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Subject: Duncan Issues Far More NCLB Waivers Than Predecessors

Chiefs,

In light of your upcoming discussions on reauthorization and waivers, please see article below. Secretary Duncan issued a waiver this month to the 2,400-student McPherson Unified School District, in Kansas. The school district won approval to implement a different test and different standards than those set by the state. The district indicates they are following higher standards than the state.

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"The waiver effectively upends a top priority of NCLB, which tries to ensure that all students be held to the same standards and be tested with the same assessments so there's a uniform yardstick by which schools and students in a state can be compared."

NATIONAL NEWS

Duncan Issues Far More NCLB Waivers Than Predecessors

Education Week

By: [Michele McNeil](#)

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[http://www.edweek.org/ew/articles/2011/04/22/29nclb_ep.h30.html?
tkn=PNYFQt35NTgsEpxVZ4m4lu3qFe1NnI9ADfx%2B&cmp=clp-edweek](http://www.edweek.org/ew/articles/2011/04/22/29nclb_ep.h30.html?tkn=PNYFQt35NTgsEpxVZ4m4lu3qFe1NnI9ADfx%2B&cmp=clp-edweek)

With Secretary Arne Duncan at the helm, the U.S. Department of Education is gradually—and sometimes quietly—chipping away at key parts of the No Child Left Behind Act as states and districts demand more relief from the elusive goal that all students be what the law terms "proficient" in reading and math by 2014.

The pressure on Mr. Duncan to waive substantial parts of the 9-year-old federal school-accountability law is only growing as Congress continues to drag its feet on reauthorizing the Elementary and Secondary Education Act, of which NCLB is the latest version.

Although President Barack Obama and Mr. Duncan have called for revision of the law by the start of the next school year, draft legislation has yet to be introduced, and school leaders anxious about rapidly approaching deadlines are clamoring for leeway in

the meantime.

“We need flexibility as we age out of NCLB,” said Kansas Commissioner of Education Diane DeBacker, who, in a request also being made by officials in Arkansas, is seeking a waiver of the law’s hallmark 2014 proficiency requirement.

Officially, the Education Department remains mum on any plans it has to issue waivers if the ESEA is not renewed by the time students return to school in the fall.

“We’re working very hard to address these issues for all states when we fix No Child Left Behind this year,” department spokesman Justin Hamilton said this week.

But during Secretary Duncan’s first year in office, in 2009, he granted 315 waivers under NCLB—many linked to the education aid Congress provided as part of the economic-stimulus package. That marks a nine-fold increase in the number under his predecessor, Margaret Spellings, the year before, according to [annual reports made to Congress](#).

Information for 2010 is not yet available. But waivers continue—including some that strike at the heart of the requirement that students, schools, and districts be measured against the same state tests.

In Kansas, for example, a school district just this month got a first-of-its-kind waiver to use its own standards and tests, opting out of state exams for its oldest students. In Utah, the state in March won approval to let 12 districts use computer-adaptive tests for accountability purposes—a request rejected in 2008 by Ms. Spellings.

The waivers are a sign of the need for flexibility under the current system, in the view of Gene Wilhoit, the executive director of the Washington-based Council of Chief State School Officers.

Broad Discretion

The NCLB law—the centerpiece of President George W. Bush’s education agenda—requires states to test all students annually in reading and math in grades 3-8 and once during high school. Schools that fail to meet proficiency targets, or make “adequate yearly progress”—known as AYP—face an escalating set of sanctions. Periodically, those proficiency targets get higher, as states seek to bring all students to the 100 percent proficiency mark by the end of the 2013-14 school year.

The law gives the education secretary broad waiver authority aside from areas involving civil rights and funding. But between 2002 and 2004, just eight NCLB-related waivers were granted under then-Secretary Rod Paige, who had made it clear he didn’t want to entertain requests from states or districts to circumvent what were then new requirements under the revamped ESEA.

The first substantial waivers were granted in 2005 by Secretary Spellings and involved the requirement that schools and districts provide public school choice and supplemental education services, or tutoring, to students who attend schools in need of improvement.

That year, Virginia got a first-of-its kind waiver for four districts to reverse the order of those remedies and provide tutoring before offering public school choice. That same year, Ms. Spellings granted another precedent-setting waiver to the Boston and Chicago school districts, letting them be their own providers of tutoring. (Current law requires outside providers to do the tutoring for districts “in need of improvement” under the law.)

The overall number of waivers grew to 51 in 2008 as Ms. Spellings expanded a pilot program to allow states to use student-academic-growth models for accountability purposes.

Mr. Duncan, who sought flexibility as Chicago’s schools chief prior to being appointed education secretary by President Obama, has embraced his waiver authority in his current role.

The majority of the 315 NCLB-related waivers granted in 2009 were related to how states and districts could use the additional \$10 billion in Title I funding wrapped up in the American Recovery and Reinvestment Act, the economic-stimulus package Congress passed that year.

Mr. Duncan also invited and granted dozens of waivers involving tutoring and school choice.

‘Shocked’ in Kansas

The decision to grant a waiver depends on many factors, department officials say, such as the impact of the request on students and teachers, whether the waiver would improve education for all students, and what precedent would be set if the waiver was approved.

But for now, Mr. Duncan is avoiding saying much of anything about waivers. “My whole mentality is to get [NCLB] passed,” the secretary said on Feb. 7 at a meeting of the National School Boards Association, when asked repeatedly about what waivers he was considering.

