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ABSTRACT

This study examines how the federal government and states prepare to implement the No Child Left Behind Act. Researchers reviewed states' consolidated applications for federal grants; conducted telephone interviews with officials in 48 states, the District of Columbia, and 8 school districts; and reviewed relevant research. The study addresses assessment and accountability; public school choice and supplemental education services requirements; teacher and paraprofessional quality; and use of scientifically based research to improve education. Overall, states are committed to the Act's goals of raising achievement for all subgroups and enhancing teacher quality and working to implement the law, though its deadlines for making massive changes are short and final regulations on some key issues were late in coming from the Department of Education. The main challenge states face are creating plans for determining whether schools are making adequate yearly progress in raising achievement. States and districts are slow in acting on requirements to offer public school choice and supplemental services. They are not very far along in using scientifically based research to inform classroom practice. Three appendices include protocol for review of state plans, an interview guide, and a policy summary of the No Child Left Behind Act. (Chapters contain references.) (SM)

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ED 474 010

from the Capital to the Classroom

State and Federal Efforts to Implement the No Child Left Behind Act

Center on Education Policy

JANUARY 2003

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Commentary

A year ago, in January 2002, President Bush signed the No Child Left Behind Act. This far-reaching education law has two major purposes: to raise student achievement across the board and to eliminate the achievement gap between students from different backgrounds. To accomplish these ends, the law requires states and school districts to deal forcefully with schools that are not improving achievement and to ensure that all students are taught by highly qualified teachers. In our opinion, these are worthy goals for the country.

Over a five-month period during the summer and fall of 2002, the Center on Education Policy reviewed the implementation of this Act by the U.S. Department of Education and the state governments. We read the plans states submitted to the federal government, conducted confidential interviews with scores of state administrators in nearly every state, and reviewed the guidance and regulations issued by the federal government. During this first year of what is intended to be a six-year study, we concentrated on the federal and state actors, because the main tasks required by the Act for 2002 involved building state-level systems for additional testing, greater accountability, and data collection, with only a few new requirements affecting some local schools. In the fall of 2003, however, this will change, as the force of this major challenge for American public education reaches every local school in the country.

Our study found that the states are committed to the goals of the legislation and are trying hard to carry them out, but the prescriptive nature of the requirements is causing great concern. States are moving faster on the elements of the law where they have more experience, such as developing state tests, and slower on aspects where they need to create new procedures, such as approving nonprofit and for-profit groups to provide tutoring. We also found that the fiscal crisis in most states, coupled with the prospect of limited additional federal aid, could threaten the successful implementation of this very ambitious law.

Nearly four decades ago, another ambitious federal policy was initiated when President Johnson signed into law the Elementary and Secondary Education Act (ESEA) of 1965. This legislation, which vastly expanded federal aid to education, was meant to improve American public schools and help poor children climb out of poverty by providing them with a better education. New compensatory education programs took shape in almost every school district, new textbooks were bought, innovative programs were offered, and research was conducted to find better ways of teaching and learning. There was great enthusiasm for that law because its promises seemed so noble.

Four decades after ESEA was enacted, debate persists about the original Act's effectiveness in improving American schools and raising the achievement of poor children, although the weight of evidence suggests its impact on student learning was modest. In short, a major policy was not as successful as it could have been, because the promises

made by President Johnson and his supporters were overstated and the changes needed to carry out those promises were underestimated. Moreover, the war in Vietnam drew funding and attention away from the Act, slowing its momentum. In the years that followed, many poor children received additional services as a result of ESEA, but the ways of administering its programs became too highly regulated and perfunctory.

After completing our analysis of the first year of the implementation of the No Child Left Behind Act (NCLB), we see striking—and unsettling—parallels with the first years of the Elementary and Secondary Education Act, even though the times are obviously different. President Bush and Members of Congress have made lofty promises for the success of this initiative, while generally underestimating the magnitude of change that must occur in American public education to bring about those promises. Although President Bush supported a significant increase in appropriations for the first year of NCLB as part of a political compromise to get the measure enacted, his budget for the second year proposes a much smaller increase. The states are in no financial shape to make up the funding difference. And since the Act was signed, the nation's attention and resources have shifted to a war on terrorism and now a possible war against Iraq.

Some critics of the original ESEA say that it failed because it provided money without accountability, and that the NCLB Act will succeed because it requires strict accountability. The ESEA of 1965 may have offered money without much educational accountability, but the NCLB Act demands heavy accountability without much greater federal financial and technical assistance—an approach no more likely to succeed.

In 1965, extensive federal requirements like those in NCLB would never have made it through the Congress. At that time, the federal role in education was marginal, most state education agencies had very limited authority and capabilities, and local people were extremely wary that more federal aid would bring federal control. Since then, the federal and state roles in education have grown, and states and school districts recognize that accepting federal requirements goes along with receiving federal funding.

The No Child Left Behind Act places greater demands on states and school districts than ever before. States must define the level of proficiency that all students are expected to reach and set a timetable for schools to bring all their students up to this level by school year 2013-14. States must also expand their testing programs, analyze and report test results in new ways, provide technical assistance to under-performing districts and schools, help teachers become better qualified, and much more. School districts must raise test scores in reading, math, and science, close achievement gaps, design improvement strategies and interventions for under-performing schools, hire or develop better-qualified teachers and classroom aides, and create or expand public school choice programs, among other duties.

It remains to be seen how well these demands will be accepted and carried out. Since the federal government continues to provide only about 7% of the total funding for public elementary and secondary schools, it may have trouble demanding 100% accountability from schools.

We want this law to succeed because its goals are the right ones for American children. By spotlighting the performance of poor students, disabled students, and students from all major racial-ethnic groups, the law refines the commitment to disadvantaged children that began in 1965, while also recognizing the need to provide a high-quality education for all children. These goals resonate with people, as we heard in our interviews during the last months. We therefore offer these recommendations for this second year of the Act.

First, the rhetoric from Washington ought to be toned down. The President and others ought to be careful about making grand promises for NCLB, because the challenges of carrying them out will soon become very clear. Our leaders should emphasize the soundness of these goals but also recognize how much work it will take at the state and local levels to accomplish them.

Second, the federal government ought to be flexible and sensitive to the complex and varying circumstances found in states and school districts—which, after all, provide the vast majority of education funding. To the extent possible, the Department should allow states to achieve the goals of the law without having to dismantle aspects of their assessment and accountability systems that are working well. If the U.S. Department of Education takes a rigid, heavy-handed approach to compliance, our state interviews suggest that state and local responses could turn from dedication to making the law work to mere technical compliance with the law's many detailed requirements.

Third, the President and the Congress ought to fully fund the Act so states and school districts can go about making improvements. The U. S. Department of Education should also provide technical assistance to help states and districts find ways to raise student achievement through such means as improved professional development for teachers and more effective strategies to help students.

Fourth, all the requirements of the law ought to be implemented as fully as possible. National policymakers should carefully monitor how the requirements play out in states, schools, and classrooms. If unintended effects emerge, then changes in the law should be considered in later years. For example, if large numbers of schools are targeted for interventions because of test score volatility unrelated to student learning, as explained in Chapter 2 of our report, then policymakers should consider changes that would target interventions and assistance on schools with the highest degree of failure and greatest needs.

The No Child Left Behind Act is too important to America's children for the nation to let it fail. We urge our leaders to closely monitor the impact of the legislation, be ready to make changes if needed, and commit themselves to providing the major financial and other assistance that will be essential to help every child to succeed.

Jack Jennings
Director, Center on Education Policy

Summary of Key Findings

Chapter 1: Looking Broadly at the Act's First Year

After reviewing the first year of implementation of the No Child Left Behind Act, the Center on Education Policy has concluded that states are committed to the Act's goals of raising achievement for all subgroups of students and enhancing the quality of the teaching force. States are trying hard to implement the law, even though its deadlines for making massive changes are short and the final regulations on a few key issues were late in coming from the U.S. Department of Education (USED). The Center also reached other broad conclusions about federal and state implementation:

- The law contains many detailed requirements, and support for it could erode if the U.S. Department of Education applies these requirements too rigidly—for example, by preventing states from maintaining elements of their existing testing and accountability systems that are working well. Limited waivers of specific requirements may be necessary in some individual cases to accomplish the law's broader goals.
- States are making headway in carrying out the law's requirements for standards and assessment, because they already have experience in these areas, but are moving more slowly on implementing newer roles, such as developing lists of approved providers of supplemental education services, helping local school districts assess the qualifications of Title I instructional aides, or providing guidance to school districts about which instructional practices are based on scientific research.
- The majority of states interviewed by the Center rated the quality of USED written regulations and guidance as good to fair, with guidance on assessments and teacher quality receiving higher ratings than guidance on scientifically based research. States gave the Department lower marks for the timeliness of its regulations and guidance.
- The Act is asking states to do more than ever before at a time when most states are facing severe financial strains. If federal education funding for fiscal year 2003 provides only the modest increase proposed in the President's budget, states and school districts will be hard pressed to carry out the many new demands, such as providing technical assistance to all schools identified for improvement.

Chapter 2: Assessing Student Progress and Holding Schools Accountable

The assessment and accountability provisions of NCLB are the heart of the Act. The Center's study revealed the following about these aspects of implementation:

- The most formidable challenge of the law, according to virtually all state officials interviewed, is to come up with a suitable plan for determining whether schools are making adequate yearly progress in raising student achievement. State efforts to do this have been hampered by the federal government's delay in issuing final regulations on adequate yearly progress and other complex accountability questions.
- The rules for determining whether schools and districts are making adequate yearly progress present practical and technical dilemmas that could result in large numbers of schools being identified for improvement. States are concerned that if they have to assist all of the schools identified, it will spread their resources too thinly and subvert the law's intent of targeting extra money and help on the schools and students that need it most.
- NCLB continues to allow each state to define proficiency in its own way, which means that states that set higher expectations could be unintentionally penalized, because their schools will have farther to go to reach the goal of 100% proficiency, while states with lower expectations could have an incentive to keep them low.

Chapter 3: Providing Public School Choice and Supplemental Education Services

Among the provisions of NCLB that affected school districts this fall were requirements to offer public school choice and supplemental education services, such as tutoring, to students in schools identified as needing improvement under the terms of the prior law. States and school districts were generally slow in acting on these requirements, according to our state interviews and other anecdotal evidence. Many school districts had not yet received test data showing which schools and students would be eligible, and states were awaiting final regulations from the U.S. Department of Education. Other findings also emerged from the Center's study:

- In fall 2002, several states estimated that few parents had made use of the public school choice option thus far. This could be due to state and local delays in implementing the requirements, inadequate efforts to inform parents that the option was available, or the commitment of parents to their neighborhood schools.
- Even with the declaration in final regulations that lack of capacity cannot be used to deny choice for students, practical constraints could make it difficult to implement the choice requirements in districts that have overcrowded schools, have a single school at certain grade spans, or are located in rural or remote areas.

- As of November 2002, only 15 states had developed a list of approved providers of supplemental education services, as required by Department of Education guidance. Many states were waiting for final regulations, while others did not have any schools that were required to offer these services this school year. The number of providers on state-approved lists varied widely, from a handful to more than 100.

Chapter 4: Improving the Qualifications of Teachers and Paraprofessionals

The NCLB Act requires all teachers of core academic subjects to be "highly qualified," as defined in the law, and raises the minimum qualifications for paraprofessionals in Title I schools. The Center reached several findings about implementation of these provisions, which have already taken effect for some teachers and paraprofessionals:

- All the states we interviewed had or would soon have information on the number of teachers who are fully certified, but many said their data gathering systems will have to be revised to fully reflect the federal definition of "highly qualified." States were less far along in collecting data about the qualifications of paraprofessionals; most states will need to start from scratch to develop data systems about paraprofessionals or will rely on school districts to do it.
- Whether the NCLB teacher and paraprofessional qualification requirements will help to improve instruction depends on both the rigor of states' teacher certification requirements and the evaluation instruments used to assess the knowledge and skills of current teachers and paraprofessionals.

Chapter 5: Using Scientifically Based Research to Improve Education

Numerous programs in the No Child Left Behind Act require schools to use scientifically based research to inform their classroom practices. States are not as far along in implementing these requirements as they are with other major aspects of the law. This seems to be mostly because several states were waiting on the federal government to provide more definitive guidance, and a few felt they lacked expertise on this issue. State officials interviewed gave the Department low marks for its overall guidance, or lack thereof, on scientifically based research. The Center's review also reached these findings about the provisions for scientifically based research:

- Many Title I state directors report that the federally funded Reading First program in their states is taking the lead in carrying out requirements to use scientifically based research. Since the Reading First program uses a special definition of scientifically based research that is less rigorous than the general definition that applies to other NCLB programs, it may not be prudent for Title I programs to rely on Reading First materials.
- Some state officials, researchers, and educators are concerned that strict adherence to the law's general definition of scientifically based research will produce few programs or approaches that meet it or could severely limit classroom teaching methods and materials.

CHAPTER 1

Looking Broadly at the Act's First Year

KEY FINDINGS

- States are generally committed to the goals of the No Child Left Behind Act (NCLB) and are trying hard to implement it, even though the law's deadlines for making massive changes are short and the final regulations on such key issues as "adequate yearly progress" were late in coming from the U.S. Department of Education (USED).
- A stated principle of the Act is to allow greater flexibility in federal education programs in exchange for increased accountability. But this philosophy could be undercut by the law's many highly specific requirements, the strict interpretations in the final regulations, and the stance of the U.S. Department of Education that waivers will not be granted. If the Department is too inflexible and compliance-oriented on such issues as whether states can keep aspects of their assessment and accountability systems that are working well, this could erode state and local support for the law and impede progress toward the broader goal of improving student achievement.
- States are making headway in carrying out the law's requirements for standards and assessment, because most states already have experience in these areas. (An exception is in defining adequate yearly progress (AYP), which many states did not plan to resolve until final regulations were issued.) States are moving more slowly on implementing newer roles, such as developing lists of approved providers of tutoring and similar kinds of supplemental academic services, helping local school districts assess the qualifications of Title I instructional aides, or providing guidance to school districts about which instructional practices are based on scientific research.
- Although much of the media coverage about NCLB has focused on its requirements to mandate public school choice for children in under-performing schools and to allow federally funded supplemental education services to be provided by faith-based and for-profit groups, the law's greatest impact is likely to come from its more technical, less newsworthy provisions that require schools and districts to show adequate yearly progress in test score gains or else undergo increasingly severe corrective actions.

- The Act is asking states to do more than they have ever done in education at a time when most states face severe economic problems. With many states looking at budget cuts and hiring freezes, state departments of education may lack the funding, staff, and expertise needed to fulfill all these demands. For example, states may not be able to provide needed technical assistance if large numbers of schools are cited for inadequate yearly progress.
- If federal education funding for fiscal year 2003 provides only the modest increase proposed in the President's budget, states and school districts will be hard pressed to carry out the many new demands of NCLB. Without substantial new federal funding in the coming years, it will be difficult for states and school districts to meet the ambitious goals of the Act, however worthy.

A Broader and Stronger Federal Role

When President Bush signed the No Child Left Behind Act (Public Law 107-110) on January 8, 2002, the federal government took on a broader and stronger role in education. This legislation, which passed the Congress with bipartisan support, extends and revamps dozens of federal programs authorized by the Elementary and Secondary Education Act (ESEA) and other statutes, from the $10.3 billion Title I program for disadvantaged children to the $25 million program for character education. The Act builds on earlier school reform legislation supported by President Clinton and on the state-initiated movement to reform education by setting challenging academic standards, but it is far more than a minor tweaking of existing law. Rather, it marks a significant change in federal and state responsibilities in education.

The objectives of the law are bold and inspiring—to ensure that all children become proficient in reading, mathematics, and science and to close the achievement gap. They are also very ambitious. Implementing this 669-page Act is an immense undertaking at the federal, state, and local levels—and states and local school districts are just beginning to see how immense it will be.

With the No Child Left Behind Act, Washington is knocking harder on the schoolhouse door. The federal role is now meant to affect *every* public school student and school in the country, not just those that participate directly in federally funded programs. The federal government is putting more pressure than ever before on states and school districts to raise the academic achievement of all students, especially as measured by test scores—and to do it on a strict timeline. Schools must close achievement gaps between different racial, ethnic, income, and other subgroups of children. States and school districts must also ensure that *all* teachers of academic subjects in any school are highly qualified according to the law's rigorous definitions. The requirements are even stricter for schools and school districts that receive federal Title I funds. If these schools and districts do not make adequate progress toward achievement goals, they must change their methods and practices, and if they still do not improve they must undergo increasingly severe corrective actions, eventually leading to restructuring, staff replacements, state takeover, private management, or dissolution for those that repeatedly fail to improve.

Under NCLB, states and school districts are expected to assume more responsibilities than ever before. States must expand their testing programs, analyze test data in new ways, provide technical assistance to under-performing school districts and schools, collect data about teachers' qualifications and help teachers become better qualified, develop lists of approved providers of supplemental education services, and much more. School districts must strive to raise test scores, collect and report detailed test data, close achievement gaps, provide technical assistance to under-performing schools, recruit highly qualified teachers and paraprofessionals, provide professional development to instructional staff who are not yet highly qualified, and create or expand public school choice programs, among other duties.

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Purpose of This Report

This report by the Center on Education Policy describes what the federal government and the states have done to prepare to implement the No Child Left Behind Act since it was signed into law a year ago. It also discusses implementation challenges that have come up at the federal or state levels and identifies issues that should be watched because they are important or potentially problematic. In addition, the report includes five case studies of states and school districts that seem to be doing a commendable job of carrying out a particular aspect of the law.

The report is based primarily on research conducted by the Center's staff and consultants during the summer and fall of 2002. As described in the Methodology section below, we reviewed states' consolidated applications for federal grants, conducted telephone interviews with officials in 48 states and the District of Columbia and eight school districts, and reviewed other research on the implementation of NCLB and its predecessor education laws. This is the baseline-year report for a six-year study by the Center that will monitor the implementation of the Act until 2007, when it is slated to be renewed by Congress.

As an independent organization funded primarily through foundation grants, the Center on Education Policy is in a unique position to study the law's implementation. Other organizations that are analyzing various aspects of NCLB represent teachers, state administrators, parents of students in Title I programs, governors, or other constituencies, and they must be sensitive to the needs of their members. The Center is not affiliated with any constituent group and aims to be objective in its research. Furthermore, several studies of NCLB now being conducted by other groups are focused on particular issues or aspects of the law, such as its choice provisions. Our study, by contrast, aims to be comprehensive and look across a range of major issues.

Issues Addressed in This Report

This report focuses on four main issues:

- assessment and accountability (discussed in chapter 2);
- public school choice and supplemental education services requirements (discussed in chapter 3);
- teacher and paraprofessional quality (discussed in chapter 4); and
- the use of scientifically based research to improve teaching and learning (discussed in chapter 5).

We chose to study these issues because they deal with the most central and controversial aspects of the new law and will require the most preparatory work at the federal and state levels. They are also issues that must be addressed during the first year of implementation.

As the nation approaches the first anniversary of the law's signing, most of the action related to the law is occurring at the federal and state levels, and that is where we focused most of our research. The report discusses how the federal government is interpreting the legislation and how states are laying the foundation for its implemen-

tation—building testing and accountability systems, collecting data about teacher qualifications, identifying potential providers of supplemental education services, and more. By the end of January 2003, states should have completed one of their hardest tasks, defining what constitutes adequate yearly progress in raising achievement for schools and school districts. The decisions states make will establish performance targets for the next 12 years. Our general impression is that states were focusing this year on issues that demanded their immediate attention, leaving other items on the back burner to be addressed next year.

Although a few key requirements have already taken effect at the local level, the impact of NCLB is just starting to trickle down to school districts. Information in this report about local implementation is limited, because school districts are waiting on states, which in turn were waiting for guidance from the federal government. In the next two years, however, the trickle will become a cascade, and every public school in the nation will have to face the full impact of the law; they will have to meet annual test score targets for all children or face accountability measures if they don't. So the federal and state actions discussed in this report are a precursor to the real action, which will occur at the local level.

As an example of how implementation is progressing during this first year in one school district, this chapter includes at the end a case study of the Hamilton City (Ohio) School District, where the No Child Left Behind Act was signed. In years to come, we intend to monitor local action and hope to have more information about local implementation.

The long-term objective of our study is to help explore such critical questions as whether children are learning more and whether teachers and paraprofessionals are better qualified as a result of NCLB. In future reports, we will look at available evidence on student achievement, teacher and paraprofessional qualifications, parents' use of the options for school choice and supplemental education services, and other vital issues. We will try to help answer such crucial questions as whether adequate funding and other supports have been provided to help teachers, schools, and districts meet the goals of the Act, whether the law is accomplishing what it intends, and whether any negative consequences emerge as a result of the new demands.

Federal Implementation

The timelines in the law to prepare for implementation are relatively short for both the federal government and states, especially in light of the magnitude of the task. The U.S. Department of Education has accomplished several important tasks in almost a year, although it missed a key deadline for issuing final regulations, as discussed below.

As shown in **Box 1-A**, the Department has sent letters to the chief state school officers discussing key provisions of the law; held meetings on NCLB throughout the country; reviewed and approved states' consolidated applications; and carried out other day-to-day tasks, such as responding to queries from states and school districts. As required by law, the Department conducted negotiated rulemaking on two issues, standards and assessments. The Department issued draft and final regulations as well as non-regulatory guidance for specific aspects of the law.

Federal Regulations and Guidance

In general, NCLB requires the U.S. Department of Education to have final Title I regulations in place within one year of the date of the law's enactment (January 8, 2003), and this deadline was met when final Title I regulations were issued on November 26, 2002. But NCLB required regulations to be issued within six months of enactment (July 8, 2002) for the very important provisions of Title I that dealt with standards, assessment, accountability, and district and school improvement. The law did not specify whether the regulations issued on the six-month schedule must be final regulations, although one could assume that was the intent, since proposed rules are published to elicit public comment rather than govern programs.

On July 5, the Department issued final regulations for standards and assessments, so it met the deadline for two of the critical topics. But these July regulations did not address the two other topics—accountability and school/district improvement—that were supposed to be handled on a six-month schedule. Proposed rules on these topics were not published until August 6, and final regulations were not issued until November 26, later than the six-month deadline.

With a deadline of January 31, 2003, looming for states to submit their plans for implementing the law's accountability requirements, many state officials we interviewed expressed concern about how long it was taking the Department to publish final regulations, especially on such crucial issues as setting the timetable for adequate yearly progress. (The implications of this delay are discussed more fully in Chapter 2.) Although the Department has sometimes been late with statutory deadlines in past reauthorizations of education programs, the stakes are higher this time, because states and school districts had to begin implementing some NCLB requirements this fall and because the sanctions attached to the law's accountability provisions are greater. States appeared to be responding to a lack of guidance by either forging ahead with their plans knowing that they may need to be revised, or waiting for guidance knowing that they will have less time to formulate a plan.

In our interviews with state officials, we asked them to rate the quality and timeliness of regulations and other guidance from the U.S. Department of Education in the following three areas: assessment, teacher quality, and scientifically based research. For their ratings, interviewees were asked to pick one of four choices: excellent, good, fair, or poor.

QUALITY OF GUIDANCE

In general, states rated the quality of the Department's guidance as good to fair, with guidance on assessments and teacher quality receiving higher ratings than that on scientifically based research. The specific responses for the guidance on assessment, teacher quality, and scientifically based research are reported in chapters 2, 4, and 5.

This finding may reflect the fact that respondents said that there were generally more materials available for assessments and teacher quality than in other areas. Perhaps people equated quality with availability, which also could explain why scientifically based research, the area with the most "poor" ratings, was also the subject of many complaints about a lack of guidance. Several respondents were reluctant to answer the questions about quality because they felt it was "unfair" to give a rating when they had not yet received actual guidance in many of these areas.

BOX 1·A CHRONOLOGY OF MAJOR ACTIONS OF THE U.S. DEPARTMENT OF EDUCATION ON KEY PROVISIONS OF THE NO CHILD LEFT BEHIND ACT ADDRESSED IN THIS REPORT

DATE	ACTION
JANUARY 8, 2002	No Child Left Behind Act signed into law
FEBRUARY 7, 2002	Letter on key provisions sent to chief state school officers
MARCH 11-20, 2002	Negotiated rulemaking conducted on standards and assessments
APRIL 1, 2002	Guidance published for the Reading First program
APRIL 28, 2002	Letter on paraprofessionals sent to chief state school officers
MAY 6, 2002	Notice of Proposed Rulemaking for standards and assessments published
MAY 6-30, 2002	Regional meetings on standards and assessments held in five cities
MAY 22, 2002	Final notice published on contents of consolidated applications
JUNE 6, 2002	Draft guidance published on Title II, Improving Teacher Quality
JUNE 12, 2002	Consolidated applications due from states
JUNE 14, 2002	Letter sent to chief state school officers containing guidance on school choice and supplemental services
JULY 1, 2002	Department announces 8,652 schools in need of improvement nationwide
JULY 5, 2002	Final regulations published for standards and assessments
JULY 24, 2002	Letter sent to chief state school officers containing guidance on adequate yearly progress
AUGUST 1, 2002	Guidance published on Comprehensive School Reform program
AUGUST 5, 2002	Draft guidance on supplemental education services published
AUGUST 6, 2002	Draft regulations published for Title I issues other than standards and assessments
OCTOBER 4, 2002	Draft guidance published on transferability of funds
OCTOBER 22, 2002	Letter sent to chief state school officers on identifying schools in need of improvement
NOVEMBER 7, 2002	Draft guidance published on paraprofessionals under Title I
NOVEMBER 26, 2002	Final regulations issued for Title I
DECEMBER 9, 2002	Draft guidance issued on public school choice
DECEMBER 12, 2002	Draft guidance issued on supplemental education services (updated)
DECEMBER 19, 2002	Draft guidance issued on Title II (updated)

Source: Center on Education Policy compiled from various sources

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One of the main concerns states raised about the quality of written guidance was that it did not provide much additional information or go beyond what was in the statute. The regulations that have been issued did not always provide states with as much clarification as they wanted. At the time of our interviews, states had hoped for more clarification of such issues as whether a long-term substitute must meet the teacher qualifications of the NCLB and which commercial assessments of English proficiency meet the law's requirements for testing English language learners.

Many state officials also reported being frustrated by what they saw as a failure of the U.S. Department of Education officials to directly answer their specific questions when talking with them. Numerous state people reported to us that the career professionals in the Department were "very cautious" in what they said about the law and seemed to be unable to respond to questions unless their answers had been fully cleared through the Department's political appointees, which these state people viewed as a departure from how the Department had operated in the past. Some state respondents also said that the career professionals in the Department were doing their best, given the situation. Other state officials noted that they had gotten different answers from different people in the Department or had received answers that were subsequently changed. Although this situation has occurred before with a new law, it creates more difficulties with NCLB, because the stakes are higher and unlike earlier laws, there was no year-long transition period for states and school districts to prepare before the law took effect.

TIMELINESS OF GUIDANCE

When asked about the timeliness of guidance, several state officials we interviewed replied, "What guidance?" referring to the fact that as of late fall, they were still awaiting definitive guidance on several major issues. Average ratings of the timeliness of the Department's written guidance were in the fair range, with the written guidance on issues of assessment and teacher quality again rating higher than the guidance on scientifically based research. The specific ratings for these issues are reported in chapters 2, 4, and 5.

In the Department's defense, it can be said that federal officials have had to grapple with some complex issues that are not easy to interpret, beyond what is in the statute. Most importantly, the timelines in the law itself are short, in light of what the law directs states and the federal government to accomplish during the first several months. Some states interviewed noted that they wished the law had authorized a year to plan for transition, to allow for better, more thoughtful preparation at the local, state, and federal levels.

Flexible or Stringent?

The No Child Left Behind Act is often described as a law that brings greater flexibility to federal education programs in exchange for greater accountability for results. Several provisions of the Act allow states and school districts greater latitude or decision-making authority in the use of federal funds, such as the "Ed Flex" program, the various options for waivers of federal requirements that are impeding progress toward the law's broader goals, and the new "transferability" provision that allows states and school districts to shift funds among various federal program authorities. At the same time, however, these more flexible options are counterbalanced by the numerous detailed requirements in other sections of the law. Therefore, a key question is how much flexibility will be allowed in the implementation of NCLB.

Not surprisingly, many state officials that we interviewed wanted to see the U.S. Department of Education show some flexibility in interpreting the law, so the states could build on their successful existing practices, meld federal efforts with state reforms, and address circumstances peculiar to their individual states and districts. Moreover, many of the statutory requirements are extraordinarily specific; a bit of flexibility could help states and school districts focus their energies on the most important goals of the law, rather than being continually anxious about compliance. A statement issued by the Council of Chief State School Officers on November 10, 2002, reiterated the states' desire for flexibility. "The President has consistently stated his support for local control, and it seems logical that a 'one size fits all' compliance system regarding NCLB would be counterproductive," the statement read. "State leaders are concerned that any of their suggestions to use current state practices as a means for implementing NCLB will be viewed as an attempt to either discredit the legislation or 'water down' its intent."

Some earlier communications from USED were encouraging, in that they suggested that some flexibility might be forthcoming. In a letter to the states of July 24, 2002, Secretary Paige noted that the intent of the law "is to build on high quality accountability systems that States already have in place, not to require every State to start from scratch." And in the draft regulations published in August, the Department invited "states that have been using different models to comment on...how these requirements could be incorporated into their current systems."

In later statements, however, and in Title I final regulations, the Department took a tighter approach. In a speech on October 24, 2002, Susan Neuman, Assistant Secretary for Elementary and Secondary Education, stated, "The previous administration was waiving this and waiving that. This administration is serious. We don't intend to waive any of the requirements." (Balta, 2002).

The final Title I regulations adopt a strict interpretation of the statute in many areas, requiring, for example, that school districts offer public school choice even if the potential receiving schools are filled to capacity and requiring states to use the same definition of steady yearly progress for all subgroups of students. Since the statute itself is specific and detailed, the Department may have felt that allowing flexibility would be inconsistent with the law's intent. On the issue of adequate yearly progress, for example, the law clearly contemplates an aggressive schedule for school improvement, even if it means that in any given year, a large number of schools will be cited for improvement. Department officials may be afraid that if they issued regulations that gave states more latitude in this area, it could be viewed as weakening the law.

While a policy of liberally granting waivers could undercut the intent of the law, so too could a "strictly by the book" approach to compliance. Granting no waivers could be counterproductive to achieving the law's purposes and could result in less effective action in states. Flexibility that recognizes local and state context and reform efforts may enhance reform. For example, in Texas, several waivers were granted under the Ed-Flex authority, which may have helped to produce test score gains in Texas. Waivers need not and indeed cannot legally waive the intent and purposes of the law. But when flexibility is carefully considered and permitted on a case-by-case basis, it can sometimes help to achieve the overall goals of the law.

