



National School  
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# FEDERAL ActionAlert

NSBA ADVOCACY FOR PUBLIC EDUCATION

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## School board advocacy is crucial as Congress works on the reauthorization of NCLB

*The education committees are holding hearings on many aspects of NCLB*

By Michael A. Resnick

Congress is on course to reauthorize the No Child Left Behind Act (NCLB). The House and Senate committees that oversee education have a goal for House and Senate floor action to be completed by the end of the year. If they succeed, there is a good chance the House and Senate will reconcile their differences before the distraction of the 2008 election season sets in.

To meet that schedule, the committees are seeking to complete their work by the end of summer to allow enough time to schedule floor action for a wide range of competing legislation. For local school boards, that means the time to advocate for specific provisions to be included in the committee bill is right now.

### NSBA's message

NSBA has been advocating that the 42 improvements contained in the accountability provisions of NSBA's bill (H.R.648)—introduced by Rep. Don Young (R-Alaska)—be included in the legislation, as well as several provisions to give school districts greater flexibility in meeting the law's requirements for highly qualified teachers.

NSBA's broad message is that our recommendations to fix the law must be addressed now or more schools will be unnecessarily labeled as "failing," especially as the percentage of students who must score at the proficient level continues to rise. Additionally, more schools will unnecessarily progress to more severe and costly

sanctions—which too often are overly broad in their application and take away time, energy, and funding from the very students who need assistance the most.

Especially with some members of Congress seeking to add yet more accountability requirements, the need to fix the basic flaws in the law is even more compelling. Without making the needed "fixes," the number of ways in which a school can be unnecessarily labeled as failing or sanctioned will multiply.

Given the need to fix the flaws and the tight timetable, a big question is whether Congress should inject new concepts into the program.

Certainly allowing for options that have been given careful examination, like tying accountability to the academic growth students make from year to year, can be incorporated into the legislation. But what is not needed is the mandated imposition of a totally new accountability system that cannot be given adequate analysis in the short time that the committees have to act.

It is not good enough to simply believe that a specific approach would work in principle; it must be field-tested to determine whether it works in reality. And it must take into account other factors, such as how long it would take to phase-in, how much it would cost, and the unintended negative consequences. It was the failure to provide that kind of analysis when NCLB was enacted five years ago that led to the current problems with the law. Congress should not repeat these mistakes.

But there is yet another reason why a totally new direction should be left for another day. With a new administration coming into office in 2009, whether Democrat or Republican, it will have its own course to set. In other words, in fairly quick order, local school districts could find themselves adjusting to a succession of new

accountability systems. What we need from Congress now is more stability and dependability. Congress should fix and fund the current system, rather than let itself be pulled in different directions by a flawed system or switch to whatever is the accountability flavor of the day.

What also is not needed is the addition of provisions, such as tying local NCLB funding to the use of national standards and tests, that would engender major political and philosophical debates that are bound to doom the legislation from being enacted in this Congress.

### Hearings held

The House and Senate education committees have held about a dozen hearings that reveal some of the direction that congressional leaders might take in reauthorizing NCLB.

For example, with a rising congressional interest in student success at the high school level, one hearing examined dropout rates. Several witnesses advocated for reporting high school graduation rates by student subgroups in much the same way that subgroup test scores are reported in determining Adequate Yearly Progress in subject areas.

The hearing also highlighted the issue that improvement strategies at the high school level might be hampered because Title I funding generally doesn't reach high schools. The point was that the infusion of Title I funds would provide a positive funding source, as well as accountability, to failing high schools. [Note: Schools are not subject to NCLB sanctions unless they receive Title I funding.] These recommendations are also supported by the administration in its reauthorization proposal.

Other hearings focused attention on several politically charged issues, such as how best to address the academic needs

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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.

and performance of students with disabilities and English language learners (ELLs).

The hearings indicated that more consideration needs to be given to how best to assess students with disabilities and integrate NCLB with the Individuals with Disabilities Education Act (IDEA). However, many disability advocacy groups are opposed to giving individualized education program (IEP) teams more flexibility in determining which students require alternate approaches—even within the 3 percent limit.

In determining AYP for ELLs, lawmakers recognize that expecting newly arrived students from other countries to acquire academic proficiency by their second year in the United States is unrealistic. However, there was no clear consensus on how much longer students should have before their assessment results are counted for AYP. Nor was there any indication whether determinations should be allowed for extending that time period on a case-by-case basis or whether options like student growth should be available during the interim.

The hearings also focused considerable attention on the use of growth models and teacher effectiveness. While measures of individual student growth has attracted the interest of committee members, experts cautioned that Congress might need to set guidelines to ensure that states adopt appropriate ways of measuring growth.

