

Inside School Law

Summer 2002

Sensible strategies and preventive practices for NSBA National Affiliates

No Child Left Behind

What the new federal legislation means for your schools

By Julie Underwood, NSBA General Counsel

The No Child Left Behind Act of 2001 (P.L. 107-110) may represent the most significant change in federal regulation of public education over the last 30 years. What began as reauthorization of the Elementary and Secondary Education Act certainly represents the broadest modification of ESEA since it was enacted in 1965.

The statute will affect your schools in many ways. Its requirements fall into roughly four areas:

1. Testing and accountability,
2. Employment and hiring practices,
3. Choices for parents, and
4. Miscellaneous provisions.

A summary of the act's key accountability and funding provisions begins on page 3; key provisions in the other three areas are as follows.

Employment and hiring practices

No Child Left Behind (NCLB) imposes significant and wide-ranging requirements on local school districts' employment and hiring practices.

- Paraprofessionals who are hired to work in a program supported with Title I funds must have completed at least two years of higher education, hold at least an associate's degree, and pass proficiency tests.
- All paraprofessionals working in a program supported with Title I funds, without exception, must have a high school diploma by July 2002.
- By the first day of the 2002-03 school year, all teachers working in a program sup-

ported with Title I funds who are hired on or after that date must be "highly qualified"; that is, they must be fully certified by the state in the subject area they are teaching.

Choices for parents

School choice for "failing schools"

No Child Left Behind gives parents options for helping their children if they are enrolled in schools where student test scores fall below the state's identified "passing" grades. These new parental choices will be available starting in the 2002-03 school year for students enrolled in schools that have been identified as failing under current state laws.

Parents with a child enrolled in a failing school will be able to transfer their child to a better-performing public school or public charter school. They will also be able to use federal education funds for "supplemental education services." Those services include tutoring, after-school services, and summer school programs provided either by a school, public or private, or by a private company.

School choice for safety

States receiving NCLB funds must establish and implement a statewide policy allowing a student who attends a persistently dangerous public school, or who becomes a victim of a violent criminal offense while at school, to attend a different public school. Whether a school is "persistently dangerous" and what constitutes a violent criminal offense are to be determined by each state.

Home schools

No Child Left Behind prohibits the federal government from exercising any control over home schools. Since home schools are not subject to NCLB, students who are home schooled are not required to take any tests required under the Act.

Pupil privacy

NCLB requires local school districts to adopt student privacy policies, in consultation with parents, regarding:

1. The right of and necessary procedures for parents to inspect third-party surveys before they are administered to students;
2. Measures to protect student privacy in the event of a survey containing sensitive or personal information;
3. The right of and procedures for parents to inspect, upon request, any instruc-

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About NSBA

The National School Boards Association is the nationwide organization representing public school governance. NSBA's mission is to foster excellence and equity in public elementary and secondary education through local school board leadership. Founded in 1940, NSBA is a not-for-profit federation of state associations of school boards across the United States and the school boards of the District of Columbia, Hawaii, and the U.S. Virgin Islands.

About the National Affiliate Program

The National Affiliate Program extends NSBA's services directly to local school districts. School districts are eligible to join provided they are members in good standing of their state school boards association.

About the Council of School Attorneys

The Council of School Attorneys provides information and practical assistance to attorneys who represent public school districts. It offers legal education, specialized publications, and a forum for exchange of information, and it supports the legal advocacy efforts of the National School Boards Association.

tional materials (not including tests) used as a part of the educational curriculum;

4. The administration of physical examinations or screenings to students;

5. The collection, disclosure, or use of personal information about students for the purpose of marketing or selling; and

6. The right of a parent to inspect any instrument used to collect personal information from students.

School districts must provide reasonable notice of such policies directly to parents at least annually at the beginning of the school year and must notify parents of expected dates of surveys, collection of information, and physical screenings. The notice must offer parents an opportunity to opt their children out of any of these activities.

Miscellaneous provisions

Constitutionally protected school prayer

To be eligible for funds under NCLB, a local school district must certify that it does not deny participation in constitutionally protected prayer. Local school districts must submit this certification to their state education agency each year by Oct. 1.

The Secretary of Education must issue guidance to state education agencies, local education agencies, and the public on constitutionally protected prayer in public elementary and secondary schools and must make that information available on the Internet by Sept. 1, 2002, and every two years thereafter.

Boy Scouts

The Boy Scouts Equal Access Act (contained within NCLB) applies to any public educational institution that receives federal funds through the Department of Education. If a school allows youth or community groups to meet in its facilities before or after school, it may not deny similar access to the Boy Scouts of America or any other group defined as a patriotic society in Title 36 of the U.S. Code.