On a related topic, the state officials we interviewed rarely mentioned the flexibility provisions of NCLB, such as Ed-Flex and transferability, as being critical to education reform. We do not know why this is the case; perhaps they view the flexibility

options as being limited, or perhaps the federal officials have not adequately explained the options available and how to use them. It is possible that states and school districts are overlooking the opportunities afforded by the flexibility provisions to think creatively across programs, and that these provisions will come into play in future years as their potential becomes more obvious.

Federal Funding

A persistent question during the first year of implementation is whether the federal government will provide enough funding for states and school districts to accomplish the ambitious goals of NCLB. Several state officials we interviewed estimated the full costs of implementing the law to be enormous and felt that the federal government had a responsibility to provide adequate additional funding to help states and school districts shoulder all the new responsibilities. Furthermore, a notable share of funding must go toward specific aspects of the legislation, such as professional development or choice and supplemental services.

The amount of federal funding will have a tremendous impact on implementation in the coming years. As this report went to press, the fiscal year 2003 appropriations for education had not yet been finalized. If education receives only the modest 2.8% increase proposed in the President's budget, this amount is likely to fall far short of what will be needed for states and school districts to effectively implement the new law. If state and local governments perceive that the federal government is not covering an adequate share of the costs, their commitment to the law is likely to wane, no matter how worthy its goals. Even if providing a high-quality education for all is a primary responsibility of state and local governments, they may not be able to readily fulfill this responsibility in the current economic climate.

State Implementation

Since the No Child Left Behind Act was signed into law, most states seem to be making reasonable progress with implementation on such fronts as developing state applications, revising assessment systems, and developing or refining systems to track the qualifications of teachers. Although changing state assessment systems is a major task, states seem to have made the most progress with the standards and assessments requirements, because these are areas they have had the most experience with. They seem to have made less progress with newer roles, such as developing lists of approved non-school providers of supplemental education services, helping local school districts assess the qualifications of Title I paraprofessionals, or providing guidance to local districts about which instructional practices are based on scientific research.

State Support for the Goals of NCLB

Most state officials we interviewed expressed strong support for the intent of NCLB and said that the goal of improving the achievement of all students is "the right one." A few interviewed admitted that they thought the goals were commendable, but they were doubtful about whether they could be accomplished in the 12-year time frame envisioned by the law.

Two particular provisions of the law met with wide approval among state officials. First, state officials saw the emphasis on providing highly qualified teachers as essential to improving the performance of students in low-achieving schools. Second, state officials, like the President and the law's Congressional sponsors, hoped that the new requirements to disaggregate achievement data for various subgroups of students would bring greater attention to the needs of students who traditionally underachieve and would better focus resources on closing achievement gaps.

Many states also expressed their approval of the continued emphasis on standards and assessments in NCLB. Several states said that the federal law is in many ways an extension of the reform that was already taking place in their states. Putting into place the new assessments required by NCLB was not a major concern of states. Most states already had standards in place or were far along in developing them. States also had relatively long-term relationships with test developers and had begun planning for new assessments or augmentations for old assessments.

A few state officials mentioned in our interviews that NCLB was having a positive impact in their states because state people outside of the state department's federal program office were beginning to attend to federal programs. One respondent said this was the first time she had noticed "the state superintendent becoming involved in how federal legislation plays out in the state. That has never happened in the past."

Progress on State Applications

The first major step for states in implementing the No Child Left Behind Act was to develop and submit a consolidated state application for the major federal formula grant programs to the U.S. Department of Education by June 12, 2002. This application includes the state plan for carrying out all of the programs of the Elementary and Secondary Education Act. All 50 states and the District of Columbia have developed their applications and met this deadline.

The consolidated application must include a statement that the state accepts a list of five specific performance goals for ESEA generated by the U.S. Department of Education and twelve specific indicators of progress toward those goals. The five goals, shown in **Box 1-B,** relate to improvements in student achievement, proficiency for English language learners, teacher qualifications, safe and drug-free learning environments, and high school graduation. States could add other state-specific goals to their statements.

In future years, states will have to submit an annual performance report to ED that includes data demonstrating their progress towards the federal and any state goals. The consolidated applications must also describe the activities and programs states are implementing to fulfill these goals. Finally, the applications must include assurances about key ESEA program requirements and fiscal information.

The state applications vary considerably in length and depth. By the time the Center had completed its review, all state applications had been approved conditionally by the Department, meaning that they are approved as long as states address certain conditions or omissions specific to that state. The two conditions raised most often by the Department pertained to the "unsafe school choice option" in NCLB and services for migrant children. As a condition for full approval, all 50 states and the District of Columbia were told to be more explicit in their plans about how they will implement

the new "unsafe school" choice requirements, which gives students the option of transferring to a safe public school if their own school has been labeled "persistently dangerous" or if they become victims of violent crimes at their school. About half the states were also asked to include more information in their plans about how they will meet the special educational needs of migrant children.

State Capacity

States will need expertise and personnel to fulfill such NCLB duties as providing technical assistance to persistently failing schools and districts—especially if that number greatly increases. They will need adequate staff, funds, and expertise to develop and administer assessments, collect and analyze data on student achievement and teacher qualifications, determine which providers of supplemental services are acceptable, and carry out a host of other responsibilities assigned them under the new law.

One of the concerns that state officials raised most often in our interviews was whether their state government had the capacity to effectively implement the new law, both in the near future and down the road. These additional demands are coming at a time when the majority of states are facing the most ominous fiscal crisis since World War II (National Governors Association, 2002). Various factors have caused or contributed to this situation, including an explosion in health care costs, the loss of revenues from the falling stock market and the economic slowdown, state tax cuts enacted in prior years, and other

BOX 1-B ESEA PERFORMANCE GOALS IN THE CONSOLIDATED STATE APPLICATION

PERFORMANCE GOAL 1:	By 2013-2014, all students will reach high standards, at a minimum attaining proficiency or better in reading/language arts and mathematics.
PERFORMANCE GOAL 2:	All limited English proficient students will become proficient in English and reach high academic standards, at a minimum attaining proficiency or better in reading/language arts and mathematics.
PERFORMANCE GOAL 3:	By 2005-2006, all students will be taught by highly qualified teachers.
PERFORMANCE GOAL 4:	All students will be educated in learning environments that are safe, drug free, and conducive to learning.
PERFORMANCE GOAL 5:	All students will graduate from high school.

Source: U.S. Department of Education, Consolidated State Application

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factors. Even after making significant spending cuts, 37 states were forced to reduce their enacted budgets for fiscal year 2002, and 15 states have already laid off employees.

NCLB authorizes funds for state administration, mostly through provisions that set aside a small percentage of federal formula grant funds for state administration. This is the case in the Title I program for disadvantaged children, the Title II program for teacher quality, and several others. But some state officials we talked to feared that these administrative allotments would not be enough to fulfill all the new responsibilities associated with the federal law, no matter how worthy the NCLB goals.

As a result of budget cuts made to reduce funding deficits, weather economic downturns, or shrink the size of state government, several officials we interviewed said that the state staff for many federal programs is already down to the bare minimum, and in some cases one person is responsible for implementing multiple state and federal programs. Also, at least one state noted that federal funds were being stretched to cover the salaries of state department of education staff who are only indirectly involved in the federal program administration, such as supervisors of those responsible for the implementation of federal programs.

In one large state that we interviewed, the state department of education has been subject to budget cuts, hiring freezes, elimination of positions, and early retirement incentives since the mid-1990s. As a result, the department staff has been cut by roughly half and has become increasingly reliant on federal funds to support its operations: one official we spoke with estimated that 60 to 65 percent of that state department's staff were supported by federal funds. This official also said that since the early 1990s, the state staff has evolved from one made up largely of subject matter specialists (such as reading specialists and bilingual education experts) to one composed mostly of generalists who can better assist the field; but the lack of subject matter expertise has sometimes hampered the state's effectiveness in carrying out federal programs. The official also said that for the state to effectively implement NCLB, it would need an additional 25 to 30 new employees.

In Vermont, Governor Howard Dean proposed the idea that the state should not accept federal Elementary and Secondary Education Act funds because the costs to the state of complying with the law were too great (Keller, 2002). Ultimately, the state did accept the federal funds, but Governor Dean is by no means alone in his concern about the costs of compliance. As the pressures from strong accountability measures escalate, the view could become more widespread that that the federal government is demanding too much, too fast, in light of its limited contributions.

State and Local Control

States with a strong history or philosophy of local control raised concerns about NCLB's impact on local and state decision-making. This concern is not new to federal programs, but some control issues specific to NCLB will have to be addressed. First, in a few states, several of the accountability provisions of NCLB are not allowed under state law, such as state takeover of schools or charter schools; this limits a state's options in dealing with schools in the later stages of school improvement. These states said that they would have a difficult time convincing their state legislatures of the need to enact changes in state law to accommodate NCLB. Second, states were concerned that the scientifically based research requirements of the law would essentially evolve into a list

of accepted programs that districts would have to choose from, limiting their ability to make programmatic decisions. This issue is discussed in more depth in chapter 5.

Methodology

To study implementation of NCLB, the Center on Education Policy used a variety of research methods.

Review of State Consolidated Applications

Between July 30 and September 10, 2002, a Center research associate and a consultant reviewed 51 consolidated applications submitted to the U.S. Department of Education by all 50 states and the District of Columbia. The reviewers used a protocol that consisted of 15 questions on the following issues: state application approval, standards, assessments, adequate yearly progress indicators, statewide system of support, educator quality, allocation of school improvement funds, cost of developing assessments, supplemental education services, public school choice, and assessments for English language learners. (The Protocol for Review of State Applications can be found in Appendix 1.) In order to capture correspondence that took place between the U.S. Department of Education and state education administrators after the initial applications were submitted, the two reviewers also obtained access to the USED Consolidated Application files, which included associated correspondence between USED program specialists and the states, and addendums providing additional information that was requested by USED or not submitted with the original consolidated application.

State Interviews

During September, October, and November 2002, several Center staff and consultants conducted telephone interviews with 48 states and the District of Columbia. Interview questions were based on a guide developed by the Center that included 33 multi-part questions about assessment and accountability, teacher quality, requirements for scientifically based research, and the state's general views about implementation of the law. On average, we spoke with three individuals per state, most commonly with state Title I directors, individuals overseeing the state assessments, and officials from the state teacher certification/licensure division. Each state interview took an average of two hours to complete. Those interviewed were given an opportunity to review their responses, and revisions were made to the original survey answers as necessitated by those reviews. The interview guide is included in Appendix 2. Not all the states answered every question in our survey, and the interviewers in some cases departed from the guide to explore topics of special interest in a given state or follow up on a potentially useful line of discussion.

Case Studies

To gather information for case studies, several Center staff and one consultant conducted in-depth interviews in November 2002, with personnel from two states and three school districts about specific provisions of NCLB. These states and districts were identified through the state interview process described above and through conversations with experts in the field. Interview protocols were developed for each site and topic area. The interviews were structured to be as open-ended as possible but included specific probes based on general findings from the state-level interviews in the appropriate content area. Interviewees were given an opportunity to respond to the case studies, and revisions were made as needed.

Research Literature Reviews

Center staff and consultants also conducted background research on the various topics addressed by the report and have noted the sources of this information throughout the report.

Attributing Information to Individuals

In this report, we generally have not attributed statements or actions to specific individuals or states by name, unless the information could be found from other sources such as documents on state websites or newspaper articles. In order to get candid answers from the state officials we spoke with, we thought it was important to afford them anonymity. Our concern was that state officials would be reluctant to talk "on the record" about how their state was proceeding with the early stages of implementation of the No Child Left Behind Act, for fear of reprisal from the U.S. Department of Education if they were not in complete compliance with the law. For example, at the time of our interviews, many states had not approved supplemental education service providers, and some were reluctant to report this on the record.

Conclusion

The No Child Left Behind Act embraces a compelling set of goals that goes to the heart of the educational process. Past federal laws have tried to improve students' learning, but none has addressed this goal more directly or forcefully than NCLB, which challenges U.S. schools to raise the achievement of all students to proficient levels. Implementing this ambitious law will require renewed dedication of educators, state officials, and federal administrators. It will take the cooperation of national and state leaders to provide the assistance needed to help local staff do their jobs. The coming years will show whether all levels of government will rise to the challenge of making public schools better for all children.

CASE STUDY
HAMILTON, OHIO: ONE YEAR LATER

While Hamilton City School District agrees with NCLB's goals, it may take a little more help to smooth out some of the bumps along the way to full implementation.

On January 8, 2002, President Bush signed the No Child Left Behind Act at Hamilton High School in Hamilton, Ohio. Almost one year later, staff from the Center on Education Policy spoke about implementation with people in the Hamilton City School District, where officials said that they "feel a moral obligation to put this [NCLB] together and do a good job."

Officials in the district agree with the goals of the Act. They especially like the focus on long-term, comprehensive planning, which the district has been engaged in for several years; being able to coordinate grants and goals across programs; the emphasis of reading, math, and science; and the additional funds for English language acquisition programs under Title III. They are also encouraged by the heightened federal interest in education signified by this Act and believe that "the current Congress is serious about wanting to improve education." While they have some concerns about meeting the requirements of the new law, as one official said, "You have to take some challenges, but they are worth it."

At the same time, the district would like additional guidance and support from federal and state officials in helping to implement the Act. However, with the exception of a few hurdles, implementation has been smooth in the district.

School Improvement

Out of ten Title I schools, Hamilton had two schools in the first year of school improvement and was required to offer school choice to parents in those schools. No schools were required to offer supplemental services. Schools were only chosen as transfer schools if their student achievement scores had met the baseline performance level that Ohio plans on setting as part of its definition of adequate yearly progress.

Approximately 13 students from each building, out of a total of 650 students, took advantage of the school choice option and transferred to higher-performing public schools. Given the small numbers of transfers, all students received placements either in their parents' first or second choice school. While applications did not ask for the reason why parents were requesting a transfer, district officials asked them informally. Approximately half said they transferred for academic reasons and half for other reasons such as child care.

Delays in receiving student achievement data and setting AYP levels caused significant problems in identifying schools that had not met AYP in some Ohio districts and almost did in Hamilton. The district considered this the only real "implementation snag" that it ran into. An early list released by the state of schools in need of improvement identified several hundred more schools than the final list did, and some districts in the state sent out letters to parents informing them of choice and supplemental services options that were not eventually offered. Hamilton originally had three schools on this state list rather than two and would have been required to offer supplemental services if the original list had held. This incident points out the need for both speed and accuracy of these lists to help districts plan for these services.

Another concern about identifying schools for school improvement is the difficulty in getting out of school improvement, even if the school is making significant head-

way. One school currently labeled in need of improvement is outperforming some of the other schools in the district and has seen enormous improvement in recent years. In March 1996, 8.8% of this school's students were proficient on the state reading test; in March 2002, 52% were proficient, a higher percentage than some other schools in the district. Officials would like the accountability system to do a better job of recognizing this kind of growth.

Teachers and Paraprofessionals

When staff from the Center on Education Policy spoke to Hamilton officials, Ohio did not yet have guidelines on the highly qualified teacher provisions of NCLB, so the district had not yet sent out letters to the parents informing them about their teachers' qualifications. While the district is very concerned about the compliance ramifications of this, officials from both USED and the Ohio Department of Education have told district personnel that they will be considered in "delayed compliance" until the state puts guidelines together.

During a series of budget cuts in 1980, Hamilton phased out instructional aides in its Title I program and currently only uses aides for special education and a few other programs, so the district does not anticipate significant problems in meeting the NCLB requirements for qualifications of paraprofessionals. To help the district gauge the qualifications of its paraprofessionals, officials actively sought to be part of the state's piloting of the ParaPro assessment so that it would have some preliminary information on its staff.

Budgetary and Capacity Issues

The law newly requires districts to set aside a portion of Title I funds for school choice. This reprogramming of funds affected both staffing and the number of schools receiving Title I funds. While no staff members were fired, several Title I positions were not refilled due to budget constraints. In addition, this year the district had two new schools that were eligible for Title I funds. In the past, the district tried to serve all eligible schools, but they did not add these two schools this year.

Although the district is not afraid to meet the challenges of the new law, it would like more support and guidance to help it meet the requirements. This means not only timely guidance on issues like teacher quality and AYP, as mentioned above, but also qualified, knowledgeable support staff at the federal and state levels. The district is concerned that technical assistance providers do not have enough background in federal or state programs to help it implement the Act. This may be a result of budget cuts that make it difficult to "find quality people," but the district is not finding the expertise it needs.

The district would like help in identifying programs that fit well with the state's assessment system and will help them improve student achievement. One school in the district implemented a comprehensive school reform model "by the book," yet it is one of the schools in school improvement. The district studied why the school showed no improvement and found that the model's emphasis was so different from the state assessment system's emphasis that there was little apparent improvement as measured by state tests. Outside support that could have informed the district in advance of this kind of mismatch would have been of great help to the district.

Source: Center on Education Policy school district interviews

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CHAPTER 2

Assessing Student Progress and Holding Schools Accountable

KEY FINDINGS

- There is broad support among states for the ultimate goal of the No Child Left Behind Act—to ensure that all subgroups of students are performing at the proficient level in the near future.
- States are making a good faith effort to comply with the new law, while attempting to preserve aspects of their existing testing and accountability systems that are working well. States are making progress in carrying out the law's requirements for standards and assessments, possibly because these are areas in which states already have considerable experience.
- Virtually all state officials interviewed agreed that the most formidable challenge of the law is to come up with a suitable plan for measuring adequate yearly progress. State efforts to do this have been hampered by the federal government's delay in issuing final regulations on complex questions and controversial issues related to AYP.
- The rules for determining whether schools and districts are making adequate yearly progress present practical and technical dilemmas and could result in large numbers of schools being identified for improvement. States are concerned that if they have to assist all of the schools identified for improvement, this will spread their resources too thinly and subvert the law's intent of targeting extra money and help on the schools and students that need it most.
- Some states have more rigorous standards, assessments, and definitions of proficiency than others, which affects the percentages of students attaining proficiency in each state. NCLB continues to allow each state to define proficiency in its own way, which means that states that set higher expectations could be unintentionally penalized, because their schools will have farther to go to reach the goal of 100% proficiency, while states with lower expectations could have an incentive to keep them low.
- The federal government should closely monitor how the rules for implementing AYP play out in different states in the coming years, allow exceptions to states as needed to achieve the broad intent of the law, and be open to revising the specific assessment and AYP requirements as evidence of their consequences accumulates.

Assessment and Accountability Requirements of the New Law

Using tests to evaluate whether schools are making adequate yearly progress in student achievement is nothing new for some states. What has changed with enactment of the No Child Left Behind Act is that states now have far less latitude to determine who gets tested, how and when they get tested, and what constitutes AYP. The scope of the federal assessment and accountability requirements—so called because they are meant to hold schools accountable for raising student achievement—has also expanded to affect all students in every school, not just those in schools supported by the federal Title I program for disadvantaged children.

Requirements of Prior Law

Under the 1994 Improving America's Schools Act (IASA), which reauthorized most of the federal elementary and secondary education programs, states that received funds under Title I of that Act (which all states did) had to assess the progress of students in Title I-supported schools in both reading/language arts and mathematics at least once in the elementary, middle, and secondary school grade spans, using assessments aligned with state academic standards. The standards and assessments used to measure progress of children in Title I schools had to be the same as those used for all children in the state, if the state had a general system of standards and aligned assessments. But the definitions of AYP and the interventions that followed for low-performing schools were left to state determination and, in some states, applied only to Title I schools. Moreover, enforcement was weak. Only 17 of the states and jurisdictions were in compliance with the requirements for final assessment systems by 2001; 35 were put on timeline waivers or compliance agreements. (This past inaction may explain why the Department is so reluctant to grant waivers under No Child Left Behind.)

Assessment Requirements of NCLB

The No Child Left Behind Act has substantially increased both the frequency and scope of the testing requirements. Each state must develop a single accountability system for all schools that is based on challenging academic standards and aligned assessments, and includes sanctions and rewards tied to school performance. By the 2005-06 school year, states must begin administering these assessments in reading/language arts and mathematics every year to all students in grades 3 through 8 and once during high school. In addition, beginning with the 2007-08 school year, states must give a science assessment annually in at least one grade at the elementary, middle, and high school levels.

Most states do not have assessments in all of these grades or subjects, which means that they have to make revisions and additions to their state testing systems. As illustrated in **Figure 2-A**, data from *Education Week's* annual state survey for 2002 show that:

- Nineteen states and the District of Columbia administer both reading/language arts and math assessments in grades 3-8 plus one assessment in high school, as required by NCLB.
- Twenty-five states administer science assessments in at least one grade at the elementary, middle school, and secondary school levels, as will be required by NCLB in 5 years.
- Only six states appear to administer all the required assessments in all of the subject areas and grade levels, if one only counts those states using tests aligned with state standards.

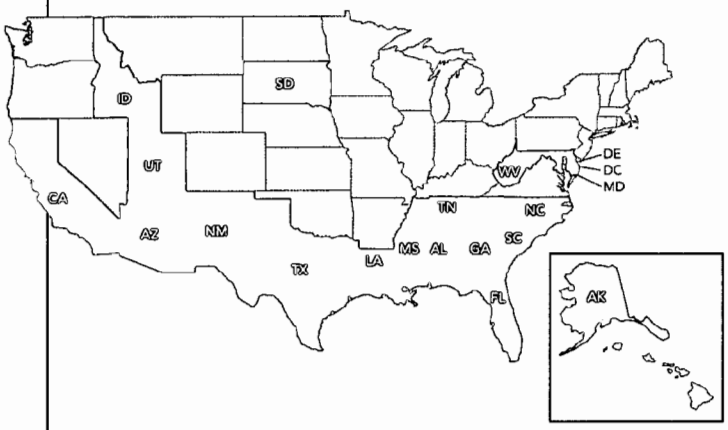
Adequate Yearly Progress Requirements

The NCLB requirements for measuring adequate yearly progress are also substantially more demanding and broadly applied than under prior law. The 1994 amendments gave states considerable leeway in how they defined adequate performance for Title I schools. Michael Cohen (2002), a former USED official in the Clinton Administration, reflects that under the previous legislation:

- About a dozen states expected from 90% to 100% of students in each school to meet the state's definition of proficient performance, while another 10 states set a goal of 50% at the proficient level in order for a school's performance to be satisfactory.
- Only 14 states set specific timelines for schools to meet performance goals (on average 10 years, with a range of 6 to 20 years).
- States used vastly different methods for defining AYP. Some required schools to meet an absolute performance target, while others required relative improvement each year or reductions in achievement gaps between subgroups of students, and yet others used various combinations of these approaches.
- States varied tremendously in the proportion of Title I schools identified as needing improvement. At the low end, Arkansas and Wyoming did not identify any of their schools for improvement, Texas identified only 1%, and North Carolina identified less than 5%. At the other extreme, Michigan identified 76% of Title I schools as needing improvement, and Washington, D.C. identified 80%. These contrasts reflected differences in states' definitions of AYP and in the rigor and types of tests used, more than actual differences in performance between the states.

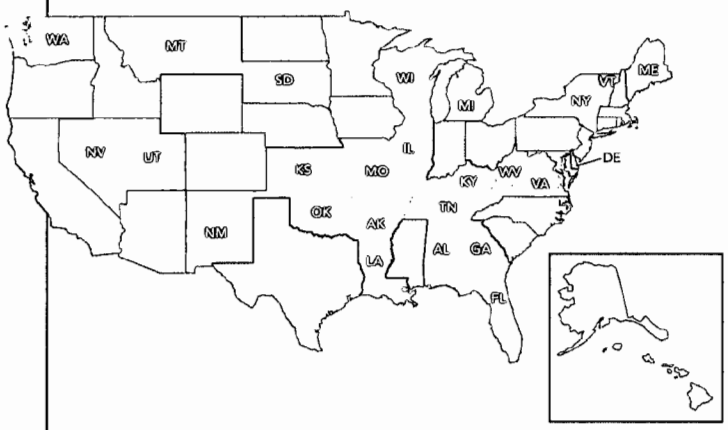
The adequate yearly progress provisions of NCLB are much more prescriptive and apply to all schools and school districts in the state. The new law specifies that each state's AYP plan must lead to the goal of all students reaching proficient levels on the state assessments within 12 years (by the 2013-14 school year). States will still determine what constitutes "proficient" performance on their tests. This school year, states must set a "starting point" (also referred to as the initial bar) for each subject area, representing the minimum percent of students who must score at or above the proficient level. States are to use the higher of two options: 1) the percentage of students at the proficient level for the lowest-performing subgroup of students statewide; or 2) the point at which one-fifth of all students are in schools with lower proficiency levels. Experts predict that most states will use the second option, because that figure will almost always be higher than the proficiency level for the state's lowest-performing sub-

FIGURE 2-A CURRENT STATE TESTING POLICIES COMPARED WITH NO CHILD LEFT BEHIND REQUIREMENTS



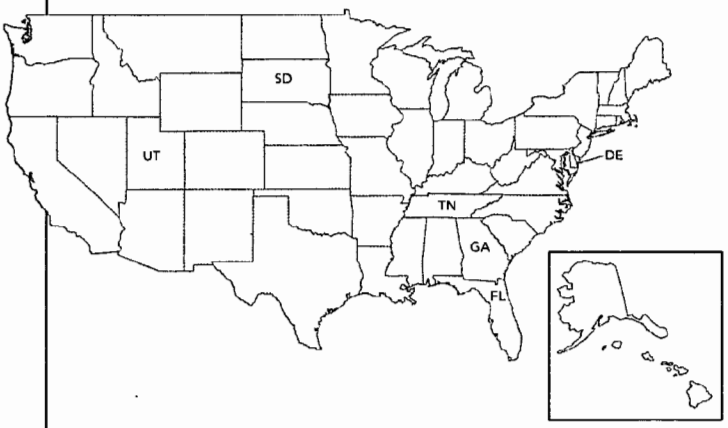
States that currently test students in English/ language arts and mathematics at grades 3-8, plus once in the 10-12 grade span:

Alabama, Alaska, Arizona, California, Delaware, District of Columbia, Florida, Georgia, Idaho, Louisiana, Maryland, Mississippi, New Mexico, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia



States that currently test students in science at least once in each of the grade spans 3-5, 6-9, and 10-12

Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maine, Michigan, Missouri, Montana, Nevada, New Mexico, New York, Oklahoma, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin



States that currently test students in all subjects and grade levels required by NCLB*

Delaware, Florida, Georgia, South Dakota, Tennessee, Utah

All other states

* Total includes only those states with standards-based assessments

Source: Education Week *Annual State Survey, 2002. Used with permission of authors.*

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group (Olson, 2002, April 3). Thus, by definition, some schools in a state will already have scored below the target set for the baseline year. The state must raise its bar in equal increments, with the first increase within two years and at least every third year after that, so that in 12 years, all students score at or above the proficient level.

According to regulations issued by the U.S. Department of Education in draft form on August 6, 2002 and in final form on November 26, the starting point must be the same for all schools, districts, and subgroups within a state. The regulations allow states to set different starting points for each grade span. This is allowed because high schools (and middle schools, to a lesser extent) tend to have lower percentages of students at the proficient level, and these schools are larger than elementary schools. Therefore, if a single starting point is set for all schools regardless of grade span, there will be a disproportionate number of high schools scoring below the starting point and, conversely, a disproportionate number of elementary schools above it.

Under NCLB, average student test scores in reading/language arts and math will be the main indicator of whether schools and districts have made adequate yearly progress, but graduation rates and at least one additional indicator for elementary and middle schools, to be chosen by the state, must also be included. However, these additional indicators may not be used to reduce the number of schools or change the schools identified using assessments; they may only be used to increase the number of schools.

The most challenging requirement of the new law is for schools and school districts to make adequate yearly progress in reading and math for each of a number of student subgroups, including low-income students, limited English proficient students, students with disabilities, and students in major racial and ethnic subgroups. At least 95% of students in each subgroup must be tested. Any school or district that fails to make AYP in *either* reading or math for *any* subgroup for two consecutive years will be identified as in need of improvement (provided the number of students in the subgroup is sufficiently large to yield a valid result). If a subgroup does not meet the bar, a "safe harbor" provision permits schools to be considered as making AYP if they meet two requirements: 1) the percentage of students in the subgroup who did not achieve proficiency dropped by at least 10% from the previous year; and 2) the school makes its target for improved graduation rates (for secondary schools) or shows improvement on the additional, state-determined indicator (for elementary schools).

Schools and school districts that receive Title I funds but do not make adequate yearly progress for two or more consecutive years will be subject to improvement strategies and corrective actions by the district or state, such as revising instruction, receiving technical assistance, providing public school choice, offering students supplemental education services, reorganizing or replacing staff, or restructuring the school. The corrective actions become more severe for schools or districts that fail to show improvement over multiple consecutive years. States may also choose to apply the same process of improvement strategies and corrective actions to non-Title I schools. In the consolidated applications that states must submit to receive federal education funds, states cited school improvement and support teams as the most common strategy they planned to use to help schools and districts in need of improvement, with 20 states citing this option.

The law also requires states to establish a program of recognition and reward for schools and districts (both Title I and non-Title I) that exceed their targets for adequate yearly progress or make significant inroads in closing achievement gaps between various subgroups of students.

Assessment Requirements for English Language Learners

The Act also contains special provisions for assessing students with limited English proficiency, also known as English language learners (ELLs). This is a large group of students—more than 4.7 million ELLs were enrolled in K-12 schools in 2001-02—and the numbers are growing rapidly (National Clearinghouse for English Language Acquisition, 2002). NCLB requires that all school districts measure the proficiency level of these students in the domains of speaking, listening, reading, and writing in English. Assessments for these students should also measure their progress in meeting annual goals established specifically for ELLs, as well as their progress toward the state's academic standards for all students. To fulfill these requirements, a state can either select an assessment that has been approved by the U.S. Department of Education and require all districts to use it, or provide school districts with the list of Department-approved assessments and allow districts to choose one.

School districts must make biennial evaluation reports that describe the programs and activities conducted for ELLs during the two immediately preceding fiscal years; the progress made by ELLs in learning English and meeting challenging state academic standards; the number and percentage of children attaining English proficiency at the end of each school year; and the progress made by students in meeting state academic standards for the two years after they are no longer receiving English language services.

Federal Actions

The No Child Left Behind Act sets out timetables and some specific actions that the U.S. Department of Education must follow in implementing Title I. The Department took several actions relevant to assessment and accountability issues.

