\$8,808,255	\$8,759,302
Title VI, Part B, Rural and Low-Income Schools	\$1,165,973	\$2,231,070	\$1,506,250	\$759,829
<b>Total</b>	<b>\$334,268,739</b>	<b>\$355,808,705</b>	<b>\$331,545,526</b>	<b>\$328,332,224</b>

Information taken from the U. S. Department of Education FY 2001-2007 State Allocations, by Program and by State. <http://www.ed.gov/about/overview/budget/statetables/08stbystate.pdf>.

**Appendix A – Chronological Summary of No Child Left Behind Requests**

<b>Title of Request</b>	<b>Calendar Year of USED Request</b>	<b>Summary</b>	<b>Status (Approved, Denied, No Action)</b>	<b>Comment</b>
Other academic indicator	2004 (March)	Use either attendance or performance on state assessments for science as other academic indicator	Approved in May of 2004	Further flexibility requested and granted in 2007
Attendance rate and science targets	2004 (March)	Maintain an attendance rate target of 94% instead of 97% by 2014.	Approved in May of 2004	
First score requirement	2004 (March)	Count a student's passing score on an expedited retake in AYP	Approved in May of 2004	Requests submitted and approved in both 2004 and 2005
Assessing LEP students	2004 (March)	Applying flexibility regarding one-time exemption from inclusion in AYP	Approved in May of 2004	
Appeals process for Title I schools and divisions	2004 (March)	Require divisions to approve appeals before consideration by the state	Approved in May of 2004	
Other academic indicator	2004 (March)	Use other academic indicator for safe harbor only	Denied in May of 2004	Requested again in January of 2005 and denied in June of 2005
Highly qualified teachers	2005 (April)	Allow teachers to become highly qualified through uniform state standard	Approved in December of 2006	
Growth model	2005 (April)	Permit Virginia to use a growth model for determining AYP	Approved in November of 2005	Approved as a pilot for all states – Virginia could not participate because not all criteria for the pilot could be met
Graduation rate and other academic indicator	2005 (January)	Define “standard number of years for graduation” as four years or less (except for student with disabilities and LEP students)	Approved in June of 2005	
Minimum “n” and division accountability	2005 (January)	Use either 50 students or one percent of the enrolled population for AYP	Approved in June of 2005	Approved with modification – a cap of 200 students
Assessing students with disabilities with 2% percent proxy	2005 (January)	Continue to implement current federal policy of using a 2% percent for the inclusion of students in AYP calculations	Approved in June of 2005	Same flexibility requested and granted in 2007
Division accountability	2005 (January)	Identify divisions for improvement only when they do not make AYP in the same subjection, same	Approved in June of 2005	Approved with modification – not same subgroup

<b>Title of Request</b>	<b>Calendar Year of USED Request</b>	<b>Summary</b>	<b>Status (Approved, Denied, No Action)</b>	<b>Comment</b>
		subgroup, and all grade spans for two consecutive years		
Reverse order of sanctions	2005 (January)	Allow SES in first year and school choice in second	Approved in August of 2005	Approved with modification – four school divisions allowed to participate in a pilot program – expanded to seven in 2007
Funding formula for Title III	2005 (January)	Revising state set-aside from 15% to 5%	Approved in February of 2005	
Separate starting points for subgroups	2005 (January)	Allow separate starting points and targets	Denied in June of 2005	
Inclusion of LEP students in state assessments	2005 (January)	Allow the reading component of the ELP assessment and plain language forms of statewide mathematics assessments as assessments under NCLB	Denied in June of 2006	Also requested in March of 2006 and denied in July of 2006
Assessing students with disabilities	2005 (January)	Allow IEP teams to make determinations about appropriate assessments	Denied in June of 2005	
ELP assessments	2005 (January)	Exclude kindergarten and first grade LEP students from reading and writing ELP assessment requirement	Denied in April 2005	
Target choice and SES	2005 (January)	Target subgroups and individual students most in need of help	Denied in June of 2005	Requested again in March of 2006 and denied in July of 2006
Consecutive years same subject and same subgroup	2005 (January)	Identify for improvement only those schools that fail to make AYP for two consecutive years	Denied in June of 2005	Requested again in March of 2006 and denied in July of 2006
Annual measurable objectives	2005 (June)	Revise the annual targets for reading and mathematics	Approved in August of 2005	
Discontinued Use of SELP as a Proxy	2006 (December)	Discontinue use of SELP as an assessment instrument for LEP students at the first two levels of proficiency.	Approved in January of 2007	
Expanded use of VGLA	2006 (December)	Use this test to assess reading skills of LEP students (in place of SELP)	Approved in July of 2007	
Inclusion of VSEP score in AYP	2006 (December)	Do not include scores of students taking VSEP in AYP calculations	Approved in January of 2007	
Inclusion of EOC	2006	Do not include scores of	Approved in July	

