

National School Boards Association

Proposed Legislative Language

No Child Left Behind Act

Reauthorization 2007



September 2007





The National School Boards Association (NSBA), representing over 95,000 local school board members across the nation, is pleased to recommend specific legislative language for inclusion in the legislation to reauthorize the Elementary and Secondary Education Act, reauthorized on January 8, 2002 as the No Child Left Behind Act of 2001 (Public Law 107-110). NSBA believes that the current law can be amended to eliminate barriers to full implementation of the law while maintaining the core principle to improve the academic achievement of all students.

These recommended amendments have been developed based on input received from local school board members, educators and administrators throughout the country. Additionally, NSBA met with a cross section of major stakeholders on numerous occasions to validate the concerns in preparation for drafting the specific legislative language.

The NSBA recommended legislative language addresses the following key provisions of the current law:

- Measuring Adequate Yearly Progress (AYP)
- Goals for Adequate Yearly Progress (AYP)
- Assessment Opportunities and Participation Rate
- Students with Disabilities
- Limited English Proficient Students
- State Flexibility by the U.S. Department of Education
- Public School Choice
- Supplemental Services
- Corrective Action and Restructuring Sanctions
- Non-Public Schools
- Teacher Quality

In addition to the recommended legislative language we have provided the specific citation to the relevant provisions of the NCLB Act (P.L. 107-110), our rationale for the amendment, and a brief summary of the impact of the provisions of the current law on local school districts. Additionally, Appendix A offers a more in-depth analysis of the impact of selected provisions on local school districts and schools.

Legislative Activity in Support of the NSBA Recommendations

In June 2006, 42 NSBA recommendations were incorporated into legislation introduced by Representative Don Young (R-AK) as the *No Child Left Behind Improvements Act of 2006, H.R. 5709*. Bipartisan co-sponsors of H.R. 5709 included Representatives Steven R. Rothman (D-NJ-9), Rob Bishop (R-UT-1), Todd Platts (R-PA-19), and Jo Bonner (R-AL-1). In January 2007, Rep. Young reintroduced his bill as the *No Child Left Behind Improvements Act of 2007, H.R. 648*. The bill's bipartisan co-sponsors to date include Representatives Charlie Melancon (D-LA-3), Steven Rothman (D-NJ-9), Jo Bonner (R-AL-1), Thaddeus McCotter (R-MI-11), Todd

Platts (R-PA-19), and Mike Ross (D-AR-4) continuing the strong bi-partisan support for these important improvements to the current law.

In November 2006, Senator Mike Crapo (R-ID) introduced *No Child Left Behind Improvements Act of 2006, S. 4064* that incorporates many of the major NSBA recommendations. In January 2007, Sen. Crapo reintroduced his bill, *Improving No Child Left Behind Act, S. 348*.

During the 109th Congress, ten bills were introduced in the House of Representatives and six bills were introduced in the Senate supporting NSBA recommendations. A listing of the specific bills and their sponsors are provided as Appendix B.

Rationale

NSBA urges you to fully incorporate our recommendations for improvements to the current NCLB law. Some local school boards believe that some of the current provisions in the law do not recognize the complex factors that influence student performance. Many other local school boards are concerned that the current NCLB law has resulted in unintended consequences contrary to the original goals and objectives of the law - and must be addressed this year without any delays.

Of utmost importance to local school boards and their local communities is the belief that the current accountability framework does not accurately or fairly assess student, school, or school district performance. Although the sponsors of the No Child Left Behind Act of 2001 hoped to establish a rigorous accountability system for the nation's public schools, what has evolved in the name of accountability is a measurement framework that bases its assessment of school quality on a student's performance on a single assessment; and mandates a series of overbroad sanctions not always targeted to the students needing services; and to date not yet proven to have significant impact on improving student or school performance.

We believe that by incorporating our over 40 recommendations, which have bipartisan congressional support, the reauthorization bill would:

- Ensure significant improvements in the validity and reliability of assessments for all students, particularly those students with disabilities and those not proficient in English;
- Foster increased accuracy and fairness in public reporting of student, school and school district performance;
- Allow schools and school districts to target resources to those students who need the most attention; and
- Eliminate the overbroad negative labeling of schools and school districts and restore public confidence in the nation's public schools.

NSBA very much appreciates the opportunity to submit recommended legislative language, and we look forward to working closely with you and your colleagues to complete the reauthorization process during this First Session of the 110th Congress. Questions concerning our specific recommendations may be directed to Reginald M. Felton, director of federal relations at 703-838-6782, or by e-mail, rfelton@nsba.org.

Table of Contents

<u>Topic</u>	<u>Page</u>
N-size for Schools and School Districts (#1 and #2).....	1
Safe Harbor Eligibility (#3).....	3
AYP Determinations: Performance of Students Belonging to Multiple Subgroups (#4).....	5
AYP Determinations: Performance by Subgroups (#5).....	9
Intermediate Goals for Subgroups (#6 and #7).....	11
AYP Alternate Measurement & Growth Models (#8 and #9).....	13
Assessment Participation Rates (#10).....	15
Assessment Participation Exemptions: Unusual Circumstances (#11).....	17
Assessment Participation Exemptions: Unusual Patterns of Attendance (#12).....	19
AYP Determinations: Assessment Participation Rates (#13).....	21
Students with Disabilities (#14, #15 and #16).....	23
Students with Limited English Proficiency (#17 and #18).....	25
AYP Determinations: Multiple Assessments (#19 and #20).....	27
Secretary of Education Requirements: Authority for Waivers (#21 and #22).....	29
Secretary of Education Requirements: Notification of Waivers and other Actions (#23 and #24).....	31
Public School Choice: Student Eligibility (#25).....	33
Public School Choice: School District Financial Obligations for Transportation (#26).....	35
Public School Choice: Transfer Options and Special Conditions (#27 and #28).....	37
Supplemental Educational Services: School District Options (#29).....	39
Supplemental Educational Services: Student Eligibility (#30).....	41
Supplemental Educational Services Providers: School District Authority (#31 and #32).....	43
Title I Set-Aside Funding for Sanctions: School District Options (#33).....	45
Supplemental Educational Services Providers: School District Options (#34).....	47
Implementation of Sanctions on Schools: Subgroup Performance (#35).....	49
Implementation of Sanctions on Schools Districts: Grade Span Performance (#36).....	51
Implementation of Restructuring Sanctions: Percentage of Students Failing to Meet AYP (#37).....	53
Implementation of Sanctions: Conditions Beyond the Control of Schools and School Districts (#38).....	55
Deferral of Restructuring Sanctions: Inadequate Federal Appropriations for Disadvantaged Students (Title I) (#39).....	57
Deferral of Restructuring Sanctions: Inadequate Federal Appropriations for Students with Disabilities (Individuals with Disabilities Education Improvement Act) (#40).....	59
Non-Public School Accountability when Receiving Title I Services (#41 and #42).....	61
Highly Qualified Teacher Determinations: Special Education Teachers (#43).....	63
Highly Qualified Teacher Determinations: Social Studies Teachers (#44).....	65
Highly Qualified Teacher Determinations: Supplemental Educational Services Providers (#45).....	67
Appendix A: Why Reports: NCLB Series.....	69
Appendix B: House and Senate Bills in the 109 th Congress.....	89
Index.....	93

Notes: The number next to a specific issue corresponds with that on the individual brief. A total of 45 issues are presented.



NCLB RECOMMENDATIONS

SUBJECT

N-size for Schools and School Districts

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(2)(C)(v); SEC. 1111(b)(2)(I)(ii); SEC. 1111(b)(3)(C)(xiii); SEC. 1111(h)(1)(C)(i)

TITLE I PART D SUBPART 3 SEC. 1431(b)

NSBA RECOMMENDATIONS

1: School districts should be able to have a larger N-size than schools when determining the minimum number of students a subgroup must have to be counted for AYP.

#2: The N-size for a subgroup 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, when determining the minimum number of students a subgroup must have to be counted for AYP.

RATIONALE

N-size is a statistical concept for determining the number of test takers needed to produce a reliable test score. School districts need a larger N-size than that of an individual school because they are considerably larger. In particular, large school districts are negatively impacted by the N-size designated for an individual school. If large school districts are to be identified as in need of improvement and subject to sanctions, a larger N-size should apply – subject to the approval of the state. In addition, the number of students within a specific subgroup may vary, so schools with large enrollments should be able to have a larger N-size that is proportional to the student population within the school.

PROPOSED BILL LANGUAGE

The following provisions are each amended by inserting after “reliable information” the following: “(the ‘number’ required to be ‘insufficient’ being greater, at the option of the State, for a local education agency than for a school, and varying, at the option of the State, from agency to agency and school to school in proportion to total enrollment)”:

In section 1111 (20 U.S.C. 6311) –

Subsection (b)(2)(C)(v), in the matter after subclause (II)(dd);

Subsection (b)(2)(I)(ii);

Subsection (b)(3)(C)(xiii); and

Subsection (h)(1)(C)(i).

Section 1431(b) (20 U.S.C.6471(b)).

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

IMPACT OF CURRENT LAW

School Districts are identified as in need of improvement and face escalating sanctions based on the same N-size as that of a school's. The number of students in a school district is considerably larger than that of a school. For example, a school with 1,000 students and a school district of 25,000 can face sanctions based on the performance of 30 students if the N-size is set at 30. This current policy causes large, diverse school districts to miss AYP even if the group not making AYP constitutes only a small portion of the total enrollment in the district. Overtime these school districts can face serious consequences such as state or private management company takeover.

Similarly, schools are identified as in need of improvement and face escalating sanctions based on the same N-size regardless of their student populations. When the same N-size is applied to all schools, a large school with 2,000 students is more likely to meet an N-size of 30 for their subgroups than a small school of 200 students. The U.S. Department of Education has recognized the issue of school sizes by allowing several states to have a "sliding scale" N-size in proportion to each school's enrollment. This practice should be available to all states because school and subgroup populations can vary significantly within a state.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Safe Harbor Eligibility

P.L. 107-110 PROVISIONS

TITLE I PART A SEC. 1111(b)(2)(I)(i)

NSBA RECOMMENDATION

#3: The current Safe Harbor requirement is reduced from 10 percent to 5 percent when determining whether a subgroup has made sufficient progress to meet AYP.

RATIONALE

This flexibility would permit subgroups to demonstrate progress and such recognition would provide more understandable and more manageable goals for the students in the subgroup. At 10 percent, the current Safe Harbor provision has little impact – and where it can be used, it’s frequently based on a confidence interval which is beyond the comprehension of most educators.

PROPOSED BILL LANGUAGE

Permitting fewer students in group to demonstrate progress to meet AYP “Safe Harbor.” Section 1111 (20 U.S.C. 6311) is further amended in subsection (b)(2)(I)(i) by striking “10 percent” and inserting “5 percent.”

IMPACT OF CURRENT LAW

The current Safe Harbor standard is set so high that few schools are able to benefit from the provision. The requirement that at least a 10 percent reduction in the number of non-proficient students in a subgroup is a “virtually impossible level of annual growth” particularly for states with rigorous proficiency goals overtime and a lower starting point for the percentage of students proficient or above, according to the California Department of Education. State data showed that only 12 of about 9,000 schools qualified for Safe Harbor in 2003; only three schools qualified in 2004. In addition, the current 10 percent requirement does not recognize students who were significantly behind but have made considerable progress academically.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.



NCLB RECOMMENDATIONS

SUBJECT

AYP Determinations:

Performance of Students Belonging to Multiple Subgroups

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(2)

NSBA RECOMMENDATION

#4: In calculating AYP, students identified in multiple subgroups should be represented in the count for each subgroup as an equal fraction totaling one student.

RATIONALE

The change creates a more appropriate approach in determining AYP for schools with large numbers of students belonging to several subgroups than over-representing their count; and would not adversely affect schools with greater diversity. Each student should be counted as one student, not some students counted up to four times.

PROPOSED BILL LANGUAGE

Section 1111 (20 U.S.C. 6311) is further amended in subsection (b)(2) by adding at the end the following: “(L) Counting students who are in more than one group. For the purpose of determining adequate yearly progress, the State may establish a uniform procedure for counting students under which a student who belongs to more than one of the groups described in subparagraph (C)(v) is counted toward each such group to which the student belongs as a fraction of 1 student, the numerator of the fraction being 1 and the denominator being the number of such groups to which the student belongs.”

IMPACT OF CURRENT LAW

Under current law students identified in several subgroups must have their test scores counted for AYP for each subgroup they belong to, resulting in over-representation of their performance within a school or a school district. Since students who are in multiple subgroups are more likely to be academically challenged, this practice creates an unfair statistical bias in evaluating and sanctioning schools and school districts that have many subgroups. Over the past few years, several states have requested the permission from the U.S. Department of Education to apportion the scores of students who are in multiple subgroups. NSBA’s recommendation will help states and school districts target their limited resources to the schools that truly need extra help.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

CASE STUDY (EXAMPLE)

School Enrollment

The Johnson-Reagan Elementary School has 1,000 students enrolled. Of the 1,000 students, 700 students belong to one or more demographic subgroups. The 700 are identified as follows:

- 350 students are identified as African-American, with a disability and in poverty;
- 250 students are identified as African-American and in poverty;
- 350 students are identified with disabilities; and
- 100 students are identified as in poverty.

TABLE 1 - SCHOOL ENROLLMENT*

	Students in Poverty	African-American Students	Students with Disabilities
350 x 3 Subgroups	350	350	350
250 x 2 Subgroups	250	250	-----
100 x 1 Subgroup	100	-----	-----
TOTAL	700	600	350

*1,000 students total enrolled at Johnson-Reagan Elementary School

In calculating AYP under the current law:

- 700 students are identified as in poverty;
- 600 students are identified as African-American students; and
- 350 students are identified with disabilities.