Witnesses indicated that growth models have the benefit of tying accountability to the year-to-year progress of individual students, recognizing the efforts of schools to move students toward proficiency over time, and forcing schools to focus their energy on the achievement of a wider range of students than the current accountability system. The current system encourages teachers to narrow the instructional level to the marginal students who have a chance to reach the proficient level and help the school make AYP.

Some witnesses identified practical pitfalls to growth models—depending on how much growth is required of each child each year for schools to make AYP. Not surprisingly, a wide range of interest groups and assessment experts are calling for multiple measures of student performance so that the skills and knowledge required by one type of test—given on one day—will not be the only factor in determining whether schools and students are succeeding or failing.

The House hearings also addressed supplemental services. Low student participation was attributed to such factors as lack of parent understanding, the competition of other after-school interests, and travel distance to private providers. The lack of services for ELLs and students with disabilities was also cited.

Witnesses indicated that supplemental services could be improved if:

## YOUR PLAN OF ACTION

Here are a number of action steps you can take to ensure that your member of Congress is responsive to your school district.

- Working with your superintendent, identify the flaws in NCLB that will have the most severe negative impact this year, as well as what your expectations will be three to five years from now if the law isn't fixed.

- Have your school board pass a resolution urging your member of Congress to co-sponsor H.R.648 in the House and S.348 in the Senate.

- Send your priority concerns and school board recommendations to your congressional representatives and to NSBA (to help us follow up with your representatives).

- Talk to your local media about your concerns and goals for NCLB (which will also help lay the groundwork for the upcoming release of AYP

results). Write an op-ed piece for your local newspaper.

- Meet with your member of Congress during the Memorial Day recess (May 28-June 1) or some other time when he or she will be home in the coming weeks. (Your representative's local district office can schedule the meeting.)

- Talk with members of other school boards in your congressional district and get them to join with you to build a broader base of support for fixing the law.

Federal Relations Network members and National Affiliate school districts can obtain a summary of NSBA's bill (H.R.648), a sample school board resolution, congressional contact directories, and other NCLB materials to assist in communicating with members of Congress at [www.nsba.org/nclbcampaign](http://www.nsba.org/nclbcampaign).

- school districts in “improvement status” were allowed to provide services;
- the option to provide the services in the first year of sanctions—not just choice—were available;
- monitoring of private providers were strengthened; and
- services were focused on lower-achieving students, rather than more generally on students from lower-income families.

The Senate’s hearing on teaching focused on how to attract and retain effective teachers—especially in math, science, and special education in low-income schools.

Witnesses and senators pointed to the need to:

- improve salaries and other financial incentives to attract qualified people into the profession, such as through student loan forgiveness programs;
- improve individual teacher effectiveness over time through professional development; and
- provide mentoring to new teachers, such as through master teacher programs; and
- expand alternative certification opportunities—for example, to attract math and science teachers from other careers and ensure that experienced teachers are adequately assigned to schools in low-income areas.

Attention was also given to the use of individual student performance data that can help teachers develop instructional strategies for specific students, as well as identify areas for their own improvement and school assignment. It is unlikely, however, that Congress would require those states that use growth models under NCLB to also use them in evaluating teachers or determining their compensation.

Meanwhile, the Senate and House committee chairs have introduced The Teach Act to address teacher-quality needs. This legislation can be taken up as part of the NCLB reauthorization or as separate legislation if lawmakers fail to complete their work on NCLB during the 110th Congress.

### Some unusual players

Among the dozens of “players” that seek to influence the NCLB reauthorization, two merit special mention. The first is the Commission on No Child Left Behind. This unofficial group—sponsored by the Aspen Institute—was co-chaired by former governors Roy Barnes (D-Ga.) and Tommy Thompson (R-Wis.).

The commission made a multitude of recommendations—some of which NSBA supports, such as growth models. While the commission’s report contains many good ideas, taken as a whole, they would unrealistically heap many more new requirements on schools. It also ventured into new areas,

such as calling for voluntary national content and performance standards in language arts, math, and science (which has support from several key congressional committee members).

The commission’s failure to prioritize—and to consider the practical implications of some of its recommendations—are its major weaknesses.

The second set of players is not involved in the details of NCLB, but waned to see more attention focused on education in the 2008 election debate. Specifically, the Gates and Broad Foundations have committed \$60 million (or about twice the amount raised by the leading presidential campaigns) to fund their Strong American Schools Campaign (see [www.edin08.com](http://www.edin08.com)).

While this high-profile ad campaign will be broadly aimed at improving public schools, it does so with a critical message about the current condition of public education. In terms of priorities, it emphasizes the need for more effective teaching (along with higher salaries based on performance), more time and support for learning (effective learning strategies, and “common American standards” in math and English (but not a national curriculum)).

