

No Child Left Behind

Spring 2005 Implementation **UPDATE**

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UPCOMING POLICY BRIEFS. . .

- ✓ Is the Achievement Gap in Indiana Narrowing?
- ✓ Home Schooling in Indiana: A Closer Look
- ✓ Enriching the High School Curriculum Through Dual Credit Classes

The *No Child Left Behind Act* of 2001 (NCLB), a law that appropriately focuses on the academic success of all students, has captured the attention of policymakers, educators, parents, students, and the general public across the country. Three years into implementation of this sweeping education reform law, the Bush administration and the U.S. Department of Education face new and elevated criticism regarding the law, and confront pending court challenges by the states of Connecticut and Maine, as well as by the National Education Association.¹ In a speech to the Education Writers Association on May 5, 2005, U.S. Secretary of Education Margaret Spellings reacted to the mounting criticisms of NCLB by stating, “the contrary actions of a couple of states and one union do not constitute a ‘grassroots rebellion.’ All 50 states, including, I would add, those now challenging the law, have accountability plans in place that have laid the foundation for continuous school improvement and real student achievement.” Indeed, NCLB does appear to be positively influencing student achievement in classrooms from coast to coast. In this Education Policy Brief, the Center for Evaluation and Education Policy at Indiana University examines how states are progressing with the implementation of NCLB; identifies the basis of the criticisms from educators and state officials; summarizes NCLB changes and additions recently proposed by the Bush administration; and shares the perspectives from six national and state education leaders on the current status and future of NCLB.

OVERVIEW OF NCLB

Since being signed into law by President Bush on January 8, 2002, the *No Child Left Behind Act* has made its presence known across the nation, prompting changes intended to help all students achieve success in the classroom. NCLB is the latest reauthorization of the *Elementary and Secondary Education Act* (ESEA), which was first enacted by Congress in 1965. The programs within the ESEA serve as supplements to states and local communities to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education.³

The principles behind the NCLB law are based upon four overarching pillars as outlined by the U.S. Department of Education. These pillars include:

- Stronger Accountability for Results
- More Freedom for States and Communities
- Encouraging Proven Education Methods
- More Choices for Parents⁴

The goals of NCLB include:

- Ensuring student access to high-quality teachers,
- Improving reading instruction for students,
- Promoting safe schools,
- Providing language instruction for Limited English Proficient and immigrant students,
- Helping children with disabilities,

- Setting high expectations for all students through rigorous state standards,
- Measuring performance accurately, consistently, and systemically via achievement tests,
- Implementing a school accountability system known as Adequate Yearly Progress (AYP), and
- Creating meaningful options for parents whose children attend a failing school.

Ultimately, the primary objective of NCLB is to close the achievement gaps between students by bringing all students, regardless of race, ethnicity, gender, or income, to the “proficient” level on state standardized tests by the 2013-14 school year.

WHAT DOES NCLB REQUIRE OF STATES?

No Child Left Behind requires the fulfillment by states of 40 major legal provisions for successful implementation. These various criteria fall under seven broad program categories which include Standards and Assessment, Accountability (AYP), School Improvement, Safe Schools, Supplemental Services, Teacher Quality, and NCLB Report Cards. The Education Commission of the States (ECS) provides a comprehensive database regarding specific NCLB requirements as well as other important state implementation information.⁵ ECS has also published a comprehensive report regarding the current implementation status of NCLB by the states titled, “The ECS Report to the Nation: State Implementation of the *No Child Left Behind Act*.”⁶

Of the seven broad program categories, the accountability requirements have generated the greatest degree of national attention. Under the current NCLB accountability model, schools are required to meet certain performance targets on state standardized tests for each and every subgroup of students (including students of low-income or minority background, Limited English Proficiency, and those with special needs). States calculated starting points based on 2001-2002 school year test data. AYP targets will increase by rates established in each state’s accountability plan until 2014, when 100 percent proficiency is required of all students. Accord-

ing to federal regulations, if a school or district participating in the Title I program, which provides additional funding to schools in high-poverty districts, does not make AYP for two consecutive years, the school/district is then moved into “Improvement Status” and subject to federal sanctions. Sanctions become increasingly severe for each consecutive year that the school does not make AYP. In the fourth consecutive year of school improvement, schools are required to draft a plan for reconstruction, which is then implemented in the fifth year of school improvement.⁷ An AYP designation is also assigned to school districts and states. Failure to implement or comply with the provisions of NCLB places states in jeopardy of losing federal K-12 education funds.

STATUS OF STATE NCLB IMPLEMENTATION: HOW ARE STATES DOING?

As of March 15, 2004, all states had either met or were partially on track to meeting 50 percent of the 40 major legal provisions of NCLB. This was an 11 percent increase from 2003.⁸ Additionally, all but two states and the District of Columbia had met or were partially on track to meet 75 percent of the requirements, a 109 percent increase from March 2003. Still, some states had made greater progress than others in complying with these requirements. Connecticut, Kentucky, New York, Oklahoma, and Pennsylvania had met or were partially on track to meeting all 40 of the requirements in 2004. Nearly half the states were testing in reading and mathematics in Grades 3-8 and once in high school, which NCLB will require of all states as of the 2005-06 school year. This constituted a 20-state increase in testing from 2003. Regarding AYP, every state is now using standardized test results to help determine whether schools have made adequate yearly progress. As of November 2004, 46 states had released their latest AYP results. In 32 of those states, a higher proportion of schools met their annual achievement targets in 2004 than in 2003.⁹

STATUS OF INDIANA NCLB IMPLEMENTATION

Although challenges exist for virtually all states in meeting the 40 major NCLB requirements, Indiana is doing well in comparison to many other states. Of the key NCLB requirements, ECS found that Indiana had met all but nine.¹⁰ The ECS report also found that Indiana, along with 32 other states, met the requirements in 2003 for reaching performance goals that would lead to all students passing state tests by 2014. Approximately 40 percent more Indiana public school systems achieved AYP in 2003 compared with 2002. With the addition of new statewide testing in Grades 4, 5, 7, and 9, 2004 marked the first time AYP results were calculated for all students in Grades 3-10. Sixty percent of Indiana schools met AYP in 2004 (1,112 out of 1,862). Of the 750 schools not making AYP, the most common achievement target missed was students in need of special education services in English and mathematics.¹¹

Much of Indiana’s initial success in implementing NCLB may be attributed to Public Law 221, the state’s school improvement and accountability law that was established in 1999. Many aspects of P.L. 221 were largely put into place before NCLB was signed into law in 2002. The guiding principles for this law are standards, assessment, and accountability—some of the same guiding principles as NCLB.¹² The key components of P.L. 221 include three-year school improvement plans, professional development programs and grants, achievement grants for high-performing schools, and an accountability program that places all schools in performance categories with consequences for low-performing schools. However, the Indiana General Assembly has not yet funded the school achievement grants for high-performing schools or the technical assistance needed to assist low-performing schools.