The AYP target for the previous school year was a 60% proficiency rate for all students and for the demographic subgroups. Under the current system, the following number of students would need to be successful on their assessments:

TABLE 2 – NUMBER OF STUDENTS NEEDED TO MAKE 60% AYP TARGET UNDER CURRENT LAW

# of Students in a Subgroup	60% Proficiency Level
1,000 students total in class	600
700 students in poverty	420
600 African-American students	360
350 students with disabilities	210

However, under the proportional formula, the number of students needed to be successful for AYP purposes only would be reduced as follows:

**TABLE 3 – NUMBER OF STUDENTS NEEDED TO
MAKE 60% AYP TARGET UNDER PROPOSED RECOMMENDATION**

# of Students in a Subgroup	60% Proficiency Level
1,000 students in class	600
700 multiple group students in poverty $350 = 350 \times .33 = 116$ (in 3 subgroups) $250 = 250 \times .50 = 125$ (in 2 subgroups) $100 = 100 \times 1 = 100$ (in 1 subgroup) Total = 341	205
600 multiple group African-American students $350 = 350 \times .33 = 116$ (in 3 subgroups) $250 = 250 \times .5 = 125$ (in 2 subgroups) Total = 241	145
350 students with disabilities (no multiple group students) $350 = 350 \times 1 = 350$	210

In summary, this proportional formula is a fairer way to determine the status of a school or school district than the current law:

**TABLE 4 – COMPARISON: NUMBER OF STUDENTS NEEDED TO
MAKE 60% AYP TARGET UNDER CURRENT LAW AND PROPOSED LAW**

	Current Law	Proposed Law
Total Enrollment	1,000	1,000
Students in Poverty	700	700
60% Proficiency Level	420	341
African-American Students	600	600
60% Proficiency Level	360	241
Students with Disabilities	350	350
60% Proficiency Level	210	210

Analysis

Under the proposed recommendations, schools would still be held accountable for providing innovative interventions to improve academic performance of the demographic subgroup; however, the number of students needing to meet their AYP targets for school and school district performance would be adjusted so as not to penalize the school or school district due to its demographics.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.



NCLB RECOMMENDATIONS

SUBJECT

AYP Determinations: Performance by Subgroups

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(2)

NSBA RECOMMENDATION

#5: A state may permit a school to be identified as meeting AYP when one or more subgroups fail to make AYP targets as long as the total number of students in the subgroups missing AYP does not exceed 10 percent 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).

RATIONALE

This option permits a one-year deferral of a school being identified as not making AYP when a relatively small number of students are unable to score proficient and the subgroup or subgroups involved made AYP in the previous year.

PROPOSED BILL LANGUAGE

Section 1111(b)(2) is amended by adding at the end the following:

“(N)* Additional Methods of Defining Adequate Yearly Progress.

“(i) In General – For the purpose of meeting the requirements of this section, the State educational agency may identify a school or local educational agency as having made adequate yearly progress pursuant to subparagraph (I) in any year in which one or more groups described in clauses (v) of subparagraph (C) in that school or local educational agency do not meet or exceed the proficient level established under subparagraph (G) in a subject to which the accountability provisions of this subsection applies or do not meet the requirement for any other indicator established under subparagraph (D) if –
“(I) the same group or groups did not fail to meet the requirements for adequate yearly progress for that same subject or the other indicator in the previous year as determined without using the provisions of this subparagraph; and

“(II) the number of students who did not meet or exceed the proficient level in such group or groups is not greater in the aggregate than a percentage determined by the State educational agency but not in excess of 10 percent of the students enrolled in the school or local educational agency, as the case may be, in grades that were assessed in that subject or indicator for adequate yearly progress.

“(ii) Greater Percentage – The Secretary may, on an individual State basis, approve a greater percentage than the amount set forth in clause (i)(II) for determining whether a school or local educational agency has met the requirements for adequate yearly progress if –

“(I) the percentage over that amount is consistent with the accountability system of the State and is proposed as an amendment to the State plan required by this section; and “(II) the State educational

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

agency applies a lower status designation of adequate yearly progress to any school or local educational agency that utilizes the percentage approved under this clause for determining that adequate yearly progress was met.”.

** Note: (N) is a newly proposed subparagraph, its letter may vary in the final bill.*

IMPACT OF CURRENT LAW

The current AYP framework subjects schools and school districts to an “all-or-nothing” accountability system without differentiating the levels of its AYP status. In most states, schools potentially have upwards of 40 ways of failing to make AYP. NSBA’s recommendation recognizes that in limited situations it is reasonable to identify a group or groups in a school as making AYP when, in one year, the number of students in that group or groups who don’t score proficient or above is a relatively small proportion of the entire number of test takers. This method of determining AYP, however, would not be applied to a subgroup that failed to make AYP in the previous year.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Intermediate Goals for Subgroups

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(2)(H)(i)

NSBA RECOMMENDATIONS

#6: Intermediate goals do not have to increase in equal increments over time.

#7: Different subgroups can have different rates of increase to ultimately reach 100 percent proficiency by 2014.

RATIONALE

This option would give schools and school districts flexibility in addressing the unique needs of specific subgroups that may already be positioned at different points to achieve full proficiency.

PROPOSED BILL LANGUAGE

Section 1111 (20 U.S.C. 6311) is further amended in subsection (b)(2)(H)(i)—

By striking “in equal increments”; and

By inserting before the semicolon at the end the following: “in—

“(aa) increments defined by the State as appropriate for the group, for each of the groups of students described in subparagraph (C)(v); and

“(bb) equal increments, for all other students.”.

IMPACT OF CURRENT LAW

NCLB currently requires states to establish intermediate goals that increase in equal increments for all subgroups over time. The percentage of students who must score proficient in a given years, or in periods of two or three years, must rise in equal amount until the figure reaches 100 percent by 2014. This practice, however, does not consider the unique needs of specific subgroups which schools and school districts must address in order to help these students reach proficiency. Particularly, students within the disabilities and limited English proficiency subgroups have a wide range of abilities and needs that they may not follow the same pace of learning as their peers in other subgroups. In addition, the introduction of new tests, new curriculum and new teaching methods does not readily translate into an even rise in student performance, as NCLB currently assumes.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.



NCLB RECOMMENDATIONS

SUBJECT

AYP Alternate Measurement & Growth Models

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(2)(C)(vii); SEC. 1111(b)(2)

NSBA RECOMMENDATIONS

#8: The basic AYP system should be expanded to include gain score approaches that take into consideration the progress students make from year to year when calculating AYP.

#9: States should be able to use this alternate method of measuring AYP for schools and school districts instead of the existing status methodology, providing that the state accountability system is based on attaining 100 percent proficiency by 2014 and using intermediate goals.

RATIONALE

The current accountability system which focuses on “cut scores” is flawed and overlooks a key indicator of student achievement – academic growth. Research concluded that growth is a more accurate measure of success, particularly for students who are traditionally at risk. Allowing alternate methods of measuring AYP gives states greater flexibility to design their accountability systems while continuing to support the broader goals of NCLB. Although the U.S. Department of Education has given one-year approvals for growth models in five states, the number is too small and the conditions too restrictive for this effective policy option.

PROPOSED BILL LANGUAGE

Expansion of AYP to include Gain Scores and Partial Credit for meeting basic targets.-- Section 1111 (20 U.S.C. 6311) is further amended in subsection (b)(2)(C)(vii) by inserting after “such as” the following: “achievement under a ‘gain score’ approach (such as a value-added system), progress toward meeting basic proficiency targets,”.

Alternatives to AYP.-- Such section is further amended in subsection (b)(2) by adding at the end the following:

“(M)* Alternate Methods of Defining Adequate Yearly Progress.-- In lieu of defining adequate yearly progress under subparagraph (C), the State may define adequate yearly progress in any manner that –
“(i) uses the measures of performance and progress described in subparagraph (A);
“(ii) complies with the timeline required by subparagraph (F); and
“(iii) includes intermediate goals, as required by subparagraph (H).

**Note: (M) is a newly proposed subparagraph, its letter may vary in the final bill.*

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

IMPACT OF CURRENT LAW

Since NCLB does not fully recognize student growth, many schools and school districts continue to be subject to sanctions even though they raise student achievement significantly from year to year. This sends a discouraging message to educators, students and families that their progress is not recognized. The Government Accountability Office reported in July 2006 that 26 states were using growth models as part of or separated from the federal law; and 22 were either considering or in the process of implementing growth models. While states have made strides in enhancing their data capacities to accommodate growth measures, current federal policies have not kept pace with local progress, with the U.S. Department of Education approving only a handful of states to use growth models for AYP calculations.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Assessment Participation Rates

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(2)(I)(ii)

NSBA RECOMMENDATION

#10: The specific requirement for 95 percent test participation rate should be adjusted to a range of 90 percent to 95 percent based on criteria established in the state plan.

RATIONALE

The current 95 percent participation requirement can cause schools with small enrollments or subgroups with a small N-size to miss AYP because just one or two students did not take the test.

PROPOSED BILL LANGUAGE

Section 1111 (20 U.S.C. 6311) is further amended in subsection (b)(2)(I)(ii) – by striking “95 percent” the first place such term appears and inserting “a percentage (from 90 to 95 percent, based on criteria established in the State plan)”; and by striking “95 percent” the second place such term appears and inserting “percentage.”

IMPACT OF CURRENT LAW

To give an accurate picture of the performance of a group, a school or a school district; and to ensure accurate representation of low-achieving students, the state test should be given to as many students as possible. However, the current 95 percent participation rate for each subgroup can cause a subgroup or a school to miss AYP when just one or two students miss the test -- even if the subgroup or the school scored proficiency. The current requirement does not provide flexibility for states when dealing with small N-sizes or student attendance issues outside the school’s control.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.



NCLB RECOMMENDATIONS

SUBJECT

Assessment Participation Exemptions: Unusual Circumstances

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(2)

NSBA RECOMMENDATION

#11: 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 a natural disaster.

RATIONALE

This option recognizes that there may be unique circumstances involving students that are not in the control of the school and should not adversely impact the determination of AYP for the entire school or school district.

PROPOSED BILL LANGUAGE

Section 1111 (20 U.S.C. 6311) is further amended in subsection (b)(2) by adding at the end the following:

“(N)* Students Exempt From Participation In Assessments – For the purpose of determining compliance with the percentage required by subparagraph (I)(ii), the State may provide for a student to be excluded from the determination with respect to an assessment if any of the following apply:

“(i) Excused Absence – The student did not take that assessment by reason of –

“(I) a medical condition;

“(II) a parental decision to exempt the student, if such a decision is available under, and exercised pursuant to, State law; or

“(III) a circumstance out of the control of the student, school or local educational agency, such as a natural disaster.

**Note: (N) is a newly proposed subparagraph, its letter may vary in the final bill.*

IMPACT OF CURRENT LAW

The current law does not explicitly allow states to exempt students from participation of testing due to medical conditions or other situations not controlled by schools or school districts. That means a school or school district must count these students who cannot take an assessment because of special circumstances against the required participation rate. Over the years, the U.S. Department of Education has allowed states to not count students who did not take the test because of medical conditions against the 95 percent requirement. However, the practice is not consistent among states and other special circumstances such as natural disasters or parental preference were not considered. NSBA’s

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

recommendation will ensure that schools and school districts are not inappropriately rated as failing to meet AYP because special circumstances prevent certain students from taking state tests.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NSBA NCLB RECOMMENDATIONS

SUBJECT

Assessment Participation Exemptions: Unusual Patterns of Attendance

P.L. 107-110 PROVISIONS

TITLE I PART A SEC. 1111(b)(2)

NSBA RECOMMENDATION

#12: Students determined to have “unusual patterns of attendance” as defined by the state education agency should be exempted 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).

RATIONALE

In some communities there are students with very poor attendance but who continue to be encouraged to remain in school rather than drop out. Chronic truancy poses a separate student-based issue than whether a school has weak academic programs or discourages certain students from taking tests. By having this recommended option, schools would have to demonstrate that they are encouraging such students to remain in school.

PROPOSED BILL LANGUAGE

Section 1111 (20 U.S.C. 6311) is further amended in subsection (b)(2) by adding at the end of proposed subparagraph (N)(i)* the following:

“(ii) Chronic Non-Attendance – Each of the following is true:

“(I) The student did not take the assessment and has demonstrated an unusual and chronic pattern of non-attendance, as defined by the State.

“(II) The local educational agency in which the student is enrolled is implementing a plan to increase participation in the assessments by students demonstrating such a pattern of non-attendance.

**Note: (N)(i) is a newly proposed subparagraph, its letter may vary in the final bill.*

IMPACT OF CURRENT LAW

Instead of giving credit to local efforts to reduce drop-out rates, the current participation requirement penalizes schools and school districts that continue to encourage students with poor attendance to remain in school because these students’ absence must count against their participation rates. NSBA’s recommendation will provide incentives for local educators to continue to keep students in school while making sure a comprehensive plan is in place to address the poor attendance patterns.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

AYP Determinations: Assessment Participation Rates

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(2)

NSBA RECOMMENDATION

#13: To meet the 95 percent participation requirement, students who do not participate in the assessment and are 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.

RATIONALE

Currently a school could be identified as not making AYP on the basis of performance and participation. When calculating AYP, this recommended option would permit a school to make AYP as long as the AYP targets were met since the absent students are given a “below basic” score as part of the final AYP determination. The purpose of the 95 percent participation rate requirement is to keep the determination of academic achievement honest so low-achieving students are not excluded from taking tests. It is not an independent indicator of academic achievement.

