



CALL^{to}ACTION

NSBA NEEDS YOUR HELP IMMEDIATELY! PLEASE URGE YOUR U.S. HOUSE MEMBER TO SPONSOR NSBA's BILL TO IMPROVE NCLB

March 24, 2005

Dear Paulette:

RECEIVED
APR 04 2005
BOARD OFFICE

We need your help to secure sponsors for NSBA's bill to Improve No Child Left Behind. Members of Congress need to feel PRESSURE from YOU, your colleagues and the community.

Requested Actions:

Please fax or e-mail your member of Congress today and send an opinion editorial to your local newspaper requesting sponsorship of NSBA's bill to Improve No Child Left Behind. If you already sent a letter requesting sponsorship and have not heard from your member's office, please send them the follow-up letter asking for their response to your initial correspondence.

Your Advocacy Tools:

- 1) If you prefer to fax Representative E. Shaw Jr. the fax number is: (202) 225-8398
- 2) Two sample letters enclosed include an initial letter requesting sponsorship and a follow-up letter.
- 3) To e-mail your member you will find the same two sample letters enclosed on NSBA's website at www.capwiz.com/nsba/home.
- 4) Please send an Opinion Editorial to your local papers. A sample Opinion Editorial is enclosed.
- 5) *Important Final Step:* Please notify Kathleen Branch at kbranch@nsba.org or fax 703-548-5613 or call 800-609-NSBA ext. 6 of your actions. This provides NSBA lobbyists with valuable information when they lobby your member on Capitol Hill.

Thank you for your help!

Sincerely,

NSBA's Office of Advocacy

Enclosures (6)
Call to Action
NSBA's NCLB Bill
NSBA's NCLB Issue Brief
Sample Letters (2)
Sample Opinion Editorial

OFFICE OF ADVOCACY

0786

MEMORANDUM

February 14, 2005

TO: South Florida Consortium of School Boards

FROM: Georgia Slack
Legislative Consultant

SUBJECT: **LEGISLATIVE UPDATE**

Among the numerous bills filed for consideration in the upcoming 2005 Legislative Session are two that are of particular interest to the South Florida Consortium of School Boards.

Rep. Randy Johnson (R-Winter Garden) has filed HB 685, which would establish a Hurricane Recovery Assistance Program using funds from sales taxes generated by hurricane-related rebuilding efforts. Rep. Johnson's other bill, HB 687, would establish a trust fund for the recovery assistance program to insure the funds are kept in reserve until they may be needed.

The Consortium's 2005 Legislative Program calls for the creation of several permanent hurricane relief measures, including creation of a special trust fund.

Reform is in the Air

Reform seems to be on every politician's list.

President Bush wants to reform social security, medical malpractice, immigration and education and the Florida Legislature wants to reform high school and middle school and maybe its voucher programs, although the latter just a bit. The Governor also wants to reform Medicare.

High School Reform, which is a refrain heard nationally as well as in Florida, most certainly will begin with the 2005 Legislature. The main concern is the thousands of students who show up in the ninth grade reading below grade level even after they score A's, B's and C's in eighth grade.

Testimony presented by Department of Education (DOE) staff at a recent meeting of the House Pre-K Education Committee focused on the "disconnect" between the average and above average grades that eighth grade students earn and the Level I scores they make just one year later when they become ninth graders and take the Florida Comprehensive Achievement Test (FCAT). The disconnect gains further credence when the community colleges continually complain that many of Florida's high school graduates need reading remediation when they hit the college campus.

Mark Musick, President of the Southern Region Education Board, also addressed the Committee and offered a list of suggestions on how to rectify the disconnect. He said that low-achieving ninth graders need "intensive care," including "transition" programs to ease the bridge between middle and high school and to help students move from high school to college or career training. He also suggested school districts need to address the problem by: using different reading materials, rather than rehashing those that apparently don't work; connecting every student to an adult such as a teacher, volunteer or some other school staff member and requiring every student to develop a five-year strategic goal that covers the four years of high school and at least one year following graduation.

