



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION

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**BILLY K. CANNADAY, JR., Ed.D.**  
Superintendent of Public Instruction

September 29, 2006

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The Honorable Timothy M. Kaine  
Governor of Virginia  
Patrick Henry Building, 3<sup>rd</sup> Floor  
1111 East Broad Street  
Richmond, Virginia 23219

Members of the General Assembly  
Patrick Henry Building  
1111 East Broad Street  
Richmond, Virginia 23219

Dear Governor Kaine and Members of the General Assembly:

I am pleased to submit the Board of Education's combined report on A Plan to Identify Provisions of the No Child Left Behind Act of 2001 That Are Not Integral or Necessary to the Commonwealth of Virginia's Statewide Educational System in response to House Bill 1427 and Senate Bill 410, and the Federal No Child Left Behind Act Waiver and Exemption Requests Made by the Virginia Board of Education in response to House Bill 1428. The bills require a report to the Governor and General Assembly by October 1, 2006.

If you have questions or require additional information relative to this transmittal request, please contact me at (804) 225-2023.

Sincerely,

A handwritten signature in cursive script, appearing to read "Billy K. Cannaday, Jr.", written in black ink.

Billy K. Cannaday, Jr.

BKCr/rs  
Enclosure

c: The Honorable Thomas Morris, Secretary of Education  
Dr. Mark Emblidge, President, Board of Education

**REPORT OF THE  
VIRGINIA BOARD OF EDUCATION**

**A Plan to Identify Provisions of the  
No Child Left Behind Act of 2001  
That Are Not Integral or Necessary  
to the Commonwealth of Virginia's  
Statewide Educational Program  
(HB 1427 and SB 410)**

**and**

**The Federal No Child Left Behind Act  
Waiver and Exemption Requests Made  
by the Virginia Board of Education (HB 1428)**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 49**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2006**

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**Plan to Identify Provisions of the *No Child Left Behind Act of 2001* That Are Not Integral or Necessary to the Commonwealth of Virginia's Statewide Educational Program (HB 1427 and SB410)**

**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 since 2003. 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 implementing the federal legislation are outlined below.

- The testing policies and assessment instruments required for use with certain students with disabilities (SWD) and limited English proficient (LEP) students.
- The criteria for determining highly qualified teachers (HQT) and interpretation of the highly qualified criteria in the law.
- The criteria to identify schools and divisions for “improvement status” and the accompanying sanctions.
- The administrative burden that has been placed on the state and school divisions in reporting the data requirements as specified under the law.

**Plan of Action to Identify Provisions of the *No Child Left Behind Act of 2001* That Are Not Integral or Necessary to the Commonwealth of Virginia’s Statewide Educational Program**

The Virginia Board of Education will continue to work with other states and organizations to influence the scheduled 2007 reauthorization of NCLB such that it contains provisions that do not result in unintended consequences and inferior educational practice. Virginia has made every effort to comply with the federal law while at the same time requesting that USED recognize the already-established rigorous educational system in Virginia that has produced demonstrable progress in student achievement. Since approval of its first Consolidated State Application and Accountability Workbook, Virginia has sought to negotiate more tenable terms by submitting regular requests for flexibility in implementation of the requirements as permitted under the law. The Commonwealth has had minimal success in receiving approval from USED for flexibility. Thus, this plan of action is based on the flexibility requests submitted to and denied by USED as Virginia implements the provisions of NCLB. All of these requests have been made to eliminate unintended consequences and ensure sound educational practices.

The following plan of action outlines events that have already occurred and steps the Virginia Board of Education and the Virginia Department of Education will take to attempt to establish provisions of NCLB that are tenable within Virginia’s accountability system.

<b>Date</b>	<b>Activity</b>
Spring 2003 - Present	The Virginia Board of Education submitted requests for flexibility in implementation of NCLB on an annual basis to USED based on areas of the law that resulted in unintended consequences for instruction and are not the best educational practices.

