HANDOUT # 1

NCSL Task Force on No Child Left Behind Report
Executive Summary

February 23, 2005

Introduction

The goal of the No Child Left Behind Act (NCLB): to close or dramatically narrow the differences in achievement among American students that cross lines of skin color, ethnicity, immigrant status and wealth. The success of American democracy and our economic future depend on a society in which everyone is educated to their full potential.

State legislatures and local schools have been working for many years to improve the quality of education for all students and to close the achievement gap. The No Child Left Behind Act of 2001 (NCLB) does not encompass a new goal handed down from the national level; rather, it crystallizes efforts that were under way in states and classrooms all over the country.

Passage of NCLB in the fall of 2001 generated immediate interest among state legislators and prompted an unprecedented number of inquiries to the National Conference of State Legislatures regarding the content of the law and its relation to existing state education statutes. It was clear that the law had struck a chord across the political spectrum, eliciting both passionate support and fiery opposition in both political parties and among liberals, conservatives and moderates. Legislators' questions fell into two categories: What do we need to do to make the law work and how can we effect improvements to it through additional congressional or administrative actions?

In March 2004, the Executive Committee of the National Conference of State Legislatures created a Task Force of state legislators and legislative staff and asked them to focus on the latter of the two questions. It directed the Task Force to dissect the law, conduct hearings throughout the country, consult with practitioners and other experts, examine the pertinent literature and research, and formulate a comprehensive set of recommendations geared toward improving the No Child Left Behind law, making it more workable, more responsive to variations among states and more effective in improving elementary and secondary education.

The bipartisan Task Force met eight times in 10 months and, on January 29, 2005, presented the attached final report to the NCSL Executive Committee, which unanimously approved it. The report has six chapters. Most of it—chapters two through five—recommends very specific changes that could be made to the law. The first chapter, in contrast, raises fundamental questions about the

act's underlying philosophy, and the last chapter addresses one of the most vexing questions raised by legislators: the federal funding available for NCLB. The balance of this summary provides a chapter-by-chapter overview of the report.

Chapter 1: The Federal Role in Education Reform

The standards-based education reform movement has followed much the same path as many other public policy innovations in the United States. Innovation and experimentation began in a few state legislatures, then others adapted the reforms to the unique cultures and circumstances in their states. A second and even third generation of reforms refined the initial approaches. And, with passage of the No Child Left Behind Act, the federal government incorporated many of the state reforms into a single national policy, thereby significantly expanding the federal role in the administration of elementary education. But this assertion of federal authority into an area historically reserved to the states has had the effect of curtailing additional state innovations and undermining many that had occurred during the past three decades.

It also has questionable constitutional underpinnings. It pits the 10th Amendment, which reserves powers to the states, against the spending clause of Article I, which allows the federal government to attach conditions to grants it provides to the states. Although the spending clause often has trumped the 10th Amendment, the Supreme Court, in *South Dakota vs. Dole* and other decisions, has placed constraints on how Congress may exercise its powers under the spending clause. The Task Force is concerned that NCLB fails to meet two of the *South Dakota vs. Dole* tests: its grant conditions are not unambiguous and it uses coercion and not financial inducement to attain state participation.

Interestingly, No Child Left Behind includes two provisions that could redress the federalism imbalances that otherwise are present in the law's approach. One, Section 9401 of Title IX, gives the Secretary of Education broad discretion to waive requirements of the law. The Task Force views this as an important tool that could turn state and federal government efforts from their current focus on process and strict adherence to the letter of the law to outcomes and compliance with the spirit and goals of the law. The other tool, Section 9527(a) of Title IX, notes that state and local governments should not have to incur expenses for implementing NCLB that are not funded by the federal government nor should the law force states or schools to change their curriculum or instruction. The Task Force believes this language should give state officials leverage in their efforts to ensure that the law is not an unfunded or underfunded mandate.

Summary of Task Force Recommendations in Chapter 1

1.) Congress should create a revitalized state-federal partnership that acknowledges diversity among states and shifts focus from processes and requirements to outcomes and results.

2.) Congress should remove ambiguity regarding the law's grant conditions.

3.) Conduct a study of whether the law is an unfunded mandate.

4.) The Department of Education should develop a transparent and uniform process for considering waiver applications.

Chapter 2. Adequate Yearly Progress: The Centerpiece of NCLB

The standards-based reform movement has several central features: an emphasis on objective measures of student achievement, such as standardized testing, and holding schools accountable for their progress in meeting goals. No Child Left Behind's adequate yearly progress (AYP) provisions incorporate both elements, albeit with an unnecessary level of rigidity and questionable methodology. The Task Force supports the premise and objectives of the adequate yearly progress concept, yet has numerous recommendations for modifying AYP to make it more valid and accurate and, a more effective tool in measuring student achievement.

The adequate yearly progress requirements of No Child Left Behind include several methodological flaws. NCLB mandates that schools be evaluated by comparing successive groups of students against a static, arbitrary standard, not by tracking the progress of the same group of students over time. The AYP requirements constitute a "static" evaluation model because they hold all schools, regardless of demographic factors and prior achievement levels, to the same benchmark. Standardized tests are far from perfect measures of student achievement and function better in combination with other measures, such as student portfolios.

The adequate yearly progress provisions are overly prescriptive and rigid. The law improperly identifies schools as "in need of improvement" by creating too many ways to "fail" and, therefore, spreads resources too thinly, over too many schools, and reduces the chances that schools that truly are in need of improvement can be helped.

The most counterintuitive and counterproductive feature of the adequate yearly progress requirements, though, are those related to remediation and school transfers. The law allows students to transfer from schools found to be in need of improvement before the school has an opportunity to address specific individual deficiencies. In addition, the transfer option is not viable for students in many urban and rural schools.

Ultimately, states should be allowed to develop any system they choose as long as it meets the spirit of NCLB.

Summary of Task Force Recommendations in Chapter 2

1.) Provide states much greater flexibility in meeting the objectives of the adequate yearly progress provisions.

2.) Give states the option of adding or substituting a "student growth" approach to testing and accountability, rather than the "successive group" approach prescribed by NCLB.

3.) Allow states to use multiple measures rather than relying exclusively on standardized tests to evaluate performance.

4.) Reduce the over identification of failure and make the adequate yearly progress provisions less prescriptive, rigid and absolute.

5.) Allow states to decide the order of interventions when a school is identified as being in need of improvement.

Chapter 3. AYP: Students with Disabilities and Limited English Proficiency

Including students with disabilities and limited English proficiency in the testing requirements of No Child Left Behind is an admirable goal. Yet, it presents considerable challenges for states, districts and schools, most glaring of which are the conflicts between NCLB and the Individuals with Disabilities Act (IDEA). NCLB requires students with disabilities to be tested by grade level, while IDEA mandates that students be taught according to ability.

The Task Force identified several other concerns related to NCLB's students with disabilities provisions. One is its requirement that all students with disabilities be proficient by school year

2013-14. This is a laudable but unrealistic goal, which cannot be realized because it removes students from the special education subgroup when they reach the standard for their grade level. Another concern is that NCLB's definition of "highly qualified" special education teachers conflicts with state certification practices.

Concerns related to the law's limited English proficiency provisions center on the expectations for when students should be tested only in English and when schools should be expected to have them performing at grade level.

Summary of Task Force Recommendations in Chapter 3

1.) Give IDEA primacy over NCLB in cases of conflict.

2.) Provide states flexibility in determining the percentage of special education students who can be tested according to their ability, not their grade level.

3.)Allows states to determine the appropriate time to use native-language tests and English-only tests.

4.) Amend the law so special education teachers who teach multiple subjects are able to meet the definition of a highly-qualified teacher without having to prove content knowledge in each subject.

Chapter 4. Flexibility for States to Address Unique Schools and Districts

Many urban and rural schools face unique challenges in educating students and, as a result, in meeting the requirements of No Child Left Behind. The law, for the most part, does not recognize these differences and, instead, imposes a uniform set of requirements that all schools must meet. Some of the challenges faced by urban schools relate to their heterogeneity and the large number of subgroups they have as a result of their diversity. In addition, urban schools share with rural schools the challenges of providing school choice and supplemental services. School choice is difficult in an urban area where many other schools in the district are identified as needing improvement; and it is difficult in rural areas because of the long distances between schools. The geography of rural schools presents additional challenges to public education, including access to supplemental service providers.

Summary of Task Force Recommendations in Chapter 4

1.) The federal government should recognize that states are in the best position to identity special circumstances.

2.) Delegate flexibility authority in Section 9401 to states to allow to allow them to respond to the unique conditions of urban and rural communities.

Chapter 5. Highly Qualified Teacher and Paraprofessional Requirements

The law sets fairly broad parameters for what constitutes a highly qualified teacher and provides states some latitude for setting their own definitions and qualifications. Even so, the federal parameters have posed problems for certain schools and school districts in all states. The portion of the law's definition that requires teachers to prove content knowledge for each subject they teach is particularly problematic for hard-to-staff schools—for example, those in urban and rural districts. In addition, areas that were affected by teacher shortages even prior to NCLB have more challenges to adequately staff classrooms.

Summary of Task Force Recommendations for Chapter 5

1.) Permit states to allow teachers who are teaching multiple subjects to be considered highly qualified based on a single means of evaluation.

2.) Allow states to establish conditions under which exceptions could be granted to the highly qualified teacher provisions.

Chapter 6. The Cost of Closing the Achievement Gap: Compliance vs. Proficiency

Some of the most contentious issues surrounding the new law relate to its costs. The Task Force arranged these questions into three groups: whether the federal government is providing enough funding to meet the law's requirements; if it is not, then what are the additional costs to states, both for administering the law and for actually reaching proficiency; and what are the financial consequences of not participating in NCLB? If the answers to these questions were straightforward, they would not be so controversial. The Task Force examined them from numerous angles and reached several important conclusions.

There is no doubt that the federal government has dramatically increased funding to K-12 education since passage of No Child Left Behind. In the first fiscal year following enactment, that increase was $4.7 billion, or 17 percent over the previous year. Federal K-12 education funding has risen a total of $10.4 billion since the law passed in 2001. Because the federal government's current share of education funding is only about 8 percent, those increases constitute just a 2 percent rise in total education spending in the country. It is a lot of money, but when it is spread among 50 states and thousands of schools and school districts it is still a relatively meager increase in total K-12 expenditures.

Since the law went into effect in 2002, at least a dozen studies—some more rigorous and credible than others—have been conducted of the actual costs to states of meeting its administrative requirements. Not surprisingly, the estimates range rather widely; yet, more rigorous and recent studies agree that the average per-state increase in administrative compliance costs is about 2 percent. In the best case scenario, federal funding marginally covers the costs of complying with the administrative processes of the law.

States face a separate set of costs in order to reach the law's standards of proficiency. The task force concludes that there are minimal new federal resources to allow schools to offer the remediation services and enhanced learning opportunities necessary to meet the proficiency goals of NCLB. The Task Force recognizes that current resources can be reallocated so they can be used more efficiently and effectively; yet, research and the members' experiences indicate that simply reallocating existing resources is not enough to meet the law's absolute proficiency targets.

In their frustration with various aspects of No Child Left Behind, several state officials have entertained the notion of choosing not to participate. One state, Utah, formally posed that question to the U.S. Department of Education. In early 2004, the department responded that not only would Utah lose its Title I funds, it would forfeit nearly twice that much in other formula and categorical funds for such programs as after school, drug free school and literacy. That response was sobering to other states and to members of the Task Force and reinforced the notion raised in Section I that compliance with NCLB is coerced. The Task Force concludes that punishing states financially for not participating in NCLB violates the spirit of a state-federal partnership to improve education.

Summary of Task Force Recommendations in Chapter 6

1.) Substantially increase federal funding for the law.

2.) Conduct a Government Accountability Office study of the compliance and proficiency

costs associated with NCLB.

3.) Reevaluate the 100 percent proficiency goal established in the law.

4.) Reexamine the financial consequences for states that would choose not to participate.

Fiscal Status -- Category Sort

K-12 Education Finance Committee, March 14, 2005, 10:00 a.m.

Bill Numb	*Author*	*Description*	*Fiscal Impact Final?*	*Fiscal Note Req'd/ Received*	*Fiscal Note Dates*	*Aid? Levy?*	*Bill Aid / Bill Levy FY 2005*	*FY 2006*	*FY 2007*	*FY 2008*	*FY 2009*
Category Facilities											
591	Stumpf	Askov Sale of School Facility & Forgiving Max. Effort Loan Balance	☑	☑	2/4/2005	☑	-215,000	0	0	0	0
				☑	2/11/2005	☐		0	0	0	0
Category Standards/Testing											
1244	Kelley	Conditions for Continued Implementation of NCLB	☐	☑	3/1/2005	☐	0	0	0	0	0
				☐		☐		0	0	0	0
					Total Aid Impact:		-215,000	0	0	0	0
					Total Levy Impact:			0	0	0	0

HANDOUT # 2

HANDOUT # 3

TASK FORCE ON NO CHILD LEFT BEHIND

FINAL REPORT

NATIONAL CONFERENCE
of STATE LEGISLATURES

The Forum for America's Ideas

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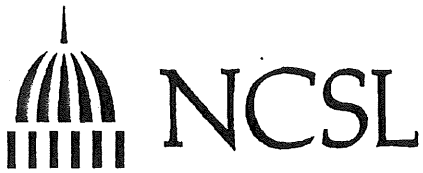
February 2005



The National Conference of State Legislatures is the bipartisan organization that serves the legislators and staffs of the states, commonwealths and territories.

NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues and is an effective and respected advocate for the interests of the states in the American federal system. Its objectives are:

- To improve the quality and effectiveness of state legislatures.
- To promote policy innovation and communication among state legislatures.
- To ensure state legislatures a strong, cohesive voice in the federal system.

The Conference operates from offices in Denver, Colorado, and Washington, D.C.

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Innovation

It also has questionable constitutional underpinnings. It pits the 10th Amendment, which reserves powers to the states, against the spending clause of Article I, which allows the federal government to attach conditions to grants it provides to the states. Although the spending clause often has trumped the 10th Amendment, the U.S. Supreme Court, in *South Dakota vs. Dole* and other decisions, has placed constraints on how Congress may exercise its powers under the spending clause. The Task Force is concerned that NCLB fails to meet two of the *South Dakota vs. Dole* tests: its grant conditions are not unambiguous and it uses coercion and not financial inducement to attain state participation.

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1. Congress should create a revitalized state-federal partnership that acknowledges diversity among states and shifts focus from processes and requirements to outcomes and results.
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4. The U.S. Department of Education should develop a transparent and uniform process for considering waiver applications.

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Chapter 3. AYP: Students with Disabilities and Limited English Proficiency

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Growth model

The adequate yearly progress provisions are overly prescriptive and rigid. The law improperly identifies schools as "in need of improvement" by creating too many ways to "fail" and, therefore, spreads resources too thinly, over too many schools, and reduces the chances that schools that truly are in need of improvement can be helped.

Too many ways to fail

The most counterintuitive and counterproductive feature of the adequate yearly progress requirements, though, are those related to remediation and school choice. The law allows students to transfer from schools found to be in need of improvement before the school has an opportunity to address specific individual deficiencies. In addition, the transfer option is not viable for students in many urban and rural schools.

Interventions

Ultimately, states should be allowed to develop any system they choose as long as it meets the spirit of NCLB.

Summary of Task Force Recommendations in Chapter 2

1. Provide states much greater flexibility in meeting the objectives of the adequate yearly progress provisions.
2. Give states the option of adding or substituting a "student growth" approach to testing and accountability, rather than the "successive group" approach prescribed by NCLB.
3. Allow states to use multiple measures rather than relying exclusively on standardized tests to evaluate performance.
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5. Allow states to decide the order of interventions when a school is identified as being in need of improvement.

