



National School Boards Association

NCLB ActionAlert

TOOLS & TACTICS FOR MAKING THE LAW WORK

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It's AYP Time Again—Are You Ready?

Getting on top of new AYP data and changes in the rules

By Michael A. Resnick

This summer, attention is being focused again on state reports showing whether local students did well enough on state tests to make Adequate Yearly Progress (AYP) under the No Child Left Behind Act (NCLB). Focus will be sharpest on Title I schools that have failed to make the grade for two or more consecutive years. Their official status as "schools in need of improvement" will immediately trigger such high-profile interventions as offering all the school's parents the opportunity to enroll their children in another school—or even restaffing or closing the school in case of longer term AYP failure.

So, when the results come out, what should your school board do?

If any school—or your district as a whole—fails to measure up, your board should immediately initiate a year-round plan that starts with identifying the underlying reasons why the students as a whole, or specific groups of them, didn't make the grade. As the school year moves forward, the board should work with the superintendent to identify proven solutions and then align the budget, formal policies, community outreach activities,

and other governing functions to support your AYP and other student achievement goals.

(For a detailed review of how boards can use NCLB as a governance tool for raising student achievement, see the Fall 2003 *Action Alert* at www.nsba.org/actionalerts. See also the sidebar on page 3.)

problem areas. Having such a plan will be especially important in this election year, since weaknesses in AYP results can become exaggerated or misleading high-profile political messages that erode public confidence.

(For a "how to" guide to developing a communication plan, see the Summer 2003 *Action Alert* at www.nsba.org/actionalerts.)

Changes in the Rules

When you review this year's AYP results, bear in mind that the way your state calculates results might have

“Weaknesses in AYP results can become exaggerated or misleading high-profile political messages that erode public confidence.”

Meanwhile, when the new AYP reports are released, effective communication about the new data will be necessary in order to ensure the public's understanding and support. Accordingly, your communication plan should explain AYP results in a straightforward manner, set a context for celebrating your schools' accomplishments, and outline plans to address any

changed from last year due to several rule changes made by the U.S. Department of Education (ED).

As you no doubt know, NCLB's principal educational goal is to raise achievement in reading and math—especially among students who have not been at the proficient level in those subjects. To attain that goal, NCLB holds school officials

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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 across the United States 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.

accountable for the performance of their students on state tests—including groups of students who by virtue of their socioeconomic status, limited English proficiency, or disabilities may come to school with barriers to learning.

Last year's results confirmed local educators' concerns that some aspects of the current measurement system were too narrowly focused or unfairly overidentified some student groups. As a result, some schools were mistakenly portrayed as failing.

(For a review of flaws in the AYP measurement system, see Winter 2003 *Action Alert* at www.nsba.org/actionalerts.)

Recently, in response to some of these concerns, ED gave states more discretion in calculating AYP for disabled and limited-English-proficient (LEP) students, as well as for determining whether the requirement for a 95 percent student participation rate on state tests is being met. In each of these cases, your state can, under special circumstances, change the way students can be treated or excluded in determining AYP for their group so that a fairer and more positive assessment of these groups can be made.

But note that these rule changes relate only to how AYP is calculated for accountability purposes. Hence, statistical results that might seem like gains should not distract your board from determining whether educational improvement has actually occurred.

If your state did not take advantage of these new areas of discretion, you should consider what difference more state flexibility would have made in preventing groups, schools, or the school district as a whole from being unfairly identified as not making AYP. You might also wish to discuss with state education officials the appropriateness of taking fuller advantage next year of the discretion that is available to them.

The following sections describe these discretionary AYP changes, as well as new state options for easing compliance with the requirement for highly qualified teachers. NSBA advocated for these changes as part of a larger package of recommendations. We believe that the new rules provide a step in the right direction to produce a more responsible accountability system under NCLB.