Indiana P.L. 221 and NCLB Comparison

Many similarities exist between NCLB and Indiana P.L. 221. For example, both laws have adopted many of the same goals, including: high academic standards, standardized assessment using tests aligned

with the standards, accountability for achievement, data-based decision making, and focusing on the needs of all children. Also, both laws set forth criteria for highly qualified teachers, school safety measures, school report cards, and a comprehensive data system.

However, significant differences exist between NCLB and P.L. 221. *No Child Left Behind* requires schools to address English proficiency while Indiana's accountability law is silent on this. *No Child Left Behind* requires students to be tested for academic standards in English and math in Grades 3-8 and once in high school, while Indiana tests Grades 3-10. Indiana requires that students be tested in social studies while NCLB does not, though this subject is not yet a component of Indiana's assessment program because of funding shortfalls. P.L. 221 encourages schools to use end-of-course testing at the high school level, while NCLB does not. Another difference includes the assessment of students in early grades through diagnostic reading tests, which is encouraged by P.L. 221 but not by NCLB. Finally, the accountability system in Indiana factors in growth or improvements in assessment scores, and not just overall performance measured against a standard, which is the central focus of the federal accountability system.

MAJOR NCLB COMPLIANCE ISSUES

Although all states appear to be moving in the right direction to implement the NCLB objectives, many have encountered difficulties or challenges in fulfilling specific NCLB requirements. Some of the most common problems include providing high-quality professional development for teachers, ensuring that both new and veteran teachers are qualified to teach their subject areas, making sure that scientifically based technical assistance is provided to low-performing schools, and developing the technical infrastructure to collect and report disaggregated achievement data.¹³ ECS found that only 10 states were on target in ensuring that both new and veteran teachers are qualified to teach in their subject areas. Few states are on track to implementing high-quality professional development for all teachers. Fewer than half the states were on track to ensure low-

performing schools have scientifically based technical assistance.¹⁴

Another emerging compliance issue concerns school districts that have not been fully observant of the provision that allows students from a low-performing school to transfer to a higher performing school. Alabama, Kansas, New York, Oklahoma, and Oregon were the only states to report that more than 10 percent of eligible students took advantage of the school choice option in the 2003-04 school year. In 21 other states, that figure was one percent, the national average, or less.¹⁵ The Title I Division of the Indiana Department of Education was recently cited for its insufficient efforts to ensure that parents were aware of these transfer options. According to an audit conducted by the Chicago office of the U.S. DOE Inspector General, Indiana has not adequately reviewed how schools are complying with provisions of NCLB that require districts to provide tutoring services and transfer options for students at schools not meeting benchmarks for AYP.¹⁶

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NCLB requirements addressing teacher quality, professional development, technical assistance, school choice, and supplemental services have posed challenges to states. However, a handful of other implementation or compliance issues have become prominent nationally and appear to be generating the greatest concern to states. These issues include difficulties in fairly assessing students with disabilities and limited English skills, computing AYP, and sufficiently funding the annual assessment

requirements. As a result, states' requests for various changes to the federal law or waivers from its requirements are becoming more frequent.

For example, in Utah, the legislature passed a bill that orders state officials to ignore the provisions of NCLB that conflict with Utah's education goals or that require state financing. This bill, which places the state of Utah in jeopardy of losing its \$76 million in federal funds, is the most explicit legislative challenge to the federal law by a state. Its passage marked the collapse of a 15-month lobbying effort against it by the Bush administration. The law orders Utah educators to "provide first priority to meeting state goals" when those goals conflict with the federal law and to spend as little state money as possible to comply with the federal law's testing and other programs. The Utah law also requires the state superintendent of public instruction to "lobby federal education officials for relief from the provisions" of the law. Utah officials have felt that their own accountability system should be utilized instead of the system outlined in NCLB.¹⁷

Special Education Student Testing Issues

Under the NCLB provisions established in 2001, no more than one percent of students with severe cognitive disabilities can be tested using alternate or modified assessments and still be considered proficient for accountability purposes. Until recent flexibility announcements declared by U.S. Secretary of Education Spellings, states that allowed the number of students to be tested through an alternate or modified assessment (at a grade level lower than they are enrolled) to exceed the one percent cap were not permitted to have the assessment results be considered proficient for AYP computation purposes.¹⁸ According to the ECS report, all states appeared to be on track to meet the Inclusion of Students with Disabilities provision regarding standards and assessments in 2004. Nevertheless, numerous states have submitted requests that the federal government take their challenges with the NCLB testing and accountability provisions into consideration.

One such request came from Texas, a state which has been reluctant to limit the inclusion of the scores of only one percent of

special needs students on alternate assessment in determining AYP. Shirley Neeley, the Texas State Education Commissioner, recently challenged the U.S. Department of Education's standardized testing rules, despite the potential for jeopardizing federal funding.¹⁹ Neeley cited the interest of the children as more important than the funding. Texas allowed nine percent of its students to take alternative tests and applied their scores in calculating AYP last year as opposed to the one percent cap put on special education tests by NCLB. As a direct result, Texas was cited by the U.S. Department of Education as inflating their standardized test results by excusing too many students from more rigorous examinations.

