



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

January 18, 2008

Dear Chief State School Officer:

I am writing to inform you about the recent decision (January 7, 2008) by the United States Court of Appeals for the Sixth Circuit in *School District of the City of Pontiac, et al. v. Secretary of the United States Department of Education (No. 05-2708)*, and to provide guidance to states and school districts while this matter works its way through legal proceedings.

In this case, the National Education Association (NEA), along with several school districts and a number of state and local NEA affiliates, challenged the No Child Left Behind Act of 2001 (NCLB) as an unfunded mandate, arguing that school districts are not obligated to comply with the requirements of NCLB to the extent that compliance would require them to spend their state or local funds. The district court dismissed plaintiffs' claims. However, by a 2-1 vote, a panel of the Sixth Circuit reversed the district court's decision. The Sixth Circuit noted that federal statutes must provide clear notice to states and school districts of their obligations if they decide to accept federal funds. The court concluded that NCLB does not provide clear notice that states and school districts must comply with all NCLB requirements if, to do so, they must incur additional costs not paid for by federal funds. In concluding that there was not clear notice to states and school districts, the court relied on its interpretation of the so-called "unfunded mandates provision" in section 9527(a) of the Elementary and Secondary Education Act (ESEA), as amended by NCLB.

I strongly disagree with the Sixth Circuit's decision and am exploring all legal remedies to overturn the decision. NCLB is not an unfunded mandate but rather a compact between a state and the federal government that asks the state and its school districts, in exchange for receiving substantial federal dollars, to demonstrate results. This investment in our children is creating opportunities for *every* child in America to have access to a high quality education. Indeed, states and school districts are seeing student achievement rise, especially for poor and minority children. Data show that NCLB is working. In my view, the Sixth Circuit's decision undermines the efforts we have made under NCLB to improve the education of our nation's children, particularly those children most in need. If the decision stands, it would represent a fundamental shift in practice.

The Sixth Circuit's jurisdiction consists of the states of Michigan, Kentucky, Ohio, and Tennessee. Courts outside the Sixth Circuit may reject its reasoning. Moreover, the Sixth Circuit's ruling, if it stands, would only provide a limited defense in future enforcement proceedings. No state or school district should regard the ruling as license to disregard NCLB's requirements.

Page 2 – Chief State School Officer

As you know, the President and I are working hard to reauthorize NCLB and have pushed to make it an even better law. We are still hopeful that Congress will pass a strong and reauthorized NCLB in the near future to help students and teachers. If Congress fails to act, I will continue to seek the input of states and school districts to identify administrative remedies to facilitate implementation of this strong law.

More than ever, it is critical, for the interests of our students, to focus our collective efforts on meeting the requirements of NCLB so that all students can be proficient by the year 2014. I look forward to working cooperatively with all of you for the sake of our nation's students.

Sincerely,

/s/

Margaret Spellings