Because the changes are administrative in nature, however, they do not deal with some basic concepts that will have to be corrected by legislation or more formal rule making. Consequently, most of these

changes are fairly modest and tightly measured. Nonetheless, for a compliance system that is based on statistical thresholds, they might serve to help keep your schools from being unfairly identified as not making AYP.

Students with Disabilities

Under NCLB, virtually all students—95 percent, including those with disabilities—must be assessed and included in the calculation of AYP. From the outset, however, the law recognized that it is not realistic for some students with disabilities to achieve at the proficient level on rigorous standardized state tests. Consequently, students with the “most serious cognitive disabilities” can be given an alternative assessment. Although that assessment must still reflect the state's academic standards, it can be designed around the expectations for the students detailed in their Individual Education Plans.

If these students score at proficient or above on the alternative assessment, their score also counts toward the percentage of test takers who must successfully make AYP in their group, school, and school district. However, a limit is imposed on the percentage of students whose success on alternative assessments can be counted for calculating AYP.

Unfortunately, two shortcomings to this approach contributed to the overidentification of schools not making AYP last year:

1. ED so narrowly defined “most serious cognitive disability” that, in effect, students with IQs over 75 would not qualify for alternative assessments. Further, students would not qualify if their cognitive disability involved a medical impairment, such as a serious emotional disorder, rather than intellectual capacity alone.

In December, ED remedied this shortcoming by giving states the discretion to define “most serious cognitive disability.” As a result, a broader range of students can now be eligible for alternative assessments.

2. ED placed a low limit on the number of students whose successful performance on an alternative assessment could be credited as having made AYP. More precisely, no more than 1 percent of all the students in the state who took the state's assessment could have their successful performance on an alternative assessment counted for having made AYP. For example, if 100,000 students took the state's fourth-grade language arts assessment, no

more than 1,000 students statewide who performed successfully on an alternative language arts assessment could be counted as having made AYP.

Although the 1 percent limit is an improvement over ED's original 0.5 percent cap, it is still not flexible enough. Concern is now being raised that allowing states to broaden the definition of "most serious cognitive disability" will have little benefit if the 1 percent limit is too low to

not possess the skills to score at the proficient level—even if accommodated by an assessment in their native language. And given that in some states these students represent more than 100 languages, local school districts may not even have alternative assessments to offer them.

Further, some LEP students arrive in this country with an academic foundation that is too weak for them to be expected to achieve rigorous state standards within

enough to be scored for AYP (that is, large enough to make the "N" size).

Second, for the year in which a LEP student enters the United States, the state now has the discretion not to test that student at all in language arts, or to test that student but not count the score for AYP purposes. These students must still be evaluated for instructional purposes to determine their ability to speak, listen, and write in English. And, as a result, they can be included in the 95 percent participation rate.

For mathematics the new rule is a little different: The student must take the assessment, but the state has the discretion to not count the score for AYP purposes.

Locally, the impact of these new provisions will vary depending on the number of LEP students who are first-year immigrants, the level of discretion sought by the state, and the operation of other provisions. For example, your state already has the option of not scoring students for AYP purposes if they enroll in a school district (or school) after a state-designated date—typically October 1.

When it comes to immigrants who have been in the country for less than a year, however, your state can now choose to exempt those students from being scored for AYP even if they were enrolled in your school district during the previous academic year but within 12 months of the current test date. So for those states that have set their full-academic-year requirement earlier than October 1, the

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Where states have acted upon them, these changes are reality-based improvements that will help prevent some schools from being unfairly identified as not making AYP.



cover the number of students involved.

Consequently, ED has agreed to consider appeals from the states to allow "small increments" over the 1 percent limit, provided the states meet tough criteria to justify their action. Similarly, while individual school districts must operate within the same percentage limit as their state, they can be given approval to exceed that limit if properly justified. However, the state will still have to meet its statewide total, which might mean lowering the limit for other school districts. Although individual schools can exceed the percentage limit without formal appeals, the school district overall must still stay within the limit assigned to it by the state.

