



# Key Elements

## *An outline of H.R. 648*

The No Child Left Behind Act was signed into law on Jan. 8, 2002, as a means of holding states, school districts, and schools more accountable for improving the academic performance of each student regardless of economic status, race, ethnicity, proficiency in English or disability.

NCLB requires states to:

- Establish rigorous academic standards.
- Conduct annual assessments in which at least 95 percent of students participate.
- Implement a complex accountability system that includes extensive data collection and public reporting on student and school performance.
- Direct formal sanctions against Title I schools and their school districts for failing to meet proficiency targets in reading and math.
- Establish new qualification requirements for teachers and paraprofessionals beyond the standards established by many states.

H.R. 648 is grouped into four areas:

1. Measuring adequate yearly progress (AYP)
2. State flexibility granted by the U.S. Department of Education (ED)
3. Implementing sanctions
4. Title I students in nonpublic schools.

### I. Measuring AYP

#### A. Group Size

- The “N” size (the minimum number of students a subgroup must have to be included in the calculation of AYP) 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 percent to 5 percent, thus permitting fewer students in the group to demonstrate progress in order to meet this alternative AYP requirement.

- In calculating AYP, a student who is identified in more than one subgroup may be represented in equal fractions in each group, with the fractions totaling one student. For example, a minority student who has limited English proficiency and a disability would be counted as one-third in each of the three subgroups. This approach is fairer than over-representing the count of these students.

#### B. Goals for AYP

- A state may permit a school to be identified as making AYP when one or more subgroups fail to meet AYP targets as long as the total number of students who are unable to reach proficiency in these subgroups does not exceed 10% of the total number of students counted for the specific assessment or indicator. This alternate method could not be applied to the same subgroup/subgroups for the same subject in two consecutive years.
- Intermediate goals do not have to increase in equal increments over time.
- Different groups can have different rates of increase to ultimately reach 100 percent proficient.

#### C. Gain Scores and Other State AYP Measures

- The basic AYP measurement system may be expanded to include (1) gain score approaches, such as value added, and (2) partial credit for meeting performance levels in addition to proficient.
- 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. This will provide states with greater flexibility to design their accountability systems without lowering the ultimate goals of NCLB.

#### D. Participation Rate

- The specific requirement for 95 percent test participation may be adjusted to a range of 90 percent to 95 percent (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 such as natural disasters.

- 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.

#### E. Students with Disabilities

- The IEP team should determine whether alternate assessments – including growth-based measures and out-of-level assessments -- are appropriate for individual students with parents’ consent.
- The percentage of students statewide who may have their score counted under this provision as meeting AYP may not exceed 3 percent of the total number of students assessed.
- States should be able to count former students with disabilities in the subgroup’s AYP for up to three years after they exit the special education program. This will credit schools and school districts for helping students with disabilities transition from the special education program to the general education program.

#### F. Limited-English-Proficient Students

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

## G. 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.

## 2. State Flexibility Granted by ED

- In approving a state's NCLB accountability plan, the Secretary of Education 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 website in clear and complete language within 30 days.
- A waiver or revision in a state plan that has been approved by the Secretary shall be available to any other state on a case-by-case determination.

## 3. Implementing Sanctions

### A. 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.
- A school district's financial obligation to provide transportation for a student ends when the group to which the student belongs no longer is identified as not meeting AYP in 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 districts from offering students transfers when health and safety are involved is codified, and the following conditions for exemption are added: (1) class-size laws, (2) over crowding, (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 transportation costs.

### B. Supplemental Services

- Supplemental services may be offered in the first year a school is in improvement status—rather than offering only 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 for school districts to bring complaints regarding the selection and performance of the provider and the number of schools served by the provider, if such scope of service adversely affects the quality of service.
- The state may establish a date, not later than December 15, to permit school districts to spend portions of the 20% set-aside from Title I not needed for such services with appropriate parent notification. This will allow school districts to reallocate funds that are no longer needed for choice and SES in time to support other Title I activities.

- 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.

### C. Sanctions in General

- Sanctions for schools and districts will apply only when AYP is not met by the "same group" on the "same indicator" in a subject for two or more consecutive years, 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 averaging the score of all

grades tested and it fails to make AYP for at least one grade span.

- Provisions of federal law requiring the restructuring of a school or district shall not be implemented unless the total number of students in the groups not scoring proficient or above exceeds 35 percent of that school or school district's enrollment.

- In addition to deferring implementation of sanctions for one year for schools and 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 are not increased by at least \$2.5 billion over previous year's level until Title I is fully funded.

- Sanctions relating to corrective action and restructuring will be deferred in any year that appropriations for special education (Individuals with Disabilities Education Act) are not increased by at least \$2 billion over previous year's level.

## 4. Title I Students in Nonpublic Schools

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

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