

Priority Issue

NSBA's Bill To Improve No Child Left Behind

Background

The *No Child Left Behind* (NCLB) Act was signed into law on January 8, 2002 as a means of holding states, school districts and schools more accountable for improving the academic performance of each student regardless of economic status, race, ethnicity, proficiency in English or disability. The law requires states to:

- Establish rigorous academic standards.
- Conduct annual assessments with at least a 95% participation rate.
- Implement a complex accountability system to include extensive data collection and public reporting on student and school performance.
- Direct formal sanctions against Title I schools and their school districts for failing to meet proficiency targets in reading and math.
- Establish new qualification requirements for teachers and paraprofessionals beyond the standards established by many states.

NSBA Position

Local school boards continue to welcome the increased accountability for student performance. In establishing a federal framework for accountability NCLB does promote important areas of state discretion to establish content and performance standards, select and operate assessment programs, and requirements to monitor and report academic performance of groups of students who have traditionally not been able to achieve at the desired levels.

At the same time, after two full academic years of implementation, local school boards across the nation have voiced increasing concerns regarding NCLB implementation. Of major importance is the belief that the current accountability framework does not accurately or fairly assess student or school performance.

Many school boards believe that some of the current provisions in the law do not recognize the complex factors that influence student performance. Other local boards have raised questions regarding the unintended consequences resulting from these provisions. NSBA acknowledges and appreciates the U.S. Department of Education's efforts during the initial approval process for state plans in 2003, and subsequent efforts in approving revisions to state plans in 2004. Additionally, we acknowledge the Secretary's response through new regulations or guidance in addressing some of the critical implementation challenges. While helpful, these regulations have not fully addressed the implementation challenges – and many of



the implementation problems involved are beyond the Secretary's administrative discretion.

We believe that legislative changes to NCLB are necessary to ensure not only that each student improves academically, but also to ensure that the public reporting accurately reflects student, school and school district performance.

Additionally, NSBA is concerned that unnecessary blame will be targeted against specific groups of students whose performance has resulted in the identification of highly regarded public schools and school districts as "*in need of improvement*" and subject to federal sanctions. In sum, if Congress does not address these changes, both the credibility of the NCLB law and the public confidence in our schools will erode.

NSBA's Proposed Changes to No Child Left Behind (NCLB) Act

In an effort to improve the implementation of NCLB and the public's commitment to our public schools, NSBA has identified several changes that need to be made to the legislation in the following areas:

- I. Measuring Adequate Yearly Progress (AYP)
- II. State Flexibility by the U.S. Department of Education
- III. Implementation of Sanctions
- IV. Non Public Schools

MEASURING ADEQUATE YEARLY PROGRESS

GROUP SIZE/ MEASURING AYP OF GROUPS

- The "N" size may be larger for school districts than for schools.
- The "N" size for a group within a school may be increased to a number or percentage of that school's total school enrollment to better align with schools with large enrollments.
- The "*safe harbor*" requirement is reduced from 10% to 5%, thus permitting fewer students to demonstrate progress within the group in order to meet this alternative AYP requirement.
- In calculating AYP, students identified in more than one group may be represented in the count for each group as an equal fraction totaling one student. This change creates a fairer approach in determining AYP for schools with students belonging to more than one group than over-representing their count.

GOALS FOR ADEQUATE YEARLY PROGRESS

- Intermediate goals do not have to increase in equal increments.
- Different groups can have different rates of increase to ultimately reach 100% proficient.

GAIN SCORES AND OTHER MEASURES OF AYP DEVELOPED BY THE STATE

- The basic AYP measurement system may be expanded to include 1) gain score approaches (like value added) and 2) partial credit for meeting basic proficient targets.



- Alternate methods of measuring AYP may be substituted for the existing methodology, provided the system is based on attaining proficiency in the 2013-14 school year and using intermediate goals, thereby providing states with greater flexibility to design their accountability systems without lowering the ultimate goals of NCLB.

PARTICIPATION RATE

- The specific requirement for 95% test participation may be adjusted to a range of 90% to 95% (based on criteria established in the state plan).
- Students may be exempted from the participation rate requirements on a case-by-case basis due to medical conditions, current state laws that grant parents final decisions regarding participation on standardized assessments, and uncontrollable circumstances (e.g. natural disaster).
- Students determined to have "*unusual patterns of attendance* " as defined by the state education agency may be exempt from the calculation to determine participation rate and referenced in the local school district accountability plan. (This category of students may include chronic truants as well as students who fail to attend school on a regular basis because of life circumstances but continue to maintain their official enrollment status.)
- Students not participating in the assessment and determined not to be eligible for exemptions may be assigned a "*below basic* " score by the school. In such cases, the school may not be identified as failing to meet the participation rate for AYP on the basis that those same students did not take the assessment.

STUDENTS WITH DISABILITIES

- As determined by the state, students with disabilities may be offered an alternate assessment for the purpose of determining AYP, provided that any such assessment is reflected by the student's IEP and is based on the IEP team's evaluation and the services to be provided for that student – and meets parent consent requirements for IEP's.
- The percentage of students statewide who may have their score counted under this provision as meeting AYP may not exceed 2% of the total number of students assessed.
- Consistent with the student's IEP, alternate assessments may include out of level assessments. Likewise, a student's test results for the purpose of determining AYP may be based on gain scores toward meeting the state standard for proficient or on an adjusted "*cut* " score for determining proficient.

LIMITED ENGLISH PROFICIENT STUDENTS

- The current regulation is codified relating to 1) first year students in the United States, and 2) counting students as LEP for



determining AYP once they leave the group except that such count may be extended to a third year.

