



NO CHILD LEFT BEHIND: The House Discussion Draft October 2007

Overview of the Process

NSBA has two broad objectives in the reauthorization of the No Child Left Behind Act (NCLB). First, we need Congress to correct the flaws in the current program without creating new ones. NSBA's bill—H.R. 648—provides the kind of fixes that should be incorporated into the legislation. Second, Congress needs to complete the reauthorization by the end of the current Congress (i.e., 2008) and ideally in time to score schools on their Adequate Yearly Progress (AYP) for the 2007-08 school year.

NSBA believes that Congress can still make the corrections that are needed in a timely manner; but it will likely require the House and Senate to pass their respective bills by year's end. That would leave 2008 for a conference committee of both houses to resolve the differences between their two bills. If initial floor passage does not occur until next year, Presidential politics and Congress' own election concerns will increasingly limit which bills will be called up and the increased potential for undesirable provisions to be added.

And, if the reauthorization is held over until after the Presidential election it is not likely that legislation will be finalized until 2010. That will mean that the current program could apply—with all its flaws—for as long as the 2010-11 school year. Meanwhile, the bar for meeting AYP will continue to rise and unfairly identify more schools and school districts as failing while others move further down the progression of overbroad sanctions and the unnecessary costs and counter-productive programming that will result.

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Accordingly, the House and Senate education committee chairs set a goal to introduce their respective bills and complete committee action by October. On the Senate side, Chairman Edward Kennedy (D-MA) has kept the development of his yet to be released bill under wraps while House Chair, George Miller (D-CA) has taken a more open approach. He released a "discussion draft" on August 28 and held hearings on September 10. (NSBA's testimony and official comments can be found at www.NSBA.org/advocacy).

NSBA's Position: More Work Needs to be Done

The materials presented below describe NSBA's positions on the details of the NCLB discussion draft released by House Education and Labor Committee Chairman George Miller (D-CA) on August 28, 2007.

NSBA was pleased that many of our recommendations were incorporated in the discussion draft. However, in judging the draft, we are concerned that, since it will be the driving force in American education over the next six years, it does not go far enough to correct some flaws in the current law and created too many new ones to earn our support.

We believe that the omission and flaws can be corrected in time for the House to pass its version by the year's end.

Our broad concerns can be grouped into the following six categories.

- Micromanagement of schools/school districts. The draft would micro-manage schools and school districts with a one-size-fits all approach for addressing school improvement that includes extensive data collection and burdensome reporting involved in developing schools' improvement plans. The draft does not recognize the sheer local overload in terms of staff availability, cost, and constriction that it poses—especially as school systems work with a variety of other new features that are promoted in the draft such as, 1) new state standards and assessment (and adjusting local curriculum and instruction to them) 2) the use of growth models 3) the use of multiple indicators and 4) new teacher assignment requirements.
- Special populations. The draft fails to realistically address the time that limited English proficient students need to acquire academic proficiency and inadequately enables school districts to use alternate means of calculating Adequately Yearly Progress for students with academically-related disabilities.
- Multiple assessments. In providing for the use of multiple assessments, the draft proposes an unacceptably complex system—which is not designed well as a local planning tool. Nor is it given insufficient weight to

- be attractive or to help broaden a wider view toward other subjects and factors that constitute a high quality education.
- Key technical issues. The draft does not go far enough or omits addressing key technical issues that will have a profound negative outcome. For example, it does not address the requirement that schools and school districts must unrealistically achieve 100% proficiency for all of their students within this reauthorization cycle. The proposal to legislate “n” size at 30—along with other provisions will result in the unnecessarily over-identifying schools and school districts for improvements.
 - Sanctions. The draft perpetuates the policy of current law that goes out of its way to sanction school districts through its illogical approach to such issues as 1) participation rates 2) students in multiple groups 3) retesting students for AYP and 4) the 10% safe harbor rule. It also fails to address certain defects in how sanctions would be applied such as the lack of local oversight in determining the qualification of supplemental service providers and the proposed elimination of the current “other” option in restructuring schools in addition to the four draconian options mandated by the draft.
 - Funding. The draft does not address the inadequacy of federal funding in the current program or the additional costs that the draft will impose on local school districts.

