JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

MEMORANDUM

TO: State Board of Education

FROM: Tom Watkins

DATE: December 9, 2003

SUBJECT: Consideration of Council of Chief State School Officers (CCSSO) NCLB Implementation Issues and Opportunities for Action

For almost two years the Michigan Department of Education and the state's collective education community have absorbed, analysed, parcelled, and worked diligently to implement the 2,094 pages of Public Law 107-110, the No Child Left Behind Act of 2001 (NCLB). Overall as education stewards for Michigan's children, we have embraced the moral imperative of NCLB that instates a shared accountability for ensuring that all children can learn to high standards. But, as with most lengthy federal reauthorization bills, we have discovered several provisions that may be theoretically well-intentioned, but virtually impossible to accomplish practically. There also are conflicting directives, unintended consequences, requirements that exponentially escalate paperwork, and, many believe, numerous unfunded mandates.

At the federal level, during the bill's consideration and in the interceding 23 months since its enactment, education organizations have positioned themselves in a variety of postures. As the implementation has unfolded at the state and local levels and the knowledge quotient has increased, parents, students, teachers, administrators, school board members, and advocates have come to understand the impact of NCLB both where they live and work. Today we are informed, experienced and poised to suggest adjustments in how NCLB is being implemented, and, yes, modifications to the law itself.

Department staff have consulted and collaborated with the Michigan Association of School Boards, the Michigan Association of School Administrators, the state Special Education Advisory Council, the Michigan Federation of Teachers, the Michigan Education Association, the Michigan Association of State and Federal Program Administrators, the Michigan Association of Intermediate School Administrators, special Michigan-based NCLB topical advisory groups and others to develop a list of recommendations for a sounder administrative implementation system for the U.S. Department of Education (USED), and possible amendments to the law to make it more realistic, and as one local Michigan local school board officer wrote to Governor Jennifer M. Granholm, to make the "playing field … fair and equitable for everyone in the game."

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It is my hope that our broad-based coalition will impress upon our federal counterparts in the USED and our Congressional Delegation that there is sincere merit and far-reaching support for these changes.

While MDE staff have worked with a large number of organizations at the state and national level, we have collaborated in a special endeavor on NCLB with the Council of Chief State School Officers. Like us, CCSSO has embraced the goals of the new federal mandate. It also has worked in a myriad of ways to assist states technically in understanding the law, convening "brain trusts" on priority issues, and assisting in implementation. With the experience CCSSO has garnered, the organization has developed the attached document, "NCLB Implementation Issues and Opportunities for Action." The document groups issues and potential actions into the three priority issues of special populations, valid and reliable accountability determinations, and teacher quality. As the document states, "Most of the recommendations can be accomplished through existing statute and regulations. Many of the suggested actions have already been implemented in some states, but additional clarification from USED is necessary to make those same options available to all states."

I also strongly endorse the CCSSO's preface: "It is in the same spirit of non-partisan partnership that characterized the development of this law and our firm commitment to the success of all children that we offer the following framework and related recommendations for action." Please see the attached "NCLB Implementation Issues and Opportunities for Action". It is my intent to work with the broad spectrum of Michigan education groups and their Washington affiliates to present this document to the Michigan Congressional Delegation and to the USED to achieve a sounder, more realistic administrative implementation of NCLB and adjustments to the law that best serve not only the children of Michigan, but children throughout the nation.

Attachment

cc: John Burchett, Director, Governor's Washington D.C. Office
Congressional Delegation
Education Organizations/Alliance
Local and Intermediate School District Superintendents
Public School Academy Directors

NCLB IMPLEMENTATION ISSUES AND OPPORTUNITIES FOR ACTION

No Child Left Behind (NCLB) is landmark legislation that has as its foundation an irrefutable principle: Shared accountability for ensuring that all children can learn to high standards. Fueled by an impatience for business as usual, NCLB rightly embraces the goal of challenging our nation to fulfill the promise of closing achievement gaps and providing an excellent education for all students.