Nevertheless, the waivers Mr. Duncan has granted suggest where he might be willing to bend if the ESEA remains stalled in Congress. A prime example: the waiver given this month to the 2,400-student McPherson Unified School District, in Kansas. McPherson won approval to ditch its state’s standards and tests for grades 6 and up, and to implement a more rigorous curriculum set to college- and career-ready standards tied to new tests—all developed by the Iowa City, Iowa-based testing company ACT.

The waiver effectively upends a top priority of NCLB, which tries to ensure that all students be held to the same standards and be tested with the same assessments so there’s a uniform yardstick by which schools and students in a state can be compared.

“I was shocked,” said Superintendent Randy Watson, who has since fielded calls from state lawmakers, superintendents, and other education officials from across the country who wanted to know how he secured the waiver.

The federal Education Department said that, generally, requests from states and districts for McPherson-like waivers will only be granted if the standards and cutoff scores on tests are more difficult than those currently in place. And states and districts must demonstrate they need the flexibility as they switch to new, tougher standards.

“The [Kansas] waiver was not about relief, it was about reform,” Mr. Hamilton, the federal department spokesman, said.

Even with tougher standards and a harder test, the department insists in its [April approval letter](#) that McPherson be measured against Kansas’ AYP benchmarks and the 2014 proficiency deadline. That decision came even though two months earlier, Mr. Watson said federal officials told him they were also going to waive the accountability provisions.

Transparency Issues

The lack of transparency around waiver decisions worries some education policy advocates.

In the case of the McPherson waiver, “I think it’s extremely confusing,” said Vic Klatt, a principal at Penn Hill Group, a government-relations and advocacy organization in Washington, and a former top Republican aide on the House education committee. He said allowing a district to operate under its own standards, with its own tests, seems to fly in the face of the main impetus behind NCLB.

Charles Barone, the director of federal legislation for Democrats for Education Reform, a New York City-based political action committee, put it this way: “It’s very murky when these decisions are made, how they’re made. No one knows.”

Another waiver approved with no fanfare from the Education Department allows 12 districts in Utah to use computer-adaptive tests rather than traditional state exams for accountability purposes. The waiver, for the 2010-11 school year, affects about 4 percent of the state’s students and allows them to take tests that adjust their questions according to how a student is performing. Three years ago, when two districts wanted to use such tests, Secretary Spellings’ administration said no. In Missouri, the 25,000-student Springfield district is hopeful it can persuade federal officials to let it use its own computer-adaptive tests for some grade levels, instead of state exams. The district will still abide by the state’s accountability plan and AYP targets because it’s able to translate the scores students receive on the district tests onto a scale used for state tests. “We’re hoping to be a sample of where the states and the country will go,” said Superintendent Norm Ridder. “I think we might become the pilot that everyone wants to look at.”

Other Routes

Those waivers aren’t the only way to gain flexibility under NCLB. States can also tweak their [accountability workbooks](#), which serve as each state’s master accountability plan.

Georgia, for example, was allowed in 2009 to use for AYP purposes the highest scores from students who retook the graduation exit exam. In 2010, Alabama was allowed to lower the attendance-rate requirement for making AYP to 90 percent from 95 percent.

Also last year, the federal department allowed Virginia to deviate from its plan and freeze its proficiency targets at 2008-09 levels, rather than make gradual progress toward the 100 percent proficiency goal, because the state was getting ready to administer new tests. In addition, it temporarily let Virginia leave its [proficiency targets for 2010-11 and beyond undetermined](#) for a period of time—something unprecedented up to that time because the law requires specific numeric targets every year. So Virginia officials were a bit taken aback that the department [wouldn’t allow them](#) to keep their proficiency targets frozen, given that their first request was accepted. The federal Education Department had led the state to believe “that we were making a reasonable request,” said state education department spokesman Charles Pyle.

Challenging AYP

One of the biggest threats to a central tenet of the No Child Left Behind law is the chorus of demands to relax the AYP requirement that is supposed to lead states, districts, and schools to 100 percent proficiency for their students by 2014. Mr. Duncan, in an effort to turn up the heat on Congress to reauthorize the ESEA, has cited Education Department estimates that more than [80 percent of schools](#) could be labeled as “failing” this year (the law’s technical term is “in need of improvement”). For the secretary, the concern is over the validity of the label.

For that reason, Kansas state board Chairman David Dennis has petitioned the federal department to hold its AYP targets at 2009-10 levels.

“We’re not taking our foot off the accelerator. We have schools that are failing that aren’t failing—they just are not meeting an arbitrary target,” Mr. Dennis said. But he’s not very hopeful that the request will be granted as Secretary Duncan instead presses for reauthorization. Instead, he asserted, Mr. Duncan wants to “use us as a hostage of ESEA reauthorization.” [Arkansas officials are making a similar request](#), asking that AYP targets be held at 2011-12 levels as the state implements the common-core standards.

And Kentucky [could be next in line](#) as part of its “Next Generation Accountability Model,” which relies on student academic growth measured against the higher, common-core standards.

“Our goal is that kids reach proficiency or higher in the tested subjects, but our model doesn’t have a date,” said Kentucky Department of Education spokeswoman Lisa Gross.

The federal education department said a handful of these kinds of requests are pending. But if history is any guide, those requests—especially when it comes to waiving the 100 percent proficiency target—are likely to be rejected.

In 2009, the federal department [rejected a request by West Virginia](#) to move its 100 percent proficiency goal to 2019-20.

“Secretary [Duncan] has stated that he does not intend to change this timeline through administrative action; this should occur through the reauthorization process,” the department’s letter to the state’s education department reads.

[\(Back to top\)](#)