

requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely WVDE's progress in meeting the terms of the compliance agreement. The Superintendent of WVDE, Dr. David Stewart, signed the agreement on March 22, 2002 and the Assistant Secretary signed it on March 29, 2002.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Assistant Secretary's written findings is set forth as appendix A and the compliance agreement is set forth as appendix B of this notice.

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(Authority: 20 U.S.C. 1234c, 1234f, 6311)

Dated: February 13, 2003.

Eugene W. Hickock,
Under Secretary of Education.

Appendix A—Text of the Written Findings of the Assistant Secretary for Elementary and Secondary Education

I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c and 1234f, that the West Virginia Department of Education (WVDE) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, and that it is not feasible for WVDE to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that WVDE failed to meet a number of the Title I requirements concerning the development of performance standards and an aligned assessment system within the statutory timeframe.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with WVDE to bring it into full compliance as soon as feasible. During the

effective period of the compliance agreement, which ends three years from the date of these findings, WVDE will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I, Part A and other applicable Federal statutory and regulatory requirements.

II. Relevant Statutory and Regulatory Provisions

A. Title I, Part A of the Elementary and Secondary Education Act of 1965

Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), 20 U.S.C. 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student performance standards. Under Title I, each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997-98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do and performance standards, aligned with those content standards, that describe three levels of proficiency to determine how well students are mastering the content standards.

By the 2000-2001 school year, Title I required each State to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools and school districts in enabling students to meet the State's performance standards. These assessments must meet the following requirements:

- The assessments must be aligned to a State's content and performance standards.
- They must be administered annually to students in at least one grade in each of three grade ranges: grades 3 through 5, grades 6 through 9, and grades 10 through 12.
- They must be valid and reliable for the purpose for which they are used and of high technical quality.
- They must involve multiple measures, including measures that assess higher-order thinking skills.
- They must provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient students.
- They must provide individual reports.
- Results from the assessments must be disaggregated and reported by major racial and ethnic groups and other categories.

20 U.S.C. 6311(b)(3).¹[1]

¹ On January 8, 2002, Title I of the Elementary and Secondary Education Act was reauthorized by the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107-110). The NCLB made several significant changes to the Title I standards and assessment requirements. First, it requires that each State develop academic content and student achievement standards in science by the 2005-06 school year. Second, by the 2005-06 school year, it requires a system of aligned assessments in each of grades 3 through 8 and once during grades 10 through 12. Third, it requires science assessments in at least three grade spans by the 2007-08 school year. Fourth, the NCLB significantly changes the

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is "failing to comply substantially with any requirement of law applicable to such funds." 20 U.S.C. 1234c. In such case, the Assistant Secretary is authorized to—

- (1) Withhold funds;
- (2) Obtain compliance through a cease and desist order;
- (3) Enter into a compliance agreement with the recipient; or
- (4) Take any other action authorized by law. 20 U.S.C. 1234c(a)(1) through (a)(4).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the available evidence, the Assistant Secretary determines that compliance until a future date is genuinely not feasible and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and publish those findings, together with the substance of any compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A compliance agreement must set forth an expiration date, not later than three years from the date of these written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. 1234f(c)(1). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect. 20 U.S.C. 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement no longer in effect and may take any of the compliance actions described previously. 20 U.S.C. 1234f(d).

definition of adequate yearly progress each State must establish to hold schools and school districts accountable, based on data from the 2001-02 test administration. Finally, by the 2002-03 school year, the NCLB requires State and school district report cards that include, among other things, assessment results disaggregated by various subgroups, two-year trend data, and percent of students tested.