Date	Activity
Spring 2003 - Present	The Virginia Board of Education and the Virginia Department of Education worked with the Council of Chief State School Officers (CCSSO) to support nationwide requests for flexibility in implementing NCLB through lobbying efforts and various position papers.
Fall 2004 – Present	The Virginia Department of Education submitted concerns and recommendations related to NCLB to Virginia’s Congressional delegation.
Spring 2006 - Present	The Virginia Board of Education and the Virginia Department of Education worked with CCSSO to draft a position paper related to key areas of the legislation that need to be changed in the reauthorization of NCLB.
Summer 2006 – Spring 2007	The Virginia Board of Education and the Virginia Department of Education will continue to consult with the Virginia Office of the Attorney General regarding the fiscal impact associated with noncompliance of certain aspects of NCLB.
Summer/Fall 2006	The Virginia Board of Education School and Division Accountability Committee and the Virginia Department of Education prepared a report for approval by the full Board of Education as required by HB 1427, SB 410, and HB 1428 of the 2006 General Assembly.
Fall 2006	<p>The Virginia Board of Education and the Virginia Department of Education will work with other states and organizations to further define provisions of the <i>No Child Left Behind Act of 2001</i> that are impractical or are poor instructional and policy practices.</p> <p>The Virginia Department of Education will submit concerns and recommendations to Virginia’s Congressional delegation with a request to influence the reauthorization of NCLB to reflect Virginia’s position.</p>
Winter 2007	The Virginia Board of Education and the Virginia Department of Education will monitor the progress of the NCLB reauthorization and provide information to the Governor and the General Assembly as needed or requested.
Late Fall 2007	The Virginia Department of Education will work with the Attorney General’s office to determine next steps depending on the progress and outcome of the reauthorization process.

### **Estimate of Costs Associated with Legal Services**

In the event a decision is made not to implement certain requirements as prescribed in the law, the Virginia Board of Education will continue to work with the Office of the Attorney General to determine financial implications. The Office of the Attorney General will provide an estimate of the costs associated with legal services under separate cover if the elimination of any requirements in NCLB results in withholding of Title I administrative funds.

### **Virginia's Journey to Educational Reform and Accountability**

Many of the provisions of NCLB are not totally new to Virginia. The Commonwealth has a ten-year history of increasing accountability for student performance. In 1995, Virginia began a journey to educational reform that resulted in revised, more rigorous content Standards of Learning, accompanied by an assessment program in grades 3, 5, 8, and in certain high school courses. Throughout the process, broad public input has indicated support of the educational reform, and results from both Standards of Learning tests and third party indicators, such as the National Assessment of Educational Progress, SAT scores, and Advanced Placement test scores, have indicated that student achievement is steadily increasing.

The Board of Education has taken a special interest in following the progress of low-performing schools and school divisions, with regular reports on how they are implementing their school improvement plans. The Standards of Quality have been amended to allow the Board to take additional action to seek compliance with school laws pursuant to the relevant provisions in the *Code of Virginia* for a school division that will not or cannot implement its school improvement plan in an effective manner that results in improvement trends for all schools in its jurisdiction. (§ 22.1-253.13:8 of the *Code of Virginia*)

### **Special Programs for Low-Performing Schools**

Virginia's governor and Board of Education have established several programs and processes that provide additional support to schools and school divisions that have been slow to meet acceptable accountability benchmarks. Prior to NCLB, Virginia had an accountability system in place through the Board of Education's Standards of Accreditation (SOA) and accredited its public schools based on benchmarks of student performance on Standards of Learning. The Department of Education has been conducting academic reviews for divisions that have difficulty meeting accreditation benchmarks. To strengthen the academic review process, beginning with the 2004-2005 school year, the state implemented a new system of conducting academic reviews, consisting of three tiers, described as follows:

<b>Review Classification</b>	<b>Characteristics of Schools – State Accreditation</b>	<b>Characteristics of Schools – AYP Purposes</b>	<b>Other Information</b>
Tier I	Any school warned in the same content area in either of the past two years or any school warned in three or more content areas	Title I school warned in English and/or mathematics that did not meet AYP	School could meet either state or AYP conditions for Tier I review
Tier II	Any school warned in science and/or history/social sciences with a pass rate more than 14 points lower than that required for full accreditation	Title I school warned in English and/or mathematics that did not make AYP or Non-Title I school warned in English and/or mathematics that did not make AYP	School could meet either state or AYP conditions for Tier II review
Tier III	Any school warned in science and/or history/social science with pass rate within 14 points of that required for full accreditation or Non-Title I school warned in English and/or mathematics that did make AYP	None	N/A

Experts who work in Virginia’s Academic Review program provide external assistance to both schools and divisions to help them evaluate areas of weakness and offer suggestions for improvement. In 2005, School Support Teams were developed as an extension of the Academic Review process to provide content-area assistance to chronically low-performing schools.

Governor Mark Warner’s Partnership for Achieving Successful Schools (PASS) initiative and Turnaround Specialist Program have been implemented to deliver additional assistance to schools that have not been able to improve student achievement on their own. PASS is a statewide initiative that provides focused coaching through the services of an outside expert for school leadership in schools having difficulty reaching targeted levels of academic performance. The Turnaround Specialist Program trains school administrators to become credentialed “turnaround specialists,” who serve as principals of low-performing schools for a minimum of three years. Performance targets are established for the schools that must be met in order for the Turnaround Specialist to receive specified incentives.

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

With this strong background in accountability, 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-AcctWkbk.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 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. As such, it is these 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.

**Provisions of the *No Child Left Behind Act of 2001* That Are Not Integral or Necessary to the Commonwealth of Virginia's Statewide Educational Program: Virginia's NCLB Flexibility Requests That Have Been Denied by USED**

Listed below are the flexibility requests related to implementation of the *No Child Left Behind Act of 2001* that have previously been denied to Virginia by the United States Department of Education. All of the requests have been made to correct certain policies and procedures that have resulted in unintended consequences and are not representative of sound educational practice.

**Testing Policies and Assessment Instruments**

1. Virginia will not require kindergarten and first grade limited English proficient (LEP) students to take the reading and writing components of the English language proficiency assessment. The English language proficiency of kindergarten and first grade LEP students will be assessed only on listening and speaking skills.
2. Virginia will allow the reading component of the English language proficiency (ELP) test required under Title I, and the plain language forms of the statewide mathematics assessments to be used as the accountability measure under section 1111(b)(3) 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 would allow Virginia to continue implementing testing policies exempting newly arrived LEP students that were in state regulations and were in effect prior to NCLB.
3. Consistent with current policy, LEP students in grades 3 through 8 at the lower levels (Level 1 and Level 2) of English language proficiency will take the Standards of Learning assessments for English/reading and mathematics, with or without accommodations, or state-approved assessments linked to the Standards of Learning. LEP students cannot take assessments linked to the Standards of Learning for more than three consecutive years.
4. Virginia will determine the percentage of students with significant cognitive disabilities that can be assessed against modified achievement standards instead of placing a limit of one percent.

**Highly Qualified Teachers**

5. Virginia will allow 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.  
[\[http://www.doe.virginia.gov/VDOE/suptsmemos/2005/inf118b.pdf\]](http://www.doe.virginia.gov/VDOE/suptsmemos/2005/inf118b.pdf)

### Criteria to Identify Schools and Divisions for School Improvement and the Accompanying Sanctions

6. Virginia will target supplemental educational services and public school choice to the subgroup(s) and individual students that need the most help.
7. Virginia will identify for improvement only those schools that fail to make AYP for two consecutive years in the same subject and for the same subgroup.
8. Virginia will allow schools the flexibility to reverse the order of sanctions in the first two years of school improvement. Supplemental educational services may be offered to eligible students attending schools in improvement in the first year and public school choice in the second year.
9. Virginia will comply with Section 1111(b)(2)(I)(i) that states the other academic indicators must be considered only if “safe harbor” is invoked. 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.
10. Virginia will allow separate adequate yearly progress starting points and targets for individual subgroups.

