



NATIONAL SCHOOL BOARDS ASSOCIATION
February 2005

The No Child Left Behind (NCLB) Act has had a significant impact on America's public schools. During the past three years, local school boards have gained substantial experience with its implementation. Local school boards have seen the benefits of the program that have caused rich data to surface about the performance of specific schools and groups of children in their local communities.

In addition to these very positive impacts, local school boards have experienced some operational challenges. Of utmost concern is the belief that *NCLB* places too much emphasis on one way of evaluating schools and students. Local school boards welcome increased accountability, but they believe that the assessments for *all* children should be valid and reliable. They also believe that the data publicly reported should fairly and accurately reflect school and school district performance.

The National School Boards Association (NSBA) has developed a bill based on presentations, feedback and discussions that we have had with thousands of school board members. Additionally, NSBA has reviewed U.S. Department of Education documents, research reports and other relevant articles and publications.

NSBA is pleased to release this bill that is designed to improve - not avoid accountability by:

- 1) Improving the accuracy by which NCLB defines adequate yearly progress (AYP);
- 2) Strengthening the alignment between the required sanctions (remedies) and the educational needs of the individual students;
- 3) Granting the Secretary of Education greater flexibility to approve effective and innovative state accountability systems.

We urge you to join with us in mobilizing grassroots and Congressional support for its adoption during the 109th Congress. If you have questions concerning the NSBA bill, please contact Reginald M. Felton, director of federal relations at 703-838-6782, or by e-mail, rfelton@nsba.org.

Sincerely,
[signed]
Michael A. Resnick
Associate Executive Director

The text that follows is the NSBA's No Child Left Behind Bill

109th Congress, 1st Session
H.R. _____

To amend the Elementary and Secondary Education Act of 1965, and for other
purposes.

In the House of Representatives
_____ x, 2005

M_. _____ (for ...)

A BILL

Be it enacted by the Senate and House of Representatives of the United States of
America in Congress assembled,

Section 1. Short Title.

This Act may be cited as the "No Child Left Behind Improvements Act of 2005".

Section 2. References.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Elementary and Secondary Education Act (42 U.S.C. 6200 et seq.).

Title I – Amendments to the Education for the Disadvantaged

Section 101. Adequate Yearly Progress.

Section 1111(b) is amended--

- (1) in the matter after paragraph (2)(C)(v)(II) by inserting ", provided such number may be greater for local educational agencies (as a whole) than schools," after "reliable information";
- (2) in paragraph (2)(H)(i) by inserting "including, at the option of the State, reasonably unequal increments for each group described in subparagraph (C)(v)" after "equal increments";
- (3) in paragraph (2)(I)(i) by striking "10" and inserting "5";
- (4) in paragraph (2)(I)(ii) by inserting "except as provided in subparagraph (K)," before "not less than";
- (5) in paragraph (2)(I)(ii) by striking "95 percent" in the first instance it appears and inserting "90 to 95 percent (based on criteria established in the State plan)";
- (6) in paragraph (2)(I)(ii) by striking "95 percent" in the second instance it appears and inserting "90 to 95 percent";
- (7) by redesignating paragraph (2)(K) as paragraph (2)(Q); and
- (8) by inserting, after paragraph (2)(J), the following:

"(K) SPECIAL RULE.—A State may permit the exclusion of a student or students from the calculation used to determine compliance with subparagraph (I)(ii) based on the following:

- (i) such student or students have, pursuant to State law or policy, been excused by their parents from taking the assessments described under such paragraph;
- (ii) special circumstances identified by the Secretary affecting individual students, including:
 - (aa) emergency medical conditions;
 - (bb) exceptional or uncontrollable circumstances, such as a natural disaster; or
 - (cc) an unusual pattern of attendance as determined by the state educational agency, provided that the local educational agency in which the student or students are enrolled is implementing a plan to increase participation in the assessments described in such paragraph.

