

# NCLB ActionAlert

## TOOLS & TACTICS FOR MAKING THE LAW WORK

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### The Politics of NCLB

*Growing concern over flaws in NCLB raises questions about the future of the landmark legislation*

By Michael A. Resnick

The past year has seen a rise in concern over the No Child Left Behind Act. Although they have worked hard to meet NCLB's requirements, local school board members and educators worry that the program doesn't provide an accurate basis for determining student achievement in their community—or for promoting effective school improvement.

State and federal policymakers have also voiced more apprehension over NCLB than in past years. This elevated political discussion no doubt has influenced some changes made in 2005.

This issue of *Action Alert* will look at recent developments and the prospects for additional changes, keeping an eye on the political influences that are likely to influence NCLB in the 2006 congressional election.

We will also examine how the U.S. Department of Education (ED) revises the accountability plans in which states lay out how they will meet NCLB's requirements for measuring achievement. Most of the action is occurring around these plans; by understanding the process, local school officials should be in a better position to influence the decisions their state is mak-

ing and to advocate for change with members of Congress.

Throughout the year, most of the conversation on NCLB was driven by three related questions:

1. Will the number of schools and school districts that fail to make Adequate Yearly Progress spike upwards—especially in states where the conditions needed to make AYP have become more challenging?

2. Will ED approve state requests for flexibility where the current system is overidentifying the schools or school districts that fail to make AYP—or applying overbroad sanctions to them?

3. Will the political reaction of local school districts and state officials to the flaws in NCLB put enough pressure on ED and Congress to make the needed corrections?

By September, enough of the results were in to answer these questions—and to set the stage for the future.

#### **AYP Results: A Mixed Bag**

In many states, the number of schools and school districts failing to make AYP did not change significantly this year. These results were especially welcomed in states whose accountability plans called for an increase in the percentage of students

needed to score at proficient or above on state tests, in the use of new tests, or in the addition of new grades to be tested.

Where schools did better than expected, NCLB advocates have been quick to say the federal law was having the desired effect. Others, however, believe NCLB is still too new to have created positive gains. Instead, they say, the rise in student achievement was the product of pre-existing state accountability programs.

Still others believe some of the good news was due to changes in how ED allowed states to calculate AYP. For example, ED approved several state requests to increase the minimum size for student groups to be scored for AYP; to use multi-year averaging of test results, or to ease the method for calculating the “safe harbor” option in determining AYP.

In some states, AYP results were worse this year, for a variety of reasons. In Hawaii, for example, two-thirds of the schools failed AYP in 2005, compared to only half in 2004. Why? The AYP bar was raised—that is, the percentage of students who had to score proficient or above for a school to make AYP was substantially higher this year than last. According to Hawaii's state department, about two-thirds of the state's schools would have made AYP if last year's percentage were used—which would have been progress.

Although the impact was far less dramatic, other states like Colorado, Kansas, and New Jersey reported the same effect. Likewise, as a result of raising the bar, the number of schools in Washington state

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Associate Executive Director  
Advocacy and Issues Management

**Michael A. Resnick**

Director of Publications

**Sally Banks Zakariya**

Production Manager **Michele Sabatier**

## 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.

that entered improvement status rose from 156 to 185.

But changes in calculation produced significant favorable results as well. In Minnesota, the number of schools that failed to make AYP dropped from 464 to 247. Seventy eight schools and 75 districts were spared from failing AYP through the first-time use of multiyear averaging of test scores. Further, by raising the minimum group size for limited-English-proficient students from 20 to 40, the number of schools not making AYP for that subgroup dropped from 140 in 2004 to 21 this year.

In Alabama, the number of schools making AYP nearly doubled due to an improvement in meeting the requirement that 95 percent of students be tested. In 2004, too few students were tested due to scheduling problems, and many schools failed to make AYP.

Even without such changes, many states were able to demonstrate actual improvement in student test scores, graduation rates, and other indicators of performance. For example, looking again to Minnesota, 76 percent of students scored proficient in math compared to 67 percent last year.

Clearly, the real cause for better-than-expected results varies from state to state and may result from a combination of factors. In 2006, concerns will arise again that more schools won't meet the bar—especially in those states that for the first time must now test in all grades three through eight and once more in high school to comply with NCLB's mandatory deadline.

