



National School Boards Association

Testimony before the No Child Left Behind Commission September 25, 2006

The National School Boards Association, representing over 15,000 local school boards across the nation, thanks you for this opportunity to share our positions, concerns, and recommendations for improvements to the No Child Left Behind Act as Congress prepares for reauthorization of the Elementary and Secondary Education Act.

NSBA Position

As we continue to say - local school boards across the nation continue to fully support the goals of NCLB – including increased accountability for student performance. However, almost from the beginning, local school boards voiced concerns regarding NCLB implementation. Many school boards believe that some of the current provisions in the law do not recognize the complex factors that influence student performance and continue to raise questions regarding the unintended consequences resulting from these provisions. Of major concern, in our view, is the current accountability framework that does not accurately or fairly assess student or school or school district performance.

As we know, the *No Child Left Behind (NCLB) Act* established a rigorous standard for the nation's public schools and a theoretical model to assess student, school, and school district performance. However, what has evolved - in the name of accountability - is a measurement framework that bases its assessment of school quality on a student's performance only on a *single assessment*; and mandates a series of overbroad sanctions not always targeted to the students needing services or research-based and, to date, not yet proven to have significant impact on improving student performance and school performance.

Nearly five years after enactment of NCLB, local school districts across the nation continue to struggle to comply with the language of the law at a time when the unintended consequences of the law are far more complex than had been anticipated by the sponsors of the legislation. Additionally, many of the federal and state lawmakers have become increasingly aware that successful attainment of the desired national goals is very much dependent upon the *capacity* of the state departments of education and the local school districts to successfully address the expanded federal requirements.

Local school boards acknowledge and appreciate the U.S. Department of Education's efforts over the past two years to approve revisions to state accountability plans that have begun to correct the over identification of schools labeled as "*in need of improvement*." Additionally, local school boards appreciate Secretary Spellings' response through new regulations or guidance released in 2004, 2005 and 2006 to address some of the critical implementation challenges. However, while helpful, these new federal regulations, guidelines and proposed pilot programs do not adequately address many of the critical implementation challenges; nor have these regulatory changes eliminated the perceived unfair labeling of local schools.

Finally, local school boards across the nation are concerned that unnecessary blame is being targeted against specific groups of students whose performance has resulted in the identification of schools as "*in need of improvement* " and subject to more severe sanctions.

NSBA's Legislative Proposal to Improve the No Child Left Behind (NCLB) Act

Given the very serious concerns raised by our local school boards, NSBA began meeting with local school board members, administrators, and other officials to identify specific operational challenges with the new law.

As a result, in January 2005, NSBA officially unveiled its bill, the *No Child Left Behind Improvements Act of 2005*. The bill contains 40 provisions that would improve the implementation of the current federal law. These provisions address:

- I. Measuring Adequate Yearly Progress (AYP)
- II. State Flexibility by the U.S. Department of Education
- III. Implementation of Sanctions
- IV. Funding and Non Public Schools

The following reflect the operational impact on states and local school districts if the specific provision were to be adopted:

I. MEASURING ADEQUATE YEARLY PROGRESS

GROUP SIZE/ MEASURING AYP OF GROUPS

- The "N" size may be larger for school districts than for schools.
- The "N" size for a group within a school may be increased to a number or percentage of that school's total school enrollment to better align with schools with large enrollments.
- The "*safe harbor*" requirement is reduced from 10% to 5%, thus permitting fewer students to demonstrate progress within the group in order to meet this alternative AYP requirement.
- 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 change creates a fairer approach in determining AYP for schools with students belonging to more than one group than over-representing their count.

GOALS FOR ADEQUATE YEARLY PROGRESS

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

GAIN SCORES AND OTHER MEASURES OF AYP DEVELOPED BY THE STATE

- The basic AYP measurement system may be expanded to include 1) gain score approaches (like value added) and 2) partial credit for meeting basic proficient targets.
- Alternate methods of measuring AYP may be substituted for the existing methodology, provided the system is based on attaining proficiency in the 2013-14 school year and using intermediate goals, thereby providing states with greater flexibility to design their accountability systems without lowering the ultimate goals of NCLB.

PARTICIPATION RATE

- The specific requirement for 95% test participation may be adjusted to a range of 90% to 95% (based on criteria established in the state plan).



- Students may be exempted from the participation rate requirements on a case-by-case basis due to medical conditions, current state laws that grant parents final decisions regarding participation on standardized assessments, and uncontrollable circumstances (e.g. natural disaster).
- Students determined to have "*unusual patterns of attendance*" as defined by the state education agency may be exempt from the calculation to determine participation rate and referenced in the local school district accountability plan. (This category of students may include chronic truants as well as students who fail to attend school on a regular basis because of life circumstances but continue to maintain their official enrollment status.)
- Students not participating in the assessment and determined not to be eligible for exemptions may be assigned a "*below basic*" score by the school. In such cases, the school may not be identified as failing to meet the participation rate for AYP on the basis that those same students did not take the assessment.