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States face a separate set of costs in order to reach the law's standards of proficiency. The task force concludes that there are minimal new federal resources to allow schools to offer the remediation services and enhanced learning opportunities necessary to meet the proficiency goals of NCLB. The Task Force recognizes that current resources can be reallocated so they can be used more efficiently and effectively; yet, research and the members' experiences indicate that simply reallocating existing resources is not enough to meet the law's absolute proficiency targets.

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Summary of Task Force Recommendations in Chapter 6

1. Substantially increase federal funding for the law.
2. Conduct a Government Accountability Office study of the compliance and proficiency costs associated with NCLB.
3. Reevaluate the 100 percent proficiency goal established in the law.
4. Reexamine the financial consequences for states that would choose not to participate.

Summary of Task Force Recommendations in Chapter 4

1. The federal government should recognize that states are in the best position to identity special circumstances.
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Chapter 5. Highly Qualified Teacher and Paraprofessional Requirements

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Since the law went into effect in 2002, at least a dozen studies—some more rigorous and credible than others—have been conducted of the actual costs to states of meeting its administrative requirements. Not surprisingly, the estimates range rather widely; yet, more rigorous and recent studies agree that the average per-state increase in administrative

need to do to make this work and, if we run into problems, how can we effect improvements through additional congressional or administrative actions?

NCSL responded to this interest by providing technical assistance in numerous state capitols, answering hundreds of telephone and e-mail requests, conducting programs for legislators and staff at national and regional meetings, and providing several opportunities for Secretary of Education Rod Paige and other administration officials to offer their perspectives on NCLB. The organization's leaders met on several occasions with Secretary Paige and White House education officials to summarize legislatures' experiences with the law and to express support for modifications that could be made, especially through regulations and other administrative actions.

The more that NCSL worked with and examined the law, the more it became clear that legislators wanted to put aside the rhetoric and growing controversy and develop a comprehensive and balanced look at how the law was structured, how it is being implemented, the experiences legislatures and schools are having with it, and, where necessary, to make recommendations for changes to the statute and its regulations.

In March 2004, NCSL's Executive Committee, on the recommendation of Utah Speaker Marty Stephens, NCSL's president at the time, and Maryland Delegate John Hurson, then NCSL's president-elect, created a bipartisan Task Force to study NCLB. The Task Force members were primarily chairs of their legislative education committees or fiscal committees. Task Force members were not only bipartisan, but diverse in terms of philosophy, experiences and judgments about the law. Nonpartisan education staff from several states were represented on the Task Force as well.

In the 10 months since its inception, the Task Force has met eight times in seven different regions of the United States, with each of the meetings focused on fact-finding. The Task Force members participated in more than 100 hours of formal presentations and deliberations, hearing from 60 witnesses ranging from Ivy League researchers to school, district and state-level education officials to representatives of local and national groups. This report relies heavily upon the information gathered in these meetings and also draws on research and analysis conducted by a range of education experts.

This Task Force report is the product of extensive deliberations among its members and reflects their consensus. There is no minority report. The co-chairs feel confident that the findings and conclusions iterated here reflect the views of a vast majority of state policymakers, all of whom are dedicated to improving education outcomes for all children.

The Task Force's report has six chapters. Most of it—chapters two through five—focuses on very specific changes that could be made—either through statutory adjustments or regulations—that would make the No Child Left Behind Act more workable, more responsive to variations among the states, and more effective in improving public education.

The first chapter, in contrast, raises fundamental questions about the underlying philosophy of the law. It views NCLB from an historical and constitutional perspective and suggests changes that would remove the constitutional ambiguities and shift the act's emphasis from process to outcomes and from federal standards to state flexibility in achieving those outcomes. The last chapter addresses one of the most vexing questions raised by legislators—

INTRODUCTION

The goal of the No Child Left Behind Act (NCLB): to close or dramatically narrow the differences in achievement among American students that cross lines of skin color, ethnicity, immigrant status and wealth. The success of American democracy and our economic future depend on a society in which everyone is educated to their full potential.

State legislatures and local schools have been working for many years to improve the quality of education for all students and to close the achievement gap. The No Child Left Behind Act of 2001 (NCLB) does not encompass a new goal handed down from the national level; rather, it crystallizes efforts that were under way in states and classrooms all over the country.

Through their leadership of the standards-based reform movement during the past two decades, state legislators have demonstrated their resolve and creativity in improving education quality for all students and in addressing the academic achievement gap.

The No Child Left Behind Act (NCLB), which became effective in January 2002, depends on state legislators, other state policymakers and education officials to implement the dramatic changes it makes to the nation's public education and for its ultimate success in raising the education achievement of all children. Legislators must adjust their states' laws, appropriate funds and find revenue sources to meet the law's requirements. Because of their roles in their communities and their leadership on education policy, state legislators are in an ideal position to know how the new law is working —what elements are proving effective, which provisions need to be modified and what it costs to implement the law.

Passage of the No Child Left Behind Act generated immediate interest among state legislators and prompted an unprecedented number of inquiries to the National Conference of State Legislatures (NCSL) regarding the content of the law and its relation to existing state education statutes. The questions ranged from highly technical to philosophic. It was clear that the law had struck a chord across the political spectrum, eliciting both passionate support and opposition in both political parties and among liberals, conservatives and moderates. Legislators' questions to NCSL fell largely into two categories: What do we

1. The Federal Role in Education Reform

"Constitutionally and historically, states are responsible for public education and are accountable to their citizens for the results of public education. States are committed to improving learning for all students and closing the achievement gap."—Task Force on No Child Left Behind

Introduction

The dramatic overhaul of the nation's elementary and secondary education system that took place during the past three decades was initiated and guided by state legislatures. Education reform experiments were introduced in one state and monitored, modified and adopted to fit the specific needs of other states—in a classic example of Supreme Court Justice Louis Brandeis' "laboratories of democracy."[1] This facilitated the shift to standards-based reforms and efforts to find equitable and adequate mechanisms for financing K-12 schools. The No Child Left Behind law, passed in December 2001, attempted to incorporate many of these state reforms into a single federal policy, which has led to a substantial expansion in the federal government's role in the administration of elementary and secondary education.[2]

The Task Force's report begins with an examination of the federalism implications of the No Child Left Behind law, including:

- The historical precedents of No Child Left Behind.
- Federal and state constitutional issues that are raised by the statute.
- Aspects of the law that offer generic tools for addressing state-federal issues in the law.
- Federal statutory and regulatory actions that would redress the concerns.

Concerns: Standards-Based Reforms

Throughout the 1980s states initiated and led the standards-based reform movement. It was not until 1988 that this movement received national attention when President George H.W. Bush called for a national education summit. Among the movement's champions was then-Governor Bill Clinton who would further standards-based reform both as governor and then as president.

the federal funding available for NCLB—and makes several recommendations regarding the options that states have with regard to participation in the program.

NCSL intends to use this report to initiate a constructive dialogue with Congress and the administration that will lead to improvements to the law and make its laudable goals a reality—at the same time making it more consistent with the nation's long-established principles of federalism, state constitutional authority and flexibility.

The co-chairs and members of the Task Force have found the past 10 months immensely constructive and rewarding. The Task Force is grateful to all who participated in the meetings and contributed in other ways to this report. The work of the Task Force has affirmed our belief that there is a vast network of policymakers and practitioners at all levels of government who have dedicated their lives to ensuring a rich and rewarding educational experience for all children. This report could not have been completed without their help and the inspiration they have provided us.

Developing this report has been hard work. We realize, though, that the hardest part of this project—seeing that its recommendations are vetted fully in Congress and the administration and ultimately adopted—is just beginning. We look forward to that phase of the work with enthusiasm and high hopes.

The result is a one-size-fits-all accountability system that affects all students and brings the federal government into the day-to-day operations of public education.

Unlike past versions of the Elementary and Secondary Education Act (ESEA), NCLB affects all students in public schools, not only those in schools that receive federal Title I funds. Adequate yearly progress—NCLB's accountability system—and the law's testing and reporting requirements apply to all students and schools. In addition, the teacher qualifications; school, district and state interventions; and consequences for failing to meet proficiency targets now are part and parcel of federal education law. Supporters of the law cast these changes as evolutionary, or justified by the goal of bringing all students to proficiency and closing the achievement gap.[5] Other observers disagree with the former characterization[6] and at the very least consider NCLB a combination of evolutionary and revolutionary changes[7] that expand the federal government's influence beyond its traditionally limited role.[8]

There are three issues to consider when examining the constitutional and legal standing of NCLB. The first is whether NCLB violates any federal constitutional provisions; the second is to what extent NCLB intrudes upon state constitutions; and the third is whether remedies are available in the law that would make it more palatable from a federalism standpoint.

The Constitution and No Child Left Behind

As adopted 215 years ago, the U.S. Constitution afforded states substantial authority and offered protection from federal interference in their affairs. Most notable among these provisions is the 10th Amendment, which states:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

For many reasons, including the absence of any reference to public education in the U.S. Constitution,[9] authority over education historically has been the purview of state governments. The U.S. Supreme Court, in fact, has acknowledged this on several occasions, calling education policy "... perhaps the most important function of state and local governments"[10] and declaring that " ... public education in our nation is committed to the control of state and local governments."[11]

On the other hand, judicial interpretations of the Constitution in the latter half of the 20th century have significantly eroded state authority and frequently left states to the exigencies of federal politics. The judicial justification for an expanded role for the federal government in education lies largely in the spending clause, which states:

> The Congress shall have Power to lay and collect Taxes, duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States ."[12]

The spending clause allows the federal government to attach numerous regulatory requirements, or conditions, that states must follow upon the receipt of federal funds.

In attempting to account for the differences of 15,000 local districts and 40 million public students, state and local districts created a diverse array of policies and programs. It became apparent that some states, districts and schools were moving faster and further in implementing standards-based reforms than were others. It was at this point that the federal government became belatedly involved in standards-based reforms.

Standards-based accountability systems moved from a focus on the equality of opportunity to equality of outcomes for all students—especially for minorities and poverty stricken students. Advocates became no longer concerned just with student access and school equality (i.e., inputs) but with equality of student performance (i.e., outcomes). This required states to set standards for learning for all children, assess their progress by those standards and develop strategies for addressing deficiencies. Curriculum and instruction had to be aligned to create a comprehensive expectation of student knowledge. States began a deliberate, voluntary movement to adopt these features into current systems. By the time Congress began deliberations on NCLB in early 2001, 48 states were well on their way to implementing standards-based reform.[3] Although there is nearly unanimous agreement on the concept of standards-based reform, states created variations in their specific approaches to account for vast differences in circumstances and cultures among the states.

An Expanded Federal Role

Before the No Child Left Behind Act, the federal government's role in education was limited. Generally, it provided supplemental resources to targeted groups of disadvantaged students, such as high poverty, special education or homeless students. While funding was limited, so was the federal role—it was restricted to specific categorical activities or programs. Furthermore, the "strings" attached to the receipt of federal education funds (called "conditions of grant" or "spending clause conditions,") were finite and applied only to specific programs and were not considered unfunded mandates by the U.S. Supreme Court. For example, the Improving America's Schools Act (IASA), which was the 1994 reauthorization of the Elementary and Secondary Education Act (ESEA), required states to develop standards and impose testing requirements for Title I students only—about 35 percent of all public schools students. Federal policymakers hoped that states would implement assessment systems for all public school students in the state. Although desirable, any benefit to non-Title I children was considered incidental. Tying federal funding to specific programs meant the cessation of those activities when federal resources were exhausted.

The limited role of the federal government in education was by design. Congress has always been concerned about the effect of federal expansion on public education. This was most recently evident during the IASA negotiations in 1994: "Instead of more federal programs, more federal paperwork, and more federal mandates, this bill must be changed to become less directive and more supportive of the genius of our local communities."[4] Yet, barely seven years later, NCLB encumbers states with more than 1,000 pages of statute and, more than 1,000 pages of regulation and guidance—dwarfing the average state 400 page K-12 statute. Pointing to a handful of states that were not moving fast enough to incorporate standards-based reforms, the federal government justified this expanded role. It passed NCLB, intending to incorporate principles of individual state standards-based reform efforts selectively and condense them into a single federal statute.

To summarize, any conditions placed on federal funds must be stated unambiguously, so states can decide whether to accept funds knowingly and in full awareness of the consequences, and do so with no coercive actions on the part of the federal government.

State Constitutions/Statutes

To what extent does NCLB conflict with state constitutions and statutes? As is true with almost any significant federal law, states are expected to make some statutory accommodations. But a wide array of adjustments had to be made to meet the requirements of NCLB. In some cases, states that were farther down the standards-based reform path had to make more substantial changes to current policies. Vermont amended its testing cycle statute and its definition of which district has responsibility for transporting and educating homeless children to comply with the law. A Maryland school district was sued by the ACLU over a clash between federal and state definitions of "homeless" students. The NCLB requirement to have the state "take over" school districts and its provision for testing teachers ran afoul of a portion of the Louisiana Constitution that indicates that school districts are constitutionally created and guaranteed some autonomy. English-only statutes and constitutional provisions in 27 states conflict with the option of testing in native languages for limited English proficiency (LEP) students. California's statute allowing parents to withdraw their children from standardized testing is permitted by NCLB, but the federal law still counts those children negatively toward the federal requirement of a 95 percent participation threshold. The more sophisticated (and accurate) value added assessment systems in Kentucky and North Carolina (which are addressed in more detail in section two) were disallowed under NCLB. Student population shifts as a result of the implementation of choice provisions in NCLB trump any standing desegregation orders and are now in litigation in Florida and have been an issue in Georgia.[16]

Although these statutory accommodations are troublesome, of greater concern is the law's effect on education policy innovation in the states—damaging the principal benefit of federalism. NCLB undermined state laws that had gone further than the federal provisions. As one of the federal participants in the Task Force deliberations said, "As legislated, adequate yearly progress was too prescriptive and led to the U.S. Department of Education rejecting the accountability systems in Virginia, Kentucky and North Carolina."[17] Another observer said, "The law's mandates also clash with preexisting accountability systems in states such as California and Florida, yielding much confusion about how schools are faring or what constitutes adequate performance. Neither parents nor educators are clear about which schools and children are eligible for what or how to interpret inconsistent state and federal performance ratings. The confusion deepens in states such as Michigan,[18] where the penalties associated with failing to make AYP have led to lower academic standards or softer accountability systems than the state had devised in the pre-NCLB period."[19]

The Task Force is greatly concerned about the extent to which the federal government seems indifferent to other unintended consequences of NCLB, including increased litigation, a shift of local control of schools to the control of state education agencies and the U.S. Department of Education, and incentives that encourage action contrary to the law's stated goals. For example, one researcher has expressed the concern that, "The early successes of standards–based lawsuits ensure that the present efforts to improve achievement will have the unintended consequence of stimulating litigation against the states." [20]

Many constitutional scholars agree that the 10th Amendment is "no match for Congress' spending powers,"[13] which has allowed the federal government to bypass the issues of constitutionality. In the case of education policy, Congress has used its spending clause authority to entice states to adopt federal testing requirements and other accountability features into their existing systems.

The 1987 Supreme Court decision in *South Dakota vs. Dole*, offered guidance for determining the conditions Congress should meet under the spending clause requirements. To be valid, the Court said, spending clause programs must:

1. Be in pursuit of the "general welfare;"
2. Be related to federal interest, in particular national projects or programs;
3. Not be prohibited by other constitutional provisions;
4. Be unambiguous in describing the conditions on the states' receipt of federal funds; and
5. Be a financial inducement and not coercion.

The No Child Left Behind law is supposed to be a conditional grant under the spending clause authority. However, the Task Force believes the law fails to meet the conditions established in *South Dakota vs. Dole,* particularly the third, fourth and fifth requirements. The Task Force addressed the third requirement regarding the Tenth Amendment and constitutionality earlier in this section.