## Flexibility and the Rising AYP Bar

Soon after her Senate confirmation, Secretary Spellings said she would bring greater flexibility to ED's rules for managing NCLB, and in April she announced the framework for her new policy. (See article on page 6.) Subsequently, ED granted numerous requests by state departments of education for more latitude in how they could calculate AYP for 2004-05 and following years. Here are some examples:

1. Some states were allowed to reduce the percentage by which the AYP bar had to rise for 2004-05. For example, rather than nearly doubling the percentage of students who had to score proficient, Missouri was allowed to reset its 2004-05 target for a 30 percent increase (or a jump of 6.6 points instead of 18.4).

2. At least two more states were given permission to calculate their minimum

group size ("N") using whichever is greater: the state's original "N" (for example, 30 students) or a percentage of school enrollment (such as 15 percent), up to a specified cap. This option is especially helpful—and reasonable—for schools and school districts that are sufficiently large and diverse that using the basic "N" size would result in AYP failure and sanctions on the basis of a very small portion of the student body. About 10 states now use some version of this approach, including California, Florida, Massachusetts, Texas, and Virginia.

In approving these sliding-scale formulas, ED has had to balance common-sense realities with the need to hold Title I schools accountable for closing the achievement gap between subgroups—which, after all, is the core mission of NCLB. (It should be noted that large Title I schools would still be responsible for reporting the AYP scores of their subgroups on a disaggregated basis to parents and the general public.)

3. Numerous states also were given approval to effectively triple the number of students with disabilities who could be scored for AYP in an alternative manner through the use of the new 2 percent rule.

4. More states were also given approval to count students with disabilities and limited-English-proficient students whose individual needs and plans call for five years or more to graduate as meeting the requirement for an on-time graduation rate.

5. Additionally, a larger than expected number of districts that didn't make AYP were spared from entering improvement status. Here, ED approved state plan requests that would trigger sanctions only if the district failed to make AYP in each of its grade spans (that is, elementary, middle, and high school) for a specific subject or indicator.

However, ED has resisted waiving sanctions for schools where different groups fail to make AYP in each of two consecutive years (that is, no one group fails twice in a row). Hence, if a school corrects the AYP failure for a group in the year immediately after it identifies the problem but another group fails to clear the bar, the school will still continue on the sanctions path.

Although most of these types of flexibility have been granted to states before, what is noteworthy is the large number of requests made and granted this year. Also ED did not rescind previously granted flexibility or add new regulations that

would make the achievement of AYP more difficult.

For an online summary of the revisions approved for your state, and a comparison with other states, see [www.nsba.org/decisionletters2005](http://www.nsba.org/decisionletters2005).

### Major Flaws Not Addressed

Although the flexibility provided by these revisions helped many schools meet AYP this year, the revisions did not address the fundamental flaws in the program—flaws that could undermine NCLB if they are not addressed. For example, in the long run, all schools will fail to make AYP, since the program ultimately requires 100 percent of the students tested to score proficient or above. Not only is this a statistical impossibility, but it discourages states from raising their standards or increasing the rigor of their tests.

Further, NCLB currently determines school quality on the basis of a single measure: Did a certain percentage of students meet the cut score? Certainly, cut

scores are an important indicator of success. But before labeling schools and students as failing, and then imposing costly sanctions, the progress schools are making with students—especially those who are substantially below grade level or who have special challenges—should also be considered. This failure to account for progress hurts the law's credibility.

In addition, ED has not sufficiently allowed states to incorporate key elements of their own accountability program into the AYP calculations. Some state accountability plans not only are equal to or better than the federal framework, but also may conflict with it. Further, they are likely to be more responsive to local needs and priorities.

On the bright side, ED is tackling the question of measuring student progress. Secretary Spellings recently convened a panel of advisors to study whether and how such growth models might be incorporated into the NCLB accountability system.

On November 18, she announced that ED would approve the use of growth models for the 2005-06 school year on a pilot basis in up to 10 states. Whether those states or any other state could be approved for the use of growth models the following year would depend on evaluation of those pilots.

### Rising Political Pressure

Several major organizations have taken significant steps calling for change in NCLB. NSBA, for example, developed a bill that would make more than 40 improvements to the program. Meanwhile, several state legislatures adopted formal measures, and Connecticut filed a lawsuit. In addition, the National Conference of State Legislators produced detailed recommendations in response to concerns over costs, conflicts with state programs, and various technical problems with AYP.

