



UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

January 31, 2007

Honorable Billy K. Cannaday, Jr.
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 232 8

Dear Dr. Cannaday:

Thank you for taking the time to talk with me about how some Virginia local educational agencies (LEAs) are proposing to assess limited English proficient (LEP) students. As I mentioned, I am greatly distressed to hear that some of Virginia's districts voted on resolutions that may cause them to be out of compliance with certain assessment requirements of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the *No Child Left Behind Act of 2001* (NCLB) (hereinafter collectively referred to as "ESEA").

As you know, the State also submitted several proposed amendments on a number of issues to its accountability plan under Title I of the ESEA. We are responding to those amendment requests in a separate letter.

Under law, the State educational agency is responsible for ensuring that its LEAs properly implement the programs authorized by the ESEA. We have repeatedly stated that, pursuant to that requirement, all States must have a fully approved standards and assessment system in place for the 2006-07 school year. Unfortunately, however, Virginia has not yet met that requirement because, as documented in letters that Assistant Secretary Henry Johnson sent to Superintendent Wright on March 22, 2006, and again on June 28, 2006, the Stanford English Language Proficiency (SELP) assessment, which you have used to assess the reading/language arts proficiency of LEP students, does not meet the ESEA requirements for technical quality and alignment.

There are several viable options available for Virginia to use in place of the SELP assessment. For example, students may take the SOL assessment with accommodations, such as a bilingual dictionary, simplified oral directions, or multiple test sessions. In addition, as you know, the Department's outside experts reviewed the Virginia Grade Level Alternative (VGLA) assessment last week. If the VGLA assessment meets the requirements of the ESEA, students may be assessed with the VGLA and their scores included in adequate yearly progress (AYP) determinations for 2006-07. If the VGLA is not approved, these students must take the SOL assessment with accommodations, as necessary.

There are several actions a State educational agency (SEA) can take when an LEA does not comply with requirements in the ESEA. The enforcement mechanisms available to SEAs in carrying out these responsibilities include:

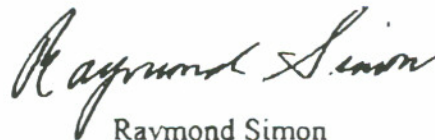
- (1) Withholding approval, in whole or in part, of the application of an LEA until the SEA is satisfied that program requirements will be met,
- (2) Suspending payments to an LEA, in whole or in part, if the SEA has reason to believe that the local agency has failed substantially to comply with program requirements;
- (3) Withholding payments, in whole or in part, if the State finds, after reasonable notice and opportunity for a hearing, that an LEA has failed substantially to comply; and
- (4) Ordering, in accordance with a State audit resolution, repayment of misspent funds.

Sections 432 and 440 of the General Education Provisions Act (20 U.S.C. 1231b-2, 1232c) provide more detailed information on these enforcement mechanisms, including requisite due process requirements.

I trust that you will take appropriate action with any district that does not comply with the ESEA. Please notify me within 15 calendar days regarding the steps you will take regarding the appropriate assessment of LEP students. If LEAs in Virginia do not comply with the assessment requirements of the ESEA, and the State does not take appropriate action, this Department may take enforcement action against the State.

As promised in our recent conversation, I am enclosing a letter dated January 29, 2007, that Secretary Spellings sent to Senator Warner regarding the assessment of LEP students in Virginia and the timeline of correspondence on this issue between the Department and Virginia dating back to 2001. Please know that the Department remains committed to providing Virginia with technical assistance to help improve the assessment of all students, particularly LEP students. Through your participation in the LEP Partnership, we know Virginia is interested in finding ways to improve the assessment of those students. As always, we are eager to work with the Commonwealth and its public officials to ensure that no child is left behind.

Sincerely,



Raymond Simon

Enclosure