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The Honorable Edward M. Kennedy
Chairman, Committee on Labor and
Human Resources
United States Senate

The Honorable Nancy Landon Kassebaum
Ranking Minority Member
Committee on Labor and Human Resources
United States Senate

The Honorable Mark O. Hatfield
Ranking Minority Member
Committee on Appropriations
United States Senate

In order to raise the performance of all the nation's students, the Congress is considering education reform legislation. The approach it is considering, called systemic reform, involves all levels of the education system--national, state, district, and school--and sets high standards of achievement for all students.¹ A key part of such reform is providing freedom from regulations² that, according to experts, can constrain school improvement efforts. Under systemic reform, this regulatory flexibility would be given to schools in exchange for increasing accountability for student achievement.

¹For a discussion of this approach, see Marshall S. Smith and Jennifer O'Day, "Systemic School Reform," Politics of Education Association Yearbook 1990, pp. 223-267. See also Systemwide Education Reform: Federal Leadership Could Facilitate District-Level Efforts (GAO/HRD-93-97, Apr. 30, 1993).

²The term "regulation" refers to a variety of governmental policies, including, but not limited to, regulations. It also refers to statutes, guidelines, rules, policies, and interpretations of these items by local educators and policymakers.

This letter responds to your request for preliminary findings from our ongoing study of states' regulatory flexibility efforts. You asked for these findings to assist you in considering the Goals 2000: Educate America Act,³ which would provide grants to states for systemic reform efforts and includes a number of provisions for increasing flexibility in federal education programs.

As part of our study, we visited three states,⁴ selected because they (1) were involved in statewide education reform efforts, (2) had provided flexibility to schools with respect to their state regulations, and (3) had included students with special needs in their efforts to provide more regulatory flexibility to schools. Special needs students are those who need special assistance to improve their achievement, such as students who are disadvantaged,⁵ have limited proficiency in English, or have disabilities.⁶ We reviewed each state's improvement efforts and interviewed state, district, and school officials in the three states. We also met with federal education officials and reviewed studies of systemic reform and state regulatory flexibility efforts.

The regulatory flexibility efforts of the three states we visited varied.

-- One state had three programs that provided flexibility: two demonstration programs for a limited number of schools and one program for all schools that receive funds for students with special needs. In the first program, schools applied to the state for grants; waivers of state regulations could be requested as part of schools' plans to improve. In the second, schools

³The Goals 2000: Education America Act refers to titles I-IV of S. 1150, which is currently being considered in the Senate, and H.R. 1804, which was passed by the House of Representatives on October 13, 1993.

⁴The states will be identified in the final report.

⁵The three states we studied defined disadvantaged students as those who were poor, had low achievement on state-required tests, or both.

⁶The majority of students with disabilities are identified as having specific learning disabilities, speech or language impairments, mental retardation, or serious emotional disturbance.

submitted applications that detailed their improvement plans and, upon approval, were then exempted from most state education regulations. The third program allowed schools the flexibility to combine funds for students with special needs in order to better coordinate services for these students.

- The second state had two programs: one that provided regulatory flexibility as a reward to schools whose students had high performance on state achievement tests, and a demonstration program in which a small number of schools were given flexibility over many state regulations in order to give them the freedom to develop new instructional techniques and assessment systems.
- The third state completely revised its education system by eliminating many procedural requirements for all schools, such as the prescribed minimum number of daily minutes of instruction, in return for evidence of improved student achievement.

Finally, all three states allowed most schools to request waivers of state regulations on a case-by-case basis, whether or not these schools participated in the states' other regulatory flexibility efforts.

You asked us four specific questions on school reform, which we address as follows:

1. How have schools used regulatory flexibility in their school improvement efforts?

School improvement efforts that used regulatory flexibility provided by the states fell into two general categories: innovative classroom structures and integrated instructional models. Innovative classroom structures included (1) combining students into multigrade groups so that teachers could address the needs of students based on their developmental needs rather than their ages and (2) restructuring the school day to allow schools to schedule longer blocks of time in order to cover subject areas in greater depth and allow teachers more time for planning. Integrated instructional models combined more than one subject into thematic units and included some units taught by teams of teachers. For example, one school integrated different subjects--reading, art, science, and math--into a unit on weather.