STUDENTS WITH DISABILITIES

- As determined by the state, students with disabilities may be offered an alternate assessment for the purpose of determining AYP, provided that any such assessment is reflected by the student's IEP and is based on the IEP team's evaluation and the services to be provided for that student – and meets parent consent requirements for IEP's.
- The percentage of students statewide who may have their score counted under this provision as meeting AYP may not exceed 3% of the total number of students assessed.
- Consistent with the student's IEP, alternate assessments may include out of level assessments. Likewise, a student's test results for the purpose of determining AYP may be based on gain scores toward meeting the state standard for proficient or on an adjusted "*cut*" score for determining proficient.

LIMITED ENGLISH PROFICIENT STUDENTS

- The current regulation is codified relating to 1) first year students in the United States, and 2) counting students as LEP for determining AYP once they leave the group except that such count may be extended to a third year.
- Students may be provided an alternate assessment that is based on making specific gains individually determined for that student toward meeting state standards for up to three years, as determined by the local school district.

FIRST ASSESSMENTS

- The higher score achieved by a student who is assessed more than once prior to the beginning of the next school year may be used as the sole score for that student for the purposes of determining AYP.
- If a student scores proficient or above on an assessment taken prior to the academic year in which that assessment is normally offered, that student's score can be counted for the purpose of determining whether AYP was met. However, if that student fails to score at the proficient level, that student's score will not be counted for determining AYP.



II. STATE FLEXIBILITY BY THE U.S. DEPARTMENT OF EDUCATION

- In approving a state's NCLB accountability plan the Secretary shall grant states flexibility to alter the federal framework to align with the state's own accountability system.
- The Secretary may provide statutory and regulatory waivers – including waiving requirements that are unnecessarily burdensome or duplicative of state requirements.
- When the Secretary approves an amendment to a state plan or grants a waiver, that information must be published on the ED's website in clear and complete language within 30 days.
- A waiver or state plan's revision approved by the Secretary shall be available to any other state on a case-by-case determination.

III. IMPLEMENTATION OF SANCTIONS

TRANSFER TO OTHER SCHOOLS

- A transfer option need only be offered to those low achieving students within the group who failed to meet their AYP targets in the same subject for two or more years – not to all students in the school.
- Financial obligations for a school district to provide transportation for a student ends when the group to which the student belongs no longer is identified as not meeting AYP target within the student's former school even if that school continues to be identified as not making AYP for other reasons.
- A student need only be offered the option to transfer to one other school rather than the current interpretation of at least two schools.
- The current regulation exempting students from being offered the transfer option when health and safety are involved is codified and the following conditions for exemption are added: 1) class-size laws, 2) overcrowding, 3) the need for mobile classrooms, construction, or other significant capital outlays, and 4) such travel burdens as time, safety, and unusually high per pupil costs.

SUPPLEMENTAL SERVICES

- Supplemental services may be offered in the first year that a school is in improvement status – rather than only offering the transfer option for that year.
- Supplemental services need only be offered to low achieving students within the specific group that fails to make AYP in the same subject for two or more years.
- The state is required to consult with school districts in developing criteria for supplemental service providers.
- The state is required to develop – and make available to the public – procedures to enable local school districts to bring complaints regarding the selection and performance of the provider, and number of schools served by the provider if such scope of service adversely affects the quality of service.
- School districts may not be denied the opportunity to provide supplemental services solely because they did not make AYP or they are in improvement, corrective action, or restructuring status.



SANCTIONS IN GENERAL

- Sanctions for schools and school districts will apply only when AYP is not met by the “*same group*” for two or more consecutive years in a subject on the “*same indicator*” – rather than applying sanctions when different groups and/or different indicators are involved from year to year in that subject.
- The application of corrective action sanctions to restructure a school district will occur when it fails to make AYP on the basis of 1) averaging the score of all grades tested and 2) it fails to make AYP for at least one grade span.
- Provisions of federal law requiring the restructuring of a school or a school district shall not be implemented unless the total number of students in the group not scoring proficient or above exceeds 35% of that school or school district’s enrollment.
- In addition to deferring implementation of sanctions for one year for schools and school districts that face hardships such as natural disasters or financial difficulties, implementation may also be deferred due to a sudden change in the enrollment of particular groups of students in the school or within identified groups.
- Sanctions relating to corrective action and restructuring will be deferred in any year that appropriations for Title I is not increased by at least \$2.5 billion over the previous year until Title I is fully funded.
- Sanctions relating to corrective action and restructuring will be deferred in any year that appropriations for students with disabilities are not consistent with the authorized funding levels in *Individuals with Disabilities Education Improvement Act of 2004*.

IV. FUNDING AND NON PUBLIC SCHOOLS

- Students receiving Title I benefits in non public schools shall be given the same assessments, as public school students, with appropriate accountability and test reporting requirements to parents and school districts that are required by NCLB to provide consultative services to those non public schools.
- States may authorize a cessation of Title I support to a non-public school whose Title I students as a whole do not make AYP and perform at lower levels than the area public school(s) for three years or more.