In sum, where states have acted upon them, these changes are reality-based improvements that will help prevent some schools from being unfairly identified as not making AYP. However, these changes alone will not solve the problem of effectively determining school accountability in the disability area.

Limited-English-Proficient Students

Limited-English-proficient (LEP) students make up another group that has not been fairly accommodated by the AYP rules. Consequently, their group and their school and school district have frequently been overidentified as "failing."

By definition, a group comprised solely of limited-English-proficient students is more likely to include students who do

their first years here. Finally, when LEP students do become proficient, they leave the group, and the school or school district doesn't get "credit" for their achievement in calculating AYP for their LEP group.

ED responded to these concerns in two ways through a statement released last February. First, states now have the discretion to define LEP students so that once they become proficient in English, they can still be counted as a member of the LEP group for an additional two years. Additionally, these students do not need to be included in the initial count to determine whether the group is large

ACTION STEPS FOR SCHOOL BOARDS

- Ask your superintendent to conduct a workshop to review the operation of AYP, what your results mean, and what the consequences are.
- Develop a year-round plan for addressing any weaknesses in your AYP reports and raising student achievement generally.
- Develop a communication plan to explain the meaning of AYP reports and other indicators of performance to the public.
- Discuss with state department of education leaders how they might better use the discretion available to them—including recent federal rule changes—to maximize NCLB's practical effectiveness in your school district.
- Ensure that congressional and state candidates understand what AYP means, the improvements that are needed in how the program operates, the need for resources, and the need to make a commitment to support your school district's specific NCLB-related goals.
- Use AYP reports, improvement strategies, and needed priorities in your own reelection campaign to support your record, build support for public education in your community, and build a mandate for specific action in the future.

The Politics of Change

Correcting NCLB is easier said than done

Despite the need for legislative corrections, both the White House and the Congress (Republican and Democrat leaders alike) have adamantly opposed reopening the law. Early on, their understandable concern was that they needed more time to see how the law works in practice. But now that the problems are known, leaders on Capitol Hill have raised additional concerns.

Some worry that taking up a “correc-

tions bill” could lead to the unraveling of the political compromises that were necessary to pass the law in the first place.

Further, NCLB is a major high-profile initiative—one the president and members of Congress from both parties would like to take credit for in this election year. Some believe that reopening the legislation to correct its failings would risk diminishing its political value.

Meanwhile, the Department of Education did make some quiet accommo-

dations in negotiating the terms of individual state accountability plans. But the department has resisted making major regulatory changes or granting states waivers in special circumstances. And, until last February, Secretary Rod Paige and other ED officials took a hard line, publicly criticizing anyone who challenged the efficacy of specific provisions in NCLB.

Generally, the tenor of that criticism was that the folks responsible for public education should focus on the goals of the law, rather than its specifics. Concerns with the flaws of the AYP measurement system, the lack of funding, or the consequences of these factors, ED officials suggested, are nothing less than excuses for

WHERE WE STAND ON NCLB

In March 2004, NSBA's Delegate Assembly, comprised of school board members designated by their state school boards associations, passed the following resolution on NCLB. It specifies improvements that need to be made and calls for full funding if particular requirements of the law are going to stay in force.

NSBA believes the intent and stated objectives of the No Child Left Behind (NCLB) Act are laudable. However, the act generally fails to acknowledge or build upon the work in many states to implement effective accountability systems that, often, are as good or better than the system under NCLB. Further, in several key areas, the NCLB requirements are unworkable, too costly and inconsistent with effective state efforts to raise student achievement. Accordingly, NSBA supports amendments to the No Child Left Behind Act and revisions to Department of Education regulations to provide flexibility in order to address the barriers facing local educational agencies (LEAs) in the successful and effective implementation of NCLB in the following manner:

(a) permit any state to obtain waivers from the accountability requirements of NCLB if that state can demonstrate by reasonable criteria that its accountability requirements meet or exceed the intent of the requirements established by the NCLB;