To enable schools to try these innovative structures and integrated instructional models, states provided many different kinds of regulatory flexibility. For example, states provided flexibility by (1) waiving regulations relating to class structure, such as the length of the school day and class size restrictions; (2) allowing teachers to teach subjects for which they were not specifically credentialed, such as allowing a mathematics teacher, as part of a team, to teach a thematic unit on social studies; (3) allowing funds to be combined, such as one state that allowed schools to combine most of their funds for students with special needs in order to encourage teachers and administrators to work together in planning programs for these students; and (4) allowing teachers to include students in special programs based on their evaluations of students' needs rather than solely on test results or outside evaluations, such as allowing students whose scores on a reading test were just above the program's cut-off score to be included in a reading program for disadvantaged students.

Many schools, however, chose not to use the regulatory flexibility that was available to them. In all three states, schools were permitted to request waivers from state regulations on a case-by-case basis, but the states received few requests. In one state, about 20 percent of the schools were granted flexibility in return for good performance on standardized tests;⁷ however, according to district officials, about half of the schools granted flexibility had not used it to attempt improvement.

Several factors appeared to contribute to whether or not schools took advantage of regulatory flexibility to attempt improvement. Schools that developed plans for improvement as part of a planning process requested many waivers from regulations in several districts we visited. Schools that had not developed plans for improvement may not yet have done enough work to know which regulations were barriers to what they wanted to do, according to state officials. Many schools had been recently required to prepare school improvement plans and, as a result, state officials expected to receive more requests for waivers.

⁷Although other factors were considered, such as attendance and dropout rates, the formula used to determine which schools were high performing was heavily weighted towards the results of a standardized test given to most students in the state.

The availability of technical assistance also seemed to make a difference in whether schools took advantage of regulatory flexibility to attempt improvement. Technical assistance included (1) providing examples of innovations, (2) establishing networks of schools involved in reform, and (3) providing schools with information on organizations working on education reform. This assistance, however, was not available to all schools. Although all three states had established centers to assist schools in their improvement efforts, not all schools that requested assistance received it, because funds were limited.

Finally, incentives, and the lack of them, in the designs of the states' programs appeared to affect schools' participation and their willingness to attempt improvement. For example, one state provided an incentive to schools to attempt improvement by giving grants to schools that participated in its demonstration program. In another state, the program that rewarded schools with flexibility for good performance did not provide an incentive for some schools to improve because school officials felt that their programs were already good enough since they had been designated high-performing. In addition, when flexibility was provided on a temporary basis, some school officials were reluctant to make changes that might later be rescinded. For example, if a school decided to increase its class sizes beyond the state requirement and hire more student aides for these larger classes, the school would have to replace some of the aides with state-credentialed teachers if the school lost its eligibility in the program.

2. What kinds of accountability systems have states established to accompany regulatory flexibility?

Providing accountability for student achievement in return for regulatory flexibility is a key element of systemic reform. None of the three states, however, had fully implemented an accountability system that allowed it to both (1) measure the effects of schools' improvements efforts on student achievement and (2) provide consequences to schools: rewards to schools that improve student achievement and assistance to schools that fail to improve. All three states had accountability systems that included statewide student assessments. All three were also developing new assessment systems that would better link assessment to high standards of achievement, although none of them had completed the task. Only one of the states, however, had developed an accountability system with consequences for all schools, and it had not yet been fully implemented. Another state had not yet included

consequences as a part of its accountability system. The third state rewarded schools that had met the program's definition of high achievement by providing the schools with flexibility, but, by design, low-performing schools were not included in the program.

3. How are special needs students affected by states' regulatory flexibility efforts?

To varying degrees, all three states provided regulatory flexibility in their programs for students with special needs. All three allowed flexibility in their programs for disadvantaged students. For example, in one state, requirements for minimum number of minutes of instruction for all students, including disadvantaged students, were waived in all high-performing schools.