Hearing Held on Discussion Draft

The wide range of witnesses testifying before the House committee tended to focus on the failure of the discussion draft to adequately address their concerns. Given that the witnesses represented various interests within school districts, single issue advocacy groups, and think-tanks, among others, it was not surprising that there was conflict over the manner in which schools should be held accountable for student performance generally and for specific groups of students.

During the hearing sparks flew between the Committee Chair and the National Education Association (NEA) over a provision that would provide grants to school districts to fund salary incentives to attract and reward effective teachers in schools with a large portion of students from low income families. Contrary to the Chairman’s understanding, the union argued that it did not previously sign off on the use of performance pay criteria that would be a condition for school district use of these grants. How this issue is handled could be important in securing the support of some Democrats for the bill.

Meanwhile, House Republican leader John Boehner (R-OH)—who chaired the House Committee when NCLB was originally enacted—sent a letter to Chairman

Miller outlining his concerns with the discussion draft. Among those items he registered strong disappointment with the sanctions mandating supplemental educational services (i.e., after-school tutoring by private companies) because their use would be limited compared to current law. He also expressed concern over the data collection requirements and the number of new grant programs that the draft would add.

Taking all of this "input", Mr. Miller may formally introduce a revised bill for committee action by early November.

Main Features of the Discussion Draft

While some of the details will change when the Chairman's bill is formally introduced, the discussion draft does provide a valuable road map for the direction that NCLB is likely to go.

NSBA is pleased that many of the concepts that were addressed in our bill, H.R. 648, were included. For example, the draft would eliminate some of the rigidity in the calculation of AYP that is unfairly identifying schools as failing. It also would provide the option for states to use growth models and apply different sanctions depending on how much a school missed AYP. At the same time, the draft did not go far enough to correct some flaws and added a number of cumbersome provisions and paperwork requirements that are unacceptable.

Calculating AYP

- Students with Disabilities. In calculating AYP for students with disabilities, the draft would allow school districts to continue counting students who were previously identified as having a disability as a member of that group for up to three years after they leave the group. It would also legislate current Department of Education (Ed) policy to allow students with certain academically related disabilities to satisfy AYP requirements through the use of modified standards (for up to 1% of test takers) or alternate assessments (for up to 2% of test takers). However, the draft fails to place sufficient trust in the IEP team by continuing the use of rigid definitions to determine which students fall into these categories rather than leaving the decision to the team's evaluation of the student. Although the draft would allow districts to appeal to have their 2% cap on modified assessment test takers raised to 3%, the process for approval is too cumbersome to be used.
- English Language Learners. In addressing AYP for English language learners, the draft provides three beneficial changes. First, in calculating AYP it would allow states to count previously limited English proficient (LEP) students for up to three years after they become proficient and

leave the group. Additionally, states would have two years to develop native language assessments and could use their English Language Proficiency (ELP) assessment to determine AYP during the interim. Further, students could be tested in their native language for up to five years (rather than the current three) plus an additional two years on a case-by-case basis.

However, there is the bad news. Specifically the draft does not recognize that frequently students from other countries have an education foundation that is so weak that it may take several years for them to achieve proficiency in English and math. That is, the draft would continue the AYP requirement for LEP students to score at the proficient level by the end of their second year in the U.S. rather than allowing local school experts to individually evaluate these students and develop individual measures of progress for them for a more reasonable period of three years before requiring that they meet the proficient cut score.

- Growth for Measuring AYP. More broadly, the draft would provide states with the option to determine AYP on the basis of whether enough students meet their individual growth targets for the year—not just whether enough scored at the proficient level. However, the draft would limit the use of growth so that students must reach proficiency by the third year. As a result the draft’s year-to-year growth trajectory could be unreasonably steep for meeting rigorous state standards.

As another form of growth, the draft also allows states to receive AYP credit for students gains on an index system i.e., on the basis of the number of student’s moving from basic to proficient.

