



**National School Boards Association**  
**Initial Comments and Recommendations on the**  
**Miller-McKeon Discussion Draft to Amend Title I of the**  
**Elementary and Secondary Education Act (ESEA)**  
*Revised September 7, 2007*

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The National School Boards Association (NSBA), representing over 95,000 local school board members across the nation is pleased to respond to your request for comments regarding the Miller-McKeon Discussion Draft to amend Title I of Elementary and Secondary Education Act (ESEA).

**PART I – GENERAL COMMENTS**

The National School Boards Association (NSBA) is pleased with the direction that you have taken by shifting the emphasis of the law away from punitive sanctions and a “one-size-fits-all” approach and moving toward an approach that recognizes the need for greater flexibility and increased options for states and local school districts in improving academic achievement for all students. We are particularly pleased that the draft allows for growth models and indexing systems, multiple measures of academic achievement, and provides several key reforms regarding progress measures for students with disabilities and English Language Learners (ELL).

Before addressing our specific concerns with certain provisions in the draft, we have several general comments. First, we note that the draft adds significant process, data collection and reporting requirements for local school districts. While these new requirements may technically refine specific shortcomings in the current program, we have very serious reservations that the sum total of these requirements will substantially complicate a general understanding of the law and its implementation at the local level.

That is, the merits of specific provisions aside, priorities will need to be set as to where additional processes, data collection, and reporting are absolutely necessary—including separating out what’s really going to be needed or used by local, state, and federal personnel—rather than what may meet a theoretical ideal or be “nice to know”. We say this on behalf of rural and small school districts with only a few staff to administer the entire system as well as larger systems for which these new requirements will be added for tens of thousands of students. As previously stated, NSBA is an organization that values data and is committed to data driven decision-making.

**OFFICE OF ADVOCACY**

Finally, given the magnitude of the bill and the timeframe for our response, the initial comments presented in this paper, with few exceptions, do not address the improvements to the law that we support. Rather, our comments focus only on the provisions that need to be modified or the proposed solutions to operational issues that we believe are either incomplete or unworkable.

Our concern that the system will be overloaded by increased data and reporting requirements is heightened by the other numerous changes that this bill will bring. For example, as states adopt growth models, design new standards and assessments focused on workplace/college readiness and put new intervention activities in place—to name a few—local school systems will need to make significant adjustments to their curriculum, instructional materials, teacher policies and development, among others.

In short, we are concerned that the overall impact of Title I as drafted will not stand the test of practical implementation. More attention needs to be given to the sum total of what the bill will be doing at the local level, how the parts are sequenced, and whether there is too much for local school personnel to sustain and do well over a compressed period of time while being forced to eliminate other priorities—especially given the lack of federal funds to support the expansion of requirements the bill is requiring.

We believe that if these concerns are not appropriately addressed in the final bill, there would continue to be major obstacles to full implementation of the law, particularly for local school districts. Therefore, we urge you to keep this over-arching concern in mind as you review our comments on the specifics.

#### **A. Data Collection and Reporting Requirements**

The draft identifies increased data collection and reporting requirements for states, school districts and schools. While each requirement can certainly be justified, when we view the comprehensive requirements, we question whether school, school districts or the states will have the capacity to meet these requirements. As you are aware, over the past decade, there has been tremendous pressure to reduce administrative staff at both the district and school level and to reallocate such resources to the classroom. Most states and school districts have little if any additional capacity to take on these increased requirements, and would need additional time to both conduct internal reorganizations and to seek additional resources through their state and local legislative/budgetary processes. Therefore, we urge you to reassess the total requirements for data collection and reporting, to prioritize those requirements that are absolutely necessary, and to incorporate appropriate transition timeframes for states and school districts to make the necessary personnel and fiscal adjustments. Additionally, we urge you to reassess the capacity of the U.S. Department of Education to be able to effectively and efficiently respond to the significantly increased number of reports, plans and documents that will now be required to be submitted from states and local school districts. It is our belief that if all the proposed reporting requirements were imposed, states and school districts would be overwhelmed, resulting in significant delays or only cursory reviews at the state or federal level – further raising the questions as to whether such comprehensive reporting and data collection are absolutely necessary. NSBA acknowledges the need for effective planning, adequate data collection, and appropriate reporting; however, we must all be concerned with the effective use of our very limited fiscal and personnel resources.

Additionally, one could imagine a public backlash against the schools and/or Congress if parents and taxpayers believe that the reauthorized law requires schools to spend more time and more resources collecting and reporting unnecessary information instead of “teaching our children.” Such a backlash would undermine the public support needed to make the goals of NCLB a reality.

#### **B. Access to Highly Qualified Teachers**

The draft attempts to retain its emphasis on recruiting and retaining highly qualified teachers by modifying the language to require that students have access to highly qualified teachers. While the intent to ensure that no student is exposed to less than highly qualified teachers for no more than two consecutive years is worthy, the impact on operations would be chaotic. The real issue, well-recognized, is that such requirements would still be subjected to negotiated agreements in many states. Therefore, we urge you to reconsider this proposed language, and to establish requirements that offer greater flexibility in view of the current recruitment and retention challenges facing local school districts, particularly low-performing and rural school districts, and as regards teachers of multiple core academic subjects, especially special education teachers.

