



## The Promise and Challenges of the “No Child Left Behind Act”

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June 2004

**This policy brief analyzes four major areas of concern under NCLB and provides a list of useful resources:**

- Testing and Adequate Yearly Progress
- Use of Test Results: Interventions
- "Highly Qualified" Teachers and Paraprofessionals
- Additional Resources, Funding and Cost Estimates

### **I. Introduction**

In December 2001, Congress passed a sweeping reauthorization of the Elementary and Secondary Education Act that introduces a vastly expanded federal role in K-12 education, and called it the "No Child Left Behind Act" ("NCLB"). States and local education agencies are charged with developing proactive plans to ensure that by the 2013-14 school year all students score at the proficient or advanced levels on state tests aligned to state standards. Schools and districts that fail to make adequate yearly progress towards this objective may receive technical assistance or be subject to corrective action.

Beginning with the 2002-03 school year, all newly hired teachers and paraprofessionals in Title I schools must be "highly qualified," and, by the 2005-06 school year, all public school teachers and paraprofessionals must be "highly qualified". Parents must be involved in planning and developing the programs NCLB establishes and parents of students in schools identified for improvement or corrective action are empowered to secure additional educational services for their children or to transfer their children to other public schools. States, districts, and schools must issue regular report cards to inform parents and the community of their progress towards the goals and requirements set forth in the Act. NCLB's goals are quite ambitious, and its passage was accompanied by a modest increase in federal funding, including new targeted funding for districts with high concentrations of poverty.

NCLB also contains a provision providing that no State or local educational agency will have to incur any expense or spend any funds in order to fulfill the mandates of NCLB that are not paid for by federal funding. In short, the law prohibits the imposition of an "unfunded mandate" in connection with NCLB.

When passed, many education officials, advocates, and commentators were cautiously optimistic about the law, viewing it as a promising step towards ensuring that all students have a sound education, particularly in its commitment to closing the "achievement gap" that too often separates minority, low-income, English language learners, and students with disabilities from their peers.

As so clearly articulated by the Education Trust and others, closing teacher gaps and opportunity gaps in order to close achievement gaps must be national state and local priorities if we are to educate our children effectively. Many educators agree that the strength of NCLB is its focus on a national set of educational ideals.

Unfortunately, many American schools lack the fundamental resources, in terms of qualified teachers, adequate facilities, sufficient materials, or specific educational programs, which students need to succeed. The law lacks any mechanism to ensure that schools have adequate resources to provide their

students with an adequate education. While NCLB focuses attention on the achievement gaps, a nationwide debate has unfolded regarding the law's effectiveness in actually closing these gaps.

ACCESS has prepared this policy brief to summarize the components of the law and the experience with its implementation to date.

## **II. Testing and Adequate Yearly Progress**

NCLB imposes specific requirements for student performance on each school and school district. Congress had already (in the 1994 reauthorization of ESEA) required states to adopt reading and math standards. In the 2001 reauthorization of ESEA (NCLB), Congress added a requirement that states adopt science standards by the 2005-06 school year. Student academic achievement standards must be aligned with the state's content standards, and tests must accurately measure the same challenging knowledge and skills that are contained in the state's content and achievement standards. The law currently requires students to take state tests in math and reading at least once in elementary school, middle school, and high school, and beginning in 2005-06, students must be tested every year in grades 3 - 8; science tests must be developed and put into place by the 2007-08 school year. States are to establish at least three levels on the tests: basic, proficient, and advanced. By the 2013-14 school year, all students are to achieve proficient or advanced levels. Every other year, students in grades 4 and 8 must also participate in the National Assessment of Educational Progress (NAEP).

Under NCLB, each state must develop an objective measure by which it will judge whether the state as a whole, each local education agency ("LEA," generally the school district), and each individual school is making "adequate yearly progress" ("AYP") towards 100% proficiency by the 2013-14 school year. Although largely judged on student test performance, high schools must also be evaluated on their graduation rate and elementary and middle schools on at least one other academic indicator.

Economically disadvantaged students, students of color, students with limited English proficiency, and students with disabilities also tend to lag far behind their peers. NCLB's stated intent is to require that states, districts, and schools acknowledge, and then end, this achievement gap. To this end, the new legislation requires that states, districts, and schools disaggregate figures for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency and evaluate each subgroup's progression towards proficiency. The law provides that states may choose a minimum number of students that will be considered for disaggregation purposes. The only stated requirement in the law regarding the size of the disaggregated subgroup is that it be statistically significant.

