



STATE OF CONNECTICUT
NEWS RELEASE

Attorney General Richard Blumenthal

MONDAY, AUGUST 22, 2005

**STATE SUES FEDERAL GOVERNMENT OVER ILLEGAL UNFUNDED
MANDATES UNDER NO CHILD LEFT BEHIND ACT**

Attorney General Richard Blumenthal today announced a lawsuit against U.S. Secretary of Education Margaret Spellings for illegally imposing more than \$50 million in unfunded federal mandates on Connecticut under the No Child Left Behind (NCLB) Act.

The federal government has repeatedly refused to grant the state waivers or full funding to comply with the NCLB Act – violating the express terms of the NCLB Act and the Spending Clause of the U.S. Constitution.

Announcing the lawsuit, Blumenthal was joined by Lt. Gov. Kevin B. Sullivan, state Department of Education Commissioner Betty J. Sternberg, legislative leaders and superintendents and teachers from local school districts.

“No matter how good its goals – and I agree with NCLB’s goals – the federal government is not above the law,” Blumenthal said. “The goals of the No Child Left Behind Act are laudable – indeed Connecticut has pursued these goals for decades – but the federal government has failed in implementing them. Unfunded mandates are all too common; these specific unfunded mandates are unlawful.

“Our message to federal officials: Give up your unfunded mandates or give us the money. Live up to the law’s promise. Show us flexibility or show us the money. We begin this federal court battle today – before spending one cent on illegal unfunded mandates this fiscal year. Hundreds of millions of dollars are at stake. Again and again, in letters and meetings, the federal government has rejected our repeated waiver requests unreasonably and arbitrarily. This mindless rigidity harms our taxpayers, but most of all, our children, who are robbed of resources in their classrooms. We will not dumb down our tests – as the federal education officials suggested – or divert money from critical existing educational programs.”

"As Education Commissioner, if I believed that the \$8 million cost of adding additional tests in grades three, five and seven was educationally beneficial to

MEDIA CONTACTS

Attorney General’s Office
Tara York or Christopher Hoffman 860-808-5324

Department of Education
Henry Garcia 860-713-6548

Connecticut's students, I'd be the first one in line advocating for the expense," Sternberg said. "The cost, however, is not worth the questionable educational benefit. After multiple failed attempts to obtain a mutually agreeable resolution to our reasonable, research-based requests, it is time to seek resolution in another forum – the courts."

The NCLB Act clearly requires:

(a) **GENERAL PROHIBITION.** Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this chapter.

This provision prohibits the federal government from forcing the state to pay for any costs associated with complying with the NCLB Act.

Additionally, the Spending Clause (Article I, Section 8) of the U.S. Constitution permits Congress to condition the receipt of federal funds on compliance with certain obligations, provided that the conditions are unambiguously set forth in the statute.

The shortfall in federal funding to comply with the NCLB Act will cost Connecticut more than \$50 million.

Connecticut's students are ranked among the highest achieving in the nation. For 20 years the state has implemented effective assessment and accountability measures for its schools through the statewide Connecticut Mastery Test (CMT) – considered one of the most rigorous tests in the nation.

The state has unsuccessfully asked Spellings for lawful waivers from certain NCLB mandates related to standardized testing, testing of English Language Learner (ELL) students; and testing of special education students.

STANDARDIZED TESTING: Instead of the annual tests mandated under the NCLB Act, the state wishes to continue alternate-grade CMTs, supplemented by formative testing. Formative testing is short, focused testing on specific subjects where the results are immediately provided to the teacher. The state's testing proposal is based on extensive research.

The federal government instead suggested that the state either replace its tests with less rigorous, less costly multiple choice tests and drop the writing portion in the additional grades or divert federal funding from other critical programs.

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ELL TESTING: The federal government has rigidly insisted that ELL students take math tests as soon as they enter the U.S. school system, and language arts tests within one year, regardless of fluency in English. Connecticut wishes to phase these students in over three years.

The federal government's rigidity on ELL testing leaves Connecticut with a harsh dilemma – spend millions of state dollars to create, administer and grade tests in various native languages (Connecticut's student population has over 160 different languages) or fail to meet federal standards because students cannot understand the English tests.

SPECIAL EDUCATION TESTING: The federal government insists that the state test special education students at grade level – regardless of individual educational needs. The state wants to continue providing its special education students with the option of testing at their instructional level. A tenth grade special education student who is learning fractions and decimals should not be required to take a test in algebra.

Spellings has denied each of the requested waivers without any basis in scientific research.

When a state decides to opt out of the NCLB Act, or to not comply, the penalties are severe. For example, the federal government will cut or eliminate any federal funding. The state receives about \$435,946,380 in federal funds – about 5.8 percent of the state's total \$7.5 billion education budget.

Blumenthal and Sternberg said that opting out of the NCLB Act – when the Act itself demands full funding or flexibility – would further harm children and taxpayers, depriving them all of federal money, through Title I, as well as NCLB. A Title I school district is one that has at least 2 percent of its student population below poverty level based on census data. Title I grants are used for educational programs that assist those children who are determined to be at risk of not meeting academic standards.

The state's lawsuit asks the court to:

- declare that the state and its local school districts are not required to spend state, local or non-NCLB funds to comply with the NCLB Act mandates;
- declare that the federal government cannot withhold federal funds, benefits, or decline to grant waivers to the state for failing to comply with the NCLB Act due to insufficient federal funding;

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- **enjoin the federal government from mandating, directing or controlling the allocation of state or local resources;**
- **prohibit the federal government from taking any adverse action against the state because of failure to comply with the NCLB Act that is attributable to the state's refusal to spend its own funds to comply;**
- **grant Connecticut's waiver requests and awarding the state any costs, fees and other expenses incurred prosecuting this lawsuit.**

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