On Capitol Hill, however, White House and Congressional committee leaders voiced their opposition to legislative

## BILLS ON THE HILL

Several bills have been developed to improve NCLB. Here are three of the most comprehensive of those measures:

**The NSBA bill.** This proposal sets forth a wide range of solutions for:

1. Correcting problems in the calculation of AYP;
2. Targeting sanctions to students who actually need assistance;
3. Allowing waivers to accommodate high-quality state accountability systems, including the use of measures of progress;
4. Allowing for more individualized measures of success in calculating AYP for students with disabilities and limited English proficient students; and
5. Placing funding triggers in the program so that the most costly sanctions are not implemented in any year in which Congress does not increase funding by \$2.5 billion.

Last February some 900 local school board leaders took the NSBA bill to Capitol Hill, where it has served as a teaching tool. Despite NCLB's high name recognition in Congress, most members are not familiar with the legislation's basic shortcomings or the full range of issues. They tend to know one or two points that are current problems in their community. NSBA's lobbyists have visit-

ed more than 100 Congressional offices and will continue this information campaign to build support for needed improvements.

Meanwhile, several improvements that were advocated by NSBA for calculating AYP and applying sanctions have been reflected in ED's approval of state plan requests, as well as in its regulatory policies.

**The Allen bill.** Sen. George Allen (R-Va.), a former governor and possible presidential candidate, introduced S. 901 in April with the cosponsorship of key House Republican members from his state. The bill requires the secretary to grant waivers from NCLB's accountability provisions if a state can show that its own accountability program provides for AYP, even if its provisions differ from federal requirements. Secretary Spellings would have to grant the waiver regardless of her opinion of the merit of the state's approach. Although this bill is not expected to be acted upon, it did set a serious precedent by breaking ranks with the White House wish to keep the lid on NCLB legislation during this Congress.

**The Collins bill.** Unlike the Allen bill, which is based on a general waiver, this bill places greater emphasis on correct-

ing specific issues. Sen. Susan Collins (R-Maine) introduced S. 1690 in September with the cosponsorship of Sen. Olympia Snowe (R-Maine). The bill provides flexibility to the states to use measures of progress based on models developed by ED.

Like the NSBA bill, S. 1690 includes a decision-making role for ED; the Allen bill, on the other hand, gives ED no substantive involvement. But both S. 1690 and S. 901 address the conundrum of how to reach 100 percent proficiency in 2013-14. Allen would do it by eliminating the requirement as a state goal; Collins, by giving ED the discretion to extend the timeline to a subsequent year.

The Collins bill specifically stipulates that sanctions should be imposed only if AYP is not met by the same group for two consecutive years. It also provides greater flexibility in defining highly qualified teachers—with a special emphasis on the needs of small and rural school districts.

NSBA was in communication with both Senate offices during the development of their bills and wrote letters of support. Although neither bill addresses all the issues in NSBA's bill, each goes a long way toward improving NCLB.

amendments and discouraged members from introducing bills. This veil of silence has lifted somewhat, as several members have introduced legislation—including Republicans, who generally want to support the White House position. Other members have chosen to work more quietly through meetings with top ED officials to advocate for specific revisions for their states.

While escalating, the political pressure is not yet so urgent as to force the leaders of the House and Senate committees, on both sides of the political aisle, to take up

legislation this year. Nonetheless, state and local concerns over the anticipated rise in the number of schools that might not make AYP this year most likely influenced Secretary Spellings to provide more flexibility, including specific decisions to approve state plan revisions.

ED sets a high bar for making changes to NCLB's accountability system. Additionally, the department is caught between competing political forces. On the one hand are advocates who want the AYP measurement system to be as tough

on schools as possible. They regard even minor statistical refinements to state plans as a retreat from the program's basic mission if it means raising AYP scores.

On the other hand, many practitioners and state and local policymakers are becoming more frustrated over Washington's failure to address NCLB's flaws. They believe these flaws overidentify AYP failure, are without educational justification, and produce costly sanctions against schools, rather than targeting the students who actually need additional

## STATES SPEAK OUT

### Connecticut

In the first legal action brought by a state over NCLB, Connecticut has filed suit alleging that the federal government's failure to fully fund its testing mandate violates the NCLB provision that says states may not be required to spend their own funds to implement the act. The case has the support of the state's Republican governor, M. Jodi Rell.