- Multiple Indicators. In determining whether students make AYP in math or reading, states could also receive credit for how well they perform on a menu of up to five “other indicators” that are listed in the draft. Unfortunately, this option requires substantial data collection and uses an overly complex scoring process. Consequently, it will not be well understood at the local level or be the incentive envisioned for school systems to place a higher priority on these “other” factors. It is also too limited in its AYP scoring value to be of much benefit. As a result it will not provide the wider balance of other achievement factors that should be considered in how well a school is doing to close the achievement gap.
- “N” Size. Although the issues discussed above do not go far enough, they will improve the calculation of AYP. However, the calculation of AYP is a different issue than whether a group of students will be large enough to be counted in the first place. The draft sets the threshold figure at thirty with the opportunity for the state to justify the threshold to be forty. For those states with a group size (“N size”) currently over thirty, this may mean that more groups in their schools will be counted for AYP.

Consequently, this proposed change may cause a rise in the number of their schools not making AYP. The proposed change could also have impact on states like California, Florida, Georgia, Massachusetts, and Texas that use a floating group size that increases with enrollment to accommodate large and diverse schools—which is some states can exceed 100).

- 100% Proficiency. The discussion draft did not address the “bottom-line” requirement in current law that all students must be scored at proficient or above by the 2013-14 school year in order for a school or school district to make AYP. Since the reauthorization would run through 2013-14, this impossible to meet requirement will ultimately flunk any school or school district in which just one student fails to make the grade.

Calculating AYP: What’s Missing

In determining whether schools or school districts make AYP, the discussion draft fails to capture several important points recommended by NSBA.

- First Assessment Rule. Contrary to current ED practice, once the official state assessment is given, students who do not score proficient or above and then successfully retake the state test should have their success counted for AYP. These successful students may make the difference as to whether their sub-group makes AYP and whether the school faces certain sanctions. The point is, why label a school as not making AYP—even though the group in reality is entering the next school year performing at the level required by AYP? Further, why not give the school and student greater incentive to engage in after school programs in the spring or early summer by counting their success?
- Multiple Counting of Students. Under current ED policy students who belong to several groups must be counted as one student for each of those groups. Not only does this approach statistically over-represent these students, but it over-represents school failure since the most academically challenged students are more likely to belong to more sub-groups than do other students. To prevent this statistical bias to promote school failure, the scores of students in multiple groups should be counted as one student by fractionally weighting them on the basis of the number of groups to which they belong.
- Participation Rate. To determine the quality of a school’s education program, it is essential for there to be a minimum percentage of students taking the test. One reason is to guard against an over-representation of lower achieving students who are absent on test day. In other words, minimum test participation serves as a tool for keeping the system honest in measuring the quality of a school. However, test participation is not in itself a measure of a school’s quality. Yet, NCLB treats it that way

because if a group has more than enough students scoring proficient or above, it can still fail to make AYP just because one or two students too many failed to take the test during the official test period. But, what if those students did show up on test day and failed to score proficient? The group would have made AYP and the school would not have been labeled as failing and possibly be subject to costly sanctions. Schools should have the option to count non-participant students as having taken the test but scored as not meeting proficiency in calculating AYP.

- Reduce Safe Harbor Requirement. Currently if a school or group doesn't make AYP using the basic calculation, they still can make the grade if at least 10% fewer students fail to make AYP than did the previous year's group. The problem is that very few schools or groups that fail to make AYP under the basic calculation have made it under this option. The safe harbor threshold should be at 5%.
- Limited English Proficient Students. Under the draft bill, students from other countries will have their test scores counted for AYP at the end of their second year in the United States. As previously indicated these students may have been significantly under-educated for years in their country of origin. Some may not be sufficiently literate in their native language so that giving them a native language assessment or other accommodations (e.g. extra time or a proctor to read the questions to them) will make a difference. Can these students categorically be expected to meet the proficient level on high state standards within two years? In scoring for AYP, schools should be able to evaluate students on a case-by-case basis and set individually determined goals for them for up to three years following their year of enrollment.
- Students with Disabilities. Currently, a student must fit into the rigid categorical definition of having a "serious cognitive disability" or a "persistent academic disability" to qualify to be among the up to 3% of students who can have their scores for AYP determined through the use of modified standards or alternate assessments. Rather, IDEA, the basic law for determining the appropriate programming for these students should apply by enabling the IEP team to make individual determinations based on their on-the-ground evaluation of each student—subject to the overall cap of 3% of students counting toward AYP.