(b) provide federal funding consistent with the levels authorized for edu-

cation programs and expanded information systems needed to accurately reflect student, school and school-district performance;

(c) authorize alternative assessments for students who are not proficient in English and for students with certain disabilities beyond those who are classified as having a “significant cognitive disability” and provide flexibility to states as to the number of students whose alternative assessments may be counted for adequate yearly progress (AYP) purposes;

(d) permit flexibility in calculating student participation in assessments to meet the 95% requirement;

(e) permit alternative methodology for determining AYP targets and progress for students with disabilities, and for students who are not proficient in English;

(f) modify current AYP provisions to apply sanctions only when the same groups/subgroups within grade levels fail to meet AYP targets in the same subject;

(g) provide states flexibility to adopt gain score or value-added measures as the principal means for determining AYP (rather than cut-scores);

(h) modify current AYP provisions to permit AYP calculations to include students who move from “below proficient” to “proficient” levels in determining whether AYP is achieved;

(i) permit flexibility in calculating AYP for students belonging to multiple groups/subgroups;

(j) provide for waivers and exten-

sions for LEAs in meeting the qualification requirements for teachers and paraprofessionals;

(k) require that instructional personnel employed by supplemental service providers meet the same qualification requirements as comparable employees in the LEAs;

(l) authorize LEAs to participate in state processes for selecting and approving service providers for supplemental services;

(m) modify school choice provisions by limiting the option and transportation to only those students whose performance is at the below proficient level;

(n) permit flexibility in establishing criteria for graduation rate determinations;

(o) permit flexibility granted by the U.S. Department of Education to any state to be applicable to all states unless specifically restricted;

(p) provide for an implementation study, including congressional hearings, to be completed by July 1, 2005, regarding federal and state funding, AYP provisions, and other significant provisions; and

(q) ensure that the current law and subsequent revisions recognize that education is primarily a state and local responsibility in our federal system of government.

If the Congress and the Department of Education do not make the proposed revisions to NCLB and its regulations, then Congress should suspend implementation of the relevant aspects of the law until the changes are made.

maintaining the status quo, opposing accountability, and resisting school reform.

By February, however, a number of forces had come together that changed the tenor of the conversation. First, with the election year underway, some of ED's more strident criticism was not being well received in the press. More significantly, ED was becoming increasingly sensitive to the growing concerns being voiced by a widening circle of credible interests.

For example, in more than 20 state legislatures, one or both houses had passed measures calling for NCLB relief. Some demanded that Washington provide the level of funding that had been promised. Others sought waivers from federal accountability provisions that clashed with the high-rigor systems their states had already put in place. Some state legislators even threatened to pull out of the program.

For their part, the governors, as a

group, have not been overly critical or supportive of NCLB. But now, more governors are beginning to take notice of the political and financial consequences involved when schools and districts don't make AYP on their watch and the state budget is tight.

State superintendents dealt with their concerns more quietly last year by negotiating their state's individual plans. But this year, some have become more outspoken. In late March, for example, 16 state superintendents publicly outlined their concerns with the program to leaders on Capitol Hill.

At the local level, several major organizations, including NSBA, have been voicing the growing frustration of their members that the laudable goals of NCLB will not be met if federal lawmakers continue to oppose the corrections and funding levels needed. (For NSBA's resolution, see the sidebar on page 4.)

Honest and constructive criticism of NCLB can no longer be simply "jaw-boned" away. Nonetheless, opposition to legislative changes continues, although several members of Congress have introduced bills.

It is not likely that Congress will act before the election, however. Nor is it likely that ED will open up significant new areas of flexibility through regulation in the coming months. And, any action ED does take is not likely to affect this year's AYP determinations, as the process has been fully or substantially completed across the states.