#### **C. Federal Funding**

Finally, adequate funding at the federal, state and local levels is essential to achieving the goals and objectives of the law. Regarding federal funding, the FY2006 and FY2007 appropriations have been far less than needed, and the FY2008 pending appropriations appear not to offer any substantial relief. States continue to under-fund educational services for those schools and students most in need, and many local communities are unable to cover the shortages. NSBA recognizes the complexity of the appropriations process. However, in the absence of any guarantees of the federal funding that is needed, the final bill needs to include provisions that provide some relief for states and school districts in the event adequate federal funding is not appropriated.

In summary, while NSBA is pleased with the direction that you have taken in redesigning the framework and providing greater flexibility for local school districts in achieving the goals of the federal law, there remains significant issues that we have identified that need to be fully addressed in order to preclude additional obstacles to full implementation.

## **PART II – SPECIFIC COMMENTS**

### **1. Adequate Yearly Progress Demographic Groups**

#### **Page 30, lines 7-24; Page 31, lines 1-16**

This section establishes requirements to measure achievement of all public school students and specific demographic groups in determining adequate yearly progress (AYP).

**Recommendation:** NSBA supports the concept of disaggregated data and the need to monitor the academic performance of demographic groups within the school or school district to ensure that additional instructional supports are targeted to those most in need. However, as drafted, schools and school districts with enrollments of students belonging to more than one demographic group are adversely affected since such students would be over-represented in determining AYP for the entire school or entire school district. Therefore,

NSBA recommends that in calculating AYP, students identified in more than one group may be represented in the count for each group as an equal fraction totaling one student. **This rule should be applied when calculating graduation rates as well.**

## **2. System of Multiple Indicators**

### **Pages 32-42, lines 1-9**

This section allows states to use more than a single test for accountability programs and establishes a framework for calculating AYP using additional measures.

***Recommendation:*** While the concept of multiple indicators should be retained, we question the complexity of the system established in the bill. We are concerned that the complexity will not adequately support school officials in their efforts to make strategic and focused decisions to meet AYP. We are also concerned that the data systems and local staff capacity does not exist to effectively work with this system.

Generally the multiple indicators are based on the annual growth in the percentage of students, by each student group, for each indicator. The annual growth rate needed to be counted for AYP would be re-set each year based on those school districts in the state that showed the greatest rate of growth in the previous year for a particular indicator. Points are awarded for totally meeting the growth rate or ultimate target for an indicator—with partial point credit for some indicators. Apart from the complexity in managing and strategically using this system, we question the extent to which schools will be able to adequately benefit from this option to help offset the flaws in the AYP system. Further, the use of additional indicators must be applied statewide which may not be appropriate for all LEAs.

## **3. Growth and Indexing**

### **Page 42, lines 10-25; Pages 44-46**

In supporting the incorporation of growth models and indexing (at state discretion) in the bill, clarification should be added so that maximum coordination between the federal framework and the state's own accountability objectives can be met.

***Recommendation:*** The bill should state that the state should be accorded maximum flexibility to determine how various components of their system would interact with each other in determining AYP.

## **4. Safe Harbor**

### **Page 49, lines 7-25**

The bill continues the current safe harbor provision at 10%.

***Recommendation:*** By and large this threshold is too high to make a difference as an alternative way of making AYP. As an alternative, a more reasonable measure of progress should be set at 5%. This flexibility would permit demographic groups to demonstrate progress and such recognition would provide more understandable and more manageable goals for the students in the groups. At 10%, the current Safe Harbor provision has little impact – and where it can be used, it is frequently based on a confidence interval which is beyond the comprehension of most educators.

## 5. Test Participation Rates

### Page 50, lines 1-12

The draft bill continues an erroneous assumption about participation rates. While the requirement of a minimum participation rate is absolutely necessary to ensure the integrity of AYP results, participation rate by itself is not a measure of the quality of a school's education program. Rather, the performance of its students is what counts. If a school has a sufficient percentage of students scoring proficient to make AYP after assigning non-proficient scores to the absent students, the school should not be identified as not making AYP just because it does not meet the participation requirements.

**Recommendation:** NSBA recommends that the specific requirement for 95% participation be adjusted to a range of 90% to 95%. Further NSBA recommends that students not participating in the assessment and determined not to be eligible for exemptions should be assigned a "below basic" score. In such cases, when calculating AYP, the school would not be doubly penalized since the below basic score would have been incorporated in the calculation.

## 6. Disaggregation of Data for Groups: "N" Size

### Page 53, lines 9-25

The discussion draft fixes the "N" size at 30—with possible state justification for 40.

