

STANDARDS, ACCOUNTABILITY AND COMMON SENSE

Solutions to Implementation Issues with
The No Child Left Behind Act

Prepared by:

Leadership for Educational Excellence

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EXECUTIVE SUMMARY

The No Child Left Behind Act (NCLB) historically shifted federal education policy by assuming a far more expansive federal role in the areas of standards, assessment, accountability, staffing, and budgetary allocations. This new direction in federal policy creates both opportunity and challenge. The federal law includes laudable goals, such as: 1) the elimination of “achievement gaps” based on race, ethnicity, disability or limited English proficiency, and 2) ensuring that all students are proficient in language arts, math and science by 2013-14. NCLB also provides modest increases in funding in some areas to assist with achieving these goals. However, in the 18 months since NCLB became law, significant concerns have arisen surrounding its implementation. Without revision, the act may have a number of unintended consequences, including:

- compromising the ability of schools to address the unique educational needs of special education students and students with limited English proficiency;
- penalizing successful schools that are making significant progress in raising student achievement;
- failing to consider the unique issues faced by schools when dealing with highly mobile student populations;
- loss of many outstanding, experienced educators and paraprofessionals and exacerbating the shortage of teachers and paraprofessionals;
- pressuring schools to provide choice options where there is no intra-district capacity to accept students;
- mandating states to endorse supplemental education program providers who are not required to employ “highly qualified” teachers;
- providing inadequate funding to cover costs of mandates imposed by NCLB; and
- forcing schools, districts and states to inefficiently allocate resources due to the rigid and confusing “supplement, not supplant” federal requirement.

The attached summary represents the collective concerns regarding NCLB and recommendations for improving NCLB that have been jointly developed by New Jersey’s major education associations, including the New Jersey Association of School Administrators, New Jersey Association of School Business Officials, New Jersey Congress of Parents and Teachers, New Jersey Education Association, New Jersey Principals and Supervisors Association, and New Jersey School Boards Association. The report provides additional detail on each of the concerns above and offers recommendations for revising NCLB to rectify these problems.

We are hopeful that this document will serve as a blueprint for New Jersey’s congressional delegation to work together to ensure that the laudable goals of No Child Left Behind will be realized for all of New Jersey’s children.

TOPIC: ADEQUATE YEARLY PROGRESS

THE ISSUE: *Special education students get left behind under NCLB.* Instead of recognizing the unique needs and goals of special education students, the Act requires schools to judge special education students as a homogenous group and subject them to standardized testing. The Act fails to recognize that each special education student has unique needs that should be addressed individually. Although the Act permits a student's IEP to choose accommodations for taking an assessment, the IEP has no power to decide whether it is appropriate to subject that student to a standardized general assessment. Instead, the Act only offers an artificial one-percent (1%) "cap" that allows "alternate assessments" for certain "severely cognitively disabled" students. Neither the "cap," nor the term "severely cognitively disabled," is based on scientific evidence or student need.

THE SOLUTION: **NCLB should afford greater flexibility for assessing special education students in accordance with their individual and specific needs.** An assessment should measure the student's progress toward fulfilling the goals specified in the IEP. AYP for special education students should be based on the school's progress towards achieving the goals of each student's IEP. In many cases, it may be more appropriate to devote resources toward helping a student fulfill individualized goals as opposed to taking a standardized, state-mandated assessment designed for the general population. NCLB's current focus on standard assessments designed for the general population may not be an appropriate indicator of a special education student's progress.

THE ISSUE: *The categorization of Limited English Proficient (LEP) students must be revised to avoid senseless results.* By definition, LEP students are not proficient in English. However, NCLB requires *all* subgroups to be proficient in reading/language arts literacy. Under this scenario, LEP students will never be proficient on state tests because once a student is English proficient, that student is no longer in the "LEP" subgroup. Although some could argue that the requirement allows testing of students in their native language, this option is cost-prohibitive in a state like New Jersey where over 100 different native languages are spoken. Under the current definition, schools will not get credit for making LEP students proficient, but instead will fail to achieve AYP.

THE SOLUTION: **LEP students' test scores should not be included in AYP accountability until they have completed two (2) full academic years of education in the United States, or until sufficient federal funding is provided to develop state tests in each student's native language.** Prior to such time, AYP for LEP students should be based on student progress towards English language proficiency. Once included in the AYP assessments, LEP students, after becoming literate in English, should

remain part of the LEP subgroup for purposes of determining whether that subgroup is achieving AYP for at least one additional academic year.