Congressional Support for NSBA’s Legislative Proposal

Since the unveiling of our bill in 2005, ten bills have been introduced in the House, and 5 bills have been introduced in the Senate **that includes NSBA’s recommendations**. It is also noteworthy that both Republicans and Democrats have co-sponsored these various bills.

Of particular importance, however, is that on June 28, 2006 Representative Don Young (R-AK) introduced *H.R. 5709, No Child Left Behind Improvements Act of 2006*, which is fully consistent with NSBA’ 40 recommendations. In introducing the bill, Rep. Young stated, “...I firmly believe in the original goals of NCLB, but I understand that a ‘one size fits all’ approach to student achievement is not possible....This bill (H.R. 5709) will establish an improved framework for accountability that fairly and accurately assesses student, school and school district performance”. Also, I am pleased to acknowledge the bipartisan support for H.R. 5709 with Representatives Curt Weldon (R-7th PA), Steve Rothman (D-9th NJ) and Rob Bishop (R-1st UT) - having recently signed on as co-sponsors, with others to follow.



Attachment (1) summarizes the 40 recommendations contained in the NSBA Legislative Proposal and identifies the specific House and the Senate bills that include language consistent with NSBA's recommendations.

Additional Comments on NSBA's Recommendations for Improvements to No Child Left Behind

While all 40 provisions contained in the NSBA bill are important, for the purpose of this discussion, I have selected three areas: **Assessments, AYP Measurements, and Sanctions.**

ASSESSMENTS

1. *Students with Limited English Proficiency* – Districts can use alternate assessments or individualized measurements of progress based on making specific gains toward meeting state standards in determining AYP for up to three years.

STATEMENT OF THE ISSUE

NCLB's policy does not recognize the challenges districts and schools face in raising the academic achievement of LEP students. There are three major issues: 1) Some LEP students' previous academic proficiency from their native countries is so low that counting their scores for AYP based on world-class standards when they have been in the United States for less than two or three years is inappropriate, 2) states do not have alternate assessments in students' native languages, as allowed under NCLB; and 3) schools are being mislabeled as failing based on standardized test scores even when their LEP students are making progress and gaining knowledge.

NCLB holds most LEP students to the same academic standards as their English-speaking peers. Requiring some LEP students to take standardized assessments is inappropriate because these tests do not accurately measure what these students know and can do. Alternate measures are needed to gauge student performance because LEP students are learning the language at the same time acquiring content knowledge. However, districts currently cannot use alternate assessments on LEP students to count toward AYP because their states have not developed these assessments specifically for the population.

LEGISLATIVE REMEDY

NSBA's bill will authorize districts to provide an alternate assessment – as determined by the committee overseeing the LEP student's education plan and on a case-by-case basis – that is based on making specific gains toward meeting state standards for AYP for up to three years. Existing regulations will be codified to allow 1) first-year students in the United States to have their reading test scores exempted from AYP, and 2) students who exited the LEP subgroup to be counted toward that subgroup's AYP for up to three years (rather than the current two years).

Note: The U.S. Department of Education has finalized the 1) and 2) points here in the final regulations released in September 2006. However, ED's final regulations allow only former LEP students to be counted in the subgroup for 2 years, while NSBA has recommended a 3-year timeframe. Further, even if it is included in the regulations, it needs to be in the law.



2. *Students with Disabilities* – IEP teams will determine whether alternate assessments are appropriate for individual students (with the parent’s consent). Test scores from alternate assessments can be counted as proficient toward AYP so long as the number of students counted this way does not exceed 3 percent of all test takers.

STATEMENT OF THE ISSUE

NCLB regulations on students with disabilities present major problems for IEP teams because they must fit students into highly restrictive definitions in order to count their alternate assessment results as proficient toward AYP. This narrow concept is driven by the two testing caps defined by ED: 1) the current policy imposes a 1 percent cap for testing students with the “*most significant cognitive disabilities*.” Districts and states are allowed to count the test scores of only 1 percent of the students tested toward AYP proficiency based on alternate assessments measured against alternate achievement standards; 2) ED’s newly proposed 2 percent cap policy allows districts and states to count as proficient the test scores of 2 percent of all students who fit the “*persistent academic disabilities*” category based on “*modified assessments*” measured against “*modified achievement standards*.”

Confining testing decisions in these numeric caps will restrict IEP teams’ ability to determine the most appropriate assessment for students with disabilities. Since educators and researchers agree that about 3 percent of students are unable to take regular standardized assessments even with accommodations, NSBA believes testing decisions for individual students should be left up to the IEP team.

LEGISLATIVE REMEDY

NSBA proposes to add language in the law to permit states and districts to count toward AYP proficiency up to 3 percent of the test takers based on alternate assessments. In doing so, the IEP team will determine, with the parent’s consent, whether the student should take alternate assessments based on the evaluation of such student and the services provided under IDEA. These assessments can include the use of gain scores or out-of-level testing if the IEP team believes they will better reflect the needs and services for that individual student.