**Recommendation:** The "N" size is a statistical concept for determining the number of test takers needed to produce a reliable test score. However, the current law and proposed draft expands the use of the "N" size to also establish the baseline for entire school and school district performance. For larger schools and school districts using an "N" size of 30, the performance of the entire school or school district could be determined by the failure of as few as two students to participate in the testing or failing to meet the intermediate goals.

Under current practice, states that have large schools and school districts—including California, Massachusetts, Texas, Florida, and Georgia can use a higher "N" size when a group constitutes a minimal percentage of a school or school district's enrollment. The objective is to provide a little more leeway when the proportion of students in a group in a large and diverse school district is too small to warrant negative labels or invoking certain interventions. Even with the changes that the bill makes to the current sanctions process, current leeway should be contained.

Therefore, NSBA recommends that for the purposes of determining AYP, the schools and school districts should have the authority to establish "N" sizes based on a percentage of 35% of that school's or school district's enrollment.

## 7. Students with Disabilities

### Page 54, lines 18-25; Pages 55-59, lines 1-10

The bill codifies the 1% and 2% allowances regarding standards and assessments for students defined as having serious cognitive disabilities or persistent academic disabilities.

The bill allows local districts to exceed the 2% cap by raising it by as much as 1%. However, to do so they must first provide "evidence" that students are not academically behind as a result of factors such as the qualification of teachers or the lack of research based instruction. This raises

questions which could make this provision substantially inoperable. For example, how far back in the student’s education must that evidence be provided? How will that evidence be assembled for students moving in from other districts or states?

**Recommendation:** The better approach would be to eliminate those specific definitions and allow the IEP team to evaluate students, consistent with IDEA, to determine whether either of these approaches would be appropriate—subject to the cap. In this way, students will not fall through the cracks because their specific disability does not fit within a standard definition.

## **8. Approval for increases beyond 1% in calculating AYP (Students with Disabilities)**

**Page 57, lines 15-25; Pages 58-59, lines 1-10**

This section establishes extensive data requirements to secure approvals for increases each year, and only provides an option for an additional 1% flexibility.

**Recommendation:** Eliminate the requirement for “evidence” in the student’s background and rely on the IEP team’s evaluation of whether the student has a disability meriting special treatment. Further, do not sunset the 1% provision but authorize a study to report back to Congress after three years of implementation to determine whether it needs to be terminated or modified.

## **9. Application Approval (Students with Disabilities)**

**Page 59, lines 11-25; Page 60, lines 1-10**

This section requires local school districts to secure approval from the state and the federal government.

**Recommendation:** With 14,500 school systems including urban districts (for which “evidence” for several thousand students each might need to be assembled) how will that approval occur within 30 days at each level? The draft creates more bureaucracy and additional paperwork regarding students with disabilities, which stands in stark contrast to the goal of IDEA to reduce these administrative burdens.

## **10. Academic Assessments**

**Pages 63-80**

This section establishes requirements for Academic Assessments, but does not allow scores of proficient or above on state assessments to be counted for AYP if they are administered after the official test dates.

**Recommendation:** NSBA recommends that the higher score achieved by a student who is assessed more than once prior to the beginning of the next school year may be used as the sole score for that student for the purposes of determining AYP.

## **11. Academic Assessments of English Language Proficiency**

**Page 83, lines 19-25; Pages 84-85**

This section establishes requirements for plans related to English Language Learners. The bill does not address the reality that students from other countries frequently not only have language barriers to overcome, but also, as a result of deficiencies in their native country’s education system, may be years behind academically even in their native language. Yet, the bill creates the

false expectations that all of these students ultimately will score at the proficient level after their second year in American schools. The bill tries to address this concern by allowing for an ELL-specific index approach for two years. Yet, what happens after two years as new students continue to arrive?

While this problem could be helped through the use of growth models, many states are years away from that option. Moreover, the growth models (and index systems) that some states may select for all students may not meet the way in which growth targets should be set for these ELL children in terms of their sense of educational success and the accountability of the school system.

**Recommendation:** Allow school officials a three-year window on a case-by-case basis to set individual (not formula driven) growth targets for all students in counting ELL students for AYP.

## **12. Local Plan Provisions**

### **Page 123, lines 18-24**

This section requires an assurance that the LEA will participate, if selected, in the state National Assessment of Educational Progress in 4<sup>th</sup> and 8<sup>th</sup> grade reading or language arts, and mathematics carried out under Section 303(b)(2) of the National Assessment of Educational Progress Authorization Act.

**Recommendation:** NSBA supports participation of “selected” LEAs if for the purposes of gathering “sample data” for the state. However, NSBA is opposed if the intent is for NAEP to be able to collect LEA data nationwide for other purposes. Therefore, NSBA recommends that language is added that specifically clarifies the use of the data for state sampling.

## **13. Section 1114. School-Wide Programs**

### **Page 157, lines 19-25**

This section requires all school-wide programs for children below grade four to include early childhood education teams of staff within such schools.