The Department was required to use a process of negotiated rulemaking to develop the regulations governing standards and assessments, and could also use this process for other topics, at its discretion. Negotiated rulemaking involves bringing together a group of representatives of major stakeholders in a formal setting to negotiate the text of regulations, within limits allowed by the statute. The Department decided to limit the items to be included in negotiated rulemaking to the two mandatory topics included in the Act, standards and assessments. This took the most contentious issues related to accountability and school improvement, especially adequate yearly progress, off the table. Draft regulations for standards and assessments, based on negotiated rulemaking, were issued on May 6, and final regulations were published on July 5.

On May 22, the Department issued final regulations about the consolidated applications that states had to submit to receive federal education funds. The regulations acknowledged the difficulty states faced in immediately submitting all of the information required by the Act, while recognizing that states had to submit applications without delay in order to receive funding in July 2002. Of particular importance was the timeline set for states to submit information on how they would measure adequate yearly progress and determine their starting points. States were given until January 31, 2003, to submit their plans for handling these issues to USED.

On July 24, the Secretary sent a key policy letter to the chief state school officers with guidance on some issues related to Title I accountability and school improvement. The letter adhered quite closely to the statute, but indicated that the Department might allow for some flexibility in implementation.

In late August, the Department conducted a pilot review of the accountability systems of five states—Colorado, Indiana, Louisiana, Massachusetts, and North Carolina. As this report went to press, the Department had yet to provide feedback to the five states.

In an October 22 letter to the states, Secretary Paige exhorted states to not lower performance standards. Some states had indicated that they intended to do so to avoid identifying very large numbers of schools as in need of improvement or corrective action or to establish a more realistic goal (as discussed in more detail in the Issues to Watch section below).

As mentioned in Chapter 1, the Department published proposed regulations on accountability and school improvement on August 6, nearly seven months after the law's enactment, and issued final regulations on November 26, almost eleven months after enactment—later than the six-month deadline in the law for regulations on these topics and just two months before states had to submit their AYP plans to the Department.

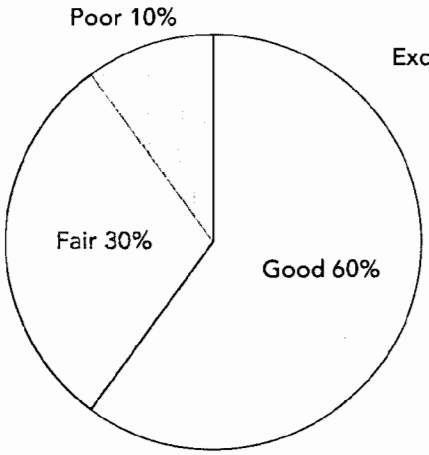
In our interviews with state officials, we asked them to rate the quality of the regulations and written guidance provided by USED on assessment issues. The majority of the 40 states responding to this question rated it as "good" (60%). Another 30% rated it as "fair". When asked about the timeliness of this written guidance, 29% of the 41 states responding rated it good and 41% called it "fair". The totals are shown in **Figures 2-B** and **2-C.**

We also asked state officials to rate the quality of other non-written forms of federal guidance about assessment, such as oral communications, websites, and meetings. Five percent of the 37 states who responded to our question rated this type of guidance excellent, and 38% rated it good, while 41% thought it was fair and 16% thought it was poor. These ratings are shown in **Figure 2-D.** For the timeliness of these non-written forms of federal guidance on assessment, more than one-third (38%) of the 37 states responding rated it as poor, while 30% rated it fair, 30% rated it good, and 3% rated it excellent. These ratings for timeliness are shown in **Figure 2-E.**

The major concern expressed during our interviews was that the federal government, at that time, had not yet released final Title I regulations, and the draft regulations were generally perceived by states as too vague to help them move forward with confidence that they were following the rules of the law. Furthermore, states were deliberately holding back, since they believed that the policy might change and did not want to make adjustments that ultimately would not be necessary. Existing state accountability systems were put in place to serve state goals and purposes, not federal ones. Changing a state accountability system may involve amending state statutes or regulations, which can be a lengthy process, and this added to states' frustration.

At the same time, many state officials were sympathetic with federal employees who, they felt, were probably doing the best they could amid difficult circumstances, a too short transition period, and their own limited access to information. State interviewees also often noted that information and communication from USED seemed to be improving.

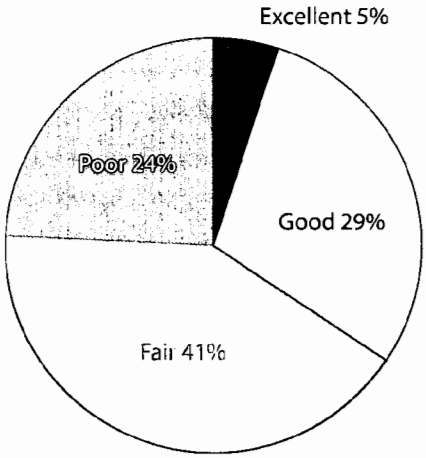
FIGURE 2-B STATE RATINGS OF THE QUALITY OF FEDERAL WRITTEN GUIDANCE ON ASSESSMENT



Number of states responding = 40

Source: Center on Education Policy state interviews

FIGURE 2-C STATE RATINGS OF THE TIMELINESS OF FEDERAL WRITTEN GUIDANCE ON ASSESSMENT



Number of states responding = 41

Note: Percentages do not total 100% due to rounding.

Source: Center on Education Policy state interviews

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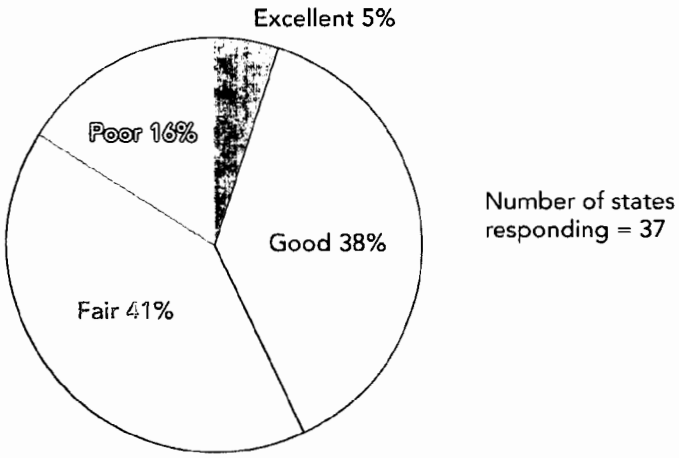
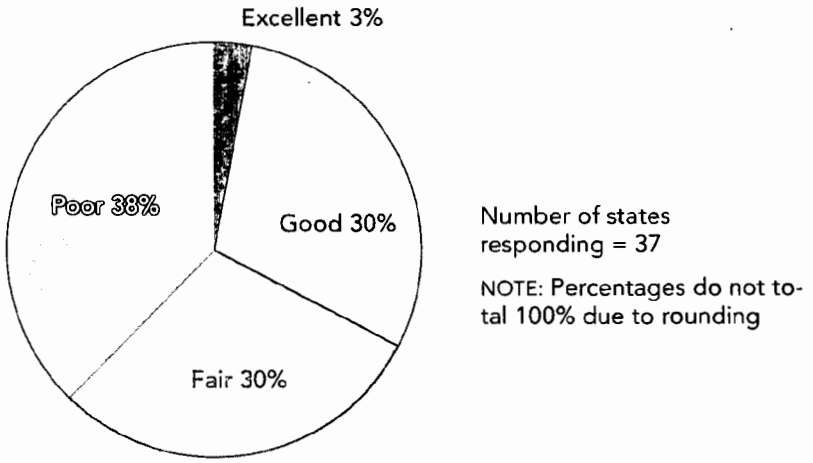
FIGURE 2-D STATE RATINGS OF THE QUALITY OF NON-WRITTEN FORMS OF FEDERAL GUIDANCE ON ASSESSMENT (SUCH AS ORAL COMMUNICATIONS, WEBSITES, AND REGIONAL MEETINGS)



Source: Center on Education Policy state interviews

FIGURE 2-E STATE RATINGS OF THE TIMELINESS OF NON-WRITTEN FEDERAL GUIDANCE ON ASSESSMENT



Source: Center on Education Policy state interviews

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State Actions

The Center on Education Policy interviewed state officials in September, October, and November 2002, just a few months into the implementation of the new law. Many state officials expressed their approval of the continued emphasis on standards and assessments in NCLB, though a few expressed concern about the mandatory extension of standards-based assessments to every grade spanning 3-8. Several states said that NCLB is in many ways just an extension of the reform that was already taking place in their states. One indication of this is that putting new assessments into place as required by NCLB was not a major concern of states. Most states already had standards in place or were far along in the development of them. States had also relatively long-term relationships with test developers and had begun planning for new assessments or augmentations for old assessments. Many of our interviewees expressed particular support for the idea of monitoring and focusing on subgroup performance, toward the goal of closing achievement gaps.

Several officials mentioned moving to one accountability system for all schools (rather than just Title I schools) as a positive change. First, one accountability system is easier from an implementation and management perspective. Second, as one official said, a unified cause encourages people to take a reform more seriously because it is for all students and schools rather than just a subset.

At the time of our interviews, the main implementation dilemma facing states was how to develop their plans for accountability and adequate yearly progress in the absence of final regulations on these matters. Interviewees described the competing pressures they were working under: on the one hand, wanting to move quickly to formulate an AYP plan to submit to the federal government by the January 2003 deadline; on the other hand, holding back from making decisions or changing their current accountability systems until they had more detailed information about how to implement the law correctly and how much flexibility would be allowed. It seemed unfair to the states that they were being held to the deadlines even though the federal government had not stuck to the agreed-upon timetable for its own actions.

These concerns were corroborated by a November 10th statement from the Council of Chief State School Officers (CCSSO, 2002a), which noted that states had received mixed messages about what may or may not be permissible from U.S. Department of Education personnel and which asked the Department to reconsider the deadline for state plans, in order to give states time to thoughtfully develop their plans.

The question of how much flexibility would be permitted was central. States were hoping that USED would grant them some flexibility in implementing the law so they would not have to completely revamp their existing accountability systems or identify large proportions of their schools as failing. They were also awaiting further information about such issues as whether they would be allowed to set different starting points for different subgroups. As described in Chapter 1 of this report, states saw encouraging signs in Secretary Paige's letter to the states of July 24, 2002 and in the draft regulations, both of which adhered closely to the language in the law but said the intent was not to dismantle systems that states already had in place.

The final regulations, as well as statements from Department officials, indicated that USED will be exacting in its interpretations of the law's accountability provisions. For example, the final regulations made clear that states must use a single starting point for all subgroups. At the same time, however, the preamble to the final regulations said that a state may continue to use its current accountability system "if that system integrates adequate yearly progress as defined in the statute and regulations into its system." The regulations offer no explanation of how this integration could or should be accomplished, so the meaning of this statement may only become evident as the Department approves or disapproves state accountability plans.

The Department may have been grappling with a conundrum posed by the aggressive nature of the improvement envisioned in the Act. The Administration has made the accountability provisions a cornerstone of its approach to education reform and is now faced with the problem that those provisions (as written by Congress), strictly enforced, could mean that large numbers of schools will be identified as needing improvement. If the Department enforces these provisions very strictly, several states with workable accountability systems in place would have to greatly modify or perhaps abandon their systems, instituting a new system that complies more directly with the provisions of NCLB. One possible solution would be for the Department to use its waiver authority to allow those states to continue with their current systems or to give states flexibility in certain portions of the accountability requirements, such as computation of the "starting point." Another possible solution would be to grant provisional approval to states with accountability systems that appear to be working as long as the states continue to show increased student achievement. However, these options would give the appearance of backing away from the portion of the Act that has been referred to as its cornerstone.

Meanwhile, states were making progress on several fronts in their assessment and AYP plans. States were in the process of:

- Identifying schools on the improvement list for the 2002-03 school year based on the state's criteria under the prior law.
- Planning and negotiating with contractors for the development of content standards and assessments for missing grades.
- Identifying additional indicators for elementary and middle school levels. The great majority of states that had decided on their additional indicators by the time we interviewed them planned to use attendance data; a few states chose grade retention data and assessments of other subjects, including science and writing.
- Considering different AYP models and, in some cases, running projections to find out how many schools will be identified as needing improvement under the various options.

Putting in place annual testing at grades 3-8 presents a significant task for many states. However, our interviews revealed that while states are working hard to deal with this requirement, it is not the area of greatest concern. Virtually all of the state officials we spoke with indicated that the most formidable challenge is coming up with a sound plan for measuring AYP that will meet the numerous and complex rules in NCLB, while at the same time resulting in valid and beneficial decisions about schools.

As regards the special assessment requirements for English language learners, many states were initiating statewide efforts to test English language proficiency for the first time. It is too early to tell what issues states will face in developing these systems, but the process is likely to be a challenge for many states and school districts, especially those that have students from dozens of dominant language groups.

All of the states we interviewed said that they plan to test the English proficiency level of ELLs in the 2002-03 school year. Among the most common assessments chosen by states were several commercially developed assessments of English proficiency, including the Language Assessment Scales (LAS), IDEA Proficiency Test (IPT), the Woodcock-Munoz assessment, and the Maculaitis Assessment for Competencies Test for English Language Proficiency (MAC II). At the time of our interviews, the U.S. Department of Education had not issued any ruling about whether these commercial assessments meet the requirements of NCLB (Testing English-language learners, 2002). NCLB also makes competitive grants available to consortia to develop better assessments of English proficiency that meet the law's requirements.

Issues to Watch

Our interviews with states and our review of the research literature revealed several issues of concern associated with the assessment and accountability requirements of NCLB. Some of these are practical concerns, while others are technical concerns about assessment and accountability instruments and methods.

Practical Concerns

1. Large numbers of schools will be labeled as needing improvement, including many that are not failing.

State officials predict that the NCLB requirements will result in a great number of schools being identified as needing improvement, many more than under the previous legislation, where numbers were already substantial for several states. The primary concern is that overidentification of schools will spread resources too thinly and subvert the law's intent, which is to target additional money and help to the schools that need it most. One respondent likened the situation to a teacher having "too many students in one class...Some will slip through the cracks." Another state said that with so many schools potentially identified "more time will be spent on compliance than on improvement." However, it could be argued that the intent of the law is to identify all under-performing schools, no matter how numerous.

Another frequent concern was that NCLB provisions for identifying schools in need of improvement could damage schools and weaken public education in general. Several respondents said that the language in NCLB concerning failing schools and persistently dangerous schools would place an "embarrassing label" on schools that they would find difficult to ever "shake." Some respondents were concerned that these labels would oversimplify what was taking place in schools and fail to acknowledge what is going right in these schools. A few state officials said they thought that NCLB had intentionally set very high performance requirements to undermine public education.

They said that if many schools failed to meet these benchmarks, then some policymakers could make the case that public education is failing and advocate private school tuition vouchers as the solution. One respondent called NCLB "a backdoor to vouchers," although the Department has repeatedly denied this charge.

Overidentification of schools and districts in need of improvement is virtually inevitable because if even a single subgroup fails to make adequate yearly progress on a single test, the whole school is labeled. Some researchers have conducted analyses to compute the number of schools that would have been identified as in need of improvement if NCLB criteria were applied to past years' test results. Most approaches yield large numbers of schools.

- A study by the Congressional Research Service (Smole & Riddle, 2001) estimated that 17% to 64% of the schools serving grades 3-8 in three states—Maryland, North Carolina, and Texas—would have failed to meet the AYP requirement for two consecutive years, if the NCLB Act had been in effect during school years 1997-98 through 1999-2000. The highest estimates—up to 64% of schools—were for North Carolina, the only state that had data available for every student subgroup to be broken out under the new law.
- The Council of Chief State School Officers (2002b) ran AYP simulations using data from eight states. The analysis revealed that the percentage of schools that would be identified for improvement after two years ranged from 49% to 88%.

Some say that the results of such studies are not entirely predictive, however, because the test data are from a time when the law was not in place and educators probably were not paying as much attention to raising the test scores of each subgroup as they now will under NCLB.

Although virtually all of our interviewees said that they thought the new law would certainly increase the number of schools identified as in need of improvement in their states, one official expressed the more positive expectation that over time, the new system will actually decrease the number of schools identified, explaining that, "One of the intended effects of public promulgation of data and corrective action is that there will be more attention paid to improving student achievement."

2. States are not starting on a level playing field.

The rigor of states' content standards, tests, and performance standards vary greatly; consequently, the percentage of students who score at the proficient level or higher varies accordingly. This means that if current tests and standards are used to set AYP objectives, some states will have much farther to go and will have to set much more demanding objectives than others, not necessarily because their students are achieving less but because their definitions of proficient performance are more stringent (Linn, Baker & Betebenner, 2002).

For instance, Linn and colleagues found that Mississippi reported that 39% of 8th grade students scored at the proficient level or higher in mathematics in 2001, while only 7% did so in Louisiana. The percentage of students who "passed" the 8th grade math test in Texas that same year was 92%. Although there may be real differences in math achievement in these three states, the differences surely are not as great as the disparities in these percentages. On the National Assessment of Educational Progress (NAEP), which is given

to a sample of students in each participating state and therefore can be used to make state-by-state comparisons, only 25% of Texas 8th graders scored at or above the proficient level, compared with 12% of Louisiana students and 8% of Mississippi students. So while Mississippi claims that four times as many of its students are proficient on its state test as Louisiana claims, the NAEP results rate more Louisiana students proficient. Obviously, Louisiana and Mississippi are not using the same definition of proficiency.

An analysis by *Education Week* (Olson, 2002, February 20) explored more broadly what "proficient" means across all of the states, by using NAEP as the benchmark for comparison. Using data from the 2000 school year, this study compared the percentage of students who scored at or above the proficient level on a state's own assessment with the performance of students on NAEP. The relationship between NAEP and state assessment results varies widely by state.

- Most states had a greater proportion of students scoring proficient on their state tests than on NAEP, suggesting that those states' proficiency levels are less rigorous than NAEP's. For instance, in Oklahoma, 71% of 8th graders scored proficient on the state math test, but only 19% of them scored proficient on NAEP. In Virginia, 61% of 8th graders scored proficient on the state math test, compared with 26% on NAEP.
- In a few states (such as Wyoming, South Carolina, and Kentucky), the proportions of students scoring proficient on both assessments were similar.
- Only a handful of states (Idaho, Louisiana, Rhode Island) had a *smaller* share of students scoring at the proficient level on their own tests than on NAEP in 4th or 8th grade math, suggesting that those states' tests may be more rigorous than NAEP.

Clearly, "proficiency" takes on very different meanings across the states. This is not a new problem; it was also an issue under the previous law. But the fact that states are not starting on a level playing field has greater significance now that the consequences attached to demonstrating AYP are more serious.

3. There are incentives to lower performance standards.

States had set the performance standards (often called achievement levels) for their state tests before NCLB declared they would be used to determine AYP objectives. Most states set performance standards under the more permissive requirements of the 1994 law, with "partially proficient" or "basic" achievement being the target. Some states set the mark for proficient at a level that yields results similar to the State NAEP results for their states.

In some cases the proficiency levels are set so high that it may be unrealistic to expect all students to reach that level by 2014. No state is close to having *all* students meet the high standards set for proficient performance on NAEP or similar standards on many state assessments (Linn, 2000). Nationally, just 26% of 4th and 27% of 8th graders scored proficient or higher on the NAEP mathematics test. The generic definition for the NAEP proficient level is mastery of challenging subject matter for the grade level (National Research Council, 1999).

As a result, NCLB may unintentionally encourage states to lower academic standards since it continues to allow each state to define proficiency as it wishes, placing more emphasis on the goal of 100% proficiency by 2014 than on the rigor of the standards.

States with higher standards for their students and tougher definitions of proficiency will inevitably identify more schools as in need of improvement than states with lower standards and so appear to be farther behind in the goal of having all students reach proficiency. Thus, states are punished for having higher standards. The fear that almost all of their schools will be identified as failing may push some states with relatively rigorous assessments to water down their test questions and/or lower performance standards.

One official that we interviewed said that the level labeled proficient on the Stanford-9 Achievement Tests, a nationally standardized test used to measure student achievement in that official's jurisdiction, was too high to be used for AYP purposes. Another state said it was contemplating changing the labels of the performance levels on its state assessment, so that the level now referred to as "satisfactory" (which is not the highest level on the test) would become the proficient level for federal AYP purposes. A different state plans to collapse two of its current levels—proficient and partially proficient—into a single category of proficient, essentially lowering the standard for what is acceptable performance.

Some other states said they are committed to leaving the performance levels on their tests as they are. These leaders felt their states put a great deal of effort into determining their achievement levels, including garnering public support, and they worried about what kind of signal it would send to the citizens if they suddenly lowered academic expectations. Furthermore, the NCLB Act requires states to periodically administer NAEP assessments and compare the results to state test scores, in part as an external check on whether state performance levels are sufficiently rigorous, although with no consequence besides the publicity.

The indications that some states were considering lowering their standards led Secretary of Education Rod Paige to charge in an October 22 letter that state actions to lower standards were "not worthy of a great country" and called those who advocated the action "defenders of the status quo" and "apologists for failure" (USED, 2002). However, the letter did not mention the unevenness of the states' playing field, discussed above, and it ignored NCLB's incentives to lower standards. The Secretary also did not point out that some states had low standards at the outset, and that NCLB offers no incentive for them to raise their standards. The more appropriate response might be to modify the law to give states that have lower expectations for achievement a reason to raise them. How states respond to the competing pressures is a major issue to track in the coming months.

4. Every school and subgroup within a state will be measured from the same starting point.

Many state officials were urging the Department to allow different starting points for different schools and subgroups, putting them on varied trajectories for improvement but always nudging them toward the same goal of 100% proficiency in 12 years. However, the final regulations ended up ruling against this, allowing different starting points for different subject areas and grade levels only.

Since AYP will be measured from the starting point and since all schools and groups will have to progress from the common starting point to the first objective in the state's AYP plan, schools and groups that are well below the common starting point will have to move very far to avoid identification. Conversely, schools and groups

already above the starting point will not have to move at all, or could even show a decline and still meet the AYP requirement. **Table 2-A** presents a simple illustration.

5. Testing and accountability systems that have been working may need to be dismantled.

Officials in some states are concerned that the requirements of the new law are so specific that it may be difficult to continue with their existing testing and accountability models, even when those programs are working well and are the product of many years' development. It is unclear to what degree this will be the case in states, but the prospect of spending the time necessary to develop and pilot a new accountability system and then trying to build support for it was daunting for these states. They feared that having to "start from scratch" could impede the progress and positive movement being made.

Perhaps in an effort to direct limited testing resources to the requirements of NCLB, many states are scaling back on tests that they currently have in subject areas other than math and reading, or on costly open-ended test questions that have to be scored by hand (Hoff, 2002). Although the prior federal law similarly offered no incentive for states to test subjects other than reading and math, it demanded far less in terms of testing time, administrative effort, and testing costs. To be able to comply with the new testing mandates at a time when state budgets are being cut in many places, states appear to be curtailing non-mandated aspects of their assessment programs. For instance, Oregon plans to save money by eliminating its writing tests for grades 3, 5, and 8, its science assessments in grade 5 and 8, and the extended-response portions of its 5th and 8th grade math exams. Massachusetts will not use history or social studies tests this year. Maryland, long known for its innovative assessments that presented students with a variety of rich, open-ended tasks, is replacing that program with a predominantly multiple choice test, in part because NCLB requires states to provide individual student scores, which their former tests may not have been designed to do.

Many people concerned about the impact of tests on instruction would describe these as movements in a negative direction, since it is well known that what gets tested is what tends to get taught, especially under high-stakes testing situations. Eliminating the more complex assessment tasks and tests of important areas like writing and social studies simply because they are not required by the law may unintentionally send the message that those academic areas are unimportant and lead schools to reduce the time and effort they spend on these topics. However, others would argue that by requiring assessment and accountability in the areas of reading and math initially, NCLB will help ensure that at least students have mastered those very fundamental competencies. There are already plans to phase in science, and other subject areas could be added in the future.

Meanwhile, states are exploring a variety of options for filling in the gaps in their testing programs to meet the new NCLB testing requirements. **Table 2-B** summarizes options that states are pursuing, each of which has advantages and disadvantages.

States are also struggling with how to integrate the new requirements for measuring AYP into their existing accountability systems, again, to avoid having to redesign those systems from scratch. For example, North Carolina's accountability system has been operating for the past six years and is functioning well; state officials are hoping

TABLE 2-A VARIABILITY IN PROGRESS REQUIREMENTS FOR DIFFERENT SCHOOLS IF THE 2003-04 AYP TARGET IS 50% PROFICIENCY

PERCENTAGE OF STUDENTS SCORING PROFICIENT OR ABOVE IN 2001-02	NEEDED INCREASES IN PERCENTAGE SCORING PROFICIENT OR ABOVE BY 2003-04
School A: 30%	School A: 20%
School B: 45%	School B: 5%
School C: 75%	School C: could decline by up to 25%

Source: Linn, 2002.

TABLE 2-B STATE OPTIONS FOR FILLING IN GAPS IN TESTING PROGRAMS

OPTION	PROS	CONS
Develop new customized criterion-referenced test (CRT)	Aligned to state standards	Expensive, takes several years to develop
Use off-the-shelf norm-referenced test (NRT) augmented with some state customized test questions	Somewhat aligned with state standards yet less expensive than completely customized test	Less well aligned to state standards than fully customized test
Let districts use their own local tests	Allows local control, relieves some of the state burden	Lack of comparability across districts, requires more state monitoring to assure regulations are met
Collaborate with other states	Efficient, states can combine resources	Difficult to get agreement across states on content and other characteristics of the tests

Source: Center on Education Policy interviews with state officials

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to keep as much of it in place as possible (see the case study at the end of this chapter). In the state's current system, schools get placed into six different categories, depending on overall (not disaggregated) test performance. The two highest levels are *Schools of Excellence* and *Schools of Distinction*. The concern is how, in the future, to explain to the public that a school in one of these categories may not have made AYP. It is bound to happen that one or two subgroups will not make AYP in some schools that do very well overall. This presents a big communications challenge, yet North Carolina does not intend to completely reinvent its basic accountability system. Another significant challenge may be explaining to the public that the Title I sanctions do not apply if the school is not receiving Title I funds.

Some states, like Kentucky, rate schools based on an accountability index that combines student performance across a number of subjects, rather than setting separate targets in math and reading as the new federal law requires. In addition, Kentucky's and some other states' indices "give credit" for any positive movement in test scores across the range of achievement levels (for instance, more students reaching the basic level and fewer students below basic, compared to the year before), not just increases in the number of students reaching the proficient level. The final regulations do not explain how indices such as those described above can be "integrated" with the highly specified definition of AYP in the new law.

6. Twelve-year targets must be set but tests are changing.

The results from state tests administered in the spring of 2002 form the baseline for defining AYP. But during the 12-year period covered by the law, most states will be changing their tests or adding the new tests for additional grades required by the law, which will render some of the baseline information useless. States will probably have to set AYP targets now for the tests they have in place, and re-establish their targets when new tests come online in the next few years. In essence, they may have to start again from a new baseline in measuring AYP.

For some states that are introducing new testing programs in the 2002-03 school year, this presents an immediate dilemma. For instance, Texas and Maryland will not have statewide results for their new tests until spring 2003, after the new tests are first administered. They will not be able to measure change until the second (2004) test administration.

States currently tend to revise and update their assessments every several years to stay aligned with trends in curriculum and instruction. However, NCLB seems to discourage states from updating and making their assessments more rigorous over the next 12 years, because such changes would require resetting their AYP targets and intermediate steps, and would likely cause a "set back" in meeting their AYP goals. The law also discourages states from gradually raising performance standards on their existing tests during this time period, preventing states from gradually raising academic expectations. The final regulations are unclear about how changes in assessment systems will impact baselines and AYP calculations over the course of the 12-year timeline for ensuring that all students are proficient, but, in the appendix containing comments, the Department promises that examples of ways in which states can move to new assessments will be included in nonregulatory guidance in the future.

7. The law allows states a short time to turn around and report test data.

The requirement for quick turnaround of results threatens the accuracy of the data that will be used for accountability. NCLB requires states to identify schools in need of improvement before the start of the school year. Most states test in the spring, return results to districts sometime in the summer or early fall, ask the districts to carefully review their data and report any potential errors to the state, and then check and correct all errors at the state level before releasing the final results to the schools and the public sometime later in the fall. Given the short turnaround time allowed for reporting tests results under NCLB, some states we interviewed were worried that they will have to sacrifice some of their quality control procedures, or have districts identify schools in need of improvement before the verified state results are released, which inevitably will lead to some schools initially being misidentified.

A related problem is that with more testing per state and states testing at similar times, the competition for vendors' (test publishers') time and space may result in higher costs, and greater volume may lead to more vendor errors. Testing organizations have already had to admit errors in scoring and reporting of state test results that have in some cases caused students to be wrongly held back or even denied high school diplomas. Many educators worry that a tight timeline for grading, less quality control, and the increased testing attributable to NCLB will result in many more errors.

8. There are costs beyond the obvious ones of developing more tests.

The law states that the schedule for administration of the additional assessments is contingent upon Congressional appropriations of at least $370 million for FY 2002 and $380 million in FY 2003 for states to help with the costs of developing and implementing annual assessments. Congress has actually appropriated $387 million for FY 2002, and the President's budget for FY 2003 calls for the same amount, in both cases exceeding the minimum amount required.

The majority of the officials we interviewed thought their state testing budgets, along with the federal funds reserved for this purpose, should be sufficient for their state to initially develop the required tests at additional grades. Some states still expressed concerns, however, about how to afford the long-term costs of maintaining, administering, and updating tests and analyzing test data. One state reported that as long as federal funds are available for test administration (in addition to development), the state would meet the requirements. However, officials in this state did not expect the state legislature to step in and pick up the tab in the absence of federal funds for administration.

There are additional, less obvious costs implied by the new law that federal leaders seem not to have taken into account. For instance, most states are already set up to disaggregate test data by subgroups, but many are not prepared to disaggregate and report on other indicators such as graduation and attendance rates. Gearing up for these additional data collections and analyses will require resources. There are other costs related to implementing the new reporting requirements, strengthening testing expertise and capacity among local district administrators, and integrating the student test data with the teacher qualifications data to determine which teachers are teaching which students and in which subject areas. These are all coming at a time when state economies are declining.

Technical Issues

1. School test results are volatile.

Under the No Child Left Behind Act, important decisions about which schools are cited for improvement and which are subject to interventions, sanctions, or rewards will be based on test data that are inexact and changeable, even when the tests are well-designed and properly administered. School test results often fluctuate from year to year for many reasons that have nothing to do with how much students are learning or the quality of instruction. For instance, changes in the population of students being tested can produce significant year-to-year variations in average test scores. Countless factors can change the composition of the student body from year to year, including an influx of immigrants or refugees who are English language learners, an exodus of students to charter schools, or the construction of an upscale housing development in the neighborhood.