Other suggestions, some emanating from the Committee members themselves, range from putting more focus on career vocational technical courses, offering intensive summer programs for Level I students along with having an Individual Education Plan (IEP) for each and focusing on staff development for teachers, many of whom are expected to remediate students' reading but who have not had specific training on how to do so.

Back in the 1980's, the Legislature addressed improving the high school curriculum by mandating a course in Writing Skills and funding the seven-period days. Funding for both these programs has since disappeared.

School districts are urging the Legislature to go slowly and take a strategic approach to high school reform that includes both short-range goals to satisfy legislators' desires to "make their mark," and long-range goals that will allow sufficient time for planning and ultimately achieve the desired results.

Middle School Reform

Along with the Governor, the State Board of Education is proposing steps for middle school reform, including using a statewide grading scale, requiring a credit-based system for middle grades that begins with sixth grade and eventually requiring 12 credits for middle school graduation.

Middle grade retention policies would be changed so students who fail one or two courses don't have to repeat the others they have passed. This would tie into the credit-based system. In addition, it is being recommended that, beginning with sixth grade, all students reading below grade level as evidenced by their Level I FCAT score, would have to take an intensive reading course. This requirement would be phased-in starting with the sixth grade.

Many of the proposed reforms are the result of the work of a legislatively mandated Middle School Task Force, which held hearings throughout the state before issuing its final report.

Togetherness

The State Board of Education has other reforms on the table, some of which also are contained in Governor Jeb Bush's proposed budget for next year.

Like the Governor, the State Board wants to see funding for reading become a formalized part of the regular Florida Education Funding Formula (FEFP) where, hopefully, it would increase each year commensurate with student enrollment growth.

The Board also believes the third grade retention policy should be expanded to fourth and fifth grades. In fact, the Board is recommending an end to all social promotion and to do so by phasing-in a standard promotion plan for all public schools.

Other Goals

Also drawing major State Board attention is improving school leadership. Stronger school leaders would emerge via a state system of professional development with expanded training opportunities by creating a School Leadership designation and giving higher pay to those who improve their students' performance.

Career education needs a big boost, according to the State Board's legislative priorities. The program would get this by making the courses more rigorous and relevant and guaranteeing that students are exposed to these types of courses.

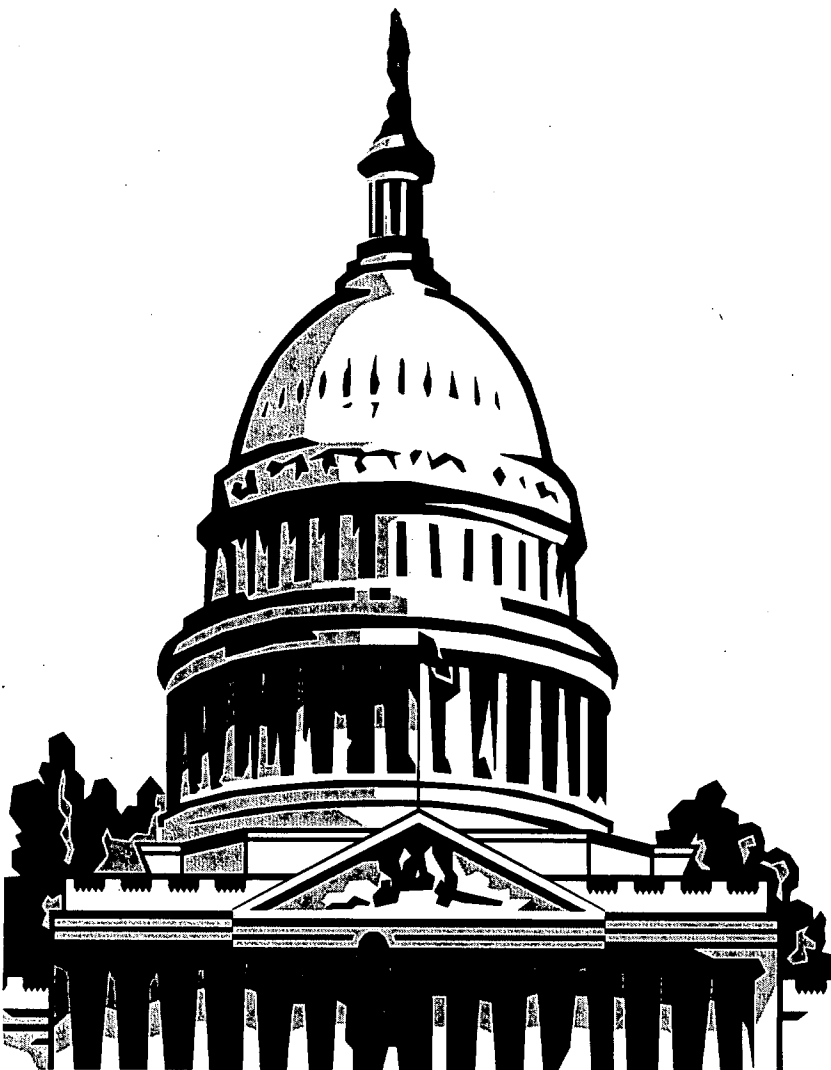
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No Child Left Behind Improvements Act of 2005:

A Bill Developed by the
National School Boards Association

February 2005





NATIONAL SCHOOL BOARDS ASSOCIATION

February 2005

The No Child Left Behind (NCLB) Act has had a significant impact on America's public schools. During the past three years, local school boards have gained substantial experience with its implementation. Local school boards have seen the benefits of the program that have caused rich data to surface about the performance of specific schools and groups of children in their local communities.

In addition to these very positive impacts, local school boards have experienced some operational challenges. Of utmost concern is the belief that *NCLB* places too much emphasis on one way of evaluating schools and students. Local school boards welcome increased accountability, but they believe that the assessments for *all* children should be valid and reliable. They also believe that the data publicly reported should fairly and accurately reflect school and school district performance.

The National School Boards Association (NSBA) has developed a bill based on presentations, feedback and discussions that we have had with thousands of school board members. Additionally, NSBA has reviewed U.S. Department of Education documents, research reports and other relevant articles and publications.

NSBA is pleased to release this bill that is designed to improve - not avoid accountability by:

- 1) Improving the accuracy by which NCLB defines adequate yearly progress (AYP);
- 2) Strengthening the alignment between the required sanctions (remedies) and the educational needs of the individual students;
- 3) Granting the Secretary of Education greater flexibility to approve effective and innovative state accountability systems.

We urge you to join with us in mobilizing grassroots and Congressional support for its adoption during the 109th Congress. If you have questions concerning the NSBA bill, please contact Reginald M. Felton, director of federal relations at 703-838-6782, or by e-mail, rfelton@nsba.org.

Sincerely,

Michael A. Resnick
Associate Executive Director

109th Congress, 1st Session
H.R. _____

To amend the Elementary and Secondary Education Act of 1965, and for other
purposes.

In the House of Representatives
_____ x, 2005

M_. _____ (for ...)

A BILL

Be it enacted by the Senate and House of Representatives of the United States
of America in Congress assembled,

Section 1. Short Title.

This Act may be cited as the "No Child Left Behind Improvements Act of 2005".

Section 2. References.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Elementary and Secondary Education Act (42 U.S.C. 6200 et seq.).

Title I – Amendments to the Education for the Disadvantaged

Section 101. Adequate Yearly Progress.