**Recommendation:** In some school districts, grade levels may not be organized along traditional grade levels. For example, some schools operate K-3 schools, with grades 4-6 at different schools; and some districts may operate single grade schools. Under such schools without K-3 grade levels, there should not be a requirement to establish early childhood education teams. Further, there should be some flexibility where the consortia of schools should be able to be supported by one early childhood education team, particularly in school districts where the curricula, instructional methodology and materials are selected centrally.

## **14. Section 1115. Targeted Assistance Schools**

### **Page 170, lines 1- 12**

This section (and current law) provides that a portion of these funds be used as a last resort to provide comprehensive services such as basic medical equipment, compensation of a coordinator, and professional development necessary to assist teachers, instructional support personnel, other staff, and parents in identifying and meeting the comprehensive needs of eligible children.

**Recommendation:** Although the language includes the phrase “last resort”, in the absence of funding by others agencies, local school districts could be forced to cover the costs, requiring already limited funding to be reallocated. NSBA recommends that line 3 be changed to read “...part may be used to facilitate the development of formal agreements among major stakeholders.”

**15. Section 1116. School and Local Educational Agency Improvement and Assistance  
Use of Additional Academic Assessments/Other Indicators  
Page 171, lines 16-24**

This section allows LEAs to use additional academic assessments or other indicators, except that such indicators may not be used if by using such indicators the number of schools that would otherwise be subject to school improvement and assistance or redesign would be reduced.

**Recommendation:** Continuing to encourage the use of other academic indicators without allowing such indicators to have any importance in the overall assessment of performance does not make sense, particularly if such additional indicators are endorsed by the state. Such indicators when approved by the state should impact overall performance ratings. NSBA recommends deleting lines 16-24.

**16. School Designations  
Page 180, lines 11-24**

This section designates schools not making adequate yearly progress for two consecutive years as either High Priority Schools or Priority Schools using pre-determined factors outlined in the law.

**Recommendation:** Given that the draft language defines the criteria for designation, which would be uniform across the nation, there is no need for the federal government to determine the specific “label.” Just as the states are permitted to apply to the Secretary to use state-developed process for designating schools (Page 182, lines 9-20), such states should have the option to determine the specific “label” for such schools, since other names may be more consistent with state accountability systems. Further, NSBA recommends that states be given the option to use the “suggested” labels of Priority and High Priority or to use other designations as determined appropriate within the state.

**17. Plan Approved During School Year  
Page 190, lines 15-18**

This section provides that if a plan is not approved prior to the beginning of a school year, such a plan shall be implemented immediately upon approval.

**Recommendation:** In such cases, it is difficult to determine whether immediate implementation is possible without disruption to the school or reallocation of staff. Therefore, NSBA recommends that line 18 be amended by adding, “...to the extent practicable and subject to the approval of the LEA.”

**18. Provisions of Assistance  
Page 192, lines 21-25**

This section provides for technical assistance to be provided by the LEA in conjunction with technical assistance providers and instructional experts from other LEAs, educational service

agencies and regional educational laboratories and comprehensive assistance centers, and other agencies and institutions.

**Recommendation:** Although not specifically prohibited, NSBA recommends that clarification is added regarding the use of for-profit organizations and the appropriate entity that would be financially responsible.

## **19. General Requirements. Identification**

### **Page 193, lines 21-24**

This section establishes criteria for the identification for school improvement and assistance; that is, not making AYP for two consecutive years for the same group of students in the same subject.

**Recommendation:** NSBA supports the proposed criteria, since this provides a more reasonable approach in the identification of schools. By requiring at least a two-year pattern of low performance of a specific group, limited resources can be strategically targeted and the number of schools identified would more accurately reflect the needs of the students.

## **20. School Improvement and Assistance Measures**

### **Page 195, lines 22-25; Page 196, lines 1-15**

This section identifies those areas that must be addressed in the implementation of a plan. Specifically, the school must address any necessary changes to the school's teacher assignments in order to ensure that no student in the school is taught the same core academic subject for two consecutive years by a novice or out-of-field teacher and that students in groups not making AYP are not disproportionately taught by out-of-field or novice teachers or, in such cases in which there are not enough experienced teachers, to include such mentoring and induction for all new teachers.

**Recommendation:** NSBA supports the goal of ensuring that low performing students have access to highly qualified teachers. However, changes in teacher assignments may not be an option for the principal due to negotiated agreements. Therefore, NSBA recommends that Page 195, line 24 is amended to read, "...school's teacher's assignments, if so authorized, in order..."

## **21. Specific Measures**

### **Page 199, lines 8-20**

This section identifies a list of specific measures, some mandated, and some optional that must be taken by schools identified as a Priority School.

**Recommendation:** NSBA recommends that this proscriptive language be deleted from the statute, and incorporated in guidance that could be released by the Secretary. The broad range of options is appreciated but the level of detail is far too specific.

## **22. Required Expenditures for School Improvement and Assistance Measures**

### **Page 210, lines 13-25**

This section establishes minimum expenditures that LEAs must set aside to support school improvement and assistance measures: In the first year, 20% of the LEA's annual allocation under the subpart or an amount equal to 20% of each identified school's allocation under Section 1113 allocated for SES and transportation costs; and 1% of parent outreach, unless the states

approve a lesser amount. Thereafter, the LEA must set aside 10% of the annual allocation or an amount equal to 10% of each identified school's allocation.