### Administrative Burden

In addition to the ten flexibility requests noted above that have been denied by the United States Department of Education, it is important to note the vast amount of data collection and reporting that the *No Child Left Behind Act of 2001* requires. Consolidated Performance Reports are due twice each year for all titles of the law. Additionally, the state must monitor school divisions for compliance with the law, and the State Education Agency (SEA) is also subject to regular monitoring from the USED.

In 2004-2005, the Virginia Department of Education undertook a study of the state agency and local school division costs of the *No Child Left Behind Act of 2001* in response to actions taken by the 2004 and 2005 General Assembly. The complete study is available at: [\[http://www.pen.k12.va.us/VDOE/nclb/coststudyreport-state.pdf\]](http://www.pen.k12.va.us/VDOE/nclb/coststudyreport-state.pdf). Some commonalities were observed among the participating school divisions:

- To some extent, all school divisions were diverting resources to meet NCLB requirements and experiencing opportunity costs as a result. Most divisions were experiencing difficulty in balancing their needs and priorities with state and federal requirements.
- School divisions were focused on the accountability requirements and their challenges. These challenges included a recognition that efforts needed to be undertaken to ensure that schools did not fall into “improvement status” and remain in that status. No division in the study had a mechanism for projecting the number of schools that might

fall into “improvement status,” due to the lack of experience with NCLB requirements. The participating divisions were diligent in their efforts to ensure that sufficient resources were available so that schools did not have to incur sanctions under NCLB.

- Among the unquantifiable cost for some divisions was the communication efforts they undertook (and are still undertaking) to inform parents, students, and faculty and staff about NCLB. The time and energy needed for this effort was compounded by the differences between Virginia’s existing accountability system and NCLB.
- The divisions in the study reported that data disaggregation required by NCLB was a positive outcome. Several large, urban divisions were already building database systems that would enable them to better focus on addressing achievement gaps. To accomplish this goal, divisions in the study were seeking solutions to data warehousing demands as a result of NCLB.
- Most divisions were experiencing difficulty in maintaining the high quality teacher work force required by NCLB. The divisions participating in the study regarded the requirements for high quality educators as beneficial to their school systems.
- Prior to NCLB, all divisions in the study had developed an infrastructure to administer Virginia’s state assessment program. Nevertheless, all divisions in the study needed substantial, additional resources to meet the testing requirements of NCLB and to ensure that the existing state accountability structure was merged with AYP reporting requirements.
- School divisions in Virginia, like school divisions nationally, had more Limited English Proficient (LEP) students coming into their systems. The testing requirements for these students in their first years of enrollment were challenging the capacity of the schools both to prepare students for the tests and to administer the tests.
- School divisions were expending additional resources to assist students needing testing accommodations to take and pass required tests so that AYP benchmarks were met.

## The Federal No Child Left Behind Act Waiver and Exemption Requests Made by the Virginia Board of Education (HB 1428)

### Summary of Requested NCLB Waivers

#### Web links to Board correspondence:

<http://www.doe.virginia.gov/VDOE/nclb/NCLBproposedamendments.pdf> and  
<http://www.doe.virginia.gov/VDOE/nclb/AMO-6-22-05.pdf>  
[http://www.doe.virginia.gov/VDOE/VA\\_Board/Meetings/2006/ItemF-mar.pdf](http://www.doe.virginia.gov/VDOE/VA_Board/Meetings/2006/ItemF-mar.pdf)

#### Web links to USED responses:

<http://www.doe.virginia.gov/VDOE/nclb/accountability-used-8-19-05.pdf>  
<http://www.doe.virginia.gov/VDOE/nclb/USDOE07-27-06.pdf>