3. *Multiple Assessments* – states will have the option to count the higher score achieved by a student who is assessed more than once on the same content prior to the start of the next school year for AYP.

STATEMENT OF THE ISSUE

Until recently, ED’s policy of not counting subsequent test scores after the first official test date toward AYP ignores schools’ efforts in helping students reach proficiency. This means if a student fails the test the first time during the spring administration and the school subsequently offers remediation and the student scores proficient the second time, the proficient score cannot be used for AYP that year. This policy is particularly troubling in states where students are given multiple opportunities to pass the high school exit exams, many of which are also used for NCLB accountability.

Over the years, ED has allowed 11 states the option to count the highest scores among multiple assessments on the same subjects toward AYP (Center on Education Policy 2005). This option appears to apply only to retesting that occurs within the official testing period. In December, ED proposed to expand this flexibility to all states, providing that the inclusion of these scores will not delay AYP reporting and



school identification for improvement. However, it's unclear whether the proposal would allow states to count the scores from retesting that occurs beyond the official testing window. NSBA believes this flexibility should apply to situations in which schools were able to use summer programs to help students successfully make AYP in retests if these subsequent scores are calculated after preliminary AYP data are reported and sanctions are determined. This year, ED allowed Delaware to count students' test scores after summer remediation toward AYP for certain grade levels, the same flexibility should be extended to all states.

NSBA believes schools that are able to use summer programs to help students make AYP within the same school year should be credited for their success. Under NSBA's proposal, a school and district would be able to revise its AYP data after preliminary AYP data are released if, as a result of retests, specific subgroups that previously failed AYP become proficient. The new data also would determine whether this school or district moves to the next level of sanctions or moves toward being removed from the improvement list, as well as how and whether sanctions would be applied the following year.

In cases where the eligibility for transfer and supplemental educational services is announced prior to the availability of revised AYP data that change specific subgroups' AYP status, regulations can determine whether the circumstance justifies the need to proceed, as long as the school is appropriately credited based on the revised data.

LEGISLATIVE REMEDY

NSBA's bill will give states the option to count the highest score achieved by a student who is assessed more than once prior to the beginning of the following school year when determining AYP. In addition, if a student scores proficient or above on an assessment prior to the academic year in which the assessment is normally offered, that student's score can be counted as meeting AYP. However if the student fails to score proficient, the score will not be counted toward AYP for the following academic year.

AYP MEASUREMENT

4. *Growth Models* – States will credit schools for the progress students make from one year to the next on meeting state standards when determining AYP.

STATEMENT OF THE ISSUE

NCLB's "*all-or-nothing*" approach in judging school success ignores the progress students make and unfairly identifies schools as failing even though they raise student achievement significantly from one year to the next. The law's sole emphasis on meeting "*cut scores*" overlooks a key indicator of student achievement – academic growth. NSBA believes, and research concurs, that growth is a more accurate measure of success, particularly for students who are traditionally low performing or face challenges in language and special needs. Schools should be credited for progress students make toward the goals when determining AYP.

In May 2006, ED approved the use of growth models for AYP in North Carolina and Tennessee under a one-year pilot program. While this is a positive step, the scope of the program is too limited because there are many more states that are using or considering using growth models in their accountability systems (Government Accountability Office, July 2006). NSBA believes all states should be able to consider



student growth when calculating AYP so long as their accountability systems establish a path to 100 percent proficiency by 2014.

LEGISLATIVE REMEDY

NSBA recommends that the AYP structure be redefined to allow districts and schools 1) to count student progress to meeting academic goals, and 2) to receive partial credit for meeting performance levels in addition to proficiency; providing that the goal of attaining proficiency in the 2013-14 school year remains unchanged.

5. *Multiple Subgroups* – Students belonging to multiple subgroups will be counted in each subgroup as an equal fraction totaling one student toward AYP.

STATEMENT OF THE ISSUE

The current AYP structure counts students more than once if they are identified in multiple subgroups. This creates an unfair bias for schools that have many subgroups because if a student doesn't meet proficiency in one subgroup, he or she will be counted again as non-proficient in other identified subgroups. NSBA believes each student should be counted as one student, not two or three students, in determining AYP, so his or her scores will fairly represent school performance.

Counting the same students multiple times poses major challenges for schools and districts to make AYP because 1) the current practice creates a statistical bias toward students belonging to more than one subgroup; that is the more subgroups a student belongs to the more likely that student is going to be academically challenged and less likely to make AYP; and 2) large and diverse schools are more subject to failing AYP.

LEGISLATIVE REMEDY

NSBA recommends that students identified in more than one group be represented in the count for each group as an equal fraction totaling one student when determining AYP. For example, if a Hispanic student also belongs to the LEP and economically disadvantaged subgroups, that student's performance will be counted as a 1/3 fraction in each of the subgroups when calculating AYP.