The application of these general principles is rather technical. Each state sets separate starting points for English and math and designates the performance levels that must be met in subsequent years. The starting point is based on 2001-02 test scores and must be at least the higher of the percentage of students that are proficient in the state's lowest achieving subgroup or the percentage of students that are proficient in the school at the 20th percentile statewide. Each year, individual schools must meet or exceed the state objectives both for their entire student population and for each subgroup (or meet a limited "safe harbor" provision which can apply if students in a subgroup fail to meet targets but nonetheless make significant progress on tests and on other indicators). At least 95% of students in each subgroup must be tested. Students with disabilities and limited English proficient (LEP) students generally must take the standard tests with appropriate accommodations. The law provides that states must make "every effort" to develop tests in "languages other than English that are present in the participating student population."

NCLB requires that data regarding adequate yearly progress at the school, district, and statewide level is readily available to parents and to the public generally. The state "report cards" must, at a minimum, include information on general student achievement and the achievement of each of designated subgroups on the math and reading/language arts tests, as well as percentage of students in each subgroup not tested. In addition, they must also include information that can be used to compare actual achievement to the state's objectives, graduation rates and other alternative academic indicators,

information about districts' and schools' yearly progress on tests, and teacher qualifications and credentials (in the aggregate and disaggregated by high-poverty compared to low-poverty schools). Districts must produce reports cards with similar district-level information.

**Implementation:** Many states are finding that NCLB's methods for assessing student performance and focusing on groups which have been traditionally ignored are problematic. The difficulties encountered by states, school districts and schools fall into three general categories: (1) dual testing systems; (2) the definition of adequate yearly progress; and (3) disaggregation of subgroups.

**(1) Dual Testing Systems:** When NCLB was enacted, many states already had testing and accountability systems in place. These systems focused on goals that the states determined were of primary importance. The states' educational goals were not always consistent with the new federal goals. In particular, many states eschewed a single performance measure, as required by NCLB. Many states added the NCLB requirements to their existing accountability programs. One of the results of maintaining dual systems is that the public receives mixed messages about school performance. Schools that were honored as excellent schools under a state accountability system find themselves labeled as "needing improvement" and subject to sanctions under NCLB. For example, it was reported that in 2003, only 47% of North Carolina's schools made Adequate Yearly Progress, even though 94% of the state's schools passed state learning standards. Similarly, it was reported that 84% of Florida's schools did not make AYP, although 78% of those schools that failed to make AYP had attained an A rating under Florida's state learning standards.

Moreover, the differences in accountability systems among states yield inconsistent results regarding "proficiency." NCLB allows each state to define proficiency, yet all states must be 100% proficient by 2014. As a result, several states lowered the score required to be considered "proficient" so that more students would make AYP. It was reported that Connecticut lowered its standards so that 80% of the students would pass its tests and make AYP. Wyoming set its standards so low that every school made AYP. Colorado and Louisiana also lowered their proficiency standards for federal purposes, while maintaining higher standards for local use. There is a fear that as more and more schools face sanctions associated with being labeled "in need of improvement," more states will consider weakening their definition of proficiency.

**(2) Adequate Yearly Progress:** The overall goal of NCLB is to achieve 100% nationwide proficiency by 2014. Some researchers claim that 100% proficiency is an unrealistic and possibly an unachievable goal. In Minnesota, a state with a high percentage of schools making Adequate Yearly Progress, the Office of the Legislative Auditor and the University of Minnesota conducted a simulation which revealed that between 80%-100% of that state's elementary schools would fail to make AYP by 2014.

As stated above, NCLB requires that schools and states test students each year at various grade levels, then report those results to the U.S. Department of Education ("ED"). These yearly tests form the basis of the determination of whether a school has made "adequate yearly progress" ("AYP") or is in need of improvement and therefore possibly subject to sanctions. These test scores are compared to the test scores of the same grade from the previous year. Thus, the third grade test scores, for example, are compared to the test scores of third graders from the year before, who are now in fourth grade. The federal requirement does not provide that the same students be compared over time. Furthermore, the tests are only given in English, math and, in the upper grades, science.

Accordingly, there is concern that AYP may not provide an accurate picture of student performance or of a school's performance. By focusing on a student's performance at a single point in time, without any information concerning that student's starting point, it is impossible to gauge that student's progress and to know how the school contributed to the student's progress. Moreover, by focusing solely on the point of proficiency, AYP gives no information regarding the progress of those students who are above proficiency level, as well the progress of those students who are well below proficiency level. These snapshots may tell us more about the demographics of a school than how that school has contributed to the students' learning. In March 2004, chief state school officers from 14 states wrote to U.S. Secretary of Education Roderick Paige requesting that ED allow states to include a growth model in NCLB assessment of AYP.

