

Congress of the United States
Washington, DC 20510

January 17, 2012

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Duncan:

There is wide consensus that the No Child Left Behind Act (NCLB) is broken and needs to be updated. We appreciate that you have set an appropriately high bar for states to receive a waiver from some of NCLB's requirements, and we feel strongly that you should maintain this standard throughout the process. We urge you to require from all applicants robust and meaningful accountability measures when approving requests for flexibility under NCLB and we seek your commitment that the critically important gains for our students' civil rights and educational equity that NCLB achieved are included as part of the Department's final decisions to grant flexibility requests. To that end, there are a few aspects of the waiver applications submitted by eleven states in the first round of the process that we believe deserve especially close attention.

One of the most important achievements of NCLB was the focus on subgroups as part of a robust accountability process. Prior to NCLB, States and Districts were able to mask the performance of the most underserved students by using averages to distill poor performance. For the first time in our nation's history, NCLB shined a very bright light on the performance of all students. And the law did not only provide parents with information on student performance, it also provided parents with the assurance that schools had to act on that valuable information. It is this powerful combination of knowledge and action that was the game-changer in the education of previously under-served children.

In its analysis of the eleven waiver applications, the Center on Education Policy found that nine state applicants will base almost all accountability decisions on the achievement of only two student groups; i.e., all students and a "disadvantaged" student group or "super subgroup." We fear that putting students with disabilities, English language learners and minority students into one "super subgroup" will mask the individual needs of these distinct student subgroups and will prevent schools from tailoring their interventions appropriately. Therefore, we urge you to consider each applicant's subgroup performance measures as significant and coherent components of overall accountability and require applicants to articulate meaningful and effective interventions for schools that are low performing or have subgroups that fail to progress.

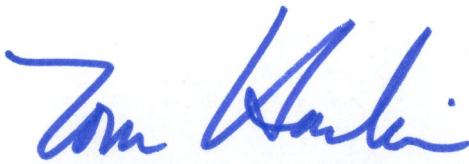
It is imperative under any new accountability system to maintain the Federal commitment to equity in education for students with disabilities, including those students with the most severe cognitive disabilities. Given the small number of students who have such disabilities, no more than one percent of all students in a State should be allowed to have scores on such alternate assessments count for accountability purposes. It must remain a priority to ensure that students are not left out in order to make schools appear more successful than they are.

We all share the goal that all students graduate from high school prepared for success in college and careers. To that end, it is critical that State goals and targets to reach that threshold of student achievement are truly "achievable but ambitious." States must demonstrate how their expectations for improvements in student achievement and graduation rates will be achieved in a reasonable timeframe. Clearly, the implementation of these objectives must also be tied in a meaningful way to accountability.

Additionally, progress in both graduation rates and student achievement must be weighted equally in determining high school quality. State commitments to accurately calculate and actually increase graduation rates cannot be lost through the flexibility process. We have seen significant progress by States on graduation rates since the set of 2008 NCLB regulations were promulgated. We believe that States' commitments to accurately calculate and actually increase graduation rates cannot be lost during the flexibility application process. As states make decisions about which high schools require interventions, low graduation rates cannot be obscured by changes in test scores, or vice versa.

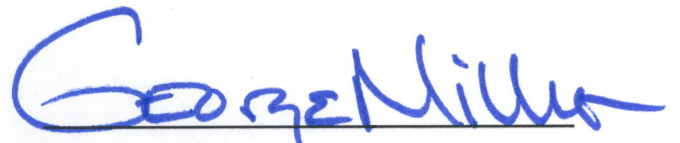
Finally, we are keenly focused on improving teacher and principal evaluation and are concerned that some flexibility applicants are foregoing change in this regard. A report by the Center for American Progress found that few states provided the necessary details on their capacity to implement the teacher and principal evaluation requirements under the waivers, and some applications were missing important information. An analysis by Education Week also found that six states that applied for waivers have yet to adopt the teacher evaluation guidelines required under the waiver application. We hope that you will address these areas with states as you move forward in the waiver process.

In closing, we believe you have an unprecedented opportunity to work with States to update and enhance their accountability systems so that they adequately reflect what we have learned from NCLB and what our students need to be successful in the 21st century. We urge you to maintain the high-standard that you have set for States to receive flexibility as you move forward in the process.



Senator Tom Harkin
Chairman, Committee on
Health, Education, Labor and Pensions

Sincerely,



Rep. George Miller
Senior Democrat, Committee on
Education and the Workforce