SANCTIONS

6. *Same Subgroup* – Schools and districts will apply sanctions only when the same subgroup fails to make AYP in the same subject or indicator for two consecutive years or more.

STATEMENT OF THE ISSUE

Federal policy inappropriately punishes districts and schools that are successful in raising student achievement in specific subgroups, because it applies sanctions (school choice and supplemental educational services, etc.) when one subgroup fails AYP in a subject for just one year and another different subgroup fails in the next. This means that if a school tests a subgroup in the spring and it fails to make AYP and the school remedies the problem in the very next school year, it will still be subject to sanctions if, in that next year, some other subgroup fails to make AYP for the first time.

Why reduce the limited resources available to the school by engaging in costly sanctions when the school has immediately raised student achievement of a previously failed group? Large and diverse schools and school districts are more



likely to face this “*revolving door*” type of result, which, after several years could end up closing the school, turning it over to a private management company or replacing the entire staff.

LEGISLATIVE REMEDY

NSBA recommends that new language be added to specify that sanctions will apply to districts and schools only when AYP is not met by the “*same subgroup*” in the same subject or indicator for two or more consecutive years.

7. *Aligned Sanctions with Needs* – Specific sanctions, i.e. restructuring, will be better aligned with the need for school-wide improvement interventions.

STATEMENT OF THE ISSUE

The problem with NCLB’s criteria on the restructuring sanction is that districts and schools face serious consequences even when a small percentage of students missed AYP targets. A school with 1,000 students or a district with 25,000 students could face restructuring when as few as 30 students failed to make AYP (if the minimum subgroup number or the N-size is set at 30). States spend tens of millions of dollars a year to implement NCLB sanctions, which over time can result in a school closing, private management company takeover or replacement of the entire staff. Although districts do not enter a mandatory restructuring phase, they could eventually face major changes in governance or even be abolished under the current policy.

On the other hand, there are other more appropriate approaches under NCLB such as replacing specific staff and improving curriculum that target in-school remedies to correcting specific AYP problems. These approaches would produce more strategic and cost-effective results in cases where the overall school is not failing AYP or its subgroups are not broadly failing AYP. Legislative changes are needed to strengthen the connection between sanctions and the students whose needs must be addressed to improve performance. The current blanket policy on restructuring will pose a significant problem over time as more schools are expected to move into the more severe level of sanction for failing to meet increasingly high AYP targets.

School improvement efforts are costly – states must provide grants to identified schools, the schools and districts must set aside 10 percent of their Title I allocations for professional development. Moreover, local resources, in addition to Title I funds, will need to be redirected from other programs to meet the cost of restructuring. It’s important that restructuring is used in a more strategic and responsive manner than what NCLB currently requires.

NSBA’s recommended changes will help target resources to where the most needs are particularly at a time when Congress’ support has dwindled. Lawmakers cut NCLB funds – including Title I funds – in December 2005 by nearly \$800 million, and the law itself is under funded by \$40 billion over the past five budget years compared with what was authorized in 2002 (based on an analysis from U.S. Rep. George Miller, D-CA ranking member of the House Committee on Education and the Workforce).

LEGISLATIVE REMEDY

NSBA’s bill will authorize states to limit the use of restructuring to schools and districts to instances where the number of students belonging to subgroups that failed to meet their AYP targets and who were themselves unsuccessful in scoring proficient or above totaled at least 35 percent of the entire student population.



8. *Aligned Sanctions with Needs* – school choice and supplemental educational services (SES) sanctions will be available only to those students that belonged to a subgroup that failed to make AYP and were themselves unable to make AYP.

STATEMENT OF THE ISSUE

The current policy on school choice and SES sanctions makes available these services to students who attend a school identified for improvement regardless of these students' performance. This is a problem because 1) districts are unable to provide SES services to all eligible students and have to turn some of them away; 2) the sheer volume of eligible students creates tremendous administrative burdens on districts and diverts resources for poor and low performing students; and 3) low performing students have not benefited from school choice because students whose parents elected the option to transfer from failing schools tend to be high performers.

NSBA believes school choice and SES should be offered only to students for whom their schools repeatedly failed to raise their achievement. Why divert the limited resources to those students who might not need the extra services at a time when Congress has already shortchanged districts by more than \$10 billion in Title I funds for FY 2006 compared with what was authorized in the law? Focusing eligibility on students who need the services most will help districts distribute their 20 percent set-aside Title I allocations for choice and SES more efficiently.

LEGISLATIVE REMEDY

NSBA recommends that school choice and SES will be available only to those students that belonged to a subgroup that failed to meet its AYP targets and were themselves unsuccessful in scoring proficient or above. For example, if a school's limited English proficiency and economically disadvantaged subgroups failed AYP, choice and SES will be targeted for those students within the two subgroups who also scored below proficient.