The validity of the tests relied upon for AYP analyses have been called into question. There are two types of standardized tests administered in public schools: "norm-referenced" tests and "standards-based" tests. As W. James Popham points out in his book, *America's "Failing" Schools*, it is possible that both types of tests, depending on their design, may inaccurately portray the performance of students and schools. "Norm-referenced" tests, such as the Iowa Basic Skills Test, are generally administered nationally and designed to produce a "spread" among students. In order to produce this spread, the tests include questions that measure a student's natural aptitude and questions that depend on a student's socio-economic status, along with questions that measure what a student should have learned in school. The first two categories of questions do not relate to a school's curriculum. Thus, while these tests are appropriate for some uses, they do not reflect accurately what a student has learned in a particular year, nor do they show how the school has contributed to his/her learning. If states base AYP on "norm-referenced" tests, therefore, they are not truly measuring student achievement or a school's performance. "Standards-based" tests are also potentially problematic. If States articulate too many standards for each subject, then it is impossible for teachers to predict what will be tested and to plan their lessons accordingly. The tests, therefore, will not measure what students in those classes learned. According to Popham, "standards-based" tests can measure a school's and a student's performance only if there are very few, clear standards for each subject.

The reliance on standardized tests to determine AYP also runs the risk of narrowing a school's curriculum. Schools and teachers, anxious about the consequences of being labeled "in need of improvement," may resort to "teaching to the test." In doing so, teachers and schools may ignore subjects that are not tested, but that are critical to a well-rounded education and may be the only subjects that inspire some students to continue their education. Several studies have concluded that AYP's narrow focus on certain subject matters has substantial negative impacts. The Council for Basic Education and the National Association of State Boards of Education reported in separate studies that the focus on AYP subjects has led to a decrease in instruction time in arts, foreign languages and elementary social studies. Furthermore, the Council for Basic education reports that schools enrolling higher numbers of minority and low-income students were more likely to experience decreased instructional time in arts and foreign languages.

**(3) Disaggregated Subgroups:** As stated above, the text of NCLB provides no specific requirement regarding the size of a disaggregated subgroup, as long as that size is statistically significant. The Pennsylvania NCLB Accountability Workbook notes that a subgroup that is too small runs the "substantial risk of identifying groups as not making 'adequate yearly progress' on the basis of chance rather than real underperformance." The Workbook further notes that "that risk increases when a school or LEA (local educational organization) has multiple subgroups." The Pennsylvania Workbook describes a subgroup of 100-200 children as being small enough to raise such reliability questions. However, most states have subgroups which are much smaller than 100-200. In Pennsylvania, for example, the state authorities decided on a subgroup size of 40 students, in order to avoid excluding schools or subgroups from consideration.

Moreover, as stated in the Pennsylvania Accountability Workbook, the Center on Education Policy study and the Harvard Civil Rights Project study, the risk of unreliable results increases in schools that have a large number of disaggregated subgroups. Schools with a diverse population have more benchmarks to meet and therefore are more likely to fail to meet one of those benchmarks. If the size of the subgroup is unreliable, then the failure to make AYP may not be reflective of the actual performance of that subgroup.

One school district, in Reading, Pennsylvania, has challenged the size of that state's subgroups. Reading's schools are very diverse, and are comprised of multiple subgroups. Thirteen of Reading's nineteen schools were cited last year for either failing to make AYP or being in danger of failure. The school district has challenged those designations in court, contending, among other things, that Pennsylvania's designation of 40 as the minimum subgroup size is statistically unreliable and has unfairly resulted in the failure of many of the district's schools.

Researchers and state officials have also recognized that separation into disaggregated subgroups may at times result in overidentification of subgroups or of schools that fail to make adequate yearly progress.

If one child is a member of multiple subgroups, his/her single score will affect the passing rate of each subgroup. State officials in Maryland noticed that students belonging to the Special Education or Limited English Proficient (LEP) group often also belong to the Free and Reduced Meals (FARMS) group. Accordingly, they have asked the Department of Education to allow them to count those children in only one subgroup, in the following order of priority: FARMS, Special Education and LEP.

Some education experts have remarked that the special education and English Language Learner (ELL), or Limited English Proficient (LEP), subgroups should be eliminated from AYP consideration. They assert that there are many students with severe cognitive difficulties who will never be able to meet a proficiency requirement. The Center on Education Policy survey of educators across the country found that many believed that it was inappropriate to require certain special education students to perform at grade level. They also disagreed with the requirement that ELL students be expected to reach 100% proficiency. Similarly, the Harvard Civil Rights Project stated that, given the lack of evidence regarding effective assessment of these two subgroups, they should not be counted for AYP. The study advocated collecting more diagnostic data regarding the performance of these subgroups before imposing high stakes testing.