How this campaign will directly influence NCLB, including the work that the Gates Foundation is doing in high school and other areas, remains unclear. ■

## A school board call to action

### *Lawmakers need to hear from school board members*

If Congress is going to fix NCLB, our lawmakers will need to hear from their school board members right now—and certainly by early summer. The stakes are high because this reauthorization will be a driving force in the education of our children and in the operation of our schools for years to come.

The comprehensive recommendations proposed by NSBA are broadly viewed as sensible and necessary improvements among local school board members. So some school board members might be tempted to rely on Congress to make these beneficial changes without feeling the need to communicate their concerns and solutions to their representatives.

Unfortunately, taking the legislative process for granted won’t work. There are dozens of groups who have different outcomes in mind based on their education

or political ideology, business interest, limited knowledge of school district operations, or sense of perspective. Some groups, for example, view the law through the filter of a single issue.

For these other groups, the stakes are also high. The supplemental service industry, for instance, would benefit significantly from the administration’s proposal to require school districts to spend all of the 20 percent of Title I funding that must be set aside for choice and supplemental services in schools that are identified for sanctions.

Currently, districts must spend only that portion of the 20 percent that is needed to cover parents’ selections made in the fall; the rest of the 20 percent is then available to fund programs inside the schools. Under the administration’s proposal, the district would have to surrender

any unused portion. This would substantially expand districts’ financial commitment for supplemental services.

Meanwhile, in addition to opposing the administration’s proposal to channel more Title I funds to supplemental service providers, NSBA is seeking to move more control of supplemental services to the hands of local school districts. This includes requiring a release of the 20 percent set-aside not used for supplemental services or choice early enough in the school year so these funds can be effectively used for other educational purposes.

Looking beyond the ideas discussed at committee hearings, legislation will also be influenced by the strength and credibility of a wide range of interests—including school boards—who will be competing to have their priorities enacted into law. On any given issue, many groups will weigh in, which means the chance of school board success increases significantly when local board members make clear to their member of Congress what they want from reauthorization. ■

# The Department of Education holds tight against fixing NCLB

*The flexibility offered by the department has been minimal*

Officials at the U.S. Department of Education (ED) are quick to say they have given schools and districts an extensive amount of flexibility in administering NCLB.

But most of that flexibility has come as a result of amendments to state accountability plans. For the most part, these amendments involve nuances around how students and their test scores will be counted in determining whether the school or district is making AYP.

By contrast, broader policy changes regarding AYP and sanctions affecting good educational practices—not just the way students are counted—have received far narrower consideration from ED.

Here are some key examples:

## English language learners

There is an abundance of evidence that many students from other countries arrive in America so far behind that it might take several years before they will reach academic proficiency. Yet, in addressing this issue, ED's idea of flexibility was to only give states a waiver for a student's first year in the country before counting the student's test scores for AYP.

Meanwhile, the amount of progress the student is making doesn't count. Not only is ED's approach unfair and discouraging to students and their schools, but it is a flawed educational strategy.

## Students with disabilities

It took three years before ED was willing to

recognize that up to 3 percent of test takers might have a disability that warrants the use of an alternative assessment or modified standards. But rather than giving the IEP team the authority to decide which students to place within the 3 percent, it requires students to fit within either of two definitions.

Further, the IEP team can't use options it believes are most appropriate for a child, such as out-of-grade tests or measuring student progress. Students don't always fit into neat definitions nor do the best strategies for serving them.

Rather than a one-size-fits-all approach, NCLB should allow the IEP team to do its job. After all, the people on the team are experts who work with the child on a regular basis and must design a program for the child that meets the requirements of IDEA. **(Go to page 5)**

## BE PREPARED TO RESPOND TO LAWMAKERS' 'DODGES'

Because NCLB is complex and controversial, some members of Congress might be noncommittal or incomplete in their initial response. The following tips will help you recognize when your representatives are being evasive and help you get them to commit to act on your recommendations and push for Congress to make the necessary changes in the law.

Also, be sure to visit NSBA's website [www.nsba.org/advocacy](http://www.nsba.org/advocacy) for more general hints and strategies for effective communications with Congress

In your meetings and correspondence with members of Congress, some lawmakers might try to dodge responsibility or refuse to take a position.

If your lawmakers try to dodge your appeal by saying, "The bill is in committee and I'm not on the committee," you can respond with, "That is why we need you to co-sponsor H.R.648 [or S.348]. Will you send a letter expressing our concerns and support for these bills to the chair and ranking member of the education committee?"