Sanctions

Under current law if a school or school district fails to make AYP for two or more years in the same subject (i.e., math or reading) it becomes subject to interventions. As each year goes by that AYP is not met, more aggressive interventions are added. This will occur regardless of the portion of enrollment that missed AYP, or the number of points by which they missed the target, the level of growth that students have achieved, or certain extenuating

circumstances—such as a large number of students from another country unexpectedly enrolling in the school.

- Same Group/Same Subject. The discussion draft seeks to address some of these issues by refining the ways in which sanctions are applied. First, sanctions would only apply if the same group failed to make AYP in the same subject for two consecutive years. This would end the unsound practice currently in place that would invoke sanctions even if a different group fails to make AYP in one year than in the next. In addition to unnecessarily labeling schools that only temporarily fail to make AYP for a specific group, this “revolving door” approach has been forcing schools to refocus their improvement plans and interventions each year. Accordingly, this is a significant improvement.
- Sanctions for High Priority Schools. The draft would replace the “one size fits all” imposition of sanctions by creating one menu of interventions for schools that miss AYP by a significant amount and another for those that more marginally miss the grade. Generally, if 50% or more of the students in a school miss AYP, or if 50% of students from two or more groups miss AYP, the school will be designated as a “high priority” school after not making AYP for two consecutive years. As such, it must immediately develop an improvement plan and after another year of not making AYP it must offer its students both the opportunity to transfer to another school or receive supplemental services. If after another year students don’t make AYP, the school would then be designated as a “high priority design school” and progress to more aggressive interventions such as total restructuring. However, the draft recognizes the need to set priorities in the number of high priority design schools that a school district will be able to address. Therefore, not more than the lesser of 50 of schools or 10% of a school district’s schools need to be identified as “high priority design schools”.
- Interventions for Priority Schools. For those schools not making AYP for two consecutive years by lesser amounts, the draft would designate them as “priority schools”. They, like high priority schools, would be required to engage in vigorous data collection and develop very detailed school improvement plans—especially in comparison to current requirements. While these requirements may in theory sound good, the capacity of schools to comply with the magnitude of requirements in the draft is unrealistic whether applied to a small district with limited administrative staff or a larger district with thousands of students. In implementing the plans, the good news is that “priority schools” would not need to offer choice or supplemental services nor would they be subject to restructuring.
- The Omissions. While the discussion draft improves the way in which sanctions would be applied, there are several serious omissions. For

example, choice and supplemental services should be specifically targeted to those students who did not score proficient from the groups that did not make AYP as opposed to current requirements that make all students eligible. School districts that are in improvement status should be specifically authorized to provide supplemental services. Private SES providers should be held accountable for having highly qualified teachers and local school districts should be allowed to challenge the performance of any provider to serve students.

A Special Focus on High Schools

To address the concern that too many students either drop out of high school or are not proficient in English and math when they do graduate, the discussion draft proposes to increase both accountability and program support at the secondary level.

On the accountability side, the current AYP requirement that a high school must meet the state's requirement regarding the overall percentage of students who must graduate will become tougher in several ways. First, the state's graduation rate requirement must be met for each group of students—not just students overall. Second, the states must require high schools to increase their graduation rate by at least 2.5% annually for each group until they achieve 90%--with the goal of eliminating the graduation rate "gap" among groups by the 2019-20 school year.

On the incentive side, the draft would create a new program, the Graduation Promise Fund, to provide financial assistance through the states to primarily assist "high priority" high schools increase their graduation rates. In addition to this new program, the draft would also allow states to give schools credit in calculating AYP for math and reading if they meet the state's annual goal for raising high school graduation rates or reducing drop-out rates. Specifically, these rates can be used as one of the indicators that a state could allow in using multiple indicators in calculating AYP for math and reading. If a school meets the growth target, it could constitute as much as 15% of a group's AYP score for math and reading.