9. *Aligned specific sanctions with funding* – States will delay implementation of restructuring schools or districts in years when Title I funds are not increased by at least \$2.5 billion and the *Individuals with Disabilities Education Act* funds are not consistent with the authorized levels in the 2004 reauthorized IDEA.

STATEMENT OF THE ISSUE

Congress is not providing adequate resources to help schools raise the achievement of the neediest children – those who are disadvantaged by poverty and those who have special needs. This funding shortfall comes at a time when the federal government is demanding, through NCLB, that schools and districts raise student achievement or face serious consequences such as restructuring, which could result in a school closing, private management company takeover or replacement of the entire staff. Districts face similar consequences.

Restructuring is expensive – schools and districts must set aside Title I funds and states must provide improvement grants to schools. However, the two major federal funding sources – Title I (NCLB's main funding component) and IDEA – have not kept pace with increased demand for results and higher costs for services. Here is why: 1) Title I – four years after the passage of NCLB, Congress has continued a steady decline in fully funding the law. It authorized \$22.75 billion in funding for FY 2006, but appropriated only \$12.7 billion in December 2005, leaving a shortfall of



more than \$10 billion to districts and schools; 2) IDEA – Congress has not kept its promise of funding IDEA at 40 percent average per pupil cost when the law was passed. Today the federal share is about 18 percent, creating a cumulative funding gap of more than \$59 billion over the last four fiscal years.

NSBA recommends that Congress provide adequate funding for Title I and fully fund IDEA or defer the implementation of restructuring districts and schools for that year. In this case, however, districts and schools would still use Title I funds to improve student achievement, including spending up to 20 percent of these funds for school choice and supplemental educational services and implementing other targeted in-school remedies.

Restructuring is a significant activity which incurs the use of local resources if Title I funds are not adequate. It is anticipated that with AYP targets continue to rise overtime, more schools and districts will be moving into restructuring so that it becomes not just a cost item for individual districts, but a national issue that merits the increase of Title I appropriations.

LEGISLATIVE REMEDY

NSBA's bill recommends that districts and schools be allowed to delay implementation of restructuring in any year that Congress fails to increase federal funding for Title I by \$2.5 billion over the previous year, or fails to increase funding for IDEA consistent with the authorization levels in the Individuals with Disabilities Education Improvement Act of 2004.

Summary

NSBA believes that significant improvements to NCLB will require a comprehensive legislative approach. With the support of Representative Don Young and his co-sponsors, and other strong supporters on Capitol Hill, appropriate legislative changes can be made.

What local school boards want – is what parents and students and teachers and administrators and communities want –

- Reliable and Valid Assessments
- Accountability systems that fairly and accurately reflect the performance of students, schools and school districts, and acknowledge progress
- Federal and State-supported initiatives that result in improved academic performance rather than simply mandate actions that are punitive
- Sufficient flexibility for States and Local School Districts to accommodate the unique needs of students and the States while maintaining high, rigorous standards
- Federal and State funding and policy that fully support the implementation of all requirements

In closing, NSBA encourages the members of the Commission to fully consider our recommendations and to continue its collaboration with NSBA and other stakeholders to ensure that all children have access to high quality public education. NSBA believes that if Congress does not address these needed changes, both the credibility of the NCLB law and the public confidence in our public schools will erode. Thank you again for this opportunity.





Attachment 1

Federal Legislation Addressing Provisions in NSBA's No Child Left Behind Improvements Act of 2005

NSBA Issue

House/Senate Bills

MEASURING ADEQUATE YEARLY PROGRESS *GROUP SIZE/ MEASURING AYP OF GROUPS*

1. The "N" size may be larger for school districts than for schools.	H.R. 5709
2. The "N" size for a group within a school may be increased to a number or percentage of that school's total school enrollment to better align with schools with large enrollments.	H.R. 5709
3. The "safe harbor" requirement is reduced from 10% to 5%, thus permitting fewer students to demonstrate progress within the group in order to meet this alternative AYP requirement.	S. 1690, H.R. 5709
4. 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 change creates a fairer approach in determining AYP for schools with students belonging to more than one group than over-representing their count.	H.R. 5717, H.R. 5709

GOALS FOR ADEQUATE YEARLY PROGRESS

5. Intermediate goals do not have to increase in equal increments.	S. 1690, H.R. 5709
6. Different groups can have different rates of increase to ultimately reach 100% proficient.	S. 1690, H.R. 5709

GAIN SCORES AND OTHER MEASURES OF AYP DEVELOPED BY THE STATE

7. The basic AYP measurement system may be expanded to include: 1) gain score approaches (like value added) and 2) partial credit for meeting basic proficient targets.	H.R. 2569, H.R. 1506, H.R. 1821, H.R. 1177, H.R. 4578; S. 724, S. 901, S. 1690, H.R.
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NSBA Issue

