



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

September 15, 2006

The Honorable Howard "Buck" McKeon
Chairman
House Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, D.C. 20515

Re: *No Child Left Behind*

Dear Chairman McKeon:

This is pursuant to our discussion about No Child Left Behind, and your request that I give you some of my thoughts in writing.

This letter will be divided into two parts: the first is about unreasonableness by the U. S. Department of Education in implementing No Child Left Behind; the second is about proposed revisions when No Child Left Behind is reauthorized.

Unreasonableness by the Federal Department of Education.

English Language Learners.

While Arizona's particular problems with the federal Department of Education may be of little general interest, it furnishes some valuable background for understanding the general problem. I will start with Arizona's particular problem, and then show the general, nationwide problems created by the unreasonableness of the federal Department of Education.

The federal department negotiated separate agreements with each of the 50 states in 2003, eventually achieving 50 separate state agreements which were then celebrated in a Rose Garden ceremony. In the case of Arizona, the most significant problem being negotiated was that of English Language Learners, because of our geography and our high number of English Language Learners. Under the Arizona system of accountability, which predated No Child Left Behind, schools had three years to bring English Language Learners up to speed: first to proficiency in English so that they could learn in English, and then to academic proficiency so

that they could pass the academic tests in English. An initiative passed by the voters prevented us from testing them in Spanish. This system provided more than sufficient incentive for schools to begin working hard with these students in the first year, because they knew that by the fourth year the students would have to pass their academic tests in English or face the possibility of state takeover. The state wanted its No Child Left Behind agreement to provide the same system: three years to become proficient in English and in academics in English, and then the schools would be responsible in the fourth year. The federal negotiators wanted the schools to be responsible for having the students pass the tests in one year. There is no person in the education community anywhere who believes this is possible.

The ultimate compromise was that the test scores would be counted in the first year, but that any schools not making adequate yearly progress could appeal and those appeals would be granted with respect to students in their first three years of being English Language Learners. Attached to this letter is a memorandum by a representative of the federal government in the negotiations, confirming this agreement. The federal department asked to keep the agreement oral, so that other states would not copy it, but the contemporaneous notes to which the memorandum refers furnish irrefutable written proof that the agreement was reached.

This past year, the federal department indicated that they were renegeing on the agreement. Normally, oral agreements are enforceable with exceptions not applicable here (such as agreements for sale of real estate). I have therefore brought suit to enforce the agreement. But what is of more general interest is that there can be no rational basis for the rule the federal department is imposing. Even with the one-year grace period it has arrived at (as opposed to the three-year grace period it has agreed to with us), it is not possible for even the best school to bring a significant number of English Language Learners to the point where they can pass academic tests in English in that short period of time. Indeed, there was a task force established by the federal department that was on the verge of recommending a two-year grace period for the entire country. We would have compromised with the two-year grace period. However, that did not happen because of objections from national La Raza and national LULAC (so I am told). Local Hispanic groups recognize that it takes time for students to learn English and they normally advocate in support of giving schools the time that is needed. The national groups have their own, strange agenda. What is upsetting is that La Raza and LULAC should be calling the shots in a Republican administration.

As you know, each state has what is referred to as an "N number" which must be reached before a school will be responsible for a given subgroup. A common N number is 40. That means that if there are less than 40 English Language Learners at a given grade level, the fact that they are not passing the test does not hurt the school. Therefore, for many states, and many schools, this irrational rule has no practical impact. However, for schools where there are over 40 English Language Learners at a given grade level, the impact is devastating. What the federal department is saying is: "no matter how hard you work, and no matter how smart you were, you are doomed to failure. This is because you have committed the sin of having more than 40 English Language Learners in a given grade level." This makes a mockery of what accountability should be.

I have been a strong advocate of accountability from long before the passage of No Child Behind. When I was in the legislature between 1996 and 2000, I was sometimes referred to as the "poster boy of accountability." I was Chairman of the Academic Accountability Committee. For someone like me who is a strong advocate of accountability, this is especially upsetting, because it undermines the credibility of accountability. Accountability should mean rewarding good schools, and calling attention to the weaknesses in unsuccessful schools that must be addressed. What the federal department is doing now is simply condemning to failure any school with more than 40 students in a given grade level that are English Language Learners, no matter how good the school is.

If a community knows that a school is good, and the federal government labels it as failing, the community is not fooled. They know how good their school is. What happens is that the credibility of accountability in that community is destroyed.

Special Education.

There is a provision in No Child Left Behind that prohibits out of level testing. That means that if you have a learning disabled student in high school who reads below the third grade level, you still must present that student with a high school test. The student does not know what he is looking at. I regard this as federally imposed child abuse. The schools chief in South Carolina has a video tape of special education students being confronted with tests they cannot understand, and they are doing things like hitting their heads against the wall.

The federal department recognizes that three percent of students are significantly cognitively disabled, and should be able to take a test that is designed for students at their grade level who read at a much lower grade level. Whether three percent is the correct number is controversial. Principals have told me that the correct number would be five or six percent. But the federal department has come up with guidelines for a test only for one percent, and the other two percent that even the federal department recognizes as needing a separate test do not have the test. Furthermore, the guidelines what were given for the first one percent are excessively technical and psychometrically demanding, and it is therefore extremely expensive to develop the tests. Four years after No Child Left Behind has been implemented, one would think that the federal department would have come up with the guidelines for the test for the two percent. But even when they do it, if they are as excessively complex as was true for the first guidelines, it will be very expensive and take a long time for the states to develop those tests.