**Recommendation:** NSBA recommends that the state be authorized to establish a date, not later than December 15, to permit school districts to spend portions of their set-asides from Title I not needed for such services with appropriate parent notification. This would allow school districts to reallocate funds that are not longer needed for public school choice and SES in time to support other Title I initiatives for eligible students within the district. Additionally, NSBA recommends that this provision is amended to provide for some relief or suspension of requirements in the event adequate federal funds are not allocated.

### **23. Supplemental Educational Services (SES) – LEA Responsibilities (Lease/Rental Rates)** **Page 213, Lines 9-25; Page 214, Lines 1-25; Page 215, lines 1-5**

This section identifies LEA responsibilities in implementing SES options. Among the requirements, LEAs must inform parents of the demonstrated effectiveness of each such provider (Page 214, lines 7-8); not disclose to the public the identify of any student who is eligible for services without written permission of the parents of the student (Page 214, lines 16-20); allow the provider to operate on site in the school or schools on the same basis and terms as are available to other groups that seek access to the school building, if so desired by the LEA.

**Recommendation:** NSBA believes that the requirement to notify parents of the demonstrated effectiveness should be deleted. LEAs have no way to assess the effectiveness of the SES provider and could be subject to litigation if challenged by the provider. The only action that the LEA could take would be to provide data released by the provider or to provide comments regarding its own assessment of the provider (as in any recommendation or endorsement of products) subject to LEA legal counsel and advice. Therefore NSBA recommends that this requirement is deleted.

Secondly, since supplemental educational services are only available to eligible students based on poverty guidelines, the mere listing of eligible students could be interpreted as disclosure. NSBA recommends that this language is modified or deleted so as not to result in misinterpretations or subsequent litigation.

Finally, although the language to permit use of facilities at the same rate is modified based on the desire of the LEA, such language should be deleted. States and school districts have different policies regarding use of facilities, and in many cases have no control over the fees. Additionally, NSBA would not support “for-profit” providers having access to school facilities at the same rate as “non-profit” and other governmental agencies.

### **24. State Educational Agency (SEA) Responsibilities** **Page 216, lines 19-24**

This section outlines SEA responsibilities regarding implementation of supplemental educational services. Among the requirements, SEAs must promote maximum participation by qualified SES providers to ensure that parents have a wide range of choices; and at its discretion, provide technical assistance to providers.

**Recommendation:** NSBA recommends that these two requirements are deleted. The SEA should have no responsibility to promote potential contractors, and should not provide technical assistance unless fully compensated. Even then, such service could be perceived as a “conflict of interest.”

**25. Criteria for Providers**

**Page 219, lines 1-24; Page 220, lines 1-23**

This section establishes criteria for SES providers.

**Recommendation:** NSBA fully endorses the proposed criteria, and recommends adding on Page 219, line 9: “and that instructors of core academic subjects meet the highly qualified teacher requirements of similar public school teachers.”

**26. Amounts for Supplemental Services**

**Page 221, lines 1-14**

This section establishes methods for determining SES set asides, and provides an option for the LEA to pay the actual costs of services received.

**Recommendation:** NSBA recommends that the costs of services are limited to the formula proposed in lines 6-10.

**27. Amounts for Special Populations (Students with Disabilities, English Language Learners, and students eligible for assistance under Section 6211 or 6221)**

**Page 221, lines 14-24**

This section provides for amounts equal to 200 percent of the costs allocated for other students.

**Recommendation:** NSBA opposes this arbitrary determination. All costs should be justified. As a general rule, we have been guided by a cost equal to 40% greater than the cost of regular education students. Since such costs should be market-driven, rather than to set a 200% arbitrary cap, language should be added to permit SEAs to authorize costs that exceed the pre-determined caps for any student, since such programs should be tailored to the individual needs of students, and states should be required to supplement any additional costs.

**28. Funds Provided by the State Educational Agency/Special Rule**

**Page 223, lines 18-25**

This section requires the LEA to assume responsibilities in the management of supplemental educational service providers that the state would normally be expected to perform if state legislatures prohibit states from performing such duties.

**Recommendation:** NSBA opposes this provision as drafted. NSBA recommends that under such circumstances, LEAs should be allowed to carry out such responsibilities only as long as the LEA receives specific funding from the state or the federal government to carry out such responsibilities.

## **29. Local Educational Agency Reservation of Provider Payments**

### **Page 225, lines 14-25**

This section requires LEAs to reserve 1% payable to providers and remit such amount to the state.

*Recommendation:* NSBA opposes this provision. If the federal government believes the SEAs should receive additional funding to support these responsibilities, the law should provide for such allocations, and not require LEAs that already have shortfalls (federal and state) to supplement state requirements.

## **30. Local Educational Agency Improvement and Assistance Plan and Measures**

### **Pages 233-245**

This section establishes the requirements for the LEA Improvement and Assistance Plan and Measures.