The protracted period of negotiations between states and the U.S. Department of Education and ongoing amendments to state plans in response to changing federal guidelines, inconsistent approvals to amendment requests, resulting lack of notice or availability of precedent for states to rely on is strong evidence that the law is not "... unambiguous in describing the conditions on the states' receipt of federal funds."

The Supreme Court and lower courts have invalidated federal attempts to link ambiguous conditions to the receipt of federal funds. The Court of Appeals for the Fourth Circuit, for example, invalidated an attempt by the U.S. secretary of education to withdraw federal funds from Virginia because of conflicts with the Commonwealth's policy of expelling disabled students for disruptive behavior not associated with a student's disability.[14] While spending clause programs have been crafted to circumvent the limitation the Constitution places upon congressional activities in public education, the continued uneven and inconsistent implementation and response to amendment applications by regulators fail to meet the conditions of the spending clause.[15]

The law also crosses the line between inducement and coercion—the Court's fifth condition. Federal officials note that, pursuant to federal policy, failure to participate in No Child Left Behind would jeopardize not only the additional money available to states for NCLB, but also the tens of millions of dollars they were receiving before NCLB. The fact that the federal government has increased the stakes for not participating in Title I programs, while expanding its scope without commensurate funding increases, creates a coercive relationship between states and the federal government.

This section of NCLB offers state policymakers and federal officials an opportunity to reach a win-win resolution of a pressing issue. For states that are making a case of substantial compliance or compliance with the spirit of the law, a waiver "grandfathering" effective existing standards-based systems would alleviate the perception that the federal law presents a blanket preemption of a hard-fought state battle for reform. For federal officials, the appropriate use of waiver authority would give federal officials the opportunity to acknowledge and reward progress without making statutory changes to NCLB. State school chiefs and legislators have expressed concerns that the amendment process has not been applied consistently and fairly and that the waiver authority has been ignored.[25]

The law's language on unfunded federal mandates and restrictions on federal involvement in state and local education systems is another possible tool to address federalism concerns with No Child Left Behind.

> Section 9527(a). NCLB Prohibitions on Federal Government and Use of Funds.
> (a) GENERAL PROHIBITION.—Nothing in this act shall be construed to authorize an officer or employee of the federal government to mandate, direct, or control a state, local educational agency, or school's curriculum, program of instruction, or allocation of state or local resources, or mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this act.[26]

This provision, which also was included in earlier federal laws governing elementary and secondary education, is a clear statement that state and local governments should not have to incur expenses for implementing No Child Left Behind that are not funded by the federal government. The Task Force recognizes that, by federal statutory definition, NCLB is technically not a mandate. The fact is, however, that there is broad recognition that the law functions as an unfunded or underfunded mandate. After 30 years of integrating flexible federal financial assistance into state K-12 plans, the sudden shift to the prescriptions of NCLB raises the question whether Congress is appropriating enough funds to cover all the costs imposed on state and local governments. (See Section six of this report for a full discussion of costs.) At the very least, the Task Force believes that the section is a clear statement of Congress' intent not to shift costs to the states. The language, therefore, should give state officials leverage in their efforts to ensure that NCLB is not an unfunded or underfunded federal mandate.

Conclusion 1: Role of the States

Constitutionally and historically, states are responsible for public education and are accountable to their citizens for the results of public education. States are committed to improving learning for all students and closing the achievement gap.

This conclusion is the Task Force's fundamental starting point. The first sentence states a constitutional truth. The second is based on the testimony received and the experience of Task Force members in their states. Although all states can continue to improve their success in educating all children, solving the problems with NCLB begins with acknowledging that states, which have the authority over education, are committed to the same goal.

Another education expert noted that NCLB causes a loss of local control and incentives to compromise state accountability systems. "(K)ey finding is that increased federal funding and federal mandates further the need by the state to assert full control over education at the state level, divesting local governments of much of their autonomy.... Accountability measures will be rigidly enforced, resulting in significantly *weaker* local control of education as local school districts are forced to implement federal mandates administered by state governments. In my view, the fatal flaw of the act is that it creates incentives that work against the act's goals. First, although the act is supposed to raise achievement across all schools, it creates incentives for states to lower academic standards. Second, although the act is supposed to close the achievement gap, it creates incentives to increase segregation by class and race and to push low-performing students out of school entirely, which will make it even more difficult for disadvantaged students to catch up to their more affluent peers. Finally, while the act is supposed to bring talented teachers to every classroom, it may actually deter some from teaching altogether and divert others away from the most challenging classrooms, where they are needed the most. In short, although the act is supposed to promote excellence and equity, it may work against both."[21]

Contrary to the view of states as laboratories of democracy, the law also stifles future state innovation. Hoover Institution writers have argued that states " ... should be allowed to continue experimenting, until the nation reaches a consensus regarding the ideal way to determine which schools are making adequate yearly progress and which schools are not. We understand the impulse to create a system which requires specific remedies sooner rather than later. However, impatience is an insufficient excuse for bad education policy."[22] The issue of imposing a top-down, inflexible federal system on states was summarized succinctly by the *Richmond Times Dispatch*. "Washington should find a way to acknowledge that not all states came to the No-Child starting line in the same shape. The law was passed to bring up the stragglers, not hobble the leaders. Those at the front of the pack should not be punished but praised."[23]

Federalism Tools in No Child Left Behind

The No Child Left Behind law itself includes two provisions that could help redress some of the federalism imbalances inherent in its approach. One grants broad waiver authority to the secretary of education, creating an opportunity to give states more latitude in meeting the law's objectives. The other addresses the unfunded mandate issue—one of the most widespread complaints about the legislation—by purporting to limit what states must spend, and is generally believed to provide leverage to state officials in their dealings with Congress and the U.S. Department of Education.

The law includes the following waiver language.

> Section 9401. Waivers of Statutory and Regulatory Requirements
> (a) IN GENERAL- Except as provided in subsection (c), the secretary may waive any statutory or regulatory requirement of this act for a state educational agency, local educational agency, Indian tribe, or school through a local educational agency, that—
> (1) receives funds under a program authorized by this act; and
> (2) requests a waiver under subsection (b)[24]

Recommendation 4b: Assisting State Innovations

The U.S. Department of Education should fulfill its role as a national center for diagnostic data collection and scientifically based research that helps states address and eliminate the achievement gap. The U.S. Department of Education should enhance its role as a partner by dedicating more resources to research.

Conclusion 5: Unfunded, Underfunded Mandates and Flexibility

Despite the language in NCLB that purports to prevent unfunded mandates and restrict federal involvement in state education systems, the implementation of NCLB has created an unfunded or underfunded mandate with divergent requirements in individual states.

Recommendation 5a: GAO Study of Unfunded, Underfunded Mandates

The Congress should request a GAO study evaluating whether NCLB, as currently implemented, violates Sec. 9527 by requiring states to spend their own money or change their accountability system in order to comply with the law.

Recommendation 5b: Plan Approval Process

The U.S. Department of Education process for state accountability plan approval and amendment should be uniform, transparent, deliberate and prompt, with requests for exceptions and waivers, both those approved and denied, promptly made public, published and explained in writing. Options granted to any state should be published as notice to and guidance for the benefit of all states.

Recommendation 5c: Appeals Process

Congress should direct the U.S. Department of Education to adopt an appeals process, such as an independent peer review to hear appeals for denied requests for flexibility, exemptions and waivers. Such a process should include state legislators and state and local education officials. The secretary should be required to make timely reports on the disposition of such requests.

Conclusion 2: Appropriate Role of Federal Government in Public Education

Under NCLB, the federal government's role has become excessively intrusive in the day-to-day operations of public education by trying selectively to incorporate the principles of individual state standards-based reforms and condensing them in one federal statute that imposes a one-size-fits all accountability system.

Recommendation 2a: Appropriate Role of Federal Government in Public Education

The Task Force recommends that Congress amend NCLB to create a revitalized state-federal partnership that ensures state accountability for results and enables state and local innovation. Such a partnership should respect diversity without causing division and foster unity without enshrining uniformity. The federal government should honor state systems that govern education by eliminating direct federal regulatory interaction with local education agencies and individual schools and limiting its direct interaction to states.

Conclusion 3: Constitutionality of NCLB

The Task Force does not believe that NCLB is constitutional under the 10th Amendment, because there is no reference to public education in the U.S. Constitution. If it is intended to be supported by the spending clause, NCLB is ambiguous in describing the conditions on the states' receipt of federal funds and is coercive with respect to financial consequences.

Recommendation 3a: Constitutionality of NCLB

The Task Force recommends that Congress cure the defects by unambiguously stating any conditions placed on funds that the federal government appropriates to the states to help students gain proficiency and, second, by eliminating any coercion to participate in NCLB and limiting the punitive financial consequences should a state decide not to participate.

Conclusion 4: Stifling State Innovations

Although the law has had some positive effects on education, some unintended consequences are stifling, and will stifle ongoing innovations and reforms in many states, districts and schools.

Recommendation 4a: Stifling State Innovations

Federal programs should emphasize results in narrowing the achievement gap and achieving proficiency, and not intrude on state processes. The U.S. Department of Education should fully utilize the waiver authority granted in NCLB, especially Section 9401, and use existing authority under this section and in other sections to acknowledge and reward accountability plans that meet the spirit and broad goals of NCLB.

2. Adequate Yearly Progress: The Centerpiece of NCLB

Introduction

The Task Force consistently heard concerns that adequate yearly progress (AYP), the core accountability concept under NCLB, is an incomplete measurement of student achievement. Administrators at the state, local and school levels are overwhelmed by AYP because it holds schools to overly prescriptive expectations, does not acknowledge differences in individual performance, does not recognize significant academic progress because it relies on absolute achievement targets, and inappropriately increases the likelihood of failure for diverse schools.

A common problem with many accountability systems is their reliance on standardized test results. Standardized tests are not the only tools for measuring student performance, but they are the easiest to implement and the least expensive to administer. Some children just do not perform well on tests; and, similarly, tests are limited in their ability to assess student knowledge fully and accurately. These problems are not particular to NCLB. They are, however, amplified because the law requires AYP to be based "primarily on academic assessments..."[27] and attaches significant consequences to their results.

The Task Force supports the use of standardized testing to ensure that all children can read, write and perform essential mathematical tasks. As discussed below, however, all states should have the flexibility to incorporate additional assessments in their accountability systems without falling afoul of NCLB. The Task Force also supports disaggregating test results by subgroups but has concerns about the methodology required under NCLB.

AYP requires that schools and districts be held accountable for two indicators other than the proficiency benchmarks. The law requires 95 percent of all students and 95 percent of the students in each subgroup to participate in the state tests. (The U.S. Department of Education has recently approved a three-year averaging of participation and graduation rates in some states.) Schools that fall below this percentage are identified as "in need of improvement," regardless of any other factors. The apparent intent of this provision is to ensure that schools are held accountable for all students and do not "hide" the performance

TESTIMONY

The Task Force heard testimony on specific issues related to Section I at the following meetings and from the following presenters:

Washington, DC—April 30, 2004
Constitutional and Legal Aspects of Federal Education Policy
Judith A. Winston, Winston, Withers & Associates
Melissa Clarry Junge, Brustein and Manasevit, LLP

Promise of No Child Left Behind
David Dunn, Special Assistant to the President of the United States

History of the Federal Role in Standards-Based Reforms
Representative Bill Goodling (retired), U.S. House of Representatives
Michael Cohen, Achieve
Denis Doyle, SchoolNet

NCLB: Will it Work?
Ross Weiner; The Education Trust
Dr. Gerald Bracey, George Mason University

View Toward the Future: Policy Implications of NCLB
Michael Usdan, Institute for Educational Leadership
Susan Traiman, Business Roundtable

Chicago, Illinois—June 10-11, 2004
Overview of NCLB: Requirements and Opportunities
Dr. Alexa Pochowski, Kansas Department of Education
Bruce Hunter, American Association of School Administrators

Salt Lake City, Utah—July 19, 2004
Overview of NCLB: Requirements and Opportunities
Doug Mesecar, U.S. Department of Education

New York City, New York—August 20-21, 2004
NCLB and the Achievement Gap
Sandy Kress, Business Roundtable
Paul Barton, Educational Testing Service

Santa Fe, New Mexico—September 10-11, 2004
No Child Left Behind
Dr. Susan Sclafani, counselor to the secretary, U.S. Department of Education

Portland, Oregon—October 9-10, 2004
State, Local and School Level Administrators' Experience Implementing NCLB
Trent Blankenship, state superintendent, Wyoming Department of Education
Vicki Phillips, superintendent, Portland Public Schools

challenges to raise student achievement than others. This is not an excuse for lack of improvement, but a reality that needs to be acknowledged by any accountability system.

A valid and accurate system should acknowledge the differences in achievement levels at which students begin each grade and focus on the growth they make from one year to the next. Value-added or student-growth models have been recommended as a better way to measure school performance than the current AYP model.

Growth models are gaining popularity.[29] In March 2004, 16 state school chiefs were denied permission to incorporate student growth components in their NCLB accountability plans. In addition, organizations such as the National Association of State Boards of Education (NASBE), the National Education Association (NEA), the American Association of School Administrators (AASA) and the Council of Chief State School Officers (CCSSO) have voiced their support for student growth models and have made similar recommendations. During its proceedings, the Task Force heard testimony from organizations such as the Northwest Evaluation Association (NWEA) and the National Center for Research on Evaluation, Standards and Student Testing.[30,31] NWEA recommends a hybrid model that incorporates value-added components with a requirement for proficiency for all high school graduates.

Value-added accountability systems are not the ultimate solution to evaluating student performance. They have shortfalls as well. Some rely more on norm-referenced tests and are confined by the same limits of testing as any other test-driven system. However, they are considered a better alternative to AYP for helping states identify schools, teachers and programs that are successful in raising the achievement level of students, especially disadvantaged students.

Many researchers acknowledge the limitations of AYP and further acknowledge that some state systems are, or were, better measures of student performance.

> "Congress' 'one size fits all' approach to education accountability policy will restrict the natural experimentation that has taken place at the state level over the last 10 years. The AYP formulas contained in HR1 appear to be based on early state accountability policies, such as those in Texas and Kentucky. The federal provisions do not capture important changes in the Kentucky model (particularly those that account for measurement error), nor do they reflect more complex policies in states like Delaware, Illinois, Massachusetts, Rhode Island and Vermont that consider both performance levels and performance growth, and emphasize assistance over sanctions. The proposed legislation could also invalidate the use of "value-added" accountability systems in states like North Carolina."[32]

Federal efforts to improve education should not hinder state efforts to develop unique systems that best fit the needs of its students.

of some by only testing and reporting the results of higher performing students. The Task Force commends NCLB for focusing on all children, but is concerned that this provision alone can cause a school to be identified as low performing.

AYP also requires secondary schools to meet a state-defined minimum graduation rate (elementary and middle schools also must be held accountable to an indicator of their choice; most have elected to use attendance rates). This provision is intended to prevent schools from raising student achievement by encouraging low-performing students to dropout. The Task Force supports NCLB's emphasis on the importance of improving graduation and attendance rates for all students.

The Task Force believes that the order, or sequence, of school choice and supplemental services is counterintuitive. Currently, a school identified as needing improvement first must offer students the opportunity to transfer to another school within the district that performs better. This encourages high-achieving students to utilize choice, concentrating low income, poor-performing and minority students in the identified schools. It is only if the same school misses AYP the following year, that it must provide students with tutoring that typically occurs after school, on weekends or over the summer. NCLB shuffles many students between schools before providing individual low-performing students with additional remedial options.

The law requires schools to provide school choice and supplemental services to all students. If there are insufficient funds to do so, schools are allowed to give priority to low-achieving students. [28] But if lower-performing students do not request these services, the resources are diverted to higher-performing students who are more likely to request the services. This undermines the goal of providing additional resources to disadvantaged students. There also is no requirement to link supplemental services to the academic subject where the deficiency is identified.

