



# Great Lakes West Comprehensive Center

## Your Access to the Region

### FEATURE ARTICLE

#### A Cautionary View of No Child Left Behind Flexibility and Waivers



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It has been nearly a decade since the No Child Left Behind (NCLB) Act was enacted and schools across the United States were subjected to the most rigorous federal requirements since the first Elementary and Secondary Education Act (ESEA) was passed. Under NCLB, the title given to ESEA during the George W. Bush administration, states and local school districts are required to adhere to a multitude of challenging requirements (e.g., ensuring that schools are accountable for the achievement of subgroups of students; teachers are highly qualified; data systems are developed to report substantial information to the public in clear, understandable formats; and programs have evidence that they work). Since NCLB became law, education in the United States has undergone a transformation that has involved considerable effort by educators to improve in many facets of the system. Looking back on the last decade, it is clear that states have taken on the challenges contained in NCLB and implemented many reform initiatives to comply with its requirements. Illinois and Wisconsin have been leaders in those initiatives and have been working diligently to improve their state’s education programs and student achievement. Both Illinois and Wisconsin are dealing with new political environments and a challenging economy; yet, their state education leaders are pursuing major changes to their accountability programs.

Despite herculean state efforts, it always has been understood that some of the requirements of NCLB, such as the provision requiring 100 percent proficiency for all students, were goals that would not be achieved. Within this context, Secretary of Education Arne Duncan announced late in 2011 that states and territories could seek a waiver from some of the requirements of NCLB in return for assurances that they would comply with different rigorous reforms being promoted by the U.S. Department of Education. But what does the waiver mean for the states, and what caution may they want to exercise as they consider applying for the new flexibility? The requirements for the flexibility are not a “free parking” provision, and states could be held to very high expectations. What will the consequences be for not fulfilling those expectations?

Right now, eleven states’ applications for an NCLB waiver have been evaluated, and approximately 30 more states have submitted an expression of interest to submit a waiver by the February deadline. Wisconsin has been working on the waiver application as part of a state accountability task force consisting of the governor, the house and senate education committee chairs, and the state education chief.

## What Does the New Guidance Mean for State and Local Education Agencies?

Although NCLB was a “game changer” for education reform efforts to improve accountability and student achievement, teacher quality, and the use of research evidence to support implementing new programs, it is clear that some of the law’s intended outcomes are not going to be reached. The delayed reauthorization of ESEA has not been completed by Congress, and Secretary Duncan has determined that he has the legal authority to offer flexibility from some of the law’s provisions in a quid pro quo for different accountability reforms. Although there are those in Congress who believe he has exceeded his authority in offering this flexibility, more than 40 states have indicated intent to seek the provision, and, as mentioned earlier, 11 have already had their applications reviewed and are awaiting a decision on whether their proposals were accepted.

There are two deadlines for the waiver request. The first deadline was November 2011, and the second is February 2012. To get approval, states will have to:

- Demonstrate their willingness to lead rigorous reform efforts in adopting college- and career-ready standards and assure they are aligned to state tests.
- Develop a differentiated accountability system that focuses on 15 percent of the state’s most troubled schools, and ensure that the system is based on student growth goals. It is interesting to note that the 15 percent level for the most troubled schools exceeds the provision in the reauthorization proposal passed by the senate education committee last year that set it at the bottom 5 percent of the most troubled schools.
- Develop statewide guidelines for teacher and principal evaluations that are based at least partially on student growth and used for making personnel decisions. It has been rumored that this particular provision will receive substantial attention by the reviewers. Those states submitting waiver applications for February should be certain they have set a high bar for this provision.

In return for states agreeing to those reform initiatives, the following NCLB requirements will be waived:

- The 2013–14 NCLB deadline for schools to have 100 percent of their students proficient, sanctions that can lead to restructuring a school
- Twenty percent of Title I funds that must be set aside to allow students in some identified schools the options of school choice or tutoring

The applications for flexibility will be peer reviewed. The use of peer review panels indicates a serious intent by the Education Department to ensure that states being given relief from some of the daunting challenges of NCLB are being held to high standards for the new reforms. (More information about the NCLB flexibility process can be found on the Education Department [website](#).)

## How Will This New Flexibility Support the Reforms Already Under Way in States?

As illustrated in the following examples, Great Lakes West states have been actively engaged in education reform for many years and have been working to improve their academic content standards, accountability systems, and teacher/principal evaluation systems.

### **Adoption of College- and Career-Ready Standards**

- **Illinois.** Illinois is among the 44 states that have adopted the Common Core State Standards and is a governing state in the Partnership for Assessment of Readiness for College and Careers (PARCC), one of the two assessment consortia that will create assessment systems and supporting tools aligned with the standards.
- **Wisconsin.** Wisconsin adopted the Common Core State Standards in 2010. Currently, the Wisconsin Department of Public Instruction (DPI) is in the process of designing a five-year strategic plan for the integration of the Common Core State Standards to increase the number of Wisconsin graduates who are career and college ready.