“(L) PARTICIPATION EXCEPTION.—Any student not participating in the assessments described in paragraph (3), for which an exclusion under subparagraph (K) is not permitted, may, for the purposes of determining adequate yearly progress, be considered as having achieved an achievement score below the level described in paragraph (1)(D)(ii)(III) (below basic). In making the calculation required by subparagraph (I)(ii), students described in this subparagraph who are considered as having an achievement score below basic under the preceding sentence shall be considered as having participated in such assessments.

“(M) MINIMUM GROUP SIZE.—For the purpose of determining whether a school is making adequate yearly progress, the State plan may provide that the number of students needed to constitute a group under subparagraph (C)(v)(II) must exceed a specific percentage of students enrolled in any such school.

“(N) SINGLE COUNT OF STUDENTS.—In meeting the definition of adequate yearly progress under subparagraph (C), students who may be counted in 2 or more groups described under subparagraph (C)(v)(II), may each be counted as an equal fraction of one for each such group.

“(O) STUDENTS WITH DISABILITIES REQUIRING ALTERNATE ASSESSMENTS.—Consistent with subsection (n)(3), a State may implement the amendments made to part 200 of title 34 of the Code of Federal Regulations on December 9, 2003(68 Fed. Reg. 68698) (related to achievement of students with significant cognitive disabilities) as if such amendments—

- ‘(i) permitted 2 percent of such students to be counted for the purposes of determining adequate yearly progress, except that—
 - (I) any assessment given to any such student for the purposes of determining such adequate yearly progress must be required by the individualized education plan of such student;
 - (II) the individualized education plan must reflect the need for any such alternate assessment based on the evaluation of such student and the services provided such student under section 614 of the Individuals with Disabilities Education Act (42 U.S.C. 1400 et seq); and
 - (III) the individualized education plan must include written consent from the parent of such student prior to such alternate assessment being administered;
- “(ii) used the term ‘students requiring alternate assessments’ in lieu of the term ‘students with the most significant cognitive disabilities’; and

(iii) permitted the eligibility of such students to be determined by the State educational agency, except that such eligibility shall, at a minimum, include—

- (I) students who are receiving services pursuant to a plan required under Section 504 of the Rehabilitation Act of 1973 and part 104 of title 34 of the Code of Federal Regulations;
- (II) students who are assessed at a grade level below the grade level in which they are enrolled (out of level assessments); and
- (III) include students considered students with the most significant cognitive disabilities, as defined by the state educational agency, prior to the enactment of the No Child Left Behind Improvement Act of 2005.

“(P) Other Measures Of Adequate Yearly Progress.

Notwithstanding any other provision of this paragraph, a State may establish an alternative definition of adequate yearly progress, subject to approval by the Secretary under subsection (e) (except that such approval shall not apply as such definition applies to students with disabilities and limited English proficient students). Such alternative definition may—

- (i) include measures of student achievement over a period of time (such as a value added accountability system) or the progress of some or all of the groups of students described in subparagraph (C)(v) to the next higher level of achievement described under paragraphs (1)(D)(ii)(II) and (III) as a factor in determining whether a school, local educational agency, or State has made adequate yearly progress, as described in this paragraph; or
- (ii) use the measures of performance and progress described in subparagraph (A) as the sole basis for determining whether the State, its local educational agencies or schools have met adequate yearly progress, provided—
 - (I) the primary goal of such definition is that all students in each group described in subparagraph (C)(v) meet or exceed the proficient level of academic achievement, established by the State, not later than 12 years after the end of the 2001-2002 school year; and
 - (II) such definition includes intermediate goals, as required under subparagraph (H).”.

Section 102. Assessments.

Section 1111(b)(3)(C) is amended—

(1) By striking clause (ix)(III) and inserting the following:

“(III) the inclusion of limited English proficient students, who—

(aa) may, consistent with paragraph (2)(P), be assessed, as determined by the local educational agency, through the use of an assessment which requires achievement of specific gains for up to three school years from the first year any such student is assessed for the purposes of this subsection;

(bb) may be , at the option of the state educational agency, assessed in the first year any such student attended school in the United States (not including Puerto Rico);

(cc) shall not be included in any calculation of adequate yearly progress when such students are in the first year of attending school in the United States (not including Puerto Rico); and