Concern 1: Validity and Accuracy of AYP

AYP is an inaccurate measure because it evaluates schools by comparing successive groups of students against a static, arbitrary standard. This system does not focus on the performance of an individual student or group of students over time. For example, schools are measured by comparing the achievement levels of grade 4 students in 2004 to grade 4 students in 2005.

In addition, AYP is referred to as a "static" evaluation model because it holds all schools and districts to the same expectation, or benchmark, and measures them equally—regardless of the differences in starting points among individuals and schools. Many researchers argue that AYP measures schools based on a "snapshot" evaluation, or based on the school's performance at a single moment in time (see appendix I for further explanation).

The underlying problem is that all schools and districts in a state are measured equally, regardless of differences in socioeconomic factors, prior achievement levels, or unique challenges the students, schools or districts face. Yet, policymakers and parents know that children learn differently and at different rates and that some schools face more difficult

if it results in a decrease in the number of schools that miss AYP. The exception, however, is in Nebraska. The U.S. Department of Education is allowing Nebraska to use portfolios as an alternative to relying primarily on test results.[37] The state received approval because its constitution guarantees local control over school accountability and because the state was able to demonstrate that the assessments were valid and reliable.

Allowing a state to average proficiency rates over a number of years could also help resolve fluctuations in test scores. For example, if a school or district experiences a one-year dip in the percentage of students scoring proficient, then that year's percentage can be averaged with the previous two years, minimizing the effect of the dip.[38]

Conclusion 2: Limitations of Standardized Testing

The Task Force finds that it is inappropriate to impose high stakes on schools and districts based primarily, if not entirely, on the annual test results of students. Other tools can more accurately evaluate student achievement and identify low-performing schools.

Recommendation 2a: Limitations of Standardized Testing

Multiple Measures
The Task Force recommends that states be allowed to use multiple measures in addition to standardized tests to evaluate school and student performance to determine AYP. States should have the option to determine the measures used and the weight of each measure.

Recommendation 2b: Limitations of Standardized Testing

Averaging Proficiency Data
The Task Force recommends, for purposes of identifying schools for improvement, that the U.S. Department of Education publicize to all states the option of averaging two or three years of data when calculating the percentage of students scoring proficient. States such as South Carolina and Washington have received approval to do this, but many other states are unaware of this option.

Table 1. AYP Matrix

	Math 95% Part.	Math	Reading	Reading 95% Part.	Additional Indicator*
All Students					*Additional indicator for secondary schools is the graduation rate. For elementary and middle schools, it is typically the attendance rate. Additional indicator applies only to the school-wide population.
Economically Disadvantaged					
Asian/Pacific Islander					
Black					
Hispanic					
tive American					
White					
Students with Disabilities (SWD)					
Limited English Proficient (LEP) Students					

Source: NCSL, 2005

Concern 3: AYP—Prescriptive and Absolute

Taking into consideration the proficiency and participation requirements for all the subgroups and the graduation or attendance rate requirement, schools typically must meet more than 40 indicators in order to make AYP. Table 1 provides an example of an AYP matrix, or checklist. Schools that miss any indicator one year and the same or another indicator the second year are labeled "in need of improvement" and subjected to the AYP sanctions (a full list of sanctions can be found in the appendix).

Conclusion 1: Validity and Accuracy of AYP

The Task Force finds that AYP does not allow states to evaluate schools based on the amount of improvement an individual student, or the same group of students, make over time, and is therefore an inadequate measure.

Recommendations 1a: Validity and Accuracy of AYP

Value-Added/Student Growth
The Task Force recommends that states be allowed to use a value-added, or student-growth, approach in their accountability plans. A state plan would meet the requirements of NCLB provided it includes benchmarks to measure increased achievement and disaggregates by subgroups. Not only would this be a more accurate measure of school and student performance, but it would allow states to focus limited resources on the students and schools most in need. (NCLB has a mechanism for recognizing significant growth within a subgroup that falls short of proficiency; however, this mechanism is limited in its application.[33])

Concern 2: Limitations of Standardized Testing

The test scores of schools, grade levels and even individual students naturally fluctuate. These fluctuations are caused by the various factors that affect education. Some students are better at taking tests than others or can have good or bad test days, and children start school at different levels of achievement and learn at different rates.

> "The performance of any school on any index will vary from year to year, in part because of systematic changes, but also because of random fluctuations. A school that scored higher than another in one year might score lower in another year, not because of any fundamental change in teaching practices or student population, but because the sample of students, and their performance on the given day that testing was done, varied."[34]

The smaller the group of students, the more probable and drastic these fluctuations tend to be. Small schools and districts, whether in rural or urban communities, are statistically at greater risk of being misidentified as low-performing because smaller sample sizes generate greater fluctuations in test scores.

> "Small schools are especially vulnerable to being misidentified as failing AYP because small numbers of students take the tests. Smaller numbers make test results very weak. And since AYP judgments are made on the basis of these unreliable statistics, many small schools and districts probably will be incorrectly identified as 'failing.'"[35]

Multiple measures, such as portfolios,[36] can provide a more accurate assessment of performance, but not as applied under the current AYP structure. NCLB allows states to use measures other than test results, but only to identify more schools as being "in need of improvement." In other words, additional indicators cannot be used to refine the model

diagnostic systems like these to focus resources on the lowest performing students and schools.

These systems do not comply with the current structure of AYP, but some states are keeping their state accountability system as an alternate to NCLB. The differences in how these systems measure schools compared to NCLB's methods are a source of considerable confusion. Nowhere is this more obvious than in Florida, where less than 9 percent were given a letter grade of D or F based on the state system but more than 75 percent of the schools missed AYP.

Conclusion 3: AYP—Prescriptive and Absolute

NCLB's prescriptive AYP methodology is inferior to accountability plans developed by some states prior to NCLB and improperly identifies schools as "in need of improvement" by creating too many chances for failure, preventing the use of systems that would focus on patterns of low achievement, and counting individual students in multiple subgroups. Resources will be diverted from students and schools that need more help because too many schools and subgroups will be identified as not making progress.

Recommendation 3a: AYP—Prescriptive and Absolute

Recognizing Differences in School Performance
The Task Force recommends states be allowed to use their state accountability system to comply with the spirit of the federal law. These systems should be based on realistic academic goals and not on the broad aspirational proficiency goals of NCLB.

Recommendation 3b: AYP—Prescriptive and Absolute

School Level Subgroup and Subject Contingency
The Task Force recommends that AYP be changed to allow states to identify schools only after the AYP targets in the same subjects and subgroup are missed for two consecutive years, which has been denied by the U.S. Department of Education. The Task Force recommends that the U.S. Department of Education clarify that all states have the option to identify schools only after they miss the AYP targets in the same subject in two consecutive years. Some states have taken advantage of this, while other states are unaware of this option. The U.S. Department of Education also should analyze and report on the effects of this option on the ability of schools, districts and states to comply with AYP.

Recommendation 3c: AYP—Prescriptive and Absolute

District Identification
At least nine states have been allowed to identify *districts* as being "in need of improvement" only when they do not make AYP in the same subject across multiple grade spans for two consecutive years. The Task Force recommends that the U.S. Department of Education authorize all states to use this option if they desire.

Generally, AYP gives schools and districts more than 40 ways to "fail," but only one way to pass.

While still negotiating the details of the law, several researchers and other education organizations warned Congress that AYP would result in almost all schools being identified for improvement within the first several years of its implementation.[39] Using North Carolina and Texas as case studies, one report concluded that, within a five-year span, the law would result in 96 percent of schools facing corrective action and 75 percent of schools facing restructuring. This purportedly caused Congress to reconsider its definition of AYP and held up negotiations for months.[40] More recent reports have found similar estimates in the percentages of schools that will likely miss AYP during the next several years.[41] The Task Force is concerned that if too many schools are identified by AYP, states will be forced to spread resources so thinly in order to meet the sanctions that the ability to sustain effective reforms will be difficult, if not impossible. Identifying too many schools would also cause resources to be misallocated.

Not only will the overly prescriptive nature of AYP result in too many schools being identified for improvement, but it also fails to acknowledge differences in the schools that are identified. Schools are considered "in need of improvement" and are subjected to the same sanctions, regardless of whether they miss one of the 40 indicators or all, or if one subgroup misses proficiency versus several. A school with one subgroup that falls short of the 95 percent participation requirement should not be judged in the same fashion as a school that has several subgroups below proficiency in academic subjects.

Ultimately, the Task Force wants states to have a way to prioritize schools and students in most need so that resources can be focused on closing the achievement gap. One way this can be accomplished is by changing AYP to better identify trends or patterns in poor performance. The U.S. Department of Education has allowed several states the option to identify schools as being "in need of improvement" only after they miss the AYP targets in the same subject area for two consecutive years. Some states wanted to further refine AYP to identify schools only after the same subgroup missed the same subject target for two consecutive years. This proposal was denied by the U.S. Department of Education. If states could focus on particular subgroups and subjects where additional work is needed, they could speed progress towards NCLB's goal. The current lack of resources, not the lack of will, prevents states from doing so.

AYP also can be refined to provide a more accurate picture of school performance by improving how students from multiple subgroups are reported. Currently, a student can be reported in several subgroups, compounding his or her effect on that school's proficiency, participation and graduation or attendance rates. For example, a learning disabled Hispanic student from an economically disadvantaged family would be counted as a full student in four subgroups (including the overall student population). Overrepresenting such students provides an inaccurate evaluation of a school's performance and makes it more difficult for schools to meet AYP goals.

States had systems in place prior to NCLB that allowed them to recognize differences in school performance. For example, Florida rates schools based on an A-F grading scale, and North Carolina categorizes schools based on the level of student-growth. States use

Conclusion 5: AYP—Graduation Rate Requirement

The Task Force finds that students who do not want to pursue a "traditional" education should be given the opportunity to pursue an alternative path that is rigorous and prepares them for full participation in the workforce. NCLB encourages students to pursue traditional paths but does not recognize the value of alternative programs

Recommendation 5a: AYP—Graduation Rate Requirement

Reporting Graduation Rates
The Task Force recommends that states have the flexibility to include students in their AYP graduation rate who are successfully pursuing alternative paths that are similar in rigor to a high school diploma and provide more flexibility in how students with disabilities are included in graduation rates.

Concern 6: AYP Consequences

Offering school choice before providing individual remediation through supplemental services is illogical. If an effective and accurate accountability system is focused on the diagnosis of individual problems as it should be, deficiencies should be remediated before students are allowed to transfer. States should have the discretion to determine how best to remediate the deficiencies. In addition, choice is not an option for many urban and rural communities. Urban districts report difficulties finding schools within the district that have not been identified as "in need of improvement" themselves and that have adequate space and staffing to accommodate transfers. In many rural communities, choice is not an option because there are no other schools within a reasonable distance to which students can be sent. In many cases, schools are reluctant to accept transfers because they fear it would increase their chance of missing AYP.[42] Doing so increases the risk that the non-identified school will fail AYP in the future. The academic performance of one student may not substantially affect larger schools, but it can affect individual subgroups' ability to reach proficiency.

For these and other reasons, very few families are taking advantage of this opportunity. Only 2 percent of eligible students transferred during the 2003-2004 school year.[43] States may not believe that offering choice is an effective strategy for raising student achievement. Transferring from one school to another can disrupt learning both for the individual and for the receiving classroom. Many administrators contend that the money they spend to provide transportation could be diverted to other programs that are more effective in improving student achievement.

Parents have strong attachments to their local communities and schools and want to have improvements brought to them, not to have their children bused to other schools.

Recommendation 3d: AYP—Prescriptive and Absolute

Improve how Students of Multiple Subgroups Are Reported
The Task Force recommends that schools, districts and states include multiple subgroup identification when reporting student data for diagnostics. When calculating AYP, however, the scores of students with multiple subgroup identifications should be included in the smallest subgroup of which they are a part.

Concern 4: AYP—Test Participation Requirement

NCLB requires that 95 percent of the overall student population and 95 percent of each subgroup participate in the assessments. Failure to meet this requirement causes a school to be identified "in need of improvement" regardless of any other factors, including academic proficiency. The Task Force finds it inappropriate to identify schools for improvement solely for missing the test participation rate requirement. Cases have been reported around the country where schools are failing AYP because a few students in a specific subgroup were not present during the testing window. A few students should not determine an entire school's status under AYP, especially considering that the indicator is not a direct reflection on achievement. Moreover, some have been affected because parents exercise their rights to withhold students from state/federal tests.

Conclusion 4: AYP—Test Participation Requirement

The Task Force finds that too many schools and districts are being identified "in need of improvement" solely because they fail to meet the test participation requirement of NCLB and that AYP arbitrarily punishes these schools and districts in the same way as those that miss academic achievement expectations.

Recommendation 4a: AYP—Test Participation Rate

Testing Participation Rate Requirement
States should have the flexibility in their state accountability plan to establish a formula for the participation rate of schools and districts. This formula could use the average daily membership (ADM) and/or the average daily attendance (ADA) as the basis for an appropriate participation rate for testing purposes. Any formula included in a plan should hold schools accountable to an accurate representation of student attendance and recognize the differing definition of an academic year.

Concern 5: AYP—Graduation Rate Requirement

Graduation rates are another indicator required by AYP. However, NCLB does not allow states to include students who obtain a general education degree (GED) in their graduation rate, nor does the law accommodate students with disabilities whose IEPs recognize that additional time is needed for these students to complete their education. These conflicts are causing problems in some districts and schools.

failing subgroup(s) and low-income students only. If these resources are not needed for the intervention services prescribed by the law, states should be allowed to redirect those resources to other activities that serve disadvantaged students. This would require the federal government to change the requirements for state set-asides of Title I money for transportation and supplemental services.

Recommendation 8b: AYP—Focus of Intervention Services

Provide Supplemental Services in the Subject Causing Deficiencies
The Task Force recommends that states be allowed to use NCLB money to provide supplemental education services only in the academic subject area that causes schools to miss AYP. The Task Force believes that this would help schools target interventions specifically to the subject areas of academic deficiency.

TESTIMONY

The Task Force heard testimony on specific issues related to Section II at the following meetings and from the following presenters:

Chicago, Illinois—June 10-11, 2004
Overview of NCLB: Requirements and Opportunities
- Dr. Alexa Pochowski, Kansas Department of Education
- Bruce Hunter; American Association of School Administrators

Adequate Yearly Progress: Model for Measuring Student Performance
- Dr. Jim Pellegrino, Center for the Study of Learning, Instruction and Teacher Development, University of Illinois at Chicago
- Dr. Gary Orfield, The Civil Rights Project, Harvard University

Perspectives from the Field: Local Officials Reaction to NCLB
- Dr. James T. Rosborg, superintendent, Belleview School District (Ill.)
- Dr. Lowell Rose; Indiana Urban Schools Association
- Dr. Donald Kussman, superintendent, East Dubuque Unit School District (Ill.)
- Xavier Botana, Chicago Public Schools

State Implementation: Strategies and Flexibility
- Douglas Christensen, Nebraska commissioner of education
- Thomas Watkins, Michigan superintendent of public education
- Dr. Alexa Pochowski, Kansas Department of Education

Salt Lake City, Utah—July 19, 2004
Overview of NCLB: Requirements and Opportunities
- Doug Mesecar, U.S. Department of Education

NCLB Implementation: Utah's Experience
- Representative Margaret Dayton, chair, Utah House Education Committee
- Kim Burningham, chair, Utah State Board of Education
- Barry Newbold, superintendent, Jordan School District (Ut.)
- Ray Timothy, Utah State Office of Education

Conclusion 6: AYP Consequences

The Task Force finds that the NCLB mandated sequence of intervention services is inflexible and may not be the best approach for some states, districts and schools.