There are other factors that contribute to what testing experts refer to as a test's standard error of measurement. A student's test score on any given day could be affected by the particular sample of questions included on that version of the test out of all possible questions that could be asked about the subject; the student's physical condition or state of mind; distractions outside the classroom like construction noise or a barking dog; and factors such as lucky guesses on the student's part or errors in scoring.

Kane and Staiger (2001) estimate that more than 70% of the year-to-year fluctuations in average test scores for a given school or grade can be attributed to variations in student population and other external factors, rather than to changes in learning. And calculations of progress that are based on the difference between one year's score and the next year's score tend to be even less reliable than either year's score, because the difference is subject to measurement error in both the baseline and follow-up years. **Box 2-A** describes how the standard error for a particular test affected decisions about school awards in California.

Studies show that a school that makes large test score gains in one year is more likely than not to do worse the next year. In one such study, Figlio (2002) examined school-level test score data from two Florida school districts in two consecutive windows of time. In three-fourths of the schools, the proportion of students who met the state proficiency standards improved in at least one of the two time windows. But in 69% of these schools that showed improvement, a school that improved in one instance fell back in another. The researcher attributed this finding to measurement problems: Schools facing an unusually "bad draw" one year (such as a large number of students who, for some idiosyncratic reason, did very poorly that year) tended to bounce back in the next, while schools facing an unusually "good draw" one year tended to revert to more average performance the next year. Small sample sizes (groups of students being tested) are especially prone to this kind of volatility.

The bottom line is that test scores need to be thought of as estimates rather than perfect measurements. A rise in average tests scores one year does not necessarily mean that a school or subgroup is succeeding, just as a drop in scores does not always mean it is failing. The natural volatility of average scores (especially for small groups) means that it may be unrealistic to expect schools to post the consistent test score gains demanded by NCLB.

BOX 2-A LESSONS TO BE LEARNED FROM CALIFORNIA'S SCHOOL AWARD SYSTEM

California recently had an accountability system that focused on cash awards to schools, whereas the No Child Left Behind Act focuses on sanctions. Yet the two programs have much in common, and problems that arose in California offer some hints of what may come when the new federal law gets fully implemented.

Called the Academic Performance Index (API), California's accountability system was passed by the state legislature in 1999 and tied cash awards to school scores on the state test. However, a series of investigative reports in the *Orange County Register* in August 2002 (Sharon, Tapia & Campbell, 2002) revealed that there was a large margin of error associated with the test scores, averaging 20 points. This is a big margin in a system where a single point could make the difference of whether a school receives tens of thousands of much needed dollars.

The state assigned an API score to every school based on the Stanford-9 test, an exam that compares students with their peers across the country. The state also gave each school a target score to meet out of a possible 1000 points. For instance, a school needing to score 650 to win money would miss out with a score of 649. But a 20-point margin of error meant that a 649 indicated only that the school's true scores is somewhere between 629 and 669, and that the system could not reliably pinpoint fine changes in school performance. (The *Register* relied primarily on a comprehensive study by Richard Hill of the National Center for the Improvement of Educational Assessment; California officials agreed with his conclusions about the size of the margin of error.) As a result, the *Orange County Register* concluded that a third of the $67.3 million the state planned to give to schools as rewards in the 2002-03 school year would go to schools where the magnitude of improvement was not statistically significant and could be due to chance.

Why was the API's margin of error so large? It was the result of several factors. With any test, there is regular measurement error—a student's score could be influenced by distractions such as an illness, the weather, or a barking dog. In addition, there was error associated with changes in the sample of students tested each year. Furthermore, in many California schools, the population of students changes so much from grade to grade that it is impossible to get a precise measurement of a cohort's progress from grade to grade. Finally, there was the problem that a large proportion of students' scores are not counted because of API loopholes.

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A particularly troubling finding was that predominantly white schools earned more of the cash rewards than diverse schools in the state. Like NCLB, the API system required a school to raise not only its overall API, but also the scores of each of its major ethnic and racial groups and poor children to win an award. But the experience in California shows that an unintended consequence of such a rule can be a system tilted toward schools with the fewest racial groups. About 58% of schools statewide with one major group won awards last year, compared with about 29% of schools with four or more groups, even though black and Latino students were improving more. Research by Kane and Staiger (2002) showed that in the first year of the API, the scores of diverse schools rose an average of 35 points, while the scores of predominantly white schools rose 33 points. Yet the diverse schools received an average of three to six dollars less per student in awards than mostly white schools. The problem is that the diverse schools had more hurdles to jump—if any one group falls short, the entire school loses. NCLB will require even more subgroups to show increases in performance to avoid sanctions, so this phenomenon is likely to be even more pronounced.

The API's margin of error was never openly disclosed by state leaders until the *Register* revealed the problem. This year, rewards are being suspended because of the budget deficit, though state officials have not ruled them out in the future.

California's experience offers some lessons to be learned as federal and state leaders proceed with implementation of NCLB. Most importantly, it illustrates some of the pitfalls of basing high stakes decisions (whether it be awards or sanctions) on results from a single test, because no test is a perfect measure. There will always be some error associated with test results, and leaders should consider this fact in their policymaking. Issues of measurement error should be made public, and the extent of error associated with states' tests should be monitored. Methods also need to be in place to ensure that all students are truly being counted in the final test results.

Source: Center on Education Policy based on news articles in Orange County Register, *August 2002*

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Averaging a school's or subgroup's test score data over several years, as permitted under NCLB, could help. For example, states could compare the percentage of students in a school who scored at the proficient level in reading averaged over the 1998-99, 1999-2000, and 2000-01 school years with the average over the 1999-2000, 2000-01, and 2001-02 school years. Figlio (2002) found that using such three-year rolling averages reduced the number of unstable schools (those that improved one year and fell back the next, or vice-versa) from about 57% to 33% in the Florida districts he studied. As implementation of the law proceeds, average test scores should be examined carefully to see what kinds of patterns emerge and what degree of changes might be attributable to measurement error or other kinds of test score instability.

Meanwhile, state officials are asking whether differentiated sanctions might actually be more appropriate, in light of the real difference between schools that fail to meet AYP due to essentially random events, versus schools that demonstrate consistent patterns of failure with the total group or a specific student subgroup over several years. Under NCLB, the consequences for a school missing a single indicator are the same as for a school that fails to meet multiple indicators.

2. Some schools and districts will not be held accountable for subgroup performance.

For many schools and districts, particularly those in rural or demographically homogeneous areas, there may only be a handful of students in some of the reporting subgroups. As discussed above, average test scores from year to year are likely to be unstable for small groups. The law takes this into account by excusing school districts from counting a subgroup in their progress determinations if the number of test-takers in that group is too small to yield statistically reliable information, or if the results would reveal personally identifiable information about an individual student. The appropriate minimum threshold is open to interpretation, since there is no magical sample size above which subgroups are likely to be "statistically reliable" (Kane & Staiger, 2002), although reliability does increase as the number of students goes up.

At the time of our interviews, states were considering a wide range of numbers for the minimum subgroup size, from a low of 20 test-takers in a school or district to a high of 70. In some cases, states may be considering technical qualities of their tests when they determine the minimum subgroup size, but in other cases, it is likely to be more of a political or strategic decision on the part of state leaders.

Although increasing the minimum subgroup size could help districts or states reach more valid conclusions about which schools have failed to meet achievement targets, it could also mean that large numbers of schools would not be held accountable for subgroup performance at all and that subpopulations of students with educational needs in those schools may be overlooked. One rural state reported that at a minimum group size of 30, well over half the schools in the state would not have enough students in any category to measure subgroup performance. An official from another rural state called it "unfair" that the subgroup rules would only apply to a handful of the larger districts in her state.

NCLB does allow data to be combined across grade levels for a particular subject within a school or district. This will help to increase subgroup sizes once tests are in

place for all the grades 3-8. However, in states that currently test only once at the elementary, middle, and high school levels, districts and schools will be making their initial AYP determinations based on only one grade's worth of test data, until their revised testing system is in place.

Use of three-year rolling averages can also increase the total number of students in each subgroup. This is because rolling averages are computed by adding up the number of students in a subgroup over the three years, then calculating an average for the total. This has two consequences. First, the scores are likely to be more accurate because the instability factor described above has been partially reduced. Second, subgroups with numbers below the minimum in a single year may now have enough scores to meet the minimum number of test scores when averaged across three years; in other words, schools could report on more subgroups if they use three-year rolling averages. State decisions about the minimum size of subgroups and how to report averages should be monitored over the coming years.

Some experts have suggested alternative methods for achieving reliability in AYP decisions while holding all schools—large and small—accountable for subgroup performance. For instance, states could use "confidence intervals," a standard measurement technique that would allow them to consider schools to have made AYP even if they fell below their AYP targets, provided their scores were within the range of possible measurement error (CCSSO, 2002b). A drawback to this approach, however, is that such statistical techniques are relatively complex and difficult to communicate to the public.

3. The more subgroups a school reports on, the more likely it is to be identified as needing improvement.

An unintentional outcome of the law is that more subgroups in a school present a greater number of hurdles to leap, so the likelihood of being labeled as needing improvement is related to the number of groups, as well as to student performance.

Whereas school districts with considerable racial, ethnic, and language diversity will be responsible for reporting on numerous subgroups of students, small or homogenous school districts will not be required to report on subgroups at all. In some sparsely populated, less diverse states, only a few districts may be required to disaggregate data by subgroups. Thus, the law is stacked against diverse schools with many different subgroups of students (that are large enough to meet the minimum size criterion selected by the state), each of which must make adequate yearly progress.

There are also questions that have not been answered in regulations or guidance about how to define major subgroups. Most states currently report the traditional five race/ethnicity categories (American Indian, Asian/Pacific Islander, Black, Hispanic, and White) with some adding a sixth category (Other). As of January 2003, federal agencies will report six subgroups based on the 2000 Census, but even this newer division leaves questions. For example, how should schools handle biracial or multiracial students? Similarly, should all English language learners be considered as a single subgroup, or should they be categorized by their specific language background, or should there be different subgroups for students who do not know any English versus those who can speak English but are still learning to read and write it?

4. English language learners and students with disabilities are different in nature than other subgroups.

Two of the subgroups—English language learners (called limited English proficient students in the law) and students with disabilities—are different from the other subgroups, because they are categorized more by students' special, and in some cases temporary, learning challenges than on their background characteristics.

While many state officials we interviewed liked the additional attention paid to ELLs and students with disabilities in NCLB, others had great concerns about including them in the AYP system and contended that these two groups should be treated differently for calculating AYP.

Limited English proficiency, in particular, is defined in a way that makes measuring progress of students impossible from one standpoint, since English language learners who become proficient in English leave the group and are replaced by new ELLs, who by definition are not proficient in English. A few state officials interviewed said that it would be "impossible" to get all ELLs to the proficient level because the population is not stable—those who become proficient in English leave the English language learning programs and new students are added. So a school that makes enough progress with its ELLs to mainstream them within a couple of years might actually look worse on tests comparing the ELL subgroup than a school whose ELLs advance only slightly.

By including students with disabilities in testing, NCLB is trying to rectify schools' past practices of keeping their scores high by excluding large numbers of students with disabilities from testing. At the same time, some students with disabilities have cognitive or other disabilities that will prevent them from ever performing at the proficient level. The law will allow school districts to exempt only a small proportion of their student enrollments from accountability testing for this reason—the Department originally suggested 0.5%, but the final regulations call for the formation of a new group to determine what the acceptable exemption rate will be. Some state officials we surveyed were troubled by the proposed 0.5% limit, voicing concern that forcing children to take a test that is beyond their capabilities would damage them. One official said, "Treating everyone the same isn't being equitable at all. I just don't know if jumping through all the same hoops for all children is equitable." It is not at all clear, however, what percentage of students with disabilities is appropriate to exempt; experience will shed more light on this issue.

5. Making valid decisions about schools requires highly accurate data.

States are struggling with some of the data collection requirements for NCLB. Most states are already set up to disaggregate their test results into most of the subgroups required by NCLB, except several states are not yet prepared to do so for low-income students (those eligible for free and reduced-price lunches). In addition, states are not generally equipped to report on disaggregated attendance and graduation rate data. Thus, in some states, substantial resources will need to be devoted to expanding their data collection systems.

Another set of concerns relates to the accuracy of the background information about students used to disaggregate results by subgroups. As one interviewee observed, "disag-

gregated tests results are only as good as the data that people supply." Some states will probably leave it to test contractors or school districts to collect student background data, which in most cases means that the information will be filled in by the students at testing time. But research has shown that students frequently misreport this kind of information. For instance, one state realized that self-reported data from students about their free and reduced price lunch status were unusable because so many students left the question blank. In another state, 20% of students in matched records changed their ethnicity, and in a third state, 4% changed their gender. Some students report that they are "Native American" because they are born in the U.S. (Dougherty, 2002). Then there are multiracial children, who may not be sure how to categorize themselves.

Many states will need to devote significant resources to handling these new requirements. Some interviewees saw this as a positive consequence of NCLB—the law is spurring their states to develop more comprehensive and accurate data collection systems, long due but not a high priority until now.

Conclusion

The assessment and accountability provisions are the heart of the No Child Left Behind Act. They are the main tools that the federal government will use to press states, school districts, and schools to boost the academic performance of all groups of students and to close racial, ethnic, and other achievement gaps. These are ambitious goals that states appear to be taking very seriously, based on what we learned from our numerous and often quite candid discussions with state officials.

The assessment provisions of NCLB are complex and have attracted considerable attention in the media and public discussions. From what we have observed, states are making headway in implementing these provisions, perhaps because states have been working for several years with standards and assessments on their own and in response to the IASA requirements. The key here will be to reach a delicate balance between complying with the law and maintaining the features of existing state assessment systems that are working well.

The most contentious issues that confront states are related to adequate yearly progress. Because of practical problems and technical factors, it could be difficult for states to develop plans for measuring AYP that will accurately target the schools that have not performed well without also incorrectly targeting schools due to measurement anomalies. States have legitimate concerns about how this system will play out, and the federal government's delay in issuing final regulations and strict interpretations of the law did not help with their anxiety.

The federal government, the states, and outside researchers should closely monitor how the accountability provisions of NCLB unfold in the coming years. Lowering standards will not help the children who are receiving an inadequate education, but neither will approaches so rigid that the goals of the law are subverted.

CASE STUDY
WHAT NORTH CAROLINA MUST DO TO BRING ITS ASSESSMENT AND ACCOUNTABILITY SYSTEM IN LINE WITH THE REQUIREMENTS OF THE NO CHILD LEFT BEHIND ACT

North Carolina's assessment and accountability system meets some of the requirements of NCLB, such as disaggregating test scores by student subgroups. But it will be complicated, and perhaps not feasible, to reconcile other aspects of the state's system with NCLB, such as its "value-added" approach that looks at average growth in achievement of the same students from one year to the next.

Like many other states, North Carolina had a statewide system of assessments and school level accountability in place before the No Child Left Behind Act was enacted. And like the systems in many states, the North Carolina system does not align perfectly with the provisions in NCLB. Following is a discussion of how the two systems compare with one another and what North Carolina plans to do to bring its system in line with the Act's requirements.

The North Carolina Approach

ASSESSMENT

North Carolina assesses all children statewide in reading and mathematics in grades 3 through 8 and administers end of course tests in 10 subjects in high school. The state also administers a comprehensive test in reading and mathematics to students in grade 10 in high schools that receive Title I funds. These assessments meet the current requirement for assessment in the Elementary and Secondary Education Act, but will need to be adjusted to meet the requirements that come into play under NCLB. Assessment data are already disaggregated into the categories required by NCLB.

To meet these new requirements, North Carolina will have to administer the high school assessments in grade 10 reading and mathematics and, by school year 2007-08, institute a science assessment at least once in each of three grade spans: grades 3-5, 6-9, and 10-12.

The state is concerned, however, about the timetables in the law for reporting assessment results. Unlike some states that contract with outside vendors or groups to compile assessment results, North Carolina provides local school systems with hardware and software to scan and score answer sheets. The local systems then forward their data to the state department for additional quality control and statewide reporting purposes. In the past, if there were no changes to the assessment, the state could get official results to districts and schools in August. When changes occurred in the assessments, official school, district, and state results from the State Department of Public Instruction would not be provided until September or October. The state is concerned that the schedule in NCLB will leave no time for adequate quality control over results.

ACCOUNTABILITY

While the process of aligning North Carolina's state assessment system to NCLB is rather straightforward, the situation with accountability is much more complex. The

North Carolina system for assessment and accountability was put in place for elementary and middle schools in school year 1996-97 and in high schools the following year. The system contains incentives and sanctions and is based on results on the state assessments described above.

The accountability system has several major features.

- For each school, growth expectations of performance were established using tests administered during the 1992-93 and 1993-94 school years, except for grade 3, where pretest scores collected in school year 1996-97 were initially used. The grade 3 formula has since been revised based on data collected in 2000-01. Expected growth rates differ from school to school.
- Results for each school year are calculated using matched student scores, to determine the extent of growth students experienced from one year to the next.
- The assessment system has four levels of performance, with level III designated as proficient and level IV as advanced.
- Based on the overall percentage of students scoring at or above the proficient level, as well as a comparison of actual growth with expected growth rates, schools are divided into six categories, ranging from Schools of Excellence, the top category, to Low-performing Schools, the lowest category. (**Table 2-C** shows numbers of schools in each category.)

TABLE 2-C NUMBER OF NORTH CAROLINA SCHOOLS ATTAINING VARIOUS CATEGORIES ON THE STATE'S ACCOUNTABILITY SYSTEM

RESULTS FOR THE 2001-02 SCHOOL YEAR ARE:

CATEGORY	NUMBER OF SCHOOLS	PERCENT OF TOTAL
Schools of Excellence	299	13.6
Schools of Distinction	640	29.6
Schools of Progress	521	23.8
No Recognition Schools	465	21.2
Priority Schools	132	6.0
Low Performing Schools	18	.8

Prior to NCLB, North Carolina identified Title I schools in need of improvement as those schools in the low-performing category as well as those schools with less than 60% of student scores below achievement level III. For 2001-02, 17 Title I schools were designated as in need of improvement.

Source: The ABCs Accountability Model: Results 2001-02. State Board of Education/ Department of Public Instruction. www.ncpublicschools.org

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- Financial rewards are distributed to certified staff and teaching assistants in schools that attain or exceed expected growth.
- The state provides technical assistance to low-performing schools. Local superintendents and, in some instances, the state board, may take further action.
- While North Carolina has disaggregated data on student performance for each school and makes this information available to the public, it is the overall performance of students, not the performance of subgroups, that determines a school's designation.

Major Differences Between the North Carolina System and NCLB

The North Carolina assessment and accountability system differs in several respects from the requirements of the No Child Left Behind Act:

- The North Carolina system is based on changes in the average scale scores of the same students from one year to the next, calculated by comparing the average scale scores for the group of students one year with average scale scores of the same students the next year. NCLB, by contrast, compares the percentage of students in a school, as a whole and by subgroup, scoring at the proficient level against a standard set by the state following procedures established in NCLB. Therefore, the same children are not followed over time by NCLB. NCLB requires increased performance of each subgroup in each school against the state standards whereas the North Carolina approach looks at overall changes in the average scale scores in the school as a whole.
- NCLB sets a time certain by which all children must attain proficiency, a concept not included in the North Carolina approach.
- North Carolina sets expected growth rates for individual schools, based on their individual performance in relation to overall state results. NCLB requires states to establish a single starting point and incremental increases that apply to *all* schools and subgroups; the performance of schools and subgroups is based on progress from the starting point and incremental increases.
- NCLB requires that at least 95 percent of all students and of each subgroup participate in the assessments. North Carolina has a provision for the school as whole.

In an effort to determine how the NCLB could affect the designation of schools into performance categories in North Carolina, the state conducted several simulations that applied NCLB requirements to actual test data from past years. For these simulations, the state used the following assumptions: the starting point was set based on 1997-98 data; the number of students assessed in a subgroup had to be at least 30 for the group to be counted for school designation; and the 10% reduction in numbers of students scoring below proficiency (the so-called "safe harbor" provision) was applied. The Act allows the safe harbor provision to be used only if the school made adequate progress on the additional indicator. However, the state did not have information on the additional indicator and, for purposes of this study, assumed that all schools had made required progress on it.

The state did six simulations, using different assumptions regarding periods for incremental increases and the use of a single starting point for all schools and groups (as final regulations now require) and use of different starting points for different subgroups. Using these simulations, the state estimated that between 24% and 62% of its schools would make adequate yearly progress each year; that between 25% and 65% of those not making adequate yearly progress for one year would fail to do so for the subsequent year; that between 20% and 53% would fail the third year; and that between 17% and 42% would fail the fourth year.

Since these simulations were run, the U.S. Department of Education has issued final regulations for school accountability. Absent waivers, these regulations require the starting point to be the same for all schools and groups. The simulation for the approach that North Carolina now seems most likely to use showed that approximately 30% of schools would make adequate yearly progress each year.

The major reason why so few schools would make adequate progress appears to be the performance of subgroups, even in schools that have overall high performance. While supportive of the requirement in NCLB that performance of each group should be included in measuring the performance of a school, the North Carolina Department of Public Instruction is concerned about adequately communicating to the public how schools identified under the state system as Schools of Distinction or Schools of Excellence could also be identified, under NCLB, as schools in need of improvement.

The state is also concerned about possibly having to provide technical assistance to a large number of schools.

Incorporation of NCLB into the North Carolina System

For school year 2002-03, North Carolina plans to treat the AYP requirements in NCLB as an additional component of the state system. Schools will continue to be placed in the categories described above but will also be designated as having or not having made adequate yearly progress under the requirements of NCLB. After results for the year have been compiled, the state will decide whether any changes to the system should be made.

One major change has already been made in the area of financial rewards for certified staff and teaching assistants in schools that perform well. In prior years of the accountability program the certified staff and assistants received incentive awards for making expected growth and higher incentive awards for making high growth. Starting with school year 2002-03, the State Board of Education approved reducing the amounts of incentive awards for making expected or high growth but adding an incentive award for staff in schools that make AYP under NCLB.

Source: Center on Education Policy state interviews

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CHAPTER 3

Providing Public School Choice and Supplemental Education Services

KEY FINDINGS

- The No Child Left Behind Act had very ambitious deadlines for implementing new requirements for public school choice and supplemental education services, and it was difficult for states and school districts to act on these provisions in fall 2002 without data on which schools and students it would affect. The timing of the U.S. Department of Education in releasing final regulations and guidance also seems to have been a factor as to why states were not ready to fully implement these provisions.
- In fall 2002, several states estimated that few parents had made use of the public school choice option thus far. This could be due to state and local delays in identifying low-performing schools, inadequate efforts to inform parents that the option was available, or the commitment of parents to their neighborhood schools.
- Practical constraints could make it difficult to implement the Act's choice requirements in districts that have overcrowded schools, have a single school at certain grade spans, or are located in rural or remote areas. In the first few months of implementation, some districts were limiting students' choices due to a lack of space in receiving schools, but the final regulations released in late November said that lack of capacity cannot be used to deny choice for students.
- As of November 2002, only 15 states had developed an approved list of supplemental education service providers. Non-regulatory guidance issued by the U.S. Department of Education required states to have an approved list in fall 2002. Many states were waiting for final regulations, while others did not have any schools that were required to offer these services this school year. The number of providers on state-approved lists varied widely, from a handful to more than 100.

Introduction

The No Child Left Behind Act requires states and school districts to take a variety of steps aimed at improving student achievement. Two of the most significant steps pertain to requiring public school choice and providing supplemental education services when schools that receive federal Title I funds are cited as "in need of improvement" under the law's accountability provisions.

The law's choice provisions require schools that have failed to meet the state's definition of adequate yearly progress for *two* or more consecutive years to allow students in these schools the option of transferring to a better-performing public school in the same district that is not in need of improvement. The requirements for supplemental education services apply to schools that have failed to make adequate yearly progress for *three* or more consecutive years. School districts must arrange for students in these schools to receive tutoring and other supplemental education services from a state-approved service provider selected by the student's parents. These providers can include public agencies or private nonprofit or for-profit entities.

This chapter describes how the federal government, states, and school districts are implementing public school choice and supplemental education services. It also discusses some issues that states are currently facing and issues to watch in the coming years.

Public School Choice

Background

The term "school choice" can be used to describe various policies or programs that give parents the option of choosing educational settings for their children other than their neighborhood public schools. Charter schools, open enrollment or choice among public schools, tuition vouchers for students to attend private schools, and home schooling are some common forms of educational choice. The No Child Left Behind Act clearly limits choice to the public school system, allowing students in designated schools to transfer to a better-performing public elementary, middle, or secondary school or a public charter school.

Proponents of school choice argue that giving parents greater choice among schools will force schools that are performing below standard to improve their practices or risk losing funds as students leave to attend "better" schools. Public school choice in the No Child Left Behind Act is intended to prevent children from languishing in schools that have repeatedly been designated as in need of improvement.

The choice requirements of NCLB are an outgrowth of earlier provisions for choice in the 1994 Improving America's Schools Act (IASA) that allowed, but did not require, school districts to use funds to develop and implement public school choice programs for Title I children. (The 1994 legislation also introduced the concept of labeling schools as "in need of improvement.")

In the federal appropriations bills for fiscal years 2000 and 2001, Congress required districts to offer public school choice to students in Title I schools identified for improvement. The money was distributed through either a formula or competitive grant process, as determined by the state, and only districts that had at least one school labeled as in need of improvement were eligible to receive the funds. In guidance issued by the U.S. Department of Education for the FY 2000 appropriations bill, the Department acknowledged that the additional funds may not be sufficient to offer a transfer to all students attending Title I schools identified for improvement and stipulated that in these cases, the neediest students should have priority in exercising this option.

Evidence suggests that the choice provisions of these appropriations bills were not widely implemented. Alexander Russo (2002) suggests the choice program was underfunded, poorly publicized to parents, limited to low-performing schools, administered by unenthusiastic school officials, and full of bureaucratic loopholes. But in fairness to school districts, the choice provisions contained in the appropriations bills allowed exceptions. In guidance on this legislation, USED acknowledged that class size limits, desegregation orders and other capacity issues could make implementation difficult in certain school districts. Although there were no published USED reports on the implementation of these prior choice requirements, anecdotal evidence suggests that many districts had legitimate reasons that allowed them to avoid offering choice to students. For these reasons public school choice was not widely implemented under the FY 2000 and FY 2001 appropriations bills.

The No Child Left Behind Act takes the prior legislation several steps further by linking the public school choice option to the school accountability system, earmarking funds for transportation, and requiring all Title I schools in school improvement, corrective action, and restructuring status to offer public school choice. NCLB also has expanded and heightened the level of enforcement of public school choice in Title I schools.

Although pro-voucher amendments were defeated in Congress, some educators remain suspicious that the Act's public school choice provisions could pave the way for vouchers. The Department's treatment of the choice provisions in the final regulations, which allows virtually no flexibility in denying students transfers, has stoked these concerns among critics, who fear that private school vouchers could become the next step in cases where a district's better-performing public schools do not have space for transfers from lower-performing schools.

Choice Provisions of the No Child Left Behind Act

As explained in Chapter 2, schools that do not make adequate yearly progress in raising test scores, as defined by the state, will be designated as in need of improvement and must undergo a series of improvement steps and corrective actions including public school choice. Specifically, the Act requires schools that have not made adequate yearly progress for two consecutive years or more to allow students the option of transferring to another public school or public charter school in the same district that has not been designated as in need of improvement, corrective action, or restructuring. The Act also

BOX 3-A TRANSPORTATION FUNDS

The No Child Left Behind Act requires each school district to set aside an amount equal to 20% of its combined Title I allocations (basic, concentration, targeted assistance, and finance incentive grants) to pay for transportation costs associated with the public school choice requirements and for supplemental education services. NCLB allows the funds to come from federal, state, local, or private sources, as long as the dollar amount equals the 20% figure. For instance, funds can come from the Title I program, the Safe and Drug Free Schools and Communities program, or the innovative programs under Title V. Of this set-aside, 5% is earmarked for transportation for public school choice and 5% for costs related to providing supplemental education services; the remaining 10% can be used for either of these purposes.

Source: P.L. 107-110, the No Child Left Behind Act

requires school districts to set aside funds to pay for transportation costs associated with the choice requirements. (See **Box 3-A,** Transportation Funds.) If the district cannot afford to pay transportaion costs for all students who apply, the law stipulates that the lowest-achieving students should have priority. These public school choice requirements of NCLB took effect at the start of school year 2002-03 and applied to schools that had been designated as in need of improvement under the terms of the 1994 law.

School districts can, but are not required to, meet the choice requirement by forging cooperative agreements with other districts that allow students to transfer to a school in a different participating district. Furthermore, states can *require* school districts to employ interdistrict transfers (between two or more districts) as part of the corrective actions imposed on schools that have not made adequate progress for several years.

The law contains another choice-related provision, the "unsafe school" choice option, which takes effect in school year 2003-04. Under this option, districts must allow students to transfer to a safe public school if the public school they are attending has been labeled "persistently dangerous" or if a student becomes a victim of violent criminal offenses at the public school he or she attends. States must develop a policy and plan for identifying schools that are persistently dangerous, and must submit this policy and plan to the U.S. Department of Education for approval. As of October 31, 2002, all states had submitted a plan to USED but not all plans had been approved. Specific information on the content of the plans was not available in time for this report.

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Department of Education Actions

LIST OF SCHOOLS IN NEED OF IMPROVEMENT

On July 1, 2002, U.S. Secretary of Education Roderick Paige released a list of Title I schools that had been identified by states as "in need of improvement," based on recent state test data (USED, 2002b). This list included 8,652 schools, broken out by state, that had not made adequate yearly progress based on the state measures developed under the 1994 IASA, the predecessor law to NCLB. Schools were identified using data from the 1999-2000, 2000-01, or 2001-02 school years. Most of these schools had been in program improvement status for one or two years, under the provisions of the prior law. States were permitted to remove schools from the list that had made adequate yearly progress for two years based on 2001-02 assessment results, but they did not have to add schools that were not on the list already, even if those schools did not make adequate yearly progress in 2001-02. The number of schools identified for improvement may have decreased because of this allowance or, as some states conjecture, the Department of Education may have overidentified schools in its original figures. In any case, most states we interviewed expected the number of schools in need of improvement to go up next year, when states begin using their new definitions of adequate yearly progress, so the number of children eligible for choice is likely to rise, too.

The schools currently identified for improvement were required to implement the public school choice requirements at the beginning of the 2002-03 school year even though USED had not yet issued final regulations and guidance on public school choice by the start of the school year.