PROPOSED BILL LANGUAGE

Section 1111 (20 U.S.C. 6311) is further amended in subsection (b)(2) by adding at the end the following: “(O)* Student Assigned “Below Basic” Score By Default – For the purpose of determining adequate yearly progress, and for the purpose of determining compliance with the percentage required by subparagraph (I)(ii), a student who does not take an assessment and who is not excluded under subparagraph (N) may, if the State plan so provides, be treated as having taken the assessment and having achieved a score below the level described in paragraph (1)(D)(ii)(III) (below basic).”.

**Note: (O) is a newly proposed subparagraph, its letter may vary in the final bill.*

IMPACT OF CURRENT LAW

If a subgroup of a school has more than enough students scoring proficient or above to make AYP, it can still fail AYP on the basis of students not taking the test. Further, the current policy subjects schools and school districts to a “double jeopardy” situation when a student misses an assessment because the absence counts against the participation rate and the student is considered as scoring “below basic” in performance.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Students with Disabilities

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111 and SEC. 1111(b)(2)

NSBA RECOMMENDATIONS

#14: The IEP team should determine whether alternate assessments are appropriate for individual students (with parents' consent).

#15: Test scores from alternate assessments – including growth-based measures and out-of-level testing - should 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.

#16: States should be able to count former students with disabilities in the subgroup's AYP for up to three years after they exited the special education program.

RATIONALE

The IEP team has the authority and expertise to determine the academic requirements for the students, and NCLB should not preempt an IEP team's determination of the needs of the child – as agreed by the parent.

PROPOSED BILL LANGUAGE

Section 1111 (20 U.S.C. 6311) is further amended in subsection (b)(2) by adding at the end the following: "(P)* Student With Disabilities Requiring Alternate Assessments – Consistent with paragraph (3), a State may implement the amendments made to part 200 of title 34, Code of Federal Regulations, on December 9, 2003 (68 Fed. Reg. 68698) (related to achievement of students with significant cognitive disabilities) as if such amendments—

"(i) permitted 3 percent of such students to be counted for the purposes of determining adequate yearly progress, except that—

"(I) any assessment given to any such student for the purposes of determining such adequate yearly progress must be required by the individualized education plan of such student;

"(II) the individualized education plan must reflect the need for any such alternate assessment based on the evaluation of such student and the services provided such student under section 614 of the Individuals with Disabilities Education Act (42 U.S.C. 1400 et seq.); and

"(III) the individualized education plan must include written consent from the parent of such student prior to such alternate assessment being administered;

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

“(ii) used the term ‘students requiring alternate assessments’ in lieu of the term ‘students with the most significant cognitive disabilities’; and

“(iii) permitted the eligibility of such students to be determined by the State educational agency, except that such eligibility shall, at a minimum, include—

“(I) students who are receiving services pursuant to a plan required under section 504 of the Rehabilitation Act of 1973 and part 104 of title 34, Code of Federal Regulations;

“(II) students who are assessed at grade level below the grade level in which they are enrolled (out of level assessments); and

“(III) include students considered students with the most significant cognitive disabilities, as defined by the state educational agency, prior to the enactment of the No Child Left Behind Improvements Act of 2007.”.

Section 1111 (20 U.S.C. 6311) is further amended by adding at the end of (o)(1)* the following:

“(2) Issuance Of Regulations Affecting Children With Disabilities.—The Secretary shall issue regulations not later than 180 days after the date of the enactment of the No Child Left Behind Improvements Act of 2007 regarding the participation of children with disabilities under this part. Such regulations shall permit a State to include, for up to three years, students who were children with disabilities as part of the group described under section 1111(b)(2)(C)(v)(II)(cc) but who are no longer identified as children with disabilities. Students with disabilities may be provided an alternate assessment, including an out of level assessment, if deemed appropriate by the individual education plan team for that student and included within the written individual education plan for that students.”

**Notes: (P) is a newly proposed sub paragraph, its letter may vary in the final bill.*

(o)(1) is a newly proposed subsection, its letter and number may vary in the final bill.

IMPACT OF CURRENT LAW

Under current regulations IEP teams must fit students into highly restrictive categories in order to count their test scores on alternate assessments toward AYP. This narrow concept is driven by two testing caps allowed by the U.S. Department of Education that classify students either as having “the most significant cognitive disabilities” or “persistent academic disabilities.” These two definitions restrict the ability of IEP teams to determine the most appropriate way of assessing the achievement of these students.

Students with disabilities are a diverse group with many unique needs and challenges. Since research showed that about three percent of students need some type of alternate assessments to measure their performance, NSBA’s recommendations will free IEP teams from making restrictive testing decisions that do not consider students’ individual needs, and at the same time ensure that only students who truly need alternate assessments use them for AYP purposes.

In addition, ED has proposed to allow states to count former students with disabilities in the subgroup AYP for up to three years after they exited the program. This policy should be incorporated in the law.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org



NCLB RECOMMENDATIONS

SUBJECT

Students with Limited English Proficiency (LEP)

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(3)(C) and SEC. 1111

NSBA RECOMMENDATIONS

#17: Current regulations are codified relating to 1) exempting first-year students in the United States from AYP; 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.

#18: LEP students should 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 school district.

RATIONALE

The proposed flexibility in assessing LEP students for the first three years is necessary to meet the needs of individual students who enroll in schools with wide variations in English fluency and academic backgrounds. The proposed language is consistent with current regulations issued by the U.S. Department of Education.

PROPOSED BILL LANGUAGE

Section 1111 (b)(3)(C) (20 U.S.C. 6311(b)(3)(C)) is amended—

In clause (ix) by striking subclause (III) and inserting the following:

“(III) the inclusion of limited English proficient students, who—

“(aa) may, consistent with paragraph (2)(P), be assessed, as determined by the local educational agency, through the use of an assessment which requires achievement of specific gains for up to three school years from the first year any such student is assessed for the purposes of this subsection;

“(bb) may, at the option of the State educational agency, be assessed in the first year any such student attended school in the United States (not including Puerto Rico);

“(cc) shall not be included in any calculation of adequate yearly progress when such students are in the first year of attending school in the United States (not including Puerto Rico); and

“(dd) shall be assessed in a valid and reliable manner and provided reasonable accommodations on assessments administered to such students under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what such students know and can do in academic content areas, until such students have achieved English language proficiency as determined under paragraph (7).

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

Section 1111 (20 U.S.C. 6311) is further amended by adding at the end the following:

“(o)* Regulations. –

“(1) Codification of Regulations Affecting Limited English Proficient Children.—This part shall be implemented consistent with amendments proposed to part 200 of title 34, Code of Federal Regulations, on June 24, 2004 (69 Fed. Reg. 35462) (relating to the assessment of limited English proficient children and the inclusion of limited English proficient children in subgroups) as if such amendments permitted students who were previously identified as limited English proficient to be included in the group described in subsection (b)(2)(C)(v)(II)(dd) for three additional years, as determined by a local educational agency (based on the individual needs of a child) for the purposes of determining adequate yearly progress.

**Note: (o) is a newly proposed subsection, its letter may vary in the final bill.*

IMPACT OF CURRENT LAW

NCLB does not effectively hold schools and school districts accountable for the performance of LEP students because: 1) some LEP students’ academic backgrounds from their native countries are so poor that counting their scores for AYP based on grade-level standards when they are in the United States for less than three years is not appropriate; and 2) some states do not yet have valid and reliable standardized tests to measure these students’ academic performance.

For students who entered the country far below grade level academically, it would be more appropriate to determine their achievement for AYP purposes on the basis of academic progress for several years. After that they should be assessed on the same basis as other students. Research on language acquisition is consistent and clear that LEP students, particularly those with poor academic backgrounds from their native countries, need more 12 months to achieve English language proficiency, and as many as seven years to achieve grade-level academic performance in English. A three-year window to measure progress as individually determined at the local level is a reasonable balance.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

AYP Determinations: Multiple Assessments

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111(b)(3)(C)

NSBA RECOMMENDATIONS

#19: The higher score achieved by a student who is assessed more than once on the same subject prior to the beginning of the next school year should be used as the sole score for that students for the purposes of determining AYP.

#20: 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.

RATIONALE

If a student scores proficient or above after the official test dates but before the beginning of the next school year, treating that student and possibly the subgroup as not meeting AYP is not an accurate representation of the school's performance. In addition, allowing states and school districts to "bank" a student's proficient score on a test that is normally given in the following year is both reasonable and consistent with several state plan approvals by the U.S. Department of Education.

PROPOSED BILL LANGUAGE

Section 1111(b)(3)(C) (20 U.S.C. 6311(b)(3)(C)) is amended—

In clause (xiv) by striking "and" at the end;

By redesigning clause (xv) as clause (xvii); and

By inserting after clause (xiv) the following:

"(xv) at the option of the local educational agency, be administered multiple times to any such student during the school year, or (at the option of the State) a subsequent date prior to the beginning of the next school year, provided that the local educational agency shall determine which score of any such administration be used for determining adequate yearly progress;

"(xvi) at the option of the school district, measure the achievement of student as if such student were in the grade level proceeding the grade level of such student, provided that—

"(I) if such student meets the proficient level of achievement for such proceeding grade level, such score shall be used to determine adequate yearly progress for such proceeding grade level; and

"(II) if such student does not meet the proficient level of achievement for such proceeding grade level, such score is not used for the purposes of determining adequate yearly progress; and".

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

IMPACT OF CURRENT LAW

The U.S. Department of Education does not allow all states to count toward AYP the proficient scores from tests that are taken after the official testing date. If a student fails the test the first time during the official spring administration but, after remediation, scores proficient in a subsequent test on the same subject, that proficient score cannot be counted for AYP that year. This practice is particularly troubling in states where students are given multiple opportunities to pass a test on the same subject. NSBA's recommendation will allow a school or school district to revise its AYP data based on the scores from retests that take place after the official testing period but prior to the next school year.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Secretary of Education Requirements: Authority for Waivers

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111

NSBA RECOMMENDATIONS

#21: In approving a state's NCLB accountability plan the Secretary shall grant the state flexibility to alter the federal framework to align with the state's own accountability system.

#22: The Secretary should provide statutory and regulatory waivers – including waiving requirements that are unnecessarily burdensome or duplicative of state requirements.

RATIONALE

States have the authority and responsibility to educate their students. They should not have to implement federal mandates that are inconsistent, duplicative or add no value to state requirements as long as those state requirements support the broader objectives of NCLB.

PROPOSED BILL LANGUAGE

Section 1111 (20 U.S.C. 6311) is amended—

By redesigning subsections (f) through (m) as subsections (g) through (n); and

By inserting after subsection (e) the following:

“(f) State Flexibility.—

“(1) Plans.—In approving plans under subsection (e), the Secretary shall accord a State maximum flexibility to make such plans and any revisions compatible with the accountability system of such State.

“(2) Waivers.—Through the authority provided under part D of title IX, the Secretary may grant a waiver of any statutory or regulatory requirement of this part requested by a State educational agency or local education agency.

IMPACT OF CURRENT LAW

Current law imposes additional federal mandates – including those contradictory to a state's existing accountability system. Many states such as Florida and Texas had already established their own school rating systems prior to NCLB. The incompatible nature between the state and the federal accountability systems creates ample confusion for parents and the communities as to how their schools and students are performing. More recognition needs to be accorded to making NCLB compatible with proven state accountability programs.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Secretary of Education Requirements:
Notification of Waivers and Other Actions

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1111

NSBA RECOMMENDATIONS

#23: When the Secretary approves an amendment to a state plan or grants a waiver, that information must be published on the U.S. Department of Education Website in clear and complete language within 30 days.

#24: A waiver or state plan revision approved by the Secretary shall be available to any other state on a case-by-case determination.

RATIONALE

Information regarding changes approved by the Secretary to a state's accountability plan is currently not readily available. The proposal will ensure that all states are informed regarding adjustments and accommodations granted by the Secretary and receive equitable treatment by the U.S. Department of Education.

PROPOSED BILL LANGUAGE

Section 1111 (20 U.S.C. 6311) is amended—

By redesigning subsections (f) through (m) as subsections (g) through (n); and

By inserting after subsection (e) the following:

“(f)* State Flexibility.—

“(3) Notification.—Not later than 30 days after the approval of any revisions to the plan of a State, or the granting of any waivers described under paragraph (2), the Secretary shall notify each State educational agency of such revision or waiver and, through the website of the Department of Education and the Federal Register, the public. The notification described in the preceding sentence shall be in writing and include a clear and complete explanation of such revision or waiver.

“(4) Applicability Of Plan Revision And Waivers To Other Agencies.—A revision to a plan approved under this part or a wavier issued under this subsection or under part D of title IX may be applied in any other State or local educational agency, provided the State or agency meets any requirements issued by the Secretary applicable to such revision or waiver as implemented by such State or agency.”.

**Note: Subsection (f)(3) contains new language that is not currently in the law, its letter and number may vary in the final bill.*

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

IMPACT OF CURRENT LAW

The U.S. Department of Education currently does not publish all the state amendments it approves or denies on its Website or in written letters to states. This practice creates ample confusion as to what amendments are acceptable or not acceptable and why. The Council of Chief State School Officers, which studies ED's responses to state amendments, said in its 2006 report that "while past [ED] responses have not always been quick or completely documented in writing, responses to 2005-06 requests have been notably slower and, when they include denials, far less likely to be documented in writing." ED's inconsistent treatments toward states have caused implementation of the law to vary greatly across the country. NSBA's recommendation will provide more transparency to the state plan process.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Public School Choice: Student Eligibility

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(b)(1)(E)(i); SEC. 1116(b)(7)(C)(i) and SEC. 1116(b)(8)(A)(i)

NSBA RECOMMENDATION

#25: Transfer options should be available only to low-achieving students within the subgroups that did not make AYP, not all students in a school.

RATIONALE

The current policy does not target students who are low performing. It has resulted in an unintended consequence that higher performing, more affluent students opt for the transfer out of a school identified for improvement, leaving the school less likely to improve its performance in subsequent years.