A second instance of states' difficulty in meeting NCLB requirements involved the state of Connecticut, which recently asked the federal government for additional flexibility in interpreting the NCLB law concerning the assessment requirements. According to Betty J. Sternberg, the State Education Commissioner for Connecticut, educators who teach special education students in her state believe the tests that are currently required under NCLB are "inappropriate, ineffective, and unfair to the students."²⁰ Sternberg requested that Connecticut be allowed to test some special education students below their grade level.

Limited English Proficiency Student NCLB Provisions

NCLB provisions involving Limited English Proficient (LEP) students, who are also often referred to as English Language Learners (ELL), are included under Title I and Title III of the law. Title I outlines the state standards, assessments, adequate yearly progress, and other accountability requirements for ELL students. Title III provides funding for state and local education agencies who are obligated by NCLB to increase English proficiency. Under this title, state education agencies, school districts, and schools must:

- Ensure that ELL students, including immigrant children and youth, develop English proficiency based on state expectations, and meet the same academic content and achievement stan-

dards that all children are expected to meet.

- Districts must annually assess ELL students on their English language proficiency to determine how proficient they are in listening, speaking, reading and writing, and this proficiency data must be sent to the state for compilation. Each state is required to set annual measurable objectives for school districts in moving ELL students toward English proficiency.
- Administer reading/language arts assessments written in English to any student after they have attended school in the United States for three or more consecutive years, unless it is determined by the school district that native-language tests will yield more accurate results.
- Administer assessments for ELL students in their native language or using an alternate assessment for the first three years of attendance in a school in the U.S. The assessment must be aligned with the state content and achievement standards.
- Test at least 95 percent of those students identified as ELL in reading/language arts and math, and, by 2006, in science.
- Report the test scores of ELL students as one of the subgroups to be disaggregated, and as part of the state, district, and school test scores for all of the students.²¹

"I do not see people getting growth models approved under NCLB language that are not what I call proficiency-rooted or proficiency-based."

*Sandy Kress
Former Advisor to
President G. W. Bush*

Some states have expressed considerable concern regarding the testing of ELL students for NCLB accountability purposes. For example, Connecticut Education Com-

missioner Sternberg requested permission to exempt ELL students from all state testing requirements, including the alternative tests administered in the native language of students, for up to three years. Connecticut cited the cost of developing alternative tests as the reason for this request. According to Sternberg, the cost of developing alternative tests would be in the "tens of millions of dollars" and that such tests would miss the point of developing English skills.²² Texas has also been cited as being concerned about the NCLB requirement of testing ELL students using the same grade-level standards that are applied to others. State officials indicate the reason for this concern is that test results are "unfairly skewed" by the inclusion of this subgroup of students, which is particularly prominent in Texas.²³

Adequate Yearly Progress

In addition to the special education and ELL testing issues, the methodology used to determine the schools "in need of improvement" under the AYP accountability system has recently generated much federal-state dialogue. A criticism that states have of this system is that it gives little credit to schools that, despite not making AYP, have still made significant gains in student achievement. Similarly, states are seeking greater flexibility in the size of the student subgroups that apply when determining the AYP status of schools.

Currently, as many as three dozen states are requesting that the federal government alter guidelines on how schools in need of improvement are identified. Various "growth" models have been proposed to give recognition to schools that demonstrate meaningful improvement in student achievement, but fall short of making AYP. Two of the models being proposed to the U.S. Department of Education are the Massachusetts Model and the Value-Added Model (currently being proposed by the state of Tennessee). Under the Massachusetts Model, schools or subgroups that fall far below the annual target set by the state can still make AYP if their rate of improvement is steep enough to indicate that all students will be able to reach proficiency by 2014, if progress continues at the current rate. This is not unlike Tennessee's proposed Value-Added Model, which, although it does not ensure that all students will reach proficiency by 2014, does pro-

pose that a school not meeting targets can still make AYP as long as the percent of students on track to pass the state's high school exit test have increased by 10 percent over the past year. Tennessee's model also tracks the performance of individual students over time and judges schools based on the level of academic growth students make from year to year.²⁴

When asked how likely it will be for states to gain federal approval for alternative accountability models, former advisor to President Bush, Sandy Kress, was quick to emphasize one thing: proficiency. "I do not see people getting growth models approved under NCLB language that are not what I call proficiency-rooted or proficiency-based." However, for alternative models that do hold proficiency as their primary foundation, there seems to be growing support from the federal government for exploring new measures and provisions.²⁵

In addition to alternative accountability models, one of the most common AYP modifications being sought is consent to adjust subgroup sizes. If a school or district has enough students in one category (such as low-income, minority background, Limited English Proficiency, or special needs), these students then qualify as a subgroup and the district is responsible for making sure each subgroup meets AYP targets. However, if there are not enough students of a particular background to constitute a subgroup, the district does not have to meet the standard for this particular group. As recently as May 17, 2005, the state of Florida was granted authority from Secretary Spellings to redefine the size of particular subgroups. Florida began with a very low numeric threshold for their subgroups, which meant that a small number of struggling students within a subgroup could cause an entire school to not meet AYP.²⁶ The state of Illinois is also seeking permission to make similar adjustments to their subgroups, particularly that of special education. If the subgroup threshold were increased to the proposed rate, only one percent of schools in the state of Illinois would have enough special education students to qualify as a subgroup.²⁷

Annual Assessments

Beginning with the 2005-06 school year, NCLB will require states to test annually in mathematics and reading/language arts in Grades 3-8. This particular provision has been criticized by some states. Recently, Connecticut has been the most vocal in discussions of annual assessments. In April, Connecticut Attorney General Richard Blumenthal announced that the state would sue the U.S. Department of Education, claiming that NCLB mandates changes without providing the necessary funding to carry them out, specifically the provision of annual assessments. This would mark the first time that a state has filed suit against the federal government based on the NCLB law. The state is arguing that because Congress is not providing enough money to implement its requirements, NCLB is essentially an unfunded mandate and this is in violation of provisions of the law. The state of Connecticut claims that complying with NCLB's testing requirements would cost taxpayers an additional \$8 million annually.²⁸ In February, the U.S. Department of Education denied a request by Connecticut officials for a waiver to allow the state to continue with its current testing regime (Grades 4, 6, 8, and 10). In a letter explaining her decision, Secretary Spellings said that testing in more grades is needed to better identify students' needs. It was when this request for a waiver was denied that the state decided to take action against the federal government.²⁹