Since its enactment, states have worked to implement NCLB in an effort to strengthen their own state systems and improve educational opportunities and outcomes for all children. The Council has provided substantial technical assistance, partnered with the U.S. Department of Education (ED) on numerous ventures, and led efforts to gather information about implementation successes and challenges. Much has been learned through the initial implementation period and those lessons have been translated into additional flexibility with ED, states, and CCSSO working together to ensure proper implementation of the law.

In that spirit, this document identifies NCLB issues and potential actions that can promote educationally-sound implementation and avoid unintended consequences. This list is not meant to be comprehensive, but rather, identifies three priority issues. The priorities are based on the input of more than 40 states as part of our continuous efforts to implement NCLB. Most of the recommendations can be accomplished through existing statute and regulations. Many of the suggested actions have already been implemented in some states, but additional clarification from ED is necessary to make those same options available to all states.

It is in the same spirit of non-partisan partnership that characterized the development of this law and our firm commitment to the success of all children that we offer the following framework and related recommendations for action.

Priority I: Special Populations

ISSUE: NCLB appropriately requires Adequate Yearly Progress (AYP) for all groups of students. This creates some unique, often unintended challenges, such as those with regard to measuring the progress of students with disabilities and English language learners. If the accountability systems do not reflect the particular needs of certain subgroups, we run the risk of either inaccurately measuring schools that are serving students well, or worse, judging individual students by standards that are not appropriately adjusted to reflect their education experience in a valid and reliable manner. Action is needed to determine how we can meaningfully include special populations with appropriate assessments, standards, and consequences.

SUGGESTED ACTIONS

Inclusion of Students with Disabilities: NCLB requires that all students be held to the same high standards. However, some special education students may benefit from being assessed with a different instrument that is aligned with more appropriate standards. The following areas for action can help ensure that special populations are meaningfully and appropriately included in state assessment and accountability systems:

- Improve and finalize proposed regulations that permit states to use alternate assessments measured against alternate achievement standards for students with *severe* disabilities as determined by each student's Individualized Education Program (IEP) team (and monitored by the state to prevent abuse).

  Ensure that NCLB permits states to develop alternative assessments for students with *significant* disabilities (those who do not qualify as severely disabled, but for whom an alternative assessment would still be appropriate), aligned to the state content standards, yet measured against adjusted performance levels where appropriate as determined by each student's IEP team (and monitored by the state to prevent abuse).

  Ensure that NCLB permits states to define graduation rates to include diplomas earned by students with severe disabilities for whom receipt of a regular diploma is not an appropriate educational goal, as determined by each student's IEP team.

Inclusion of Limited English Proficient (LEP) Students: NCLB requires that all enrolled students be included in state assessments, and that 95 percent of those students participate in an assessment for a school/district to demonstrate AYP. This includes LEP students. However, in some instances, it is neither educationally valid nor appropriate for newly enrolled LEP students to participate in state assessments. The following areas for action can help ensure that LEP students are meaningfully and appropriately included in state assessment and accountability systems.

- Clarify NCLB to permit states to omit LEP students who have not been enrolled for a full academic year from state assessments if the student's LEP team determines that inclusion in state assessments is not educationally appropriate and/or the student's screening test results show that participation is not suitable.

Clarify NCLB to permit states to use English proficiency (not substantive content knowledge) to hold schools and districts accountable in the LEP student's first three years of enrollment where it would be valid, reliable, and consistent with the student's educational program.

Transitioning In and Out of Subgroups: NCLB requires schools to demonstrate AYP for all subgroups. However, in the case of LEP students, those who demonstrate proficiency in reading/language arts are likely to transition out of LEP status, making it difficult to demonstrate AYP for the LEP subgroup regardless of substantial improvements in student proficiency. The disability subgroup faces similar problems as students transition out of special education.

- When determining the performance of a subgroup, clarify that NCLB permits states to count the performance of those students who recently transitioned out of the group, particularly in regard to LEP and IEP students (e.g., their performance would count during the transition period for as long as the student remains in the same school).