**Federal Response:** Recently, the U.S. Department of Education announced several policies that provide greater flexibility for states and school districts regarding children with limited English proficiency (LEP). The first policy provides that children who have been enrolled in a school for a year or less must take the mathematics and English proficiency tests, but need not take the reading/language arts tests. The math scores of these LEP students need not be included in the AYP determinations. The second policy change permits a student who has been considered LEP during the previous year or two years to be included in the LEP subgroup, even if that student has achieved English proficiency. This change responds to concerns regarding the difficulty of meeting AYP with the LEP subgroups.

The Department of Education also recently altered in a limited way the procedures for assessing children with disabilities. New regulations issued on December 9, 2003 allow school districts and states to count as "proficient" and "advanced" (for the purpose of measuring adequate yearly progress) the results of alternate testing of students with the "most significant cognitive disabilities." These tests may be based on standards consistent with the student's individual education plan, and need not necessarily reflect the student's grade level. There is a 1% cap on the number of scores based on these alternate tests states are permitted to count for adequate yearly progress purposes. If the number of alternate tests exceeds this number, states and districts will have to choose which scores to include. States and districts may exceed the 1% cap if they can document that the incidence of students with severe cognitive disabilities exceeds 1% of all students and why.<sup>(1)</sup> While some educators applaud the "1%" rule, others educators doubt that this change will alleviate the problems associated with assessing students with special needs. They point out that many students who are not among 1% with the most severe cognitive difficulties will never be able to understand the material that forms the basis of the tests.

**Conclusion:** The ostensible purpose of accountability in NCLB is to ensure that schools effectively carry out their function and that all children, regardless of their ethnic background, economic background or learning ability, learn. While it is important to focus on results, the measurements being used to demonstrate achievements must be truly representative of how schools actually perform. If the accountability provisions of NCLB do not provide an accurate picture of how schools perform or how well students are learning, they will not assist in closing the achievement gap nationwide.

### III. Use of Test Results: Interventions

Schools that receive Title I funds and fail to make adequate yearly progress for two consecutive years generally will be designated schools "in need of improvement." Within three months of such designation, each school must develop a "school plan" outlining how it will address its shortcomings. These plans, which are to be developed in consultation with school and district staff, parents, and outside experts, must include specific strategies for improving instructional techniques in specific areas where students, or subgroups of students, were not proficient and set measurable goals for improved student achievement. Districts must provide extensive technical assistance to schools in analyzing data, school resources, and capacity to assist them in creating the plan. At least 10% of Title I funds received by the school must be

used for professional development addressing the school's academic shortcomings. Schools that continue to fail to make AYP are subject to escalating levels of corrective action.

Districts must also show that they are making AYP as a whole. If they fail to do so, they will also receive technical assistance and may, if they continue to fail to make adequate progress, be subject to state takeover or other radical restructuring. States also must show that they are making AYP towards 100% proficiency. The Act provides that 2% of Title I, Part A funding must be set aside for technical assistance, with 95% of these funds going to schools identified for school improvement, corrective action, and restructuring.

The year after a school is identified as "in need of improvement," its students generally must be given an option to transfer to non-failing schools in the district. All students in a failing school are eligible, but priority for transportation assistance must be given to the lowest-achieving children from low-income families. Regulations released by the Department of Education in fall 2002 (after the first round of student transfers had occurred) state that districts cannot use lack of capacity or class sizes in the receiving school as a justification for failing to provide all eligible students with a choice of at least two schools. If a school fails to meet AYP for a third consecutive year, low-income students in the school have a right to use a portion of their Title I money for "supplemental services," such as tutoring by private agencies which are independent of the school system. Assuming there is sufficient demand, districts must spend at least 20% of their Title I, Part A funds (the bulk of funding under the Act) for transportation and supplemental services. These options must be made available to students until the school makes AYP for two consecutive years.

If a school fails to make adequate yearly progress by the end of the second school year after being identified as being "in need of improvement," then the school is subject to "corrective action" in one of the following ways: (1) replacing the staff who are relevant to the school's failure to make AYP; (2) institution of a new curriculum, together with professional development, aimed at helping the school make AYP; (3) significant decrease of management authority at school level; (4) appointing an outside expert to advise the school on how to make AYP; (5) extending the school year or school day; or (6) restructuring the school.

If after one year of corrective action, the school still does not make AYP, then the following actions are to take place: (1) closing the school and reopening it as a public charter school; (2) replacing all or most of the school staff (which may include principal) relevant to the failure to make AYP; (3) entering in to a contract with an entity, such as a private company, to operate the school; or (4) turning operation of the school over to the state.

**Implementation:** There have been many challenges in administering these programs across the country. In addition, educators and analysts have questioned the efficacy of transfers and supplemental services in raising student achievement.

**(1) School Transfers:** Very few students eligible for transfer have in fact invoked this option. Most parents appear to prefer that their children remain in their school or in their neighborhood. In some cases, parents did not receive notification, as will be discussed below. The school transfer provision has also presented difficulties for both the sending schools and the receiving schools. The problems fall into three categories: (a) logistical and cost problems for sending schools; (b) capacity problems for receiving schools and (c) availability and quality of receiving schools.