House/Senate Bills

	5709
8. Alternate methods of measuring AYP may be substituted for the existing methodology, provided the system is based on attaining proficiency in the 2013-14 school year and using intermediate goals, thereby providing states with greater flexibility to design their accountability systems without lowering the ultimate goals of NCLB.	H.R. 2569, H.R. 1506, H.R. 1821, H.R. 1177, H.R. 4578; S. 724, S. 901, S. 1690, H.R. 5709

PARTICIPATION RATE

9. The specific requirement for 95% test participation may be adjusted to a range of 90% to 95% (based on criteria established in the state plan).	H.R. 2569, H.R. 1177, H.R. 5709
10. Students may be exempted from the participation rate requirements on a case-by-case basis due to medical conditions, current state laws that grant parents final decisions regarding participation on standardized assessments, and uncontrollable circumstances (e.g. natural disaster).	H.R. 5709
11. Students determined to have " <i>unusual patterns of attendance</i> " as defined by the state education agency may be exempt from the calculation to determine participation rate and referenced in the local school district accountability plan. (This category of students may include chronic truants as well as students who fail to attend school on a regular basis because of life circumstances but continue to maintain their official enrollment status.)	H.R. 5709
12. Students not participating in the assessment and determined not to be eligible for exemptions may be assigned a " <i>below basic</i> " score by the school. In such cases, the school may not be identified as failing to meet the participation rate for AYP on the basis that those same students did not take the assessment.	H.R. 5709

STUDENTS WITH DISABILITIES

13. As determined by the state, students with disabilities may be offered an alternate assessment for the purpose of determining AYP, provided that any such assessment is reflected by the student's IEP and is based on the IEP team's evaluation and the services to be provided for that student – and meets parent consent requirements for IEP's.	H.R. 1177, S. 901, S. 1690, H.R. 5709
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NSBA Issue

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14. The percentage of students statewide who may have their score counted under this provision as meeting AYP may not exceed 3% of the total number of students assessed.	H.R. 1722, S. 1690, H.R. 5709
15. Consistent with the student's IEP, alternate assessments may include out of level assessments. Likewise, a student's test results for the purpose of determining AYP may be based on gain scores toward meeting the state standard for proficient or on an adjusted "cut" score for determining proficient.	H.R. 1177, S. 901, S. 1690, H.R. 5709 H.R. 5717

LIMITED ENGLISH PROFICIENT STUDENTS

16. The current regulation is codified relating to 1) first year students in the United States, and 2) counting students as LEP for determining AYP once they leave the group except that such count may be extended to a third year.	H.R. 1506, H.R. 1821, H.R. 1177, S. 1690, H.R. 5709
17. Students may be provided an alternate assessment that is based on making specific gains individually determined for that student toward meeting state standards for up to three years, as determined by the local school district.	H.R. 1506, H.R. 1821, H.R. 1722, H.R. 1177, S. 1690, H.R. 5709

FIRST ASSESSMENTS

18. 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.	H.R.5709
19. If a student scores proficient or above on an assessment taken prior to the academic year in which that assessment is normally offered, that student's score can be counted for the purpose of determining whether AYP was met. However, if that student fails to score at the proficient level, that student's score will not be counted for determining AYP.	H.R. 5709

STATE FLEXIBILITY BY THE U.S. DEPARTMENT OF EDUCATION

20. In approving a state's NCLB accountability plan the Secretary shall grant states flexibility to alter the federal framework to align with the state's own accountability system.	S.1690, H.R. 5709
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NSBA Issue

House/Senate Bills

21. The Secretary may provide statutory and regulatory waivers – including waiving requirements that are unnecessarily burdensome or duplicative of state requirements.	S. 1690, H.R. 5709
22. When the Secretary approves an amendment to a state plan or grants a waiver, that information must be published on the ED's website in clear and complete language within 30 days.	H.R. 5709
23. A waiver or state's plan's revision approved by the Secretary shall be available to any other state on a case-by-case determination.	H.R. 5709

IMPLEMENTATION OF SANCTIONS *TRANSFER TO OTHER SCHOOLS*

24. A transfer option need only be offered to those low achieving students within the group who failed to meet their AYP targets in the same subject for two or more years – not to all students in the school.	H.R. 1506, H.R. 4578; S. 724, S. 1690, H.R. 5709
25. Financial obligations for a school district to provide transportation for a student ends when the group to which the student belongs no longer is identified as not meeting AYP target within the student's former school even if that school continues to be identified as not making AYP for other reasons.	H.R. 5709
26. A student need only be offered the option to transfer to one other school rather than the current interpretation of at least two schools.	H.R. 4578, H.R. 5709
27. The current regulation exempting students from being offered the transfer option when health and safety are involved is codified and the following conditions for exemption are added: 1) class-size laws, 2) overcrowding, 3) the need for mobile classrooms, construction, or other significant capital outlays, and 4) such travel burdens as time, safety, and unusually high per pupil costs.	H.R. 1681, H.R. 4578; S. 1055, S. 15, H.R. 5709