That means your school board should be laying the groundwork now for action after the election. Make plans to meet with your Congressional candidates to obtain their commitment to sponsor and aggressively pursue correcting legislation that addresses your specific issues when Congress convenes next January. ■

The Politics of Funding

Raising the stakes in federal education policy

NCLB's goals are laudable, but are federal funding levels adequate to the task? It is not enough to ensure that the law's design and the educational responses it produces are on target. Success also depends on adequate funding, and with the election season nearly upon us, the funding debate—already heated—is rising to new levels.

Many congressional campaigns are likely to focus on NCLB funding and on holding legislators accountable for their votes. How incumbents and challengers present NCLB and the overall funding priority for education during the campaign can certainly predict and influence how they vote over the next two years. More immediately, next year's funding bill is likely to still be pending after Labor Day. So the debate that occurs now could have a direct impact on funding when schools open a year from now.

(To review your representatives' voting record in education, visit www.capwiz.com/nsba/home/.)

Examining the funding debate being waged in Washington should give school board members a broader context and a flavor of the arguments they can expect from members of Congress who don't

share their view that school districts need more money.

A Tale of Two Views

The White House and members of Congress who want to maximize the benefit of NCLB enthusiastically point to the funding levels they have provided over the past four years to support the program.

For example, the \$12.3 billion Title I program will grow by \$1 billion this year—or by 46 percent over four years—if Congress follows the president's budget request. Administration officials point out, accurately, that the cumulative dollar growth in Title I surpasses that of the previous administration.

Some also assert that school districts now have more than enough money to fund NCLB's requirements. And, they argue, school districts will use preexisting funding more effectively now that they are being held accountable for the achievement of Title I students.

On the other hand, a closer look at the funding data reveals what most school officials already know: There isn't enough money to meet the requirements of NCLB.

While it is true that Title I will grow by

some 46 percent over the base year of FY 2001, the actual year-to-year rate of growth is somewhat less dramatic. (See Table 1.) Nevertheless, even after accounting for inflation, these incremental gains are relatively strong compared to those of other federal programs.

The problem is that NCLB, with its accountability requirements, has radically transformed Title I. Within the new structure, incremental increases over the old funding base aren't even relevant to the discussion. The key question is, how well do current funding levels meet the needs?

To answer that question, remember that Title I funding currently serves only about 40 percent of eligible students, although funds have been targeted to the most needy among them. So, even if all current funding is used for programs to raise language and math scores, that funding level will not reach all eligible children.

The potential funding shortfall will become even more significant depending on the program innovations that are needed to make AYP, hire highly qualified teachers, and meet other NCLB requirements. For example, if school districts need to add summer school and after-school programs, reduce class size, or pay more to recruit and retain the best teachers, the federal dollars—even with recent increases—may wind up serving fewer students.

Some children will be left behind.

Locally, due to the operation of the allocation formula and a relatively small increase in FY04 funding, more than half of all school districts will experience a cut in Title I funds in the coming school year.

However, Congress did not intend that



In the real world, NCLB is not only an unfunded mandate but an unfilled promise.



NCLB would meet all local funding needs. But federal lawmakers did designate specific funding levels that Congress was expected to provide each year. So, despite the relatively strong (but decreasing) incremental increases that were provided early on, funding is far short of the amount Congress originally envisioned when it passed the law less than three years ago.

In fact, the cumulative shortfall between what Congress designated (authorized) and then actually provided (appropriated) will exceed \$20 billion over the four budget years since NCLB was enacted. (See Table 2.)

Supporters of the current rate of increases say the amount that was “promised” was not a legal obligation but a goal. Further, they contend that current funding exceeds the actual cost that NCLB imposes on states and local school systems. That is, while NCLB does require (and Title I can adequately fund) such expenses as student testing, various kinds of reporting, and some mandated interventions, it does not “require” such costly strategies as summer school or reduced class size.

An Unfunded Mandate?