**(a) Cost and logistics:** School transfers have negative economic consequences for schools in need of improvement. Title I schools are required to use their Title I funding to pay for transfers of students. Thus, the diversion of Title I money for the purpose of transferring students further strains the schools' limited budgets. Moreover, Title I schools whose students transfer out will lose Title I funds allocated for those students.

Sending schools also experience logistical problems. In 2003, in many areas, test scores were not available until after the deadline for notification of transfer eligibility. Therefore, school officials did not yet

know whether or not their school was designated as "in need of improvement" at the time they were required to notify parents of their children's right to transfer.

*(b) Capacity of Receiving Schools:* The major concern for receiving schools has been capacity to accommodate the eligible transferring students. Under NCLB, receiving schools must find room for the transferees. If the school is the subject of an existing desegregation order, the school must seek permission from the court to change the desegregation plan in order to allow these students to attend, even if that change will undermine the purpose of the desegregation order. According to the Center on Education Policy Study, 73% of receiving schools experienced such capacity problems. Schools are sometimes reluctant to accept an influx of transfer students, because these students may threaten their own status as schools meeting AYP.

There have, however, also been positive experiences with school transfers as well. In April 2004, the Chicago Board of Education released an analysis concluding that transferring students in Chicago improved their reading and math in their first year in the new school, and that their presence did not negatively affect the progress of the other students. Arne Duncan, Chicago Schools CEO, was quoted in the Chicago Sun-Times as saying "I couldn't have asked for better results."

*(c) Availability and Quality of Receiving Schools:* In urban districts there often is a paucity of appropriate receiving schools. Because urban schools are often comprised of multiple subgroups, they have more of a chance of not making AYP and, therefore being labeled "in need of improvement." When many schools in the same urban district are labeled as being in need of improvement, there are few eligible receiving schools. Chicago officials predict that in 2005, only 20 out of 600 schools will receive transfer students, and there will be only 457 spots for 300,000 students. In rural districts, there is often only one elementary and secondary school. In Nebraska, for instance, 90% of the school districts have only one building at any grade level. Consequently, there simply are no other schools to which students may transfer.

In addition to availability issues, the increased quality of instruction at receiving schools is questionable. The Harvard Civil Rights Project reported that in Chicago, the majority of receiving schools are on a state list for poor performing schools. Many of the receiving schools in urban areas are high poverty schools themselves. Therefore, students in urban districts had little chance to transfer to thriving schools. If a student from a Title I school does transfer to a non-Title I school, then he/she will no longer receive certain Title I services, such as Title I after school programs or other Title I school-wide programs, because these programs are only available to schools with at least a 40% poverty level.

**(2) Supplemental Services:** Although more students use the supplemental services option than the transfer option, still only a small percentage of eligible students have elected to participate in the supplemental services option. There are several reasons for the low participation rate. The Harvard Civil Rights Project and CEP report that availability is an issue, especially in rural areas. Since the majority of supplemental service providers are private companies, many choose not to operate in rural small markets. As indicated above, late notification is also a problem. If schools do not receive timely notification that they are designated "in need of improvement," they cannot notify parents in a timely manner.

Researchers point out that there is little empirical evidence that supplemental services raise student achievement. The Harvard Civil Rights Project has recommended halting this option until there is more evidence on the subject. The contention of those who question the efficacy of supplemental services is that funds would be better spent on other strategies which have been tested and proved to improve student achievement, such as improving the quality of teachers and pre-school for children at risk.

In addition to the dearth of evidence that supplemental services raise student achievement, there are allegations that mandating supplemental services has a negative impact on a school's ability to improve learning by undermining the traditional holistic approach used in Title I programs. While Title I programs tend to affect the entire school, supplemental services focuses on individual eligible students. Some critics argue that by diverting Title I money to administering individual tutoring programs, the supplemental services option makes it more difficult for schools to improve.

Another problem with supplemental services is the lack of oversight and quality control by the federal government. Without these safeguards, there is no guarantee that the supplemental service providers will help students succeed. Moreover, there is no requirement that these outside providers service special education students and English Language Learners. Owing to the fact that these populations are more expensive to educate, many supplemental service providers choose not to include these students.

**Conclusion:** The sanctions called for by NCLB highlights the differences in approach with many educators. NCLB emphasizes transfers and private supplemental services as tools to spur schools to improve. Many educators, on the other hand, view these measures as depriving them of needed funds to improve schools and placing the funds in programs that have not been widely proven to raise student achievement.