Section 1111(b) is amended--

- (1) in the matter after paragraph (2)(C)(v)(II) by inserting ", provided such number may be greater for local educational agencies (as a whole) than schools," after "reliable information";
- (2) in paragraph (2)(H)(i) by inserting "including, at the option of the State, reasonably unequal increments for each group described in subparagraph (C)(v)" after "equal increments";
- (3) in paragraph (2)(I)(i) by striking "10" and inserting "5";
- (4) in paragraph (2)(I)(ii) by inserting "except as provided in subparagraph (K)," before "not less than";
- (5) in paragraph (2)(I)(ii) by striking "95 percent" in the first instance it appears and inserting "90 to 95 percent (based on criteria established in the State plan)";
- (6) in paragraph (2)(I)(ii) by striking "95 percent" in the second instance it appears and inserting "90 to 95 percent";
- (7) by redesignating paragraph (2)(K) as paragraph (2)(Q); and
- (8) by inserting, after paragraph (2)(J), the following:

"(K) SPECIAL RULE.—A State may permit the exclusion of a student or students from the calculation used to determine compliance with subparagraph (I)(ii) based on the following:

- (i) such student or students have, pursuant to State law or policy, been excused by their parents from taking the assessments described under such paragraph;
- (ii) special circumstances identified by the Secretary affecting individual students, including:
 - (aa) emergency medical conditions;

- (bb) exceptional or uncontrollable circumstances, such as a natural disaster; or
- (cc) an unusual pattern of attendance as determined by the state educational agency, provided that the local educational agency in which the student or students are enrolled is implementing a plan to increase participation in the assessments described in such paragraph.

"(L) PARTICIPATION EXCEPTION.—Any student not participating in the assessments described in paragraph (3), for which an exclusion under subparagraph (K) is not permitted, may, for the purposes of determining adequate yearly progress, be considered as having achieved an achievement score below the level described in paragraph (1)(D)(ii)(III) (below basic). In making the calculation required by subparagraph (I)(ii), students described in this subparagraph who are considered as having an achievement score below basic under the preceding sentence shall be considered as having participated in such assessments.

"(M) MINIMUM GROUP SIZE.—For the purpose of determining whether a school is making adequate yearly progress, the State plan may provide that the number of students needed to constitute a group under subparagraph (C)(v)(II) must exceed a specific percentage of students enrolled in any such school.

"(N) SINGLE COUNT OF STUDENTS.—In meeting the definition of adequate yearly progress under subparagraph (C), students who may be counted in 2 or more groups described under subparagraph (C)(v)(II), may each be counted as an equal fraction of one for each such group.

"(O) STUDENTS WITH DISABILITIES REQUIRING ALTERNATE ASSESSMENTS.—Consistent with subsection (n)(3), a State may implement the amendments made to part 200 of title 34 of the 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 2 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;

“(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 of the Code of Federal Regulations;

(II) students who are assessed at a 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 Improvement Act of 2005.

“(P) Other Measures Of Adequate Yearly Progress.

Notwithstanding any other provision of this paragraph, a State may establish an alternative definition of adequate yearly progress, subject to approval by the Secretary under subsection (e) (except that such approval shall not apply as such definition applies to students with disabilities and

limited English proficient students). Such alternative definition may—

- (i) include measures of student achievement over a period of time (such as a value added accountability system) or the progress of some or all of the groups of students described in subparagraph (C)(v) to the next higher level of achievement described under paragraphs (1)(D)(ii)(II) and (III) as a factor in determining whether a school, local educational agency, or State has made adequate yearly progress, as described in this paragraph; or
- (ii) use the measures of performance and progress described in subparagraph (A) as the sole basis for determining whether the State, its local educational agencies or schools have met adequate yearly progress, provided—

- (I) the primary goal of such definition is that all students in each group described in subparagraph (C)(v) meet or exceed the proficient level of academic achievement, established by the State, not later than 12 years after the end of the 2001-2002 school year; and
- (II) such definition includes intermediate goals, as required under subparagraph (H).".

Section 102. Assessments.