LETTER TO CHIEF STATE SCHOOL OFFICERS

On June 14, 2002, Secretary Paige issued a letter to the chief school officers in all states that included guidance about school choice and supplemental education services (USED, 2002a). The letter made several important clarifications to the law, most of which were repeated in the final regulations, but a few of which were actually retracted in the regulations. For example, while the June 14 letter suggested that health and safety code requirements were an acceptable reason for a district to restrict choice, the final regulations said health and safety factors could not be used to deny transfers. The June 14 letter did clarify that NCLB does not prohibit a district from spending more on transportation costs than the 20% set aside required by law or from using state and local funds to cover costs related to public school choice.

FINAL REGULATIONS

The final regulations for Title I, issued by the U.S. Department of Education on November 26, 2002, tend to reiterate the language of the law. The final regulations deny the flexibility that school districts were hoping for on implementing public school choice and allowing exceptions to implementation under special circumstances. Districts with unusual circumstances that prevent them from implementing choice are encouraged in the regulations to enter into cooperative agreements with neighboring districts, hire more teachers, or add more classrooms.

The regulations made several important clarifications to the law:

- *Extent of choice.* The final rule defines choice to mean, at a minimum, the opportunity for eligible students to choose between *at least two* better-performing schools.

- *Capacity limits.* The major clarification in the final regulations asserts that school districts cannot use space limitations in receiving schools, including class size limits and health and safety code requirements, as a reason to deny students transfers.

- *Class size limits and health and safety concerns.* If a school district has reached its "maximum instructional capacity" or has class size limits set by state policies, it must still offer choice and adhere to the state-mandated limits. The regulations also require that choice be implemented in a healthy and safe manner. If a school has reached its state-mandated class size limits or maximum capacity in all classes, as regulated by fire codes or other health and safety concerns, USED suggests that it hire additional teachers and add classes to accommodate students who wish to transfer to the school.

- *Desegregation orders.* In cases where a school district has a court-ordered desegregation plan in effect, the final regulations clarify that it should continue to adhere to the desegregation plan as ordered by the court and make choice available. If the school district is unable to implement public school choice consistent with its desegregation plan, USED requires it to "secure appropriate changes" from the court. The Department leaves open how it will handle cases where the courts deny amendments to desegregation orders, but indicates that it does not intend to withhold Title I funds from states that make good faith efforts to comply with the law.

- *Cooperative agreements with neighboring districts.* In school districts in which all schools have been identified for improvement, the final regulations indicate that this situation cannot be used to deny public school choice to eligible students. The regulations *encourage but do not require* districts to form cooperative agreements with neighboring districts in order to allow students to transfer.

- *Use of supplemental education services, corrective action or restructuring.* If the school district cannot provide public school choice under these options, the regulations allow districts to use any of the improvement methods outlined by the statute for later years in the process. For example, some districts in rural and remote areas have already indicated that they plan to provide supplemental education services in this situation. The regulations justify this by noting that these methods are already permissible uses of federal funds under Title I.

- *Grounds for not implementing public school choice.* Under the regulations, a student can be denied choice only in the very limited situation where state law specifically prohibits certain kinds of choice. In particular, a school district "may invoke the state law prohibition on choice . . . only if the state law prohibits choice through restrictions on public school assignments or the transfer of students from one public school to another public school."

On December 9, 2002, the U.S. Department of Education issued draft nonregulatory guidance for the choice provisions. Key points made in the guidance include the following:

- States must annually report the number of students and schools that participate in public school choice.
- School districts are not required to cover transportation costs after the end of the year in which the school of origin is no longer in improvement status.
- School districts in rural and remote areas that have no practical choice options for students attending schools in improvement status may offer supplemental education services in lieu of public school choice.
- School districts that must seek amendments to desegregation orders from the courts in order to provide choice can use Title I money to pay for associated legal costs.
- Title I public school choice can become part of a state's open enrollment program as long as the requirements of Title I are met, allowing children who are the lowest achieving and come from low-income families to exercise choice first.
- As with pre-NCLB legislation, Title I funds do not follow a child who transfers to a non-Title I school.
- School districts must still offer choice if transportation funds are not sufficient to pay for all students who request transfers, but the district is only required to spend up to the set-aside required in the legislation.
- School districts are not required to pay for transportation costs for students who left a school in improvement status prior to the enactment of NCLB.
- School districts may establish transportation zones within an LEA based on geographic location of schools, as long as more than one choice is offered.
- Parents should be informed of their child's eligibility through multiple methods, such as mail, newspapers, posters, and the Internet.

State and Local Implementation

While many of the state officials we interviewed spoke about school choice, they downplayed its importance. The reasons why were not clear, although some states noted that in many districts, there are no realistic options to which students will be able to transfer, either because potential schools are overcrowded or because there are simply no other schools.

State and local implementation of the NCLB choice provisions was complicated by the very ambitious deadlines required by the law. Often results from spring testing do not become available until the fall, and when we interviewed states in the fall, some still had not finished analyzing their test score data or had not received test data from outside test contractors. Consequently, these states had not yet determined which schools were in need of improvement and which students would be eligible for choice. Furthermore, final regulations and guidance were not yet available at the time school

districts were supposed to begin implementing choice. Some states used the law and the Secretary's June 14 letter to develop draft guidance for their school districts, while other states directed local school people to the Department's NCLB website, where the letter is posted.

Some states and school districts already have "open enrollment" policies, which allow students to transfer to schools within the same district (intradistrict) or in another district (interdistrict). According to the Education Commission of the States (2002), 33 states have mandatory or voluntary intradistrict and/or interdistrict laws that allow students to exercise public school choice. In addition, 41 states have charter school laws, which permit students to enroll in charter schools that operate with less regulation and more flexibility than other public schools. These existing state and local choice policies will interact with the federal choice provisions in various ways. On one hand, the existence of open enrollment or charter school policies can make it difficult to track which students are exercising choice stemming from NCLB and which are changing schools for other reasons. On the other hand, experience with existing public school choice programs can help states and districts to implement the NCLB choice provisions. The St. Paul school district, for example, reports that it used its existing school choice system and magnet schools as a basis for implementing NCLB choice provisions (Welbes, 2002).

Since districts are directly responsible for implementing the NCLB choice provisions, it is necessary to go to the district level to answer such key questions as what is being done to carry out the requirements and how many students have chosen to transfer thus far. Because implementation of choice is proceeding in various ways and at different paces, a state-by-state account cannot yet be given. The more in-depth data collection and analysis will come in following years. For example, states will have to report the number of students and schools that participate in public school choice in their annual state Title I reports to USED.

Some general information about local implementation can be provided, based on our state interviews, our review of state consolidated applications, and news articles about specific districts and states. In addition, some districts have compiled and made public various kinds of information about their use of the choice provisions.

Districts have developed plans for implementing the choice requirements based on a number of factors that best fit their capacity and need. Some of the factors considered include the number of children eligible for public school choice, the number of receiving schools that are not in school improvement status, the capacity of the receiving schools to accommodate additional students, and the cost of providing transportation. The following examples depict a range of implementation processes at the district level:

- In Montgomery County, Maryland, sending schools are paired with a particular set of receiving schools in the district, and students are transferred to the designated receiving schools (Montgomery County Public Schools, 2002).
- The New York City Department of Education centralized the public school choice option, lifting the borders from its school districts and allowing students to transfer within and across their home districts (New York State Department of Education, 2002).

- In St. Louis, the district takes into account the performance of potential receiving schools and considers as receiving schools only those with performance above a set bar, even if the school is not in improvement status.
- In Hamilton, Ohio, parents were allowed to select two schools from a list of seven receiving schools, and all parents got one of their top two choices. (The Center on Education Policy case study of this school district appears in Chapter 1.)

Information from our state interviews, news reports, and other organizations suggests that in the early phases of implementation, the choice option is not being used extensively. According to the American Association of School Administrators (2002), 63 out of 2,300 eligible students in Howard County, Maryland, applied for transfer, and 49 accepted the school they were assigned to. In Portland, Oregon, only 100 out of the 3,000 eligible students applied. In Wichita, Kansas, two schools offered choice but as of September no parents had applied. In Fulton County, Georgia, 331 out of the 11,000 eligible students from 10 schools applied and accepted transfers. In Clark County, Nevada, 109 of 4,500 eligible students were expected to move. In Montgomery County, Maryland, 101 of the 6,000 eligible decided to move.

In some districts, however, enough students seem to be transferring to have an impact on the school that loses enrollments. At West Middle School in Uintah County, Utah, a rural school serving a largely Native American population, 60 students opted to transfer to a different school, despite a campaign mounted by parents to encourage other parents to keep their children in the local school. As a result, West Middle School lost 3.5 full time equivalent teachers, leaving math classes in the hands of a shop teacher and a science teacher (Sykes & Lynn, 2002).

There are several possible reasons why the use of public school choice has been limited so far in many districts. As already noted, some districts have delayed implementation, so choice has not truly been made available. In other cases, parents may not have been well informed or may not be aware that public school choice is now available. Parents may have a strong familiarity with and commitment to their neighborhood schools, or a desire to improve the local school rather than leave it. For example, an official from a state in which only two students had transferred to another school felt that the local culture of community involvement in local schools could have made parents reluctant to exercise choice, especially if the receiving school is farther away. Some parents may also like the convenience of their child attending school close to home.

In an effort to mount a public information campaign that would spread the word to parents about the NCLB choice option, the U.S. Department of Education awarded a $600,000 grant to the Black Alliance for Educational Outcomes. This organization will develop a public information campaign to reach parents about the choices available to them under the No Child Left Behind Act (BAEO, 2002). It is too early to predict the effects of this campaign. Even with a national campaign, districts will still have to implement their own public information efforts.

Current Issues, Problems, and Obstacles

Based on state and local experiences so far, some issues, problems, and obstacles have emerged in implementing the choice provisions of the law.

- Districts, especially large urban districts, are struggling with capacity and class size limits.

In our interviews, some states reported that districts are struggling to place students who have requested transfers, because of limited capacity or class size constraints in the receiving schools. Space in schools not identified as needing improvement is often limited, and districts find this demand difficult to accommodate, particularly in cases where large numbers of students apply for transfers or many schools have been identified as needing improvement. Los Angeles, for example, had 230,000 students who qualified for 100 available spaces in fall 2002, while Baltimore had 30,000 students qualifying for 194 spaces (Holland, 2002). These examples occurred before the final regulations were released and USED had made clear that limited capacity cannot be used to deny students transfers to better-performing schools. To comply with the regulations, some school districts will have to scramble to make room in better-performing schools, adding teachers and classes and perhaps even adding mobile classrooms, split sessions, or other strategies used in overcrowded schools. The case study of St. Louis at the end of this chapter illustrates what one urban district is doing to try to make choice run smoothly.

Before the final regulations were released, some states had passed legislation to limit the public school choice required by NCLB. In Illinois, the General Assembly approved legislation requested by the Chicago Board of Education to exempt magnet schools and crowded schools from the list of "receiving" schools (Catalyst Chicago, 2002). The final non-regulatory guidance makes clear that a district may not exclude magnet and special-focus schools from the list of choice schools. However, the admissions requirements for getting into these schools should also apply to transfer students.

- Districts in rural and remote locations have practical issues with implementation.

Some states in our survey reported this fall that serious logistical issues could make it difficult for districts to implement public school choice options, even with a good faith effort to comply with the law and regulations. For instance, some rural districts have only one school at each grade span and cannot make public school choice available to their students. Using NCES data, Alexander Russo (2002) calculated that among the more than 14,000 school districts in the nation, one in three has just a single school per grade level. In Kentucky, for example, there are six such districts. As advised by USED, some states have encouraged school districts facing this situation to provide supplemental education services to students in schools in their first year of improvement status, or to form cooperative agreements with neighboring school districts. For instance, one county school superintendent in Kentucky with only one school per grade span said that the district will offer supplemental instruction for students in the school found to be in need of improvement (Deffendall, 2002). In Hawaii, some students in geographically remote areas would have to transfer to another island to exercise choice.

- The public school choice option is being exercised for reasons other than the intent of the law.

Some states officials that we interviewed indicated that some parents request transfers for reasons other than the intent of the law. For instance, parents may exercise choice

so their child can transfer to a school that is closer to their work. Or, students who are the highest achieving in a low-performing school could disproportionably request transfers. One state described a situation in which parents who had pulled their children out of public schools before NCLB have gone back to their neighborhood school to request a transfer for their child to attend a higher-performing public school, even though their child was not enrolled in the Title I school. The final regulations and guidance leave it to the states to define enrollment policies and how eligibility for enrolled students should be determined, but stipulate that transportation costs do not have to be paid for students who left a school in improvement prior to the enactment of NCLB.

Issues to Watch

EXTENT OF USE

In order for the federal government, states, and districts to have a clear picture of the extent of use of public school choice, the reasons why parents did or did not exercise this option should be studied. However, outside of collecting raw numbers on the children and schools using this option, there are currently no requirements for the district, state, or federal government to conduct detailed analyses. Tracking various trends can help state and federal policymakers better understand the issues surrounding public school choice and make decisions in the future informed by concrete information.

IMPACT OF CHOICE ON STUDENT ACHIEVEMENT AND SCHOOL QUALITY

A major question is whether choice is making a difference in student learning. To ensure that the public school choice requirements are not just a band-aid solution that has little or no impact on achievement, policymakers and researchers should closely watch changes in the achievement level of students who exercise this option. Empirical evidence is needed to determine whether choice is contributing to the greater goal of improving student learning.

Simply placing a low-achieving student in a higher-achieving school may not improve the performance of that student. Children who have been behind in the past and who have not received the supports needed to reach their academic potential will continue to remain behind unless they receive additional supports and/or services to help them address the problems that contributed to their poor performance. Claims that choice improved student performance should be backed up by evidence that shows what additional support(s) students received and to what extent the transfer has contributed to their achievement.

A related question is what happens to the quality of education in a school, or for that matter across a district, if significant numbers of students request transfers from under-performing schools. Will the sending school improve, or will performance decline even more if many students leave, especially if those who leave are not the lowest achievers? What will happen to achievement in the receiving school if large numbers of students enter who may not be prepared for a demanding curriculum? Research is also needed to answer these questions.

TRANSPORTATION COSTS

Some districts are trying to keep costs down by limiting the schools to which students can transfer. In situations where single students choose to attend different schools a great distance from home, transportation costs for the school or district could be high. Districts will have to strategically determine the most cost effective way to handle transportation while complying with the law and regulations. For instance, Chicago has restricted transfers to within a three-mile radius (Catalyst Chicago, 2002). The final regulations and guidance note that school districts can establish such transportation zones as long as the choice option is made as broad as possible, but at a minimum includes at least two choices. Additional experience with implementing the option will reveal whether transportation costs are a significant factor.

PARENT REQUESTS THAT CANNOT BE MET

In some states, there has been confusion as to what the public school choice option means. Some parents have made requests that cannot be met, such as requesting the choice of a private school. One state official interviewed said that disseminating correct information to parents has been a tremendous task.

Supplemental Education Services

NCLB Requirements for Supplemental Services

The federal Title I program has always allowed schools to provide additional instructional services to children after school, during the summer, and on weekends. The No Child Left Behind Act marks the first time, however, that the federal law has included a mandatory supplemental education services requirement, and the first time that public school children are specifically allowed to receive services from providers outside the school system, paid for with federal funds.

In addition to offering public school choice, Title I schools in their second or subsequent years of school improvement status must offer supplemental educational services to students from low-income families. These services include tutoring and supplemental academic enrichment services, as shown in **Box 3-B.** These services will be paid for out of the same 20% set-aside of funds that school districts must reserve for choice programs.

These supplemental services can be provided by a public or private school entity, educational agencies, a public or private institution of higher education, or a nonprofit, for-profit or faith-based organization. Parents will choose the providers they want to serve their children from a list of state-approved providers that are in the area or that offer services via distance learning technology. The law calls on states to develop objective criteria for selecting service providers that must include:

1) A demonstrated record of effectiveness in improving student academic achievement;

BOX 3-B SUPPLEMENTAL EDUCATION SERVICES

Supplemental education services should be:

(1) In addition to instruction provided during the school day;

(2) Specifically designed to—

(i) Increase the academic achievement of eligible students as measured by the state's assessment system; and

(ii) Enable these children to attain proficiency in meeting state academic achievement standards; and

(3) Of high quality and research-based.

Source: P.L. 107-110, the No Child Left Behind Act

2) Documentation that the instructional strategies used by the provider are high quality, based on research, and designed to increase student academic achievement;

3) Evidence that services are consistent with the instructional program of the school district and with state academic content standards;

4) Evidence that the provider is financially sound; and

5) An assurance by the provider that it will provide supplemental education services in accordance with applicable federal, state, and local health, safety, and civil right laws.

Department of Education Activities

On July 13 and 14, 2002, the U.S. Department of Education held a NCLB Supplemental Services conference in Washington, D.C., that was attended by representatives of state education agencies and various education organizations. In the view of some states, the information provided by the Department at the July meeting on supplemental services was inadequate, as characterized by a story in the *Title I Monitor* (2002) with the headline, "Supplemental Services Meeting Generates More Questions Than Answers."

On June 14, the Secretary released a letter to the chief state school officers that contained guidance about the supplemental services provision and reiterated that these opportunities were to be afforded to children beginning "this fall."

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The letter also offered some clarification to the law, including the following:

- School districts are not required to provide supplemental education services to students in a school that has been removed from the school improvement list based on 2001-02 assessment results.
- Parents, the school district, and the chosen provider must develop specific academic achievement goals for the student, measures of student progress, and a timetable for improving achievement.
- If funds for supplemental services are limited, the lowest achieving students must be given priority.
- The list of state-approved providers must be updated at least annually.
- States may not require supplemental education service providers to hire only certified teachers in order to be eligible.
- Regardless of whether the provider is a public, private or faith-based entity, all criteria for selecting providers must be applied consistently.
- Providers that are located outside the district or state are eligible to provide services if they meet the criteria used to approve all providers.
- Charter schools that receive Title I funds and are identified as being in need of improvement must offer supplemental education services.
- Supplemental education service funds can be used to transport students to and from approved providers.

The final regulations issued on November 26, 2002, made several additional clarifications to the supplemental services provision:

- The Department of Education has changed its earlier position about whether states can require supplemental service providers to document that their instructional strategies and services are grounded in "scientifically based research," as defined by NCLB. (As discussed in chapter 5 of this report, NCLB requires public schools to use instructional strategies based on scientific research in many federal programs.) Although the Secretary's June 14 letter said that providers should not be disqualified on these grounds, the final regulations removed this interpretation, which means that states could impose such a requirement.
- The regulations require school districts to ensure that English language learners receive appropriate supplemental educational services and language assistance in the provision of those services.
- Supplemental educational services have to be consistent with, but do not have to meet the goals and objectives of, the Individual Education Program (IEP) for students with disabilities. Services should be in addition to other services received by students that are consistent with their IEPs and section 504 plans.
- The regulations prohibit school districts identified for improvement or corrective action from providing supplemental education services themselves.

On December 12, 2002, the Department released more detailed non-regulatory guidance on supplemental educational services. The guidance offered further clarifications to the law, including the following:

- The state-approved list of supplemental education service providers must include a brief description of the services, qualifications, and demonstrated effectiveness of each provider.
- Faith-based organizations may become providers if they meet the requirements of the statute and regulations.
- Supplemental education service providers are not governed by the teacher quality requirements that apply to Title I schools.
- A school district may request an exemption from the state on all or part of the supplemental education service requirements if none of the providers can make their services available to the school district because of geographic constraints or by distance learning or if the school district can provide evidence that it cannot provide these services.

State Activities

STATE CRITERIA

Our review of state applications and our state interviews confirmed that all states used or planned to use the criteria from the legislation as a basis for rating and selecting providers. Some adapted the *SEA Toolkit on Supplemental Educational Services in the No Child Left Behind Act,* which was created by the Council of Chief State School Officers and the Education Quality Institute and funded by the U.S. Department of Education through the State Education Policy Network. This toolkit includes a sample application form for supplemental education service providers, a sample checklist for reviewing applications from prospective providers, recommendations for the process of approving providers, communication issues for states to consider, and information resources such as websites. Some states used a combination of the law, the toolkit, and/or state-specific criteria in their selection process.

The U.S. Department of Education did not provide any other model to help states prepare to implement the supplemental services provision before the 2002-03 school year began.

STATE LISTS OF PROVIDERS

When we interviewed states during the fall of 2002, 15 states had a list of approved supplemental service providers. Several states had interpreted the Secretary's statement in his June 14 letter to mean that supplemental services must be made available this fall, although not necessarily by the beginning of the school year. In October, most schools were at least one month into the school year, and the majority of the states were still in some phase of the selection process. States were still developing a rubric for the application, waiting for the completed applications to be returned, assembling a task force to develop a process for selecting providers, reviewing applications, or waiting for the selected providers to confirm that they wanted to be included on the state-approved list.

In our interviews, the most common reason cited by states for this delay was that they were waiting until the federal government issued final regulations and guidance before selecting providers. Another reason was that in many states, relatively few Title I schools were in the stage of school improvement where they must offer supplemental education services. Some states, like Florida, did not have any schools in school improvement status, which meant that no students were eligible for supplemental services. Although these states are aware that they may have to produce such a list in the coming years, they have opted not to create a list this school year. Instead, they were focusing their time, money, and human resources on fully implementing the services and programs that are required for 2002-03.

Finally, many states indicated that they were still waiting for the release of 2001-02 assessment results. The U.S. Department of Education has given states the option to remove schools from the list of those identified for improvement if their 2001-02 test results show achievement gains, but they do not have to use these data to add more schools to the list of those needing improvement. Some states have indicated that until their '01-'02 data are reported, they cannot be certain which schools will need to provide supplemental services. One state does not expect to receive '01-'02 score results until the spring of 2003. However, USED administrators have said in several interviews and written statements that waivers or delays in implementation will not be permitted. If a state elects not to use 2001-02 test results to add more schools this year, the regulations indicate that these data will be used in the following years to identify schools.

Among those states that do have approved lists of providers, many states, including California, Maryland, New York, and Tennessee, have posted their lists on the state education agency website. The number of providers varies widely by state. Maryland had only two providers that were approved in the initial application process, while California had already approved 113 providers in September 2002 when our interviews were conducted. In some states, the lists for this school year will change, because the state has a rolling application process and will continue to accept applications and approve providers. In November 2002, Maryland released a second request for applications and will add providers as they complete the process.

LOCAL IMPACT

Early estimates from cities like Los Angeles and New York suggest that far fewer students are seeking supplemental education services than might have been expected. In a survey conducted by the *New York Times* in November 2002, 10,000 of the 240,000 eligible students in New York City had signed up with an outside provider (Goodnough, 2002). Because so many states have not yet issued their lists, it is difficult to know whether this early trend will hold, or whether more parents and students will take advantage of this option as information about it spreads. Unlike public school choice, use of third party supplemental service providers, selected by parents, is a new phenomenon in most of the country, and it will take a while for understanding of the concept to spread.

One school district we spoke with was trying to stay ahead of the curve to provide supplemental services to its students. This district is located in a state that, like many others, had only a small number of schools required to offer supplemental services to

students in the 2002-03 school year. The state did not have the capacity to put together a list of providers by spring 2003, so with state permission, the district we interviewed in that state sent out its own request for proposals for supplemental service providers. In fall 2002, this district was working to set up contracts with several national and local service providers. Even though this district is required to provide supplemental services to the students in only one school, it is also making these services available to three other schools in the district (two that currently must offer choice and one that will likely be required to offer choice next year). Since transportation costs for school choice have proved to be low because of an agreement with the local public transportation administration, the district has the funds to expand this option to these additional children. Rather than carry these Title I funds over to next year, the district has chosen to start helping to improve the academic achievement of these students now rather than later.

Issues to Watch

Several issues should be watched to determine how the supplemental services provisions are implemented and what their effects are.

HOW WILL STATES MONITOR THE EFFECTIVENESS OF SERVICES?

NCLB requires states to monitor the quality and effectiveness of the services or program offered by approved providers. Since supplemental education services are only one part of the educational process that could affect learning and achievement, it will be difficult to identify whether a particular service actually improves student achievement, and if so, to what extent. States face a challenge in figuring out how to isolate this part of the educational process.

HOW ARE STATES DISSEMINATING INFORMATION TO PARENTS?

Although the requirement in the law to inform parents of their options rests with local school districts, states should monitor how and if parents are informed about the availability of supplemental services. In our interviews, many states were still in the process of developing their approved-provider list. It was unclear how this information will eventually get into the hands of parents. The *New York Times* reports that thousands of children in New York City will miss out on free tutoring that they qualify for under NCLB because the district did not give parents enough information or time to sign up (Goodnough, 2002)

TO WHAT EXTENT ARE SUPPLEMENTAL EDUCATION SERVICES BEING USED?

In future years, it should be easier to obtain data about how many students are receiving supplemental services. In addition, research should look at the characteristics of students seeking these services. The legislation stipulates that students receiving supplemental services should be from low-income families, but are they the lowest achieving, or a mix, and do the services that students seek match their academic need? Who are the providers? Are parents being adequately informed about the services offered by the different providers and their effectiveness?

Conclusion

It is still early to predict what effect, if any, public school choice and supplemental education services will have on increasing student achievement. However, there are some key areas of implementation that should be monitored to help the federal government, states, districts, and schools identify the progress or lack of progress in providing these services.

CASE STUDY
SCHOOL CHOICE IN ST. LOUIS

The St. Louis Public Schools implemented school choice quickly, efficiently, and thoughtfully, and the district is already working to make next year even better.

Working with a short timeline, the St. Louis, Missouri, Public Schools efficiently managed and carried out NCLB's school choice provisions. Seventeen of the district's Title I schools failed to make adequate yearly progress for two consecutive years and were required to offer choice. On August 5, 2002, the St. Louis Public Schools sent out approximately 7,000 school choice letters and applications to parents of students attending these six middle and eleven elementary schools. Of 280 applicants, 125 students were offered places in six qualifying transfer schools, and parents were notified by August 23, 2002. Transfer students began the 2002-03 school year in their new schools, and as of September 24, 2002, 38 students had enrolled in transfer schools.

Finding Space and Selecting Schools

The two primary criteria for identifying schools as transfer schools were academic performance and space. To help ensure that students would be less likely to go through the choice process again in the future, "challenge schools"—those deemed at risk of being placed in school improvement in the future—were not considered as potential transfer schools. Only solidly performing schools were chosen as transfer schools.

Finding schools with available space was more difficult and was based on enrollment projections from the previous year, which led to one problem. After choice letters were sent out to parents, the district determined that there were a limited number of spaces in six elementary schools and none in middle schools. Thus, no middle school students were able to transfer this year even though they had been sent applications and letters.

Finding places for special needs students was a high priority for the district. To make sure that choice was available for all special needs students, a few places were made available at elementary schools other than the six originally identified as transfer schools.

Selecting and Placing Students

The most time-intensive part of the school choice process was identifying and placing students. Since the number of spaces was limited, only low-income, low-achieving students were able to transfer. Students were ranked from highest to lowest priority in the following way.

- Students who scored below level in reading and mathematics and received free lunch.
- Students who scored below level in either reading or mathematics and received free lunch.
- Students who scored below level in reading and mathematics and received reduced-price lunch.
- Students who scored below level in either reading or mathematics and received reduced-price lunch.

After it was determined which students had the greatest need, the district then attempted to match students with schools that were close to where they lived to minimize travel time for students.

Placing English language learners and special education students also presented some additional challenges for the district. Letters and applications were translated into five different languages (Bosnian, Somali, Vietnamese, Spanish, and Farsi) and sent to parents of ELLs. Parents of ELLs requesting placement in choice schools were assigned schools with programs specific to the needs of ELLs. Special education students were placed based on their IEP, in consultation with the Special Education Office, to ensure that placement met IEP requirements.

Aside from the logistical problems, placing students also caused some tension with parents, because they believed that they would be able to choose the school their children would be attending. While parents' concerns were eventually addressed, the district had to spend a significant amount of time with them explaining the process.

Lessons Learned and Concerns

While school choice went smoothly this first year, for the most part, there are things the district would change for next year and would suggest for other districts just beginning the choice process.

First, the district would advise other districts to form an NCLB implementation committee that includes parents and representatives from every department in the district, because every department, including transportation, ESL, and others, will be affected.

Second, the district had thousands of returned letters because parent addresses had not been purged from the information system. Getting rid of old addresses not only cuts down on costs but also minimizes confusion on the part of parents whose students are no longer enrolled in choice schools.

Third, districts should take advantage of whatever extra time they have to get the choice process started earlier. Because of the chosen timeline steps for AYP, Missouri will not be identifying any new schools under its accountability system in the coming year. Therefore, St. Louis already knows which schools will have to offer choice in the coming year. This helps them get a jumpstart on planning for next year, and they plan to send out letters to parents in January 2003 for choice in fall 2003.

Impacts

While long-term impacts of choice in St. Louis will not be seen for years to come, the district does have some first thoughts. The loss of funding in schools that had to offer choice was minor this first year because the number of students transferring was low. Most choice schools lost less than 10 students. In years to come, if more space is found in transferring schools, this may no longer be the case.

While schools as a whole may not be greatly affected, the district was concerned that students whose parents opted for choice may lose out on the extra services provided in the schools that are in need of improvement. These schools get extra funding and have additional programs that transfer schools do not. Therefore, while they believe that choice will increase performance for these students, it may not be as rapid as if they had stayed in their home schools.

Source: Center on Education Policy school district interview

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CHAPTER 4

Improving the Qualifications of Teachers and Paraprofessionals

KEY FINDINGS

- At the time of our interviews, all the states we interviewed had or would soon have information on the number of teachers who are fully certified, but many states indicated that their data gathering systems will have to be revised to fully reflect the federal definition of "highly qualified" teachers.
- States have not made as much progress in gathering data about the qualifications of paraprofessionals working in Title I-supported programs. Most states will need to start from scratch to develop systems to collect this information, or will rely on school districts to gather it.
- In interviews conducted for this report, most state personnel rated the written guidance issued by the U.S. Department of Education on the NCLB teacher quality provisions as "good" or "fair." But states gave the Department lower marks of "fair" or "poor" for the timeliness of this guidance.
- The federal definition of what constitutes a "highly qualified" teacher is tied to state certification and licensure requirements. Some experts have questioned the rigor of these systems for adequately preparing teachers and have called on states to make their teacher certification requirements more stringent. Therefore, the effect that NCLB teacher and paraprofessional qualification requirements could have on improving instruction will depend in part on both the rigor of states' teacher certification requirements and the evaluation instruments used to assess the knowledge and skills of current teachers and paraprofessionals.

A Stronger Federal Role

Through the No Child Left Behind Act, the federal government is taking broad and unprecedented steps to raise the qualifications of the nation's public school teaching force and of the instructional aides, also known as paraprofessionals, who work in Title I programs for disadvantaged children.