#### IV. "Highly Qualified" Teachers and Paraprofessionals

Education research has strongly established that quality teaching is essential for educational improvement. Unfortunately, there is ample evidence that children of color in high poverty communities are more likely to be taught by unqualified teachers than students in affluent neighborhoods. Research has shown that secondary school students in high poverty schools are twice as likely as those in low poverty areas to have teachers who are not licensed in the subjects they teach. Moreover, teachers in high poverty areas are more likely to be less experienced. One study found that in high-minority elementary schools, nearly 15% of teachers are new year after year.

Starting in the 2002-03 school year, all teachers newly hired in programs supported by federal funds under Title I must be "highly qualified" as defined by NCLB. Generally speaking, this means that the teacher must be state certified and have demonstrated competency in the subjects he or she is teaching. Likewise, all paraprofessionals hired in programs supported by Title I also must meet NCLB standards of "highly qualified." By the 2005-06 school year, all teachers teaching in core academic subjects (English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography) are to be "highly qualified." States had to immediately develop a plan in 2002 to demonstrate how they will achieve this objective, and also how they would increase annually the percentage of teachers that are receiving "high quality" professional development. The plan must also include specific steps that the state will take to ensure that poor and minority children are not taught at higher rates than other children by teachers who fail to meet the "highly qualified" definition.

NCLB allows veteran teachers to meet the same requirements as new teachers or to demonstrate competence in all academic subjects that the teacher teaches based on a "high objective standard of evaluation" ("HOUSSE"). Each state may develop its own HOUSSE standards, but they must meet certain general criteria, including: grade-appropriate subject matter knowledge and teaching skills; alignment to state student achievement standards, provision of objective, coherent information regarding the teacher's achievement of core content knowledge in the subjects he/she teaches; uniform application throughout the state; availability to the public; presence of multiple objective measures of teacher competence.

**Implementation:** While the aim of staffing all schools with "highly qualified" teachers is a goal widely supported by educators, many have found the implementation of this requirement under NCLB to be less than successful. A number of educators, administrators, and researchers across the country have lamented that the federal government's approach does not lead to meaningful reform, owing to: (1) a lack of meaningful standards, (2) a lack of funding for professional development and (3) a lack of support for rural and urban communities seeking qualified teachers.

**(1) Lack of Meaningful Standards:** There has been criticism that NCLB and its regulations do not provide any real standards for "highly qualified" teachers. There is no uniform, specific definition in either the law or regulations of a "highly qualified" teacher. In fact, it is left to the states to determine the standard. The federal government does not review assessments given to teachers, nor does it review state methods for achieving the goals of the "highly qualified" teacher section of the law.

The federal government's reliance on the states has proven problematic for several reasons. Researchers have found that self-reporting is unreliable. Most school districts do not have a classification system for qualification of teachers, nor do they have the capacity to track the assessment of teachers. Despite this lack of capacity, the Center on Education Policy reported that a surprising number of districts reported that most or all of their teachers were highly qualified. Upon closer examination, analysts have discovered that these statistics are questionable. States have admitted to guessing the number of highly qualified teacher, or artificially inflating the number so as to spare teachers' feelings.

In addition, many existing state certification requirements are inadequate. The Education Trust found that seven states have no licensing examinations for teachers and that testing standards in many of the remaining states and the District of Columbia exclude only "the weakest of the weak." Few state teacher licensing examinations are linked to specific areas of knowledge students are required to know under state learning standards.

The lack of uniform guidelines has also produced a great deal of confusion in the development and application of HOUSSE standards. Some states have fairly simple and straightforward requirements, where other states have developed extremely complex sets of requirements. In these latter states, teachers must pore through volumes of documentation in order to determine whether or not they are qualified. The lack of federal standards also presents a challenge for assessing the cost of achieving qualification. For example, the Ohio NCLB costing-out study noted that, depending on one's definition of highly qualified, it would either cost the state a one-time charge of \$875,000 for Praxis exams for non-qualified teachers, or it would cost \$59 million dollars annually to pay increased salaries to all teachers if they all attain masters degrees.

In addition to the lack of rigor and specific standards, educators and analysts assert that NCLB does not emphasize the skills truly needed to be an effective teacher. The Department of Education emphasizes verbal skills and content knowledge only. However, several surveys of teachers reveal a strong belief that in addition to content knowledge, it is essential that teachers receive pedagogical training in order to be effective.

**(2) Professional Development:** Many educators and administrators believe that NCLB's most positive effect in the area of teacher quality is the increased focus on professional development. However, the sufficient funds are not always available for developing and administering quality professional development programs. Title II funds are designated for professional development. However, in 2004, the federal government cut \$81 million in Title II grants. Nor did the federal government increase Title II funding in 2005. This lack of federal funding, coupled with budget crises in many states, has severely contracted states' abilities to provide professional development. Furthermore, most professional training dollars are spent on teachers, with very little spent on paraprofessionals, who also are required to be "highly qualified."