PROPOSED BILL LANGUAGE

Section 1116(b) (20 U.S.C. 6316(b)) is amended—

In paragraph (1)(E)(i)—

By striking “In the case” and inserting “Consistent with subparagraph (G)*, in the case”;

By striking “all students enrolled in the school” and inserting “students who failed to meet the proficient level of achievement on the assessments described under section 1111(b)(3) and are in the group whose academic performance caused the identification under this paragraph”; and

In paragraph (7)(C)(i)—

By striking “all”; and

By striking “another” and inserting “an other”;

In paragraph (8)(A)(i)—

By striking “all”; and

By striking “another” and inserting “an other”;

**Note: (G) is a newly proposed subparagraph, its letter may vary in the final bill.*

IMPACT OF CURRENT LAW

NCLB allows all students attending a school identified as needing improvement to transfer to a different school. This policy does not target students who are most at risk and has resulted in higher performing students opting to transfer. The administrative burden of notifying parents of all the students and making sure they are aware of the option causes many school districts to shift funds from other programs serving Title I students. NSBA’s recommendation will allow school districts to strategically spend the required 20 percent set-aside in Title I allocations for students who are the lowest performing.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Public School Choice:
School District Financial Obligations for Transportation

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(b)(13)

NSBA RECOMMENDATION

#26: Financial obligations for school districts to provide transportation to students who choose to transfer under the choice option should not be federally mandated when the group to which the student belongs no longer is identified as not meeting AYP targets within the student's former school even if that school continues to be identified as not making AYP for other reasons.

RATIONALE

Title I funds are already limited. Requiring school districts to continue such financial obligations when the student's former school makes AYP for the specific group of students diverts the much needed resources from other Title I activities. The continuation of providing transportation under these circumstances should be a local option for the school district.

PROPOSED BILL LANGUAGE

Section 1116(b)(13) is amended--

By striking "is no longer identified" and all that follows through the period at the end and inserting the following: "has made adequate yearly progress for the group in which the child is a member in the same subject for which a failure to meet adequate yearly progress triggered the transfer."

IMPACT OF CURRENT LAW

Current law requires a school to continue to provide transportation to students who transfer under choice even if the school remedies the AYP problem for the subgroup to which the students belonged the following year. Why divert limited resources from other Title I activities once the school immediately raises the achievement of the subgroup that failed AYP? Congress currently only funds the Title I program at 50 percent of its authorized level. School and school districts must target limited funds to students who need help most.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.



NCLB RECOMMENDATIONS

SUBJECT

Public School Choice: Transfer Options and Special Conditions

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(b)(1)(E)(i); SEC. 1116(b)(1)(E) and SEC. 1116(b)(7)(C)(i) and SEC. 1116(b)(8)(A)(i)

NSBA RECOMMENDATIONS

#27: Districts need to only offer a student the option to transfer to one other school.

#28: A school should not have to receive a student under the choice option if doing so would violate local health, safety or class size policies, cause overcrowding, require new construction and substantial amounts of travel among other conditions.

RATIONALE

The current school choice provision does not take into account specific situations relating to students' health, safety and learning environment that can prevent school districts from offering transfer options to students. As more schools are moving forward on the NCLB sanctions trail, more schools are required to offer school choice in schools identified as needing improvement. In some cases, the choices of schools available within a district to receive transferred students are limited due to the number of schools in improvement. Under those circumstances the law's intent would be met and made administratively more workable if students have one transfer option.

PROPOSED BILL LANGUAGE

Section 1116(b) (20 U.S.C. 6316(b)) is amended—

In paragraph (1)(E)(i)—

By striking "another public school" and inserting "one other public school identified and";

In paragraph (1)(E) by adding the end the following:

"(iii) Special Conditions.—A local educational agency shall not be required to implement the transfer of a student to a school under this subparagraph if doing so would—

"(I) violate a State of local law or policy relating to health, safety, or class size;

"(II) result in overcrowding, the installation of mobile classrooms, construction of classrooms, or other significant capital improvements in that school; or

"(III) be impractical due to distance, geographical barrier or hazards, time or travel, or unusually high cost of travel.";

In paragraph (7)(C)(i)—

By striking "all"; and

By striking "another" and inserting "an other";

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

In paragraph (8)(A)(i)—
By striking “all”; and
By striking “another” and inserting “an other”;

IMPACT OF CURRENT LAW

A school designated under public school choice may be forced to enroll additional students even if the additional students result in overcrowding, create additional challenges in terms of health and safety, or adversely impact teacher and student ratios. Current law does not consider these various factors that can prevent a school from receiving students under the choice option.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Supplemental Educational Services (SES): School District Options

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(b)(1)

NSBA RECOMMENDATION

#29: Districts can opt to offer both school choice and SES in the first year of school improvement, instead of offering school choice in the first year and SES in the second.

RATIONALE

School districts should be given more flexibility to offer SES in the first year of improvement because they have unique needs and challenges to address.

PROPOSED BILL LANGUAGE

Section 1116(b)(1) is amended by adding at the end the following:

“(G)* Options.—A local educational agency may offer supplemental services as described in subsection (e) in place of the option to transfer to one or more public schools described in subparagraph (E) for the purposes of meeting the requirements of paragraphs (5)(A), (7)(C)(i), or (8)(A)(i).”;

**Note: (G) is a newly proposed subparagraph, its letter may vary in the final bill.*

IMPACT OF CURRENT LAW

The current policy does not immediately deliver extra help to students who need it most. Many students who are low performing can benefit from tutoring in the first year but have to wait until the second year to receive services. The U.S. Department of Education recognized this problem and started a pilot program in 2006 to allow a small number of districts to first offer SES and then school choice in the second year of improvement. However, the pilot program remains limited in scope and should expand to all other districts.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.



NCLB RECOMMENDATIONS

SUBJECT

Supplemental Educational Services (SES): Student Eligibility

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(e)(12)(A)

NSBA RECOMMENDATION

#30: SES need only be offered to low-achieving students within specific subgroups that fail to make AYP in the same subject for two or more years.

RATIONALE

Given the limited Title I funds available, such resources should be targeted only to those students who have demonstrated a need, not all Title I eligible students.

PROPOSED BILL LANGUAGE

Section 1116 is further amended in subsection (e)(12)(A)—

By striking “a child from a low-income family, as determined by the local educational agency for purposes of allocating funds to schools under section 1113(c)(1)” and inserting “students who failed to meet the proficient level of achievement on the assessments described under section 1111(b)(3) and are in the group whose academic performance caused the identification under this paragraph; ”

IMPACT OF CURRENT LAW

NCLB allows all low-income students attending a school identified as needing improvement to receive SES. This policy does not target students who are most academically challenged and has resulted in the lowest achieving students not receiving tutoring. If the current eligibility criteria do not change, many school districts will spend their limited Title I funds on students who do not necessarily need the extra help, therefore reducing available in-school funds for other low-performing students who need them most. In addition, the sheer volume of eligible students under the current criteria has driven up the administrative costs for SES; causing school districts to divert funds from other programs serving low-performing students to cover such costs.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.



NCLB RECOMMENDATIONS

SUBJECT

Supplemental Educational Services (SES) Providers:
School District Authority

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(e)(4)(B); SEC. 1116(e)(4)(D); SEC. 1116(e)(4)(E)

NSBA RECOMMENDATIONS

#31: The state should be required to consult with school districts in developing criteria for SES providers.

#32: The state should be required to develop procedures to enable local school districts to bring complaints regarding the selection and performance of SES providers to prevent an adverse impact on the school or students.

RATIONALE

Current law does not specifically describe a role for school districts in selecting and terminating SES providers locally. Because school districts work closely with providers, they have the knowledge and information on specific providers' performance and impact on students, therefore should be directly involved in selecting and terminating SES providers.

PROPOSED BILL LANGUAGE

Section 1116(e) (20 U.S.C. 6316(e)) is amended—

In paragraph (4) and subparagraph (B) by inserting after "objective criteria" the following: "(developed through continuous consultation with local educational agencies in the State)";

In subparagraph (D) by striking "and" at the end;

In subparagraph (E) by striking the period at the end and inserting "; and"; and

By adding at the end the following:

"(F) Develop procedures by which a local educational agency may—

"(i) present complaints and documentation of such complaints to the State educational agency regarding the qualification, operation, and evaluation of approved providers and potential providers seeking such approval; and

"(ii) demonstrate to the State educational agency that any provider should not be authorized to provide supplemental services, as described in this subsection to any school or schools under the jurisdiction of that local educational agency."

IMPACT OF CURRENT LAW

Currently providers are placed on the state approved list with little, if any, input from local school districts that often have relevant information concerning their performance locally. School districts also have little recourse regarding substantive complaints against the providers even if students do not

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

succeed, forcing the school into the next phase of sanctions. NSBA's recommendations will allow states and school districts to work together to ensure only quality SES providers are approved

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Title I Set-Aside Funding for Sanctions: School District Options

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(b)(10)

NSBA RECOMMENDATION

#33: The state should establish a date, no later than December 15, to permit school districts to spend portions of the 20 percent of the funds set aside for choice and supplemental educational services (SES) that are not needed for such services with appropriate parental notification.

RATIONALE

This will allow school districts to reallocate funds that are no longer needed for choice and SES in time to support other Title I initiatives for eligible students within the district. Currently such funds cannot be released in a timely manner to support much needed programs at the remainder of the school year.

PROPOSED BILL LANGUAGE

Section 1116(b)(10) is amended by adding at the end the following:

“(E) Determination That Lesser Amount Is Needed.—

“(i) In General.—If a local educational agency determines under subparagraph (A) that a lesser amount is needed to comply with paragraph (9) and to satisfy all requests for supplemental educational services under subsection (e), the agency shall be required by this paragraph to spend only that lesser amount. The remaining amount (equal to the difference between that lesser amount and the amount otherwise required to be spent by subparagraph (A)) shall be merged back with the agency’s allocation under subpart 2 and shall be available accordingly.

“(ii) Timing.—A determination described in clause (i) may not be made—

“(I) until a reasonable time after notice to parents is made under paragraph (6) and a reasonable time after the deadline for making requests for such transportation or services has passed; and

“(II) after December 15, or after the date specified in the State plan, if the State plan specifies an earlier date.

“(iii) Assurances.—The remaining amount may not be merged back with the agency’s allocation, as described in clause (i), until after the agency notifies the State of the determination made under clause (i) and provides assurances to the State that the determination was made in compliance with this paragraph.”

IMPACT OF CURRENT LAW

Currently the 20 percent Title I funds are reserved beyond January in some states although not all of these funds are needed to meet the choice and SES decisions parents make in the fall. As a result, these unused funds cannot be spent in a timely manner for providing Title I services to students in the spring.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

These unneeded funds should be released sooner so schools and school districts can use them to prepare students for spring testing. NSBA's recommendation will ensure that state or federal regulations do not prevent a timely release of unneeded funds for choice and SES, and therefore other Title I services can be provided as the law intended.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Supplemental Educational Services (SES) Providers:
School District Options

P.L 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(e)(12) and SEC.1116(e)(13)

NSBA RECOMMENDATION

#34: School districts should not be denied the opportunity to provide SES solely because they did not make AYP or they are in improvement, corrective action or restructuring status.

RATIONALE

The U.S. Department of Education's policy to prohibit school districts identified for improvement from providing SES is an unnecessary restriction, resulting in costlier programs provided by private vendors using the same teachers and facilities that would be available with the school district as a provider. Although ED has already allowed very few school districts in improvement to provide SES, it has not remedied the problem for the overwhelming majority of school districts.

PROPOSED BILL LANGUAGE

Section 1116(e) is amended—

By redesignating paragraph (12) as paragraph (13); and

By inserting after paragraph (11) the following:

“(12) Local Educational Agency As Providers.—Nothing in this section prohibits a local educational agency that has failed to make adequate yearly progress or is in improvement, corrective action, or restructuring status pursuant to subsection (c) from providing supplemental services, solely due to such failure. In developing and applying objective criteria under paragraph (4)(B) and withdrawing approval for providers under paragraph (4)(D), a State educational agency may not consider whether a local educational agency made adequate yearly progress or its status under subsection(c).”

IMPACT OF CURRENT LAW

The U.S. Department of Education imposed the policy to prohibit school districts identified for improvement from providing SES for students, although such restriction is not in the law. This unnecessary restriction resulted in costlier programs and reduced the number of students served. Some school districts have paid three times more in per-pupil cost for SES provided by private vendors than services provided by the school district. In addition, many private providers hire the same teachers as tutors as the school district would if it was allowed to provide SES. With limited resources, school districts are forced to spend more funds that can otherwise be used on other Title I activities.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Implementation of Sanctions on Schools: Subgroup Performance

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(b)(1)(A); SEC. 1116 (b)(5); SEC. 1116(b)(7)(C) and SEC. 1116(b)(8)(A)

NSBA RECOMMENDATION

#35: 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 the same subject or indicator, rather than applying sanctions when different groups and/or different subjects or indicators are involved from year to year.

RATIONALE

This provides a more reasonable approach in the identification of schools. By requiring at least a 2-year pattern of low performance of a specific group, limited school resources can be strategically targeted and the number of schools identified would more accurately reflect the needs of students.