NCLB requires states to ensure that all public school teachers who teach core academic subjects are "highly qualified" by the end of school year 2005-06. (See **Box 4-A** for a list of the law's main deadlines affecting teachers and paraprofessionals.) The law essentially defines a highly qualified teacher as one who is fully certified and who demonstrates competence in the subject that he or she teaches by having completed certain academic coursework, passed a state examination, or successfully completed a rigorous state evaluation. The Act also requires most Title I paraprofessionals to have at least two years of college or to pass a state or local exam by January 2006. These federal requirements for teachers and paraprofessionals have already taken effect for two groups of newly hired personnel: teachers hired after the first day of school year 2002-03 to work in Title I programs; and Title I paraprofessionals who provide instructional services and were hired after January 8, 2002 (the date the law was enacted).

In both substance and scope, these requirements represent a major expansion of the federal role concerning teacher quality. Traditionally, states have determined the requirements for licensing and certifying people who want to teach in their states. With NCLB, the federal government, for the first time, has established minimum qualifications for *all* teachers of core subjects, not just those whose salaries are paid for by a federal program. The number of teachers affected will almost certainly be a very large share of those who teach core subjects of the nation's 2.9 million public school teachers (National Center for Education Statistics, 2002). States still have the authority to set requirements for teacher preparation, certification, testing, and related areas, but the policies they establish will have to conform with federal law—which will mean a change of policies in most states.

The new federal requirements will also have a substantial impact on paraprofessionals who provide instructional services. Under the old law, paraprofessionals supported with Title I funds only needed a high school diploma or the equivalent, so the new law has significantly ratcheted up the minimum qualifications for this group—which in school year 1997-98, numbered almost 77,000 people (U.S. Department of Education, 1999a). Under NCLB, local school districts, in tandem with the states, are responsible for ensuring that their paraprofessionals meet these higher requirements. Many states or local school districts do not require Title I paraprofessionals to complete at least two years of college, nor do they have testing policies for paraprofessionals, and they will need to establish such requirements or policies as a result of the federal law.

The new teacher and paraprofessional requirements are creating considerable challenges for states as they implement NCLB. This chapter analyzes the issues faced by states and school districts in meeting these requirements and reports findings from our interviews with state department of education personnel. The chapter also highlights issues to watch as implementation proceeds during the next few years.

BOX 4-A DEADLINES FOR MEETING THE TEACHER AND PARAPROFESSIONAL REQUIREMENTS OF THE NO CHILD LEFT BEHIND ACT

JANUARY 8, 2002

All Title I paraprofessionals must have at least a high school diploma or its equivalent.

All Title I paraprofessionals hired after January 8, 2002 (except those with non-instructional duties such as those who serve as translators or conduct parent involvement activities) must have completed at least two years of higher education or have demonstrated their knowledge and skills through a test and other rigorous standards of quality.

SCHOOL YEAR 2002-03

All teachers hired after the first day of school year 2002-03 to work in a program supported by Title I must meet the NCLB definition of "highly qualified."

By May 2003, states must set annual measurable goals for each of their school districts and schools, including annual increases in the percentage of highly qualified teachers and the percentage receiving professional development to become highly qualified.

School districts receiving Title I, Part A funds must begin filing annual reports on their progress, and the progress of their individual schools, in meeting their annual measurable goals. States must also submit an annual progress report to the U.S. Secretary of Education.

School districts must inform parents of students attending schools receiving Title I funds that they may request information on the qualifications of their child's teachers. Also, parents of children in Title I schools must be informed in a timely manner, if their child has been assigned to or taught by a teacher who is not "highly qualified" for four or more consecutive weeks.

JANUARY 8, 2006

By January 8, 2006, all Title I paraprofessionals, regardless of when they were hired, must meet the NCLB qualifications of having completed at least two years of higher education or having demonstrated their knowledge and skills through a test and other rigorous standards of quality. Paraprofessionals who serve as translators or conduct parent involvement activities are exempted from these requirements.

END OF SCHOOL YEAR 2005-06

By the end of school year 2005-06, all public school teachers who teach core academic subjects must meet the NCLB definition of "highly qualified."

Source: P.L. 107-110, the No Child Left Behind Act

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Teacher Quality

Background

Before NCLB, the federal government played a limited role in improving the skills of the nation's teaching force. Over the last 50 years, the major federal programs affecting teachers have included scholarship and fellowship assistance for teachers in training, student loan forgiveness for teachers working in high-need schools, professional development funds, and, starting in fiscal year 1999, federal aid to help states and school districts reduce class size. The National Science Foundation, the National Endowment for the Arts, and many other federal agencies also administer programs to improve teaching.

Through amendments to Title II of the Elementary and Secondary Education Act (ESEA), the No Child Left Behind Act continues federal aid to improve teachers' skills and knowledge through high-quality professional development and to reduce class size by hiring more teachers. In FY 2002, Congress appropriated $2.85 billion for the state grants portion of Title II part A. Congress also appropriated an additional $18 million for a Title II program to help members of the military to become teachers, and another $35 million to prepare mid-career professionals from other fields and new college graduates to become teachers in high-need schools.

It is the sections of NCLB often referred to as the teacher quality requirements that represent the real evolution of the federal role. These requirements are based on the assumption that students taught by fully certified teachers perform better academically than those taught by teachers who lack certification in the subject they are teaching. Several pieces of research corroborate this assumption. In one of the most compelling pieces, Dan Goldhaber and Dominic Brewer found that 12th grade students who were taught by certified teachers performed significantly better in mathematics than those students taught by teachers with private school certification or teachers uncertified in their subject area (Goldhaber & Brewer, 2000).

The new provisions are intended specifically to rectify the problem of large numbers of students being taught by teachers with inadequate content knowledge and preparation in the subjects they are teaching. According to the National Commission on Teaching and America's Future (1996), 23% of all secondary school teachers do not have a college major in their main field of teaching; among teachers who teach a second subject, 36% are unlicensed in the field and 50% lack a minor in the second subject matter. For specific subject areas, a National Center for Education Statistics analysis of public high school teachers (2002) found that in the 1999-2000 school year, 21% of math teachers, 19% of English teachers, 17% of science teachers, and 39% of foreign language teachers did not have an undergraduate or graduate major in their main field of assignment. For advanced high school science subjects, the percentages without a major in their field were even higher: 51% of physics teachers, 54% of chemistry teachers, and 65% of geology/earth and space science teachers were under-qualified by this definition.

These "out-of-field" teaching assignments, as they are called, are more prevalent in schools with large proportions of minority students and low-income students. In fact, the least experienced and least qualified teachers often teach students with the greatest educational needs. Based on an analysis of data from the U.S. Department of Education and other sources, the Education Trust concluded that 34% of secondary school-level courses in high-poverty schools were taught by teachers without at least a college

minor in their subject, compared with 19% of secondary courses in low-poverty schools (Jerald, 2002). Because federal Title I funds flow to schools with large proportions of low-income students, the qualifications of teachers in these schools have been a particular concern of the Congress and the Administration.

These problems of out-of-field teaching persist because many school districts, especially urban districts, have difficulty attracting and keeping highly qualified teachers. Many rural schools have similar difficulties, or they have such small enrollments that they must assign teachers to teach multiple subjects. The choice in these settings often comes down to hiring an under-qualified teacher versus hiring no teacher at all, or reassigning a teacher to a subject outside of his or her field. It is too early to tell how the teacher quality provisions of NCLB will impact school districts that face these choices, but it could be that NCLB will exacerbate an already difficult situation.

Teacher Quality Requirements of NCLB

Some of the significant new teacher requirements already mentioned are contained in the NCLB amendments to Title I of the Elementary and Secondary Education Act. States that receive Title I funds—as all states do—must ensure that all of their public school teachers who teach core academic subjects (English, reading or language arts, mathematics, science, foreign languages, civics, government, economics, arts, history, and geography) are highly qualified by the end of school year 2005-06. The law's criteria for what constitutes "highly qualified" vary (the specific criteria are described in **Box 4-B**), but generally speaking, they require teachers to be fully certified and to demonstrate their knowledge and skills by either having taken sufficient academic coursework in their field, passing a state test, or successfully completing a rigorous state evaluation. At the beginning of each school year, schools receiving Title I assistance must inform parents of students attending such schools that they may request information on the professional qualifications of their child's teacher.

The new federal criteria are effective *immediately* for public school teachers who were hired the day after the first day of school year 2002-03 (which varied, depending on the school district's schedule) and are teaching core subjects in programs supported by Title I, Part A funds. (Part A, the largest component of Title I, authorizes grants to school districts.) In draft regulations for NCLB issued in August 2002, the U.S. Department of Education made an important clarification. The regulations specified that the federal teacher requirements apply not just to newly hired teachers in Title I "targeted" assistance programs (those that operate as separate programs within a school and serve only low-achieving children), but also to newly hired teachers of core academic subjects in Title I "schoolwide" programs (those that use Title I funds to improve instruction for all children throughout an entire school; only schools with at least 40% of the students from low-income families are eligible to operate schoolwide programs).

States must develop a plan outlining how they will meet the federal teacher requirements by the end of the school year 2005-06. The plan must establish annual measurable goals for each school district and school in the state; these goals must include an annual increase in the percentage of highly qualified teachers in each school district and school, and an annual increase in the percentage of teachers receiving high-quality professional development aimed at making them highly qualified and successful classroom teachers.

BOX 4-B FEDERAL DEFINITION OF "HIGHLY QUALIFIED TEACHER"

The No Child Left Behind Act requires that all public school teachers teaching core academic subjects be "highly qualified." As shown below, this term has different meanings for current versus new teachers and for elementary versus middle or high school teachers.

NEW TEACHER – ELEMENTARY SCHOOL

A public elementary teacher who is new to the profession is considered to be highly qualified under the No Child Left Behind Act if he or she has:

1) Obtained full certification or passed the state's licensing exam and holds a license to teach; AND
2) Has not had certification or licensure requirements waived on an emergency, temporary or provisional basis; AND
3) Holds at least a bachelor's degree; AND
4) Has demonstrated, by passing a rigorous state test, subject matter knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic school curriculum.

NEW TEACHER – MIDDLE AND HIGH SCHOOL

A public middle or high school teacher who is new to the profession is considered to be highly qualified under the No Child Left Behind Act if he or she has:

1) Obtained full certification or passed the state's licensing exam and holds a license to teach; AND
2) Has not had certification or licensure requirements waived on an emergency, temporary or provisional basis; AND
3) Holds at least a bachelor's degree; AND
4) Has demonstrated a high level of competency in each of the subject matters he or she teaches by:
   A) Passing a rigorous state academic subject test in each of the subjects he or she teaches; this subject matter knowledge could be assessed either with a state-required certification or licensing test, or with a separate test in each academic subject that the teacher teaches; OR
   B) Successfully completing an academic major, graduate degree, coursework equivalent to an undergraduate major, or advanced certification or credentialing in each of the academic subjects he or she teaches.

CURRENT TEACHERS – ELEMENTARY, MIDDLE AND HIGH SCHOOL

A public school teacher who is not new to the profession is considered to be highly qualified under the No Child Left Behind Act if he or she has:

1) Obtained full certification or passed the state's licensing exam and holds a license to teach; AND

2) Has not had certification or licensure requirements waived on an emergency, temporary or provisional basis; AND

3) Holds at least a bachelor's degree; AND

4) Meets the appropriate criteria outlined above for teachers new to the profession, including the option for passing a rigorous state academic subject test; OR

5) Has demonstrated competence in all the academic subjects in which the teacher teaches based on a high objective state uniform standard of evaluation.

CHARTER SCHOOL TEACHERS

Public school teachers in charter schools who are in compliance with the state's charter school law regarding certification or licensure of such teachers are considered "highly qualified."

ALTERNATIVELY CERTIFIED TEACHERS

A teacher who obtained certification through an alternative route is considered to meet the state certification requirement. However, the final regulations issued by the U.S. Department of Education clarify that a teacher in an alternative route program is highly qualified if he or she is making satisfactory progress toward full certification. Such teachers must receive high quality, sustained professional development before and while teaching; participate in a program of intensive supervision; and assume functions as a teacher for no more than three years before receiving full certification.

Source: P.L. 107-110, the No Child Left Behind Act

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School districts that participate in Title I must also develop plans for meeting the federal teacher criteria by 2005-06. Beginning in school year 2002-03, both the states and school districts must annually report on their progress in meeting their measurable goals. School districts must also require principals of Title I schools to annually attest that their schools are in compliance with the teacher and paraprofessional qualification requirements.

The No Child Left Behind Act also authorizes federal funding to increase the number of highly qualified teachers. Districts must use at least 5% of their Title I, Part A grant for professional development aimed at helping teachers become highly qualified (which is not a new source of funding but a redirection of existing funds). A school that has been identified as needing improvement must reserve 10% of its funds to use for professional development activities. Also the revised version of Title II of ESEA authorizes federal grants to states to train and recruit highly qualified teachers and principals.

Title II also spells out what happens to school districts that fail to make sufficient progress in raising teacher qualifications. If a state determines that a school district has failed to make progress toward its annual teacher quality goals for *two* consecutive years, the district must develop an improvement plan addressing the obstacles that prevented it from reaching its goals. The state must also provide technical assistance to the district. If the school district fails to make progress toward its teacher quality goals for *three* consecutive years, and also fails to make adequate yearly progress in raising student achievement for three consecutive years (see chapter 2 for an explanation of the student achievement requirements), then the district must work out an agreement with the state about how to use its Title II funds for professional development activities and develop strategies that will help it reach its teacher goals.

U.S. Department of Education Actions

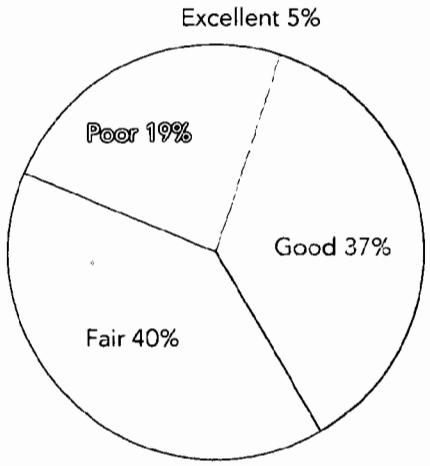
On June 6, 2002, the U.S. Department of Education issued draft guidance for the "Improving Teacher Quality State Grants" program authorized by Title II. On August 6, 2002, the U.S. Department of Education issued draft regulations for the teacher quality provisions included in Title I.

The final Title I regulations, issued by the U.S. Department of Education on November 26, 2002, included an important clarification with regard to teachers who enter the teaching profession through alternative routes. The final regulations clarified that alternative certification programs should not become "vehicles for granting long-term waivers of certification requirements" and specified that teachers in alternative route programs should receive sustained, high-quality professional development, participate in a program of intensive supervision, assume functions of a teacher for no more than three years before receiving full certification, and demonstrate satisfactory progress toward full certification.

On December 19, 2002, USED issued updated guidance on the Teacher Quality State Grants program. Some of the issues raised in this chapter may be addressed by this guidance, but we were not able to include a discussion of the updated guidance because of publication deadlines.

As shown in **Figure 4-A**, more than three-fourths (77%) of the state personnel we interviewed rated the quality of the written guidance given by the U.S. Department of Education on teacher issues as "fair" or "good." (These questions were asked before the

FIGURE 4-A STATE RATINGS OF QUALITY OF WRITTEN FEDERAL GUIDANCE ON TEACHER ISSUES

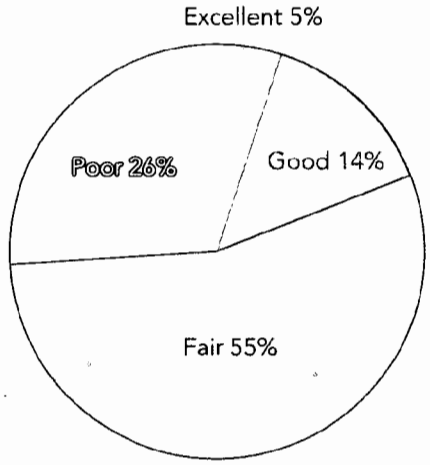


Number of states responding = 43

Note: Totals exceed 100% due to rounding.

Source: Center on Education Policy state interviews

FIGURE 4-B STATE RATINGS OF TIMELINESS OF WRITTEN FEDERAL GUIDANCE ON TEACHER ISSUES



Number of states responding = 42

Source: Center on Education Policy state interviews

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final regulations came out.) But as **Figure 4-B** illustrates, these state officials gave the Department lower marks on the timeliness of its guidance on these issues, with 81% rating it as "fair" or "poor." The majority of our interviews with the states took place before a key set of regional meetings held by the U.S. Department of Education in October, so we do not have information about whether states found these meetings helpful in implementing the teacher quality provisions.

State Activities

DATA COLLECTION

A critical question on the minds of policymakers, educators, and the public is how many current teachers are not highly qualified. For states to be able to answer this question and set measurable yearly goals for improving teacher quality, they must have a system for keeping track of the qualifications and assignments of public school teachers. All of the states we interviewed either already had a system for tracking school personnel in the state or were in the process of developing such a system. Some states have created electronic systems for retrieving this information from school districts, while others conduct periodic paper-and-pencil surveys of school districts.

Many of the states with existing teacher tracking systems said they would have to revise their existing systems to align them better with the requirements of the No Child Left Behind Act. Some states have already started making modifications, while others said they were waiting for more guidance (and hopefully more clarification) from the U.S. Department of Education about such issues as how to handle long-term substitute teachers and whether teachers with an "emergency" certificate that allows them to teach while pursuing full certification through an alternative route can be considered "alternatively" certified for purposes of NCLB.

Anecdotal evidence suggests that in some states and districts, the numbers of teachers not meeting the definition of "highly qualified" are large. Illinois had estimated that about 25,000 out of 130,000 teachers in the state are teaching without full credentials or in subjects for which they are not certified (Sack, 2002). A report of the Maryland Department of Education estimated that 10% of newly hired teachers, or more than 5,300 teachers, were hired with provisional certificates, meaning they had not yet passed the necessary state exams or coursework (Labbe, 2002a). In Philadelphia, by one report, more than half of the 600 new teachers hired this year were not fully certified (Mezzacappa, 2002).

States are also working to meet federal requirements for reporting and accountability. We asked states if they had established a reporting system for school districts in order to determine compliance with NCLB's educator quality provisions. Forty-one of the 44 states that responded to our question indicated that they have established a system for reporting information on teacher qualifications, or are in the process of developing one. We also asked states how they are ensuring that all new teachers hired after the first day of this school year to work in programs supported with Title I meet the definition of highly qualified. The 45 states that responded to our question reported a variety of strategies for monitoring compliance with this provision, including reviewing state licensure information to determine which schools were in compliance and which were not, checking compliance during state audit visits to school districts, or working with school districts to assist them in meeting the requirements.

STATE LICENSING AND TESTING REQUIREMENTS

The No Child Left Behind Act requires teachers new to the profession to be fully certified and to demonstrate appropriate knowledge and skills by passing a state test or, in the case of secondary school teachers, by having at least an academic major in the subject being taught. According to *Education Week*, 29 states and the District of Columbia require beginning teachers to pass exams of both basic skills and subject matter knowledge. Twenty-nine states and the District of Columbia require high school teachers to have a major in the subject matter they are teaching, and four of those and the District of Columbia also require middle school teachers to have a major in their subject assignment (Olson, 2002).

In some states, the federal requirement for middle school teachers to have either a major in their assigned subject or pass a knowledge test in their subject is posing problems. While most middle schools encompass grades 6 though 8, some include grade 5, which is typically taught by teachers with a general elementary school endorsement, rather than a subject matter specialty. Some middle schools are structured around departments, while others assign one teacher to teach reading and social studies and another to teach mathematics and science—a situation that could require teachers to be certified in multiple subjects under the new law. States that require only a general endorsement for middle school teachers are grappling with how they can carry out the NCLB requirements for this level of schooling. At press time, the U.S. Department of Education had not provided any written guidance on this issue.

When we interviewed state education personnel, we asked them about any recent or anticipated changes in the state's certification requirements. Thirty-two of the 44 states responding to this question reported that their states had made changes to their certification requirements in the last two years or will make them soon. In nearly all cases, the changes were meant to strengthen the certification process, either by having more rigorous requirements or by clarifying an earlier vague system. We do not know if recent changes made to state certification systems were in response to NCLB or if other conditions existed that caused the states to take action. Beginning on the next page, a case study of Kansas discusses how changes to that state's licensure system has helped to prepare it to implement the teacher requirements of NCLB.

STATE STRATEGIES TO DEVELOP HIGHLY QUALIFIED TEACHERS

According to our review of state consolidated applications, states are planning a variety of approaches to ensure that teachers meet the federal requirements. Some of the most common or interesting strategies are shown in **Table 4-A.** A number of states plan to adopt new certification/licensure systems, including performance-based systems, or to change their existing ones. Several states already have or are putting in place alternative routes to certification, and some states intend to provide financial assistance to teachers to help with certification costs. One state was developing strategies to improve the passing rates of lower-performing demographic groups on an entry-level teacher competency exam; and another planned to phase out provisional certification altogether. Many states intended to improve their support systems for teachers, including mentoring for new teachers or special programs to retain teachers in high-poverty areas. Finally, numerous states planned to form partnerships with higher education institutions, businesses, and other entities to better prepare under-qualified teachers. It should be noted that some states listed multiple approaches.

CASE STUDY
TEACHER QUALITY IN KANSAS

Kansas's work in changing its teacher licensure system has positioned it well to implement NCLB's teacher quality provisions.

The emphasis of No Child Left Behind on improving teacher quality has proved to be a good fit with Kansas's own education reform efforts. Improving teacher quality has been a long-term goal for Kansas. The state has spent the last 10 years revising its teacher licensure system, and on July 1, 2003, a new performance-based licensure system will be instituted in the state. In addition to the state's own commitment to improving teacher quality, Kansas has sought help from the federal government in this task and is currently in its third year of a Higher Education Act Title II Teacher Quality Enhancement Grant.

Kansas's work has given the state a jumpstart in the implementation of the NCLB teacher quality provisions in a variety of areas. Although much of this work was not in response to NCLB, it does address many of the requirements of the law.

More Rigorous Licensure

In hopes of producing more highly qualified teachers, the state's new licensure system will be far more rigorous than the previous one. First, the state has changed the types of assessments teachers must pass to be licensed in the state. Teachers will continue to take a pedagogy test, Principles of Learning and Teaching, but they will also be required to take Praxis II content area tests and a performance assessment. The performance assessment will be a portfolio based on professional education standards in the state. Also, 15 of 22 teacher education programs in the state currently require a subject area major for their students, and the other 7 require content coursework equivalent to a major.

Current Teacher Qualifications

Kansas's current data collection system for teacher qualifications, the Certified Personnel Report, will have to be modified to gather the information required under NCLB. However, the state believes that these changes are minor and that current data are close to meeting the requirements of NCLB.

For the most part, the state believes that its teaching force is in "good shape." Approximately 95% of teachers in Kansas are appropriately certified for the teaching assignments that they hold. However, the state does have some concerns. Three percent of the state's teachers are adding endorsements and are provisionally certified in those new areas, meaning that they hold one certification and are teaching in an area where they are more than halfway done with the requirements for this second certification. The state has set the bar for provisional certification much higher than in other states and is concerned about the implications of this strict definition under NCLB.

The state is much more concerned about the number of waivers it has granted to

teachers. Due to some teacher shortages, especially in special education but also in math, science, music, and foreign languages, the state has granted waivers for licensed teachers who have just begun a second certification and are teaching in that area. Ensuring that these teachers meet the NCLB requirements may be the state's most difficult implementation problem.

Veteran Teachers

The state has yet to choose a "rigorous standard of evaluation" for veteran teachers to demonstrate competence in teaching. In early December, the state will convene a group of Kansas master teachers, certification experts, and National Education Association (NEA) representatives to discuss options.

The NEA has offered some suggestions, but the state has not felt that they have been rigorous enough. A pencil and paper test has also been discussed. If this is the route the state takes, it would like to develop its own tests for this purpose, so the tests would reflect that veteran teachers were trained in a different era. However, the cost of doing so may be prohibitive.

Recruiting and Retaining Teachers

The state agrees with the teacher quality goals of NCLB. One state official said, "We can't argue with the intent [of NCLB]." However, the hard part will be "the logistics of financing this." Kansas currently offers less competitive salaries than many surrounding states, and coming budget cuts in the state will likely compound the problem. The state does not expect to offer raises for teachers next year, and several districts do not offer health insurance to their teachers. On top of these financial considerations, the state is concerned that the additional requirements for new and veteran teachers under NCLB may make it even more difficult to get people to enter and remain in the field of teaching.

Source: Center on Education Policy state interviews

TABLE 4-A SELECTED STATE APPROACHES TO DEVELOP HIGHLY QUALIFIED TEACHERS

ACTIVITY

IMPROVED ASSESSMENT AND EVALUATIONS FOR TEACHERS

Examples:

State-administered assessment for teachers

Alignment of professional development and teacher evaluation with state standards

REFINEMENTS OF CERTIFICATION AND LICENSURE

Examples:

Alternative certification routes

New licensing system based on performance

Financial assistance to help teachers with certification costs

New procedures for reviewing and accrediting teacher preparation programs

Phasing out of provisional certification

Strategies to increase passing rates of lower-performing demographic groups on teacher professional entry exam

FINANCIAL AND OTHER INCENTIVES

Examples:

Incentives to recruit teachers such as housing, travel assistance, scholarships, loan forgiveness

Incentives for teachers to pursue national board certification

Higher teacher salaries

PROFESSIONAL DEVELOPMENT AND TRAINING

Examples:

Professional development models for specific academic areas

Financial assistance for teachers to participate in professional development

RECRUITMENT AND HIRING

Examples:

Recruitment through websites, clearinghouses, job fairs, other databases

SUPPORT AND MENTORING FOR TEACHERS

Examples:

Mentor or support systems for new teachers

Support systems for teachers in high-poverty areas

Source: Center on Education Policy review of consolidated state applications

Quality of Paraprofessionals

Background

The Congress and the Administration raised the qualifications required for paraprofessionals providing instructional services in Title I-supported programs because of concerns that classroom aides were being widely used to provide direct instruction to students. Many of these aides do not receive adequate supervision from teachers, and many lack the appropriate educational background to provide primary instruction for these students even for a limited time.

According to the Congressional Research Service, about half the staff hired with Title I, Part A funds are paraprofessionals, and their salaries make up about 15% of Title I, Part A costs (Riddle, 2002). The use of paraprofessionals is common in Title I programs in high-poverty areas. In the 1997-98 school year, 84% of principals in high-poverty schools reported using paraprofessionals, compared with 53% of principals in low-poverty schools. Nearly all Title I paraprofessionals provide instruction to students: 98% of Title I aides reported that they either taught or helped teach students, and over 50% reported that these instructional duties were carried out without a teacher being present (USED, 1999a).

Paraprofessional Requirements of NCLB

The No Child Left Behind Act has raised the qualifications expected of most paraprofessionals working in Title I. Under the previous law, Title I paraprofessionals, except those acting as translators, had to have a high school diploma or its equivalent or had to obtain one within two years of being employed. Under NCLB, local school districts had to ensure that as of January 8, 2002, all Title I paraprofessionals, including translators, had at least a high school diploma or its equivalent. In addition, districts must ensure that paraprofessionals hired after this date meet the more stringent requirements described in **Box 4-C**, which include completing two years of higher education, or obtaining an associate's degree, or meeting a "rigorous standard of quality" and demonstrating knowledge by passing a state exam. By January 8, 2006, all paraprofessionals working in Title I-supported programs must meet the more stringent requirements, except those who do not carry out instructional duties such as translators and paraprofessionals who work solely on parental involvement activities. Also, paraprofessionals cannot provide direct instruction to students unless they are under the direct supervision of a teacher.

U.S. Department of Education Activities

On April 28, 2002, the U.S. Department of Education sent a letter to chief state school officers briefly informing them of the requirements of the No Child Left Behind Act regarding paraprofessionals. The draft regulations issued in August 2002 made several important clarifications to the paraprofessional requirements, which remained unchanged in the final regulations issued in November 2002.

The regulations elaborate on what it means for a paraprofessional to be supervised by a teacher. A paraprofessional is considered to be working under the supervision of a

BOX 4-C NEW REQUIREMENTS FOR PARAPROFESSIONALS

The No Child Left Behind Act contains several new requirements regarding the qualifications and duties of paraprofessionals working in any program supported by Title I funds.

HIGH SCHOOL DIPLOMA

Immediately after the legislation was enacted (January 8, 2002), all Title I paraprofessionals, regardless of their hiring date, had to have at least a high school diploma or its equivalent. Under the prior law, paraprofessionals without a high school diploma or its equivalent could work as translators.

POSTSECONDARY EDUCATION OR ASSESSMENT

Title I paraprofessionals hired after January 8, 2002, except for those with non-instructional duties, such as those who serve primarily as translators or whose only duty is to conduct parent involvement activities, must have:

- ☐ Completed two years of study at an institution of higher education; OR
- ☐ Obtained at least an associate's degree; OR
- ☐ Met a rigorous standard of quality and demonstrated, through a formal state or local assessment, that they have knowledge of reading, writing, and mathematics (or of reading readiness, writing readiness, and mathematics readiness) and that they have the ability to help instruct students in these subjects.

All Title I paraprofessionals, except for those who carry out non-instructional duties, must meet these requirements by January 8, 2006.

INSTRUCTIONAL DUTIES

Title I paraprofessionals may provide instructional services to a student only if the paraprofessionals are working under the direct supervision of a teacher.

Source: P.L. 107-110, the No Child Left Behind Act

teacher "if the teacher plans the paraprofessional's instructional activities and evaluates the achievement of the students with whom the paraprofessional works." The paraprofessional and the teacher must be working in "close physical proximity," and the teacher must be "highly qualified." The regulations also make clear that the new qualifications requirements apply not only to paraprofessionals working in Title I targeted assistance programs, but also to those working in Title I schoolwide programs. Finally, the regulations clarify that Title I, Part A funds reserved for teacher professional development can also be used to help paraprofessionals meet the new requirements.

On November 7, 2002, the U.S. Department of Education issued draft non-regulatory guidance on the Title I paraprofessional provisions. In addition to clarifying some basic issues, such as outlining what constitutes a "newly hired" paraprofessional, and explaining what "two years of study" at an institution of higher education means, the draft guidance shed light on two areas where states and school districts had sought clarification.

Several states we interviewed wanted clarification from USED about how to handle aides funded through special education who work with children with disabilities in Title I schoolwide programs. The draft guidance states that these aides must meet the requirements for Title I paraprofessionals if they provide instructional services, regardless of the source of funds that support their salaries. However, if a special education aide in a Title I schoolwide program provides *only* personal care services, then the aide is not considered to be a paraprofessional under the Title I program so the requirement does not apply.