Recommendation 6a: AYP Consequences

Allow States to Determine Sequence of Consequences
The Task Force recommends that states be allowed to decide the order of interventions provided when a school is identified as being "in need of improvement." For example, providing choice as the first intervention service may not be the best approach for all students. Supplemental services may be a more appropriate initial intervention.

Recommendation 6b: AYP Consequences

Exempting Transfers from AYP Calculations
The Task Force recommends that states be granted more flexibility when counting transfer students in the receiving school's AYP calculations. This will allow receiving schools the chance to improve the student's performance before the school is held accountable for that student to make AYP.

Concern 7: AYP—Focus of Intervention Services

Parents of higher performing students are more likely to request transfer.[44] In many cases, these parents are more aware of their options and have the means to take advantage of them. It is also reported that high-performing students are using this opportunity to transfer to schools with a strong arts or sports program,[45] or simply because parents do not like to send their high-achieving child to a "failing"[46] school.

In addition, there is no requirement that the supplemental services being provided relate to the academic subject that causes the school to miss AYP. If a school or subgroup of students misses AYP in math, the district should not be forced to pay for tutoring services in reading. Focusing these resources on the academic subject in which schools are deficient would help students improve where needed.

Conclusion 8: AYP—Focus of Intervention Services

The Task Force finds that NCLB's interventions divert resources to students who are not in most need of additional help, thereby reducing the resources available for the students who are in most need.

Recommendation 8a: AYP—Focus of Intervention Services

Improve Focus of Intervention Services
The Task Force recommends that states be allowed to change the way they provide intervention services so that their NCLB money is focused on the students most in need. Schools should be required to use their Title I funds to provide intervention services to

3. AYP: Students with Disabilities and Limited English Proficiency

Introduction

NCLB presents tremendous challenges to educators in implementing the law and serving the educational needs of all children. The inclusion of students with disabilities and limited English proficiency in the testing requirements of NCLB and the disaggregating of those students' scores is a major improvement over past practices of hiding the performance of these students in the averages of general student reporting. Nevertheless, the requirement to incorporate students with disabilities and limited English proficiency into an AYP model based on standardized testing raises additional issues.

There are inherent conflicts between the Individuals with Disabilities Education Act (IDEA) and No Child Left Behind. IDEA is both a federal statute and embedded in civil rights law, while NCLB is merely a statute. NCLB requires students with disabilities to be tested according to grade level, while IDEA requires that these students be taught according to ability. NCLB requires that 90 percent of all students with disabilities be proficient by school year 2013-2014.[47] Although this is an admirable goal, it is unrealistic to hold schools accountable for 90 percent of students with disabilities reaching proficiency according to grade level standards. Furthermore, if a student does reach grade level standard, he or she may be removed from the special education subgroup, leaving the subgroup populated by students who, by definition, are not proficient. This is a flaw in NCLB that was recognized for the limited English proficiency subgroup and addressed by regulatory changes, but never applied to the special education subgroup.

The Individuals with Disabilities Education Act (IDEA) guarantees all children with disabilities the right to a free and appropriate public education (FAPE) in the least restrictive environment (LRE). IDEA '97 reinforced the use of individualized education programs (IEPs), which require educators and parents to determine how best to design an effective individual program of instruction for students with disabilities and to hold schools accountable for the student's achievement. To appropriately test their knowledge, students with disabilities were tested on either 1) regular grade-level assessments; 2) regular assessments with accommodations; 3) alternate assessments based on grade-level standards;

New York City, New York—August 20-21, 2004
NCLB and the Achievement Gap
Sandy Kress, Business Roundtable
Paul Barton, Educational Testing Service

Meeting the Demands of NCLB: Test Development, Scoring, Reporting and Accuracy
Patty McAllister, Educational Testing Service
Larry Snowhite, Houghton Mifflin
Dr. Monty Neill, National Center for Fair and Open Testing

State Implementation Strategies and Flexibility
Betty Sternberg, Connecticut state commissioner of education
Melissa Jamula, superintendent, Reading School District (Penn.)
Janet Chavis, director of Title I Programs, Newark School District (NJ.)

Santa Fe, New Mexico—September 10-11, 2004
New Mexico Implementation of NCLB
Kurt Steinhaus, New Mexico Public Education Department
Penny Bird, New Mexico Public Education Department

No Child Left Behind
Dr. Susan Sclafani, counselor to the secretary, U.S. Department of Education

Portland, Oregon—October 10-11, 2004
State, Local and School Level Administrators' Experience Implementing NCLB
Trent Blankenship, state superintendent, Wyoming Department of Education
Vicki Phillips, superintendent, Portland Public Schools

Value-Added Models as an Alternative to AYP
Allan Olson and Gage Kingsbury; Northwest Evaluation Association
Kyo Yamashiro, National Center for Research on Evaluation, Standards and Student Testing

Furthermore, the 10 percent exemption level is arbitrary because the special education population is not uniformly dispersed across districts and states. This subjects many districts and states to inappropriate and unrealistic expectations in reaching proficiency that will consequently cause them to fail AYP. States and districts would be better left to determine an appropriate exemption level that reflects individual school and district special education populations.

Finally, it is unlikely that the students with disabilities subgroup will ever reach 100 percent proficiency, considering that once a student is "proficient" he or she may no longer be included in special education programs or counted toward the subgroup's AYP calculations. "Exiting" proficient students from the special education subgroup could leave the subgroup populated by students who by definition are not proficient.[49] This obvious flaw in NCLB was recognized for the limited English proficiency subgroup and addressed by regulatory changes,[50] but never applied to the special education subgroup.

Conclusion 1: Students with Disabilities—IDEA and NCLB

The Task Force believes IDEA is the long-standing and primary federal law governing and protecting the individualized education of students with disabilities. Although it acknowledges the importance of holding these students to appropriately high educational expectations, NCLB conflicts with IDEA, brings into question important individual protections offered by IDEA, and may demoralize these students by holding them to an unrealistic and inappropriate expectation of meeting grade level standards and being tested accordingly.

Recommendation 1a: Students with Disabilities—IDEA and NCLB

Recognizing Primacy of IDEA and the Importance of Individual Education Plans
The Task Force urges that Congress recognize IDEA as the prevailing federal law regarding students with disabilities. It should take precedence over NCLB. States should be allowed to use IEPs to determine an appropriate curriculum, standards and assessment system for students with disabilities.

Recommendation 1b: Students with Disabilities—IDEA and NCLB

Allowing States to Set the Exemption Level for Alternate Testing of Students with Disabilities
The Task Force recommends that states be allowed to determine the percentage of the special education population that would be best educated according to out-of-level standards and tested accordingly, based on IEPs. Districts should be able to petition the state if they need to exceed the exemption level. Regardless of where this exemption level is set and in recognition that the special education population is not uniformly dispersed across states and school districts, these decisions should be made at the discretion of states—not in Washington, D.C.

or 4) alternate assessments based on alternate achievement standards (also called out-of-level standards and assessments). Although states were encouraged to include students with disabilities in the general education curriculum, IDEA recognized that this was inappropriate for some children who should be taught and tested according to their ability and not their grade level. NCLB allows only 10 percent of a special education population to be tested according to out-of-level standards. The remaining 90 percent must be tested according to grade level. NCLB holds students with disabilities to unrealistic expectations and risks demoralizing and stigmatizing these students because special education subgroups have caused many schools to fail to meet AYP.

NCLB's definition of a "highly qualified" teacher also conflicts with state practices for certifying teachers of students with disabilities. Congress was expected to address this conflict during the 2004 reauthorization of IDEA. However, it did not.

Timing of tests and teacher certification for students with limited English proficiency presents additional difficulties. State policymakers and administrators need to determine a realistic schedule for administering tests in English to students with a different native language and an appropriate expectation for when these students should be held to the proficiency standards for school, district and state AYP calculations. State processes for certifying teachers of students with limited English proficiency (often referred to as ESL teachers) must be reconciled with the NCLB highly qualified definition.

Concern 1: Students with Disabilities—IDEA and NCLB

With the inherent contradictions between IDEA and NCLB, states must determine which federal policy should prevail in certain situations. IDEA is not just another federal statute; it is grounded in civil rights law and was established to provide disabled students an opportunity for academic achievement to their full potential. Without resolution, these conflicts will create bureaucratic nightmares for states.

The inherent contradictions between IDEA and NCLB change the expectations of how schools teach students with disabilities and are held accountable for their achievement. IDEA requires states to use individual education plans to determine the appropriate way to educate students with disabilities, including alternate assessments based on out-of-level standards. Under NCLB, districts and states may allow only about 10 percent of the special education population—those with severe cognitive disorders—to be tested according to out-of-level standards in their AYP calculations. The remaining 90 percent must be taught and tested based on grade level standards, although accommodations such as extra time, oral presentation and larger print are allowed. The U.S. Department of Education has testified that it established the 10 percent exemption based on the national average of special education students who had severe cognitive disorders (even though the exemption level was originally set at .5 percent). Some have questioned whether this exemption level is appropriate. Although some children may not have severe cognitive disorders, they may possess other disabilities that prevent them from meeting the same grade-level expectations of non-disabled students. They may learn differently or at a slower pace or may require alternate forms of testing. An appropriate exemption level should acknowledge these students, often referred to as "gap" students. Several studies indicate that 20 percent to 30 percent of the special education population should be exempted from grade-level testing.[48]

Recommendation 2a: Students with Limited English Proficiency

English-Only Tests
The Task Force recommends that states have the flexibility to determine when to administer native-language tests to students with limited English proficiency and when to use English-only tests.

Recommendation 2b: Students with Limited English Proficiency

Meeting AYP Proficiency
The Task Force recommends that states have the flexibility to determine when to hold schools accountable for including students with limited English proficiency in AYP calculations.

Recommendation 2c: Students with Limited English Proficiency

Different "n" Sizes
The Task Force recommends that the U.S. Department of Education publicize to states the option of setting a different "n" size—the minimum number of students needed to establish a subgroup in a school for reporting purposes—for students with limited English proficiency. This option has been made available to some states with respect to students with disabilities and also should be available to the states for students of limited English proficiency (*see recommendation 1d*).

Concern 3: Highly Qualified Special Education Teachers

NCLB requires teachers to prove content knowledge for every academic subject they teach. The law, however, is silent on the definition of a highly qualified special education teacher. The difficulty in requiring core content expertise for all special education teachers is that they are highly focused on special education methods and are generalists when it comes to academic subject knowledge. In addition, the environments in which they teach do not fit a standard model. Some special education teachers go from school to school to provide intensive interventions in special education. Although some special education teachers are trained in their teacher preparation program to work with students with a specific type of disability, such as autism, most do not know in what type of setting they will immediately be employed (e.g., elementary, middle, or secondary school). Last, some special education teachers are trained specifically in how to instruct students with disabilities and may not have majored in the multiple core content areas they may cover in their classrooms. In rural communities, certified special education teachers may travel from one district to the next to teach disabled students, regardless of grade or academic subject.

Conclusion 3: Highly Qualified Special Education Teachers

The Task Force finds that states are in the best position to establish the certification requirements of special education teachers. Federal preemption could inhibit the ability of states to properly staff classrooms, deter young people from pursuing a career as a special education teacher, or encourage current special education teachers to choose to work with

Recommendation 1c: Students with Disabilities—IDEA and NCLB

Setting Separate AYP Paths for Students with Disabilities
The Task Force recommends that states be allowed to set separate starting points and AYP projection paths for students with disabilities. This will acknowledge that "gap" kids do not meet the definition of students with severe disabilities, nor are they appropriate candidates for regular assessments and standards.

Recommendation 1d: Students with Disabilities—IDEA and NCLB

Different N Sizes
The Task Force recommends that the U.S. Department of Education publicize to states the option of setting a different "n" size—the minimum number of students needed to establish a subgroup in a school for reporting purposes. Some state plans have acknowledged the difficulty disabled students will have in meeting AYP and have increased their "n" size so fewer schools are required to meet the AYP proficiency standards for this subgroup. This will reduce the number of schools that miss AYP due solely to this subgroup.

Concern 2: Students with Limited English Proficiency

The NCLB requirements for testing students with limited English proficiency are inflexible, and the law places unrealistic expectations on when schools should be held accountable for these students to reach the AYP proficiency targets. Students with language barriers will have a difficult time participating in state assessments and may enter school with insufficient education, well below their grade level expectation.

A similar contradiction exists between the expectation that NCLB places on students with limited English proficiency (LEP) and the challenges of English-only testing after two years. NCLB demands that schools be held accountable for students reaching English proficiency within three years of entering the country.

As with the special education subgroup, the limited English proficiency subgroup may never be able to reach 100 percent proficiency if test scores of those who have left the subgroup no longer count toward AYP. The U.S. Department of Education has offered some flexibility to address this situation for students with limited English proficiency (LEP). Under the revised rules, states may include those LEP students in the subgroup for two years after they are considered proficient in English. The U.S. Department of Education was responding to requests from several states that originally proposed in their state plans to continue to include LEPs in the subgroup for three years after they reach proficiency in English. Even with this flexibility, many still are concerned whether the LEP subgroup can meet 100 percent proficiency within three years of beginning English language study. As mentioned earlier, the U.S. Department of Education has yet to acknowledge this as a problem for the students with disabilities subgroup.

Conclusion 2: Students with Limited English Proficiency

The Task Force finds NCLB's expectations of LEP students to be inflexible and unrealistic. The act needs to be amended to give states more flexibility to bring students to English proficiency.

NCLB imposes uniform requirements across districts and schools, without recognizing the unique challenges of some communities. The magnitude of these challenges often are greater in urban, rural, and small schools and districts than in suburban districts. Urban schools, especially those with highly heterogeneous populations, (and, therefore, more identified subgroups) will likely have more difficulty meeting AYP. Urban and rural schools are experiencing problems meeting the school choice and supplemental service provisions. Issues arise around the NCLB accountability requirements and how states educate homeless students. There is a wide variation in the distribution of children who are homeless and confusion about whether local, state or federal guidelines determine which district bears financial responsibility and is accountable for the academic achievement of these students.

non-disabled students. NCLB's requirement that teachers prove content knowledge for each academic subject they teach in order to become "highly qualified" is unrealistic and counterproductive and conflicts with many state processes for certifying special education teachers. This is a dramatic shift in the expectations for special education teachers and will likely exacerbate an already growing shortage of teachers in this profession.

Recommendation 3a: Highly Qualified Special Education Teachers

Allowing Certified Special Education Teachers to Meet Requirement
The Task Force recommends that NCLB defer to state certification processes for meeting the highly qualified definition for special education teachers.

Recommendation 3b: Highly Qualified Special Education Teachers

Highly Qualified Requirement for Special Education Teachers of Multiple Subjects
The Task Force recommends that NCLB be amended to allow special education teachers who teach multiple subjects to meet the NCLB highly qualified definition without having to prove content knowledge for each academic subject. This could be accomplished by developing an alternative method of evaluation to confirm that these teachers have enough content knowledge to teach various subjects to special education students. An alternative method of evaluation could include a single assessment or allowing states to establish a highly objective and uniform state standard of evaluation (HOUSSE program) specifically for special education teachers.

Recommendation 3c: Highly Qualified Special Education Teachers

Meeting Highly Qualified Requirements Through Consultation and Collaboration
Special education teachers and general education teachers who do not meet specific content knowledge requirements should be offered the option of partnering with teachers who have the subject matter content knowledge. This would allow special education teachers access to the content knowledge of academic teachers, and give academic teachers the opportunity to observe appropriate teaching techniques for students with disabilities. Both parties in this collaboration would meet the federal definition of a highly qualified teacher, which would help states adequately staff classrooms and would allow students with disabilities to benefit from teachers who have both special education expertise and content knowledge.