Here are some more responses to the dodge you are likely to hear:

**Dodge:** "I understand that the education committee plans to address this problem."

**Response:** "That's great but there are no guarantees. Will you reinforce our

concern by co-sponsoring H.R.648 or sending a letter to committee leaders in support of its provisions?"

**Dodge:** "The leadership is directing this legislation."

**Response:** "From our perspective, this is a constituent issue affecting the education and tax dollars of our community."

**Dodge:** "H.R.648 was originally introduced by a Republican, and, as a Democrat, I can't co-sponsor it."

**Response:** "The bill has Democratic co-sponsors. Besides, good education legislation should not be partisan. But if you can't co-sponsor, will you support our school system and good education policy by sending a letter to committee leaders urging them to incorporate the provisions of H.R.648 in the committee bill?"

**Dodge:** "You make a good case; I'll keep your views in mind."

**Response:** "That's fine, but what specific action will you take to help us? Will you co-sponsor H.R.648 or send a letter of support to the committee?"

**Dodge:** "This is a tough issue because there is a competing interest group that doesn't agree with your position."

**Response:** "I'm speaking to you as an elected representative with the knowledge and perspective of what's impor-

tant to this school system. This is important to us as representatives of your constituents."

**Dodge:** "I know there are provisions of NCLB that are counterproductive in your school system, but because of the shortcomings in other school districts, we can't make this particular policy change."

**Response:** "We appreciate your interest in addressing educational issues in other communities, but those efforts should not come at the expense of good educational practice in our community. You've got to help us, too. For the vast majority of school districts, H.R.648 and S.348 provide sensible solutions to the accountability flaws posed by NCLB."

**Dodge:** "America must maintain its competitiveness with the rising skill levels of China and India's work forces. Overall, we are better off with this accountability system even if it overreaches."

**Response:** "There is no argument with having an accountability system aimed at world-class competitiveness. We are talking about fixing specific flaws that are unfairly labeling schools and groups of students, as well as wasting time, energy, and resources that could be better spent on the students who are in need of additional assistance."

## Supplemental services

After five years of experience, ED has only allowed a handful of school districts that are in improvement status to provide supplemental services. This is true regardless of the merits of the program or whether there are private providers who can serve the community—or whether those private providers have good programs.

On this latter point, local school districts have no authority to certify or object to a private provider even though the district—not the private provider—is held accountable for whether the students succeed.

Meanwhile, some private providers hire public school teachers but charge a much higher tuition rate than the hourly cost of the teachers—which in turn, deprives the Title I school of resources that could otherwise be spent on building its education program. Other supplemental service providers do not use public school teachers because ED doesn't require them to employ highly qualified instructors.

On these issues ED has sidestepped providing flexibility aimed at better education policy despite its commitment to base decisions on data and common sense. ED's inaction—or minimal action—on these broader issues of education policy also are evident in many other areas. ED has failed to expand its pilot test on growth models, failed to allow students to be retested for measuring AYP, failed to limit the application of sanctions to instances where the same group fails to make AYP for two years in a row—the list goes on.

## Minor changes proposed

ED has not yet released specific details for the reauthorization of NCLB, but it has published a narrative of its recommendations. The recommendations contain a few improvements to fix the flaws, but are not comprehensive and would add new requirements, such as counting science for AYP purposes. Expanding NCLB, without fixing



**Expanding NCLB, without fixing the flaws, will unfairly multiply the ways in which schools and districts will fail to meet NCLB's requirements.**



the flaws, will unfairly and wastefully multiply the ways in which schools and districts will fail to meet NCLB's requirements.

In sum, looking over the past five years, there are several key observations that can be made about how ED's past approach to NCLB could affect the future:

- ED's willingness to provide flexibility was most manifested through individually negotiated state plan amendments involving computational issues for determining AYP. However, it appears that the department is not planning to break new ground in this arena.
- In making broader decisions for all states on matters outside of technical issues, ED has been very limited in providing flexibility in relation to the number of problems requiring relief.

- ED has asserted that the law prevents it from acting on some issues. However, Secretary of Education Margaret Spellings has legislative waiver authority for some concerns, and the law does not clearly require ED to act in the manner it says it must for others (such as applying sanctions when different groups fail to make AYP for two consecutive years).

- ED's legislative recommendations for the reauthorization of NCLB are limited in the relief requested to fix the program's flaws while the department would expand accountability in some areas and toughen sanctions in others.

Therefore, for local school board members who want NCLB's flaws corrected, the message is clear. There may be areas where your state's accountability plan can be amended to catch up to that of other states. But you can expect most of the bigger changes to come from Congress, not the Department of Education. That adds to the importance of congressional action this year. ■

Michael A. Resnick is associate executive director for advocacy and issues management at NSBA.



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