Priority II: Valid and Reliable Accountability Determinations

ISSUE: NCLB requires that states make AYP determinations for every public school and district, and that those decisions be valid and reliable in terms of identifying the right schools for the right interventions that can raise student achievement. It is crucial that states not misidentify schools. Without accurate determinations, schools will waste resources, parents will make schooling decisions based on inaccurate information, and the credibility of NCLB will be undermined. Action is needed to ensure that progress is adequately measured, AYP determinations are valid and reliable, and consequences are connected with the individual circumstances of a school's performance.

SUGGESTED ACTIONS

Recognizing Progress: NCLB defines AYP solely on whether students achieve "proficiency" on state assessments. Furthermore, the NCLB's safe harbor provision is hampered by trying to measure small changes in student performance, for small numbers of students, over a small amount of time. This model does not always value progress with regard to subgroups or schools starting significantly below proficiency or with improved student performance at other levels of achievement (e.g., movement from proficient to advanced and below basic to basic). States are committed to meeting AYP for all students, but the current system neither sufficiently values progress for lower-performing subgroups nor accounts for the degrees by which groups do not make AYP. The following areas for action can help ensure that progress is recognized:

- Ensure that NCLB permits states to set separate starting points and trajectories by subgroup, school, and/or district, as long as the trajectory accomplishes 100 percent proficiency by 2014. Preliminary AYP analyses show that a large number of schools and districts will fail to meet AYP based solely on initial performance gaps for select subgroups that begin at a very low starting point. Separate starting points would better recognize progress by setting a low-performing subgroup, school, or district on its own trajectory to 100 percent proficiency rather that the statewide trajectory.

If the above suggestion is not possible, accommodate those schools and districts with very low starting points by ensuring that any school or district that is on a trajectory to make proficiency before 2014 is included in the definition of "safe harbor." To qualify for safe harbor under NCLB currently, a subgroup must demonstrate that it reduced by 10 percent the number of students scoring below proficiency from the prior year. Although the concept of safe harbor is vital to AYP, the calculation measures such small changes over such a brief period of time that the final determinations frequently lack sufficient validity or reliability (e.g., in a small subgroup, the performance of a single child in a single year may represent a 10 percent change in performance). The problem can be solved by permitting states to recognize gains in students' achievement for "safe harbor" relative to their starting point, making sure a school's own progress toward 100 percent proficiency is its own measure of success.

- Clarify that states can use "averaging" of data to allow schools to demonstrate "safe harbor" based on greater progress over multiple years as opposed to 10 percent in one year. For example, in Utah's approved plan, an LEA, school, or subgroup will make AYP if it demonstrates reductions in students who are not proficient by 27.1 percent over three years, 19 percent over 2 years, or 10 percent in a single year. This proposal ultimately expects the same level of progress, but it removes some of the uncertainty inherent in annual determinations.

  Ensure that NCLB permits states to adopt growth/value added models in which AYP is determined based on the growth of the *same* students from grade to grade, ensuring that each individual student achieves proficiency over time. NCLB requires that states measure AYP based on a state bar by comparing student performance in the current year with the performance of *different* students in the same grade in the prior year. This model is subject to significant validity problems based on cohort variability and does not fully account for students who enter a grade far below proficiency. At a minimum, ensure that the growth/value-added model is allowable for "safe harbor" determinations.

Making Valid Determinations: NCLB requires schools that do not make AYP for two (or more) consecutive years be placed in school improvement. However, schools could be identified for improvement based on unrelated factors. The following actions can help ensure that schools are identified for improvement only in situations where there is consistent underperformance demonstrated by a particular group of students:

  Clarify that NCLB permits states to identify for school improvement only those schools that fail to meet AYP for two consecutive years in the same subject *and for the same subgroup.* ED has permitted states to identify for school improvement only those schools that fail to meet AYP for two consecutive years in the same subject, but prohibited states from treating subgroups the same way. This model raises substantial reliability concerns given the multitude of subgroups that could fail to demonstrate AYP for one year. This model fails to recognize the different educational problems that may be evidenced and interventions that may be appropriate in cases where different subgroups fail to demonstrate AYP.

- Ensure that NCLB permits states to adopt index systems in which AYP determinations are based on student progress toward proficiency (including movement from below basic to basic) and at higher levels of performance where data show that such index systems neither diminish the impact of accountability nor mask the performance of underachieving students.