TESTIMONY

The Task Force heard testimony on specific issues related to Section III at the following meetings and from the following presenters:

Salt Lake City, Utah—July 19, 2004
IDEA & NCLB: Requirements and Opportunities
Dr. Troy Justesen, Office of Special Education and Rehabilitative Services, U.S. Department of Education
Bob Runkle, state director of Special Education, Montana Department of Education
Dr. Ron Powell, Desert Mountain Special Education Local Planning Area (Calif.)

Introduction

districts' are more likely to be economically disadvantaged and live in communities that lack resources such as libraries and access to technology. [51]

The U.S. Department of Education attempted to recognize the different needs of rural schools by extending the deadline for compliance with the highly qualified provisions by one year for schools that meet a limited definition of "rural" chosen by the U.S. Department of Education. According to the Rural School and Community Trust, however, the definition of rural announced by the U.S. Department of Education excludes three fourths of the nation's 38,000 rural and small town schools. The U.S. Department of Education considered two definitions of "rural" used in U.S. Department of Education programs, and chose the one that includes 10,000 schools serving 1.6 million students in 5,000 school districts, primarily in the Midwest and Plains states. It rejected the alternative definition of "rural," which would have identified an additional 7,000 schools and 2.8 million students.

Under the current interpretation and definition, only 66 districts in the South received the extended deadline flexibility. Using the broader definition, 545 districts would have the benefit of the added flexibility.[52]

Conclusion 1: Uniformity of NCLB

NCLB's inflexible and uniform requirements put too much emphasis on the law's compliance issues, emphasizing inputs and not focusing on the recognition of the unique characteristics of schools and districts that affect their ability to comply with NCLB's specific requirements.

Recommendation 1a: Uniformity of NCLB

The Task Force recommends that the federal government help states overcome the unique challenges urban and rural schools face by providing incentives and flexibility to these communities and stop punishing them with prescriptive definitions and sanctions. The Task Force further recommends that Congress delegate flexibility authority in Section 9401 to states to allow state governance systems the authority to recognize and respond to the unique conditions of urban and rural communities.

Recommendation 1b: Uniformity of NCLB

The Task Force recommends that Congress and the U.S. Department of Education permit states to determine the sequence of consequences offered for schools in need of improvement, especially for rural and urban schools where choices and providers may be limited. This recommendation reinforces the recommendation made in section two of this report. Flexibility in assigning consequences is especially important in urban and rural areas. Decisions about consequences must be decentralized so that decision making is the responsibility of the level of government closest to, most familiar with and responsive to the areas in question.

Recommendations 1c: Uniformity of NCLB

4. Flexibility for States to Address Unique Schools and Districts

Concern 1: Uniformity of NCLB

The law does not recognize the unique difficulties of some communities and unfairly challenges some schools and districts due to their location and demographics. The U.S. Department of Education recognized the unique nature of rural communities when it granted flexibility from meeting the highly qualified teacher requirements. However, the flexibility was not extended to enough schools and districts, and the U.S. Department of Education has failed to offer similar flexibility to urban and rural schools and districts over other areas of the law.

The unique circumstances of urban and rural areas magnify the many problematic elements of the law identified elsewhere in this report.

Urban schools are likely to have more difficulty meeting AYP than rural or suburban schools. As mentioned in section three, schools with more subgroups are at a greater risk of failing AYP statistically, regardless of the quality of instruction. Statistically, a school with a large percentage of one minority will meet AYP more easily than a school with several smaller minority populations. This does not mean diversity alone puts schools at a greater risk of missing AYP. Instead, the more heterogeneous a school's student body, the greater the chance of failure because more subgroups are identified and counted toward AYP calculations.

As mentioned in section two, urban and rural schools identified for improvement are having difficulty providing school choice and supplemental services. Offering school choice in urban districts may not be an option if many or all the other schools in the district also have been identified for improvement. Rural districts have a comparable challenge because they may not have another school within reasonable proximity to offer school choice. For-profit providers are reluctant to offer supplemental services in geographically diluted rural markets. Distance and fewer consumers of these services also are issues for nonprofit providers. The Task Force recognizes the potential of distance learning as an alternative source of supplemental services and school choice, but also notes that students in rural

New York City, New York—August 20-21, 2004
State Implementation Strategies and Flexibility
Betty Sternberg, Connecticut state commissioner of education
Melissa Jamula, superintendent, Reading School District (Penn.)
Janet Chavis, director of Title I Programs, Newark School District (N.J.)

Santa Fe, New Mexico—September 10-11, 2004
New Mexico Implementation of NCLB
Kurt Steinhaus, New Mexico Public Education Department
Penny Bird, New Mexico Public Education Department

Impact of NCLB on Rural Communities
Lorna Jimerson, Rural School and Community Trust
Dr. Stephen Bohrer, superintendent, Holyoke School District (Colo.)
Bob Dittman, Principal, Empire Elementary School (Calif.)

The Task Force recommends that the federal government conduct additional research on effective distance learning that would enable students and schools to meet NCLB's goals, identify the barriers to distance learning, and disseminate that research to the states and schools.

Recommendations 1d: Uniformity of NCLB

The Task Force recommends that any flexibility granted to rural districts or schools include a broader definition of "rural" than the definition used by the U.S. Department of Education in granting the February 2004 flexibility for compliance with the highly qualified teacher requirement.

Conclusion 2: Uniformity of NCLB

The Task Force concludes that federal provisions allocating the cost of educating homeless children are too rigid and cause disproportionate burdens on some districts.

Recommendation 2a: Uniformity of NCLB

NCLB and related federal laws should be amended to permit states to allocate the costs of educating homeless students among districts within their borders. States also should have the flexibility to resolve interstate cost allocations by agreement.

Recommendation 2b: Uniformity of NCLB

To the extent a federal role is maintained in resolving interstate issues of costs allocation, there must be a limit on the length of time a district in which a child originally became homeless is responsible for the costs of the child's education in a new home district.

TESTIMONY

The Task Force heard testimony on specific issues related to Section IV at the following meetings and from the following presenters:

Chicago, Illinois—June 10-11, 2004
Perspectives from the Field: Local Officials Reaction to NCLB
- Dr. James T. Rosborg, superintendent, Belleview School District (Ill.)
- Dr. Lowell Rose, Indiana Urban Schools Association
- Dr. Donald Kussman, superintendent, East Dubuque Unit School District (Ill.)
- Xavier Botana, Chicago Public Schools

Concern 1: Requiring Teachers to Prove Content Knowledge

The NCLB definition of a "highly qualified" teacher requires teachers to prove content knowledge for each academic subject they teach. They may do this by passing a state test or taking coursework equivalent to a postsecondary major, while veteran teachers can also use HOUSSE programs. Regardless of their option, this condition must be met for each academic subject a teacher teaches.

The Task Force recognizes the importance of ensuring that teachers have sufficient content knowledge in order to provide students a high-quality education. However, many teachers, especially those in hard-to-staff schools, are forced to teach a multitude of academic subjects due to staff shortages. Mandating that these teachers meet specific conditions for each subject creates a burden on the profession and hinders schools' ability to staff classrooms adequately.

Conclusion 1: Requiring Teachers to Prove Content Knowledge

The Task Force believes that requiring teachers to prove content knowledge in every subject they teach is making it difficult for schools and districts to ensure every teacher meets the "highly qualified" definition and adequately staff classrooms (especially in particular academic subjects such as science and math).

Recommendation 1a: Requiring Teachers to Prove Content Knowledge

The Task Force recommends that states be able to allow teachers who are teaching multiple subjects to be considered highly qualified based on a single means of evaluation (which could include a test, continued education or a HOUSSE program). Any evaluation system must ensure that teachers have sufficient content knowledge to teach separate subjects, but should not require teachers to repeat the evaluation process for each subject.

Concern 2: Meeting the Highly Qualified Teacher Requirements

The rapid population growth in some areas leaves administrators with little choice but to hire teachers on provisional status just to keep classrooms staffed. Administrators also find the staffing of schools in rural and urban schools to be challenging for various reasons. The locations can be seen as less than desirable places to live, which makes recruiting and retaining high-quality educators more difficult. A lack of resources can restrict the ability of these schools to offer competitive salaries and provide professional development opportunities or other incentives to entice high-quality educators. The challenges of teaching children who start school behind their advantaged peers because of socio-economic and family factors deter high-quality teachers from entering these classrooms. Similarly, many schools, districts and even states have faced teacher shortages prior to NCLB. Placing more qualifications on the teachers hired in these areas makes it more difficult to staff those classrooms. This problem is worse in specific subject areas such as mathematics and science.

5. Highly Qualified Teacher and Paraprofessional Requirements

Introduction

NCLB requires states to ensure that all teachers and paraprofessionals are highly qualified by the 2005-2006 school year. States are allowed to set the definition of what constitutes a highly qualified teacher, but at a minimum teachers cannot teach on temporary or emergency waivers, must have obtained state certification or passed a state licensing exam (including alternative routes to certification), and must hold a bachelor's degree.

Newly hired elementary teachers must pass a rigorous test of basic elementary curriculum knowledge, while veteran elementary teachers may pass a test or demonstrate competency of elementary content based on a "highly objective, uniform state standard of evaluation" (HOUSSE programs).

Middle and secondary school teachers face more difficult challenges in meeting the highly qualified definition. Newly hired teachers must pass a rigorous state test or have completed a postsecondary academic major in each academic subject they teach. Veteran teachers must prove content knowledge for each academic subject they teach using one of the above approaches, or they can pass a HOUSSE program.

NCLB also requires paraprofessionals (i.e., teacher assistant or education assistant) to have their secondary school diploma or an equivalent. They also must complete at least two years of study at an institute of higher education or meet rigorous standards through a state or local test.

Ensuring that all teachers meet the federal definition of a "highly qualified" teacher or paraprofessional is difficult for many schools and districts, particularly those in fast-growing areas and those in rural and urban schools with hard-to-staff classrooms.

NCLB requires that states ensure that schools are implementing and complying with the "highly qualified" provisions, while schools must issue report cards to parents that include the progress they are making toward having all teachers "highly qualified" and the status of each teacher.

6. The Cost of Closing the Achievement Gap: Compliance vs. Proficiency

Introduction

State participation in federal education programs, including the No Child Left Behind Act, is in the form of an exchange: states comply with federal requirements in exchange for money to supplement state and local education efforts. Issues relating to the legal, statutory and constitutional issues arising from that exchange or contract have been presented in section one of this report. This section addresses the financial terms of the exchange.

The federal government's involvement in K-12 education has historically been in narrowing the "achievement gap" between majority and minority students and wealthy and poor students. Federal K-12 money was targeted to students from high poverty families, otherwise known as Title I students (about 35 percent of all students). The federal government's contributions peaked at 9.8 percent of K-12 funding in 1980 and has declined to approximately 6 percent to 8 percent of the money spent on K-12 education since then.

NCLB has greatly expanded the target of federal education policy, while the federal government has provided only marginal financial increases to meet its mandates. The law's testing and accountability requirements affect all public schools and students, not just the 35 percent of Title I students the Elementary and Secondary Education Act (ESEA) was intended to serve. Yet, the federal government's financial commitment to education remains at around 8 percent of the total revenue spent on K-12 education.

Whether the federal government is providing enough funding to meet the requirements of the law—and if not, how much it will cost states—is still being debated. Any estimate of the fiscal impact of NCLB must consider two separate costs: the cost of administering the law (i.e., compliance cost) and the costs of bringing every child to academic proficiency (i.e., proficiency cost). Some researchers argue that the law does not actually require states to meet the 100 percent proficiency goal. NCLB, however, sets that ultimate target and punishes schools, districts and states if they do not.

Recruiting the highest quality teachers into the hard-to-staff classrooms of urban and rural low-performing schools has always been a challenge. For schools with significant minority populations, there is a legitimate desire to recruit culturally sensitive teachers as well. States have been developing successful programs to address these issues for years. However, resources are being diverted from these programs due to the emphasis NCLB places on compliance. States are having to focus administrative resources on implementing the law and meeting its consequences, rather than investing these resources in programs and practices intended to raise student achievement.

Conclusion 2: Meeting the Highly Qualified Teacher Requirements

The Task Force finds that the federal government has a legitimate role in requiring that all teachers hired with federal funds meet its highly qualified guidelines. Those hired with state and local money should meet state and local certification, not federally imposed standards.

The Task Force also finds that the federal government would best maximize its affect on increasing student achievement by focusing on providing incentives to attract better teachers into the most challenging communities, not by mandating one-size-fits all standards.

Recommendation 2a: Meeting the Highly Qualified Teacher Requirements

The Task Force finds that many hard-to-staff schools are having difficulty ensuring that all teachers meet the highly qualified definition. Unique circumstances prevent these schools from complying with this requirement. We recommend that states determine the conditions under which exceptions can be granted in unique and limited circumstances that are beyond the control of the school and/or district.

TESTIMONY

The Task Force heard testimony on specific issues related to Section V at the following meetings and from the following presenters:

Salt Lake City, Utah—July 19, 2004
Issues Around Highly Qualified Teachers
- Eric Hirsch, Southeast Center for Teacher Quality
- David Lussier, National Board for Professional Teaching Standards
- Kathy Madigan, American Board for Certification of Teacher Excellence
- Marji Zimmerman, Nevada Education Association

Santa Fe, NM—September 10-11, 2004
NCLB and Paraprofessionals
- Kathy Chavez, New Mexico Federation of Educational Employees
- Dr. Marilyn Likins, National Resource Center for Paraprofessionals

the federal government leaves states with an "all-or-nothing" offer that undermines the spirit of the law.

To understand these issues it is important to provide historical context to the federal government's role in, and fiscal commitment, to education.

Concern 1: Funding K-12 Education and the Effects of "Historic" Increases in Federal Funds

As discussed in section one, the U.S. Constitution (by omission), and state constitutions agree that public education is the responsibility of state governments and, specifically state legislatures.

Public education in the United States is a $500 billion per year endeavor. If the K-12 system were a company, it would rank first in the Fortune 500, with revenues exceeding the combined revenues of Wal-Mart and Exxon/Mobil, the top two companies on the list in 2003. K-12 education is not a single entity, and the cost it offers of $6 per hour per student is a bargain, considering the more than 40 million students it serves.[56]

State sources account for about 92 percent of the revenue spent on K-12 education—generally through a mix of property, sales and income taxes.[57] Federal sources account for approximately 8 percent of the revenue spent on education. In other words, 92 cents of every $1 spent on public K-12 education comes from in-state sources, while 8 cents comes from federal sources. The federal share peaked at 9.8 percent in school year 1979-80, declined continuously for 10 years thereafter and has climbed slowly for the last 14 years.

In FY 2002, the year following NCLB's enactment, federal education funding increased $4.7 billion—or 26 percent—over the previous year. That appears to be a considerable amount, until one takes into account the effect that $4.7 billion has on the aggregate K-12 system of $500 billion in revenue. For that year, a $4.7 billion federal increase represented only a 1 percent increase in overall K-12 spending. For the two years subsequent to that first year boost (FY 2003 and FY 2004), the federal commitment to K-12 increased a total of $5 billion or at current total expenditures an additional increase in K-12 spending of about 1 percent. Thus, at current expenditures, every $1 billion increase in federal K-12 spending amounts to a 0.2 percent increase in aggregate K-12 resources. Since NCLB's passage, the total federal increase in K-12 appropriations is equal to about 2 percent of aggregate K-12 revenue.

This analysis of increases initiated by the passage of NCLB is generous in including not only formula-driven funds that are distributed to all states and districts (including special education), but also competitive grants that are awarded to those states and districts that successfully apply for the funding. Some analysts consider Title I funds, upon which most NCLB compliance requirements are based and which make up less than half of NCLB appropriations, as the only funds applicable to NCLB cost calculations.[58] Using Title I figures, the increase from pre-NCLB (FY 2001) appropriations to FY 2005 is $4.1 billion, or an absolute increase in aggregate K-12 funding of .08 percent. (See figure 1 on page 56.)