At issue is Connecticut's desire to continue alternate-year testing at the elementary and middle school levels, rather than incur the costs of annual testing in grades three through eight, beginning this school year. The state also wants to continue assessing students with disabilities at their instructional level, rather than at grade level, as ED requires. Further, it wants to continue assessing students in English after three years rather than providing assessments in the students' native language after one year.

The state argues that its current approach is grounded in scientifically based research (as required by NCLB) and that ED's testing regime is not. By not exercising her statutory waiver authority under NCLB, the complaint says, Secretary Spellings has acted in an "arbitrary and capricious manner" in implementing NCLB and is in violation of the unfunded mandate provision. Further, the complaint alleges that the secretary's action violates the U.S. constitution's spending clause and the 10th Amendment.

Although the complaint does not specify the amount involved, a cost study estimates that Connecticut will spend \$41.8 million more to comply

with NCLB through 2008 than the amount the federal program is providing. The figure includes \$8 million for the additional cost of testing, but it does not cover the cost of local compliance—or the cost of summer school and other programs that are not mandated but may be needed in order for schools to make AYP.

### Utah

After considering withdrawing entirely from NCLB, the Utah legislature adopted a resolution (H.J.R. 3) and then passed legislation (H.B. 1001) making it clear that the state's accountability system (called U-Pass), which is based on progress, will be the means for assessing student achievement. Further, in resolving conflicts between the state program and NCLB, the legislation specifically directs school officials to give first priority to the state program, to minimize state expenditures on NCLB, to seek waivers, and to lobby Congress for relief, among other provisions.

As a result, while school officials are complying with AYP reporting and sanctions, NCLB does not have a great deal of support in Utah.

### Virginia

Like several other states, Virginia had a pre-existing rigorous accountability system (the Standards of Learning) that conflicts with NCLB. The state legislature considered but did not take final action on a measure that would seek a waiver from NCLB's requirements.

Virginia's state plan identifies those NCLB elements that the state objects to but is required to carry out. The state board went on record criticizing the delay between the submittal of its

requested plan revisions in January and ED's formal approval in August. During this time, state education leaders enlisted the support of members of Congress to influence ED to expedite the process. Although interim oral approvals were given, several key items tied to the state accountability program were not addressed or ultimately approved.

The state's advocacy was a likely factor in Sen. George Allen's interest in introducing his bill over the White House's objection.

### Texas

The Texas Education Agency sought to revise its accountability plan to substantially expand the number of students with disabilities whose scores of proficient or above on an alternative assessment could be counted toward meeting AYP. Specifically, Texas wanted to raise the number to 9 percent of all test takers, compared with ED's new maximum of 3 percent. The state also wanted to use below-grade assessments, which was contrary to ED's policy.

ED refused to approve the request, but the state did not give in. ED ultimately granted Texas a one year-waiver, allowing the state to count the scores of up to 5 percent of test takers on below-grade-level assessments in determining AYP. The waiver was granted to recognize transitional issues in applying recent changes in the state's testing program to students with disabilities.

In this instance, Texas—the home state of President Bush and Secretary Spellings—went much further than most states in saying that it would not acquiesce to ED's total rejection of its requested revision.

services. They see these flaws as eroding the credibility of the program and their own commitment to it.

### Conflicts with State Systems

For states that consider a school's progress in raising test scores a measure of its quality and success, NCLB's exclusive reliance on cut scores is generating increased concern. Early on, for example, North Carolina found that many Blue Ribbon Schools—nationally recognized for making progress to close the achievement gap—did not make AYP.

This year, 81 percent of California schools succeeded under the state's Academic Performance Index, compared to 64 percent last year, but only 56 percent made AYP, compared to 65 percent last year. These divergent results are due to the greater percentage of students who were required this year to score at proficient or above to make AYP. So, despite the progress schools are making under the state program, a net increase of 200 Title I schools in California became subject to costly federal sanctions this year—bringing the total to one-third of the state's 5,887 Title I schools.

Similarly, in Florida, two-thirds of schools were scored as A or B schools under the state's well-established A+ accountability system, but two-thirds did not make AYP under NCLB. In May, ED signaled that it would "provisionally" approve A and B schools that would not have otherwise met the federal requirement. As a result, two-thirds of Florida's schools made AYP, rather than one-third.