**(3) Rural/Urban Difficulties:** Both high poverty urban and rural areas experience great difficulties in recruiting and retaining qualified teachers. These areas are often unable to offer high enough salaries or attractive working conditions. High poverty areas have few if any programs to support new teachers. In rural areas, teachers often must teach multiple subjects, therefore they must be qualified in multiple subjects. Moreover, in a poor economy, these areas can no longer afford to offer "perks" which may entice teachers to interview there. NCLB has not aided high poverty urban and rural areas to recruit and retain "highly qualified" teachers.

**Federal Response:** In March 2004, the federal government eased some restrictions for new and veteran teachers in some rural areas. New teachers now have three years to meet qualification requirements and veteran teachers have an extra year to demonstrate competency in each subject. However, the federal definition of "rural" areas affected by this change only covers 26% of the nation's rural and small town schools. Moreover only 25% of those schools affected by the eased standards are high poverty. Therefore, the change does not aid all poor rural schools.

**Conclusion:** There is a wide body of research pointing to the fact that high quality teaching is a vital factor in raising student achievement. There are serious questions as to whether NCLB actually promotes the hiring and retention of teachers who are truly "highly qualified."

## V. Additional Resources, Funding, and Cost Estimates

It is clear that many states and/or districts will need to commit significant additional resources to their schools if they are going to have a fighting chance of meeting NCLB's standards for their students. The question in contention among federal officials and supporters of the law on the one hand, and some state officials and the law's critics on the other, is how much money is needed to fulfill the requirements of NCLB and whether the federal allocation to the states will cover that cost.

**Federal Allocation under NCLB:** Traditionally, Title I money, though ostensibly targeted for low-income children, has been spread very thin. Under the "basic grant" formula (the bulk of Title I funding), funds go to schools with as few as 2% of children below the poverty level, the result being that nine out of ten districts receive funding. "Concentration" grants provided limited additional aid to districts with poverty rates above 15%. Nonetheless, under previous funding allocations, many schools with high poverty rates, including one out of every five schools with poverty rates between 50 and 75%, did not receive any funding because they were surrounded by schools with even higher poverty rates. The 2001 appropriations bill allocating Title I money provides funding for two funding formulas that had been approved in the 1994 reauthorization of ESEA, but were never previously funded. These are funded in addition to the basic and concentration grants:

Targeted grants provide additional funding for high poverty districts. This formula assigns weights to low-income children based on the child poverty rate or number of poor school-age children in the LEA; as a result, the higher an LEA's poverty rate, the more Title I funding it will receive. Approximately \$1 billion was appropriated for this program in FY 2002 and early estimates suggest it will result in a more than 30% increase in Title I funding to major urban areas.

Education finance incentive grants encourage states to equalize funding across districts and to fund education generously. This program allocates funds to states based on an equity factor (which assesses disparities in per pupil expenditures within the state) and an effort factor (which assess the state's education funding relative to its per capita income). Grants distributed under this formula are targeted within states to districts with high concentrations of poverty. Approximately \$800 million was appropriated for this program in FY 2002.

**Assessing the cost of NCLB:** The cost of NCLB will be calculated differently, depending on one's definition of what constitutes meeting the requirements of the law. As noted by William Mathis in a recent article in *Education Week*, if one limits the definition to simply implementing the mechanical requirements of the law, the cost will be considerably lower than defining "meeting the requirements" as ensuring that all students actually meet state learning standards. Ohio is the first state to complete a thorough analysis of the costs of NCLB. The study concluded that it will cost that state approximately \$1.5 billion a year of additional money to comply with NCLB. The bulk of the cost was attributed to student intervention costs, in order to achieve 100% proficiency. The study estimated that of that \$1.5 billion, the federal government provides \$44 million. Minnesota conducted a limited costing-out analysis of NCLB. Its study focused only on the cost of developing and administering the new tests required under NCLB (\$19 million) and the future cost of transfers and supplemental services (\$20 million). Minnesota noted that the costs of corrective action will increase as more schools fail to make AYP, and that the cost of NCLB will likely outpace its federal allocation.

While it is difficult to assess the full costs of complying with NCLB, a number of states, in connection with school funding lawsuits, have been analyzing the cost of providing designated percentages of students with an adequate education, which would ostensibly enable students to meet both state and NCLB standards. As William Mathis notes in his *Education Week* article, those costs represent an average increase of 30% of a state's education budget.

