



National School Boards Association

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# NCLB ActionAlert

## TOOLS & TACTICS FOR MAKING THE LAW WORK

A Membership Benefit of NSBA National Affiliates

### NSBA's Bill to Improve NCLB

*Why now: The basic principles of improvement*

By Michael A. Resnick

The No Child Left Behind Act has had a significant impact on America's public schools—and on the role of the federal government to influence classroom education across the nation. For both reasons, NCLB is truly historic legislation and therefore merits the attention of every school board member to evaluate its effectiveness and how it can be improved.

During the three years NCLB has been in place, school board members and local educators have gained substantial experience with its implementation. They have seen the benefits of a program that has caused rich data to surface about the performance of specific schools and groups of children in their communities. Moreover, in many school districts, NCLB has increased local accountability and spurred action to raise academic achievement—especially where it has been less than adequate.

However, local educators also have seen NCLB's shortfalls. They are concerned that the program places too much emphasis on one way of evaluating schools and the students who attend them. Further, they see a number of flaws in how that one measurement system operates,

resulting in overidentifying school failure and then requiring sanctions that are not well enough aligned with the improvements that are needed.

Given how NCLB operates, these problem areas will become more pronounced each year. Consequently, NSBA believes that Congress must act now to make cor-

rections or risk losing the utility of NCLB—and risk losing the support of local educators and the public—regardless of the laudable intent behind it.

NSBA has developed a bill that is designed to make those corrections. This proposal is based on presentations and discussions we have had with thousands of school board members at state and national conferences and reviews of U.S. Department of Education documents, research reports, and the association's own materials—including the six previous edi-

tions of *NCLB Action Alert*, which have addressed various aspects of implementation (see [www.nsba.org/actionalerts](http://www.nsba.org/actionalerts))

This issue of *Action Alert* provides a discussion and summary of NSBA's bill and a plan of action for school board members to advocate for its enactment in the new Congress.

#### What Our Bill Does

NSBA's bill is designed to improve—not avoid—NCLB's call for accountability and higher performance—especially for students who otherwise would be left

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”

behind as low academic achievers.

Our bill does this by (1) improving the accuracy by which NCLB defines adequate yearly progress, or AYP; (2) strengthening the alignment between the remedies (sanctions) and the educational shortfalls that are identified; and (3) giving the Secretary of Education greater flexibility to approve effective and innovative state accountability systems.

While our bill focuses solely on the accountability features of NCLB, other aspects of the law, such as the require-

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#### **About NSBA**

The National School Boards Association is the nationwide advocacy organization for public school governance. NSBA's mission is to foster excellence and equity in public elementary and secondary education in the United States through local school board leadership. Founded in 1940, NSBA is a not-for-profit federation of state associations of school boards and the school boards of the District of Columbia, Hawaii, and the U.S. Virgin Islands.

#### **About the National Affiliate Program**

The National Affiliate Program extends NSBA's services directly to local school districts. School districts are eligible to join provided they are members in good standing of their state school boards associations.

#### **About the Office of Advocacy and Issues Management**

The Office of Advocacy and Issues Management implements NSBA's Action/Advocacy Agenda and carries out NSBA's lobbying efforts at the national level. By lobbying the Congress, the White House, and federal agencies, the office helps increase federal funding for local school districts and reduces costly federal mandates; helps improve federal education programs by making legislative and regulatory changes local board members support; protects the governance role of school boards from congressional attack; and promotes the role of school boards as a key democratic institution in our country's education system.

ments for highly qualified teachers, also need to be adjusted to meet certain circumstances. NSBA will be working through other avenues to address improvements in those important areas.

While NSBA's bill contains many technical amendments, they can be grouped and described under the four general operating principles presented in the following paragraphs. (For more detail, see "Highlights of the NSBA Bill," page 4, and "Key Elements," page 7.)

### **1. Provide states with more flexibility to improve accountability for student performance**

First, the bill addresses the concern that NCLB overemphasizes one indicator—the attainment of "cut scores"—in judging the success of a school. Certainly, cut scores, which require students to perform on tests at levels that demonstrate proficiency in subject matter, are a legitimate way of measuring achievement. However, in measuring the quality of a school—especially in teaching students who are significantly behind—it may be equally or even more relevant to determine quality or success based on the progress being made to reach the cut score. Recent work with value-added systems has borne this out.