*Recommendation:* NSBA urges you to reconsider these requirements. The requirement is very comprehensive and reflects the kind of analysis that is necessary to initiate meaningful and effective actions. However, from an operational perspective, such an analysis would take far longer than envisioned by the drafters of these requirements. This exhaustive list appears to reflect every possible fact that could be considered in moving forward. However, such a comprehensive requirement is not realistic and probably not workable, particularly for larger school districts or rural districts that have either been neglected for extended periods of time, or simply lack the professional resources needed to undertake such an effort.

NSBA urges you to either develop the list as options to consider in developing a plan or to identify perhaps not more than 10 areas that you believe are absolutely necessary to ensure aggressive academic improvements.

## **31. State Educational Agency Responsibility**

### **Page 246, lines 8-25 through Page 250**

This section establishes responsibilities for SEAs in providing technical assistance, implementing measures, conducting hearings, and public notification.

*Recommendation:* NSBA supports the general framework for the SEA support to LEAs. However, the level of technical assistance required to be performed by the SEA would vary substantially. Realistically, most SEAs are not structured to provide this level of technical assistance to the large numbers of local school districts within the state. Even when the numbers of school districts are manageable, SEAs may lack the necessary competence to address the broad range of challenges facing these school districts. Therefore, NSBA urges you to reconsider this section, and to provide options for SEAs in order that they begin to develop the skills needed to ultimately address such broad ranges of issues. Perhaps, the law should provide additional competitive grants to assist SEAs in developing such skills, before mandating action that can not be initiated.

## **32. Section 1117. School Support Recognition of Success and Bringing Success to Scale**

### **Pages 257-269**

This section establishes a system of support and recognition for LEAs and schools that have made significant progress.

**Recommendation:** This very comprehensive program appears to be designed such that only the “perfect” schools or school districts would be recognized. Rather, the intent of the recognition program should be to provide incentives for those struggling schools and school districts that are making worthy improvements. At these earlier stages, it may be more important to have thousands of schools recognized for making worthy improvements than to have a very limited number of schools recognized. Under this approach, those schools and school districts that would be recognized would be those already in line to make the necessary gains.

NSBA urges you to consider re-working this section so as not to promote disincentives for those schools and school districts that we are trying to help. We concur that recognition for high performing schools and school districts is needed, but we believe the rewards program should be so structured as to provide incentives for worthy achievements as well.

### **33. Section 1118. Parental Involvement. Reservation**

**Pages 272 – 273**

This section requires LEAs to reserve not less than 1% of their allocation under this subpart, unless the amount is \$5,000 or less.

**Recommendation:** NSBA recognizes the need for federal funds to support parental involvement. However, given the lack of adequate Federal Title I funding, this provision should be amended to provide relief in the event Title I funds are not significantly increased.

### **34. School Parental Involvement Policy**

**Page 273, lines 12-24**

This section requires each school served under this part to develop a written parental involvement policy, and to notify parents of the policy.

**Recommendation:** NSBA recommends deletion of this provision, as LEAs establish district-wide policies rather than to permit each school to have separate policies that could be inconsistent. Page 274, lines 5-9, require LEAs to amend their policies to meet this requirement. However, this approach is inconsistent with the management operations of the school district. Rather than to require LEAs to amend their policies, the federal law should recognize that LEAs have the primary responsibility for policy development not individual schools.

### **35. Policy Involvement**

**Page 274, lines 18-25; Page 276, lines 1-10**

This section establishes a process for parent involvement at each school.

**Recommendation:** While NSBA supports strong parent involvement, NSBA strongly opposes this level of detail within federal law. LEAs should be held accountable for policy development and implementation aligned with their unique business practices and culture. Therefore, NSBA recommends that this entire expanded section be re-drafted to establish responsibility at the school district level, and to offer options for consideration by the LEA rather than to mandate such specific requirements. As you are aware, many schools have little administrative support beyond the principal and a single administrative support person.

Such proposed mandates could not be implemented without additional staff resources or the reallocation of instructional personnel, neither of which is considered acceptable.

### **36. Shared Responsibilities for Improved Student Academic Achievement**

**Page 276, lines 1-25; Page 277**

This section establishes school-parent compacts that outline how parents, the entire school staff, and students will share the responsibility for improved academic achievement.

***Recommendation:*** NSBA supports the option for such school-parent compacts, but we re-emphasize the fact that any such option should be under the **school district** policies not school level policies.

### **37. Building Capacity for Involvement**

**Page 278-280; Page 281, lines 1-6**

This section establishes requirements for LEAs in implementing stronger parental involvement programs.

***Recommendation:*** NSBA supports strong parent involvement. However, NSBA recommends that you re-work this section as options for LEAs to consider in strengthening parent involvement programs rather than establishing mandates unless such requirements will be fully funded by the federal government. School districts, while supporting parent involvement programs, would need to establish some priorities in targeting parents, and the specific initiatives would need to be tailored to the targeted parent groups. As drafted, this section assumes a one-size fits-all approach across the entire school/school district, and assumes that there would be unlimited resources available. Therefore, NSBA recommends that, in the absence of adequate federal funding, these activities are identified as focused priority areas to consider.