Ultimately, however, schools must ensure that 100 percent of their students make AYP. So while the law doesn’t specify certain educational strategies or innovations, school districts must invest in those strategies or risk not making the law’s AYP requirements—and failing to serve the very children the law was intended to help. What’s more, if they do not provide the needed services, districts may well face “adequacy” law suits using NCLB as a basis.

In the real world of public education, then, NCLB operates as an unfunded mandate.

The debate on this issue took a new turn last May when the Government Accounting Office (GAO) released a report that analyzed a variety of new laws,

that the GAO report exposed the unfunded mandate argument as a “red herring” intended by opponents of accountability and education reform to take the focus off the “true subject” of improving the quality of education.

However, UMRA is not a legal or policy definition of a mandate. It is merely a procedural law designed to require Congress to consider the costs of certain categories of legislation when passing mandates on industry and public agencies. It excludes significant areas of legislation from this internal procedure—even IDEA, which, of course, is a court-enforceable federal mandate.

Ironically, ED’s use of the narrow technical definition in UMRA can itself be said to be a red herring intended to detract from how NCLB actually operates as a mandate, the more serious legal arguments about funding that it raises, and the additional finances school districts will need to help students.

Finally, ED and others argue that NCLB is not an unfunded mandate because states can opt out. But that presents a dilemma: By opting out, a state would have to forgo federal funding for the very students the law is intended to help—simply because the state did not have adequate funds for the additional programs needed to make AYP or meet NCLB’s other unfunded requirements.

Moreover, as previously indicated, a local school district cannot make the state

including NCLB, in relation to the federal government’s Unfunded Mandate Relief Act (UMRA).

NCLB, the report concluded, is not an unfunded mandate under the terms of UMRA, which does not define the cost of complying with grant-in-aid programs like NCLB as a mandate. The report did not address such issues as whether NCLB operates as an unfunded mandate on local school systems if they reject Title I funds but are still required to meet specific requirements as a condition for the state to receive NCLB funds.

Subsequently, the Department of Education (ED) issued a statement saying

TABLE 1: TITLE I ANNUAL INCREASE

	PERCENT	AMOUNT
FY02	14%	+\$1.2 billion
FY03	13.2%	+\$1.4 billion
FY04	5.1%	+\$650 million
FY05	8.1%*	+\$1.0 billion*

*Amount proposed by president.
(Note: Minor errors are due to rounding.)

TABLE 2: TITLE I FUNDING (IN BILLIONS)

	AUTHORIZED	APPROPRIATED
FY02	\$13.5	\$10.4
FY03	\$16.0	\$11.7
FY04	\$18.5	\$12.3
FY05	\$20.5	\$13.3*
Total: 4 Years	\$68.5	\$47.7

Cumulative four-year shortfall: \$20.8 billion.

*Assumes president’s budget request will be enacted.
(Note: Minor errors are due to rounding.)

opt out in order to relieve itself of responsibility for meeting state requirements. Here again, in the real world, NCLB is not only an unfunded mandate but an unfilled promise.

As this “inside the beltway” debate on funding continues, several states are conducting formal NCLB financial impact studies that should be completed in time for next year’s federal and state funding cycles.

Locally, school boards might wish to analyze their own NCLB-related costs, including projections for the next few years, and seek commitments from both federal and state candidates in this fall’s election to meet those expenses.

(For details on identifying these costs, see the Spring 2004 *Action Alert*, www.nsba.org/actionalerts.)

The Big Picture

NCLB’s primary emphasis is on raising the achievement of students who might otherwise not be academically proficient,

but the scope of the law encompasses all of K-12 education. Consequently, the law will affect instructional and funding priorities for all students. It also will shape how the public thinks about both education and its schools.

Clearly, NCLB represents a major expansion of the federal role in education, from providing programs to meet special needs to setting broad national policy for the operation of the public schools. The issues discussed in this and previous *Action Alerts* demonstrate the significance of this change and the current resolve of some key federal policy makers to maintain their commitment to the letter of the law and to limited funding levels.