Accordingly, states should have the flexibility to combine measures of progress (or gain scores) with cut scores as the primary indicator of AYP—rather than focusing on cut scores as the pre-eminent measure.

Further, many states have developed or are developing accountability systems that are at least as rigorous as the federal AYP framework and better tailored to the needs of the state. These states should have greater flexibility to use their own system without having to operate two systems or compromise key elements of their own system—provided that the state system is designed to meet the NCLB goal of having all students proficient in language arts and math by the 2013-14 school year.

In sum, our bill provides states with more flexibility to incorporate measures of progress and other elements of accountability into their basic determination of AYP—so long as the goal of NCLB is being met.

### **2. Align the measurement of AYP with student needs**

Second, NSBA's amendments refine the way of determining whether AYP is being met by taking into account educa-

tionally significant factors that the present system overlooks.

Currently, all schools and school districts are held accountable for the performance of all students in basically the same way. As a result, certain groups of students (such as students with disabilities or limited proficiency in English) are being overidentified as not making AYP in instances where the educational foundation and/or reasonable expectations for some of those students are not matched with the standard measure of AYP—at least not for the short run.

While the U.S. Department of Education (ED) has addressed some of these concerns through regulation, the law itself must be changed if the achievement of significant numbers of students in these groups is to be handled in an educationally effective way.

Further, NCLB currently hinges the determination of AYP for a group of students on whether there are enough test takers to ensure statistical reliability of the results. To a great extent, the quality of large and more diverse schools and school districts is being judged as inadequate—and sanctions being imposed—even where a small portions of student enrollment is involved.

To correct these and similar concerns, NSBA's amendments provide educationally based alternative ways to determine how some students will be assessed, how AYP goals will be determined, and what the group size should be in special situations.

### **3. Align AYP failure with remedies**

Our third principle seeks to strengthen both the basis for determining when sanctions should come into play, and the alignment between the specific remedies provided by those sanctions and the problem that they are intended to address.

Under current law, sanctions will come into play even when students in a subgroup fail to make AYP in a subject for just one year if, in the next year, students from a different subgroup fail to make AYP. Likewise, if students from a subgroup don't make AYP on test scores in one year and they succeed in the second year, but they (or even a totally differing group) fail to make AYP on their test participation rate, sanctions also will be imposed. As a result, schools that don't have persistent problems in making AYP for a specific reason are being overidentified for sanctions.

The NSBA bill continues to identify each of these conditions as failures to make AYP in a given year. However, it

focuses the use of sanctions on those instances where a specific problem (not a series of different problems) has not been solved for two or more consecutive years.

Just as NCLB's current criteria for imposing sanctions are overbroad, so are the requirements of the remedies themselves. For example, if one group of students fails to make AYP in a subject, then all students in the school must be given the option to transfer elsewhere. Likewise, an entire school district of a hundred thousand students can be subject to broad sanctions because a solution cannot be found to enable one group of students—just a small fraction of the total enrollment—to make AYP. In other words, there is an expensive “silliness” factor that needs to be corrected.

NSBA's bill seeks to focus the energy and resources of the school system on those remedies that deal with the specific shortfalls in achievement.

#### 4. Align remedies with federal funding

NSBA's fourth principle recognizes that there is a direct and strong relationship between the ability to make AYP and the amount of funding available to school districts.

Current funding for Title I (the main funding source for NCLB) may be adequate to implement such technical requirements as administering assessments, collecting data, and issuing report cards. Nationally, Title I funding can also support various educational services for about 40 percent of all eligible children.

However, current Title I funding is not adequate to provide the full range of additional services that may be required to raise achievement levels for each child who needs them to reach the ultimate goal of 100 percent of students making AYP. These services can include proven but costly strategies—and combinations of strategies—such as class-size reduction, after-school programs, and summer school.

But the federal Title I program was not intended to fully fund the cost of making AYP. Congress enacted a funding schedule that called for \$20.5 billion for the 2005-06 school year; unfortunately, only \$12.7 billion was actually appropriated—about \$400 million, or just 3.2 percent, over the previous year's level.

The NSBA bill seeks to strike a balance between the funding levels Congress said it should provide and what it actually is providing. Specifically, the bill defers the mandated implementation of corrective

action and restructuring sanctions—which are substantial cost items—in any year in which federal funding is not increased by at least \$2.5 billion over the previous year's level.