The National Education Association, 10 of its affiliates, and several school districts have issued legal challenges to the law based on the argument that it is underfunding mandated programs. Maine is reported to be considering a similar lawsuit.³⁰

CENTER ON EDUCATION POLICY REPORT

On March 23, 2005, the Washington-based Center on Education Policy released the results from their report, "From the Capital to the Classroom," the most comprehensive study on the impact of NCLB to date. This report included a survey of education officials in 49 states, a survey of 314 nationally representative school districts,

and in-depth case studies in 36 districts. According to the report, states and districts indicate they do not have the capacity or funds necessary to reach all schools in need of improvement, and although most officials generally agree with the law's emphasis on accountability for all student subgroups, a majority say they would like to see the accountability requirements for students with disabilities and ELL students changed or eliminated.

More specifically, the report indicates that school district officials cite a number of challenges in working with ELL students, a rapidly growing student subgroup often at risk of missing performance targets. Significant challenges include hiring and training qualified bilingual education teachers, testing ELLs in English/language arts and other areas, and addressing the impact of student mobility on the ELL population.

Another challenge addressed in the CEP report was ensuring equitable distribution of highly qualified teachers. Teachers in most states and districts surveyed are highly qualified as defined by NCLB, keeping those states and districts on track to comply with the law's requirement that all core academic classes be taught by highly qualified teachers by the end of 2005-06. However, compliance with this requirement has posed difficulties for school districts with high percentages of students living in poverty. Low-income districts and those with high percentages of minorities have the largest proportion of teachers who are not highly qualified as defined by NCLB. Furthermore, states and districts are experiencing difficulties in ensuring that students with disabilities and students in rural schools are taught by highly qualified teachers.

Finally, the CEP report stated that many school districts have been forced to narrow the curriculum in order to spend more time on core subjects, such as reading and math, in response to NCLB. Districts with greater proportions of low-income students were more likely to require greater amounts of time for reading and math. Some survey and case study districts report cutting back on time for social studies, science, and other subjects to make more time for tested subjects.³¹

WHERE DO WE GO FROM HERE UNDER NCLB?

The *No Child Left Behind Act* has been praised for raising standards and expectations for all students and focusing the nation on the achievement gaps that exist between groups of students. However, criticisms of the law have overshadowed the progress students are demonstrating. Though states are headed in the right direction for implementation of the 40 NCLB requirements, recent national reports reflect the concerns and demands of educators and policymakers seeking changes and increased flexibility. These reports offer recommendations for modifications that are intended to enhance the effectiveness of NCLB and the role of schools.

2005 NCSL Report

On February 23, 2005, the National Conference of State Legislatures' (NCSL) *No Child Left Behind* task force released a 10-month study on the federal law. The ultimate concern emerging from this report was that states need additional flexibility in meeting NCLB requirements and implementing necessary components that will benefit everyone in the long run.³² This report asked Congress and the administration to recognize special challenges that schools and students face. The NCSL report generated 43 specific recommendations on ways that NCLB can be revised to improve the quality of education for every student and close achievement gaps that are present in schools today.

Some of the specific recommendations included:

- Remove obstacles that stifle state innovations and undermine state programs that were proven to be working before the passage of NCLB.
- Grant and publicize federal waivers for innovative programs.
- Fully fund NCLB and provide states financial flexibility to meet their goals.
- Remove the one-size-fits-all method that measures student performance and encourage more sophisticated and accurate systems that gauge the growth of individual students and not just groups of students.

- Recognize that some schools face special challenges, including adequately teaching students with disabilities and English language learners.
- Recognize the differences among rural, suburban, and urban schools.

The entire 87-page NCSL report regarding NCLB may be accessed online at http://www.ncsl.org/programs/educ/nclb_report.htm.

CCSSO Findings

In addition to NCSL's report, other concerned parties have offered recommendations or proposals regarding NCLB to the administration. The Council of Chief State School Officers (CCSSO) compiled information that organizes requests for amendments by states to the U.S. Department of Education through April of 2004. This information may be found in a comprehensive report called "Revisiting Statewide Educational Accountability Under NCLB."³³ The report separates state requests into four main categories: Standards and Assessments, AYP Model, Inclusion of All Students in Accountability, and AYP Consequences and Reporting:

- *Standards and Assessments:* States are seeking to change the tests or grade levels that yield scores used in AYP analyses, bank results which are used in AYP determinations, use out-of-level tests or alternate assessments, and adjust assessment scores for defining "proficient."
- *AYP Model:* States prefer the use of rounding rules and want to define the student participation rate and percent proficient on required assessments, and determine other accountability components such as graduation rate, state targets, and schedules for AYP. Furthermore, other AYP requests seek to establish minimum annual measurable objectives and intermediate goals and strategies to enhance reliability of AYP results. This includes the establishment of minimum "n" sizes, using confidence intervals, and applying safe harbor reviews.
- *Inclusion of all Students in Accountability:* State amendment requests in this

area address the inclusion of Limited English Proficient (LEP) students in the assessment and accountability systems and the percent of students with disabilities that participate in alternate assessments and accountability determinations.

- *AYP Consequences and Reporting:* The requests by states that fall under this category primarily concern the timing of consequences for schools, implementation of state rewards and recognition, and the means of integrating federal reporting requirements with the components of state reports.

According to the CCSSO report, the U.S. Department of Education has been consistent in not approving several categories of requested changes from the states. These include using out-of-level testing results in AYP calculations, limiting identification of schools in need of improvement to those schools that miss AYP for two consecutive years in the same content area and student group, applying retroactively any 2003-04 amendments to years prior to that school year, exempting schools from the obligation to test students with medical emergencies, and switching the order of the NCLB sanctions of school choice and supplemental educational services.³⁴

NCLB CHANGES AND ADDITIONS PROPOSED BY THE BUSH ADMINISTRATION

In January 2005, President Bush announced a plan to expand the scope of NCLB by proposing that states extend annual testing in reading and math into high school through Grade 11.³⁵ This proposal has received a lukewarm reception to date by the United States Congress. In addition, President Bush called for states to receive \$250 million to fully participate in and administer the Grade 12 National Assessment of Educational Progress in reading and math every two years.