In the meantime, some students need accommodations that are referred to as "nonstandard accommodations." These are accommodations that can affect the score that a student gets on a test. In Arizona, the three types of nonstandard accommodations that are called for in student's individual education plans are having paragraphs read to the student, having the student dictate with a scribe writing down, and using a calculator for the arithmetic part of questions. Some states permit calculators on math tests, but Arizona does not, in order

to be sure that teachers will teach the students arithmetic. But some special education students can do higher mathematics, while having problems with arithmetic.

The federal department has said that if a student has a nonstandard accommodation, the student not only must fail the test, but the student must count as being absent, as though the student was not taking the test. As you may know, 95 percent of every subgroup must take the test, or the school fails no matter how high the proficiency of those who took the tests may be. This was designed to prevent schools from sending students home that might get low grades on the tests, in order to show an artificially high test average. But applying the 95 percent rule to students who take the test, yet are given nonstandard accommodations because of their individual education plans is utterly irrational.

Schools are caught in the kind of dilemma that many feel is typical of what happens when the federal government tries to micromanage the details of people's lives. Whatever they do, they will violate a federal law – either special education law or No Child Left Behind. If they disallow the nonstandard accommodation that is contained in the student's individual education plan, they are violating special education law. But if they allow the student to have the nonstandard accommodation, then they are doomed to failure under No Child Left Behind, because it is not uncommon to have more than five percent of special education students at some grade level needing nonstandard accommodations. Some of the highest academically performing schools in our state failed to make adequate yearly progress this year because they refused to bow down to an irrational rule, and they allowed the students the nonstandard accommodations provided for in the students' independent education plans.

Honesty.

One thing that is particularly frustrating is that the federal Department of Education is not honest in its dealings with the press. When reporters called the federal Department of Education about the nonstandard accommodations issue a department employee falsely laid the blame with the State Department of Education – me. She said that the federal government has nothing to do with determining what is a nonstandard or standard accommodation, that that is up to the state. That is a false statement. If I were to count as standard accommodations, accommodations that change the results of test, I would be sanctioned by the federal government.

The situation is even worse with respect to the English Language Learners' problem. A PR person for the department, Chad Colby, was shopping around a false story about me to newspapers. He claimed that I was lying about the English Language Learner agreement and that Arizona assessment system was a "sham." [Click here](#) for a memorandum, written by representative of the federal department proves that I was telling the truth. All but one paper were too knowledgeable to buy his story, but a young reporter at one paper did. When we showed the facts to that paper, they ran an editorial stating that what I had done was proper.

Reauthorization of No Child Left Behind.

253 Ways to Fail.

There are nine subgroups. There are seven grades that we test. There are two indicators: 95 percent tested, and the annual measurable objective for the percent proficient. Other two subjects: Reading and Math. If you multiply those numbers together, you get 252. There is one additional indicator, so the total is 253.

Under the architecture of No Child Left Behind, a school can succeed spectacularly in 252 of the categories, and fall short on one (say, 94 percent of fourth grade special ed students tested) and the whole school still fails. This system also undermines the credibility of accountability.

In the Arizona system of accountability, and that of many other states, we look comprehensively at the whole school, and our achievement labels are fair and accurate. The public looks to these achievement labels in judging the schools.

Narrow Focus on Proficiency.

No Child Left Behind focuses on only one thing: what percentage of students are proficient. If you put a lot of pressure on the schools, as we are doing, and focus on only one thing, there will be a temptation for the schools to ignore other things. In the case of No Child Left Behind, they are forced to focus on the "golden band" of students just below proficiency. If schools begin to neglect the average and brightest students, as I have heard has happened in some states, that is an educational catastrophe. In Arizona, we focus not only on how many students reach proficiency, but on how many students exceed proficiency. Consequently, the schools have an incentive to work with all of their students, not just the "golden band" right below proficiency.

In addition, focusing only on proficiency is unfair to excellent schools in poor neighborhoods. They might move their students two education years in one calendar year, but still not bring them to the same absolute percentage of proficiency as even a mediocre school in a rich neighborhood where the students, with so much more from home. What needs to be measured is the "value added:" Where were the students when they started school, where the students were when they finished that year, and how much value was added by the school. This is the only fair way to measure how well the schools are doing. In Arizona, we call this the "Measure of Academic Progress."

The federal department is beginning to experiment with "growth models" but they require that the measurement be of growth toward proficiency, whereas in the Arizona model we measure the growth of all students, including those who have already achieved proficiency.

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A General Solution for Reauthorization.

Obviously, Arizona would not be the only state with an accountability system that is more fair and accurate than the architecture of No Child Left Behind. The best solution is for the reauthorization to focus on a few general principles, and defer to the states – at least those states that have good accountability systems – for implementation of details. The current system of both the statute, and the federal Department of Education's interpretation of the statute, which micromanages details, can no more be successful than the Soviet government was successful in managing a continent-wide economy.

I signed a letter, along with 20 other school chiefs, to this effect two years ago. The letter went to the federal Department of Education and to Congress. I believe that is the best approach to take to reauthorization.

Thank you very much for inviting my comments.

[Click here for federal memorandum confirming ELL agreement](#)

Sincerely,

A handwritten signature in black ink that reads "Tom Horne". The signature is written in a cursive, slightly slanted style.

Tom Horne

cc: Arizona Congressional Delegation
Executive Director, Council of Chief State School Officers