In such cases, schools and school districts would still use the Title I funding they are receiving to improve student achievement. They would also still be responsible for issuing report cards, identi-

fying any failure to make AYP, and implementing student transportation and supplemental services for up to 20 percent of their Title I funding if AYP was not met. But they would not be subject to specific sanctions.

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### THE POLITICS OF NO CHILD LEFT BEHIND

America wants its public schools to be the finest in the world. We want continuing improvement in the system—and we want to ensure that no child is left behind. Many members of Congress believe the public interest will be served by NCLB because it holds schools publicly accountable when they fall short and requires them to take specific action to correct the problem.

When NCLB was signed into law, it had overwhelming bipartisan support in Congress and was President Bush's “marquee” domestic issue. Margaret Spellings—who formerly served as the President's domestic counselor and, earlier, helped design then-Gov. Bush's education accountability system in Texas—was a champion of NCLB during its creation and is now the U.S. Secretary of Education. She, like the President, believes in this program as a means of improving public education.

Given this history, the President and the Republican majority in Congress are much more likely to support constructive changes to improve the law than initiatives they view as efforts to undermine or repeal it.

For their part, the Democrats continue to support NCLB. Having voted for the law, they are reluctant to press for anything that looks like a reversal of judgment—or a retreat from accountability in education. However, Democrats continue to argue that Congress has sharply underfunded Title I—the main program of federal aid to education. As a result, they contend, NCLB has fallen short of its promise and effective implementation.

During this recent election year, meanwhile, the U.S. Department of Education, to its credit, authorized changes in state plans and issued several regulations that helped limit the unnecessary identification of AYP fail-

ure. ED has moved more slowly than necessary on some issues, however, and has not addressed broader policy concerns that will require congressional action.

With the elections behind us, and with more data on implementation available to guide legislative action, lawmakers and administration officials should be more open to making constructive changes to the law. Politically, many of them know that the program—and their responsibility for fixing the problem areas—could be on a collision course with public credibility if they fail to make the needed corrections before the next congressional election.

The administration will be seeking legislation to change the law by, for example, increasing accountability at the high school level through high school exit exams. This could provide lawmakers, school board members, and others directly involved with the legislation with additional momentum for debate and a vehicle for corrective legislation.

Strategically, the changes advocated by NSBA's bill are most likely to occur if members of Congress get the message that the do-nothing beltway politics of last year must give way to the voices of their constituents calling for them to make the necessary improvements to NCLB.

Toward that end, NSBA is urging school board members across the nation to work together in a mass grassroots effort to make sure all members of Congress understand that correcting NCLB is an educational necessity for their communities and a political necessity for them. This campaign needs your support if it is to succeed. You can join the campaign by taking the action steps outlined on page 5.

# Highlights of the NSBA Bill

## *How the the key provisions of the bill would operate*

For readers who are familiar with NCLB, the description and rationale behind most of the provisions of our bill should be apparent from the outline of the bill's provisions on page 7. To provide a fuller context—especially for some of the higher profile or more complex issues—this section explains how these amendments would operate within the NCLB framework.

### Measuring AYP

The definition of adequate yearly progress is refined in order to more meaningfully determine whether student achievement goals are being met—including more effectively accounting for circumstances that the current formula is not designed to capture accurately.

- **Group size/measuring groups.** Using the same group size (“N”) for large, diverse schools and districts that is used for smaller, more homogeneous ones is more likely to result in identifying many larger schools and districts as not making AYP from year to year. As a result, they eventually will be subject to a progression of increasingly aggressive sanctions—even if the group not making AYP constitutes only a small portion of the total enrollment.

NSBA's bill recognizes this concern by authorizing a larger “N” to be used by school districts and larger schools (a point the Department of Education has approved in several state plans).

Another current practice is that students who are in several subgroups must have their tests scored for AYP for each group to which they belong, resulting in an over-representation of their performance. Given that students who are in multiple subgroups are more likely to be academically challenged than students in one subgroup or no subgroup at all, this multiple count creates an inaccurate statistical bias for causing their school to fail to make AYP.

NSBA's bill addresses this issue by counting students in multiple groups as an equal fraction of one for each group to which they belong, thereby scoring each student as one child—not three or four.

NCLB also contains a “safe harbor” provision as an alternative method of determining AYP in recognition that some student subgroups may be starting with so

low a percentage who score at the proficient level that the group cannot be expected to make AYP. Currently, the safe harbor standard is set at too high a level to be used in all but a relatively few instances. The NSBA bill recalibrates the standard to a more realistic level.

