



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

September 5, 2007

Honorable George Miller
Chairman
Committee on Education and Labor
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I write to express my appreciation for your work to date on reauthorization of the No Child Left Behind Act of 2001 (NCLB) and to provide the Department of Education's general comments on the August 28 "Miller-McKeon discussion draft" of Title I of NCLB, as posted on the Committee's Web site. I am encouraged that reauthorization is moving ahead and look forward to working with you throughout the legislative process to achieve a final bill that meets our shared goals.

At the outset, I am pleased that two of the bright-line principles of NCLB would remain in place: every child performing at or above grade level in reading and math by 2014; and annual assessments and disaggregation of data by subgroups. I also appreciate that the discussion draft incorporates some of the specific policy concepts proposed by the Administration to build on the reforms made by NCLB, including growth models, increased rigor and accountability in high school, and differentiated consequences, which allow States to prioritize schools in improvement based on the specific needs of the school and its students.

While these aspects of the draft bill establish a solid basis for further discussion, I am deeply troubled that the draft would decrease information and options for students and parents—a key bright-line principle of NCLB. I have outlined this and other serious concerns with the discussion draft below.

Complexity and Transparency

The overall approach to holding schools and school districts accountable for improved academic achievement is far more complex than current law, which will make it more difficult for parents to clearly understand if their children are learning and if their schools are doing a good job.

The increased complexity would make it far more difficult to provide a clear picture of progress. As the person who oversees and works with States on their data and accountability systems, I have grave reservations about the capacity and capability of States and districts to administer the complex level of accountability that is proposed in the

discussion draft. We could easily lose simple transparency about whether schools are teaching students to read and do math on grade level, and obscure what's actually going on in schools under this new approach. Ultimately, we run the risk of creating a very confusing and burdensome process for all who play a part in educating our children, including parents, teachers, principals, superintendents, school board members, and other public officials. I am also concerned that some of the bill's provisions would be burdensome and costly for States and districts to implement, such as required school district audits of student mobility and additional reporting requirements.

Accountability

While I agree that the Act should provide some additional flexibility in measuring student progress on reading and math assessments, the draft bill would make it too easy for many low-performing schools to escape needed intervention and improvement. As a consequence, parents and the rest of the community would be led to believe that the current achievement gap is acceptable. The discussion draft would provide several additional methods by which a school could demonstrate that it is making adequate yearly progress (AYP), the basic element of NCLB's accountability system—even if student performance in reading and math falls short. With the inclusion of nonacademic indicators in determinations of student progress in reading and math, student proficiency scores in those subjects would no longer be accurate reflections of their basic reading and math ability. Proficiency in these core areas forms the gateway to learning in other subjects. Finally, the pervasive inclusion of statistical adjustments and other data manipulations creates a greater potential for masking students' and schools' true performance. The fact that fewer than half of African-American and Hispanic fourth graders have fundamental reading skills, as defined by the Nation's Report Card, makes it a moral imperative to continue to close the achievement gap, and to refuse to accept any approach that threatens to turn back the clock on accountability.

School Improvement and Parental Options

Although I am pleased with the general concept of recognizing that schools that fail to make AYP across the board should be required to implement more serious interventions than those that narrowly miss making AYP, I am concerned that, under the language in the draft, a low-performing school might never be held accountable for real change or be required to provide real options for parents. Our reading of the draft allows a school to become worse over time and actually start over in the interventions and assistance timeline.

While I support increased accountability in the provision of supplemental educational services, I am extremely concerned that the draft bill would significantly restrict the opportunities for children in schools that fail to make AYP to obtain free tutoring to help increase their academic proficiency, whether by limiting the situations in which those students would have the right to tutoring or by reducing the amount of funds available to pay for tutoring. The opportunity to obtain this aid should be expanded, as proposed by the Administration, not curtailed, in order to meet the goal of having all students on grade level by 2014. I am likewise concerned that the bill restricts public school choice options

and does not include additional private school options for low-income students as proposed by the Administration.

Students with Disabilities and with Limited English Proficiency

The changes to the accountability system for students with disabilities and students with limited English proficiency will exclude more students and allow them to be held to lower standards, even though these two groups have made some of the most significant progress under NCLB. For example, in order to ensure that tests given to limited English proficient (LEP) students actually measure their knowledge of the particular subject matter, instead of their knowledge of the English language, current law permits States to test LEP students in their native language for up to three years, and for an additional two years on a case-by-case basis. For those States that administer native language assessments, the discussion draft would extend the three-year provision to permit five years of testing in the native language (while retaining the additional two years on a case-by-case basis). That's simply too long; this would allow a third-grade student to reach the tenth grade before ever being tested in English. States and school districts need to be held accountable for ensuring that LEP students learn English and should be given incentives to accelerate, not slow down, the learning of English, especially when approximately two-thirds of LEP students are born in the United States. Similarly, I am concerned that an increase in the number of students with disabilities who are allowed to take alternate or modified assessments could lead to ignoring those students' academic progress.

High Schools

I am pleased to see movement toward providing a clearer picture of high school accountability, which is critical to our Nation's competitiveness. While the Administration supports increasing high school rigor and accountability, we believe this can be best achieved by expanding the existing Title I program rather than creating a costly new high school program. The Administration supports reforming Title I so that more funds flow to high schools, and provides significant new funds in Title I to do so.

I am also concerned that the bill provides incentives for States and districts to use a five-year graduation rate for accountability for all students. It should instead use the commonsense four-year period for most students, as specified in the National Governors Association's graduation rate compact, which all 50 Governors have affirmed.

Moving Forward

The No Child Left Behind Act of 2001 is working. Test scores are rising and achievement gaps are narrowing. For the last forty years, the federal role in education has focused on leveling the playing field for our neediest students, and I am concerned that this draft walks away from that commitment. As we work to strengthen and renew NCLB this year, we must increase the law's flexibility, but not remove its power and sense of urgency entirely. Thanks to this law, we're finally shining a bright light on every child's achievement. We don't always like what we see, but instead of obscuring what the law has

uncovered, we must focus on the hard work ahead. Now is the time to build on the progress we have seen and the many lessons we have learned to target resources, improve policy, and enhance competitiveness. I look forward to working with you in this vital effort.

Sincerely,

/s/

Margaret Spellings