Section 1111(b)(3)(C) is amended—

- (1) By striking clause (ix)(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 be , at the option of the state educational agency, 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);";

- (2) by striking "; and" in clause (xiv) and inserting a semicolon;
- (3) by redesignating clause (xv) as clause (xvii); and
- (4) 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, 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 a 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".

Section 103. State Flexibility.

Section 1111 is amended-

- (1) by redesignating subsections (f) through (m) as subsections (g) through (n).
- (2) 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 educational agency.
- (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 REVISIONS AND WAIVERS TO OTHER AGENCIES.**—Revisions to plans approved under this Part or waivers 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.”.

Section 104. School Improvement and Public School Choice

Section 1116(b) is amended—

- (1) in paragraph (1)—
 - (A) by striking “In the case” and inserting “Consistent with subparagraph (G), in the case” in subparagraph (E)(i);
 - (B) by inserting “(in the same subject for the same group of students, as described in section 1111(b)(2)(C)(v))” after “2 consecutive years” in subparagraph (A);
 - (C) in subparagraph (E)—
 - (i) by striking “all students” and inserting “students who failed to meet the proficient level of achievement on the assessments described under section 1111(b)(3) and are”;
 - (ii) by inserting “in the group whose academic performance caused the identification under this paragraph” after “in the school” in clause (i);

- (ii) by striking "another public school" and inserting "one other public school identified and"; and
- (iii) by inserting at 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 or 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 barriers or hazards, time of travel, or unusually high cost of travel."; and

- (D) after subparagraph (F), insert 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 paragraph(5)(A), (7)(C)(i) or (8)(A)(i).";

- (2) in paragraph (5) by inserting "(in the same subject for the same group of students)" after "adequate yearly progress";

- (3) in paragraph (7)(C)—

(A) by inserting "(in the same subject for the same group of students)" after "adequate yearly progress";

(B) by striking "all"; and

(C) by striking "another" and insert " an other";

- (4) by amending paragraph (7)(D) to read as follows:

"(D) DELAY.—Notwithstanding any other provision of this paragraph, the local educational agency may delay, for a period 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 make 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.”;

- (5) in paragraph (8)(A) by inserting “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)) exceed 35 percent of all students enrolled in such school who took the assessment in such subject” after “adequate yearly progress”;
- (6) in paragraph (8)(A)(i)—
 - (A) by striking “all”; and
 - (B) by striking “another” and insert “ an other”; and
- (7) in paragraph (13) by striking “is no longer identified” and all that follows 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.”.

Section 105. School District Improvement

Section 1116(c) is amended—

- (1) by amending paragraph (10)(B)(ii) to read as follows:

“(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 and averaged across all grades and in at least one grade span (as determined by the State) 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); and

(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; and"; and
- (2) by striking paragraph (10)(F) and inserting the following:

"(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—

(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).".

Section 106. Supplemental Services.

Section 1116(e) is amended—

- (1) in paragraph (4)—

(A) by inserting "(developed through continuous consultation with local educational agencies in the State)" after "objective criteria" in subparagraph (B);

(B) by striking "; and" in subparagraph (D);

(C) by striking the period in subparagraph (E) and inserting "; and"; and

(D) by inserting after subparagraph (E) 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 qualifications, 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 education agency.”;
- (2) by redesignating paragraph (12) as paragraph (13); and
 - (3) by inserting after paragraph (11) the following:

“(12) Local Educational Agencies as Providers.—Nothing in this section shall be construed to prohibit 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).”.

Section 107. Full Implementation.

Section 1116 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 subsections (b)(7) and (8) and subsection (c) (7) and (10) in any fiscal year in which the amount appropriated under section 1002(a) and section 611(i) of the Individuals with Disabilities Education Act (42 U.S.C. 1400 et seq) does not equal or exceed the amount authorized under such section for such fiscal year. For the purposes of determining the amounts necessary in the preceding sentence, starting with fiscal year 2008, the amount authorized to be appropriated under section 1002(a) shall be \$2,500,000,000 more than such amount for the preceding fiscal year. Such determination shall only apply for the purposes of this subsection.”.