But would those provisionally approved schools that would have been subject to sanctions still be required to offer choice or supplemental services? ED didn't say, so local Florida educators exercised caution by offering all parents those options. They considered this the safest approach—even though they might incur costs that were not required or have to tell parents that the offer might be withdrawn.

ED finally answered the sanction question by withdrawing its initial approval for provisional AYP altogether. For many local educators, ED's handling of the issue created needless confusion and effort, adding to their frustration with the program.

### How States Are Responding

Given such conflicts, several states have sent ED and the Congress strong messages this year. For example, one state has filed suit, another has passed legislation, and in two others, state superintendents have

taken strong public stands. (See the sidebar on page 4.)

In other states, the action taken was more symbolic than confrontational. The Colorado legislature passed S.B. 50 last May, reinforcing the authority of local school boards to pass resolutions declining NCLB funding and, as a result, to be exempt from the law's sanctions. (Other requirements, such as AYP reporting or providing highly qualified teachers, still apply.)

Similarly, Illinois lawmakers enacted H.B. 3678, which basically supported the state board of education's desire to make specific changes to NCLB. These changes involved:

1. Using Individual Education Plans rather than state assessments to determine AYP for students with disabilities;
2. Invoking sanctions only if the same subgroup fails to make AYP for two consecutive years; and
3. Removing a school or school district from the watch list in the year it makes AYP rather than after two consecutive years.

However, under the terms of the legislation, these changes will not be implemented unless they receive ED's approval, which has not happened.

While most states are not in open rebellion—some prefer to negotiate rather than stir the political pot—it is likely that more and more will be willing to act. And that will cause ED and Congress to think more favorably about making needed improvements to NCLB.

### Politics: The Longer View

It is unclear whether the state plan revisions that ED granted this year will allay the growing concerns. The AYP bar will rise in some states next year, and all states will need to test and score all grades three through eight for AYP. As we enter a Congressional election year, the stage could be set for obtaining other needed improvements in 2006.

In the long run, administration leaders and members of Congress will need to ask themselves what they want the end result of NCLB to be. Do they want to say that a flawed program is overidentifying failure in an ever-growing number of schools—including the best ones? Or, do they want to say that NCLB has effectively spotlighted problems and is a valid measure of school improvement?

For President Bush, the answer will influence the legacy he leaves behind for his signature domestic initiative. For Congress, which has to stand for election in 2006 and 2008, it is a good guess that members will want to show voters that the program they voted for resulted in better education for the children in their district. Opinion polls regularly find that Americans hold their neighborhood schools in high regard. Few would want to take credit for a program that unfairly brands those schools as failures.

**Michael A. Resnick is associate executive director for NSBA's Advocacy and Issues Management Section.**

## Inside the Department of Education

### *What the 'new flexibility' means for your school district and your state*

**O**n April 7, Education Secretary Margaret Spellings convened a meeting of state education leaders and national organizations at George Washington's Mount Vernon—where President Bush had signed NCLB into law—to announce that the Department of Education would be taking “a new pathway.”

States, she said, would henceforth be given substantially more flexibility in the design of plans to implement the accountability requirements of NCLB. They could qualify for this new flexibility, she said, by

demonstrating that:

1. Students were learning;
2. Schools were being held accountable;
3. Parents had access to clear information and options for their students (that is, choice and supplemental services—including the services of faith-based organizations); and
4. Teacher quality was improving, including the equal availability of highly qualified teachers among poor and minority students.

Further, she said, policy decisions on allowing flexibility would be made on the

basis of scientifically proven information.

While there was early optimism over these developments, the actual details of this new approach were vague. For example, it was not clear exactly how well a state must be doing or improving in each of the four areas—or in toto. Nor was there any indication as to the areas of flexibility or the timetable involved.

Still, local officials were left with a general impression that some of their implementation problems would be resolved. The announcement produced a wait-and-see attitude about up-coming state plan revisions and new regulatory guidance.

Although details were not forthcoming, the announcement did have the political effect of temporarily diffusing the mounting pressure on ED and Congress to make NCLB more responsive to state policy and local realities.