SUPPLEMENTAL SERVICES

28. Supplemental services may be offered in the first year that a school is in improvement status – rather than only offering the transfer option for that year.	H.R. 4578, H.R. 5709
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NSBA Issue

House/Senate Bills

29. Supplemental services need only be offered to low achieving students within the specific group that fails to make AYP in the same subject for two or more years.	H.R. 4578, S. 1690, H.R. 5709
30. The state is required to consult with school districts in developing criteria for supplemental service providers.	H.R. 4578, H.R. 5709
31. The state is required to develop – and make available to the public – procedures to enable local school districts to bring complaints regarding the selection and performance of the provider, and number of schools served by the provider if such scope of service adversely affects the quality of service.	H.R. 5709
32. School districts may not be denied the opportunity to provide supplemental services solely because they did not make AYP or they are in improvement, corrective action, or restructuring status.	H.R. 5709

SANCTIONS IN GENERAL

33. Sanctions for schools and school districts will apply only when AYP is not met by the "same group" for two or more consecutive years in a subject on the "same indicator" – rather than applying sanctions when different groups and/or different indicators are involved from year to year in that subject.	S. 1690
34. The application of corrective action sanctions to restructure a school district will occur when it fails to make AYP on the basis of 1) averaging the score of all grades tested and 2) it fails to make AYP for at least one grade span.	H.R. 5709
35. Provisions of federal law requiring the restructuring of a school or a school district shall not be implemented unless the total number of students in the group not scoring proficient or above exceeds 35% of that school or school district's enrollment.	H.R. 5709
36. In addition to deferring implementation of sanctions for one year for schools and school districts that face hardships such as natural disasters or financial difficulties, implementation may also be deferred due to a sudden change in the enrollment of particular groups of students in the school or within identified groups.	H.R. 5709
37. Sanctions relating to corrective action and restructuring will be deferred in any year that appropriations for Title I is not increased by at least \$2.5 billion over the previous year until Title I is fully funded.	H.R. 4578, H.R. 5709



NSBA Issue

House/Senate Bills

38. Sanctions relating to corrective action and restructuring will be deferred in any year that appropriations for students with disabilities are not consistent with the authorized funding levels in <i>Individuals with Disabilities Education Improvement Act of 2004</i> .	H.R. 2694, H.R. 4578, H.R. 5709
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NON PUBLIC SCHOOLS

39. Students receiving Title I benefits in non public schools shall be given the same assessments, as public school students, with appropriate accountability and test reporting requirements to parents and school districts that are required by NCLB to provide consultative services to those non public schools.	H.R. 5709
40. States may authorize a cessation of Title I support to a non-public school whose Title I students as a whole do not make AYP and perform at lower levels than the area public school(s) for three years or more.	H.R. 5709

House/Senate Bills

H.R. 1177 – “State and Local Education Flexibility Act of 2005” March 8, 2005 (Rep. Lee Terry (R-NE))

H.R. 1506 – “No Child Left Behind Reform Act” April 6, 2005 (Rep. Rosa DeLauro (D-CT), Cosponsors (24))

H.R. 1681 – “Quality Education for All Act” April 19, 2005 (Rep. G.K. Butterfield (D-NC), Cosponsors (21))

H.R. 1722- (No Name) April 20, 2005 (Rep. Jeb Bradley (R-NH))

H.R. 1821 – “Flexibility for Champion Schools Act” April 26, 2005 (Rep. Bob Goodlatte (R-VA) Cosponsors (7))

H.R. 2569 – “No Child Left Behind Improvement Act of 2005” May 25, 2005 (Rep. Robert Andrews (D-NJ))

H.R. 2694 – “Keeping Our Promises to America’s Children Act of 2005” May 26, 2005 (Rep. Dennis Moore (D-KS), Cosponsors (68))

H.R. 4578 – “Student Achievement and Successful Schools Act of 2005” December 16, 2005 (Rep. Betty McCollum (D-MN))

H.R. 5709 – “No Child Left Behind Improvements Act of 2006” June 28, 2006 (Rep. Don Young (R-AK))

H.R. 5717 - “Education Assessment Technical Corrections Act” June 29, 2006 (Rep. Mark Kirk (R-IL), Cosponsor Rep. Steven Rothman (D-NJ))

S. 15 – “Quality Education for All Act” January 24, 2005 (Sen. Jeff Bingaman (D-NM))



S. 724 – “No Child Left Behind Reform Act” April 6, 2005 (*Sen. Christopher Dodd (D-CT), Cosponsors (4)*)

S. 901 – “Flexibility for Champion Schools Act” April 26, 2005 (*Sen. George Allen (R-VA)*)

S. 1055 – “No Child Left Behind Improvement Act of 2005” May 17, 2005 (*Sen. Edward Kennedy (D-MA)*)

S. 1690 – “No Child Left Behind Flexibility and Improvements Act” September 13, 2005 (*Sen. Susan Collins (R-ME) and Sen. Olympia Snowe (R-ME)*)