Other New Accountability Features

The draft would provide state departments of education with financial assistance to develop college and work readiness standards along with assessments that are aligned to them. The objective is to increase the rigor of state standards as well as to ensure that assessments are designed to assess a student's high order thinking skills—including those skills and uses of information that would be appropriate for 21st century life. States would also be required to implement

extensive longitudinal data systems within four years. This could be a burden on local school districts to the extent they would have to put new data systems in place and then provide the staffing to maintain them. On the positive side, this requirement will provide valuable information about individual students, groups, and schools that can promote more strategic analysis and attention to individual needs and performance of students and their teachers. Further, the draft would create a pilot program to allow up to 15 states to use local assessments—along with state assessments—in determining AYP. This would allow for greater local

Teacher Effectiveness

- Highly Qualified Teachers. The discussion draft seeks to promote teacher effectiveness in several ways. First, it continues the overall policy to require “Highly Qualified Teachers” (HQT) core subjects (i.e., teachers who by virtue of their college major or performance on a test have demonstrated they possess the requisite knowledge for the subjects they teach). The draft would legislate current ED practice to give more time for rural teachers of multiple subjects to acquire HQT status. Unfortunately, it does not relax the rules for special education teachers who might have to be highly qualified in multiple subjects (along with their credential in special education). Nor does it treat social studies as a core subject for HQT—as distinguished from requiring teachers to have separate core subject components like geography, civics, and economics. Further, the draft would eliminate the so-called HOUSSE option that has allowed veteran teachers to achieve HQT status by virtue of additional factors such as their experience and observable ability to teach a subject in which they did not major or pass a test.
- Equalized Salaries in Teacher Assignments. The draft also adds a new provision that would require the average salary of teachers in Title I schools to be the same as teachers in the school district’s non-Title I schools. This provision recognizes that quite frequently new teachers are over-represented in schools that are located in lower income communities. (That is, that more experienced teachers—who are likely to be more effective regardless of possessing the same “paper” credentials as their younger counterparts—are likely to exercise seniority rights in their contracts to be assigned to less challenging schools.) However, the draft also states that this provision can not supersede collective bargaining agreements, thereby preventing the forced reassignment of experienced teachers to more challenging schools in collective bargaining states. Consequently, the equalization provision may have very little impact but would result in substantial data collection.

So, how will school districts comply with this provision? Beyond reporting, there are no specific enforcement provisions. However, Title II of the

draft does enable school districts to receive funds under several modest financial incentive and reward programs to compensate effective teachers in schools serving low income areas.

- Novice/Out-of-Field teachers. Further, the draft would prohibit students from being served by out-of-field teachers or novice teachers for two consecutive years. However, like the basic HQT and equalized salary provisions, the draft does not provide local penalties for non-compliance.

Your Action

There are several key action steps that you can take to ensure that the reauthorization of NCLB is done in a timely and correct manner.

- Pass a school board resolution in support of H.R. 648. About 550 local school boards have sent resolutions to their members of Congress in support of H.R. 648—the NSBA bill. This activity is valuable because it demonstrates the unity of your school board behind the urgent need for specific fixes to the law.
- Develop a current-year local AYP/sanctions impact statement. Provide your members of Congress with a statement showing why your schools missed AYP this last year—including how the flaws in the AYP system made the difference. Show whatever mandated sanctions that your schools may be under are unnecessary, flawed, or overreach the need—along with the resultant educational, financial, and personnel cost to your schools.
- Develop a 2010-2011 local AYP/sanctions impact statement. Following your current local impact statement, project what will occur in 2010-11 in terms of making AYP (as the percent of students who must score proficient rises) and where your schools will be in the sanctions process if Congress does not fix the law before then.
- Take your case to the media. Using your board resolution and the material from your local impact statement, along with your broader educational concerns about NCLB's impact on student learning, develop an op-ed for your local newspaper and seek time on a radio station. This will reinforce the message to members of Congress that they have a responsibility to their community to fix this legislation and to fix it now.

See www.NSBA.org/advocacy for a sample school board resolution, listing of school boards that have passed resolutions, and other tools/background materials to assist you in your efforts to fix this law.