

**Flexibility in the No Child Left Behind Act
Hearing
Subcommittee on Early Childhood, Elementary and Secondary
Education
June 7, 2007
Washington, D.C.**

**Testimony of Honorable Kathleen N. Straus
President
Michigan State Board of Education**

Chairman Kildee, Congressman Castle and Members of the Subcommittee, please accept my sincere appreciation for the opportunity to testify today on flexibility in the most recent version of the Elementary and Secondary Education Act/No Child Left Behind Act. I am privileged to appear before you today, representing not only the State of Michigan as President of the statewide, elected, bipartisan State Board of Education, but also speaking on behalf of the National Association of State Boards of Education (NASBE) and my colleagues who serve on state boards of education throughout the United States.

Initially I want to make it abundantly clear that the Michigan State Board of Education and, indeed, all state boards of education embrace the philosophy and goals of the No Child Left Behind Act. It is our belief that the fundamental aspects of the law are positive and for the most part well intentioned. As state education leaders, we have championed the theory for many years that all children can learn. But it is also our belief - - of state boards generally and the entire Michigan State Board of Education, all eight members, Republicans and Democrats alike in particular -- that modifications are necessary to the amendments made in the 2001 reauthorization.

In the initial phases of implementation of the No Child Left Behind Act, there was no aspect of the new law more welcome than flexibility, nor more touted, I might add. We were soon to learn, however, that the flexibility existed more in theory than in application. What we inherently knew as state board members at the state level and throughout the country, was that we essentially have 50 separate, distinct state education systems. A one-size-fits-all approach is difficult if not

impossible to universally apply throughout the country. Speaking from personal experience, this became painfully clear as we parsed through the law page by page and provision by provision, and tried to make it fit into the academic frameworks, assessment schedule, and accountability system we had previously and so successfully established in Michigan. We came to the conclusion that while we are meeting the spirit of the law we clearly needed more flexibility to help our good faith efforts in meeting the letter of the law. As a result, I am here today to reaffirm the NASBE recommendation that we need to move from a law of absolutes to one that incorporates the following principles:

- Provide adaptation in state assessment requirements, particularly for testing of special needs students such as students with disabilities and Limited English Proficient (LEP) students;
- Permit the use of growth model measures in all states;
- Provide accommodations in teacher qualifications, deferring to well-established state licensure procedures, recognizing in particular the challenges of staffing in rural areas and high-need subjects;
- Recognize the enhanced role of states in education leadership, technical assistance, and school improvement with a solid, consistent federal investment for state capacity that reflects the new state-federal partnership in improving low-performing schools;
- Promote fair, consistent and equal treatment in all dealings, negotiations, and approvals between state and federal officials, supplemented by peer review teams consisting of accomplished, credentialed, well-trained professionals, knowledgeable in state and federal education policy and law.

As you know, these issues surrounding ESEA reauthorization are of such concern to state educational leaders that NASBE, the National Governors' Association, and the Council of Chief State School Officers included these themes among others in a recently-proposed set of joint reauthorization recommendations submitted to the Congress.

Perhaps the most important suggestion I could make today on behalf of state policymakers is to give states that have served

as the laboratories of innovation and reform the latitude to address their unique circumstances. States should be extended the freedom to develop and implement policies that meet their specific needs, while remaining within the spirit and letter of the law. Admittedly some areas have been addressed, but clearly many more aspects need attention and collaboratively-developed resolutions.

In Michigan's accountability workbook submissions to the U.S. Department of Education (USED) that serve as current day annual plans we have asked for such latitude. Some of what we have sought has been accepted. But I regret to say that a fair amount of what we have thoughtfully compiled and presented has been rejected, often however after months of delay, and sometimes having been accompanied in the first and subsequent instances by encouraging commentaries of acceptance. Unfortunately, our experience in Michigan has not been unique.

As a state that is generally recognized as a national leader in education, and as one of some 18 states that have received full approval for our assessment system, what would we specifically request? Let me briefly provide you with our priorities:

- **Graduation Cohorts of More Than Four Years**
Recognizing that time is the variable for some students to achieve the more rigorous graduation requirements recently adopted in Michigan and across the nation, we must have the flexibility to use graduation cohorts of more than four years under some circumstances. This is especially necessary for alternative education programs that accept and embrace students who are far behind grade level and are punished by the current system when they are unable to graduate the individual students with a four-year cohort.
- **Use of Best Score Through Grade 12 in Adequate Yearly Progress Calculations (AYP)** Michigan would like to incorporate the student's best score, including senior retests, in AYP determinations. The best score for students in calculating high school AYP would be used through Grade 12. We recommend the use of alternate assessments measured against alternate/modified achievement standards based on individualized growth

expectations across grade levels, as needed for some students.

- **Identification of School or School District for Improvement** It would be preferable to identify a school or school district for improvement only if the school or school district does not make AYP for the same content area in the same subgroup for two consecutive years.
- **Proxy Calculation for Students with Mild to Moderate Cognitive Impairment** Allow the “standard number of years” for graduation to be more than four under special circumstances.
- **Permit the Development of Appropriate Assessments for Students with Disabilities** An assessment between the current “1 percent assessment” and the newly-permitted “2 percent assessment” would help states assure that all students with disabilities are assessed appropriately.
- **Limited English Proficient Students and AYP** Allow schools and school districts to expand flexibility for English Language Learners (ELLs) in their first year of school in the United States to their first two years of school in the U.S. Allow ELL students to reach proficiency in English before testing in English; allow standard number of years for graduation to be more than four. Permit states to properly include new immigrant ELL students in school accountability, based on multiple measures for several years (no fewer than three), where educationally appropriate. Allow a full range of alternative assessments, and a system that values individualized growth. Recognize the positive performance of students who have recently transitioned out of the ELL student subgroup accountability determinations for an appropriate period.
- **Consistency with Approvals of Exceptions Among States** In Washington, the current terminology is transparency. In Michigan we would refer to it as equity, fairness, and respect. In the creation of state plans and the approval of accountability workbook modifications, USED should maintain a policy of consistency. Uniformly sharing information about approvals openly among states would foster great mutual respect and trust, and at the same time assist

states in resolving similar difficulties. Some examples of inconsistency have been approval of various N sizes, confidence intervals, and assessment of ELL students.

Thank you again for the opportunity to offer Michigan's State Board of Education perspective and that of our national association. I would be pleased to answer any questions you may have, or provide background information to support the issues I have raised today.