This section of NCLB reflects current case law, which requires school districts to allow groups to meet when the district operates a limited public forum. Note that it does not require a school to sponsor such a group.

The pertinent provision reads: "[N]o public ... school ... that has a designated open forum or a limited public forum and that receives funds made available through

the Department shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in title 36 of the United States Code that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth groups listed in title 36 of the United State Code."

Sex education

NCLB expands the ban on using ESEA funds to operate a program of condom distribution in schools and prohibits funds from going to programs that distribute any kind of contraceptives. Federal funds also may not be used to:

1. Distribute obscene materials on school grounds;
2. Fund courses or the development or distribution of materials that are designed to promote or encourage sexual activities; or
3. Fund sex education (or HIV prevention education) in schools unless such program is age appropriate and emphasizes abstinence.

Military recruiters

Under No Child Left Behind, local school districts receiving funds must, upon request, give military recruiters basic contact information (names, addresses, and telephone numbers) about high school students. Parents can request that this information be released only with their consent. School districts must also give military recruiters the same access to students as is provided to colleges and universities and prospective employers. The Secretary of Education was required to notify principals, school administrators, and other educators about these requirements by May 8, 2002.

Liability protections

In an attempt to quell school leaders' fears about their liability in lawsuits, NCLB includes a provision outlining protection from liability. You cannot be held liable if:

- You were acting within the scope of your authority.
- Your actions conformed with federal,

state, and local laws, rules, and regulations and were part of an effort to control, discipline, expel, or suspend a student or maintain order or control in the school.

- You were properly licensed, certified, or authorized for the activities involved.
- The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.
- The harm was not caused by the employee operating a car or vehicle, which requires an operator's license.

These provisions went into effect on April 8, 2002, and apply to any claim filed after that date, even if the injury occurred before that date. State legislatures can effectively cancel this section of the act for their state by enacting clear legislation intended to remove these protections.

Homeless students

No Child Left Behind underscores federal protections for homeless students. Simply put, local school districts may not discriminate against students because of their homelessness. Specifically:

1. Students who become homeless have a right to continued enrollment in their school while they are homeless. They may enroll in any public school that is eligible for attendance by other students who live in the attendance area in which the homeless

student is currently living.

2. No homeless student is required to attend a separate school for homeless students.
3. Homeless students shall be provided services comparable to those provided for others, including transportation services, educational services, and meals served through school meal programs.
4. Homeless students may not be stigmatized by school personnel or within school programs.
5. The local school district must identify a staff person to be responsible for homeless students in the district.

Ban on indoor smoking

A section entitled Pro-children Act of 2001 prohibits federal, state, or local agencies from permitting smoking in indoor facilities owned or leased by schools. Schools can be subjected to fines of up to \$1,000 per day for noncompliance, but not to exceed 50 percent of their federal funds.

Clearly, the new act will make significant changes in how your schools operate in these areas and in the crucial area of testing and assessment. Educators and policy makers at the local, state, and national levels will have to work together to ensure that NCLB becomes part of a comprehensive approach to improve student learning—and to ensure that, indeed, no child is left behind.

Online resources

The U.S. Department of Education has provided a number of resources directly to teachers, parents, and local districts through the No Child Left Behind Web site (<http://www.nclb.gov>). Among the resources:

- A weekly electronic newsletter, which includes tips on teaching, information on national education reform efforts, and current information on implementation of the No Child Left Behind Act. Subscribe to the newsletter at <http://www.nclb.gov/Newsletter/20020520.html>.
 - A PowerPoint presentation on standards and assessment, *Closing the Achievement Gap in America's Public Schools*, is available to download at <http://www.nclb.gov/next/closing/index.html>.
 - Short fact sheets and statistics on national progress and students' test scores are online at <http://www.nclb.gov/next/stats/index.html>.
- Additional information about the Act can be found on the Advocacy page of the National School Boards Association Web site at <http://www.nsba.org/advocacy/index.htm> and on the Council of School Attorneys Web site at http://www.nsba.org/cosa/hot_topics/child.htm.

Accountability and Funding

A guide to key provisions in the new federal law

By Lori Meyer, NSBA Director, Federal Legislation

Assessment and accountability are the centerpieces of the No Child Left Behind Act (NCLB). The act—which was signed into law on January 8, 2002, and will be in effect for six years—also includes requirements covering educator quality, consolidation, flexibility, and a wide range of other issues as well. To implement NCLB, your school district will need to make numerous decisions, which will require knowing the act's requirements, understand-

ing the implications for district operations, and developing effective strategies for maximizing student success.