**Fully Funded or Underfunded?:** The federal government has declared that it has provided historic increases in education funding under NCLB and that the law is fully funded. However, a recent study conducted by the National Conference of State Legislatures (NCSL) concluded that NCLB has been underfunded by \$27 billion since it has taken effect, and by \$10 billion for fiscal year 2005. The Children's Defense Fund recently arrived at a similar figure, calculating the amount that NCLB will be underfunded for Fiscal Year 2005-06 as \$9.5 billion. William Mathis points out that the Congressional Research Service ("CRS") calculated that the federal government would have to provide \$30.4 billion dollars to meet the requirement under NCLB that each child living in poverty is to receive an extra 40% of the state's average per-pupil spending. Currently, according to CRS, the federal government provides 41% of that \$30.4 billion amount.

States have taken steps to address the alleged underfunding of NCLB. In April 2004, Maine passed a measure prohibiting spending "any state funds or incur[ring] any costs not paid for under the [NCLB] in order to comply with the provisions of the act." Schools may spend money required to administer federal funds and to comply with Maine's learning standards. Vermont passed a law in 2003 which gives school districts the choice of whether or not to spend state and local money on NCLB compliance. Many states, among them Utah, New Hampshire, New Mexico, Idaho, Virginia and Washington have considered opting out of NCLB or have passed resolutions requesting that Congress amend the law. Some school districts have foregone Title I money in order to escape the mandates of NCLB. However, this option is only viable for those areas that can afford to do without federal money, not for poor school districts.

On May 12, 2004, the Attorney General of Wisconsin wrote a letter in response to a request from a state legislator asserting that requiring Wisconsin to spend state funds in order to comply with NCLB violates Section 7907 of NCLB, which provides that states need not spend any state money in order to comply with the mandates of the law. In addition, the Reading, Pennsylvania school district, in its lawsuit challenging the designation of 13 of its schools as failing to make AYP or in danger of failing, has contended that requiring the district, which is in a financial crisis, to spend any money to comply with NCLB, is an unfunded mandate in violation of Section 7907 of the law. Beyond the quarrel with the underfunding of NCLB, some states perceive NCLB as an unwarranted federal intrusion on what has always been a local function, i.e. public education.

**Conclusion:** NCLB funding, or lack of funding, has become controversial across the political spectrum. The question of adequate funding of NCLB highlights the differences of opinion regarding the goal of the law. The cost of NCLB depends on how one defines educational achievement and what methods we believe best accomplish this goal for all students.

### **Useful Resources on NCLB**

Many organizations have published summaries, commentary and studies on NCLB. Here are some of the most informative:

**Education Commission of the States** provides a summary of the legislation and funding allocation, a compendium of relevant state programs, and a series of policy questions for states to consider. The ECS website tracks implementation of NCLB in all fifty states.

The **Center on Education Policy** releases annual reports each January, *From the Capital to the Classroom*, on the implementation of NCLB nationwide.

**Education Week** reports on NCLB policy and implementation. The article by William Mathis noted in the Cost section of this policy brief can be found in the April 21, 2004 edition of *Education Week*.

**Public Education Network (PEN)** provides weekly action alerts that keep parents and community leaders informed of education news, including NCLB.

The **Education Trust** addresses NCLB issues, including a report on AYP.

The **Harvard Civil Rights Project** released four separate reports on the NCLB. These are available on their website.

The **National School Boards Association** provides an NCLB resource guide and NCLB news.

The **Rural School and Community Trust** provides updates and research on the effect of NCLB on rural schools.

**ACORN** provides updates, position papers and other information from an advocacy perspective.

The **Southeast Center for Teaching Quality** has prepared several reports on NCLB.

The **National Conference of State Legislatures** has prepared a report on funding gaps in NCLB and has a task force on NCLB.

The **Children's Defense Fund** has released a report on the cost of NCLB.

The **Northwest Evaluation Association** conducted a study on adequate yearly progress, as noted in this policy brief.

The **Council for Basic Education** conducted a study on the effect of NCLB on a liberal arts education, as noted in this policy brief.

**Phi Delta Kappan** periodically publishes articles on NCLB. See the May 2003 edition, by William Mathis, *No Child Left Behind: Costs and Benefits*, and the May 2004 edition, *'Highly Qualified' Teachers: Pretense or Legal Requirement?* by Michael A. Rebell and Molly A. Hunter, and *The Search for Highly Qualified Teachers* by Barnett Berry, Mandy Hoke, and Eric Hirsch.

**ACCESS** provides links to recent NCLB litigation news and NCLB policy news.

The **U.S. Department of Education** website summarizes NCLB, provides updates on department rulemaking, and a link to the legislation. The Department has also set up a website for parents and citizens that includes a brief summary of the law, parent "tool kit" explaining parental rights under the law, and timeline of key dates of implementation

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1. Whereas the proposed regulations included a definition of "the most significant cognitive disabilities" (three or more standard deviations below the mean), the final regulations allow states to define what is meant by "the most significant cognitive disabilities."