The guidance states that the purpose of the paraprofessional assessment is to have paraprofessionals demonstrate that they have "the ability to assist in instructing students and are competent in required instructional techniques and academic content areas." The exams, according to the guidance, should be sufficiently rigorous to evaluate paraprofessionals at a level equal to the second year of college. The exams do not have to be "paper and pencil" tests, but there must be evidence that the tests are "valid and reliable" and "the results must be documented." However, the guidance makes clear that the U.S. Department of Education does not have the authority to review or approve the proposed state or school district assessments for paraprofessionals.

State Activities

Our interviews with state education personnel indicate that states are not as far along in determining the qualifications of current Title I paraprofessionals as they are with teacher qualifications. Of the 46 states that answered our question, 9 states reported that they had complete information on the qualifications of Title I paraprofessionals, while 13 states had some information and 7 were in the process of developing a system to collect information. Four states will require school districts to collect the information and two states reported that they will collect the information during state compliance audits. Two states were waiting for more information from USED regarding paraprofessional qualifications before they proceeded to collect the information, and nine states responded that they did not have the information and did not indicate how or if they planned to collect it.

We asked states what they were doing to make sure that Title I paraprofessionals hired after January 8, 2002, met the new requirements. Of the 45 states that answered our question, 14 said they had given school districts information about the requirements and were leaving it up to local officials to comply. Eleven states said they will monitor compliance with these provisions through annual state audit visits. Other states reported a variety of means to monitor compliance, including reviewing information from the state's school personnel survey and requiring assurances on school district applications that they are in compliance with the provision. One state, which has been granted authority to waive a range of federal requirements through the federal "Ed-Flex" program, said it would monitor compliance by noting which school districts sought waivers of the paraprofessional requirements.

Although systematic data are not available about the current qualifications of paraprofessionals, anecdotal evidence suggests that in some districts, large numbers of Title I paraprofessionals will be affected by the new requirements. In Denver, for example, the superintendent estimated that about 2,500 instructional aides did not meet the NCLB requirements (Labbe, 2002b). In Philadelphia, the new requirements are projected to affect more than 2,000 paraprofessionals (Mezzacappa, 2002).

Despite the apparent need, less than half of the nation's school districts had some type of system in place to encourage paraprofessionals to pursue more education. According to U.S. Department of Education data from 1997-98, 38% of school districts provided a career ladder for paraprofessionals to move into teaching careers; 33% offered funding for higher education classes; 22% provided release time for paraprofessionals to attend or study for college classes; and 2% made funding available for paraprofessionals to obtain a high school diploma (USED, 1999).

Our review of the state consolidated applications shed light on the activities that states plan to undertake to upgrade the skills of paraprofessionals. **Table 4-B** shows some of the most common or noteworthy options being planned. For example, several states plan to collaborate with higher education institutions or other states in their region to develop programs to strengthen the qualifications of paraprofessionals. Some states intend to develop or refine state certification requirements for paraprofessionals. One state plans to offer electronic training modules for paraprofessionals, while another plans to provide school districts with a list of competencies they can use in hiring paraprofessionals.

Although we did not directly ask states whether they would be developing or adopting an assessment to determine if a paraprofessional is meeting a rigorous standard of quality, some states volunteered that they intended to do this. In their consolidated applications, 17 states said that they already use or plan to adopt commercial assessments for paraprofessionals. Several states participated in the pilot of a new assessment for paraprofessionals called ParaPro, developed by the Educational Testing Service. One state indicated that it would have paraprofessionals take the Praxis I exam, a test developed by the Educational Testing Service to assess the general knowledge and skills of teachers. Some states said they were still considering various options, while others said they were leaving it up to school districts to determine which assessment to use, since the law clearly states that the exam can be a state or local assessment.

TABLE 4-B SELECTED STATE STRATEGIES TO IMPROVE THE QUALIFICATIONS OF PARAPROFESSIONALS

ACTIVITY

INFORMATION DISSEMINATION AND GATHERING

Examples:

Meetings and sessions discussing new requirements

Sample communication on how to inform affected paraprofessionals

ASSESSMENTS

Examples:

State-level assessment for paraprofessionals

Guidance to districts in selecting assessments for paraprofessionals

CERTIFICATION

Examples:

State certification requirements for paraprofessionals

Incentives for paraprofessionals seeking teacher certification

TRAINING AND PROFESSIONAL DEVELOPMENT

Examples:

Professional development and training programs to help paraprofessionals meet requirements

E-learning training modules

Programs to encourage people to become paraprofessionals

COLLECTION AND MONITORING OF QUALIFICATIONS INFORMATION

Examples:

List of competencies for school districts to use in hiring paraprofessionals

Annual performance targets for meeting paraprofessional requirements

PARTNERSHIPS AND COLLABORATIONS

Examples:

Collaborations with higher education institutions to provide necessary courses for paraprofessionals

Source: Center on Education Policy review of state consolidated applications

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Issues to Watch

Although the federal law is fairly explicit about the qualifications that teachers and paraprofessionals should have, states still have latitude to design approaches to reach these goals. Whether the new teacher and paraprofessional requirements will result in better instruction for children could rest in large part on how states and school districts interpret, apply, and monitor the new criteria. It also depends on how vigorously the U.S. Department of Education enforces the requirements. Secretary Paige, with support from key leaders on Capitol Hill, has indicated that the Bush Administration and his department intend to strictly enforce NCLB. Therefore, both state and local implementation and federal enforcement are key issues to watch in the future.

State Certification and Licensure

There has been much discussion in recent years regarding what qualities, skills, and knowledge an individual should posses in order to be an effective teacher. There has been even more debate about whether traditional teacher training programs and state certification and licensure systems result in effective teachers. Some policymakers argue that subject matter knowledge is the most important quality for teachers to possess, and therefore there should be few barriers for those with such knowledge to enter the teaching profession. Others have stated that pedagogy is just as important as subject matter knowledge because an individual has to be able to impart content and concepts to students. Both sides of the debate point to research that supports their position, but currently there is no consensus on which approach is most effective.

The framers of the No Child Left Behind Act decided to use state certification and licensure systems as the cornerstone of the definition of "highly qualified." Although some would argue that such systems are an imperfect measure of what constitutes an effective teacher, state certification is the only means currently available across all states to determine if teachers have met some qualifications before entering the classroom. This section discusses some of the problems with those systems and urges states and the federal government to take action to address them. However, an area that should be monitored over the next several years is whether or not the law's emphasis on state certification does result in better prepared teachers and increased student achievement.

For teachers to be "highly qualified" they must, as a starting point, be fully certified. Many states already require prospective teachers to pass a test as part of their certification/licensure system, but as the American Federation of Teachers, the Education Trust, the National Commission on Teaching and America's Future, and others have pointed out, the cutoff scores for passing these exams are often set so low that "there is no effective standard for entry" into the teaching profession (National Commission on Teaching and America's Future, 1996). Similarly, the American Federation of Teachers has observed that "in many fields, in many states, candidates who score at or above single-digit percentiles qualify for a license, and very few states have cut-scores above the 25th percentile for any field." Furthermore, the AFT found that these minimum requirements are often waived when states face teacher shortages (American Federation of Teachers, 2000).

The Education Trust (2002) has raised concerned about the rigor of the exams. According to a recent report from that organization, four states (Alabama, Delaware,

Maine, and New York) use a test for licensing their teachers that 12 other states use to determine entry into their teacher preparation programs. Eleven other states do not test teachers' subject matter knowledge, and eight more have no statewide teacher assessment at all.

Because of low cut-scores, less than rigorous exams, or no exams at all, certification requirements in some states could be a very weak cornerstone for establishing "highly qualified" teachers. Similarly, states must use a "high objective state uniform standard of evaluation" to determine whether current teachers meet the federal criteria. This, too, could be a weak instrument for measuring quality if states do not set high standards for these evaluations. States and school districts also will be creating or adopting assessments for paraprofessionals. USED guidance has made it clear that these exams should evaluate paraprofessionals at a level equal to the second year of college. However, the Act does not give the U.S. Secretary of Education authority to review or approve the rigor or quality of a state's teacher certification system, exams, or other measures used to gauge the qualifications of teachers or paraprofessionals. Essentially, the Act demands higher quality but leaves the mechanism up to the states.

Impact on Teacher and Staff Vacancies

A final issue to watch is whether the new requirements make it harder for school districts to find and keep qualified teachers or instructional aides. States already face teacher recruitment and retention problems, and several state officials that we interviewed expect NCLB to make these problems worse. Setting more stringent qualifications may discourage some prospective teachers from entering the field and could drive some veteran teachers out of teaching, especially secondary school teachers who teach several subjects and would have to meet requirements in each of those areas. States expected this to be a problem primarily in rural areas but also in some inner city schools. Teachers who complete additional coursework to become highly qualified in a secondary specialty may, understandably, expect higher salaries. School districts may have to compete for the best qualified candidates, increasing pressure to raise teacher salaries. The Elk Grove, California, case study at the end of this chapter shows how one district is addressing these challenges.

Finding and keeping paraprofessionals could also become more difficult. State officials that we interviewed indicated that rural school districts may have difficulty finding paraprofessionals who meet the new requirements, as well as difficulty providing the necessary training for existing paraprofessionals. As one official said, "It's not as though there is a community college within an hour's drive where the paraprofessionals could go to complete the necessary coursework." An official from a mostly rural state reported that already this year, fewer school districts had proposed in their Title I applications to use Title I funds for paraprofessionals. This official saw this as a positive trend, in that more Title I instruction is being provided by teachers rather than aides.

States and school districts have also expressed concerns about potential hidden costs of the paraprofessional requirements. Paraprofessional jobs tend to be low-paying. Once instructional aides receive an associate's degree, many will expect to be paid more and to receive pensions or other benefits that school districts don't typically provide to paraprofessionals. This could put school districts in a position of having to raise wages or risk losing paraprofessionals to better-paying jobs.

Conclusion

States are moving ahead to implement the teacher and paraprofessional qualifications requirements of No Child Left Behind, and are making good faith efforts to comply with the legislation, even though many state education agency personnel feel that the information provided by the U.S. Department of Education has been slow in coming or incomplete. States are in the process of revising current systems or building new ones to collect information on teachers' qualifications and assignments. School districts have been informed of the new teacher requirements, and states will be monitoring their compliance during the school year. Similar activities are proceeding at the state and local level with regard to paraprofessionals, but states and school districts are not as far along in their data collection efforts.

In years to come, policymakers should pay attention not only to how well states and school districts are complying with the teacher and paraprofessional requirements, but also to the quality and rigor of state certification/licensure systems for teachers. Attention should also be paid to whether or not these requirements are resulting in increased student learning.

Boosting the qualifications of a large number of teachers and paraprofessionals is certain to be an expensive undertaking, and the federal government should share these costs. The Congress and the White House have an opportunity with the fiscal year 2003 appropriations bill to send a signal to states and school districts that the federal government will be a partner in this endeavor by providing significant funding for professional development activities.

The Congress and the White House should also consider ways to provide states incentives to increase the rigor of their certification systems. Federal funds under both Title II of the revised ESEA and Title II of the Higher Education Act can be used to improve state certification and licensure systems. But under Title II of the Higher Education Act, this activity is one of seven allowable activities, and under Title II of ESEA, it is one of 18 possible uses of funds. During the 108th Congress, the Congress and the White House will be considering revisions to the Higher Education Act. A program that provides incentive grants to states for the sole purpose of increasing the rigor of their teacher certification requirements should be considered.

CASE STUDY
ELK GROVE UNIFIED SCHOOL DISTRICT, CALIFORNIA

Elk Grove is well prepared to meet the NCLB teacher requirements because the district has strengthened its teaching force through such strategies as ongoing professional development and mentoring, "grow your own" teacher programs, and incentives for skilled paraprofessionals to become certified teachers.

Although school districts across the nation are facing a variety of issues as they begin to analyze the implications of the "highly qualified" provision of the No Child Left Behind Act, some have already been working to improve the quality of their instructional staff. In California, teachers must meet a rigorous standard in order to be awarded a teaching credential. The requirements include the following: a bachelor's degree or higher, completion of an approved professional development program that includes successful student teaching, passage of the California Basic Skills Test (CBEST), passage of a subject matter competency test, and subject matter course work plus a course in the U. S. Constitution. California has reciprocal agreements with some, but not all states, because requirements are so different from state to state.

In some California districts, the philosophy, focus for hiring, and past practices have alleviated much of the anxiety associated with the onset of the NCLB requirements. The Elk Grove Unified School District in Sacramento County views the issue of "highly qualified teachers and staff" as broader than just complying with the new federal requirements, because the district has been creating and implementing support programs for teachers and other staff for many years. The focus has gone beyond merely recruiting and hiring first-class applicants to encompass improvements in ongoing training, coaching, mentoring, and support services for teachers, administrators, and support staff, including incentives to retain excellent employees. A rapidly growing K-12 district of 52,000 students, Elk Grove is in the somewhat enviable position of already having a large number of "highly qualified" teachers. More than 300 teachers are hired each year; yet of the 2,996 teachers in the district in November 2002, only 35 had not met all aspects of the new federal and state qualifications. The minute percentage of teachers in this status are all licensed and meet most state requirements, but they are on emergency short-term permits because they do not meet *all* California requirements.

Two years ago, there were 95 teachers in Elk Grove who were on emergency permits; last year there were only 71, and this year there are 35—a reduction in three years from nearly 4% of all teachers to 1%. The reasons why there are 35 are threefold. First, 15 of the 35 are special education teachers, a critical shortage area. Some of these teachers are tenured, highly qualified professionals who have taught for many years but have not yet completed all requirements for this special field. Second, 12 of these teachers are secondary school teachers who may teach three or four periods in their field of certification but must teach one or two periods out of their field because of scheduling and shortages. Third, the remaining 8 teachers are elementary teachers—including some who entered the teaching field under alternative certification programs—who have not yet completed the final phases of the requirements to be considered "highly qualified."

With the exception of special education and some math/science teachers for which there is an extreme shortage, there will be far fewer than 35 teachers on emergency status next year.

Elk Grove has made this progress even though it is a diverse district with a significant degree of poverty. Forty-four percent of the district's students are eligible for free and reduced-price lunches, and the concentrations of poverty in its Title I schools range from 60% poverty to over 90%. Elk Grove families come from 90 different countries, and the students list 77 languages as their primary or first language. The October 2002 count of English language learners in grades K-12 was 11,764, or 22% of the districtwide enrollment. The largest language groups include Spanish, Hmong, Vietnamese, Russian, Hindi, Filipino, Cantonese, and Punjab. Racial-ethnic balance is also diverse with Asian, African American, and Hispanic students making up more than 50% of K-12 enrollments.

Why is Elk Grove in such a strong position as regards the qualifications of its teaching force? Teacher recruitment and training have been a priority for the past two decades because of rapid residential growth in the 320-square mile district, where houses continue to replace pastures, crop fields, and orchards. Close working relationships with colleges and universities, a very attractive salary schedule, excellent benefits and working conditions, ongoing and intensive professional development, a friendly "small town" atmosphere (despite the growth), and well-regarded schools have made Elk Grove a place sought out by families. Most elementary and middle schools are on four-track, year-round schedules because of the growth, so the new school year begins in July—which means that hiring takes place in the spring.

Elk Grove has also made strong efforts to grow its own teachers. Hundreds of high school students have been exposed to the profession through an active Future Teachers club, and hundreds have come back to teach in Elk Grove schools. In addition, the district developed a Teacher Education Institute in partnership with San Francisco State University, which supplies as many as 100 teachers to the district each year. Applicants need a bachelor's degree to enter the Institute. The program includes a full year of intensive course work, training, mentoring, and student teaching with highly qualified teachers. Graduates of this program continue their training through a Beginning Teacher Support and Assistance (BTSA) program, and many go on to mentor other new teachers.

Paraprofessionals are also a target of professional development in Elk Grove. In the district's Title I schools, there has been a steady movement to replace paraprofessionals with teachers. Many paraprofessionals with a demonstrated ability to work effectively with students have been encouraged and assisted over the years to complete college and obtain teaching certification. These teacher candidates receive extensive training in reading and math teaching methods through Elk Grove's professional development department; Cosumnes River College, the local community college, provides coursework, especially for paraprofessionals in pre-kindergarten programs. The district will be continuing this partnership with the community college to create new programs for existing paraprofessionals, including those who provide bilingual services, to help them complete their two-year training programs and obtain an associate's degree.

To address teacher shortages in hard-to-fill subjects like math, science, and foreign languages, Elk Grove plans to offer signing bonuses of $2,500, a strategy that has helped

in the past. The district also plans to offer extended contracts with higher pay. For example, a year-round middle school may need a teacher only for an additional period of math, but finding a qualified math teacher who is willing to work for a 20% contract is not easy. In the past, the district might have used an English teacher with a college minor in math who was on contract for 80% of the time to fill that spot, but that individual would have needed an emergency credential and would not meet the "highly qualified" definition. Under the extended contract option, the district could pay an existing math teacher to teach six periods instead of five, with a contract of 120% instead of 100%.

Other California districts have developed other approaches to build a highly qualified teaching force. Sacramento City Unified School District has undertaken a major recruitment effort in the Philippines, which brought 24 new teachers to the district this year; the district is helping them become fully credentialed. The Philippines was chosen for recruitment because its English-speaking educational system is similar to that of the U. S. and teacher candidates have already mastered English.

Small rural districts sometimes face special problems due to their size. One small K-12 district in northern Wisconsin has experienced great difficulty finding and keeping special education teachers and reading specialists. The lack of competitive pay in small rural districts exacerbates the shortages typically found in these areas of specialization. Similar situations have been reported in Alabama and Massachusetts. One strategy reported in a small district was to encourage retired qualified teachers to return to teach one or two periods a day in math or science. Overall, the greatest concern reported was that of finding enough qualified special education teachers.

Source: Elizabeth Pinkerton, Director of State and Federal Programs, Elk Grove Unified School District, Sacramento County, California.

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CHAPTER 5

Using Scientifically Based Research to Improve Education

KEY FINDINGS

- Although numerous programs in the No Child Left Behind Act require schools to use scientifically based research (SBR) to inform their classroom practices, the U.S. Department of Education so far has provided guidance on implementing this provision for only certain programs, including Reading First, Comprehensive School Reform, and the Title II State Program to Improve Teacher Quality. State officials interviewed gave the Department low marks for its overall guidance, or lack thereof, on scientifically based research.
- States are not as far along in implementing the new requirements for scientifically based research as they are with other major components of the new law. This seems to be mostly because several states were waiting on the federal government to provide more definitive guidance before they moved ahead, and a few felt they lacked expertise on this issue. Some states, however, did not really want more guidance from the Department because they feared it would be too restrictive.
- Many Title I state directors report that the Reading First program in their states is taking the lead in describing scientifically based research. Since the Reading First program uses a special definition of scientifically based research that is less rigorous than the general definition that applies to other NCLB programs, it may not be prudent for Title I programs to rely on Reading First materials because they run the risk of not being in compliance with the SBR provisions that apply to Title I.
- Some state officials, researchers and educators are concerned that strict adherence to the law's general definition of scientifically based research will produce few programs or approaches that meet it.

The Prominence of Scientifically Based Research Throughout the Act

One of the major ways that the No Child Left Behind Act seeks to improve the quality of public education is by requiring educators to use programs and practices that are based on scientific research. The point of these requirements is to base school reform efforts less on intuition and more on research-based evidence. Although the testing and accountability provisions of the NCLB Act have attracted more attention, the numerous mentions of scientifically based research throughout the law may also strongly influence what goes on in classrooms.

The term "scientifically based research" appears more than 100 times in the No Child Left Behind Act, in a range of programs large and small. In Title I, Part A, the use of scientifically based research must be part of the plans developed to raise achievement in schools identified as needing improvement. Scientifically based research must form the basis for the technical assistance and support provided to low-performing schools by local school districts and by state-established support teams. And it must also be the basis for the reform strategies used in Title I schoolwide programs and the instructional strategies used to raise achievement in Title I targeted assistance schools.

In the Reading First program authorized by NCLB, scientifically based research plays a prominent role in the statement of purposes and many other sections. This program will award $5 billion over the next six years to states and school districts for programs to teach reading using scientifically based methods. And in the Comprehensive School Reform Program also authorized by NCLB, school districts seeking funds for whole-school reform must design programs that use instructional and school management strategies grounded in scientifically based research.

Under the Title II teacher preparation and professional development program, state and local applications for funds must describe how the proposed activities will be based on a review of scientifically based research. Similar references to scientifically based research appear in several other programs of the Act, ranging from the Drug-free Schools program to the Language Instruction program for English language learners.

The Reading First section of the Act has a separate definition of "scientifically based research" that applies only to that program. For all other programs under NCLB, the law contains a highly specific definition of scientifically based research, shown in **Box 5-A.** As discussed later in this chapter, this definition, if interpreted strictly, could have a significant impact on all the federal programs to which it applies.

Why the Emphasis Now?

The requirements for scientifically based research are the product of a growing desire among Members of Congress and Administration officials to ensure that federal funds are used for effective programs that have evidence of results.

BOX 5-A DEFINITION OF SCIENTIFICALLY BASED RESEARCH FROM THE NO CHILD LEFT BEHIND ACT

The term "scientifically based research"—

(A) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) Includes research that—

(i) Employs systematic, empirical methods that draw on observation or experiment;

(ii) Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication, or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Source: Public Law 107-110, the No Child Left Behind Act.

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References to research-based approaches and methods in federal education programs are not entirely new. Even when not explicitly stated, research was often assumed to be the basis for choices made by states, districts, and schools. For instance, the requirements for Title I schoolwide programs in the 1994 amendments to the Elementary and Secondary Education Act stipulated that instructional strategies should be based on "effective means of improving the achievement of children," with the understanding that effectiveness could only be derived from a past record of accomplishment (Improving America's School Act of 1994, Section 1114(b)(1)(B)(ii)).

The point was stated more plainly in the original 1998 legislation (Public Law 105-78) for the Comprehensive School Reform Demonstration (CSRD) program, which provided funds to support approaches based on "reliable research and effective practices." The U.S. Department of Education sought to help grantees implement this requirement by issuing a document entitled "Continuum of Evidence of Effectiveness," which included rubrics to determine the relative strength of research data (USED, 1998).

To provide additional guidance to states and school districts, the American Institutes for Research (AIR), under contract from several education groups, examined evidence of the effectiveness of 24 popular school reform models and found strong evidence of effectiveness for only 3 (deeming another 5 as promising) (Herman et al., 1999). However, according to the Comprehensive School Reform Database maintained by the Southwest Regional Development Laboratory (2002), many schools and districts have continued to select models with weak evidence of effectiveness.

Thus, the Congress and the Administration remained concerned that federal funds were being used to support instructional strategies and approaches that lacked broad evidence for effectiveness and held little hope for improving student performance. Members of Congress opted for a much more specific definition of research and wove it throughout the No Child Left Behind Act. Advocates of this approach compare it to using clinical trials in medicine to reach impartial decisions about the best treatment.

The report of the Committee on Education and the Workforce of the House of Representatives on NCLB cites the work of the National Institute of Child Health and Development (NICHD), which looked at the research basis of various reading programs. In testimony before the Committee, Reid Lyon of NICHD expressed concern that the term "research-based" meant different things to different people and called for adherence to scientific quality and criteria in the selection and implementation of reading programs for Title I children. Advocates for scientifically based research believe that much educational research lacks the rigor necessary to connect specific educational approaches and/or programs with specific educational outcomes for children. They contend that relying on scientifically based research will produce a better understanding of what works best for children and will help schools and districts make better decisions about curriculum and instructional approaches (House Report 107-63, pp. 288-89).

Susan Neuman, the Assistant Secretary for Elementary and Secondary Education, elaborated on the Administration's rationale for the requirements in a speech on October 24, 2002. "I think the federal government in the past has done a little of this and a little of that," Neuman said. "It seems like we were into a new trend every other year. NCLB is a bold change in the way we do business" (Balta, 2002).

At the same time, the requirements for scientifically based research have generated controversy as educators have raised concerns that the provisions will be interpreted in a way that imposes a specific ideology on public schools, will yield just a small number of acceptable practices, will give the federal government too much control over curriculum and instruction, and other issues

U.S. Department of Education Actions

Within the U.S. Department of Education, different offices are responsible for implementing the various programs of the No Child Left Behind Act, so the Department's efforts to implement the scientifically based research provisions have varied from one program to another. The Department has issued guidance about implementing scientifically based research in the Reading First program, the Comprehensive School Reform (CSR) program (the successor to the Comprehensive School Reform Demonstration Program), and Improving Teacher Quality State Grants, but not for Title I beyond regulations that simply repeat the statutory requirements for SBR. The guidance issued for Reading First, CSR, and Improving Teacher Quality closely parallels the statute, with some elaboration on the types of questions used to evaluate the scientific basis of research. A comparison of the guidance issued by Reading First and CSR follows.

In addition to program-specific efforts, the Department, in November, issued a report from the Coalition for Evidence-Based Policy (2002) that seeks to further scientifically based research. The report calls for more support for scientifically based research in education. It is the result of a joint effort between the Department and the Coalition.

Title I, Part A

Although there are several references in the Act to scientifically based research in Title I, Part A that would appear to significantly affect the program's operation, the Department has not yet issued any guidance or regulations on scientifically based research for this program, beyond the language in the statute. This includes the final regulations for Title I released on November 26, 2002.

Comprehensive School Reform Program

The No Child Left Behind Act strengthened the requirements to use research-based evidence in local programs funded by the Comprehensive School Reform program. Under the law, school districts may use CSR funds only for proven methods and strategies for student learning, teaching, and school management that are grounded in scientifically based research and in effective practices that have been replicated in schools. In order to receive federal support, a program, method, or strategy must meet one of two standards: (1) it must have been found, through scientifically based research, to have significantly improved achievement of children, or (2) it must have strong evidence that it will result in significant improvement in achievement.

In August 2002, the Department issued guidance for the CSR program. The guidance makes clear that the "strong evidence" standard, the second option mentioned in the law, is less rigorous than the "scientifically based research" standard, in that it lacks the broad research base included in the criteria for the latter term. The guidance states, however, that strong evidence is still research based, even though it does not meet all these criteria, and notes that the strong evidence standard should be used "in the absence of scientifically based research" (USED, 2002a).

The August guidance summarizes the law's definition of scientifically based research and also suggests a series of questions that states, school districts, and schools can use to evaluate whether the research supporting the program, method, or strategy they want to fund meets the criteria for being scientifically based. **Box 5-B** gives a few sample questions from the guidance, grouped according to the six elements of the *general* definition of scientifically based research included in the Act.

Although this guidance was developed specifically for CSR, the questions suggested under the topics are generic and could be used by anyone seeking to evaluate the scientific base of research.

Reading First

More than any other program in NCLB, Reading First is focused on the use of scientifically based research. However, the definition of scientifically based research that applies to this program is different from, and less rigorous than, the definition that applies to all other programs in the NCLB Act. The Reading First definition has four, rather than six, main elements. Two elements mentioned in the more widely applied definition—those related to the research design and sufficient detail and clarity to allow for replication—are not included in the special Reading First definition. In some ways, this more limited definition of scientifically based research is akin to the "strong evidence" standard included in CSR and discussed above.

In March 2002, the Reading First office of the U.S. Department of Education issued guidance for its program. The guidance includes generic questions to test evidence for scientifically based research, as well as items specific to reading in the early grades. For those elements of the definition that are the same for both Reading First and CSR, the guidance issued by the two programs differs in content and emphasis.

Like the guidance for the CSR program, the guidance for Reading First suggests questions, grouped around the elements of the statutory definition, that schools should consider using to test whether research evidence is scientifically based. In stating the topics, the Reading First guidance uses more verbatim language from the statute than was used by CSR. **Box 5-C** shows the topics and some sample questions from the guidance.

The suggested questions in the Reading First guidance for these four common elements differ substantially from those in the CSR document. For instance, under the first topic, Reading First suggests asking if the research was carefully designed to avoid biased findings and unwarranted claims of effectiveness. The CSR guidance does not mention this question, but it does include questions regarding the degree to which the study was conducted in a consistent, disciplined, and methodological manner; whether the data were obtained using observation or experiment; whether the research was

BOX 5-B SAMPLE QUESTIONS FROM U.S. DEPARTMENT OF EDUCATION GUIDANCE FOR THE COMPREHENSIVE SCHOOL REFORM PROGRAM THAT CAN BE USED TO EVALUATE WHETHER RESEARCH IS SCIENTIFICALLY BASED

1. Systematic and empirical methods

   Does the research have a solid theoretical foundation? Were the data obtained using observations or experiments?

2. Rigorous data analyses

   Did the research test the stated hypotheses and justify the general conclusions drawn? Did the research minimize alternative explanations for observed effects?

3. Reliable and valid data collection

   Did the data result from a study involving multiple investigators in a number of locations?

4. Strong research design

   Does the experiment describe a random assignment experiment in which subjects are assigned to different conditions with appropriate controls?

5. Detailed results that allow for replication

   Are the results of the research sufficiently detailed so that replication of the design is possible?

6. Results that are subject to scrutiny

   Has the research been reviewed by unbiased experts who were not a part of the research study?

Source: U. S. Department of Education, Guidance for the Comprehensive School Reform Program, August 2002.

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BOX 5-C SAMPLE QUESTIONS FROM U.S. DEPARTMENT OF EDUCATION GUIDANCE ON READING FIRST TO CONSIDER WHETHER RESEARCH IS SCIENTIFICALLY BASED

1. Use of rigorous, systematic and empirical methods.

   Does the research clearly delineate how it was conducted, by whom it was conducted, and on whom it was conducted?

2. Adequacy of the data analyses to test the stated hypotheses and justify the general conclusions.

   Does the research present convincing documentation that the observed results were the result of the intervention?

3. Reliance on measurements or observational methods that provided valid data across evaluators and observers and across multiple measurements and observations.

   What procedures were in place to minimize researcher biases?

4. Acceptance by a peer-reviewed journal or approval by a panel of independent experts through a comparably rigorous, objective and scientific review.

   Has the research been carefully reviewed by unbiased individuals who were not part of the research study?

Source: U.S. Department of Education, Guidance for the Reading First Program, March 2002.

grounded in data that are factual rather than opinion based (somewhat similar to the question about bias in the Reading First guidance); and whether the research findings are supported by tangible, measurable evidence.

It appears from the guidance that these two programs do not entirely agree on its meaning. This is important because, in the absence of guidance from Title I, states have informed us that they will refer to the guidance issued by Reading First and, to a lesser degree, by CSR, in implementing Title I. States that rely on Reading First guidance run the risk of not being in compliance with Title I requirements regarding scientifically based research. Further, it is in the Department's best interest to ensure that generic (as opposed to program specific) guidance on the common elements of this topic is the same for all programs.