PROPOSED BILL LANGUAGE

Section 1116 (b) (20 U.S.C. 6316(b)) is amended—

In paragraph (1)(A) by inserting after “2 consecutive years” the following: “(in the same subject for the same group of students, as described in section 1111(b)(2)(C)(v))”;

In paragraph (5) by inserting after “adequate yearly progress” the following: “(in the same subject for the same group of students)”;

In paragraph (7)(C) by inserting after “adequate yearly progress” the following: “(in the same subject for the same subgroup of students)”;

In paragraph (8)(A) by inserting after “adequate yearly progress” the following: “(in the same subject for the same group of students and the total number of students who did not meet or exceed the proficient level of academic achievement (who are members of a group described in section 1111(b)(2)(C)(v)) that did not make adequate yearly progress exceed 35 percent of all students enrolled in such school who took the assessment in such subject”;

IMPACT OF CURRENT LAW

Under current law, even if a subgroup that failed to make AYP last year subsequently makes AYP this year, the school is forced to be identified and subject for sanctions if a different subgroup failed AYP for the first time this year. In this case, the school doesn’t even get a chance to address the academic challenges of the second subgroup to make AYP. Over the years, about 38 states have asked the U.S. Department of Education to permit them to identify rejected the request, although nothing in the law appears to prohibit same subgroup schools as not making AYP based on the same subgroup criterion. ED, however, has repeatedly identification. How schools are identified for improvement determines

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

how certain Title I funds must be spent. School districts need to make strategic spending decisions based on data that reflect a pattern of problems, not an anomaly. Changing spending and program priorities each year based on a different subgroup failing to make AYP is not a strategic way to spend limited funds.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Implementation of Sanctions on School Districts: Grade Span Performance

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(c)(10)(B)(ii)

NSBA RECOMMENDATION

#36: The application of corrective action sanctions to restructure an entire school district should occur only when it fails to make AYP in the same subject in each of the grade spans or as averaged across all grades.

RATIONALE

This recommendation provides a reasonable approach for determining whether a school district as a composite of grade spans or grade levels is making AYP.

PROPOSED BILL LANGUAGE

Section 1116(c)(10) (20 U.S.C. 6316(c)(10)) is amended—

In subparagraph (B) by amending clause (ii) to read as follow:

“(ii) shall take corrective action with respect to a local educational agency—

“(I) that fails to make adequate yearly progress, as defined by the State, in the same subject, in either (at the option of the State) each grade span (as determined by the State) or averaged across all grades, for a group described in section 1111(b)(2)(C)(v) by the end of the second full school year after the identification of such agency under paragraph (3);

IMPACT OF CURRENT LAW

NSBA’s recommendation will incorporate in the law the U.S. Department of Education’s current policy on identification of school districts for improvement by grade spans, as outlined in a March 2006 guidance letter to states. ED has allowed states to identify school districts for improvement based on failing to make AYP in the same subject in all grade spans for two consecutive years. Many states have requested amendments to be able to implement this practice. Identification of a school district as not making AYP because one grade or one grade span misses AYP when the district as a whole is not failing AYP over-represents the need for sanctions in the district.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.



NCLB RECOMMENDATIONS

SUBJECT

Implementation of Restructuring Sanctions:
Percentage of Students Failing to Meet AYP

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(b)(8)(A) and SEC. 1116(c)(10)(B)(ii)

NSBA RECOMMENDATION

#37: Restructuring should be implemented only when 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 the grade levels tested for AYP.

RATIONALE

The current restructuring provision does not strategically respond to the specific needs schools and school districts have when only a small percentage of their students are unable to score proficient. Why restructure a whole school rather than intensifying interventions under these circumstances?

PROPOSED BILL LANGUAGE

Section 1116(b) (20 U.S.C. 6316(c)) is amended—

In paragraph (8)(A) by inserting after “adequate yearly progress” the following: “in the same subject for the same group of students and the total number of students who did not meet or exceed the proficient level of academic achievement (who are members of a group described in section 1111(b)(2)(C)(v) that did not make adequate yearly progress exceed 35 percent of all students enrolled in such school who took the assessment in such subject”;

Section 1116(c)(10) (20 U.S.C. 6316(c)(10)) is amended—

In subparagraph (B) by amending clause (ii) to read as follows:

“(ii)* shall take corrective action with respect to a local educational agency—

“(II) whose total number of students (who are members of a group described in section 1111(b)(2)(C)(v) that did not meet or exceed the proficient level of academic achievement exceed 35 percent of all students enrolled in a school in such agency who took the assessment in such subject and averaged across all grades;

*Note: (ii)(II) is a newly proposed clause, its number may vary in the final bill.

IMPACT OF CURRENT LAW

Under current law an entire school or school district can be identified for restructuring and face serious consequences such as state or private management takeover or replacement of all the staff. This sanction can be triggered by the performance of 30 students if the N-size is set at 30 – regardless of the

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

performance of the majority of students in the school or school district. That means a school or school district can be in restructuring and subject to major operational changes even if the number of students who are unable to score proficient is relatively small, and the rest of the school is successful. Why reconstitute the entire school or school district because of that? This type of drastic action does not target the needs of the schools or students that need extra help to be successful. Besides, schools and school districts currently only have one year to implement improvement strategies after they are identified under “corrective action.” NSBA’s recommendation will allow schools and districts that are not systemically failing more time to target interventions on specific low-performing students or groups and limit major restructuring to those with more than 35 percent of their students scoring non-proficient.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Implementation of Sanctions: Conditions Beyond the Control of Schools and School Districts

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116(b)(7)(D) and SEC. 1116(c)(10)(F)

NSBA RECOMMENDATION

#38: Schools and school districts should be allowed to defer implementation of sanctions in such cases where they face hardships such as natural disasters or financial difficulties, or experience sudden changes in the enrollments of particular groups of students in the school or within identified groups.

RATIONALE

The proposed change acknowledges that there could be very unique circumstances facing a school or school district such as those receiving displaced students from the Gulf Coast hurricanes.

PROPOSED BILL LANGUAGE

Section 1116(b) (20 U.S.C. 6316(b)) is amended—

In paragraph (7) by amending subparagraph (D) to read as follows:

“(D) Delay.—Notwithstanding any other provisions of this paragraph, the local educational agency may delay, for a period of not to exceed 1 year, implementation of the requirements under paragraph (5), corrective action under this paragraph, or restructuring under paragraph (8) if the school makes adequate yearly progress for 1 year or if its failure to adequate yearly progress is due to—

“(i) exceptional or uncontrollable circumstances, such as a natural disaster;

“(ii) a precipitous and unforeseen decline in the financial resources of the local educational agency or school; or

“(iii) a sudden or significant increase in the number of percentage of students represented by a group described in section 1111(b)(2)(C)(v).

No such period shall be taken into account in determining the number of consecutive years of failure to make adequate yearly progress.”;

Section 1116(c)(10) (20 U.S.C. 6316 (c)(10)) is amended—

In subparagraph (F) to read as follows:

“(F) Delay.—Notwithstanding subparagraph (B)(ii), a State educational agency may delay, for a period not to exceed 1 year, implementation of corrective action under this paragraph if the local educational agency makes adequate yearly progress for 1 year or its failure to make adequate yearly progress is due to—

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

“(i) exceptional or uncontrollable circumstances, such as a natural disaster;
“(ii) a precipitous and unforeseen decline in the financial resources of the local educational agency; or
“(iii) a sudden or significant increase in the number or percentage of students represented by any group described in section 1111(b)(2)(C)(v).”.

IMPACT OF CURRENT LAW

Current law does not provide flexibility for schools and school districts to delay sanctions for one year if they experience sudden and major changes in student enrollments due to special circumstances. The 2005 Gulf Coast hurricanes that displaced hundreds of thousands of students illustrate how schools and school districts can be impacted by a surge in enrollments. While the U.S. Department of Education did respond with temporary waivers, a federal policy is needed -- and should include circumstances when unusual sudden increases in enrollments in specific populations that can alter a school or school district, not solely broad-based natural disasters. Since whether a school or school district makes AYP carries serious consequences, NSBA's recommendation should be incorporated in the law to respond to similar circumstances in the future.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Deferral of Restructuring Sanctions:
Inadequate Federal Appropriations for Disadvantaged Students (Title I)

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116

NSBA RECOMMENDATION

#39: States should be allowed to delay implementation of restructuring schools or school districts in years when Title I funds are not increased by at least \$2.5 billion from previous year's level.

RATIONALE

Federal funding should be increased at rates that recognize the high costs of NCLB sanctions local school districts must incur to implement the federal mandates.

PROPOSED BILL LANGUAGE

Section 1116 (20 U.S.C. 6316) is amended by adding at the end the following:

“(i) Conditional Implementation.—Notwithstanding any other provision of this section, a State educational agency, local educational agency, or school, as applicable, may defer the requirements of subsection (b)(7) and (8) and subsections (c)(7) and (10) in any fiscal year for which both of the following apply:

“(1) The amount appropriated under section 1002(a) for that fiscal year fails to exceed, by at least \$2,500,000,000, the amount appropriated under that section the preceding fiscal year.

IMPACT OF CURRENT LAW

Congress is currently only funding Title I at 50 percent of its authorized level. However, schools and school districts continue to face expanding mandates under the law from year to year. They must: have aligned standards and assessments and test all grades 3-8 and once in high school in 2005-06; meet the law's highly qualified teacher requirements by the end of 2006-07; test students in science in 2007-08; and spend resources on the increasingly higher numbers of schools and school districts that are identified for improvement and facing more severe sanctions.

In addition, schools and school districts must do more each year to help their students meet the rising AYP targets. Despite these mandates, Congress has continued a steady decline in adequately funding NCLB over the last few years. As AYP targets ratchet higher over time, more schools are expected to be in restructuring. Restructuring is an expensive proposition because it involves drastic operational changes to a school or school district. It will divert local resources from other programs if federal funds are inadequate.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Deferral of Restructuring Sanctions: Inadequate Federal Appropriations for Students with Disabilities (Individuals with Disabilities Education Act)

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1116

NSBA RECOMMENDATION

#40: School districts and states should not be required to restructure schools or school districts in years when IDEA funds are not increased by at least \$2 billion over previous year's level.

RATIONALE

As the local costs of implementing sanctions relating to restructuring rise and involve more schools, the federal government should pick up the costs of funding its share of IDEA mandates. In the absence of a significant commitment to reaching the federal share of IDEA, school districts should not have to meet the restructuring mandates of NCLB as well.

PROPOSED BILL LANGUAGE

Section 1116 (20 U.S.C. 6316) is amended by adding at the end the following:

“(i) Conditional Implementation.—Notwithstanding any other provision of this section, a State educational agency, local educational agency, or school, as applicable, may defer the requirements of subsection (b)(7) and (8) and subsections (c)(7) and (10) in any fiscal year for which both of the following apply:

“(2)* The amount appropriated under section 611(i) of the Individuals with Disabilities Education Act (42 U.S.C. 1400 et seq.) for that fiscal year fails to exceed, by at least \$2,000,000,000 the amount appropriated under that section for the preceding fiscal year.”.

**Note: (i)(2) is a newly proposed subsection, its number and letter may vary in the final bill.*

IMPACT OF CURRENT LAW

Despite rising costs in providing services to students with disabilities, Congress has never fulfilled its commitment in fully funding IDEA at 40 percent average per-pupil cost. When lawmakers reauthorized IDEA in 2004, they established a 7-year path to full funding by 2011, but they have not adhered to that schedule and currently provide less than half of the federal share. Congress' unwillingness to commit adequate resources to educate students with disabilities causes school district to divert local funds from other programs to cover the federal share of IDEA mandates. This hurts both the general education and educators' ability to help students with disabilities meet AYP goals.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Non-Public School Accountability when Receiving Title I Services

P.L. 107-110 PROVISIONS

TITLE I PART A SUBPART 1 SEC. 1120

NSBA RECOMMENDATIONS

#41: Students receiving Title I benefits in non-public schools should be given the same assessment as public school students, with appropriate accountability and test reporting requirements to parents and school districts, which are required by NCLB to provide consultative services to those non-public schools.

#42: States may authorize 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.

RATIONALE

Non-public school receiving federal support should be given the same measure of performance and held accountable in a constitutionally permissible manner. Non-public schools receiving federal Title I services should have some levels of accountability to students, parents and taxpayers for effectively providing educational services.

PROPOSED BILL LANGUAGE

Section 1120 (20 U.S.C. 6320) is amended—

In subsection (b)(1)(D) by inserting after “academically assessed” the following: “(consistent with subsection (f)”; and

By adding at the end the following:

“(f) Accountability For Children Enrolled In Private Schools.—

“(1) In General.—Notwithstanding section 9506(a), as specifically provided for in this subsection, children enrolled in private elementary schools and secondary schools that receive educational services or other benefits under this part shall participate in the assessments described under section 1111(b)(3).

“(2) Reporting.—

“(A) The State educational agency shall report the result of the assessments taken by students in private elementary and secondary schools by grade and subject to—

“(i) the private elementary or secondary school that such students attend; and

“(ii) the local educational agency in which the such private school is geographically located in a manner and extent that is consistent with the provisions of section 1111(i) and the function of the local educational agency under section 1120(b).

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.

“(B) A private elementary or secondary school shall report the assessment results received from the State educational agency under subparagraph (A) to the parents of students enrolled in such school who receive services under this part in writing and in the native language of the parent in a manner and extent consistent with the provisions of subsection 1111(i).

“(3) Effectiveness of Services.—Based on the result of the assessments described under paragraph (1), a State educational agency may determine that such services received by children under this section be ceased in schools when such results, compared to a comparable cohort of children enrolled in a public school in the school district of the local educational agency, are significantly lower and such schools do not meet the definition of adequate yearly progress established by the State in which the private school is located for 3 or more consecutive years.”.

IMPACT OF CURRENT LAW

Although school districts are required to spend an equal amount of funds per student to provide services to Title I eligible students who are enrolled in non-public schools as those enrolled in public schools, there is currently no accountability for the achievement of non-public school students. Parents of these children are not entitled to comparable information regarding performance as their counterparts in public schools. To strike a balance, NSBA’s recommendations will provide parents a basic level of accountability for the performance of Title I students in non-public schools but with less detail than to public school parents, with denial of services after three years of inadequate performance rather than using interventions.