Section 108. Regulations Affecting Limited English Proficient Children And Children With Disabilities.

Section 1111 is amended by adding at end the following:

“(n)(1) **CODIFICATION OF REGULATIONS AFFECTING LIMITED ENGLISH PROFICIENT CHILDREN.** This Part shall be implemented consistent with amendments proposed to part 200 of title 34 of the 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.

- (2) CHILDREN WITH DISABILITIES.— (i) The Secretary shall issue regulations not later than 180 days from the enactment of the No Child Left Behind Improvement Act of 2005 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.
- (3) 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 student.”.

Section 109. Participation Of Children Enrolled In Private Schools.

Section 1120 is amended—

- (1) by inserting “(consistent with subsection (f))” after “academically assessed” in subsection (b)(1)(D); and
- (2) 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 which 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 results of the assessments taken by students in private elementary and secondary schools by grade and subject to—

- (i) the private elementary and secondary school which 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 subsection 1111(i) and the function of the local educational agency under subsection 1120(b).
- (B) A private elementary and 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 results 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 three or more consecutive years.”

Title II – Effective Date and Regulations.

Section 201.—Effective Date.—Except as specifically provided, the amendments made by this Act shall be effective upon the first July 1 after the date of enactment of this Act.

Section 202.—The Secretary shall issue regulations as necessary to implement the provisions of this Act not later than 180 days from the date of enactment of this Act.



ISSUE BRIEF

Priority Issue

NSBA's Bill To Improve No Child Left Behind

Background

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

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

NSBA Position

Local school boards continue to welcome the increased accountability for student performance. In establishing a federal framework for accountability NCLB does promote important areas of state discretion to establish content and performance standards, select and operate assessment programs, and requirements to monitor and report academic performance of groups of students who have traditionally not been able to achieve at the desired levels.

At the same time, after two full academic years of implementation, local school boards across the nation have voiced increasing concerns regarding NCLB implementation. Of major importance is the belief that the current accountability framework does not accurately or fairly assess student or school performance.

Many school boards believe that some of the current provisions in the law do not recognize the complex factors that influence student performance. Other local boards have raised questions regarding the unintended consequences resulting from these provisions. NSBA acknowledges and appreciates the U.S. Department of Education's efforts during the initial approval process for state plans in 2003, and subsequent

OFFICE OF ADVOCACY

efforts in approving revisions to state plans in 2004. Additionally, we acknowledge the Secretary's response through new regulations or guidance in addressing some of the critical implementation challenges. While helpful, these regulations have not fully addressed the implementation challenges – and many of the implementation problems involved are beyond the Secretary's administrative discretion.

We believe that legislative changes to NCLB are necessary to ensure not only that each student improves academically, but also to ensure that the public reporting accurately reflects student, school and school district performance.

Additionally, NSBA is concerned that unnecessary blame will be targeted against specific groups of students whose performance has resulted in the identification of highly regarded public schools and school districts as "*in need of improvement*" and subject to federal sanctions. In sum, if Congress does not address these changes, both the credibility of the NCLB law and the public confidence in our schools will erode.

NSBA's Proposed Changes to No Child Left Behind (NCLB) Act

In an effort to improve the implementation of NCLB and the public's commitment to our public schools, NSBA has identified several changes that need to be made to the legislation in the following areas:

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

MEASURING ADEQUATE YEARLY PROGRESS

GROUP SIZE/ MEASURING AYP OF GROUPS

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

GOALS FOR ADEQUATE YEARLY PROGRESS

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

GAIN SCORES AND OTHER MEASURES OF AYP DEVELOPED BY THE STATE

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

PARTICIPATION RATE

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

STUDENTS WITH DISABILITIES

- As determined by the state, students with disabilities may be offered an alternate assessment for the purpose of determining AYP, provided that any such assessment is reflected by the student's IEP and is based on the IEP team's evaluation and the services to be provided for that student – and meets parent consent requirements for IEP's.
- The percentage of students statewide who may have their score counted under this provision as meeting AYP may not exceed 2% of the total number of students assessed.
- Consistent with the student's IEP, alternate assessments may include out of level assessments. Likewise, a student's test results for the purpose of determining AYP may be based on gain scores toward meeting the state standard for proficient or on an adjusted "*cut*" score for determining proficient.