Two of the states allowed flexibility in their programs for students with disabilities. In one state, for example, funds for students with disabilities were combined with general funds so that schools could more easily educate all students in regular classrooms. According to district officials, this allowed students with disabilities to be included in the state's new primary program, which combined children from kindergarten through third grade into multigrade classes. State and district officials reported that it was difficult to include programs for students with disabilities in their state regulatory flexibility efforts because of the complexity of special education requirements and the concerns of parents of these students.

All three of the states were struggling with how to provide better accountability for the achievement of students with special needs. All of the states used their assessments to measure the achievement of disadvantaged students. One state, however, had not adapted its assessment for the state's large population of students with limited English proficiency. In addition, one state allowed schools to exempt many students with disabilities from its new assessment system because procedures had not yet been established for making the assessments accessible to these students. Another state had not made it possible for most students with severe disabilities to be assessed.

Two of the states were also working on how to separate the assessment scores of special needs students from total student scores in order to determine how well schools were meeting the needs of these students. For example, officials in one state were concerned that special needs students at high-performing schools might not be achieving

as well as other students. The needs of these students could potentially be overlooked because (1) the state did not require that assessment scores for these students be reported separately--only total student achievement was tracked--and (2) no on-site monitoring of schools in the flexibility program was required. In the one state that assessed all students, including those with disabilities, state officials had not yet decided how to separate out the data for reporting the progress of some categories of its students with special needs.

4. What are the lessons from our preliminary findings for the Congress as it considers the Goals 2000: Educate America Act?

As the Congress considers the Goals 2000: Educate America Act, the preliminary findings from our study of states' experiences in granting schools more regulatory flexibility provide some lessons. If the Congress intends flexibility to be used to improve schools, then our results suggest that it should be only one part of congressional efforts to improve student achievement. Although regulatory flexibility can contribute to school improvement, flexibility alone does not always encourage schools to improve. Other state actions, such as providing technical assistance and encouraging schools and districts to develop plans for improvement, can help schools identify approaches for improvement and when flexibility is needed to implement them. Thus, our preliminary findings suggest that federal legislation link flexibility to other specific efforts to help schools plan improvements, as Goals 2000 does.

Our preliminary findings, and a recent GAO report on systemwide reform,⁸ also indicate that reform efforts require schools to make a major investment of time and resources. Thus, schools may not take advantage of flexibility that is granted for a limited period of time. The Goals 2000: Educate America Act allows states to apply for waivers from federal requirements for, initially, a maximum of 3 years in the approved House bill and 5 years in the proposed Senate bill. The Congress will need to consider whether the time limit proposed for waivers from federal requirements in Goals 2000 is long enough to (1) encourage schools, districts, and states to invest in major reforms and (2) implement the reforms. In addition, the Congress should consider the potential impact that the

⁸GAO/HRD-93-97, April 30, 1993.

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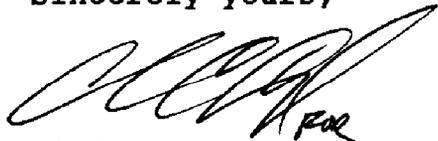
renewal process for waivers--including the kinds of evidence of improvement that will be requested by the Secretary of Education--will have on districts' and states' willingness to request waivers.

Goals 2000 recognizes the importance of accountability in its provisions for states to develop and implement assessment systems. Our preliminary findings suggest, however, that states are not yet able to determine the effects of regulatory flexibility on the achievement of many students with special needs. If the Congress intends that regulatory flexibility apply to students with special needs, then school districts and states will need to include these students in their assessment systems, as provided for in Goals 2000. The Congress may need to clarify, however, that the achievement of these students be monitored separately.

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We are continuing work on our study; our forthcoming report will contain more detailed descriptions of regulatory flexibility efforts in the three states we visited. If you have any questions or need additional information, please call me at (202) 512-7014 or Beatrice F. Birman at (202) 512-7008.

Sincerely yours,



Linda G. Morra
Director, Education and
Employment Issues

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