The enactment of NCLB has elevated the political level at which education is being engaged in Washington D.C. And, some state legislatures have responded by raising their political stakes so as to redefine the boundaries and commitments that they believe must go along with this expanded federal role.

As locally elected leaders, school board members are the natural group at the community level to engage Congress to ensure that federal policy is responsive to the needs of their school districts. Indeed, without the involvement of school boards, Congress is likely to continue to make major education decisions following the precedent it has set with NCLB.

As education policy making rises in importance at the federal level, local school boards must rise with it. The alternative is to be shut out of decisions that the federal government is now making that it has not made before—including decisions that redefine the federal government’s role in education.

We encourage school board members to consider the importance of their inter-governmental role and to address needed improvements to NCLB and the funding levels required. And we encourage you to contact your state school boards association and NSBA to learn how we may assist you. ■

ARE YOU READY?

Continued from page 3

impact of the new immigrant provision on AYP calculations is likely to be less significant.

Like the new rules for students with disabilities, the changes for LEP students move the AYP measurement system in a more realistic direction by recognizing special situations that were not addressed when NCLB was launched. However, other special circumstances and issues, such as the lack of native-language assessments, still need to be accommodated.

Participation Rates

Another common reason for failing to make AYP last year was not meeting the requirement that at least 95 percent of students must participate in the state test. This rule applies to students overall as well as to specific groups of students. No matter how high students score on a test, if the absence of a few students in a school or group calculation causes the participation rate to fall below the 95 percent mark, the school will fail to make AYP. And, in the case of Title I schools, that might trigger student transfers and other interventions.

Meeting participation rates has been

especially problematic when small schools or small groups are involved. For example, the absence of just two out of the 30 students making up a group can cause a high-achieving school of 1,500 students to not make AYP. This also has been a problem for schools that have little or no control over situations that are more likely to lead to higher rates of absenteeism. Students with disabilities may be absent frequently, for example, or some parents may have difficulty getting students off to school, or some areas may have high levels of truancy that can’t be solved by the schools alone.

Last March, at NSBA’s Annual Conference, Education Secretary Rod Paige announced two modest areas of flexibility in which states could help some schools and school districts overcome shortfalls in their participation rates:

1. If a student cannot take a test during the exam period due to a “significant medical emergency” (such as an injury resulting from an automobile accident), the student will not be counted for participation rate purposes.

2. If a school or school district fails to reach the 95 percent participation rate, it can still make AYP if, by averaging its participation rates over the previous year or two years, it reaches the 95 percent level.

Allowing such adjustments in calculat-

ing participation rates will provide welcomed and justified relief to some schools and school districts. The impact will be limited, however, as these exceptions address unusual circumstances involving only a limited number of student absences. Unfortunately, these rule changes do not recognize those more chronic and common absences that are beyond the sole control of the schools. Nor do they give “credit” to schools that are aggressively and successfully working to increase participation rates in those types of situations.

Highly Qualified Teachers

ED’s fourth area of new state flexibility involves two exceptions relating to the requirement that all teachers must be highly qualified in the subjects they teach by the end of the 2005-06 school year.

The first addresses the special problem small and rural districts have in recruiting teachers and the need to assign many of them to teach multiple courses. (Such districts are defined as having fewer than 600 students or fewer than 10 residents per 100 square miles.)

Specifically, states can now give experienced teachers who are qualified in one of their areas of teaching three years to become highly qualified in the other courses they teach. Similarly, new teachers

will be given three years to become highly qualified in the first academic subject they teach.

The other exception allows science teachers to be regarded as highly qualified to teach multiple science subjects if their state issues them a general science certification rather than a separate certification in a particular scientific discipline. ED officials have indicated that the wording of NCLB precludes this approach in states that provide general certification for social studies teachers, however.

These rule changes also have shortcomings. For one thing, they do not affect urban schools, which also face special challenges—such as providing competitive salaries—that may prevent them from meeting the requirement for highly qualified teachers by the 2005-06 school year.