### The Special Ed Example

The secretary's call for new flexibility was exemplified by one substantive announcement. For AYP purposes, she said, "eligible" states would be allowed to count a limited number of students with "persistent academic disabilities" (so-called gap students) who scored proficient or above on modified assessments. However, that number could not exceed 2 percent of all test takers from the general population. (This is in addition to a similar 1 percent cap on the number of students with "serious cognitive disabilities"

who can be scored on alternate assessments as making AYP).

Subsequently, on May 10, ED announced that the 2 percent cap would not be granted automatically—states and local school districts would have to become eligible first. To be eligible, one requirement was that the minimum group size (minimum "N") for students with disabilities could be no larger than the minimum "N" for other groups.

Quite a few states, including South Carolina and Minnesota, had made a special effort to obtain a larger minimum "N" for students with disabilities in their state plans. Now, to take advantage of the 2 percent flexibility option, those states would have to lower the "N" size for their disabilities group, which they weren't willing to do.

Further, once a state became eligible, its schools would also have to meet other conditions under one of two approaches selected by the state. One option allowed schools to use modified assessments to determine whether students falling within this 2 percent grouping were making AYP. These modified assessments, however, must have been in place under specific conditions for at least the two previous years, which eliminated many states.

Under the second option, schools could apply a formula that would boost the percentage of students with disabilities who could be counted as making AYP. But to be eligible for this option, a school could not have another group that did not make

AYP. This would be especially hard for large and diverse schools.

Despite the inability of some states to qualify, the 2 percent cap was still the most frequently granted request this year. Thirty states were approved, and most selected the second, or formula, option.

In the future, eligibility for the 2 percent cap will depend on a variety of factors. Most prominently, states must ensure that training is provided to IEP team members and that students are being properly identified and given modified assessments. The actual requirements for the provisions won't be clear until regulations are issued.

This new flexibility, in other words, will not come free. ED was specific as to which students would be included within the new 2 percent rule and which conditions states and local school systems would have to meet to qualify for this interim year. In other words, the new flexibility will be provided only if states can demonstrate they deserve it.

### The Use of Decision Letters

Although the details of NCLB have been widely debated, how decisions are made about the program has not received much attention.

The Bush administration and Congressional leaders have opposed legislative amendments—at least until a new Congress convenes in 2007. The reasons vary and include concerns that the program would be watered down and that previous compromises would unravel if the law were opened up to amendment.

Further, because of the complexities involved, they argue that many problems—especially those that are statistically based—are best resolved by the decision-making powers of Department of Education experts.

So, how does ED go about making program changes? The department can modify NCLB in three ways:

1. Issue regulations and guidelines that apply uniformly to all states;
2. Provide legislative and regulatory waivers to the states (so-called Section 9401 waivers);
3. Approve revisions to individual state plans.

ED has relied substantially on the third option—one-on-one decisions on states' requests to revise their accountability plans. Therefore, if local educators want to be effective advocates to improve the operation of NCLB at the state and federal levels, they need to understand how the

## WHAT SCHOOL BOARDS CAN DO

Local school boards can have a greater impact on the Education Department's decision-making process by working with their superintendents to take the following steps:

- Identify problems you face and needed revisions to your state plan.
- Review the revisions that ED has approved for other states for additional ideas.
- Work with your state school boards association to pursue a unified set of proposals with the state education department as early as possible before the state department submits its revision requests to ED.
- Work with your state school boards association to ensure there is a school board seat on the state panel of NCLB practitioners and that the panel

is actively involved with the state department in developing proposed revisions.

- Bring local publicity to the problems and solutions you offered the state.
- Identify the revisions that your state requests, the basis for those revisions, and the basis for not pursuing other revisions that you proposed.
- Bring your problems and solutions to your state legislators and ask for their help at the state and federal levels.
- Inform your representatives in Congress of the problems you are encountering, providing supporting data and local examples, so they will be better prepared to act legislatively on requests that your state department does not pursue or that ED does not grant.

process for revising state plans operates.

To meet ED's summer approval cycle, states are generally given an April 1 deadline for submitting proposed plan revisions. Although some states submit their requests months in advance of that deadline, formal decision letters are usually not issued until August. And some more complicated requests are not handled until September or later—after the school year has started.