THE ISSUE: *It is unfair to sanction an entire school for a subgroup's failure to make AYP.* NCLB would apply sanctions on an entire school for the failure of only one subgroup to meet AYP. This inflexibility defies logic and common sense. For example, a school may exceed AYP in every other area, but if one subgroup misses AYP then the entire school suffers. Current law is unfair to all the school's students because it sanctions the entire school.

THE SOLUTION: **Resources should be devoted to the subgroups that do not make AYP.** If only one subgroup is struggling, then remediation should be devoted only to that particular subgroup. Resources should not be expended on reconstituting an entire school if only one subgroup needs assistance. The current law creates more problems than it solves by draining resources from subgroups that need assistance to make AYP. Sanctioning an otherwise successful school is wasteful and inefficient.

THE ISSUE: *Current AYP provisions will improperly label schools "in need of improvement" that are making significant gains in student achievement.* To make AYP using the so-called "safe harbor" provision, a school must obtain a 10% reduction in the percentage of students who are not proficient. This can translate into more than a 20% increase in the percentage of students who are proficient. Under this system, many schools that are making large gains in student achievement will still not reach AYP. Current AYP measures also fail to recognize instances where a school is making significant progress with the same students over time.

THE SOLUTION: **The "safe harbor" provision of NCLB should be revised to avoid penalizing schools that are making significant academic gains.** A school should satisfy AYP whenever there is a 5% reduction in the number of students who are not proficient. In addition, for those states such as New Jersey that are developing a longitudinal student database, a "safe harbor" provision should be developed that permits schools to achieve AYP where the school demonstrates significant "value added," i.e. where test score results for the same students increase over time.

THE ISSUE: *The law fails to consider the unique problem of highly mobile students.* Current law requires a student to be counted towards a school's AYP if that student is enrolled in the current academic year, which begins in New Jersey on July 1. However, with highly mobile students, testing in the first academic year only provides an indication of the student's *prior* education. Furthermore, the law fails to consider that these students are

acclimating to a new school environment. A school should not be held accountable when that school has had only negligible time to educate the student, especially if the student just enrolled and is still adjusting to a new environment.

THE SOLUTION: **Students should not be counted toward AYP unless they have been enrolled in a school for at least three full academic years.** This would provide a valid assessment of a school's progress in raising student achievement while allowing the time necessary for a student to acclimate to a new environment.

TOPIC: SCHOOL "CHOICE" PROVISIONS

THE ISSUE: *The U.S. Department of Education (USDOE) would force schools to provide a choice option even if no schools in the district have space.* Where no schools in the district have the capacity for additional students, the USDOE demands compliance with public choice provisions by using temporary trailers, building additions, or partnerships with neighboring school districts. This solution is not reasonable. If the USDOE mandates the provision of such options regardless of capacity, then substantial new costs will be imposed on local districts. In addition, many schools may be unable to find a willing district to provide out-of-district choice options. Finally, parents may be informed that they are entitled to choice when in reality no choice option is available. This will inevitably create needless and unproductive tension with parents and the community.

THE SOLUTION: **The school choice option must be tempered with some practicality.** To offer "trailers" is not a sufficient solution. NCLB must emphasize that schools are not required to offer choice where there is no intra-district capacity. Furthermore, under these circumstances, the law should not require districts to offer a choice that cannot actually be implemented. This would create only misconceptions and strife surrounding the choice provision. NCLB should instead encourage disclosure to parents of the strategies for improvement to be implemented by the school or district.

THE ISSUE: *Children deserve certified instructors, but supplemental education providers are not required to hire highly qualified teachers.* Where a school fails to achieve AYP for three consecutive years, parents must be provided the opportunity to choose from a list of state-approved supplemental education providers to offer remedial assistance. The school maintains responsibility for monitoring the providers, but approved providers are not required to employ "highly qualified" teachers. This is unfair to the student and unfair to the school district because it imposes a double standard.

THE SOLUTION: **Require that all approved supplemental education providers employ “highly qualified” teachers.** This provision will help ensure that students are provided with the highest quality of supplemental instruction.