(dd) shall be assessed in a valid and reliable manner and provided reasonable accommodations on assessments administered to such students under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency as determined under paragraph (7);”;

- (2) by striking “; and” in clause (xiv) and inserting a semicolon;
- (3) by redesignating clause (xv) as clause (xvii); and
- (4) by inserting after clause (xiv) the following:

“(xv) at the option of the local educational agency, be administered multiple times to any such student during the school year, provided that the local educational agency shall determine which score of any such administration be used for determining adequate yearly progress;

“(xvi) at the option of the school district, measure the achievement of a student as if such student were in the grade level proceeding the grade level of such student, provided that—

(I) if such student meets the proficient level of achievement for such proceeding grade level, such score shall be used to determine adequate yearly progress for such proceeding grade level; and

(II) if such student does not meet the proficient level of achievement for such proceeding grade level, such score is not used for the purposes of determining adequate yearly progress; and”.

Section 103. State Flexibility.

Section 1111 is amended-

- (1) by redesignating subsections (f) through (m) as subsections (g) through (n).
- (2) by inserting after subsection (e) the following:

“(f) State Flexibility.

(1) PLANS.—In approving plans under subsection (e), the Secretary shall accord a State maximum flexibility to make such plans and any revisions compatible with the accountability system of such State.

(2) WAIVERS.—Through the authority provided under Part D of Title IX, the Secretary may grant a waiver

- of any statutory or regulatory requirement of this Part requested by a State educational agency or local educational agency.
- (3) NOTIFICATION.—Not later than 30 days after the approval of any revisions to the plan of a State, or the granting of any waivers described under paragraph (2), the Secretary shall notify each State educational agency of such revision or waiver and through the website of the Department of Education and the Federal Register, the public. The notification described in the preceding sentence shall be in writing and include a clear and complete explanation of such revision or waiver.”.
- (4) APPLICABILITY OF PLAN REVISIONS AND WAIVERS TO OTHER AGENCIES.—Revisions to plans approved under this Part or waivers issued under this subsection or under Part D of Title IX may be applied in any other State or local educational agency, provided the State or agency meets any requirements issued by the Secretary applicable to such revision or waiver as implemented by such State or agency.”.

Section 104. School Improvement and Public School Choice

Section 1116(b) is amended—

- (1) in paragraph (1)—
- (A) by striking “In the case” and inserting “Consistent with subparagraph (G), in the case” in subparagraph (E)(i);
- (B) by inserting “(in the same subject for the same group of students, as described in section 1111(b)(2)(C)(v))” after “2 consecutive years” in subparagraph (A);
- (C) in subparagraph (E)—
- (i) by striking “all students” and inserting “students who failed to meet the proficient level of achievement on the assessments described under section 1111(b)(3) and are”;
- (ii) by inserting “in the group whose academic performance caused the identification under this paragraph” after “in the school” in clause (i);
- (ii) by striking “another public school” and inserting “one other public school identified and”; and
- (iii) by inserting at the end the following:
- “(iii) SPECIAL CONDITIONS.—A local educational agency shall not be required to implement the transfer of a student to a school under this subparagraph if doing so would —
- (I) violate a state or local law or policy relating to health, safety, or class size;
- (II) result in overcrowding, the installation of mobile classrooms, construction of classrooms, or other significant capital improvements in that school; or

(III) be impractical due to distance, geographical barriers or hazards, time of travel, or unusually high cost of travel.”; and

(D) after subparagraph (F), insert the following:

“(G) OPTIONS.—A local educational agency may offer supplemental services as described in subsection (e) in place of the option to transfer to one or more public schools described in subparagraph (E) for the purposes of meeting the requirements of paragraph(5)(A), (7)(C)(i) or (8)(A)(i).”;

(2) in paragraph (5) by inserting “(in the same subject for the same group of students)” after “adequate yearly progress”;

(3) in paragraph (7)(C)—

(A) by inserting “(in the same subject for the same group of students)” after “adequate yearly progress”;

(B) by striking “all”; and

(C) by striking “another” and insert “ an other”;

(4) by amending paragraph (7)(D) to read as follows:

“(D) DELAY.—Notwithstanding any other provision of this paragraph, the local educational agency may delay, for a period not to exceed 1 year, implementation of the requirements under paragraph (5), corrective action under this paragraph, or restructuring under paragraph (8) if the school makes adequate yearly progress for 1 year or if its failure to make adequate yearly progress is due to—

(i) exceptional or uncontrollable circumstances, such as a natural disaster;

(ii) a precipitous and unforeseen decline in the financial resources of the local educational agency or school; or

(iii) a sudden or significant increase in the number of percentage of students represented by a group described in section 1111(b)(2)(C)(v).

No such period shall be taken into account in determining the number of consecutive years of failure to make adequate yearly progress.”;

(5) in paragraph (8)(A) by inserting “in the same subject for the same group of students and the total number of students who did not meet or exceed the proficient level of academic achievement (who are members of a group described in section 1111(b)(2)(C)(v)) exceed 35 percent of all students enrolled in such school who took the assessment in such subject” after “adequate yearly progress”;

(6) in paragraph (8)(A)(i)—

(A) by striking “all”; and

(B) by striking “another” and insert “ an other”;

(7) in paragraph (13) by striking “is no longer identified” and all that follows and inserting the following: “has made adequate yearly progress for the group in which the child is a member in the

same subject for which a failure to meet adequate yearly progress triggered the transfer.”.

Section 105. School District Improvement

Section 1116(c) is amended—

(1) by amending paragraph (10)(B)(ii) to read as follows:

“(ii) shall take corrective action with respect to a local educational agency—

(I) that fails to make adequate yearly progress, as defined by the State in the same subject and averaged across all grades and in at least one grade span (as determined by the State) for a group described in section 1111(b)(2)(C)(v) by the end of the second full school year after the identification of such agency under paragraph (3); and

(II) whose total number of students (who are members of a group described in section 1111(b)(2)(C)(v)) that did not meet or exceed the proficient level of academic achievement exceed 35 percent of all students enrolled in a school in such agency who took the assessment in such subject and averaged across all grades; and”;

(2) by striking paragraph (10)(F) and inserting the following:

“(F) DELAY.—Notwithstanding subparagraph (B)(ii), a State educational agency may delay, for a period not to exceed 1 year, implementation of corrective action under this paragraph if the local educational agency makes adequate yearly progress for 1 year or its failure to make adequate yearly progress is due to—

(i) exceptional or uncontrollable circumstances, such as a natural disaster;

(ii) a precipitous and unforeseen decline in the financial resources of the local educational agency; or

(iii) a sudden or significant increase in the number or percentage of students represented by any group described in section 1111(b)(2)(C)(v).”.

Section 106. Supplemental Services.

Section 1116(e) is amended—

(1) in paragraph (4)—

(A) by inserting “(developed through continuous consultation with local educational agencies in the State)” after “objective criteria” in subparagraph (B);

(B) by striking “; and” in subparagraph (D);

(C) by striking the period in subparagraph (E) and inserting “; and”;

(D) by inserting after subparagraph (E) the following:

“(F) Develop procedures by which a local educational agency may—

(i) present complaints and documentation of such complaints to the State educational agency regarding the qualifications, operation, and evaluation of approved providers and potential providers seeking such approval; and

(ii) demonstrate to the State educational agency that any provider should not be authorized to provide supplemental services, as described in this subsection to any school or schools under the jurisdiction of that local education agency.”;

- (2) by redesignating paragraph (12) as paragraph (13); and
- (3) by inserting after paragraph (11) the following:

“(12) Local Educational Agencies as Providers.—Nothing in this section shall be construed to prohibit a local educational agency that has failed to make adequate yearly progress or is in improvement, corrective action, or restructuring status pursuant to subsection (C) from providing supplemental services, solely due to such failure. In developing and applying objective criteria under paragraph (4)(B) and withdrawing approval for providers under paragraph (4)(D), a state educational agency may not consider whether a local educational agency made adequate yearly progress or its status under subsection (c).”.

Section 107. Full Implementation.