Under the NCLB provisions for assessments and accountability, states are required to have standards-based assessments in place for students in grades 3–8 in reading and math by the 2005–06 school year. Assessments must be in place at three grade levels in science by the 2007–08 school year. States must also develop "adequate yearly progress" (AYP) standards, with the goal of all pupils reaching a proficient or advanced

level of achievement by 2014.

The law specifies sanctions for failing to meet the standards for adequate yearly progress. These sanctions are broad and depend on how long a school has failed to meet the AYP standards. If a school fails to make adequate progress for two consecutive years, for example, sanctions include developing a plan to turn the school around and providing public school choice.

Following three years of failure to meet AYP standards, the school must also offer disadvantaged students tutoring by an outside provider.

If the school fails to make adequate progress in the fourth consecutive year, the district must take certain corrective actions in the fifth year, such as replacing certain staff members, implementing a new curriculum or extending the school year or day.

Funding and formulas

To establish guidelines for appropriating funds, NCLB creates an authorization level for Title I Part A at \$13.5 billion for FY2002, increasing to \$25 billion for FY2007. The act also reduces the schoolwide eligibility threshold for Title I, which is designed to improve the academic achievement of disadvantaged students. Schools in which 40 percent (moving down from a 50 percent requirement) of students are disadvantaged are now eligible for Title I funds for schoolwide programs.

The law also includes new provisions to enhance flexibility for local school districts. One provision, known as "transferability" allows districts that have not been identified as in need of improvement or corrective action to transfer up to 50 percent of their formula allocation for teacher quality, technology, Safe and Drug Free Schools, and the Innovative Programs Block Grant to supplement their allocation under any of those programs. Funds may be transferred into Title I, but not out of Title I.

Another provision allows up to 80 selected districts to consolidate all of their funds under the same programs (teacher quality, technology, Safe and Drug Free Schools, and the Innovative Programs Block Grants) and to use these funds for any purpose authorized under any NCLB program.

Several programs have been consolidated. For example, NCLB consolidates the Bilingual Education Act, Foreign Language Assistance Program, and Emergency Immigrant Education Program into a single formula grant program when the appropriations level reaches or exceeds \$650 million. In addition, several technology programs are consolidated, including the Technology Innovation Challenge Grants and the Technology Literacy Challenge Fund.

The law also includes a new competitive grant program authorized at \$75 million for FY2002 to enhance reading readiness for children in high-poverty areas and areas where a high number of students are not reading at grade level. These funds are aimed at 3- to 5-year-old children to help them prepare to learn to read.

Under prior law, local educational agencies (LEAs) received funds to provide before-school, after-school, and summer school programs through the Twenty-first Century Learning Centers Program. Under the new law, funds for this program will be allocated to

No Child Left Behind makes history in American education and builds futures for America's students.

—Rod Paige,
U.S. Secretary of Education

each state, and LEAs, community based organizations, or other public or private entities or consortia will apply to the state for grants.

A promising framework

NSBA acknowledges that the act provides a promising framework for raising standards and accountability for all students, with an important emphasis on raising the achieve-

ment of educationally disadvantaged students. Accomplishing that goal requires several new mandates. Unfortunately, however, NCLB does not contain any commitment by the federal government to adequately fund these new costs—nor does it address the federal government's ongoing obligation under the Individuals with Disabilities Education Act.

Implementing NCLB

States and local school districts have a number of pressing responsibilities under this statute. Within the 2002-2003 school year alone, the following requirements must be met:

- States must release state report cards containing information for public schools in the aggregate for student academic achievement on state assessments, disaggregated by subgroup; the percentages of students not tested; the names of schools identified for improvement; and the professional qualifications of teachers.
- School districts must release school report cards with the same information.
- Failing schools and districts (as identified under the 1994 ESEA) must offer public school choice for those schools in school improvement and supplemental services for schools requiring corrective action. In these school districts, notice must be sent to parents to inform them of their options and potential service providers.

- States must develop a list of providers they have approved as supplemental service providers.
- School districts must implement the employment requirements for new teachers and paraprofessionals.
- School districts must implement the miscellaneous provisions through board policy.

Implementing No Child Left Behind will be challenging for local school districts. Among the many questions board members should ask are these:

- What additional funding will be needed to implement the new requirements?
- What personnel realignments and partnerships will be necessary?
- How will implementation be monitored and assessed?

How local school districts address the provisions of NCLB—regardless of inadequate funding—will play an important part in improving student learning in the years to come.—*Julie Underwood*