TOPIC: “HIGHLY QUALIFIED” STAFF

THE ISSUE: *NCLB’s standards for “highly qualified” teachers will create unintended negative consequences for special education.* The requirement for highly qualified teachers means that a special education teacher in a self-contained class where middle school or high school level content is being taught must complete the burdensome requirement of becoming “highly qualified” in each content area being taught. This requirement ignores the critical importance of teacher preparation for special education teachers in how to address the unique needs of special education students. It also ignores the impact of ongoing professional development in addressing the need for special education teachers to have content knowledge, in states such as New Jersey where professional development is required for all teachers. Finally, it is likely to exacerbate the existing shortage of special education teachers.

THE SOLUTION: **Eliminate the requirement for special education teachers to complete a major or courses in each content area being taught, as long as the State has in place a system for ongoing professional development to address the need for content knowledge.** Support an amendment already discussed in the Senate Education Committee that would clarify that “highly-qualified” can be certification in special education, but not necessarily for every subject taught.

THE ISSUE: *NCLB’s requirement for paraprofessionals to be “highly qualified” by completing an Associate’s degree, or 48 credits of college coursework, or pass a rigorous state or local assessment within specified timelines may result in the loss of many talented and committed paraprofessionals and create a shortage of candidates for paraprofessional positions.* Many paraprofessionals have never taken a single college course and, given family and work responsibilities, will not be able to complete the required college credits by January 2006. Oftentimes, these paraprofessionals are parents in the local community and provide an invaluable linkage between the schools and community. In addition, such paraprofessionals often have valuable professional and life experience that is not reflected in the lack of coursework.

THE SOLUTION: **Provide an additional two years, until January 2008, for existing paraprofessionals to satisfy the “highly qualified” requirement and clarify the flexibility provided to local districts to develop a local**

assessment plan to ensure that paraprofessionals are highly qualified. Provide a “grandfather clause” to allow current paraprofessionals, hired before enactment of NCLB, to continue assisting their students where those paraprofessionals demonstrate successful experience in the district.

TOPIC: NCLB FUNDING / EXPENDITURE REQUIREMENTS

THE ISSUE: *The federal funding formula’s “supplement not supplant” provision is a cumbersome requirement that denies schools the ability to allocate resources freely to the areas of greatest need.*

THE SOLUTION: **Adopt the U.S. General Accounting Office (GAO) recommendation to replace “supplement not supplant” with “maintenance of effort.”**
The GAO found that the requirement of “supplement not supplant,” which requires a school district to show that federal funds are not being used to replace state and local resources, is simply “unworkable” for schoolwide programs. As the GAO showed in its report,¹ implementing this provision of Title I is cumbersome, inefficient and difficult. Instead, the GAO recommends expanding the oversight mechanism of “maintenance of effort,” which is a broad oversight tool that examines the *combined* effort of a district to maintain a certain level of spending. The maintenance of effort mechanism permits broad flexibility and allows districts to use local, state and federal resources more efficiently.

THE ISSUE: *NCLB provides inadequate funding to address the new requirements imposed by the Act.* For example, New Jersey estimates that the full cost of implementing the new state testing program at grades 3-8 and 11 will be greater than \$35 million in 2005-06. However, federal funding for state testing is expected to reach no more than \$12 million by that time. This creates an incentive for states to choose low-cost, low-value “off the shelf” tests that measure minimum basic skills, or allocate millions of dollars in state resources to support higher quality testing instruments. On a broader scale, a recent Vermont study showed that for every dollar in federal funds coming into Vermont under NCLB, there was more than \$3 in increased costs. Right now, the Congress is preparing to consider slashing funding for NCLB below what was originally promised when the law was passed.

THE SOLUTION: **Directly link NCLB requirements to the provision of sufficient federal funding to cover the cost of new federal mandates.** This provides insurance that no federal mandate goes without federal pay. If funding is

¹ The GAO made these recommendations in its February 2003 report, *Disadvantaged Students: Fiscal Oversight of Title I Could Be Improved*, available at www.gao.gov.

inadequate, the mandates of NCLB would be suspended until the Congress fulfills its funding obligation.

THE ISSUE: *Litigation will explode if NCLB is perceived to create a private right of action.*

THE SOLUTION: **Clarify that NCLB does not create a private right of civil action by parents and/or students.**