Other components of the president's proposal include providing \$200 million for the "Striving Readers" literacy program, which provides grants to schools to give extra help to middle and high school students who have fallen behind in reading; \$45 million to encourage students to take more rigorous high school courses, including the expansion of the state scholars program nationally to better prepare more students for college or the workplace; and \$500 million for states and school districts to reward teachers whose students show improvement.³⁶

More recently, announcements from the administration have been made that address the inclusion of all students in state testing and AYP calculations. In a speech delivered to chief state school officers and representatives of national education groups on April 7, 2005, Secretary Spellings announced a proposal for additional flexibility to be granted to states in an effort to help them meet federal mandates. The Department of Education will entertain new proposals from states to waive rules under NCLB. Secretary Spellings reported that she doesn't have the authority or the desire to waive certain tenets of the law, but she is willing to address concerns she has heard from state and local officials.

In this speech, Spellings outlined three primary ways in which the department will be working to make NCLB easier to implement. These include:

- Drafting rules to let states set separate standards for students in special education who have "persistent academic disabilities." Under the proposal, states may develop modified academic

achievement standards and use alternate assessments based on those standards for students with persistent academic disabilities who are served under the *Individuals with Disabilities Education Act*. States may include proficient scores from such assessments in making adequate yearly progress (AYP) decisions, but those scores will be capped at two percent of the total tested population. This provision does not limit how many students may be assessed against modified achievement standards. Individualized education program (IEP) teams will make decisions as to which students should take such an assessment.³⁷ This new rule would be in addition to the existing regulation governing students with severe cognitive disabilities. The rule provided that no more than one percent of a school's or district's enrollment may be tested against standards other than those of their own grade level and still be considered proficient for accountability purposes.³⁸

- Convening a panel of experts to consider ways of allowing states to incorporate a growth model into their accountability systems. These models would give schools and districts credit for increasing student achievement, even if they didn't reach exact levels set for all schools and districts by their states under NCLB.
- Working with states that make the case for waivers of certain rules under NCLB. States would have to prove that they had complied with the tenets of the law and show that student achievement was increasing. They could accomplish this by showing that test scores are rising, that graduation rates are on the rise, and that achievement gaps among all students are closing.³⁹

Subsequent to Spellings' announcement on April 7, 2005, the U.S. DOE has announced more details concerning the short-term option that will allow schools to adjust their AYP goals for the 2005-06 school year. However, in order to exercise this option, schools must test at least 95 percent of their special education students, develop appropriate accommodations for students with disabilities, and make available alternate assessments for students with disabilities who are unable to take grade-level tests, even with accommoda-

tions. Once these requirements are met, the state can then either use a mathematical formula to increase the passing rate for special education students or count more scores from alternate tests as proficient.⁴⁰

POLICY PERSPECTIVES

The *No Child Left Behind Act* has captured the attention of policymakers, educators, parents, students, and the broader public across the country. Daily news is seemingly generated about the ongoing debate and discussion concerning the implementation and evolution of NCLB. The ultimate success or failure of this monumental education reform law may well hinge on how the United States Congress, the U.S. Department of Education, and President Bush respond to the mounting criticisms and calls for change. The Center for Evaluation and Education Policy at Indiana University sought out the expert perspectives and opinions from national and state leaders who have been in the trenches, so to speak, in implementing this law. The six education leaders, who are our Policy Perspectives guest columnists, graciously offer their recommendations to the administration on the direction the nation must head with NCLB and the changes they believe are necessary to ensure the successful fulfillment of the law.

Policy Perspectives

MOVING FORWARD WITH NCLB

Tom Houlihan



The implementation of NCLB is well under way in every state in the nation, including Puerto Rico and the District of Columbia. There are three primary issues that must be addressed if the legislation is to be successfully implemented, and these three issues are the focus of a national conversation between the Department of Education and the nation's Chief State School Officers;

- *Special Education Testing Provisions* - The current 1% cap on special education students that can be exempted from state grade-level testing needs to be addressed to take into account the common sense nature of local flexibility and needs on an individual school level. The cap must be lifted and a more reasonable percentage (3-4%) must become the approved approach.

- *Limited English Speakers* - Currently NCLB is very strict in the ability of states and local districts to have flexibility on testing of students who are not fluent in English. In other words, it is quite possible that students are being given a test in English but cannot read or speak the English language. Obviously this causes significant accountability problems and needs to be addressed.

The state of Indiana, like many other states, is making progress in meeting the needs required of NCLB. At the same time, as adequate yearly progress provisions increase in complexity, Indiana may actually see an increase in the number of schools not meeting this requirement. The flexibility pointed out in the three examples above will alleviate this to a certain degree. However, the challenge remains clear that the goal of 100 percent proficiency by 2013-2014 is a stretch goal (at the very least).

NCLB is a step in the right direction. The issue of subgroup performance can no longer be hidden by school-wide averages. If the mission of the public schools of this nation is to educate all students, then accountability must follow. And thus the provisions of NCLB.

If additional realism and common sense are addressed in the testing provisions of NCLB, I believe acceptance will be even greater in the future. One thing is for sure—we now have a de facto national policy on education, and it is a policy based on subgroup progress over time for all children. This is a first in the history of the United States, and time will tell if the resources and policy support are provided to meet this new national policy.

Tom Houlihan is the Executive Director of the Council of Chief State School Officers (CCSSO) Washington, DC

Policy Perspectives

YEAR 3 OF THE NO CHILD LEFT BEHIND ACT

Jack Jennings



Early signs of some positive effects, but also clear warning signs of problems that could undermine the future success of the law if not addressed, are the two major themes noted by the Center on Education Policy in its analysis of the third year of the *No Child Left Behind Act*. The Center, an independent nonpartisan group, is conducting the most comprehensive, long-term review of NCLB by any organization in the country.