### **A Differentiated Accountability System That Focuses on 15 Percent of the State’s Most Troubled Schools**

- **Illinois.** The Illinois State Board of Education (ISBE) is in the process of transitioning to a differentiated accountability system. As part of their ESEA waiver plan (in development as of this e-newsletter), ISBE currently plans on moving toward a multiple measures index/composite score in analyzing school and district performance, which will incorporate current elements such as student achievement on state tests and student attendance and test participation rate, but it will also add student growth and components such as career readiness and climate surveys.
- **Illinois.** While transitioning to the new PARCC assessments, ISBE plans to increase annual measurable objectives (AMOs) by adjusting current cut scores to more accurately reflect college and career readiness attainment. In addition, a new Center for School Improvement will oversee the state’s system of supports, centering on priority and focus schools and coordinating the many new initiatives, resources, and supports to improve performance in the state’s underperforming schools and districts.
- **Wisconsin.** An Accountability Task Force, cochaired by Governor Scott Walker and State Superintendent Tony Evers along with the chairs of the Wisconsin senate and assembly committees, developed a growth-based accountability system that will consider multiple measures of student and school performance focused on college and career readiness. DPI is now using the input and framework set forth by the task force to craft a new accountability system for Wisconsin.

### **Teacher and Principal Evaluations Based at Least Partially on Student Growth and Used for Making Personnel Decisions**

- **Illinois.** In 2010, the state enacted the Performance Evaluation Reform Act (PERA) as the cornerstone of its teacher and principal reforms. Under this act, all local education agencies in Illinois are required to use student growth data as a significant factor in teacher and principal evaluations, with a default state template of 50 percent student growth. Implementation of those evaluations is scheduled to start in 2012–13. ISBE is in the process of designing default model plans for teacher and principal evaluation and a comprehensive professional development plan to support the 867 districts across the state, as well as to provide staffing and other autonomies necessary in their low-performing schools.
- **Wisconsin.** An Educator Effectiveness Design Team was established to develop recommendations for an evaluation system for teachers and school administrators. The design team developed

criteria for evaluations that are clearly articulated and use multiple indicators, including student academic growth data. At the end of the Phase I work, in November 2011, a Wisconsin Educator Effectiveness Framework was created. Phase II work during 2012 will continue to build the educator effectiveness system in Wisconsin.

## **Thoughts and Caveats on the Waiver Process**

### **Very High Expectations**

The waiver process from some of the provisions of NCLB presents an interesting scenario for states, schools, Congress, and the Education Department. As noted previously, some members of Congress believe that Secretary Duncan has exceeded his authority by offering this flexibility from the current law. That issue will ultimately have to be resolved between them as it is determined whether the executive branch of government can modify a federal law that must be reauthorized by the legislative branch of government. Although more than 40 states have indicated an intent to seek the flexibility, the old saying “be careful what you ask for; you may get it” might just be applicable here. It was the extremely rigorous provisions of NCLB and its sanctions that led to so much acrimony about the law, and the flexibility requirements could mirror that scenario. The provisions states must agree to are not unlike the early challenges they confronted implementing NCLB. Turning around “troubled schools,” ensuring that students are college and career ready, and implementing teacher and principal evaluation systems that take into account student performance data are the types of federal requirements that created so much resistance to NCLB in the first place.

### **A Gamble of Presidential Reelection**

Applying for the waiver in some respects is also a gamble that President Obama will be reelected in 2012. If President Obama is not reelected, a new secretary of education will be appointed in January 2013, and it is almost assured that the new secretary will not support the flexibility provisions. Where will that leave the states that were given the waiver and invested considerable time and money in complying with it?

### **Timing of ESEA Reauthorization**

What if Congress reauthorizes a new ESEA before it adjourns late this year? Recently, the Senate Health, Education and Pensions Committee voted out a new ESEA bill, which likely will get to the Senate floor in all likelihood early in 2012. The House of Representatives Education and the Workforce Committee has been working on ESEA in sections but is making steady progress. If Congress is to reauthorize ESEA this year, a possible scenario is as follows: the bills clear their respective chambers by spring, conferencing on the bills occurs during the summer, and final passage is enacted by fall just before the elections. A preliminary review of the Senate version of a new ESEA indicates that there are some differences between what is required for the waiver and what could become the new law. Those distinctions could be important to states that have been working on waiver reforms for approximately one year if they are then required to make more changes. It will be important to carefully monitor the activity of the education committees in both the House and Senate. If there is not much progress on ESEA by May 2012 in both chambers, the likelihood of a new law being passed before the national election in November is very slim.

### **Alignment of State Efforts Under Way**

Finally, are the waiver requests being made by the states consistent with what they are already doing, or are they going to result in efforts to make dramatic changes for the purpose of getting relief from NCLB requirements? That is an important question to consider, particularly if it means directing limited resources to new initiatives that might be temporary. There appears to be a direction in Congress to allow states to regain more control over their education programs. Undertaking these initiatives should align with what the states believe are important for their education success.

### **Sustainability as Key**

The flexibility being proposed by Secretary Duncan is sensible and can help states work on substantive changes. Like NCLB, the fundamental underpinnings are difficult to challenge. Who doesn't want schools that emphasize college and career readiness, focused efforts on the lowest performing schools, and evaluations that are more than subjective judgments? The issue is really whether the waiver provisions will be sustained by Congress when it reauthorizes ESEA.

### **The Politics of Education**

Finally, the politics of education also play a critically important role in the ESEA reauthorization and flexibility issue. A new president or change in the majority party in either chamber of Congress could result in dramatically different positions on education reform. Even though education has not been a high priority in the presidential debates or very high on the public's list of concerns, it is getting a lot of publicity and is important to the future success of America in the global marketplace. State education leaders and all educators are engaged in education reform at a time when the changes are more transformational than ever before. It is likely that the next five years of education reform will bring about more change than the previous decade, and those changes will be driven by both technology and policy. Specifically which technologies or whose policies will prevail remains to be seen.