LIMITED ENGLISH PROFICIENT STUDENTS

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

FIRST ASSESSMENTS

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

STATE FLEXIBILITY BY THE U.S. DEPARTMENT OF EDUCATION

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

IMPLEMENTATION OF SANCTIONS

TRANSFER TO OTHER SCHOOLS

- A transfer option need only be offered to those low achieving students within the group who failed to meet their AYP targets in the same subject for two or more years – not to all students in the school.
- Financial obligations for a school district to provide transportation for a student ends when the group to which the student belongs no longer is identified as not meeting AYP target within the student's former school even if that school continues to be identified as not making AYP for other reasons.

- A student need only be offered the option to transfer to one other school rather than the current interpretation of at least two schools.
- The current regulation exempting students from being offered the transfer option when health and safety are involved is codified and the following conditions for exemption are added: 1) class-size laws, 2) overcrowding, 3) the need for mobile classrooms, construction, or other significant capital outlays, and 4) such travel burdens as time, safety, and unusually high per pupil costs.

SUPPLEMENTAL SERVICES

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

SANCTIONS IN GENERAL

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

- Sanctions relating to corrective action and restructuring will be deferred in any year that appropriations for Title I is not increased by at least \$2.5 billion over the previous year until Title I is fully funded.
- Sanctions relating to corrective action and restructuring will be deferred in any year that appropriations for students with disabilities are not consistent with the authorized funding levels in *Individuals with Disabilities Education Improvement Act of 2004*.

NON PUBLIC SCHOOLS

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

Conclusion

The *No Child Left Behind* (NCLB) *Act* established a rigorous standard for the nation's public schools and a theoretical model to assess student, school, and school district performance. However, in reality, local school districts are struggling to comply with the spirit and intent of the law at a time when the unintended consequences of the law are far more complex than had been anticipated by the sponsors of the legislation. Additionally, federal and state lawmakers recognize that successful attainment of the desired national goals is very much dependent upon the capacity of the state departments of education and their own capacity to address the new requirements. Equally important is the capability and the will of the federal government, states and local communities to provide the public funds that are necessary.

Therefore, NSBA urges Congress to adopt these amendments to the *No Child Left Behind* (NCLB) *Act* that:

- Redefines AYP so that we can more accurately measure progress of specific groups of students, and recognize conditions/circumstances not currently addressed.
- Strengthens the connection between sanctions and what specifically needs to be addressed to improve student achievement.
- Grants the Secretary of Education more authority to approve state plans that: 1) Provide for gain scores (value added, etc.) in calculating AYP; 2) Allow states to be more innovative and use their own accountability systems; and 3) Provide more flexibility for states to adjust their state plans where justified.
- Defers corrective action sanctions that are very costly for school districts, in any year that Congress fails to increase federal funding for Title I by \$2.5 billion over

the previous year, or fails to increase funding for IDEA consistent with the authorization levels in the *Individuals with Disabilities Education Improvement Act of 2004*.

For additional information, please contact Reginald M. Felton, director of federal relations at the National School Boards Association at 703-838-6782, or by e-mail, rfelton@nsba.org.

March 2005

**Sample Letter to Send to Member of Congress
Urging Sponsorship of
NSBA's Bill to Improve No Child Left Behind**

Date _____

The Honorable (first and last name)
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative _____:

On behalf of the _____ School District in _____, I would like to ask you to become a sponsor of the National School Boards Association's *No Child Left Behind Improvement Act*.