Section 1116 is amended by adding at the end the following:

“(i) **CONDITIONAL IMPLEMENTATION.**—Notwithstanding any other provision of this section, a State educational agency, local educational agency, or school, as applicable, may defer the requirements of subsections (b)(7) and (8) and subsection (c) (7) and (10) in any fiscal year in which the amount appropriated under section 1002(a) and section 611(i) of the Individuals with Disabilities Education Act (42 U.S.C. 1400 et seq) does not equal or exceed the amount authorized under such section for such fiscal year. For the purposes of determining the amounts necessary in the preceding sentence, starting with fiscal year 2008, the amount authorized to be appropriated under section 1002(a) shall be \$2,500,000,000 more than such amount for the preceding fiscal year. Such determination shall only apply for the purposes of this subsection.”.

Section 108. Regulations Affecting Limited English Proficient Children And Children With Disabilities.

Section 1111 is amended by adding at end the following:

“(n)(1) **CODIFICATION OF REGULATIONS AFFECTING LIMITED ENGLISH PROFICIENT CHILDREN.** This Part shall be implemented consistent with amendments proposed to part 200 of title 34 of the Code of Federal Regulations on June 24, 2004 (69 Fed. Reg. 35462)

(relating to the assessment of limited English proficient children and the inclusion of limited English proficient children in subgroups) as if such amendments permitted students who were previously identified as limited English proficient to be included in the group described in subsection (b)(2)(C)(v)(II)(dd) for three additional years, as determined by a local educational agency (based on the individual needs of a child) for the purposes of determining adequate yearly progress.

- (2) CHILDREN WITH DISABILITIES.— (i) The Secretary shall issue regulations not later than 180 days from the enactment of the No Child Left Behind Improvement Act of 2005 regarding the participation of children with disabilities under this Part. Such regulations shall permit a State to include, for up to three years, students who were children with disabilities as part of the group described under section 1111(b)(2)(C)(v)(II)(cc) but who are no longer identified as children with disabilities.
- (3) Students with disabilities may be provided an alternate assessment, including an out of level assessment, if deemed appropriate by the Individual Education Plan team for that student and included within the written Individual Education Plan for that student.”.

Section 109. Participation Of Children Enrolled In Private Schools.

Section 1120 is amended—

- (1) by inserting “(consistent with subsection (f))” after “academically assessed” in subsection (b)(1)(D); and
- (2) by adding at the end, the following:

“(f) ACCOUNTABILITY FOR CHILDREN ENROLLED IN PRIVATE SCHOOLS.—

- (1) IN GENERAL.—Notwithstanding section 9506(a), as specifically provided for in this subsection, children enrolled in private elementary schools and secondary schools which receive educational services or other benefits under this part shall participate in the assessments described under section 1111(b)(3).
- (2) REPORTING.—
 - (A) The State educational agency shall report the results of the assessments taken by students in private elementary and secondary schools by grade and subject to—
 - (i) the private elementary and secondary school which such students attend; and
 - (ii) the local educational agency in which the such private school is geographically located in a manner and extent that is consistent with the provisions of subsection 1111(i) and the function of the local educational agency under subsection 1120(b).
 - (B) A private elementary and secondary school shall report the assessment results received from the State educational agency under subparagraph (A) to the

parents of students enrolled in such school who receive services under this Part in writing and in the native language of the parent in a manner and extent consistent with the provisions of subsection 1111(i).

- (3) EFFECTIVENESS OF SERVICES.—Based on the results of the assessments described under paragraph (1), a State educational agency may determine that such services received by children under this section be ceased in schools when such results, compared to a comparable cohort of children enrolled in a public school in the school district of the local educational agency, are significantly lower and such schools do not meet the definition of adequate yearly progress established by the State in which the private school is located for three or more consecutive years.”

Title II – Effective Date and Regulations.

Section 201.—Effective Date.—Except as specifically provided, the amendments made by this Act shall be effective upon the first July 1 after the date of enactment of this Act.

Section 202.—The Secretary shall issue regulations as necessary to implement the provisions of this Act not later than 180 days from the date of enactment of this Act.