- Students may be provided an alternate assessment that is based on making specific gains individually determined for that student toward meeting state standards for up to three years, as determined by the local school district.

FIRST ASSESSMENTS

- The higher score achieved by a student who is assessed more than once prior to the beginning of the next school year may be used as the sole score for that student for the purposes of determining AYP.
- If a student scores proficient or above on an assessment taken prior to the academic year in which that assessment is normally offered, that student's score can be counted for the purpose of determining whether AYP was met. However, if that student fails to score at the proficient level, that student's score will not be counted for determining AYP.

STATE FLEXIBILITY BY THE U.S. DEPARTMENT OF EDUCATION

- In approving a state's NCLB accountability plan the Secretary shall grant states flexibility to alter the federal framework to align with the state's own accountability system.
- The Secretary may provide statutory and regulatory waivers – including waiving requirements that are unnecessarily burdensome or duplicative of state requirements.
- When the Secretary approves an amendment to a state plan or grants a waiver, that information must be published on the ED's website in clear and complete language within 30 days.
- A waiver or state plan's revision approved by the Secretary shall be available to any other state on a case-by-case determination.

IMPLEMENTATION OF SANCTIONS

TRANSFER TO OTHER SCHOOLS

- A transfer option need only be offered to those low achieving students within the group who failed to meet their AYP targets in the same subject for two or more years – not to all students in the school.
- Financial obligations for a school district to provide transportation for a student ends when the group to which the student belongs no longer is identified as not meeting AYP target within the student's former school even if that school continues to be identified as not making AYP for other reasons.
- A student need only be offered the option to transfer to one other school rather than the current interpretation of at least two schools.
- The current regulation exempting students from being offered the transfer option when health and safety are involved is codified and the following conditions for exemption are added: 1) class-size laws, 2) overcrowding, 3) the need for mobile classrooms,



construction, or other significant capital outlays, and 4) such travel burdens as time, safety, and unusually high per pupil costs.

SUPPLEMENTAL SERVICES

- Supplemental services may be offered in the first year that a school is in improvement status – rather than only offering the transfer option for that year.
- Supplemental services need only be offered to low achieving students within the specific group that fails to make AYP in the same subject for two or more years.
- The state is required to consult with school districts in developing criteria for supplemental service providers.
- The state is required to develop – and make available to the public – procedures to enable local school districts to bring complaints regarding the selection and performance of the provider, and number of schools served by the provider if such scope of service adversely affects the quality of service.
- School districts may not be denied the opportunity to provide supplemental services solely because they did not make AYP or they are in improvement, corrective action, or restructuring status.

SANCTIONS IN GENERAL

- Sanctions for schools and school districts will apply only when AYP is not met by the “*same group*” for two or more consecutive years in a subject on the “*same indicator*” – rather than applying sanctions when different groups and/or different indicators are involved from year to year in that subject.
- The application of corrective action sanctions to restructure a school district will occur when it fails to make AYP on the basis of 1) averaging the score of all grades tested and 2) it fails to make AYP for at least one grade span.
- Provisions of federal law requiring the restructuring of a school or a school district shall not be implemented unless the total number of students in the groups not scoring proficient or above exceeds 35% of that school or school district’s enrollment.
- In addition to deferring implementation of sanctions for one year for schools and school districts that face hardships such as natural disasters or financial difficulties, implementation may also be deferred due to a sudden change in the enrollment of particular groups of students in the school or within identified groups.
- Sanctions relating to corrective action and restructuring will be deferred in any year that appropriations for Title I is not increased by at least \$2.5 billion over the previous year until Title I is fully funded.
- Sanctions relating to corrective action and restructuring will be deferred in any year that appropriations for students with disabilities are not consistent with the authorized funding levels in *Individuals with Disabilities Education Improvement Act of 2004*.



NON PUBLIC SCHOOLS

- Students receiving Title I benefits in non public schools shall be given the same assessments, as public school students, with appropriate accountability and test reporting requirements to parents and school districts that are required by NCLB to provide consultative services to those non public schools.
- States may authorize a cessation of Title I support to a non-public school whose Title I students as a whole do not make AYP and perform at lower levels than the area public school(s) for three years or more.

Conclusion

The *No Child Left Behind* (NCLB) Act established a rigorous standard for the nation's public schools and a theoretical model to assess student, school, and school district performance. However, in reality, local school districts are struggling to comply with the spirit and intent of the law at a time when the unintended consequences of the law are far more complex than had been anticipated by the sponsors of the legislation. Additionally, federal and state lawmakers recognize that successful attainment of the desired national goals is very much dependent upon the capacity of the state departments of education and their own capacity to address the new requirements. Equally important is the capability and the will of the federal government, states and local communities to provide the public funds that are necessary.

Therefore, NSBA urges Congress to adopt these amendments to the *No Child Left Behind* (NCLB) Act that:

- Redefines AYP so that we can more accurately measure progress of specific groups of students, and recognize conditions/circumstances not currently addressed.
- Strengthens the connection between sanctions and what specifically needs to be addressed to improve student achievement.
- Grants the Secretary of Education more authority to approve state plans that: 1) Provide for gain scores (value added, etc.) in calculating AYP; 2) Allow states to be more innovative and use their own accountability systems; and 3) Provide more flexibility for states to adjust their state plans where justified.
- Defers corrective action sanctions that are very costly for school districts, in any year that Congress fails to increase federal funding for Title I by \$2.5 billion over the previous year, or fails to increase funding for IDEA consistent with the authorization levels in the *Individuals with Disabilities Education Improvement Act of 2004*.

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