### Summary of Approved Waiver Requests

#### Policies for Calculating Adequate Yearly Progress (AYP)

- ✓ ***First score requirement*** – 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. **Approved.**
- ✓ ***Graduation rate and other academic indicator*** – defining “standard number of years for graduation” as four years or less except for students with disabilities and LEP students. **Approved.**
- ✓ ***Annual Measurable Objectives*** – 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 will be 65 percent and the revised proficiency target for mathematics will be 63 percent with increases in increments of 4 until 2013-2014. **Approved.**
- ✓ ***Grade levels included in AYP calculations*** - calculating participation rate for 2006-2007 AYP scores using tests administered in grades 3 through 8 and end-of-course for all subgroups. Performance calculations for student subgroups will be based on tests administered in grades 3, 5, and 8. Newly administered tests in grades 4, 6, and 7 will only be included in AYP performance if test performance improves ratings. **Denied as written, but approved to exercise the flexibility outlined in guidance provided on March 7, 2006.**
- ✓ ***Minimum “n” and division accountability*** – use of either 50 students or one percent of the enrolled student population for purpose of calculating AYP and applying the 95 percent participation rate. **Approved with modification (cap of 200 students).**

- ✓ *Assessing students with disabilities and two percent proxy* – continue 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 is 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. **Approved.**

#### Criteria to Identify Schools and Divisions for School Improvement and the Accompanying Sanctions

- ✓ *Division accountability* – 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. **Approved with modification (not same subgroup).**
- ✓ *Reversing order of school improvement sanctions* – 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. **Denied as written. USED approved a pilot program for four school divisions in Virginia for the 2005-2006 and 2006-2007 school years.**

#### Revisions in Funding Calculations

- ✓ *Immigrant children and youth funding formula (Title III)* – 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. **Approved.**

#### Summary of Denied Waiver Requests

##### Policies for Calculating Adequate Yearly Progress (AYP)

- ✓ *Separate Starting Points for Individual Subgroups* – allowing separate adequate yearly progress starting points and targets for individual subgroups. **Denied.**
- ✓ *Other academic indicator* – 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. **Denied. (Safe Harbor = If a school or a subgroup does not meet its targeted goal for test scores, an analysis is undertaken to determine if the 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 then met.)**

- ✓ ***Growth model based on separate starting points and annual measurable objectives in each subgroup*** - permitting Virginia to use a growth model for determining AYP of schools, divisions, and state. **Approved as pilot program for all states – Virginia does not meet all criteria for participation at this time.**
- ✓ ***Assessing students with disabilities*** - 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. **Deferred until final regulations are released.**
- ✓ ***Inclusion of Limited English Proficient (LEP) students in state assessments*** – 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. **Denied.**

#### **Assessment Policies**

- ✓ ***Assessing students with disabilities*** – 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. **Denied.**
- ✓ ***ELP Assessment*** – 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. **Denied.**

#### **Criteria to Identify Schools and Divisions for School Improvement and the Accompanying Sanctions**

- ✓ ***Choice and supplemental services*** - 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. **Denied.**

- ✓ *Consecutive years same subject and same subgroup* – 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. **Denied.**

#### Highly Qualified Teachers

- ✓ *Highly Qualified Teachers* – allow 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. **Denied - to be phased out beginning July 1, 2006.**



## LEGISLATIVE MANDATE – 2006 GENERAL ASSEMBLY

## CHAPTER 879 and CHAPTER 904, 2006 ACTS OF ASSEMBLY

Be it enacted by the General Assembly of Virginia:

1. § 1. *No Child Left Behind; identification plan.*

*A. That the Virginia Board of Education shall develop a plan to identify initiatives or conditions that are currently being funded by the federal act known as No Child Left Behind, that are not an integral or necessary component of the Commonwealth's own Standards of Quality, Standards of Accreditation, or Standards of Learning as authorized by the Virginia General Assembly and the Board of Education. Included in this plan will be information on the consequences (including any potential loss of Federal funding) if the Commonwealth elected to not comply with the identified components.*

*B. Upon the development of the plan required by subsection A, the Office of the Attorney General of Virginia shall provide the Board and the General Assembly an estimate of the costs for providing legal services in the event that the elimination of any initiatives or conditions results in withholding of Title I funds.*

*C. The Board of Education shall report its plan to the Senate Committee on Education and Health, the House Committee on Education, the Senate Committee on Finance, and the House Committee on Appropriations by October 1, 2006.*