The compliance costs include those related to annual testing; data collection; analysis and reporting; implementing adequate yearly progress (AYP); providing sanctions such as school choice, supplemental services and technical assistance; and getting teachers to meet the "highly qualified" definition. Some advocates of NCLB argue that if states implement these "administrative processes," this alone will lead to 100 percent proficiency. The Task Force believes that meeting these administrative processes is not sufficient to meet the proficiency goals of NCLB.

The proficiency costs are the additional resources needed to actually increase student achievement. This can include a wide array of activities, some of which states were doing prior to NCLB. But the expectation of having all children proficient by 2013-2014 will require states to increase funding drastically for these programs and others.

Some researchers argue that states can implement the processes of NCLB and meet its proficiency goals without additional resources, contending that states need to only redirect current resources more effectively.[53] They discount the fact that pursuing these efforts would require states to divert resources from other programs or force states to spend more money, which states currently do not have the capacity to do.

Policymakers know that schools can and must do more to provide students a better education by making better use of existing resources. They also acknowledge, however, that additional funding is critical to improving education. Some argue that intervention efforts exclusively limited to or focused on education, such as investing in early childhood education, reducing class sizes, increasing and improving the use of technology and using more intensive teaching techniques, will prevent or limit the achievement gap.

State courts also support the belief that additional funding is the key to increasing the achievement of disadvantaged students. "Adequacy" cases have increasingly become the main authority for determining what is needed to overcome the achievement gap, and they consistently find additional resources to be the answer. These findings directly contradict the theory that NCLB's goals can be accomplished without significant new funding. State policymakers find themselves caught between competing philosophies of federal policymakers and the actions of state courts.

Many researchers and experienced state policymakers argue compellingly, however, that a good portion of student achievement is limited by factors well beyond the control of schools. They contend that overcoming these challenges will require a substantial investment in social reforms as well as educational reforms.[54] Some students face challenges such as impoverished communities, fragmented families, poor health care and unstable housing conditions that can affect student achievement. Studies have shown that of the majority of academic achievement is determined by family, community and other "external" factors.[55] Meeting the proficiency goals of NCLB, therefore, could cost states much more than they predict and more than is realistically available.

Another issue that must be addressed is the cost of <u>not</u> participating in NCLB, or how much federal money states would lose if they "opt-out" of the law. State officials who are committed to their existing accountability systems and sincerely believe the rigidity of NCLB disrupts their progress toward addressing the achievement gap are concerned that

requirement to meet proficiency goals, the negative consequences that apply to those schools and districts that fail to meet proficiency goals are a strong argument that compliance with NCLB *implicitly*, at least, requires a progression to 100 percent proficiency. Studies of the costs of achieving proficiency have used methods adapted from those used by courts in state adequacy lawsuits and generally result in the comprehensive and high estimates of the cost of implementing NCLB.

Conclusion 2: Funding for NCLB

The Task Force considers the first four definitions of the cost of implementation to be limited and/or inappropriate for estimating a useful and accurate range for the cost of participating in NCLB. The Task Force analysis focuses on the estimates of compliance with the process and administrative requirements of NCLB to establish a minimum cost estimate, and on the estimates of reaching proficiency to establish a comprehensive cost estimate.

Recommendation 2: Funding for NCLB

The Task Force recommends that Congress request the U.S. General Accountability Office (GAO) to conduct a comprehensive study on the costs to states and local districts of 1) complying with the administrative processes of NCLB and 2) achieving the proficiency goals of NCLB and/or closing the achievement gap. Furthermore, the Task Force recommends that any time the federal government conducts a cost estimate of NCLB, it specifically include the compliance costs as well as the costs of reaching the proficiency goals of the law.

Concern 3: Compliance and Proficiency Estimates—Compliance

Compliance costs for states and localities are, theoretically, covered by increases in federal funding related specifically to passage of NCLB. The majority of state cost studies call that theory into question. The consensus of these studies is that NCLB increased funding by no more than 2 percent nationally, although some states suffered subsequent reductions when the Title I distribution formula was changed. These studies show, however, that actual compliance costs range from about 1 percent to as much as 5 percent. For some states, the new funding may barely cover the costs; for other states, the new costs exceed the additional funding by a significant margin.

Distinguishing NCLB costs from existing costs is one of the main challenges of estimating the law's fiscal impact on states.

In reviewing state studies, seven major cost areas related to compliance have been identified.[59]

- Standards and assessments
- Accountability and AYP
- Data management
- School improvement
- Supplemental services
- Highly qualified staff
- Safe schools

Conclusion 1: Funding K-12 Education and the Effect of NCLB-Related Increases in Federal Funds

The Task Force finds that, while federal increases have been sizable relative to previous federal levels, the absolute effect on state systems of education of those increases is extremely limited, ranging from eight-tenths of a percent (0.8) to 2 percent. Although the increased funding may be "historic" in size when considered from the federal point of view, it must be related to the increase in total education spending across the country. Any valid estimate of the implementation costs of NCLB should quantify the effects of federal contributions and increases relative to aggregate K-12 expenditures.

Recommendation 1a: Funding K-12 Education and the Effect of "Historic" Increases in Federal Funds

While the Task Force recognizes this as an important issue, it was unable to develop a recommendation to resolve the discrepancy between historic federal increases and their relative impact on aggregate K-12 funding.

Concern 2: Funding for NCLB

Since its enactment in 2002, the cost of implementing NCLB has been hotly debated. The question of what is needed to fund NCLB has generated at least five distinct responses, four of which the Task Force finds inaccurate, inappropriate or unrealistic.

- **Relative federal increases:** Federal increases are compared to previous federal spending levels, not to absolute aggregate funding of public education.
- **Unexpended balances:** Unexpended balances in federal education accounts are the indication of a "system flush with cash." The secretary of education subsequently repudiated this position in public hearings before a House committee.
- **Authorizations vs. appropriations:** The current gap between authorization and appropriations is $9.4 billion. Authorization levels are arbitrary and generally not directly tied to the amount of money actually needed to meet the demands of a law.
- **Statutory definitions of full funding:** The ESEA/NCLB definition of "full funding" of Title I is an allocation of 40 percent of state average per pupil expenditures (APPE) for each Title I eligible student. Under this definition, the Congressional Budget Office estimates a FY 2004 shortfall of $18 billion. In light of state experiences with the grossly underfunded mandates of IDEA, the Task Force finds this statutory definition unrealistic and irrelevant to an actual estimate of NCLB's costs.
- **Compliance vs. Proficiency: Estimating actual costs of implementing NCLB requires that two sources of costs be distinguished.** The first source is the hard costs associated with additional administrative and process costs (i.e., compliance costs) of meeting the specific mandates of NCLB. This approach forces researchers to investigate and account for the existing status and planned intent of states that already are on the path to standards-based accountability. This definition generates a narrow and conservative estimate of compliance. The second source is the cost of reaching the NCLB goal of 100 percent proficiency—educating all students to standards (i.e., proficiency costs). Despite the fact that there is no explicit

must be made on a state-by-state basis. The Task Force recognizes that implementation costs in some states will exceed those in others. Furthermore, Title I appropriations differ for each state based on census figures and formula distributions. For example, in federal FY 2004-2005, Title I appropriations decreased in half of the nation's school districts (7,397) and in 10 states.[62] Therefore, federal appropriations will have a greater or lesser effect on individual schools and districts than the ranges and averages cited.

Regardless of the experiences of individual states, the overall financial effect on states remains an issue that will intrude upon the partnership between the federal government and the states and may impede the states' sincere efforts to accomplish the goals of NCLB.

Conclusion 3: Compliance and Proficiency Estimates—Compliance

As a result of NCLB, federal education appropriations have increased considerably relative to previous federal levels, but the aggregate effect on state systems of education is marginal, ranging from 0.8 percent to 2 percent of aggregate resources. The Task Force finds that the administrative and process costs (i.e., compliance costs) of implementing NCLB ranges from 1 percent of aggregate K-12 budgets to 5.3 percent of state aggregate resources, with 2 percent emerging as a national average. Consequently, the Task Force finds that in the best of circumstances increased federal funding is close to covering the compliance costs of the law. These costs do not include the far more considerable additional educational costs of meeting NCLB's proficiency goals.

Recommendation 3: Compliance and Proficiency Estimates—Compliance

The Task Force recommends that, at a minimum, Congress provide states with enough funding to cover the compliance costs of NCLB. This level of funding should not be based on the arbitrary authorization levels established by Congress or the statutory formulas of Title I. This level of funding should be based on a comprehensive study of the actual costs of complying with NCLB.

Concern 4: Compliance and Proficiency Estimates—Proficiency

With respect to estimating the costs of achieving "proficiency," NCLB advocates claim there is sufficient funding, arguing that NCLB does not require 100 percent proficiency—even though it punishes schools, districts and states that fail to do so—or that more effective use of current funds will lead to the elimination of the achievement gap. According to one researcher, "(T)he vital ingredient won't be more dollars so much as making better use of monies already being spent."[63] Another commentator claimed,"(S)tates and districts can achieve substantial improvement if they redirect current expenditures and practices." [64]

It is extremely difficult to arrive at a consensus estimate of the educational costs of achieving proficiency for all students as demanded by NCLB. As noted above, some NCLB supporters argue that no additional funding is necessary. They tend to rely on selective studies that indicate limited successes in a small number of schools in high-poverty, high-achievement conditions. These are unique settings, and results rarely can be duplicated at large.[65] A fair analysis of the full costs of NCLB would not extrapolate from such limited examples. It would need to determine the costs of having *every* child reach proficiency by high school,

while accounting for diverse rural, suburban and urban settings and increasingly diverse populations of students.

The Task Force believes that NCLB's definition of and requirement for "proficiency" should not become the new standard for determining the "adequacy" of funding under state constitutions. Some state cases already have contributed to possible confusion by using adequacy and proficiency indistinguishably.[66]

Prior to NCLB, some judicial analyses of the cost of achieving the elusive goal of adequacy assumed a relationship between current expenditures and performance that would hold when performance expectations were increased to a state target of 70 percent to 80 percent proficiency. As a result of NCLB, some have argued that adequacy should be recalculated based on the federal proficiency goal of 100 percent. Although methods of calculating adequacy are varied, no school finance expert who addressed the Task Force believes that 100 percent is achievable, nor do they believe that the relationship between expenditures and student performance is linear, particularly when calculating the upper reaches of the equation. For example, adding resources sufficient to increase 10 percentage points from 80 percent to 90 percent student proficiency is substantially more than that needed to move from 70 percent to 80 percent proficiency.

The establishment of a federal/state partnership (NCLB) defining "proficient" creates, in the eyes of some, a proxy for adequacy at an admirable but absolutely unattainable level. The Task Force is concerned that NCLB could embolden the advocates who see school finance court challenges as the answer to the social disparities that underscore much of the achievement gap.

Members of the Task Force recognize the need to address the societal issues that limit student achievement, and most states have integrated supplemental funding into finance formulas to meet the challenges of a diverse student population.[67] but when poverty, family disintegration and health issues intrude upon a student's ability to thrive, it is not economic institutions, social services agencies nor health agencies that are challenged in court; it is the school finance system.

Schools are already burdened by "mission-creep," the assignment of activities beyond the capabilities of a specific institution. If the absolute proficiency targets are not adjusted, states could face an endless cycle of federally defined "failure" followed by adverse adequacy lawsuits. Had public policy intentionally been designed to foster conditions for a cycle of adverse legal and fiscal action against states, this is how it would have been structured. This outcome is neither necessary nor desirable to achieve a national goal of improving learning for all students and closing the achievement gap.

The financial consequences to a school for not making AYP are potentially inconsistent with NCLB's objectives. The Task Force heard from principals and local superintendents from schools and districts with high concentrations of poverty who described losing their Title I financed reading specialist(s) because they had to set aside 20 percent of their Title I money as a result of failing to meet reading proficiency targets. Under most conditions, targeting add-on tutoring and choice options do not compensate for the loss of a full-time reading specialist. The transfer of funds in such a case can only detract from educational achievement, not ameliorate the achievement gap.

systems states use for reaching that goal. Therefore, receiving full funding under NCLB would be contingent upon results, not process.

For those states with a commitment to address the achievement gap of the disadvantaged exclusively, funding would continue to flow at pre-NCLB levels, with the measure of success a statistically significant long-term march toward closing the gap. Compliance with the structures of NCLB would be less important than the state's long-term record of addressing the achievement gap and or making realistic progress toward high levels of proficiency.

Rather than disallowing effective state testing and assessment structures because they test every other year or use an alternating local and state assessment system, the federal government should recognize that identifying the achievement gap has never been difficult—addressing the problem has. States use their accountability systems primarily for diagnosis, while the AYP system, with its dependence on limited Title I-funded interventions, is used primarily to identify failure. The federal government should acknowledge the limitations of NCLB consequences and allow states, which are focused on and fund most true remediation efforts, the option to determine whether it is more appropriate to use carrots or sticks. State intervention techniques that show promise for ameliorating the achievement gap should be approved, whether or not those interventions are in line with the federal AYP sanctions.

Conclusion 5: Cost of Not Participating

The Task Force finds that the department is overly prescriptive in interpreting NCLB and that the consequences for not participating in its system of standards and accountability are inappropriately coercive as applied to states. Should a state decide to reject NCLB's prescriptive and preemptive mandates in favor of its own standards-based reform efforts, the state is left little choice to do so. The consequences of not participating are overly punitive.

Recommendation 5a: Cost of Not Participating

The Task Force finds that any conditions placed on funds that the U.S. Department of Education appropriates to help close the achievement gap must be stated unambiguously, so that, in deciding whether to participate in the partnership and accept the funds, states will understand their obligations. States should neither be coerced into participating in the partnership nor penalized financially should they decide not to participate fully in the partnership, and NCLB should reflect these principles.

Concern 5: Cost of Not Participating

Under the strict and technical definition in the Unfunded Mandates Reform Act (UMRA), NCLB is not a mandate. Neither is the Individuals with Disabilities Education Act, (IDEA) which is exempt because of its civil rights provisions.[69] Under NCLB, states have the right to reject funding if they do not wish to comply with the conditions of the statute. In reviewing the conditions of spending clause programs such as NCLB, the Task Force has identified two conditions that are not being met to legitimatize the exchange between the federal government and the states (see Section I). The first is that the conditions are not stated unambiguously—states do not have full knowledge of the requirements and consequences of the law and the amendment process, because the inconsistent manner in which amendments are approved provides neither notice nor reliable precedent. Second, there can be no coercive actions on the part of the federal government to force compliance with the statute. The second condition is the focus of this section.

On February 6, 2004, the deputy secretary of education, in response to a request from Utah Superintendent Steven Laing, outlined the consequences to the state of Utah of refusing the allocation of its Title I funds–the quid that holds the quo of the contract between NCLB and the states. "The rejection of state Title I money would result in serious consequences to other programs." The letter went on to specify that such unrelated programs as technology, safe and drug-free schools, after school programs, literacy programs for parents, and comprehensive school reform "would be negatively affected." The net effect of Utah's interest in trying to maintain the integrity of its accountability and standards system would be to lose $43 million in Title I funds and to forfeit nearly twice that amount in other formula and categorical funds. Title I is based on a specific funding formula. Conceptually, not participating in the Title I program results in states not having a formula to serve as the basis for programs tied to the Title I formula. Thus, the U.S. Department of Education contends that states would lose all funding that uses the Title I formula as the basis for additional financial allocations.