After having over two full academic years in implementing the new federal law, our local schools are aware of the many challenges with its implementation. As local school board members, we welcome increased accountability for student achievement, but we believe that the annual assessments should be valid and reliable for all students, and that the data that we must report to the public fairly and accurately reflects the performance of students, schools and our local school district. Under the current law, this is not the case.

Please advise me of your decision to serve as a sponsor so that we may inform the local community of your active support - as well as the National School Boards Association. We hope that you will agree and in the event that you have some concerns, please identify them so that we may have the opportunity to address them.

You may contact me at (provide mailing and/or e-mail address). I look forward to hearing from you in the near future. Thank you.

Sincerely,

(Your Name)
(Your Title)
(Your School District)

P.S. A copy of the bill can be found at www.nsba.org.

**Follow-up Sample Letter to Send to Member of Congress
Urging Sponsorship of
NSBA's Bill to Improve No Child Left Behind**

Date

The Honorable (first and last name)
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative _____:

On behalf of the _____ school district, a letter was sent on (list date) asking you to sponsor the National School Boards Association's No Child Left Behind Improvement Act. To date, I have not heard from you.

After having over two full academic years in implementing the new federal law, our local schools are aware of the many challenges with its implementation. As local school board members, we welcome increased accountability for student achievement, but we believe that the annual assessments should be valid and reliable for all students, and that the data that we must report to the public fairly and accurately reflect the performance of students, schools and our local school district. Under the current law, this is not the case.

Please advise me of your decision to serve as a sponsor so that we may inform the local community of your active support - as well as the National School Boards Association. I look forward to your timely response. We hope that you will agree and in the event that you have some concerns, please identify them so that we may have the opportunity to address them.

You may contact me at (provide mailing and/or e-mail address). I look forward to hearing from you in the near future. Thank you.

Sincerely,

(Your Name)
(Your Title)
(Your School District)

P.S. A copy of the bill can be found at www.nsba.org.

NSBA Sample Opinion Editorial

No Child Left Behind Should be Better for Our Students

After having over two full academic years in implementing the new federal law, *No Child Left Behind* (NCLB) Act, our school board members, superintendents, principals, teachers and staff are aware of the many challenges facing our schools. While NCLB established rigorous standards for local schools across the country, in meeting the new federal requirements, we have witnessed many unintended consequences. What appeared to be workable in theory has not worked in practice. As a result, many of our principals, teachers, parents and students have raised questions about the validity and reliability of the law's current assessments for students, and regarding the fairness and accuracy of performance reports released to the public.

Our local school board here in (type in location) welcomes the increased accountability for academic achievement for all students, as we always have. But we are concerned that some requirements under NCLB do not fully serve the needs of all of our students.

In spite of some increases on the state level, we know that the lack of adequate federal funding will continue to remain a major barrier in our efforts to fully meet the needs of all our students. However, we believe there is much that Congress can do to make NCLB better – beyond the debate over federal funding.

The National School Boards Association has developed a bill that addresses many of the implementation challenges facing our local school district. The NSBA bill, *The No Child Left Behind Improvement Act of 2005*, would make the current law doable and workable. The proposed amendments would retain high standards while recognizing the unique needs of our students and schools.

In addition to improving the design for measuring student and school progress, the NSBA bill strengthens the connection between federal sanctions and what specifically needs to be done to improve a student's performance. Further, the bill grants the Secretary of Education new authority to approve state plans that recognize the outstanding efforts our state has already taken to improve student and school performance. Finally, the bill holds Congress accountable for providing the additional funding so that NCLB avoids passing its federal share of costs to local taxpayers.

We believe that these proposed changes to NCLB will be better for our students and our local schools. Let's be certain that our own Members of Congress take a positive stand, and support this important bill by becoming a co-sponsor. Please call, fax, e-mail or write Senators (type in names) and Representatives (type in names) and tell them to become a co-sponsor to this significant bill that will help our students.

Prepared by