Inclusion of Additional Data (i.e. Compensatory Models): NCLB requires AYP determinations to be based primarily on state assessments. This model does not allow other data to reinforce the reliability of AYP determinations. The inclusion of such additional compensatory data would enhance the validity and reliability of AYP determinations, especially in small, rural, or isolated schools.

- Permit states to establish accountability systems with multiple measures that can compensate for each other (including AYP data) in making accountability determinations, so long as the state accountability system is shown to pursue the same goal of 100 percent proficiency by 2013-14

  Ensure that NCLB permits states to define AYP in a manner that protects against inaccurate determinations (e.g., via confidence intervals) and allows states to consider additional data where AYP determinations are inconclusive.

Appropriate Test Use for More Accurate Determinations of AYP: NCLB requires that AYP be based primarily on state assessments in reading/language arts and mathematics. Several states want to build more reliable, integrated assessment systems that consist of multiple assessment instruments for AYP accountability and related purposes (e.g., several formative assessments leading to a summative assessment). Additionally, ED regulations require that AYP determinations be based on the first administration of state assessments. Some states wish to establish state assessment systems with multiple administrations, in which low-performing students can receive *immediate* interventions to help each student achieve and demonstrate proficiency.

- Clarify that NCLB permits states to adopt state assessment systems that include multiple assessments of student performance. Such additional data could increase the reliability of a school or district making AYP, and will support those states whose assessment systems are designed primarily to support instruction.

  Clarify that NCLB permits states to count multiple administrations of state assessments to afford students the full opportunity to achieve and demonstrate proficiency.

NCLB Consequences (Choice and Supplemental Services): NCLB requires that schools and districts identified for improvement initiate specific actions. However, it is important that the consequences in NCLB be appropriately aligned to the individual circumstances that kept the school or district from making AYP. The law requires a school not making AYP to initiate broad predetermined consequences for *all students* irrespective of the accountability factors that resulted in the school missing AYP. NCLB also requires consequences to be administered in a particular order with public school choice available in the second year of not making AYP and supplemental services provided in the third year. In some schools/districts the opposite order may be more effective.

Clarify that NCLB permits states and districts to target supplemental services and school choice options to those subgroups that did not make AYP.

Permit schools to choose the order of initiating choice and supplemental services, as long as one action is provided in the first year and the other action is provided in the subsequent year.

Priority III: Teacher Quality

ISSUE: NCLB requires that teachers be "highly qualified" in all "core academic subjects" in which they teach, including "English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography." This requirement creates a disproportionate and difficult burden on select teachers who may teach multiple subjects, including teachers of special education, middle school social studies teachers, teachers in small/isolated schools, etc. Action is needed to ensure that alternative pathways are in place for teachers to demonstrate their qualifications.

SUGGESTED ACTIONS

Subject Matter Expertise: NCLB requires those teachers who work in several subject areas to be qualified in each area of expertise. However, the following actions would help ensure the promotion of teacher quality under the law in a manner more appropriate to multiple contexts.

- Clarify that newly hired Title I teachers and ultimately all newly hired teachers in special programs (including small and rural schools, special education, LEP programs) can be hired when "highly qualified" in their primary subject areas (at the middle and high school levels), and then become highly qualified in additional areas along with other current teachers through the Highly Objective Uniform State Standards of Evaluation (HOUSSE).

  Ensure that states have the option of allowing teachers on alternative pathways to subject matter expertise to be considered highly qualified if they are making sufficient progress under their individual plan, and if they meet the requirements of alternative pathways to certification. There should be standards in place to verify the rigor of the alternative pathways.

  Ensure that special education and LEP instructors can be defined by states as being highly qualified based on relevant criteria. Clarify that they need not be highly qualified in each core academic subject if they are working in consultation with a teacher(s) who is highly qualified in the given subject. [Note: This may also apply to teachers in small, rural, or isolated schools or alternative schools who are highly qualified in one or more core academic subjects, but may work in consultation with other highly qualified teachers in other core subject areas either on site or through technology.]