NSBA CONTACT

Reggie Felton, director of federal relations, 703-838-6782 or rfelton@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Highly Qualified Teacher Determinations: Special Education Teachers

P.L. 107-110 PROVISIONS

TITLE IX PART A SEC. 9101(23)(B)

NSBA RECOMMENDATION

#43: Special education teachers of multiple core academic subjects who have a bachelor's degree and full state special education certification would be considered highly qualified.

RATIONALE

Recruiting and retaining special education teachers were challenges for school districts before NCLB, and the highly qualified requirements have exacerbated the problem. The Department of Education has recognized these challenges and attempted to provide some flexibility. However, given the practical supply and demand realities of special education teachers, it is unreasonable to require special education teachers of multiple core academic subjects to have to meet the special education certification requirements in addition to subject matter requirements for several academic subjects.

PROPOSED BILL LANGUAGE

Section 9101(23)(B) is amended –

In subclause (i), by adding at the end the following:

“(III) in the case of a special education teacher, obtaining a State special education certificate that qualifies the teacher to teach special education in the State; or”.

In subclause (ii)(I), by striking “or” after the semicolon;

In subclause (ii)(II), by striking “and” after the semicolon and inserting “or”;

In subclause (ii), by adding at the end the following:

“(III) in the case of a special education teacher, obtaining a State special education certificate that qualifies the teacher to teach special education in the State; and”.

IMPACT OF CURRENT LAW

In a 2006 NSBA survey of local school board members, they reported that the greatest challenge in meeting the Highly Qualified Teacher requirements was for their special education teachers. In fact, 64 percent of respondents named this as the top challenge. Local board members emphasized that their district had enough difficulty hiring and retaining special education teachers even before NCLB, but that the requirements for special education teachers of multiple core academic subjects, had exacerbated those problems. The requirements may actually cause special education teachers to switch subjects so that they do not have to jump through more hoops than some of their peers.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

NSBA CONTACT

Marc Egan, director of federal affairs, 703-838-6707 or megan@nsba.org.



NCLB RECOMMENDATIONS

SUBJECT

Highly Qualified Teacher Determinations: Social Studies Teachers

P.L. 107-110 PROVISIONS

TITLE IX PART A SEC. 9101(23)(B)(ii)

NSBA RECOMMENDATION

#44: Streamline existing Highly Qualified Teacher requirements for social studies teachers so that teachers receiving a “broad field” state certification in social studies are considered highly qualified without needing an academic major or certification in multiple, specific social studies subjects such as geography, history, civics and government, and economics.

RATIONALE

NCLB’s Highly Qualified Teacher requirements break out social studies into five specific subjects: geography, history, civics and government, and economics. This differs from other major subjects such as mathematics and science, in which the law does not break those subjects into more specific groups. As a result, social studies teachers unnecessarily have extra hurdles to leap in order to meet the highly qualified requirements.

PROPOSED BILL LANGUAGE

Section 9101(23)(B)(ii) is amended –

In subclause (I), by striking “or” after the semicolon;

In subclause (II), by striking “and” after the semicolon and inserting “or”;

By adding at the end the following:

“(III) obtaining a State social studies certificate that qualifies the teacher to teach geography, history, civics and government, and economics in middle or secondary schools, respectively, in the State; and”.

IMPACT OF CURRENT LAW

Under current law, social studies teachers are treated differently than teachers of other core academic subjects, such as mathematics, because the highly qualified requirements separate social studies into five distinct subjects. This results in social studies teachers having to demonstrate their subject matter qualifications to a greater degree than other teachers in their school and district. This inconsistency in NCLB undermines the credibility of the Highly Qualified Teacher requirements that public school teachers around the country are attempting to fulfill.

NSBA CONTACT

Marc Egan, director of federal affairs, 703-838-6707 or megan@nsba.org.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA’s recommendations, see www.nsba.org/nclbcampaign.



NCLB RECOMMENDATIONS

SUBJECT

Highly Qualified Teacher Determinations:
Supplemental Educational Services Providers

P.L. 107-110 PROVISIONS

TITLE IX PART A SEC. 1116(e)(12)

NSBA RECOMMENDATION

#45: Instructional personnel of core academic subjects employed by supplemental educational services providers should be held to the same Highly Qualified Teacher requirements as public school educators.

RATIONALE

NCLB's Highly Qualified Teacher requirements should be consistently applied to recipients of federal funding, including SES providers. If the highly qualified provisions are considered a minimal standard for teachers of core subjects, instructors with SES providers need to meet that standard to help ensure that students who need further academic assistance are receiving it from qualified instructors.

PROPOSED BILL LANGUAGE

Section 1116(e)(12) is amended:

In subparagraph (B) –

In clause (ii), by striking “and” at the end;

By adding at the end the following new clause:

“(iv) provides supplemental educational services by individuals who are highly qualified to the same extent and in the same manner as a teacher under section 9101(23) with respect to the student receiving such services; and”.

IMPACT OF CURRENT LAW

Under current law, up to 20 percent of Title I funding that could be used in public schools to improve student achievement must go to supplemental education services (SES) providers. It is critical for participating students, and their public school – which faces additional sanctions if it does not make AYP in future years – that SES-provided instruction is effective. Currently, SES instructional personnel are not held to the same standards required of public school teachers of core academic subjects. This inconsistency in NCLB jeopardizes the ability of SES providers to offer effective instruction and undermines the credibility of the Highly Qualified Teacher requirements that public school teachers around the country are attempting to fulfill.

NSBA CONTACT

Marc Egan, director of federal affairs, 703-838-6707 or megan@nsba.org.

This brief explains one of the 45 provisions recommended by the **National School Boards Association** for NCLB reauthorization. For more on NSBA's recommendations, see www.nsba.org/nclbcampaign.

APPENDIX A



The Why Report: NCLB Series

NSBA RECOMMENDATION #1

Students with Limited English Proficiency – Districts should be able to 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 does not effectively hold schools accountable for the performance of students with limited English proficiency (LEP) because: 1) some LEP students' academic backgrounds from their native countries are so far below grade level that counting their scores for AYP based on grade-level standards when they have been in the United States for less than three years is inappropriate; and 2) states do not yet have valid and reliable standardized tests to measure these students' academic performance.

The law currently requires LEP students who have been in school in the U.S. after just one year to meet the same proficiency score based on grade-level standards as their English speaking peers. This is particularly problematic for students who entered the country far below grade level. For the first several years, it would be more appropriate to determine their achievement for AYP purposes on the basis of academic progress. After that they should be assessed on the same basis as other students.

In addition to NCLB's inappropriate testing requirements, many educators are concerned that even the results from native language tests, which are taken by some LEP students for AYP purposes, do not adequately reflect a student's proficiency. These tests are simply direct translations from their English-language versions and do not take into account the cultural context of their contents. LEP students who have had poor academic backgrounds before they enter school in the U.S. will have difficulty with these tests. Since native language assessments are not appropriate for all LEP students and not available in all languages, schools need to have alternate ways of assessing these students' performance.

LEGISLATIVE REMEDY

NSBA's recommendations will authorize districts to provide an alternate assessment – as determined by the local team overseeing the LEP student's education plan and on an individual 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).

This *Why Report* addresses 1 of 42 provisions contained in NSBA's bill, *No Child Left Behind Improvements Act*. To review other *Why Reports* on key provisions, see www.nsba.org/NCLBRecommendationSeries.

SUPPORTING DOCUMENTATION

Educators need alternate testing tools to accurately measure LEP student performance in order to be held accountable for their achievement. However, the current law does not give them the option to use these measures for AYP. It requires all LEP students to meet the same academic standards at the same pace as their English speaking peers, with an exception for those who have been in school in the U.S. for less than one year.

Research on language acquisition is consistent and clear that LEP students, particularly those with poor academic backgrounds from their native countries, need more than one year to achieve English language proficiency, and as many as seven years to achieve grade-level academic performance in English (National Association for Bilingual Education 2004).

With limited testing options, districts have to use standardized assessments to measure LEP student performance for AYP. Standardized testing tools are ineffective because they cannot distinguish whether students make language errors rather than content errors; therefore, they are unable to yield meaningful data on LEP student performance (NABE 2004). Many of these students need accommodations to help them take standardized tests. But researchers found that common accommodations such as simplified English and extra time are largely ineffective in helping them understand the tests (Center on Instruction 2006).

States and districts have voiced concerns over giving LEP students assessments that neither measure their performance nor inform instruction. Some schools in Virginia have intensified their protest against NCLB's testing requirements. In early 2007 officials from **Fairfax County Public Schools**, the largest school system in Virginia, considered a proposal that would allow schools to refuse to give LEP students tests they deemed inappropriate. Fairfax's action was a result of the U.S. Department of Education's objection last year over the way Virginia and 17 other states tested LEP students (The Washington Post, January 2007). Virginia gave some LEP students a specialized proficiency test to measure their reading skills and included those scores for AYP. Fairfax's refusal to use standardized tests for some students could cause more schools to miss AYP. But some local officials indicated that it's more important to do what is educationally sound for the students.

Congress must act quickly to improve NCLB's testing requirements for LEP students because the LEP population continues to grow rapidly. While these students had traditionally been concentrated in such states as New York and California, their enrollments have spread elsewhere. South Carolina saw an increase of LEP student enrollment by 521 percent and North Carolina by 470 percent between 1993 and 2003 (Center on Education Policy 2005). The overall LEP school-aged population grew by more than 169 percent from 1979 to 2003; while the general school-aged population experienced a 12 percent growth during the same period (Center on Instruction 2006).



The Why Report: NCLB Series

NSBA RECOMMENDATION #2

Students with Disabilities – IEP teams should determine whether alternate assessments are appropriate for individual students (with the parent’s consent). Test scores from alternate assessments such as progress-based measures and out-of-level testing should 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

Under the current regulations IEP teams must fit students into highly restrictive categories in order to count their results on alternate assessments for AYP. This narrow concept is driven by the two testing caps allowed by the U.S. Department of Education. Specifically districts and states can count 1 percent of all test takers who score proficient on alternate assessments for AYP if they meet the definition of students with “the most significant cognitive disabilities.” Similarly, another 2 percent can be counted for AYP on “modified assessments” if they meet the definition of having “persistent academic disabilities.”

These two definitions restrict the ability of IEP teams to determine the most appropriate way of assessing the achievement of some students with disabilities who don’t neatly fall within these definitions. Decisions on assessments such as measuring individual student progress or out-of-level testing are best left up to the expertise and evaluation of the IEP team. Currently ED prohibits the use of alternate assessments, such as out-of-level testing, for AYP purposes despite the judgment of the IEP team.

LEGISLATIVE REMEDY

NSBA recommends amending the law to permit states and districts to count toward AYP proficiency up to 3 percent of the test takers based on alternate assessments, including the use of gain scores or out-of-level testing. 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.

SUPPORTING DOCUMENTATION

Restricting students with disabilities within the 1 percent or 2 percent definitions for testing purposes does not necessarily serve their best interest. Since individual students’ needs are unique, there is not a specific methodology that can yield a definitive answer of who falls in to which category.

Research from the National Association of State Directors of Special Education found that about 3 percent of all students need to use some type of alternate assessments to measure their performance. NSBA’s recommendation will allow 3 percent of test takers to count their scores of

This *Why Report* addresses 1 of 42 provisions contained in NSBA’s bill, *No Child Left Behind Improvements Act*. To review other *Why Reports* on key provisions, see www.nsba.org/NCLBRecommendationSeries.

alternate assessments toward AYP without having to fit under either definition. This will free IEP teams from making restrictive testing decisions at the same time ensuring that only students who are most in need of alternate assessments are being given these assessments for AYP purposes.

The 1 percent policy is problematic because it allows for too much subjectivity in determining eligibility. The criteria for deciding who qualifies for the category vary with each of the 50 states defining their own criteria on what constitutes the most significant cognitive disabilities (National Center on Educational Outcomes 2005). The same students could fall in and out of this category in different states and even in different districts.

Since districts are not permitted to use measures of individual growth or measures that are based on the individual's performance level for AYP purposes, states must design different standardized tests for the respective 1 percent and 2 percent groups in order to count their scores toward AYP. However, states have been struggling with developing valid and reliable standardized tests for students with disabilities. In July 2006 ED found most of these tests developed by states unacceptable.

Students with disabilities are a diverse group with many unique needs and a wide range of challenges. Assessment and education experts agree that measuring these students' achievement often requires an individualized approach. States are having difficulty reconciling the need to assess individual students' achievement -- as required by the Individuals with Disabilities Education Act -- and meet NCLB's requirements to test all students with standardized assessments (Government Accountability Office 2005).

While NCLB has helped focus attention on the achievement of students with disabilities, its testing requirements must change to focus on appropriately assessing the performance of individual students. NSBA's recommendation will give local educators the flexibility to make the most appropriate testing decision while making sure they are not overidentifying students who need alternate assessments.



The Why Report: NCLB Series

NSBA RECOMMENDATION #3

Multiple Assessments – States should have the option to count the highest 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

The U.S. Department of Education's policy does not allow tests that are taken after the "official" assessment date to count toward AYP. Hence if a student fails the test during the official spring administration of the test but scores proficient in a subsequent test after remediation, 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 a test on the same subject. Why identify a school as not making AYP -- and spend limited resources on sanctions -- if a group enters the next school year making AYP after retesting? And why should the school move to the next level of sanctions that incur more spending?

Schools that use remediation programs in the spring or summer 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 based on the scores from retests given by the state that take place after the official testing period. The school or district would be credited for AYP if as a result of retests specific subgroups that previously failed AYP become proficient. More importantly, the new AYP data will determine whether it moves to the next level of sanctions and how 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 a school's AYP status, regulations can determine whether sanctions would proceed -- as long as the school is appropriately credited based on the revised data.