On the positive side, states and districts report that students' scores on the state tests used for NCLB are rising. Our surveys and case studies also suggest that the law has focused greater attention on the needs of lower-achieving groups of students. Districts and schools are providing extra instruction to struggling students and making greater use of test score data to inform decisions about teaching and learning. Districts also

report progress in raising the proportion of teachers who are highly qualified according to the law's definition.

On the negative side, states and districts continue to struggle with implementing key aspects of the law. In our surveys and case studies, states and districts voiced continued frustration with the NCLB testing requirements for students with disabilities and English language learners. Many state and district officials, as well as researchers, question the fairness and reasonableness of the overall approach to determining adequate yearly progress. Many state and local people we surveyed or interviewed believe the goal of 100% of students performing at proficient levels by 2014 is unrealistic and expressed doubt about their ability to meet state adequate yearly progress test targets. These targets, which are currently set at moderate levels in most states, must rise by the end of this school year and keep rising every few years.

The most serious sign of trouble ahead has to do with the capacity of states and districts—in terms of both funding and staffing—to help low-performing schools and students.

The true success of the *No Child Left Behind Act* depends on the day-to-day actions taken in underperforming schools and the effectiveness of the interventions provided for low-achieving students. But states and districts told us they lacked the capacity to help all schools identified as in need of improvement. They also said that they are not adequately prepared to monitor the quality of the entities providing tutoring under the law's requirements for supplemental education services.

In sum, our study of the third year of NCLB implementation reveals support for the goals of the *No Child Left Behind Act* and encouraging signs of positive impact. But problems persist that have been exacerbated by the way the Act has been administered. Mid-course corrections must be made in federal administration, funding, capacity, and other areas if the nation expects to see long-term, sustainable improvements in student achievement.

To read and download the full report, *From the Capital to the Classroom: Year 3 of the No Child Left Behind Act*, visit CEP's web site, www.cep-dc.org.

Jack Jennings is Director of the Center on Education Policy Washington, D.C.

Policy Perspectives

COMMON SENSE REVISIONS FOR NCLB

Frederick M. Hess



Breathing life into any statute as complex as *No Child Left Behind* brings inevitable headaches. To date, the legislation's great boon is the sunshine it has beamed upon student, school, district, and state performance in reading and math. The testing mandate is yielding a wealth of valuable achievement data that is deepening popular awareness of school effectiveness and equipping principals and superintendents to lead more effectively.

However, the accountability apparatus mapped by Congress presents some common sense difficulties. For example, the multiple subgroups the law creates mean that even generally successful schools can be flagged based on a variety of measures, yet the federal law does not distinguish between a school that fails to make adequate yearly progress in dozens of subgroups and another that falls short in just one. The law also imposes a lock-step timeline in which all states are directed to reach 100% proficiency by 2014, prompting most states to wedge the bulk of the requisite gains into the final years and leaving the heaviest lifting to those in office six or eight years from now. The rules invite finagled timelines and gamesmanship over passing rates and "cut scores."

This state of affairs points to the need for some sensible revision. First, NCLB today is too laid back about the knowledge that young Americans need and too prescriptive about calendars and measurement processes. Rather, Washington should offer clearer guidance regarding the essentials that students must master, while being flexible with regard to how states, districts, and schools produce those results. Though NCLB pretends otherwise, there is a great deal of nationwide agreement as to what children should learn in reading and mathematics. Using the National Assessment of Educational Progress (NAEP) as a benchmark, Washington could readily set clear and uniform expectations regarding student mastery in these subjects in Grades 4, 8, and perhaps 12. Such a metric would allow the Department of Education to gauge student performance with existing NAEP tests, without requiring the extensive negotiations now taking place with states over the shape of their assessment systems.

Second, school performance should be judged not just in relation to absolute standards but also in terms of how much students are learning during the course of a school year. Adequate yearly progress should be gauged based primarily

on the academic value schools add (i.e., the achievement gains their pupils make)—not, as is the case today, on the aggregate level at which students perform. Measuring a student's level of achievement entails three elements—learning in the current school year, learning in previous years, and everything else in a child's life—of which only the first gauges how schools and educators are performing. While, today, neither NAEP nor most state assessments are designed to measure value added, this capacity is rapidly developing. Today's NCLB is hostile to value-added analysis. That should change.

Third, NCLB should replace its all-or-nothing AYP calculation with a more flexible approach. One might, for example, distinguish among schools that are making progress overall and in a given percentage of their demographic subcategories; those that are making progress overall but in less than the requisite number of categories; and those failing to make acceptable overall progress. Such a triage system would distinguish between those schools that are almost succeeding and those that are clearly inadequate, and enable states and districts to focus on repairing the latter.

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Policy Perspectives

NCLB IN INDIANA

John Ellis



Throughout the U.S., debate continues to surround *No Child Left Behind*, arguably the most invasive movement of national government into the traditional state role of providing a free and public system of schools. The federal government's history of unfunded or underfunded mandates such as the IDEA funding shortfall continues through NCLB. Since education expenses generally make up more than half of state budgets, states cannot ignore the costs.

Attorney General Richard Blumenthal, on behalf of Connecticut, is preparing the first state lawsuit challenging this law, citing that its implementation will cost state and local taxpayers hundreds of millions of dollars. Blumenthal stated, "We need more than platitudes and pleasantries...we need funding and flexibility."

The National Education Association has filed suit over NCLB, joined by districts in Michigan, Texas, and Vermont. St. Paul Superintendent Pat Harvey has reviewed proposals that would give Minnesota education policymakers more flexibility in meeting the demands of NCLB. She believes that today's version of the federal act is too punitive since an entire school can be labeled as not making adequate progress because of the performance of a subgroup. Virginia is awaiting decisions on ten waiver requests submitted to the federal government.

While Indiana schools are still awaiting full staff-development support promised under P.L. 221's school improvement initiative, the P.L. 221 philosophically remains a much stronger plan for the delivery of instruction and improving student performance. Whereas NCLB opts for using standardized testing as "autopies," in the words of Doug Reeves, P.L. 221 provides prescriptive data upon which to improve student performance.