<b>Title of Request</b>	<b>Calendar Year of USED Request</b>	<b>Summary</b>	<b>Status (Approved, Denied, No Action)</b>	<b>Comment</b>
scores in AYP	(December)	students taking EOC tests approved by the state Board as substitute tests in AYP calculations	of 2007	
Inclusion of scores of former students with disabilities	2006 (March)	Include in AYP calculations test scores for students previously identified as students with disabilities for up to two years after services are no longer needed	Approved in April of 2007	No USED letter received – action approved via the release of federal special education regulations
Grade levels in AYP	2006 (March)	Calculate participation rate for 2006-2007 AYP using grades 3 through 8 but performance based on tests administered in grades 3, 5, and 8.	Approved in March of 2006	Denied as originally requested but approved to exercise flexibility provided in existing federal guidance
Reverse order of sanctions	2007 (January)	Allow SES in first year and school choice in second	Approved in August of 2007	Approved with modification – seven school divisions allowed to participate in a pilot program
Assessing students with disabilities	2007 (January)	Continue to implement current federal policy of using a 2% percent for the inclusion of students in AYP calculations	Approved in July of 2007	
Interim graduation rate calculation	2007 (January)	Recalculate the graduation rate and annual measurable objections	Approved in July of 2007	
Other academic indicator	2007 (January)	Allow school divisions without a graduating class to choose the academic indicator	Approved in July of 2007	
Exemption of certain LEP students from reading/language arts state assessments	2007 (January)	Exempt recently arrived LEP students at levels 1 and 2 of English proficiency from assessments for two consecutive years	Denied in July of 2007	USED letter received in July of 2007

## Appendix B – Glossary of Terms

**AYP** - Adequate Yearly Progress represents the minimum level of improvement that schools and school divisions must achieve each year as determined by NCLB.

**AMOs** - Annual Measurable Objectives are the minimum required percentages of students determined to be proficient in each content area.

**Assessment** - A test or other method for measuring achievement.

**ESEA** - Elementary and Secondary Education Act is the primary federal law affecting K-12 education. Congress reauthorizes it every six years. The most recent authorization is also referred to as the NCLB Act, approved by Congress in 2001 and signed into law by President George W. Bush in January 2002.

**Expedited retake** - A SOL test taken during the same academic year, and before the next scheduled test administration, by a student who, on his first attempt, scored within 25 points of passing or has exceptional or mitigating circumstances.

**Graduation rate** - Graduation rates for high schools and school divisions reported on the Virginia School Report Card include all recipients of any type of certificate or diploma (as well as students who have dropped out of or transferred into a high school) in the denominator and only those students receiving a Standard Diploma or Advanced Studies Diploma (excluding students receiving a Special Diploma, Modified Standard Diploma, Certificate of Attendance or GED certificate) in the standard number of years in the numerator.

**Highly qualified** - This term refers to a teacher who has obtained full state teacher certification and has demonstrated subject matter competency. All teachers of federal core academic subjects hired after the first day of the 2002-2003 school year and teaching in a program supported with Title I, Part A, funds must be “highly qualified.” All teachers of core academic subjects are to be highly qualified by the end of the 2005-2006 school year.