- **Goals for AYP.** Under current practice, the percent of students who must make AYP in a given year, or in periods of two or three years, must rise in equal amounts until the figure reaches 100 percent in 2013-14. However, the introduction of new tests, new curriculum, and new teaching methods does not readily translate into an even rise in student performance, as NCLB currently assumes.

The NSBA bill allows states to raise their AYP percents by different amounts from year to year provided, that 100 percent is reached by the 2013-14 school year.

- **Participation rates.** To give an accurate picture of the performance of a group, a school, or a district—and to ensure accurate representation of low-achieving students—the state test should be given to as many students as possible. Test participation rates are a necessary means for ensuring “honest” achievement results for groups. So, in effect, they function more as a support mechanism for ensuring an accurate representation of a group's performance than as an independent measure of the quality of students' education.

NCLB specifies that, unless 95 percent of all students take the test, their group won't make AYP—regardless of how many score at proficient or above. This will be true even if only one fewer student than required takes the test. As currently used, this requirement overidentifies AYP failure due to confusion over its purpose and how it deals with student attendance issues outside the school's control.

NSBA's bill strikes a balance. First, we continue to treat participation rate as a separate indicator. However, a school or group would not be counted as failing to meet the participation rate requirement if a student misses the test and is scored as below basic in determining academic AYP for the group to which the student belongs, and that group still makes AYP on the test.

Second, the bill extends the exclusion from the participation rate calculation that is based on medical conditions to

three other situations, also determined on a case-by-case basis, that are out of the control of the school system: (1) states in which parents can choose to not have their child tested, (2) unusual weather conditions or natural disasters that prevent a student from attending school on test day, and (3) patterns of frequent absence, as determined by the state, due to such causes as parent neglect, disability, or truancy—provided the district has a plan to improve that student's attendance.

Finally, the state could recognize that, under certain justifiable circumstances, the participation rate standard should be less than 95 percent but not less than 90 percent.

- **Students with disabilities.** Currently, students whose disability meets the state definition of a “serious cognitive disability” may be given an alternate assessment that is tied to their achievement level and have their proficiency score counted as meeting AYP for their group, school, and school district.

However, only 1 percent of all test takers in the general student population may have their scores counted in this manner. Hence, if 15 percent of all students are enrolled in special education programs, then one out of 15 of them—or 6 percent—can be counted this way.

The narrowness of this concept of cognitive disability and the 1 percent limit result in overidentifying groups and schools as not meeting AYP in instances where a student can not reasonably attain state standards—even where the quality of services and encouragement for the child are high.

The NSBA bill does away with the “serious cognitive disability” test for whether an alternate assessment can be used for determining AYP. Rather, it relies on the judgment of the student's IEP team—with the parent's consent—to determine whether alternate testing is appropriate. In such cases, schools have the option of using gain scores or out-of-level testing if they better reflect the needs and services for the child.

The number of students who can be counted as successfully achieving AYP in this manner would be limited to 2 percent of all test takers. Hence, for a school or school district whose special education enrollment is 15 percent, the limit would apply to about one out of seven of those students—but only if their disability and services warrant alternate testing as determined by the IEP team and chosen by the parent.

- **Limited-English-proficient students.** Generally, LEP students are counted for AYP purposes in the same manner as other students, with three important exceptions. First, students who are in the United States for their first year are not required to have their test scores counted for AYP purposes. Second, students may be given state assessments in their native language and have the results counted for AYP purposes. And third, when a student is no longer limited English proficient, that student's score may continue to be counted toward the LEP group score for up to two years.

Despite these exceptions, local school officials believe that the current system is over-identifying LEP students and their schools as not making AYP. It is not reasonable to expect many LEP students to

make AYP in their first few years—especially when students were poorly educated in their home countries. Moreover, while students should be expected to become generally proficient in English in three years, for AYP purposes “proficiency” is a more vigorous standard that may take five years or more to attain.

NSBA's bill strikes a balance by making two changes to the current program. First, it would allow those students who leave the LEP group as a result of attaining English proficiency to have their scores counted with their previous group for up to three years—provided they are receiving appropriate monitoring or other related services.