### **38. Section 1120. Participation of Children Enrolled in Private Schools**

**Pages 290-298, lines 1-19**

This section establishes requirements for LEAs regarding participation of children enrolled in non-public schools.

***Recommendation:*** Non-public schools that receive federal support should be held publicly accountable in a constitutionally permissible manner. Students who receive Title I benefits in non-public schools, a current practice that the draft bill would continue, should be given the same assessments as their public school peers, with appropriate accountability and test result reporting requirements to parents and school districts as required by NCLB. We also recommend that states have the authority to end Title I services to non-public schools if their Title I students as a whole fail to make AYP and perform at lower levels than comparable students in the local public schools for three years or more.

### **39. Section 1121. Fiscal Requirements**

**Pages 299-304 Comparability of Services**

This section establishes requirements that an LEA may receive funds under this part only if average expenditures per pupil of state and local funds for teacher salaries in Title I schools are equal to or greater than the average expenditures per pupil of state and local funds for teacher salaries in non-Title I schools.

**Recommendation:** NSBA supports federal efforts to help states and local school districts in the recruitment and retention of qualified teachers, particularly targeted to high-poverty schools. However, we believe the most reasonable approach to accomplishing this is via federal incentives. We are concerned the Miller-McKeon draft mandates an equalization in expenditures for teacher salaries that will prove unworkable, particularly since the draft also prohibits forced or involuntary transfers of teachers and other personnel in order to comply with these proposed requirements.

Further, this draft assumes that calculating average per pupil expenditures on teacher salaries would produce fair and accurate data - which is not the case. For example, in addressing the needs of high poverty students, a school district could decide to lower the teacher-student ratio at one school to 1:12 of qualified teachers with less than seven years of experience. At a different school with the enrollment of far fewer students in poverty, the teacher-student ratio could be 1:30 with qualified teachers having an average of 10 or more years of experience. Using the proposed formula, since teachers with 10 or more years of experience would be paid higher salaries on average than the higher poverty school with teachers having less than seven years of experience, the high poverty school would have a much lower per pupil expenditure. However, the lower teacher-student ratio at the higher poverty school would be much more significant than teacher comparability. Therefore, NSBA recommends that this language be used only as one of many options school districts may use to determine comparability, subject to the approval of the state.

#### **40. Section 1123. Data Systems and Requirements**

##### **Page 314, lines 19-25**

This section establishes allowable uses of funds under this subsection.

**Recommendation:** Funds authorized under this section would only go to state educational agencies to bring their data systems into compliance with the new requirements. However, data capacity at the local district level must also improve to keep pace with data system development at the state level and to be linked to state systems. NSBA believes federal funds authorized under this section should also be made available to school districts through sub-grants, which could be used directly for improving data capacity and professional development, etc. at the school district level.

#### **41. Authorization of Appropriations**

##### **Page 318, lines 11-14**

This section establishes authorization levels for FY2008 and each of the three succeeding fiscal years.

**Recommendation:** States, districts and schools must meet new requirements and timelines in terms of developing data systems and training personnel to comply with the new law. Currently, states' capacities in data collection and usage vary widely, with some advancing and others lagging behind. However, the section requires all states, regardless of where they are in data capacity now, to meet the new requirements in data elements in four years. This will require significant resources to help states and local districts develop new data systems and/or revamp existing systems to comply. NSBA urges the committee to authorize adequate funds that will help meet the real needs at the state, district and school level. A bill

introduced by Representative Holt and Representative McCarthy (H.R. 3253), from which this new section is based, authorizes \$150 million for the fiscal year and each of the three succeeding fiscal years. NSBA believes that no less than that amount should be authorized.

#### **42. Section 1124. Graduation Rates**

##### **Page 321, lines 1-3; 9-14**

This section defines “Confirmed Qualified Transfer” as a transfer that is confirmed by school or local educational agency through formal documentation that the student has enrolled in that other school, local education agency, or other educational program.

***Recommendation:*** While schools and school districts should confirm that a student has transferred to another school or another school district, the reality is that they are sometimes unable to contact the family in order to get necessary information needed to confirm a transfer. In this case, schools and school districts should not be penalized if they are unsuccessful in confirming a transfer. NSBA recommends that language be added to this section to provide flexibility to schools and districts in these circumstances. Such language would allow schools and districts to meet the requirement of a confirmed transfer by providing evidence of multiple attempts to communicate with families and/or other schools or districts in the case where no formal documentation regarding the transfer is available.

#### **43. Confirmed Departure**

##### **Page 321, lines 19-23**

This section defines “confirmed departure” as a departure, confirmed by the school or local educational agency through formal documentation that the student has moved out of the state or country.