LEGISLATIVE REMEDY

NSBA's bill gives states the option to count toward AYP the highest score achieved by a student who is assessed more than once on the same subject prior to the following school year.

SUPPORTING DOCUMENTATION

In 2006, ED approved Delaware's request to recalculate AYP if a student attending summer school retests and achieves proficiency. However, the practice is limited to that state and certain grade levels. Delaware's approval should be expanded to all states and all grade levels. This retesting policy will ensure that schools and districts using post-test

This *Why Report* addresses 1 of 42 provisions contained in NSBA's bill, *No Child Left Behind Improvements Act*. To review other *Why Reports* on key provisions, see www.nsba.org/NCLBRecommendationSeries.

remediation programs in the spring or summer to successfully help students reach proficiency are credited in the calculation of AYP for that school year.

Many states already established policies for summer programs: 34 states and the Districts of Columbia have such policies; 12 states operate programs designed specifically to ensure their students are reading at proficient levels; and 14 states included math and science as subjects in the summer program policies (Education Commission of the States 2005). NSBA's proposed policy will recognize these states' efforts to help students reach proficiency through post-test programs in the spring or summer by allowing them to include the proficient scores from retests in AYP. It also will create more incentives for states that do not yet offer any post-test remediation programs to begin offering them.



The Why Report: NCLB Series

NSBA RECOMMENDATION #4

Growth Models – States should have the option to 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 inappropriately 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. Research concluded 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 November 2005, the U.S. Department of Education said it would approve a limited number of growth models for AYP in a pilot program. Seven months later, only two states – North Carolina and Tennessee – were allowed to use growth to calculate AYP. A year after the pilot program, ED added Delaware to the pilot program, with Arkansas and Florida joining on a provisional basis until their assessment systems receive full approval. While these actions represent a positive step, the limited scope of the pilot program and the slow pace at which ED moved on growth policy do not present a favorable opportunity for more states to gain approval. While only a handful of states are expected to be approved to use growth for AYP this year, nearly all states were using or considering using growth models for a variety of purposes either within or apart from NCLB (Government Accountability Office 2006). States should be allowed to use student growth in 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 so states can allow districts and schools to count students' progress to meeting the annual AYP goals.

SUPPORTING DOCUMENTATION

While NCLB does not fully recognize student growth, many states had implemented successful growth-based accountability systems prior to the passage of the law in 2002 to track student progress and to evaluate school performance. In its July 2006 report, the GAO found that 26 states were using growth models as part of or separated from the federal law; and 22 were either considering or in the process of implementing growth models.

This *Why Report* addresses 1 of 42 provisions contained in NSBA's bill, *No Child Left Behind Improvements Act*. To review other *Why Reports* on key provisions, see www.nsba.org/NCLBRecommendationSeries.

As more states are moving forward on growth-based measures as well as improving their collection and use of data, federal policy on growth models has not kept pace with local progress. So far ED has given permission to only a handful of states to use growth to calculate AYP for 2006-07. On the other hand, states have made tremendous investments in and improvement to their data systems to sustain quality growth models: 43 states (up from 32 last year) can now match individual students' test records from year to year to measure academic growth, 44 states (up from 37) have unique student identifier to track student progress from grade to grade and across campuses and/or districts; and 36 states (up from 19) have statewide audit systems that assess data quality, validity and reliability (Data Quality Campaign 2006).

ED's approval process for the pilot program also appears inconsistent with different states. For example, Colorado's growth proposal was rated highly by some assessment experts and contained similar growth projections as North Carolina's, but was rejected earlier this year for a lack of rigor (Title I Monitor, May 2006). Arizona's proposal received high marks from peer reviewers but ED rejected it citing a non-growth related compliance issue.

Not only can growth models improve NCLB's accountability system, they also provide valuable data to help teachers identify students' strengths and weaknesses as well as to inform instruction. For accountability purposes, growth models hold all schools responsible for student progress regardless of where a student's starting point is.

The effectiveness of growth-based accountability systems is evident in the states that have implemented them for various purposes. Florida, whose growth proposal has received ED's tentative approval, implemented a state accountability program based on student growth prior to NCLB. Officials from the **Pinellas County School District** said many of their schools have made significant gains in meeting proficiency in math this year; but this improvement was ignored in some schools because they didn't meet the AYP target. Recent data from **St. Johns County Schools** showed that some students who failed to make AYP previously experienced more growth this year than their higher achieving peers. Again the growth was not considered in AYP calculations. Students with disabilities and those with limited English proficiency significantly benefit from the growth-based system. Since these students were included in the state's growth trajectory, higher expectations have brought significant academic gains in these groups over the years.

Officials from the **Anchorage School District** in Alaska use growth data to track students' rate of progress and whether they are on the right trajectory to become proficient. Many schools that started far below the proficiency bar have made progress at a greater rate than other higher achieving schools. The state hopes to get approval from ED to use growth measures to calculate AYP this year.



The Why Report: NCLB Series

NSBA RECOMMENDATION #5

Multiple Subgroups – Students belonging to multiple subgroups should be counted in each subgroup as an equal fraction totaling one student for AYP determination.

STATEMENT OF THE ISSUE

The current AYP structure counts students more than once if they are identified in multiple subgroups. This policy creates an unfair statistical bias in evaluating and sanctioning schools and districts that have many subgroups. That is if a student doesn't make AYP in one subgroup, he or she will be counted again as nonproficient in other identified subgroups. In addition, the more subgroups a student belongs to the more likely that student is academically challenged and less likely to score proficient. Not only is that students' score being overly represented, it is more likely to be low proficiency than the scores of students who are only identified in one subgroup. Large, diverse schools and districts are more likely to fail to make AYP because of that. To accurately measure school performance, each student should be counted as one student, not several students, in determining AYP.

LEGISLATIVE REMEDY

NSBA recommends that students identified in more than one subgroup 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 scores will be counted as a 1/3 fraction in each of the subgroups when calculating AYP.

SUPPORTING DOCUMENTATION

The current AYP structure can cause large, diverse schools and districts to fail AYP due to multiple counts of the same students in subgroups. Studies found that students identified for several subgroups tend to be academically challenged. Students belonging to the Hispanic subgroup are seven times more likely than those in the White subgroup to also be economically disadvantaged and English language learners (Harvard Civil Rights Project, 2005).

Several states – including Delaware and Maryland -- have unsuccessfully asked the U.S. Department of Education to allow schools to apportion the scores of students who are in multiple subgroups for AYP. ED replied that the practice was "in conflict with NCLB subgroup accountability." State officials from Delaware said that the proposal was to make sure that more resources are spent on the right schools that are identified for improvement and subject to sanctions. Multiple counting was the primary reason why half of the schools in Delaware failed to make AYP in 2003 (Harvard Civil Rights Project, 2005).

This *Why Report* addresses 1 of 42 provisions contained in NSBA's bill, *No Child Left Behind Improvements Act*. To review other *Why Reports* on key provisions, see www.nsba.org/NCLBRecommendationSeries.

An analysis conducted by Delaware showed that 44 percent of its students were included in three or more subgroups in 2005-06. The actual number of students in the tested grades was 8,632; but the total count of students in all the subgroups, including those who are counted multiple times, was 13,129. The state calculated that 52.1 percent of the students were overrepresented when they were counted in multiple subgroups. When only low-performing students are considered, 90.8 percent of them were overrepresented when counted in multiple subgroups.

The numbers of students counted in multiple subgroups for AYP are significant. In the **Dallas Independent School District** (Texas), tens of thousands of students are identified in two or more subgroups. Of the 79,535 students who took the reading test in 2005-06, more than half belonged to two subgroups in addition to the all-student group. Here are the numbers of students belonging to multiple subgroups who participated in the 2005-06 NCLB reading test:

No. of students counted in 2 subgroups (excluding all-student group)

- 43,519 were Hispanic and economically disadvantaged
- 28,226 were Hispanic and limited English proficiency (LEP)
- 3,944 were Hispanic and special education
- 19,470 were black and economically disadvantaged
- 3,466 were black and special education

No. of students counted in 3 subgroups (excluding all-student group)

- 26,367 were Hispanic, economically disadvantaged and LEP
- 3,337 were Hispanic, economically disadvantaged and special education
- 2,641 were Hispanic, LEP and special education
- 27,016 were economically disadvantaged, LEP and in a racial subgroup
- 6,883 were special education, economically disadvantaged and in a racial subgroup

No. of students counted in 4 subgroups (excluding all-student group)

- 2,487 were LEP, special education, economically disadvantaged and in a racial subgroup



The Why Report: NCLB Series

NSBA RECOMMENDATION #6

Same Subgroup – Schools and districts should 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 unfairly punishes districts and schools that are successful in raising student achievement in specific subgroups, because it applies sanctions (school choice, supplemental educational services, restructuring, etc.) when one subgroup fails AYP in a subject for just one year and then a different subgroup fails for the first time in the next. This means that if a subgroup fails to make AYP but the school immediately remedies the problem in the very next school year, the school will still be subject to sanctions if another subgroup fails to make AYP for the first time (and doesn't even get a chance to address the failure of the second subgroup to make AYP).

The issue here is not whether these two subgroups would or would not be counted as failing to make AYP, but whether sanctions would apply to the school. Why reduce the limited resources available by engaging in costly sanctions when the school has immediately raised student achievement of a previously failed group? Large and diverse schools and 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 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 consecutive years or more.

SUPPORTING DOCUMENTATION

In 2006, six states (CT, NV, OK, UT, PA, VA) asked the U.S. Department of Education to allow them to identify schools and districts for improvement only when the same subgroup didn't make AYP in the same subject or indicator for two consecutive years. These requests have either been verbally denied or have not been responded in writing (Council of Chief State School Officers 2006).

Over the years, about 38 states have asked for ED's permission to identify districts and schools based on the same subgroup criterion (CCSSO 2005). ED, however, has repeatedly rejected the request simply by citing its "*inconsistency*" with the law and regulations in a 2003 response to

This *Why Report* addresses 1 of 42 provisions contained in NSBA's bill, *No Child Left Behind Improvements Act*. To review other *Why Reports* on key provisions, see www.nsba.org/NCLBRecommendationSeries.

West Virginia. However, nothing in the law appears to prohibit same subgroup identification and no legal basis was cited in support of ED's decision.

In 2006, ED rejected Pennsylvania's request to identify for improvement only schools and districts that missed AYP solely due to the same subgroup in the same subject for two consecutive years. In 2005, only 61 of Pennsylvania's 509 schools that had moved forward on the improvement timeline missed AYP due to the same subgroup missing the same subject for two consecutive years. Under the proposed same subgroup identification, resources could have been more strategically allocated for the 61 schools that appeared to have consistent difficulty in raising the achievement of specific student groups.

How schools are identified for improvement determines how certain Title I funds must be spent. **Polk County Public Schools** in Florida will spend about \$219,000 to implement school choice and supplemental educational services in 2006-07 based on the current policy that identifies schools based on different subgroups failing to make AYP each year. District officials said these funds could be better spent on providing services to all Title I schools. While more resources can be devoted to the subgroup that missed AYP in a given year, districts should make spending decisions based on long term data. Changing priorities each year based on a different subgroup failing to make AYP is not a strategic way to spend limited funds.

In practice, same subgroup identification will help educators develop school improvement plans that target the problem areas. Schools identified for improvement due to a different subgroup every year have a hard time determining whether the failing of that subgroup is an anomaly, or whether it's truly a problem that can be traced back to instructional programs for students in the subgroup. A moving subgroup target leads to a "*sporadic and inconsistent implementation of school improvement effort*" (CCSSO 2005).

Virginia argued in its request for same subgroup identification that ED's policy also fails to "*recognize the different educational problems that may be evidenced and interventions that may be appropriate in cases where different subgroups fail to demonstrate AYP*". Applying sanctions only to schools that consistently fail to raise achievement of the same subgroup will ensure that school improvement efforts focus on schools with systemic underperformance issues.



The Why Report: NCLB Series

NSBA RECOMMENDATION #7

Aligned Sanctions with Needs –Restructuring should be better aligned with strategies that focus on specific students who are not able to score proficient or above.

STATEMENT OF THE ISSUE

A major problem with NCLB's restructuring sanction is that an entire district or school can face serious consequences even when a small percentage of students are unable to score proficient. Under the current law, a school with 1,000 students or a district of 25,000 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). Restructuring 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 can eventually face major changes in governance or be abolished under the current law.

NCLB authorizes five options to raise student achievement in schools that are in the restructuring phase. Most of these options call for drastic operational changes and one option gives local officials some flexibility to make significant changes to improve performance. Since major governance changes have not been proven effective in raising student achievement, many local officials opted to make other changes that target instruction and learning. Strategies including additional learning time, curriculum improvement and the use of specialists and coaches --which are often used in schools identified for "corrective action" -- are more appropriate and effective interventions when the overall school is not failing AYP. It is important that NCLB continues to allow local officials to implement these strategies in schools facing restructuring and restricts the use of drastic governance changes to schools with considerable numbers of students scoring nonproficient.

Restructuring essentially means creating a new school; but why break up the entire school when only a small percentage of students are unable to achieve proficiency? This drastic action does not target the needs of these students and can disrupt the learning environment for others. With inadequate federal Title I funding, local resources will need to be redirected from other programs to meet the cost of restructuring. Over time the cost will escalate as more schools and districts move into restructuring for failing to meet higher AYP targets.

LEGISLATIVE REMEDY

NSBA's bill will authorize states to limit the use of restructuring that calls for drastic governance changes to schools and districts to instances where the number of students belonging to

This *Why Report* addresses 1 of 42 provisions contained in NSBA's bill, *No Child Left Behind Improvements Act*. To review other *Why Reports* on key provisions, see www.nsba.org/NCLBRecommendationSeries.

subgroups that failed to meet their AYP targets and who themselves scored nonproficient totaled at least 35 percent of the entire student population.