Unfortunately, too, states have not been given more discretion to determine if and when special education teachers must

ly do occur (such as the 2006 deadline for highly qualified teachers).

Other Areas of State Discretion

In addition to these newer areas of flexibility, your state also has substantial discretion with regard to other components of NCLB that will determine whether schools make AYP. Two of the more important areas are “N” size and annual goals.

- **“N” size.** Each state’s plan indicates the minimum number of students needed (that is, the N size) in order for groups to be counted for AYP purposes. Typically, states have selected minimum N’s in the 30 to 40 range, although some are substantially higher or lower. (Note that the minimum N needed for a group to have its test scores counted for AYP purposes can be different from the N needed to determine whether the group is large enough to meet the 95 percent participation rate requirement.)

discretion to determine the rate by which the percentage of students who must make AYP must increase over 12 years, so long as the figure reaches 100 percent by the 2013-14 school year. To buy a short-term reprieve, some states have received approval to increase their AYP percentage by an equal amount every three years, rather than annually. More significantly, some states have received ED’s approval to increase their AYP percentage by a lower rate in the earlier years and then boost the rate of increase required in the last few years.

These and other areas of state discretion in determining accountability for AYP are discussed more extensively on page two of the Winter 2003 *Action Alert* (www.nsba.org/actionalerts). Further, ED has provided a list of more than 40 areas of discretion that states have in the overall implementation of NCLB (online at www.ed.gov/news/pressreleases/2004/01/01142004/html).

Here again, school boards may wish to consult their state education department to determine whether the state has taken full advantage of the discretion available in key areas—and, if not, the reasons for not doing so. Your state school boards association may be able to help you obtain information and make the case for greater state discretion in these areas.

Bear in mind that, ultimately, all students must make AYP. Therefore, relaxing the requirements for calculating AYP scores for specific groups of students is only a short-term solution. Similarly, to avoid overidentifying “failing” schools under NCLB, some states have already looked to a dual system in which accountability for state purposes is different from what is needed to make AYP for federal purposes. Unless Congress addresses some basic AYP design flaws, it should be expected that as the bar rises each year, some states will relax their standards or the rigor of their assessments.

In sum, in order to ensure that NCLB produces an effective accountability system for raising student achievement, school boards will need to take action at two levels. Boards will need to advocate their concerns and recommendations to state officials, asking them to exercise the discretion they already have, and to Congress, asking legislators to make key design changes.

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To ensure that NCLB produces an effective accountability system for raising student achievement, school boards will need to take action.



be “highly qualified” in academic subjects. Under current NCLB rules, special education teachers will be required to be highly qualified for the subjects they teach and to be certified in special education.

This is a standard that cannot reasonably be expected to be met—especially in a field that already experiences high teacher turnover. And, depending on the functions some special educators provide and the disabilities involved, there is some question whether this standard even makes sense for all special education teachers.

Efforts are being made to resolve this issue in the pending reauthorization of the Individuals With Disabilities Education Act (IDEA). It is not clear whether Congress will be able to finish its work on IDEA this year, however. If not, this issue and other important NCLB-related issues in special education will continue to go unresolved. Further, the lead time could be shortened for states and school systems to meet any rule changes when they final-

ly. Clearly, the level at which a state sets its minimum N sizes can make a big difference as to whether individual schools make AYP—or whether the school district does.

While states do have discretion in setting their minimum N’s, the size must meet with ED approval. The number must be large enough to be statistically reliable (that is, the group must be big enough that the group score will be virtually the same each time the test is administered). But the minimum number cannot be so large that too many schools or school districts would escape accountability for groups altogether.

Within those parameters, some states were able to set their minimum N at 50 or more for students with disabilities and LEP students. Your school board may wish to discuss with state officials whether your state’s minimum N in general and for specific groups should be adjusted to be more consistent with other states.

- **Annual Goals.** The state also has