***Recommendation:*** While schools and school districts should confirm that a student has moved to another state or country, the reality is that they are sometimes unable to contact the family in order to get necessary documents to confirm a departure. In this case, schools and school districts should not be penalized if they are unsuccessful in confirming a departure. NSBA recommends that language be added to this section to provide flexibility to schools and districts in these circumstances. Such language would allow schools and districts to meet the requirement of a confirmed departure by providing evidence of multiple attempts to communicate with families and/or other schools or districts in other states in the case where no formal documentation regarding the student’s departure is available.

#### **44. Regular High School Diploma**

##### **Page 322, lines 19-25**

This section defines “Regular High School Diploma” as the standard diploma awarded to the preponderance of students in the state that is fully aligned with state standards, or a higher diploma.

***Recommendation:*** Students with disabilities and students with limited English proficiency (LEP) should be given special consideration regarding their graduation timelines because of their unique needs and challenges. NSBA recommends that individual students with disabilities would be allowed to set a timeline for graduation based on their IEPs developed by the IEP team with consent from parents. Similarly, LEP students would be allowed to have extra years to graduate if they arrive at the U.S. at an older age (such as at high school

ages), based on a case-by-case basis and consent from the committee (including parents) overseeing the student's education.

#### **45. Interim Rate**

##### **Page 325, lines 2-13**

This section establishes procedures and requirements for states that do not have in effect a statewide identifier. Instead of using the graduation rates specified in this section, states can use an interim graduation rate that measures or estimates the number of students receiving a standard high school diploma in the exit year, as compared to the number of students entering the school in the entry year.

**Recommendation:** It appears that this section does not allow states currently unable to use a longitudinal data system to calculate graduation rate to use a five-year graduation rate. NSBA believes the five-year graduation rate should be available to states that must employ an interim graduation rate calculation until their data systems are in place. States, districts and schools should not be penalized while putting their data systems in place.

#### **46. Reporting of Additional Complementary Indicators**

##### **Page 327, lines 23-24; Page 328, lines 1-13**

This section outlines additional complementary indicators that may be reported. These include extended year graduation rates, a college-ready graduation rate, a dropout rate, in-grade retention rates, percentages of continuing students who have not graduated but are still in school, and students who have completed course requirements but failed an exit exam required to graduate.

**Recommendation:** Clarification is needed as to the purposes of these complementary indicators, and whether and how they would be used in judging a school's, district's and state's AYP status.

#### **47. Adequate Yearly Progress**

##### **Page 330, lines 3-20**

This section outlines the requirements for meeting adequate yearly progress for graduation rates, including specific growth targets schools and school districts and states must meet every year for each of the subgroups.

**Recommendation:** NSBA agrees that closing the gap in graduation rates among demographic groups of students is a main goal of NCLB. However, requiring all groups to make the same amount of progress ignores each group's/each student's unique needs and challenges. For example, if the low income group starts out with a very low graduation rate; it makes significant progress the following year but is not able to grow by the specific percentage point required in this section. In this case, the group would be considered not making AYP based on graduation rate despite the significant progress they make from one year to the next. NSBA recommends additional language or revised language that will recognize the progress made by subgroups that started out with very low graduation rates.

#### **48. Timeline**

**Page 332, lines 4-7**

This section establishes a 90 percent graduation rate by 2019-2020.

**Recommendation:** NSBA agrees that closing the gap in graduation rates among demographic groups of students is a main goal of NCLB. However, placing an arbitrary timeline on when all student groups must achieve a certain percentage in graduation rate ignores the unique needs and challenges of each group/student. The cohorts of graduating students change every year, so schools and school districts are working with different students in different graduating classes over the years. A graduation rate of at least 90 percent is something all educators should work toward; and the new requirements in this section provide incentives to achieve that goal. Why not focus on providing the resources necessary to bridge the graduation gap? The 2019-2020 timeline is arbitrary and distant and could generate unintended pressure and anxiety that could negatively affect student achievement.

#### **49. Sec. 1125. Pilot Program to Include Locally Developed Measures**

**Page 333, lines 19-22**

This section establishes eligibility requirements to participate in the Pilot Program.

**Recommendation:** While the Pilot Program appears promising, the requirement that a state must have its current assessment system approved by the Secretary in order to participate presents an obstacle. Only a small number of states would be eligible to participate in the Pilot Program given the fact that only half of the states were expected to have their current assessments approved by the end of 2006-07 school year and many states would have to redesign their assessment systems after NCLB is reauthorized. Eligibility for the Pilot Program should be modified to allow more states to participate.

#### **50. Sec. 110. Core Curriculum Development**

**Page 399, lines 1-9**

This section establishes authorization levels for grants under this section.

**Recommendation:** The competitive grant program would help school districts expand instructional time and enhance the curriculum of such subjects as music and arts, foreign languages, civics and government, etc. NSBA believes this program is much needed and urges adequate authorization of funds.

*Thank you for the opportunity to comment. Questions regarding the NSBA comments may be directed to Reginald M. Felton, director of federal relations at 703-838-6782, or by e-mail, [rfelton@nsba.org](mailto:rfelton@nsba.org).*