Educational organizations have brought the most highly regarded expert resources to Indiana to focus school improvement teams on best practices for delivering instruction. The Indiana Association of Public School Superintendents has recruited national experts such as Larry Lezotte, Robert Marzano, Mike

Schmoker, Gerald Anderson, Edie Holcomb, Katie Haycock, Kathy O'Neil, and Doug Reeves to share strategies and models for best practices in research with school leaders. The key focus of these experts is on attacking and reducing the achievement gaps that exist among our students.

Experts have identified common strategies to increase student learning. These include high curriculum standards evident in every classroom, increasing the minimal standards for curricular offerings and course selections, frequent assessment to allow for adjustments in curriculum to provide additional time to learn, and the implementation of accountability measures that force changes where low expectations prevail.

Through the use of these measures, many Indiana schools are demonstrating significant improvement. Recent consideration for Indiana to increase special education waivers from one percent to three percent of those with certain individualized education plans will also likely have a huge impact on the success rate of our schools under NCLB.

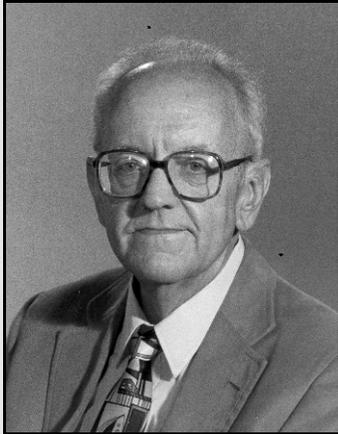
Indiana provides a fine example of how states can focus on improved student achievement. If provided with funding and flexibility, the original goals of P.L. 221 will be within reach, while much of NCLB remains a target with no darts.

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Policy Perspectives

THE EVOLVING NATURE OF NCLB

Lowell Rose



Much of my time since early 2002 has been spent on implementing NCLB. The focus has been on the workability of the law, not on such legitimate issues as the appropriateness of federal involvement in K-12 schooling or the implications for state and local control. Having noted those as legitimate issues, I will move on to such matters as whether NCLB will work, how it will impact Indiana's state plan, and how schools can adapt to it.

I view NCLB as combining the laudable goals of improving student achievement and closing the achievement gap with the Adequate Yearly Progress (AYP) system which is so flawed that it will defeat those goals.

The major problem is that the goal of 100% proficiency by 2013-14 is unachievable. It flies in the face of what we know about inherited ability, the nature of intellectual growth, and the impact of factors totally divorced from schooling. Close behind is NCLB's reliance on reaching fixed goals instead of focusing on improvement shown.

These comments do not negate the positive impact of NCLB to date. Its focus on improving student achievement and closing the achievement gap has contributed to test scores jumping significantly from 2002 to 2004, with the gains especially evident among Blacks, Hispanics, and free/reduced lunch students. We have, to this point, benefited from NCLB. However, absent changes in the AYP system, testing in all the required grades, escalating goals, and the blunting impact of large numbers on the positive impact of the test of statistical significance will quickly reverse the gains.

NCLB's future hinges, as it has from the beginning, on whether the needed changes are made. I view those as including:

- Give appropriate recognition to improvement made.
- Measure each breakout group from where it starts.

- Set improvement goals that are reasonable and can be met with stretching.
- Set goals for the special education breakout that are appropriate to that group.
- Shift from a psychology of punishment to one that values assistance and reward.

Word is that the special education cap is about to be raised. That would be significant since over half of the AYP failures in Indiana result from that breakout. Indiana has proposed a plan change involving a test of statistical significance applied to the safe harbor percentages. That moves toward a focus on improvement. And, a second proposed change would base corporation AYP on grade level groupings. These changes, if realized, will buy time while we wait for the more substantive changes listed above.

If those promoting NCLB are wise enough to make the necessary changes, it has the potential for being a positive step in improving achievement. If they are not made, NCLB will implode, and, at least in Indiana, it is likely to halt the promising start we have made in that direction.

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Policy Perspectives

SPECIAL EDUCATION AND NO CHILD LEFT BEHIND

Amy Cook-Lurvey



“Sometimes things have to get worse before they get better,” and so it is with special education and NCLB.

When the results of the first ISTEP+ scores came as a part of NCLB, the scores of special education students “as a whole” were below all categories. The immediate outcry was that these scores were going to doom the ratings of all schools.

But an analysis of the test results and the subsequent disaggregation by subgroups revealed that the diversity of scores among special education students was the same as that for general education students. For example, the special education students, like the students in general education, who received free or reduced price meals, reflected lower scores than those students not impacted by poverty.

Clearly this means that the impact of poverty, cultural deprivation, and/or race is a factor over and above the disability factor. What the accountability movement (Indiana’s P.L. 221 and NCLB) has done is to insist that all children can learn, and that our public schools are responsible for assisting all students to have an equal educational opportunity to attain their learning potential.

NCLB has challenged parents, teachers, and school administrators to raise their expectations for the learning capacity of all students, and particularly those with special needs.

Indiana’s development of new academic standards for every grade, which are part of the accountability movement, is one of the best things that has happened in special education.

No longer can parents, teachers, and school administrators be content with “watered down curricula” and lesser academic goals for students with special needs.

NCLB has created discussion and critical thinking about all aspects of educational practices.

As a result, professional development programs are more focused on strategies to achieve the necessary system change to raise academic achievement for students with special needs.

It is now evident that teacher training programs must be changed. Too many special education teachers have not been trained to teach core subjects such as reading and math. In addition, too many general education teachers have not been trained to understand how to teach children with disabilities.

The intersection of IDEA and NCLB has created a mix of challenge and opportunity that fosters a unique conveyance of interests

across groups. The performance of students with disabilities under NCLB has focused the attention of general and special educators on the urgent and common need to understand each other and work effectively together.

The timelines are short, and the stakes for students, families, schools, and educators are high.

In hindsight, if current thinking had been understood in 1987 when the ISTEP test was created, students with disabilities would have been required to be included in the testing process.