To provide some guidance before the letters are issued, ED has given informal oral approvals or denials. Consequently, some revisions can be timed for the calculation of the current year's AYP results, which also are released in the summer. While oral or tentative approvals have been generally reliable, they may not address all of a state's issues and—as Florida's experience with provisional AYP approval suggests—they are not totally reliable.

In preparing their proposals, state officials frequently consult with one another and ask ED informally whether certain revisions would be favorably considered before making a formal request. As a result, the actual requests may not be as numerous or far reaching as the state's original list and tend to focus on specific

calculation issues. Some states widely publicize their requests, while others do not.

The time lag between making a request and receiving a final decision (or even an oral approval) has caused some state superintendents to enlist the support of their congressional delegation to put pressure on ED. No doubt ED has felt that pressure, but some congressional offices have taken the assurance that the state requests are being "actively considered" as a sign that they could back off—although the actual decisions may still not occur for several months.

So, why the delay? Since most requests involve easing the requirements for making AYP, ED wants to make sure they are justified on the merits rather than simply diminishing accountability for raising student achievement. And, since the details of each state accountability system can vary, similar requests can produce different results from state to state.

For these reasons, ED may also want to do a dry run to determine how a proposed revision would affect the number schools and school districts making AYP. It is likely that ED also looks at the broader pattern created by decisions on specific requests as a group before making individ-

ual decisions.

Clearly, much of the decision-making process operates below the radar and is not subject to the same public scrutiny or uniform application that is the case with legislation or regulation.

The benefit of this state-by-state process is that an individualized approach can prevent unintended consequences arising from the many variations among the states. It also allows for more experimentation in recognition of special circumstances, enabling ED to take more risk than would be possible with large-scale implementation changes.

There are, however, offsetting costs. The time this process takes—especially for revisions that have been well established in other states—needlessly frustrates local planning and programming. Further, the lack of transparency and local involvement in this secretive process only adds to the frustration and sense of alienation that many school districts feel with NCLB.

By working with their superintendents, their state school boards associations, and their state departments of education, however—through the steps outlined in the box on page 6—local school boards can pay a role in this process. ■

## The Public View

*The more people learn about NCLB, the less they support it*

When NCLB was first put in place, local educators were concerned over how any failure to make the AYP grade would be received by the public and how the media would portray a deficient performance in their schools.

For the most part, the public has not overreacted to failure to make AYP—especially when it is tied to specific subgroups of students with unique needs. Even in schools that have failed to make AYP for two consecutive years or more, parents' confidence remains high. Indeed, parents have transferred fewer than 1 percent of eligible students to other schools under the school choice option that the law makes available to them.

Media coverage of NCLB generally has been limited to one-time stories following mid-summer announcements of AYP

without sensationalizing success or failure. There could be several reasons for this matter-of-fact press coverage.

For one thing, NCLB is a complicated story to report. Reporters familiar with the program understand its flaws, and many seek explanations from local and state educators who can put the results in perspective. Having done so, they are less likely to write broadly negative articles about schools when groups with special academic challenges—such as students with disabilities or limited-English-proficient students—don't make AYP.

In addition, reporters are likely to give more attention and credence to their state's accountability program, which may provide different results.

Several public opinion polls, including the 37th annual Phi Delta Kappa/Gallup Poll, indicate that the more people learn

about NCLB, the less convinced they are that it provides the best method for judging the quality of a school.

Respondents to the poll believe in high standards and closing the achievement gap. However, they voice some of the same concerns that many educators have raised over:

1. Using a single method of measuring performance;
2. Not considering a school's progress in raising student scores;
3. Holding schools equally accountable for students with disabilities where it is unreasonable to do so; and
4. Using student transfers from school to school as a remedy.

The poll also shows that 48 percent of the public and 57 percent of parents remain confident in their own community schools, awarding their local schools grades of A or B. Only 14 percent and 13 percent, respectively, would grade their own schools D or F.

People are less confident about schools elsewhere across the nation, however. It is noteworthy that when people shift from ranking their own neighborhood schools

to ranking schools in general—schools they don't know firsthand—both the public and parents overwhelmingly give those schools grades of C, not D or F.

Several conclusions can be drawn. First, while every school community is unique, neither the public nor the media is likely to overreact to negative AYP results, provided they have adequate information.

Second, parents, the public in general, and the media appear to agree that NCLB has flaws. Local school leaders may wish

to seek the support of these high-profile groups to influence their members of Congress to make needed legislative changes at the federal level. They also may wish to influence their own state leaders to press ED for locally needed state plan revisions and waivers.