**Individualized Education Program (IEP)** - "Individualized education program" (IEP) means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with federal regulations. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the needs.

**Individual with Disabilities Education Act (IDEA)** - Federal law has guided the delivery of special education services for students with disabilities since enactment of the *Education for All Handicapped Children Act* (P. L. 94-142) in 1975. The law pledged the availability of federal funding for states to provide a “free and appropriate public education” for every school-age child with a disability. Renamed the *Individuals with Disabilities Education Act* in 1990, and reauthorized in 1997 and again in 2004, the act emphasizes quality teaching, learning, and the

establishment of high expectations for disabled children. The IDEA also strengthened the role of parents in the educational planning process, endorsed meaningful access to the general curriculum, and delineated how school disciplinary rules and the obligation to provide a free appropriate public education for disabled children fit together.

**In improvement** - If a Title I school or a school division does not make AYP in the same subject area for two years in a row, the school or division is considered to be “in improvement” and is required under NCLB to take certain actions to raise achievement.

**LEP** - Limited English Proficient refers to students for whom English is a second language and who are not reading or writing English at their grade level.

NCLB - No Child Left Behind Act of 2001 was signed into law by President Bush in 2002

**Other academic indicator** - For AYP calculations, in addition to meeting AMOs in reading and mathematics, elementary and middle schools must also meet AMOs for attendance or science and high schools must also meet AMOs for graduation, or show improvement. School divisions must decide prior to the beginning of the school year whether to use attendance or science as the AMO for elementary and middle schools.

**Public school choice** - See “Transfer Option”

**Safe harbor** - A provision of NCLB intended for schools and school divisions that are making progress in raising student achievement but not yet meeting target goals for AYP.

**SOL** - Standards of Learning for Virginia Public Schools describe the commonwealth’s expectations for student learning and achievement in grades K-12 in English, mathematics, science, history/social science, technology, the fine arts, foreign language, health and physical education and driver education.

**Stanford English Language Proficiency Test (SELP)** – The state-approved English language proficiency assessment as required by NCLB. The SELP test, developed by Harcourt Assessment, Inc., assess the speaking, listening, reading, and writing skills of all limited English proficient (LEP) students.

**Supplemental services** - Students in a Title I school identified as needing improvement for two consecutive years are eligible to receive outside tutoring. Parents can choose the appropriate services for their child from a list of state-approved providers. The school division must pay for the services.

**Title I** - Federal-funding program designed to help low-income children who are behind academically or at risk of falling behind. Title I funding is based on the number of low-income children in a school, generally those eligible for free lunch or reduced-fee lunch programs.

**Transfer option** - Also referred to as “Public School Choice.” Students in Title I schools identified as needing improvement have to provide the option for students to transfer within

the division to a school that has made AYP. The school division is required to provide transportation to those students.

**Virginia Grade Level Alternative (VGLA)** - An assessment developed to meet the NCLB requirement that all students, including those with disabilities, be assessed on statewide accountability measures for the purpose of measuring AYP. Both the reauthorized IDEA and NCLB require states to create alternate assessments for students who are unable to take the general statewide assessments. NCLB allows creation of an alternate assessment based on grade level content and achievement standards. The VGLA is an alternate assessment evaluated against grade level achievement standards.

**Virginia Alternate Assessment Program (VAAP)** - The reauthorized IDEA (2004) requires states to develop an alternate assessment for students with significant cognitive disabilities who cannot participate in the general statewide assessment program even with accommodations. Students participating in the VAAP are evaluated against alternate achievement standards aligned to grade level content standards.

**Virginia Substitute Evaluation Program (VSEP)** - An assessment used to enable certain students with unique disabilities to earn credits towards graduation.

**Source:** Report to the Governor and General Assembly on the Costs of the Federal No Child Left Behind Act to the Virginia Department of Education, September 2005, <http://www.doe.virginia.gov/VDOE/nclb/coststudyreport-state.pdf>