Second, students may be evaluated on a case-by-case basis as being better served by taking an alternate assessment that is

tied to their needs rather than the general state assessment. In such cases proficiency can be achieved on the basis of making *progress* toward making AYP for their grade level. However, AYP proficiency only can be determined this way for three years. After that time, the school and school district would be held accountable for that student's achievement of AYP as they would for any other student.

- **State flexibility granted by the U.S. Department of Education.** ED has provided states with some flexibility to coordinate their pre-existing and evolving accountability systems with the NCLB framework. However, the view of state school boards associations and the actions taken by several state legislatures suggest that worthy state approaches to accountability are still being stifled or subordinated

## HOW YOU CAN HELP: A PLAN OF ACTION

The changes to NCLB discussed in this *Action Alert*—and addressed in NSBA's bill—won't become reality unless a majority of House members and Senators understand that these changes are in the best interests of the students, parents, and school systems they were elected to represent. There is no better group of citizens to speak on behalf of this effort than the school board members who were selected by their communities to guide the education of their children.

Here is a short list of actions you can take to ensure that NCLB works for your students and school system:

- **Review the NSBA bill.** With your superintendent, review the accompanying summary of NSBA's bill and identify key issues and proposed solutions that are most important to your school system.
- **Build the case.** Using local data and anecdotal accounts—including newspaper articles and editorials—document how the current AYP system falls short in serving your students and school system.
- **Support NSBA's bill with your representatives.** Communicate your support for NSBA's bill in writing—and in person when possible—to your legislators. Ask whether they will cosponsor the bill. Use your key issues as examples of the need to improve the law. But we urge you to endorse the entire NSBA bill so there will be broad sup-

port for changes that will affect other districts as well. Many school systems have different issues, and supporting only portions of the bill risks splintering priorities and not providing enough support for any specific improvement.

- **Follow up with representatives.** If your representative says, “I will take your views into consideration” or “You have raised important issues,” you have received an acknowledgment, not a commitment. Ask again, “Will you support or cosponsor NSBA's bill?” If your representatives say they cannot, follow up again and ask them specifically what portions they can support and what portions they cannot—and why.

- **Reach out to the community.** Many parents are unhappy that their child or the group to which their child belongs is identified by NCLB—perhaps unreasonably—as “failing” or causing their school to fail. Many parents are also concerned that NCLB overemphasizes testing to the detriment of education, and many teachers and principals share these concerns. Local business leaders and chamber of commerce members also may be concerned that labeling schools as failing—especially when high-profile sanctions are attached to the label—is unnecessarily damaging to the local economy. We suggest having discussions with all of these groups about the benefits and shortcomings of NCLB—and asking them to join you in communicating their

support for NSBA's bill.

- **Work with the news media.** We encourage you to voice your solutions for correcting NCLB to the local media through meetings with the editor, interviews on radio programs, and op-ed articles or letters to the editor. Consider indicating that you have already communicated your concerns with your representatives in the Congress, and include their response and your reaction.

- **Communicate with NSBA.** Let NSBA know what you are doing either by postal mail, e-mail (kbranch@nsba.org), or telephone (703-838-6735). Let us know the responses you receive so we can follow up with you or with congressional offices to answer questions and move this legislation along.

- **Work with your state school boards association.** Your state school boards association is a vital partner in this campaign. Tell staff members about your efforts so they can help NSBA in this national effort to make NCLB work better for your community.

- **Join NSBA's NCLB Action Committee.** Your initial contact with your representative to improve NCLB is critical. However, the passage of legislation takes time and reminders to representatives about what's important. If you want to be a part of our ongoing campaign to improve NCLB, see [www.nsba.org/nclbadvocate](http://www.nsba.org/nclbadvocate) for more information.

and that the current practice still creates significant burdens in tracking the state system with the federal program.

NSBA's bill recognizes the states as laboratories of innovation. They should have greater flexibility to focus accountability on scientifically proven alternate systems that meet the unique needs of their constituents—provided ED has the final say in determining the efficacy of those state efforts. As discussed earlier, those options should include the use of gain scores and alternative accountability approaches aimed at all students becoming proficient.

The bill provides state flexibility in several other more routine ways as well. First, the Secretary of Education is provided guidance to coordinate NCLB with state efforts—rather than the other way around. Second, the Secretary is given a stronger signal to use the waiver authority provided by Title IX of the law. Specific direction is given to consider justifiable statutory and regulatory waivers in order to avoid creating unnecessary burdens or duplication of effort in federal and state requirements.