If so, these students would be more proficient in test taking and educators would be more knowledgeable about the use of accommodations in the way tasks are presented that allow children with special needs to complete the same assignments as other students.

However, we have to accept the reality of 2005. Change doesn’t happen overnight. Details of NCLB may have to be modified, but the law has created dynamic change that ultimately will drive positive outcomes for all students, but especially for those with special needs.

For special education, the “worst is over.” Challenges remain, but the reauthorization of IDEA and the impact of NCLB will drive the necessary system change in public education that will ultimately insure educational improvement for all children.

Amy Cook-Lurvey has been a champion and leader in Indiana since the 1960s in advocating for the learning needs of special education students. Ms. Cook-Lurvey has served as the volunteer governmental affairs representative for the Indiana PTA (1962-71) and the Council of Volunteers and Organizations for Hoosiers with Disabilities (1969-present). She is a past recipient of the Indianapolis Star’s Jefferson Award (1975) and has received the Sagamore of the Wabash from Governors Bayh and O’Bannon.



THEMES AND CONCLUSIONS

Jonathan A. Plucker

The Center for Evaluation and Education Policy appreciates having six state and national education leaders share their perspectives on the *No Child Left Behind Act*. After considering both their perspectives and the research assembled in this Education Policy Brief—and mixing in a healthy dose of personal observations about NCLB and P.L. 221—the following themes and conclusions appear to be justified:

1. Regardless of one's view of NCLB, the law is undeniably the largest federal initiative—some would say intrusion—in education in at least a generation. And this involvement appears to be paying some dividends: As Mr. Jennings reports, districts and schools are starting to see evidence of improvement in important areas, although a great deal of work remains.
2. Although issues have been raised about implementation of NCLB, the goals have proven to be popular and lacking in controversy. If nothing else, NCLB provides evidence that people can disagree vehemently about reform strategies, but everyone wants to see our public schools improve.
3. The Act has focused attention on the education of many students who have historically “fallen through the cracks” of our educational system (see Ms. Cook-Lurvey's insightful analysis of this issue). For example, in Indiana, NCLB has focused attention on the performance of ELL students. These students have increased in number from 5,342 to 28,741 over the past 10 years, yet few state resources have been directed to assisting these students during this same period (despite the efforts of many educators and policymakers). These students cannot be overlooked in the future, although significant questions remain about how best to assess and teach ELL students.
4. Similarly, the inclusion of special education students as a breakout group is both laudable and very controversial. As Ms. Cook-Lurvey notes, providing these students with “watered down curricula” matched with low expectations is no longer acceptable under NCLB, which is clearly a huge advantage—both for these students and society as a whole. But as Dr. Houlihan and Dr. Rose note, the application of NCLB to special education is not without significant problems. Most notably, the hard cap on alternative assessment (even the additional two percent cap appears to be inadequate) and using the same target achievement level for all subgroups are causing considerable problems in almost every state. Yet few people appear to be talking about a potential problem that worries me a great deal: If the majority of schools failing to make AYP can point to the special education subgroup as the cause of the failure—whether justified or not—special education advocates' hard-won success will be lost if special education students become scapegoats. From my perspective, the current structure of NCLB is facilitating and will continue to facilitate this finger pointing.
5. Although many states have sought (and are seeking) to “game the system” (e.g., modifying subgroup sizes, lowering standards and assessment cut scores), Indiana policymakers and educators have avoided this approach by working in a bipartisan manner to implement NCLB in an effort to help Indiana students. Indiana's approach appears to be a better strategy, both politically and educationally.
6. Complaints about NCLB being an unfunded mandate, although easy to understand, distract from serious examinations of the law's accountability mechanisms, which undoubtedly need to be tweaked or, in some cases, rethought and overhauled. After all, if the federal government increased funding to meet critics' demands, I suspect most observers (including all of the experts who shared their thoughts in this Brief) would argue that we would merely have an extremely well-funded accountability system that still needed to be fixed. In this regard, the slowly growing number of NCLB lawsuits are distracting needed attention from improving the law—for which several excellent and reasonable suggestions are provided by the guest contributors. In this vein, the comments by Dr. Houlihan and Dr. Hess about moving from comparing cohorts to comparing progress made by students are especially well-taken; the U.S. Department of Education plans to form a task force to investigate the use of these “growth models,” but progress has been slow.
7. That said, one of NCLB's most important structural flaws is the inconsistent implementation among states. Among the states with the lowest percentage of schools failing to make AYP are some of the lowest performers on the National Assessment of Educational Progress (NAEP), and a few states with consistently high levels of NAEP performance have among the highest percentage of schools failing to make AYP. This inconsistency is important for a number of reasons, with the most serious being that a student in one state attending an “excellent” school may receive an inferior education compared to a student in another state attending a school that “needs improvement.” This could lead to a scenario in which a student's chances for a competent public school education are largely dependent on where the student happens to live—which is exactly what NCLB is intended to prevent. Fortunately, Indiana is one of the states that is taking NCLB seriously, but this larger national issue lurks in the background. Of course, allowing considerable state flexibility was a necessary compromise that allowed the bill to become law, but that does not mediate the considerable state-by-state disparities that may arise. Dr. Hess recommends tying NCLB more closely to NAEP, which is an excellent suggestion but probably is not feasible in the current political climate—especially given the huge sums that have been spent to develop and enhance state testing programs.
8. The mechanisms of NCLB and Indiana's P.L. 221 do not align perfectly: P.L. 221 considers both overall student performance and increases in student performance, whereas NCLB primarily considers subgroup performance. Given these different approaches, it should be expected that individual schools may not necessarily appear to be making equal progress in both accountability systems. However, schools failing to make AYP according to NCLB cannot perform in the top two P.L. 221 categories: Exemplary and Commendable Progress. In essence, NCLB's failure to fully recognize improvement theoretically prevents P.L. 221 from correcting this limitation. Taken in light of Dr. Ellis' analysis of P.L. 221's many strengths relative to NCLB, the forced administrative overlap between the two accountability systems is conceptually, empirically, and motivationally inconsistent and counterproductive toward our goal of improving Indiana's public schools.

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