There is also some evidence that the Department intends to interpret the scientifically based research requirements of Reading First rigorously. The Department returned many of the Reading First applications submitted by the states, with instructions for states to make revisions. States were told that they would need clear evidence that local grant recipients will use the money only for scientifically based reading programs and that the recipients will have to show evidence that their approaches actually improve student achievement (Manzo, October 2, 2002).

What Works Clearinghouse

One of the ways in which Congress sought to help states, districts, and schools implement the scientifically based research requirements was to authorize a clearinghouse that will set standards for high-quality research in education and then determine which studies meet those standards. This information is meant to help educators, parents, and others figure out which programs and strategies work and are worth adopting. In August 2002, the Department awarded a five-year, $18.5 million contract to operate this clearinghouse to the Campbell Collaboration of Philadelphia and the American Institutes for Research in Washington, D.C. The clearinghouse will provide the following databases:

- A registry of educational interventions that identifies potentially replicable programs to enhance student outcomes and synthesizes research related to their effectiveness. A linked database will provide information about the evaluation studies on which the reviews are based.
- A registry of evidence-based research reviews of educational approaches and policies.
- A registry of scientifically rigorous reviews of test instruments for assessing educational effectiveness.
- A registry that identifies evaluators and organizations willing and able to conduct evaluations of educational interventions.

The clearinghouse has a technical advisory board and, during fall 2002, was soliciting nominations for topic areas to be included in the databases, such as third grade reading and cross-age grouping. The clearinghouse is also developing a set of standards

for review of items nominated for inclusion in the databases. Draft standards have been developed and public comment on them is being solicited. The Clearinghouse plans to have the standards in place by early 2003. The website for the clearinghouse is http://w-w-c.org.

State Views of Federal Guidance

When we interviewed state officials, we asked them to rate the guidance available from the U.S. Department of Education on the main issues treated in this report. The guidance for scientifically based research was the area that respondents rated the lowest—probably because of what they saw as a lack of guidance about this topic. A sizeable share of the 37 respondents (43%) felt the quality of guidance on scientifically based research was "poor," the lowest rating, and more than half of the 39 respondents (54%) rated the timeliness of this guidance as poor. The total responses are shown in **Figures 5-A** and **5-B.**

State Activities

Most state officials we interviewed generally felt that the emphasis on scientifically based research in the No Child Left Behind Act was a positive change. States said that bringing research and proven methods to bear on educational problems was promising because schools and districts would be forced to think more deeply about why they were choosing to implement specific programs in their schools. At the same time, states expressed some concerns about the provisions, described later in this section.

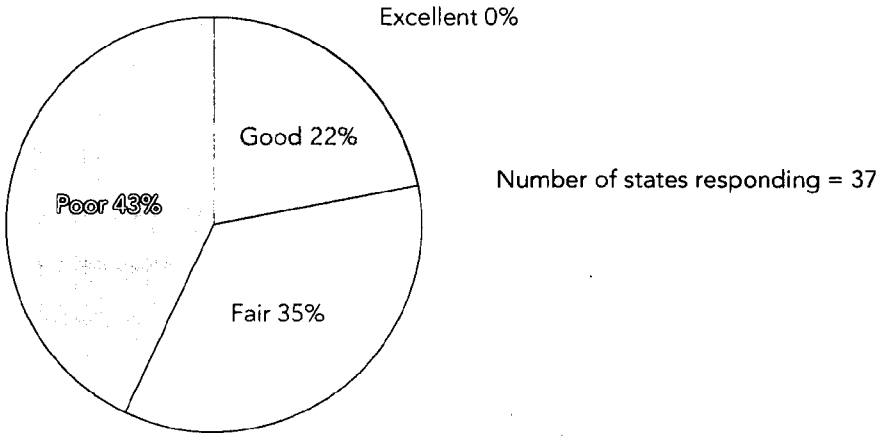
Except for preparing applications for the Reading First program, most states have done little specific planning to apply the scientifically based research requirements to Title I or other major grant programs. This lag at the state level seems at least partly attributable to the absence of guidance from the U.S. Department of Education about how the requirements should be applied to Title I and most other federal programs. While some states are awaiting more guidance from the Department, other states, as noted below, do not really *want* more guidance because of what they fear it could entail.

State Implementation Actions

Our interviews revealed that most state Title I directors were aware of the requirements for scientifically based research and its potential importance, but they had done little to implement them. So far, state Title I offices are much more focused on other provisions of NCLB that demand immediate action, such as assessment and accountability, and are paying little attention to the requirement for scientifically based research.

Some state Title I officials told us that in the absence of Title I-specific guidance, they have sought out information on scientifically based research from the Reading First Program and the Comprehensive School Reform program, In particular, many states are looking to their Reading First program to take the lead in implementing the requirements for scientifically based research, often in collaboration with other state-

FIGURE 5-A STATE RATINGS OF QUALITY OF WRITTEN FEDERAL GUIDANCE ON SCIENTIFICALLY BASED RESEARCH



Source: Center on Education Policy state interviews

FIGURE 5-B STATE RATINGS OF TIMELINESS OF WRITTEN FEDERAL GUIDANCE ON SCIENTIFICALLY BASED RESEARCH

Source: Center on Education Policy state interviews

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level programs. At the time of our interviews, however, only 11 states had received approval of their Reading First applications (not all states had yet applied). The other states were reluctant to discuss how they planned to implement the Reading First program, including scientifically based research, until their applications had been approved by the federal Department.

More importantly, if Title I relies heavily on Reading First, this could be problematic because of the differences already noted between the general definition and the Reading First definition of scientifically based research. It is unclear whether states are aware of this difference and how they will proceed to address the two items of the general definition that are not in the Reading First definition. For instance, one state said that the Reading First office in the state was compiling a list of programs that would meet the definition of scientifically based research and that this list would be used by Title I as well as other reading programs in the state. In another state, Title I officials said they were reluctant to send out Reading First materials because districts were responding angrily, asking if they had to use those materials.

State Title I directors seem to be responding to the scientifically based research requirements in three different ways:

- Many states had been awaiting further guidance from the Department before actively planning to implement the requirement. These states are concerned that any actions they take could be at odds with the interpretations eventually made by the Department, so they are doing little except to distribute the statutory provision to their school districts. One state official, for instance, said that it was unclear what scientifically based research meant in a practical sense and that the state would like some help on this. Another state official made a suggestion (an atypical view among the states) that the Department should develop common criteria to validate which programs are based on scientifically based research and should identify some exemplars. States could then apply the common criteria to local programs.

- Several states are pleased with the lack of guidance in Title I and would be happy if it stayed that way. They fear that any guidance will only reduce the flexibility they believe they now have to interpret the statute at the state level. It does seem that at least some states would interpret and apply the provisions less rigorously than the Department would. One state official, for instance, commented that the lack of guidance was not "a bad thing" and expressed the hope that the Department would "leave it alone." Another state official commented that scientifically based research "is not a priority for us." Yet another state official expressed anxiety that the Department is "just waiting to zing us on this"; rather than providing guidance to local districts, the state is referring them to the USED website for assistance on the topic. The same state person said that if federal guidance remains vague, the state would not strictly enforce the provision.

- A few state departments said they lack the expertise and/or time necessary to help districts with this issue. They are hoping that information from the What Works Clearinghouse will be helpful.

While some state personnel said they planned to rely on the What Works Clearinghouse for information, others indicated that they expected help from the federally funded regional education laboratories and comprehensive centers. A few states said that they planned to use an approved list of programs or methods, and a few planned to issue criteria for districts to use in determining at the local level if approaches were rooted in scientifically based research. However, no state had done this yet at the time of our interviews.

State and Local Concerns

State officials and local educators have expressed some concerns about how the federal government will interpret and enforce the requirements for scientifically based research. Some of these concerns deal with the political and ideological implications of the requirements, while others deal with practical and technical implications.

1. Some educators are concerned that the requirements for scientifically based research could be interpreted to severely limit classroom teaching methods and materials.

The main concern about scientifically based research raised by the states we interviewed was that the NCLB requirements could lead the Department to issue a limited list of approved programs or instructional methods that states and school districts would have to use. For example, the programs or strategies that pass muster with the What Works Clearinghouse could come to be perceived as the "approved" list.

Some state officials and local educators are apprehensive that the Bush Administration intends to use the new authority to impose a specific ideology on the public schools, especially in reading. One state, for instance, noted in our interviews that scientifically based research can be interpreted to include the research the Administration likes—and exclude the research it opposes, by labeling it as unscientific. Particular controversy has arisen about whether the Administration intends to impose strict phonics-based teaching methods on the schools by approving or denying federal funding through the Reading First program and perhaps others. Phonemic awareness and phonics are two of the five essential elements in NCLB that must be part of every local reading program (the others are vocabulary development, reading fluency, and reading comprehension strategies). Assistant Secretary Neuman has denied the charge that the Department will impose strictly phonics-based approaches, saying, "We can't do that nor would we want to" (Strauss, 2002).

Some states were further concerned that a strict interpretation of the law could end up narrowing their choices to a handful of off-the-shelf programs that have reputations for having a solid research base. After attending workshops on the reading legislation held in February 2002 by the U.S. Department of Education, some states said they were getting a subtle message that they could improve their chances of receiving Reading First funds if they use certain commercial products and materials (Manzo, February 20, 2002).

Some states have questioned whether the scientifically based research requirements represent excessive federal involvement in state and local decisions about curriculum and instruction.

States, especially those with histories of local control, are concerned about where the new requirements could lead. One state, in which school districts have a great deal of local autonomy, thought that it could create problems if the state suggested programs for the districts to use that had a scientific research basis. Another state gave examples of reading programs to schools and districts, which upset district administrators and school principals, who asked: "Do we have to have this program?"

2. States are concerned that the definition of scientifically based research is so precise that only a few education programs will meet it.

Many states we talked to feared that a strict application of the law's definition of scientifically based research will make it hard to find programs and approaches that fully meet it. For example, the definition shows a preference for "randomized" studies, in which large populations of students are randomly assigned to two groups: one that receives the program or teaching method being tested, and another that receives whatever programs or methods their schools normally use. These kinds of studies are expensive and not very common in education because they are complex to set up in a school situation and because it can be difficult to get families to agree to their children's participation. It is also difficult to maintain control groups, because children may be receiving educational services from another source not being studied and pupil mobility affects both treatment and control groups. In addition, it is hard to justify denying potentially helpful services to children. Some researchers also contend that even the most rigorously designed random studies cannot really identify why a particular practice does or does not raise achievement and that so many variables go into learning, one can't assume that something that works in one classroom will work in another (Traub, 2002).

Recognizing that few programs may meet the definition, the Coalition for Evidence-Based Policy, a foundation-funded organization of well-known researchers, has called on the Department to launch a major effort to build the knowledge base on the effectiveness of educational interventions through randomized controlled trials (Coalition for Evidence-Based Policy, 2002).

Educators and researchers have also noted that the definition in the law assumes that there is a clear "yes" or "no" answer to the question of whether a particular practice is scientifically based, when actually the answer is often a matter of degree. Some practices have more supporting evidence and come closer to the ideal, while others have little evidence and are farther from the ideal. Perhaps the question should be, "If the definition sets the ideal, how close to that ideal does any specific program or approach come?"

Issues to Watch

Based on the actions federal and state governments have taken and the concerns states have raised, the Center on Education Policy has identified several issues that should be watched in the coming years to see how they play out at the state and local levels. Some of these pertain to federal activities and others to state activities. We have posed them as questions to be asked as implementation progresses:

- Will the Department provide specific guidance on how the requirement for scientifically based research applies to the Title I program?
- How will the registries being compiled by the What Works Clearinghouse, especially the one dealing with educational interventions, be used? The emphasis the Department puts on the results of the Clearinghouse's review could signal how strictly the Department intends to enforce the provision.
- In the absence of guidance for Title I, will the Department cite states and school districts for being out of compliance if those states and districts follow Reading First SBR guidance?
- Are there sufficient programs and approaches that meet the definition for states and local districts to use? If only a few approaches are found acceptable, the issue of federal intrusion into instructional areas traditionally left to states and local districts becomes critical.
- In states with strong traditions of local control, will state departments of education be able to influence local districts to implement the provision in a way that's acceptable to the U.S. Department of Education? As noted earlier, several states have already encountered problems in this area.
- Will scientifically based research have a significant impact on the programs and approaches used in Federal programs, especially Title I? Clearly, that is its intention, but it is difficult to gauge how this issue will unfold, because the Department and the states have not taken definitive actions yet.

After analyzing the information from our interviews and other research, we urge the federal government not to use the scientifically based research requirements to impose a set of specific practices or methods on teachers or to overstep the prohibitions in NCLB against federal intrusion in curriculum and instruction. At the same time, the field of education needs to pay more attention to research–based evidence about whether a particular practice improves student learning and could benefit from more clarity about which programs and practices actually do what they purport to do. Educators can no longer treat all "evidence" equally and ignore solid evidence of effectiveness while using information based on less rigorous research to make decisions about curriculum and instructional practice.

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APPENDIX 1

Protocol for Review of State Applications

STATE: **REVIEWER:** **DATE:**

1) Is the state in compliance with standards, assessment, and accountability provisions enacted in 1994? ☐ Yes ☐ No

   If no, is the state under a waiver of time_____or a compliance agreement_____?

   Date of expiration of waiver or compliance agreement_____

2) Does the state plan meet the requirements of NCLB (has it been approved by the Department of Education)? ☐ Yes ☐ No

   If no, list the major areas in which the Department is seeking amendments or additional information.

3) For each of the first four goals required in the plan, list two or three major indicators of progress on which the state will report.

4) Does the state claim to meet the requirement that it must have challenging content standards in **reading/language** arts for each grade 3-8?

   In **mathematics** for each grade 3-8?

   If not, what is the state's schedule for adopting them?

5) Does the state plan claim existence of standards in **science** that meets NCLB __?

   If no, does the plan include a timetable for development of the standards?_____

   What is the expected date of completion of the standards in science?

6) Does the state claim to already meet the requirement for assessments in **reading/language arts** in each grade 3-8 and for high school?
☐ Yes ☐ No

In **mathematics?**

If no, is a timetable for development of those assessments included?_____

What is the date for completion?

7) What is the additional indicator the state plans to use to measure progress in elementary and middle schools?

8) Does the plan describe the statewide system of support the state will provide, including the use of school support teams? ☐ Yes ☐ No

What are the two or three main examples of state actions included in the system of support? Include only specific items, not terms such as providing technical assistance. If there are no specific items included, say none.

9) List the four or five major activities the state says it will conduct to ensure that al teachers in the state are high qualified. Activities should be specific, not a general statement of support for local school districts.

10) List the three or four major activities that the state will undertake to ensure that all paraprofessionals (excluding those working with parents or as translators) meet the qualifications contained in NCLB by the 2005-06 school year.

11) In the allocation of school improvement funds (section 1002(a)), does the plan describe a formula for such allocation? ☐ Yes ☐ No

If yes, what is the major factor in the formula (e.g. enrollment, extent of economic deprivation, etc)?

If no, what are the major considerations in making allocations?

12) Has the state estimated the cost of development of assessments to meet the requirements of NCLB? If so, how does this estimate compare with the allocation of federal dollars it will receive?

13) Summarize the state plan in regard to supplemental services. How will it inform local education agencies? Does it include a list of providers or how such providers will be selected? Does it include a procedure to determine the amount of funds that will be available for each child that will be uniform throughout the state?

14) Summarize the plan's discussion of public school choice in regard to Title I schools in need of improvement.

ENGLISH LANGUAGE LEARNERS

I. Questions for Reading First Application review

1) What is the amount of the award?

2) What are the four or five major activities or priorities for awards the state describes in its application?

3) How does the state describe the manner in which Reading First and Title I activities will be coordinated? (This can be at the state, district, and school levels. For instance, at the state level, the state may review applications for Reading First in light of district Title I plans. Districts may require schools to show how activities will be coordinated or state that if a school receives Reading First funds, it will use Title I funds for mathematics and reading in upper elementary grades.)

APPENDIX 2

Interview Guide

**Not all states chose to respond to all questions. In addition, reviewers sometimes varied the format and content of the interview depending on the state's responses.*

STATE: _____ **INTERVIEWEE:** _____

DATE: _____ **INTERVIEWER:** _____

I. ASSESSMENTS

1. Has your state provided districts with results on the state assessment for school year 2001-02?

   If yes, when was the data provided?

   If no, when will it be provided?

2. (a) Using 2001-02 data, has your state identified districts and schools in need of improvement and in need of corrective action?

   If yes, what measure of adequate yearly progress did you use?

   (b) How many schools are in each category?

   (c) How does the number identified under the new Act compare with those identified the previous year?

   If no, when do you plan to identify the schools?

   (d) Do you anticipate that the new provisions regarding accountability and identification of schools will increase or decrease the number identified the previous year? Can you estimate the extent of expected change?

   (e) What additional indicator does the state plan to use to measure the progress in elementary and middle schools?

3. Are you experiencing or do you anticipate any difficulties with disaggregating data as required under NCLB? If yes, what are the particular problems you face?

4. (a) Has your state developed a list of approved supplemental education service providers? If yes, when was it distributed to school districts? If not, when will such a list be available to school districts?

   (b) What are the key elements used or that will be used to gain approval? Obtain a copy of the list of providers.

5. Did the state develop guidance for NCLB for LEAs? Did the state develop guidance for NCLB for schools? If yes, obtain a copy of guidance materials.

6. (a) When did the state complete review and final approval of local applications?

   (b) When were awards made to local school districts?

7. (a) What information and/or guidance did the state provide to school districts regarding public school choice under Title I?

   (b) Does the state have any information on the use of this option for the 2002-03 school year? If yes, obtain a copy of materials.

8. (a) Has the state determined the cost of developing and implementing the academic content and academic achievement standards and the assessments required by NCLB?

   (b) Compare with allocation of funds for assessments.

9. (a) How does the state define proficiency in reading/language arts and mathematics?

   (b) Has the definition changed as a result of NCLB? If yes, how? Has the definition been strengthened or weakened?

10. Does the state plan to make changes in its assessment system as a result of NCLB? If yes, what changes will be/were made?

11. How does the state plan to meet the goal of having all students performing at the proficient level by 2014? What are the three to five main things it will do?

12. (a) How would you rate written guidance provided by the U.S. Department of Education on assessment in regard to its quality?

A. Excellent B. Good C. Fair D. Poor

(b) How would you rate the timeliness of written guidance provided on assessment?

A. Excellent B. Good C. Fair D. Poor

13. (a) How would you rate other forms of assistance such as oral communication, the website, regional meetings in regard to its quality?

A. Excellent B. Good C. Fair D. Poor

(b) How would you rate the timeliness of other forms of assistance provided?

A. Excellent B. Good C. Fair D. Poor

II. IMPROVE EDUCATOR QUALITY

1. Does the state have information on the number and location of teachers meeting the definition of highly qualified teachers in NCLB? If yes, please provide the information. If not, how is the state going about collecting the information?

2. (a) Has the state changed its teacher certification policies in the past two years? If not, does it have any current plans to do so?

   (b) In your opinion, have the changes strengthened or weakened the certification?

3. Does the state have a test of content knowledge that it uses to determine the adequacy of knowledge of content of prospective teachers? If not, is such a test under development at the state and/or local levels? Or is the state in the process of selecting a commercially developed test? If so, which one, if known?

4. Has the state established a reporting system for local districts to determine compliance with educator quality requirements? If a form is used, obtain a copy.

5. How is the state ensuring that all teachers hired to work in programs supported with Title I funds after the first day of the 2002-03 school year are highly qualified?

6. Does the state have information on the qualifications of paraprofessionals currently working in Title I schools? If yes, how do the qualifications compare with the requirements of NCLB? If not, how does the state plan to gather this information?

7. How is the state ensuring that paraprofessionals hired after the passage of NCLB meet the qualification requirements of the Act?

8. Has the state issued guidance on the educator quality provisions? If yes, obtain a copy.

9. (a) How would you rate the written guidance issued by the U.S. Department of Education on this issue in regard to quality?

   A. Excellent B. Good C. Fair D. Poor

   (b) How would you rate the timeliness of written guidance issued by the U. S. Department of Education?

   A. Excellent B. Good C. Fair D. Poor

III. SCIENTIFICALLY BASED RESEARCH

1. Has the state issued any guidance on Scientifically Based Research (SBR)? If yes, obtain a copy of guidance materials. If not, does the state plan to issue guidance on SBR and if so, when?

2. How does the state plan to ensure that this provision is met? For example, developing lists of programs that meet the standard, use of the clearinghouse, review of local programs against some criteria, etc.

3. (a) How would you rate federal guidance issued on SBR in regard to quality?

   A. Excellent B. Good C. Fair D. Poor

   (b) How would you rate the timeliness of guidance provided on SBR?

   A. Excellent B. Good C. Fair D. Poor

IV. EARLY LITERACY

1. What are the priorities and criteria that the state has established to award grants under Reading First?

2. If grants have been awarded, what are the three to five major activities local districts will carry out with Reading First funds?

3. What are the two or three major ways states will ensure that Reading First funds are coordinated with those available to districts under Title I?

V. ENGLISH LANGUAGE LEARNERS

1. In the 2002-03 school year, does the state plan to test the English proficiency level of English language learners?

   If yes, what test will be used?

   If no, what are the plans to develop and administer an English language proficiency assessment?

VI. GENERAL QUESTIONS

1. Do you believe that the NCLB Act will lead to improvement in the performance of all children and, in particular, children in high poverty, low performing schools? If so, give at least three major reasons why you hold this belief. If not, give at least three reasons why you think it will not result in improvement.

2. What are the two to four major problems of implementation that your state faces in implementing NCLB? How do you plan to overcome each problem?

3. (a) Among the changes made to ESEA by NCLB, what are the two to four that you find most favorable? Give reasons for each.

   (b) The two to four you find most troubling? Give reasons for each.

4. (a) What are the two to three areas of NCLB which best complement state policies?

   (b) What are the two to three areas of NCLB that greatly differ from state policies?

APPENDIX 3

A New Federal Role in Education

In January 2002, President Bush signed into law the "No Child Left Behind Act." The central feature of this law requires the states to adopt a specific approach to testing and accountability, intended to lead to higher achievement for all children. The legislation sends the message that the federal government will be assuming a more forceful role in elementary and secondary education, one that makes unprecedented demands on states and local school districts to raise academic achievement and to take direct action to improve poorly performing schools. The new law also requires states to raise the qualifications for new teachers and verify the qualifications of current teachers. In exchange for meeting the new demands, poorer school districts will receive additional federal funding, and all states and school districts will have greater flexibility in how they use federal funds. This summary covers the main provisions of the new statute. The legislation makes numerous other changes in federal K-12 education programs—too many to list here. For a more detailed description of the law and of the provisions described below, please check other sources such as the U.S. Department of Education's No Child Left Behind web site (www.nochildleftbehind.gov).

Regular Testing in Key Subjects

Currently, states must administer annual exams in reading/language arts and mathematics at least once during grades 3 to 5; grades 6 to 9; and grades 10 to 12. The new law requires states to test students in more grades, using assessments developed or chosen by each state. These test results will be used to hold educators, schools, and districts accountable for student achievement. Since these testing requirements will entail additional costs, they are contingent on the federal government providing a set amount of funding each year to help states cover the costs.

- By school year 2005-06, states must administer annual statewide tests in mathematics and reading/language arts to children in grades 3 through 8, and at least once during grades 10 to12, and must provide individual student test scores.
- By school year 2007-08, students must be tested in science at certain grade spans.
- Starting in school year 2002-03, states must annually assess the English proficiency of students who are learning the English language.
- Every other year, states must administer the mathematics and reading exams of the National Assessment of Educational Progress (NAEP) to a sample of their students in grades 4 and 8, with the federal government paying for the costs. NAEP is a national testing program that tracks student achievement in core subjects. This requirement

is meant to serve as an independent check on the states' own tests. Since the same NAEP exams will be given in every state, a comparison of NAEP results with a specific state's test scores could help determine the difficulty of a state test.

Test Design and Use

The new law contains specific requirements about the features and uses of state tests.

- State tests must be aligned with the state's academic standards and must produce results that are comparable from year to year.
- State tests must yield results that can be used to determine whether students are meeting the state standards and to help teachers diagnose and address students' specific academic needs.
- States must promptly provide test scores to local school districts by no later than the beginning of the school year after the test is given.

When the law was signed in January 2002, only 9 states were at all close to fulfilling those requirements, according to surveys by the newspaper Education Week.

Disaggregated Test Scores

The new law requires every school, school district, and state to "disaggregate," or break out, the average test results for certain groups of students, including:

- major racial and ethnic groups;
- major income groups;
- students with disabilities; and
- students with limited English proficiency.

This requirement is meant to highlight the relative achievement levels of these groups of students and to hold schools accountable for closing the achievement gap between African-American and Hispanic students on one hand, and Caucasian and Asian students on the other.

Closing the Achievement Gap

Using disaggregated test information, states are required to follow a precise timeline to close achievement gaps between different racial, ethnic, and income groups, and other groups noted above. Beginning after school year 2001-02, states have 12 years to move all groups of students to the benchmark set by the state for proficiency in mathematics and reading. States must set regular targets for increasing achievement over that period, using as a starting level the average achievement of the lowest performing group of students or schools in the state.

Failing Schools

Each school must test at least 95% of its students, and each group of students in a school must meet or exceed the annual objectives set for them. Schools receiving Title I aid that do not reach state performance objectives will be subject to various forms of assistance, intervention, and other actions, depending on how long the failure persists. (Title I, the largest federal education program, provides aid to low-income schools to improve education for low-achieving children.)

- If a school fails to meet performance objectives for two consecutive years, then in the third year, it must receive technical assistance from the district to help it improve, and its students will have the option to transfer to another public school in the district.
- After the third consecutive year of failure, technical assistance to the school and public school choice will continue. In addition, students will have the option of using their share of Title I funds to pay for tutoring and other supplemental educational services either from their own school or from a state-approved outside group, such as a for-profit company or a private non-profit entity.
- After the fourth consecutive year, technical assistance, public school choice, and supplemental services will continue, but the failing school must also change its staffing or make another fundamental change.
- After the fifth consecutive year, the governance of the failing school must be changed—for example, by converting it to a charter school, turning it over to a private management company, or having the state take it over.

Report Cards and Parents' Right to Know

Each school district must issue a report card to parents and the public that includes the following information:

- The local report card must describe the state test results for students in the district, and compare the local results with those for the whole state.
- It must include test results for each school in the district, and compare each school's results with those of the whole district and the whole state.
- It must list the schools in the district that are in school improvement (the term used to describe schools that are not raising achievement for all groups of students and that must follow the schedule set out above).

States must issue similar report cards.

Parents also have the newly-granted right to request information on the qualifications of teachers in a school, such as whether teachers are state-certified and licensed or whether they are teaching with provisional certificates.

Teacher Qualifications

By 2005-6, states must have highly qualified teachers in all their public school class-

rooms where core academic subjects are taught. States must take certain steps in the interim years to meet this goal. "Highly qualified" means that a teacher must be fully certified or licensed, have a bachelor's degree, and show competence in subject knowledge and teaching skills (generally demonstrated by passing a rigorous state test). The requirements differ somewhat for new and already-hired teachers, and for elementary, middle, and high school teachers. Also, after the beginning of the school year 2002-03, all new teachers hired whose salaries are supported by Title I program funds, must be highly qualified as must new teachers in schoolwide programs.

Paraprofessional Qualifications

By January 8, 2006, all paraprofessionals supported by Title I funds who perform instructional duties (including all such paraprofessionals in Title I schoolwide programs) must complete at least two years of higher education or meet a rigorous standard of quality, as determined by a test. This requirement took effect immediately for Title I supported paraprofessionals hired after January 8, 2002.

Flexibility

In exchange for meeting these federal demands, the new law gives educators more flexibility in the use of federal money. The main flexibility provisions include the following:

- School districts can shift up to 50% of the grants they receive under four federal categorical programs into any of the other three programs or into the Title I program. These four programs are for teaching improvement, innovation, technology, and safe and drug-free schools.
- In the Title I program, schools with a poverty rate of 40% may now use their Title I grants to improve education for all the children in the school, rather than just for the lowest-achieving students. Previously, only schools with a poverty rate of at least 50% could operate these "schoolwide" projects.
- The new law authorizes several experimental programs to test what happens when more federal requirements are relaxed in a select number of states and school districts.

More Funds for the Poorest Districts

The new statute makes several changes in the method for distributing Title I funds, in order to direct additional funding to the poorest school districts. Even more significantly, the actual dollars to carry out this increase for low-income areas were appropriated by the fiscal year 2002 appropriations bill. It was important that both the authorizing law (the No Child Left Behind Act) and the appropriations bill had the same goals, because in past years, funds have not always been appropriated for the more highly-targeted sections of the Title I funding formula.

Other Programs

The new legislation revises and extends many other federal aid programs for elementary and secondary education, including the Bilingual Education program, Impact Aid, the Safe and Drug-Free Schools and Communities Act, the 21st Century Community Learning Centers, and the education technology program. Two especially noteworthy new programs are the following:

- The Teacher Quality initiative makes funds available to school districts to recruit and retain teachers and principals and provide them with professional development. This new program combines two formerly separate programs: the Eisenhower Professional Development program and the class-size reduction initiative.
- The Reading First program helps school districts carry out comprehensive programs to improve reading instruction. Grant recipients must conduct diagnostic testing of children in K-3 to determine who is at risk of reading failure.

Immediate Action In School Year 2002-03

To underscore the urgency of the new federal demands for accountability, the law includes some important changes that will be effective in the school year 2002-03.

- In fall 2002, as already noted, new teachers hired with Title I funds or teaching in schoolwide programs must be highly qualified.
- All Title I supported paraprofessionals who perform instructional duties and who were hired after January 8, 2002 must have completed at least two years of college or must meet a rigorous standard of quality as determined by a test.
- In fall 2002, students in schools that have failed for a second year to meet the improvement provisions of the prior law will have the option of leaving the failing school and enrolling in a different public school in the district. According to the U.S. Department of Education, students in an estimated 8,652 schools will qualify for this option. The local school board must pay for some or all of these students' transportation expenses.
- In fall 2002, students in an estimated 3,000 schools will be offered both the option of public school choice and of taking away from the public school system their per-pupil share of Title I funding (between $300 and $1,000 per child) and transferring that amount to a private company, religious institution, or non-profit organization to pay for after-school tutoring or other supplemental services. This provision applies to students in schools that have already been labeled as failing for three years under the previous federal law.
- In 2002-03, students who are learning the English language must be assessed to determine their English proficiency.

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