## NSBA RESOURCES ON NCLB

NSBA offers many online resources for school board members. Visit [www.nsba.org/actionalerts](http://www.nsba.org/actionalerts) for the following resources:

- “Making the Grade in AYP: What your school board can learn from the year’s results.”

- “It’s AYP Time Again—Are You Ready? Getting on top of new AYP data and changes in the rules.”

- “Calculating the Cost of NCLB: Does your school district have the resources it needs?”

- “How to Use NCLB as a Governance Tool: Organizing the school board’s work around the law’s requirements.”

- “How to Present NCLB Results to the Media and Public: A communications plan for NCLB.”

- “AYP—What School Boards Need to Know: Understanding AYP and the local school board’s role.”

See [www.nsba.org/nclbadvocate](http://www.nsba.org/nclbadvocate) for the following resources:

- NSBA’s Bill to Improve NCLB.
- Legislative Updates.
- Calls to Action and Other NCLB Advocacy Materials

Third, to provide a free flow of information across the states, the bill requires the Secretary to publish waivers and revisions of state plans in clear, complete form on ED’s website within 30 days of being granted. Not only will this provision be helpful to states, but it also will provide school board members, local educators, and parents with a better context for understanding their own state’s NCLB program—and the options available.

Finally, the bill clarifies that, subject to case-by-case review, the Secretary is encouraged to extend waivers and state plan revisions that are granted to one state to other states. The intent is to strike a balance toward granting more flexibility to more states without either compromising ED’s need to have states justify their requests or having a chilling effect on the Secretary’s desire to experiment in one or two states at a time.

## Implementing Sanctions

The common-sense reasoning behind NSBA’s proposal to focus the sanctions on actual problem areas only requires a few comments.

As previously discussed, sanctions can be imposed even though a group fails to make AYP for just one year on one indicator for a subject if that group then fails to make AYP on another indicator in the following year—or if a totally different group fails to make AYP. Schools that are diverse enough and large enough to meet the group size needed for AYP are particularly vulnerable to sanctions under these “revolving door” circumstances.

Meanwhile, the scope of the sanctions will frequently involve students and groups for whom making AYP is not an issue.

Whole school districts, especially larger and more diverse districts, can expect to be perpetually in corrective action from the state due to a variety of factors that need to be refined. For example, if the group size “N” is set at 30 for AYP purposes, then a determination about an entire school district could be made as a result of the performance of just 30 students in one school or one student in each of 30 schools. In this regard, an “N” number that is based on a statistical notion of test reliability is a poor gauge for determining whether an entire school district should be labeled and subject to state action.

To address such concerns, NSBA’s bill focuses sanctions on specific needs and in a more utilitarian manner by:

1. Increasing the “N” size for school

districts.

2. Targeting student transfers and supplemental services to those students who actually don’t make AYP.

3. Allowing supplemental services as well as student transfers to be offered in the first year, rather than allowing only transfers.

4. Placing common sense-limits on when transfers should be available.

5. Imposing sanctions only when the same group fails to make AYP on the same indicator for two or more consecutive years.

6. Limiting the use of school restructuring and school district corrective action to instances where the total number of students who do not score proficient and whose groups don’t make AYP constitute at least 35 percent of the school’s or district’s enrollment.

7. Limiting the use of corrective action to school districts to instances where both the average score of all grades tested and of at least one grade span fail to make AYP.

8. Deferring corrective action and the restructuring of schools and districts in years when Title I is not increased by at least \$2.5 billion and IDEA is not funded in accordance with the funding schedule that Congress created for itself when it reauthorized the program in November 2004.

## Title I students in nonpublic schools.

Our bill seeks to find a responsible and unobtrusive way of providing some accountability for achievement among nonpublic schools in educating students who receive federally funded Title I services. The primary mechanism is to provide information to parents on the school’s academic success in serving Title I students (but with less detail than to public school parents). That information would also be provided to the local school district, which is required by NCLB to provide consultative services to improve services at such schools.

To provide that basic level of accountability, Title I students in nonpublic schools would take the same NCLB-related state assessment as public school students take. The results would be reported in a general AYP format. If a school fails to make AYP for these students for three years or more and underperforms the local public schools in the area, the state would have the discretion to direct the cessation of Title I funds to that school. ■

# Key Elements

## *An outline of the full details of NSBA's bill*

The No Child Left Behind Act was signed into law on Jan. 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.

