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NCLB UPDATE: The Waiver Option

AN ISSUE ALERT FROM THE SLC

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U.S. Education Secretary Arne Duncan made a surprise announcement June 13 that, if Congress did not act soon to reauthorize the No Child Left Behind Act (NCLB, already almost four years overdue), he would, in essence, do it for them. Secretary Duncan's proposal was the extension of waivers to states who adopt a set of reforms. Members of Congress have been meeting on a rewrite of the bill, but the pace is slower than the Administration's August target for legislation, and recent indicators from the House Education Committee suggest they are unlikely to deliver legislation this year.

There is a degree of urgency to this move. The deadline established under NCLB for school districts to bring every student to proficiency in reading and math (as determined by state standards) is 2014, and there is no indication that schools are anywhere near meeting that target, most especially for low-income and minority students. Indeed, Secretary Duncan warned earlier this year that as many as 82 percent of schools could miss their academic progress targets in the 2011-2012 school year, essentially a doubling of the rate from the previous year. Schools that fail to meet their proficiency goals are subject to a cascade of sanctions, and the prospect of four-fifths of schools in some form of corrective action has significant budgetary and programmatic implications.

Why this is the case is debatable, but states generally "backloaded" the academic gains they would be required to make, calculating either that the reforms put into place would realize gains significant enough to bring all student subgroups to proficiency by the deadline, or that the target would be phased out by subsequent legislation. Moreover, the Act's goal of 100 percent proficiency for all students has been assailed as both unrealistic, if not impossible.

Regardless of this, the rising proficiency expectations are hitting the hard deadline at the same time that state budgets for K-12 education are being reduced in many states, diminishing the resources available to close the remaining gaps, and potentially undermining reforms that have been put in place. Furthermore, states, with the encouragement of the U.S. Department of Education, are pursuing common, career- and college-readiness standards that are expected to be more rigorous than those states currently employ. The impact of these new standards on student performance is relatively predictable: declines in scores and increases in the number of students falling below proficiency as instruction catches up with new standards.

Secretary Duncan has yet to provide details to his proposal, but it is expected that the reform expectations will mirror those for the Race to the Top (RTTT) grant programs. Because of the nature of that grant program, many states already will have implemented many of the necessary reforms, but not all. Secretary Duncan was explicit in his expectation that states would adopt the full range of reforms in order to be eligible for waivers from NCLB. "This is not an a la carte menu," he told reporters during a June 13 conference call following his announcement.

This, of course, poses several complications. Chief among these is the potential for some of these requirements, such as a longitudinal data systems favored in RTTT, to impose additional costs on states, costs that almost certainly will not be recompensed by the federal government. Moreover, in order to be competitive for RTTT funds, many states made changes to state law. The timing of Secretary Duncan's proposal makes this almost

impossible, since few state legislatures remain in session (and likely none in the South will be by the time rules are promulgated).

The Department has acknowledged that, absent a rewrite of the law, it will need to provide relief to states in the form of waivers. Secretary Duncan already has granted more waivers than any of his predecessors, although the Department did reject a West Virginia plan to delay meeting the 100 percent proficiency target. Kentucky submitted a request for a waiver to implement the accountability model of the Act with one developed by the state, the first such waiver any state has sought. Idaho alerted the Department that the state will not follow key parts of the law and will substitute its own system as well, but is not seeking a waiver (Utah attempted this in 2005 but backed off when the federal government looked likely to make good on the sanction of suspending Title I funds).

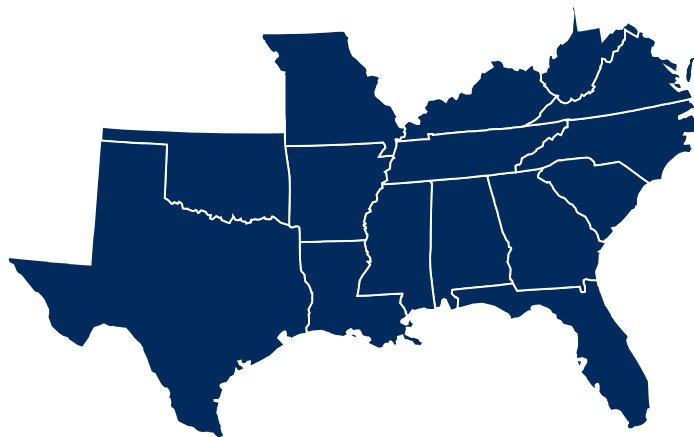
The form this relief takes may, in the end, not seem like relief at all for states if the proposed waivers impose new requirements and structures on already strained schools and states. Moreover, it may run up against the intent of Congressman John Kline of Minnesota, chair of the House Education and the Workforce, who has said he is seeking a “reduced federal footprint in education.”

Congressman George Miller, the Committee’s ranking Democrat and the chair of the Committee when NCLB was drafted, has insisted that the Act continue to support high academic standards with local flexibility, but he told an audience at the Center for American Progress that reauthorization, and not waivers, was essential, and that waivers could not be seen as an escape route.

This move on Secretary Duncan’s part appears to highlight the frustration that many have felt with the law: that it applies multiple measures for failure, but a highly restrictive method for demonstrating success, and that a rewrite of the Act that repairs its shortcomings is long overdue. By raising the possibility of a waiver process that, in essence, retools portions of the Act, the secretary is potentially bypassing Congress in order to promote a specific vision of education reform. Beyond the Constitutional concerns this raises (although the law does give the secretary broad waiver authority), a waiver program that changes core aspects of the law will establish policy that will potentially be altered, eliminated or expanded upon when Congress eventually does take up the legislation. It is unclear whether Mr. Duncan intended his announcement to spur Congress to action on reauthorization or as a genuine signal of intent to take on the task of “rewriting” the Act without Congress if they are unable to do so by August.

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