## LEGISLATIVE MANDATE – 2006 GENERAL ASSEMBLY

## CHAPTER 880, 2006 ACTS OF THE ASSEMBLY

*An Act to request certain waivers and exemptions to the federal No Child Left Behind Act.*

Be it enacted by the General Assembly of Virginia:

1. § 1. *No Child Left Behind; waiver and exemption requests.*

*A. The President of the Board of Education is encouraged to request from the U.S. Department of Education, in calendar year 2006, the following waivers and exemptions of the statutory and regulatory requirements of the federal No Child Left Behind Act (Public Law [107-110](#)):*

- 1. Additional flexibility for the Commonwealth to apply sanctions regarding supplemental services and public school choice.*
- 2. The identification of schools in improvement to consider those schools that fail to make adequate yearly progress for two consecutive years in the same subject and for the same subgroup.*
- 3. The modification of adequate yearly progress calculation policies to accommodate appropriate measures of progress for students with disabilities and those students who are limited English proficient.*
- 4. The ability to count the passing scores of students on retests in the calculation of adequate yearly progress in a manner that increases the validity of adequate yearly progress determinations across tested grade levels.*

*Nothing in this section shall be construed to prohibit the Board of Education from making additional requests as it deems necessary.*

*B. The President of the Board of Education shall make a report on the status of all requests provided in subsection A of this act to the Governor, the Chairmen of the Senate Education and Health and House Education Committees, and the Chairmen of the Senate Finance and House Appropriations Committees no later than the first day of the 2007 Session of the General Assembly. If such report indicates that the response from the U.S. Department of Education to the requests in subsection A of this act is unsatisfactory, then the President of the Board of Education shall make recommendations to the Governor and the General Assembly regarding additional actions. Such actions may include, but need not be limited to (i) the nullification and revocation of the Virginia Consolidated State Application submitted to the U.S. Department of Education; (ii) legal actions that may be taken by the Office of the Attorney General; and (iii) additional negotiations with the U.S. Department of Education.*

**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 SEA Allocation				
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 Estimate
Title I, Part A , Academic Achievement of the Disadvantaged	\$195,588,567	\$216,517,554	\$207,716,947	\$207,245,496
Title I, Part B , Reading First	\$16,928,231	\$17,995,533	\$16,695,489	\$16,695,489
Title I, Part B, Even Start	\$3,483,029	\$3,413,489	\$1,426,134	0
Title I, Part C , Migrant Education	\$1,057,027	\$795,195	\$778,696	\$778,696
Title I, Part D, Neglected or Delinquent Children	\$951,488	\$996,972	\$771,344	\$771,344
Title I, Part F – Comprehensive School Reform	\$5,508,205	\$3,377,279	0	0
Title II, Part A, Improving Teacher Quality	\$52,577,308	\$52,736,901	\$51,696,346	\$51,696,347
Title II, Part B, Mathematics and Science Partnerships	\$2,388,059	\$3,001,229	\$2,887,237	\$2,887,237
Title II, Part D, Enhancing Education Through Technology	\$10,334,465	\$8,079,871	\$4,218,076	0
Title III, Part A, English Language Acquisition	\$7,273,394	\$9,222,809	\$9,823,062	\$9,823,057
Title IV, Part A, Safe and Drug-Free	\$8,174,905	\$8,144,758	\$6,414,756	0
Title IV, Part B, 21 <sup>st</sup> Century Community Learning Centers	\$15,100,777	\$15,191,284	\$16,181,378	\$15,394,431
Title V, Part A, Innovative Programs	\$6,927,544	\$4,6337,788	\$2,312,233	\$2,312,233
Title VI, Part A, State Assessments, Improving Academic Achievement	\$8,565,602	\$8,808,255	\$8,808,255	\$8,808,255
Title VI, Part B, Rural and Low-Income Schools	\$1,165,973	\$2,231,070	\$1,506,250	\$1,506,252
<b>Total</b>	<b>\$336,024,574</b>	<b>\$396,849,987</b>	<b>\$331,236,203</b>	<b>\$317,918,837</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/07stbystate.pdf>