NCLB requires states to:

- Establish rigorous academic standards.
- Conduct annual assessments in which at least 95 percent of students participate.
- Implement a complex accountability system that includes 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's proposed changes to the legislation are grouped into four areas:

1. Measuring adequate yearly progress (AYP)
2. State flexibility granted by the U.S. Department of Education (ED)
3. Implementing sanctions
4. Title I students in nonpublic schools.

### 1. Measuring AYP

#### A. Group size

- 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 percent to 5 percent, thus permitting fewer students in the group to demonstrate progress in order to meet this alternative AYP requirement.
- In calculating AYP, a student who is identified in more than one subgroup may be represented in equal fractions in each group, with the fractions totaling one student. For example, a minority student who has limited English proficiency and a disability would be counted as one-third in each of the three subgroups. This

approach is fairer than over-representing the count of these students.

#### B. Goals for AYP

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

#### C. Gain scores and other state AYP measures

- The basic AYP measurement system may be expanded to include (1) gain score approaches, such as value added, and (2) partial credit for meeting performance levels in addition to proficient.
- 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. This will provide states with greater flexibility to design their accountability systems without lowering the ultimate goals of NCLB.

#### D. Participation rate

- The specific requirement for 95 percent test participation may be adjusted to a range of 90 percent to 95 percent (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 such as natural disasters.
- 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.

#### E. 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 the assessment reflects the student's IEP and is based on the IEP team's evaluation and the services to be provided for that student—and provided that it meets parent consent requirements for IEPs.
- The percentage of students statewide who may have their score counted under this provision as meeting AYP may not exceed 2 percent of the total number of students assessed.
- Consistent with the student's IEP, alternate assessments may include out-of-level assessments. Likewise, for the purpose of determining AYP, a student's test results may be based on gain scores toward meeting the state standard for proficient or on an adjusted cut score for determining proficient.

#### F. 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.

#### G. Limited-English-proficient students

- The current regulation is codified relating to first-year students in the United States and counts students as LEP for determining AYP once they leave the group except that such count may be extended to a third year.
- For up to three years, students may be provided an alternate assessment that is based on making specific, individually determined gains toward meeting state standards, as determined by the local school district.

### 2. State Flexibility Granted by ED

- In approving a state's NCLB accountability plan, the Secretary of Education 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 website in clear and complete language within 30 days.

- A waiver or revision in a state plan that has been approved by the Secretary shall be available to any other state on a case-by-case determination.

### 3. Implementing Sanctions

#### A. 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.

- A school district's financial obligation to provide transportation for a student ends when the group to which the student belongs no longer is identified as not meeting AYP in 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 districts from offering students transfers when health and safety are involved is codified, and the following conditions for exemption are added: (1) class-size laws, (2) over crowding, (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 transportation costs.

#### B. Supplemental services

- Supplemental services may be offered in the first year a school is in improvement status—rather than offering only 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 for school districts to bring complaints regarding the selection and performance of the provider and the 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.

#### C. Sanctions in general

- Sanctions for schools and districts will apply only when AYP is not met by the “same group” on the “same indicator” in a subject for two or more consecutive years, 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 averaging the score of all grades tested and it fails to make AYP for at least one grade span.

- Provisions of federal law requiring

the restructuring of a school or district shall not be implemented unless the total number of students in the groups not scoring proficient or above exceeds 35 percent of that school or school district's enrollment.

- In addition to deferring implementation of sanctions for one year for schools and 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 the Individuals with Disabilities Education Improvement Act of 2004.

### 4. Title I Students in Nonpublic Schools

- Students receiving Title I benefits in nonpublic schools shall be given the same assessments as public schools students, with appropriate accountability and test reporting requirements to parents and school districts that are required by NCLB to provide consultative services to those nonpublic schools.

- States may authorize a cessation of Title I support to a nonpublic school whose Title I students as a whole don't make AYP and perform at lower levels than the area public schools for three years or more. ■

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The National School Boards Association can help you make sense of the new law through its No Child Left Behind Web site. This site provides the latest information on NCLB, its impact on school board governance, solutions for meeting adequate yearly progress, tips on hiring and retaining highly qualified teachers, and more. Visit our site at [www.nsba.org/nclb](http://www.nsba.org/nclb).