Third, NCLB's lack of resonance with the public should not be confused with public lack of interest in addressing weaknesses in student achievement—especially among specific subgroups. The public wants the achievement gap

closed, and a portion of the public—albeit a declining minority—does support NCLB.

Finally, public perceptions can change. As time goes on and the AYP bar continues to rise toward 100 percent, failure by more subgroups and whole schools to make the grade could change the media's reporting and erode confidence in the public schools. Here again, having a communication plan to build the community's firsthand knowledge of the schools is essential. ■

## NSBA'S VIEW: CHANGES CAN BRING SUCCESS

No Child Left Behind has transformed the efforts of many local school boards and educators to close the achievement gap into a universal and urgent mission. To meet the laudatory goal of the law, *change* is the operative word driving the priorities, programming, and expectations of schools across the nation.

However, the broad-based inculcation of change in any institution, including our nation's school systems, depends not only on the merits of the change but the process by which it is managed. It matters how well the people who are actually responsible for implementing change are supported and brought along. This is especially true when that change is mandated from above and involves tough sanctions for failure—as was the case with No Child Left Behind.

When NCLB was enacted, school board members were skeptical that its complexity and rigidity might not be workable. Some were concerned that aspects of the program were not educationally defensible. Nonetheless, they supported the goal with the hope, if not the expectation, that Congress and the Department of Education would smooth out the program's rough edges.

At the same time, many board members appreciated the law's new data requirements, which spotlighted schools and groups of students that weren't achieving at adequate levels. That data has enabled many school boards to improve how they govern, including establishing goals, priorities, and policies to close the achievement gap while raising student performance overall.

Consequently, as their operational concerns came to fruition, school boards took a position of patient expectation that the problems would be fixed.

That patience was exhibited in annual resolutions adopted by NSBA's Delegate Assembly beginning in 2003, calling for specific improvements rather than opposing the program or its goals. Patience was also exhibited by the problem-solving direction of the bill that NSBA took to the Congress at the beginning of this year.

Now, nearly four years after the law was enacted, too many flaws remain unresolved—and are looming higher over the horizon. To its credit, ED has approved numerous state plan changes, but many of these improvements only nibbled around the edges. Further, the revision process operating between ED and state departments has invited little local involvement. ED would do well to recognize the level of alienation and frustration that exists at the local level—not just with the program's flaws and inadequate funding, but in how local educators have been dismissed.

Meanwhile, the administration does not want to pursue legislative corrections until 2007—which, as a practical matter, means 2008. On the funding side, increases for Title I, the main source of support for NCLB, have totally deteriorated. In NCLB's first funding cycle, Title I was increased by 18 percent, which then dropped progressively to just 3.6 percent last year, and now to less than 1 percent in the appropriations likely to be made for the next school year.

While the federal government never promised to pay for the full cost of NCLB, it has appropriated less than 60 percent—or about \$10 billion less—for next year than the law authorized to be paid when Congress and the president reached the final funding agreements needed to pass the law.

It is not surprising that many school boards view Washington's reaction to their substantive and financial concerns as minimal to say the least and designed to delay needed action.

Because NCLB was enacted as a mandate, ED should have seized the opportunity to win over local school boards and local educators at the outset by listening to and responding to their legitimate concerns. Rather, it chose to stay aloof and even hostile in those first years.

Fortunately, the actions taken by Secretary Spellings since her arrival earlier this year would indicate that it may not be too late to heighten local educators' commitment to the program. Hopefully, her "new flexibility" will extend to solving significant design issues that are likely to cause the program to fall under its own weight if not addressed, as well as building on the promising calculation refinements that ED is now recognizing. And, hopefully, the needed design solutions, such as allowing states to use appropriate growth models in determining Adequate Yearly Progress, will be approved for general implementation in 2006-07.

We are also hopeful that as Secretary Spellings makes regulatory changes and prepares her agenda for next year, she will provide the leadership within ED to meaningfully include local school leaders whose enthusiasm for implementing NCLB is as important as the mandate itself.

Local educators across the nation are committed to closing the achievement gap. By tending to the concerns that we have described, ED and the Congress can empower their success—along with the success of NCLB—to the ultimate benefit of the children served.