SUPPORTING DOCUMENTATION

During 2004-05, 1,065 schools nationwide were in restructuring and 1,047 schools were moving toward restructuring the following year, according to the latest data from the U.S. Department of Education. These numbers will continue to rise as schools must meet higher AYP targets next year and beyond.

Currently a school can be put into restructuring and subject to drastic operational changes even if the number of students who scored nonproficient is relatively small. For example, **Bladensburg Elementary School in Prince George's County Public Schools** in Maryland entered NCLB's restructuring after missing AYP targets for only the special education subgroup for 2004-05. The school met AYP in all the other seven subgroups and has seen test scores rise for the last few years (Center on Education Policy 2006). Within the special education subgroup, 28 students scored nonproficient in math and 29 scored nonproficient in reading. These students made up 4 percent and 5 percent, respectively, of the entire student enrollment in the school, far below the 35 percent recommended threshold.

Although Bladensburg was in restructuring, Maryland officials decided that the school was not failing broadly therefore did not warrant drastic operational changes. Instead, district and school officials intensified existing improvement strategies that were implemented under the corrective action phase. These strategies included curriculum improvement, extended learning time, diagnostic assessments and "turnaround specialists" who provided guidance for principals and teachers. Bladensburg began to respond positively to these interventions and is now on its way to exit NCLB's improvement status after making AYP for 2005-06 (CEP 2006).

The problem with NCLB's stringent improvement timeline is that it doesn't give schools and districts sufficient time to implement improvement strategies to show results. Schools are put under corrective action for just one year to implement improvement strategies before moving into the restructuring phase. Various studies have shown that meaningful school and classroom-level changes generally take more than five years to accomplish (Rand Corporation).

When a school is not broadly failing to make AYP, the best interventions are to focus on classroom learning and school leadership that target the students in need. Major governance changes should be considered only when at least 35 percent of its population is unable to score proficient. This will give schools and districts sufficient time to show success and allow them to spend limited resources more strategically.



The Why Report: NCLB Series

NSBA RECOMMENDATION #8

Aligned Sanctions with Needs – School choice and supplemental educational services (SES) should be limited to those students who belong to a subgroup that failed to make AYP and were themselves unable to score proficient or above.

STATEMENT OF THE ISSUE

When a school is identified for improvement all of its students are eligible for school choice and all of its low-income students are eligible for SES regardless of their performance. This policy is overly broad and does not target resources for students who need help most. It is counterproductive because 1) low performing students have not benefited from school choice since students who have transferred tend to be high performing; 2) since students don't have to be low achieving to be eligible for SES, Title I funds are being diverted away from students who are low achieving and need these resources most; and 3) the sheer volume of SES eligible students creates tremendous administrative burdens on districts and takes away local resources from other low performing students.

Under the current law districts must reserve 20 percent of their Title I funds for SES and transportation for students who transfer under choice, as well as spend local funds to administer these programs. Five years after NCLB's passage, Congress is only able to fund Title I at about 50 percent of its authorized level. Not only is Title I underfunded, the reserved amounts for choice and SES are not well spent under the current eligibility policy because these resources do not target low-achieving students who might not meet the low income requirement. Choice and SES should be offered only to students for whom their schools are failing to raise their achievement.

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 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.

SUPPORTING DOCUMENTATION

While parents have shown little interest in school choice under NCLB, SES has sparked a wide range of criticism from eligibility to program administration. In a November 2006 report, the U.S. Department of Education's Office of Inspector General criticized the current SES eligibility for not targeting students who need help most. OIG recommended the following alternative

This *Why Report* addresses 1 of 42 provisions contained in NSBA's bill, *No Child Left Behind Improvements Act*. To review other *Why Reports* on key provisions, see www.nsba.org/NCLBRecommendationSeries.

approaches to identify students eligible for services: limited to only low-achieving students from low-income families; or to all low-achieving students in Title I schools in need of improvement. These proposals recognize the problems but are not as targeted as NSBA's recommendations.

The reality is that if the current criteria do not improve, many districts will spend the reserved Title I funds on students who are not necessarily low performing, therefore reducing available in-school funds for other low performing students who need it most.

Since the SES policy creates a large number of students eligible for services; districts are only able to serve relative small percentages of these students. Urban districts in particular are struggling to accommodate the increasing number of SES eligible students each year. **Chicago Public Schools** have 231,000 students who are eligible for SES for the 2006-07 school year, but was able to provide services to only 52,000 with the 20 percent reserved Title I funds. However, district officials said these 52,000 students are not all low achieving because all low-income students who attended Title I schools in need of improvement were eligible to sign up regardless of their performance.

The sheer volume of eligible students is also driving up the administrative costs for choice and SES. Since the 20 percent reserved funds cannot be used for administering the programs, districts must spend local funds to pay for mailings and other outreach efforts to inform parents of every eligible student for choice and SES. Officials from the **Milwaukee Public Schools** said they had to borrow funds from the summer school programs for SES overhead expenses. As a result, the summer school budget has shrunk from \$8 million to \$3 million.

Under NSBA's recommendation, the eligibility for choice and SES will focus on students who truly need the services, freeing up local funds for other programs to help struggling students. It also will make administration of the program much more manageable and efficient. More students will become eligible for choice and SES as more schools and districts fail to meet the increasingly high AYP targets. Congress must refocus eligibility for choice and SES on students who need them most if these programs are to fulfill NCLB's goals of improving academic performance and closing achievement gaps.



The Why Report: NCLB Series

NSBA RECOMMENDATION #9

Aligned specific sanctions with funding – States should 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 increased by at least \$2 billion.

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.

When schools don't meet the rising AYP targets, they will move along the sanction continuum and eventually be restructured. Restructuring is an expensive proposition because it involves drastic operational changes to a school or district. It will divert local spending from other programs if federal funds are not sufficient. Currently Congress is only able to fund Title I at 50 percent of its authorized level and provides half of the promised federal share for Individuals with Disabilities Education Act. The combined shortfalls in meeting the mandates of these laws are a significant burden of school systems that should be addressed before restructuring is required.

While Congress provides only half of the Title I funds authorized in NCLB, districts and schools must face expanding mandates under the law from year to year. They must: have aligned standards and assessments by 2005-06; test all grades 3-8 and high school in 2005-06; meet the law's highly qualified teacher requirements by the end of 2006-07; and test students in science in 2007-08. In addition, schools must do more each year to help their students meet the rising AYP targets. Despite these mandates, Congress has continued a steady decline in adequately funding NCLB over the last few years.

Congress also has never fulfilled its promise in fully funding IDEA at 40 percent average per pupil cost. When lawmakers reauthorized IDEA in 2004, they established a seven-year path to full funding by 2011. However, they have not adhered to that schedule and currently provide less than half of the federal share. Congress' unwillingness to commit adequate resources to educate students with disabilities is causing districts to pull local funds from other programs to cover the federal share for IDEA mandates. This hurts both the general education program and

This *Why Report* addresses 1 of 42 provisions contained in NSBA's bill, *No Child Left Behind Improvements Act*. To review other *Why Reports* on key provisions, see www.nsba.org/NCLBRecommendationSeries.

educators' ability to help students with disabilities meet the same proficiency targets as their peers.

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 at least \$2.5 billion over the previous year, or fails to increase funding for IDEA by at least \$2 billion over the previous year.

SUPPORTING DOCUMENTATION

Federal Title I funds have not kept pace with the increasing demands through NCLB. For the 2006-07 school year, 90 percent of the nation's school districts participating in the Title I program and half of the states saw their Title I funding cut or frozen. The federal average per pupil spending dropped from \$1,425 from 2005-06 to \$1,373 for 2006-07 (Center on Education Policy 2006). The decline in Title I funds came at a time when more schools and districts are moving forward along the sanction trail and incurring significant spending to improve student performance.

As the number of schools subject to NCLB's restructuring grows, states and districts must spend more to help them meet AYP targets. For example, Hawaii will spend \$15 million this school year -- twice as much as last year -- to help an increased number of schools facing restructuring meet AYP. The number of restructured schools grew from 24 to 50 in Hawaii. The costs of providing support to help schools in need of improvement escalate as the number of years of improvement increases. Hawaii estimated that the cost of providing technical assistance to schools in improvement grew from \$6,000 per school in year one, to \$29,400 per school in year two, to \$94,000 per school for those facing restructuring (Augenblick, Palaich and Associates, Inc. 2004). Additional state and district funds will likely be needed to fund schools facing severe sanctions under the law. Despite the increased number of schools in restructuring, Hawaii will receive less in Title I funds this year.

Since AYP targets ratchet higher over time, more schools are expected to be in restructuring, requiring states and districts to spend more to implement improvement plans if federal funds are not adequate. Meanwhile federal Title I grants to states have been stagnant over the last few years. Half of the states will see their Title I funds reduced for 2006-07; and most states will not be receive sufficient funds to provide support for schools identified as in need of improvement and restructuring (Center on Education Policy 2006).

Congress should provide adequate funding for Title I and IDEA or defer mandating the expensive implementation of restructuring districts and schools for that year. If restructuring is delayed, 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 as well as for implementing other targeted in-school remedies under corrective action.

APPENDIX B

House and Senate Bills Supporting NSBA Recommendations During the 109th Congress

	Bill Number/Title	Sponsor	Date
House	H.R.1177—State and Local Education Flexibility Act of 2005	Rep. Lee Terry, R-NE, cosponsors (32)	March 8, 2005
	H.R. 1506—No Child Left Behind Reform Act	Rep. Rosa DeLauro, D-CT, cosponsors (27)	April 6, 2005
	H.R.1681—Quality Education for All Act	Rep. G.K. Butterfield, D-NC, cosponsors (21)	April 19, 2005
	H.R.1722	Rep. Jeb Bradley, R-NH, cosponsors (3)	April 20, 2005
	H.R.1821—Flexibility for Champion Schools Act	Rep. Bob Goodlatte, R-VA, cosponsors (7)	April 26, 2005
	H.R.2569—No Child Left Behind Improvement Act of 2005	Rep. Robert Andrews, D-NJ, cosponsors (2)	May 25, 2005
	H.R.2694—Keeping our Promise to America’s Children Act of 2005	Rep. Dennis Moore, D-KS, cosponsors (72)	May 26, 2005
	H.R.4578—Student Achievement and Successful Schools Act of 2005	Rep. Betty McCollum, D-MN, cosponsors (3)	December 16, 2005
	H.R.5709—No Child Left Behind Improvements Act of 2006	Rep. Don Young, R-AK, cosponsors (5)	June 28, 2006
	H.R.5717—Education Assessment Technical Correction Act	Rep. Mark Kirk, R-IL, cosponsors (93)	June 29, 2006
Senate	S.15—Quality Education for All Act	Sen. Jeff Bingaman, D-NM, cosponsors (21)	January 24, 2005
	S.724—No Child Left Behind Reform Act	Sen. Christopher Dodd, D-CT, cosponsor (5)	April 6, 2005
	S.901—Flexibility for Champion Schools Act	Sen. George Allen, R-VA	April 26, 2005
	S.1055—No Child Left Behind Improvement Act of 2005	Sen. Edward Kennedy, D-MA, cosponsors (9)	May 17, 2005

	S.1690—No Child Left Behind Flexibility and Improvements Act	Sen. Susan Collins, R-ME; Sen. Olympia Snowe, R-ME	September 13, 2005
	S.4064—Improving No Child Left Behind Act	Sen. Mike Crapo, R-ID	November 16, 2006

INDEX

<u>Topic</u>	<u>Page</u>
Assessment Participation Rates (#10).....	15
Assessment Participation Exemptions	
Unusual Circumstances (#11)	17
Unusual Patterns of Attendance (#12)	19
AYP Alternate Measurement & Growth Models (#8 and #9)	13
AYP Determinations	
Assessment Participation Rates (#13).....	21
Multiple Assessments (#19 and #20).....	27
Performance of Students Belonging to Multiple Subgroups (#4).....	5
Performance by Subgroups (#5)	9
Deferral of Restructuring Sanctions	
Inadequate Federal Appropriations for Disadvantaged Students (Title I) (#39)	57
Inadequate Federal Appropriations for Students with Disabilities (IDEA) (#40)	59
Highly Qualified Teacher Determinations	
Social Studies Teachers (#44).....	65
Special Education Teachers (#43)	63
Supplemental Educational Service Providers (#45)	67
Intermediate Goals for Subgroups (#6 and #7).....	11
Implementation of Restructuring Sanctions: Percentage of Students Failing to Meet AYP (#37).....	53
Implementation of Sanctions	
Conditions Beyond the Control of Schools/Districts (#38)	55
Subgroup Performance (Schools) (#35).....	49
Grade Span Performance (School Districts) (#36)	51
N-Size for Schools and School Districts (#1 and #2)	1
Non-Public School Accountability when Receiving Title I Services (#41 and #42)	61
Public School Choice	
Financial Obligation for Transportation (School Districts) (#26)	35
Student Eligibility (Schools) (#25)	33
Transfer Options and Special Conditions (Schools) (#27 and #28)	37
Safe Harbor Eligibility (#3)	3
Secretary of Education Requirements	
Authority for Waivers (#21 and #22).....	29
Notification of Waivers and Other Actions (#23 and #24).....	31
Students with Disabilities (#14, #15, and #16).....	23

Students with Limited English Proficiency (#17 and #18).....	25
Supplemental Educational Services	
School District Options (#29).....	39
Student Eligibility (#30)	41
Supplemental Educational Services Providers	
School District Authority (#31 and #32)	43
School District Options (#34).....	47
Title I Set-Aside Funding for Sanctions: School District Options (#33).....	45

Note: The number next to a specific topic corresponds with that on the individual brief. A total of 45 issues with legislative recommendations are presented.