Prior to NCLB, the penalty for nonparticipation—turning down federal education funds—was to be excluded from the specific program requirements. That was the end of it. In an analysis of the Utah decision, the Council of Chief State School Officers (CCSSO) offered the following: "This broad reading of NCLB's integrated requirements is questionable, and ED likely could have reached other reasonable interpretations that would be more supportive of state opt-out authority."[70] By significantly raising the stakes for nonparticipation, NCLB is transformed into a one-way partnership that functions as an all-or-nothing federal mandate.

If addressing the achievement gap of poor and minority students is the ultimate goal of NCLB, and if participation is fully voluntary, the Task Force envisions that states be given a graduated system of participation, ranging from full compliance with all the provisions of the law to not participating at all.

For those states that have a long-term commitment to their existing standards and accountability system, an intermediate option would be a multi-year commitment to show a reduction in the achievement gap and a statistically significant progression toward proficiency. It is the goal of NCLB that should concern the federal government, not the

TESTIMONY

The Task Force heard testimony on specific issues related to Section VI at the following meetings and from the following presenters:

Washington, DC—April 30, 2004
Financial Implications of NCLB
- Ted Rebarber, Accountability Works
- John Augenblick and Bob Palaich, Augenblick and Palaich

New York City, New York—August 20-21, 2004
The Costs and Challenges of NCLB
- William Mathis, American Education Finance Association
- Rodney Watson, National Association of State Title I Directors

List of Sanctions for Failing to Make Adequate Yearly Progress

Schools that fail to make AYP for **two consecutive years** must:

- Be identified as being "in need of improvement"
- Be provided with technical assistance from the state or district; and,
- Offer public school choice to ALL students by the next school year.

Schools that fail to make AYP for **three years** must:

- Continue to provide all the services listed above; and,
- Provide students supplemental services. (insufficient funding=priority on lowest achieving)

Schools that fail to make AYP for **four years** must:

- Continue to provide all the services listed above; and,
- Identify the school for corrective action and take at least one of the following actions:
  - —replace school staff relevant to the failure to make AYP
  - —implement a new curriculum, including appropriate professional development for relevant staff
  - —significantly decrease management authority at the school level
  - —appoint an outside expert to advise the school on its progress toward making AYP, based on the school plan
  - —extend the school year or school day
  - —restructure the internal organizational structure of the school.

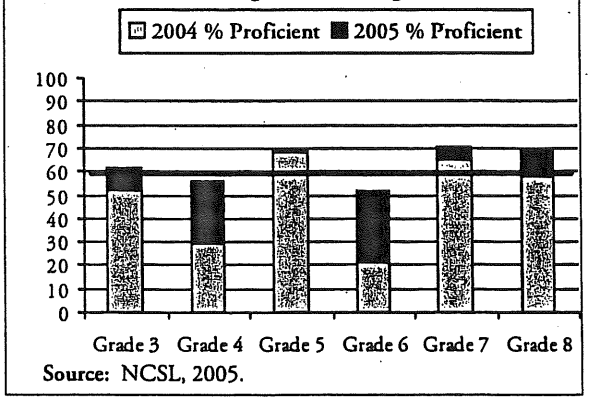
Schools that fail to make AYP for **five years** must:

- Continue to provide all the services listed above; and,
- LEA shall implement one of the following alternative governance arrangements (restructuring) that is
- consistent with state law:
  - —reopen the school as a public charter school
  - —replace all or most of the school staff relevant to the failure to make AYP
  - —enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school
  - —turn the operation of the school over to the SEA, if permitted under state law and agreed to by the state
  - —any other major restructuring of the school's governance arrangement that makes fundamental reforms to improve student achievement and has substantial promise of enabling the school to make AYP.

8. Appendix

Table 1 represents several grade levels of students, which also could represent different grade levels of a single subgroup of students. This example demonstrates how a group of students in a given grade (grade 4) can have a rather low proficiency level, make substantial improvement in the performance of its students and still be considered a low-performing school because it failed to reach the 60 percent proficiency requirement. In contrast, a grade level of students (grade 5) at a much higher achievement level could make little, none or even backward progress in student performance and still be considered proficient under AYP. As this example shows, AYP fails to recognize the effect teachers and programs have on certain groups of students within a single school.

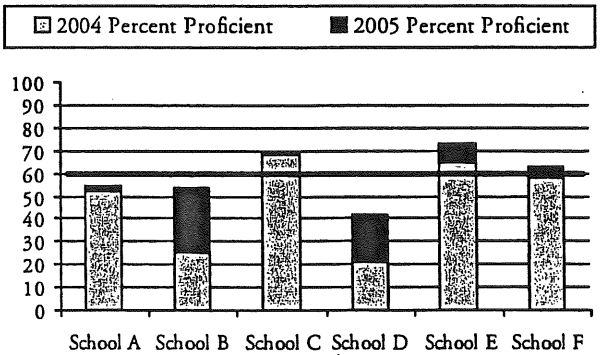
Table 2. Grade-Level Student Growth vs. Meeting Absolute Targets



Source: NCSL, 2005.

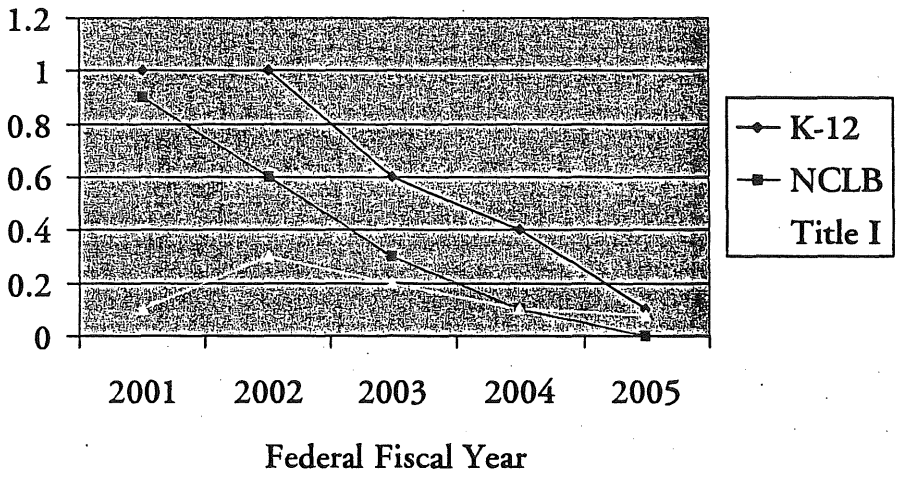
Similarly, AYP does not account for the differences and disparities of individual schools. Table 2 represents several schools and how they may be measured differently according to AYP. Again, a school with a much lower achievement level (School B) can make substantial improvement and still be considered a low-performing school because it fails to reach the 60 percent proficiency requirement. A school at a higher achievement level (School C), could make little, none or even backward progress in achievement and be considered a high-performing, school according to AYP. This case demonstrates how AYP fails to recognize the effect individual schools have on the entire student body or individual groups of students.

Table 3. Grade-Level Student Growth vs. Meeting Absolute Targets



Source: NCSL, 2005.

Figure 1: Federal Education Funding Increases, FY 2001 - FY 2005, and their Impact on Aggregate K-12 Funding



Source: U.S. Department of Education Budget Service, National Center for Educational Statistics; NCSL, 2005.

Table 4. Federal Education Expenditures, FY 2000 - FY 2005

		K-12			NCLB			Title I		
	Aggregate K-12	Total Federal K-12	? over previous year	% impact on K-12 aggregate	Total NCLB	? over previous year	% impact on K-12 aggregate	Total Title I	? over previous year	% impact on K-12 aggregate
FY 2000 (Clinton) (SY 01)	462.7	23.2	•	•	15.3**	•	•	8.0	•	•
FY 2001 (Clinton) (SY 02)	482.0	28.0	+ 4.8	+ 1.0%	18.7 **	+ 4.4	+ 0.9%	8.8	+ 0.8	+ .1%
FY 2002 (Bush) (SY 03)	501.3	32.7	+ 4.7	+ 1.0%	22.0	+ 3.3	+ 0.6%	10.4	+ 1.6	+ .4%
FY 2003 (Bush) (SY 04)	501.3*	35.7	+ 3.0	+ 0.6%	23.8	+ 1.6	+ 0.3%	11.7	+ 1.3	+ .3%
FY 2004 (Bush) (SY 05)	501.3*	37.6	+ 2.0	+ 0.4%	24.5	+ 0.7	+0.1%	12.3	+ 0.6	+ .1%
FY 2005 (Bush)	501.3*	38.3	.7	+ 0.1%	24.5	0	+ 0.0%	12.7	+ 0.4	+ .08%
Totals FY 02- FY 05	•	•	10.4	+ 2.0%	•	5.6	+1.1%	•	+ 4.0	+ 1.0%

Source: U.S. Department of Education Budget Service, National Center for Educational Statistics; NCSL, 2005.

August 20-21, 2004—New York City, New York
Paul Barton, consultant, Educational Testing Service
Marion Bolden, superintendent, Newark School District (NJ) (invited)
Melissa Jamula, superintendent, Reading School District (PA)
Sandy Kress, Business Roundtable
William Mathis, board of directors, American Education Finance Association
Patty McAllister, executive director for Public Affairs, Educational Testing Service (ETS)
Dr. Monty Neill, executive director, National Center for Fair and Open Testing (FairTest)
Larry Snowhite, vice president for government relations, Houghton Mifflin
Betty Sternberg, Connecticut state commissioner of education
Rodney Watson, state Title I director, Louisiana president, National Association of State Title I Directors

September 10-11, 2004—Santa Fe, New Mexico
Penny Bird, Indian Education Division, New Mexico Public Education Department
Dr. Stephen Bohrer, superintendent Holyoke School District (CO)
Kathy Chavez, executive vice president, New Mexico Federation of Educational Employees
Bob Dittman, principal, Empire Elementary School (CA)
Lorna Jimerson, Rural School and Community Trust (VT)
Dr. Marilyn Likins, co-director, National Resource Center for Paraprofessionals (UT)
Susan Sclafani, counselor to the secretary, U.S. Department of Education
Kurt Steinhaus, deputy secretary for school accountability, New Mexico Public Education Department

October 10-11, 2004—Portland, Oregon
Trent Blankenship, state superintendent, Wyoming Department of Education
Allan Olson and Gage Kingsbury, Northwest Evaluation Association
Vicki Phillips, superintendent, Portland Public Schools
Kyo Yamashiro, National Center for Research on Evaluation, Standards, and Student Testing (CRESST)

December 10-11, 2004—Savannah, Georgia
No speakers

January 8-9, 2005—Chicago, Illinois
No speakers

Task Force on No Child Left Behind Proceedings

April 30, 2004—Washington, D.C.
John Augenblick/Bob Palaich, Augenblick and Palaich
Dr. Gerald Bracey, George Mason University
Melissa Clarry Junge, Brustein and Manasevit, LLP
Michael Cohen, Achieve
Denis Doyle, SchoolNet
David Dunn, special assistant to President Bush
Rep. Bill Goodling, chair, House Education & Workforce (Retired)
Ted Rebarber, Accountability Works
Susan Traiman, Business Roundtable
Michael Usdan, Institute for Educational Leadership
Ross Weiner, The Education Trust
Judith A. Winston, Winston, Withers & Associates

June 10-11, 2004—Chicago Illinois
Xavier Botana, director NCLB Accountability, Chicago Public Schools
Douglas Christensen, Nebraska commissioner of education
Bruce Hunter, associate executive director of public policy, American Association of School Administrators
Dr. Donald Kussmaul, superintendent, East Dubuque Unit School District
Dr. Gary Orfield, founding co-director, Harvard Civil Rights Project
Dr. Jim Pellegrino, co-director, Center for the Study of Learning, Instruction, and Teacher Development (Univ. of Ill. at Chicago)
Dr. Alexa Pochowski, assistant commissioner, Kansas Department of Education
Dr. James T. Rosborg, superintendent, Belleview School District (2004 Ill. Superintendent of the Year)
Lowell Rose, executive director, Indiana Urban Schools Association
Thomas Watkins, Michigan superintendent of public instruction

July 19, 2004—Salt Lake City, Utah
Kim Burningham, chair, Utah State Board of Education
Rep. Margaret Dayton, chair, Utah House Education Committee
Eric Hirsch, vice president, Southeast Center for Teacher Quality
Dr. Troy Justesen, acting deputy assistant secretary, Office of Special Education and Rehabilitative Services, U. S. Department of Education
David Lussier, advisor to the president, National Board for Professional Teaching Standards (NBPTS)
Kathy Madigan, president, American Board for Certification of Teacher Excellence (ABCTE)
Doug Mesecar, deputy chief of staff, U.S. Department of Education
Barry Newbold, superintendent, Jordan (UT) School District
Dr. Ron Powell, administrator, Desert Mountain, (CA) SELPA (Special Education Local Planning Area)
Bob Runkle, state director of special education, Montana Department of Education
Ray Timothy, deputy superintendent, Utah State Office of Education
Marji Zimmerman, teacher and board member, Nevada Education Association

b. Would providing supplemental tutoring services to individual students before allowing students to transfer out of a school be a more effective way to improve student performance?
c. Do you feel that restricting choice and supplemental services to the failing subgroup would be a more effective way to target intervention services to low-performing students?
d. Reports show that small percentages of families are taking advantage of these intervention services. Furthermore, some people are concerned that the students requesting school choice and supplemental services may be primarily high performing students. What can be done to increase the number of students, especially low-performing students, requesting these services? Should schools and districts be required to report the students, by subgroup, that request these services?
e. Do you feel that providing choice and supplemental services as prescribed by the law is an effective way to close the achievement gap? What other strategies would help meet this goal (i.e. health policies, parental involvement, etc.)?
f. Many schools that are not identified as being "in need of improvement" may not accept students requesting to transfer for various reasons. Should districts provide incentives to encourage receiving schools to accept transfers (i.e. either financial incentive or exemptions from counting transferring students in AYP for a couple years)?

5. Some education experts, including 14 state school chiefs, have voiced their support for allowing states to incorporate a student-growth model into their accountability system. Such a model would reward schools for individual student improvement even if they do not meet an annual measurable objective like AYP.
    a. Can you speak to the benefits or disadvantages a student-growth/value-added model would have on measuring the progress of low-performing students and a state's ability to reduce the achievement gap?

6. States have established different definitions of proficiency and levels of standards, which largely depend on where they set their cut scores on tests and the rigor of the test questions. While we applaud the flexibility USED has offered in allowing states to determine these features themselves, it creates a very unleveled playing field and makes the impact the law will have on states quite different.
    a. Do you feel that some states are pressured to lower their standards to avoid NCLB sanctions?
    b. In your opinion, has the U.S. Department of Education explained to all states the broad definitions of "proficiency" and encouraged states to review the definitions in their plans to ensure states maximize their chances to meet AYP targets?
    c. Are there any other changes your state would like to make in regards to the statewide testing requirement?

7. Have you reviewed the efforts of state departments, legislatures or other education-related groups to estimate the costs of fully implementing NCLB in the states?

Sample List of Questions

In preparation for each hearing, Task Force members developed a list of questions for presenters to speak to. The Task Force addressed a broad array of issues and listened to a variety of perspectives on each issue. Following is a sample of the questions developed for the Task Force meeting.

The Achievement Gap and NCLB
Issues/Questions

1. Do you feel that there are variables outside the control of our education system—such as a child's health, nutrition or parental involvement—that affect a student's ability and desire to learn?
    a. What effect can schools, districts and the state have in helping students overcome these challenges?

2. Reaching 100 percent proficiency is a challenging goal. This is especially true considering most everyone in the education profession would agree that there are factors outside the control of schools and teachers that affect a child's ability to learn. With this in mind:
    a. Is it realistic to expect schools and districts to have all students proficient?
    b. Furthermore, is it realistic to meet the 100 percent proficiency expectation in 10 years?
    c. Will the attempts to comply with the proficiency requirements in math and reading narrow the curricula offerings for students?

3. NCLB attaches stakes to student performance in the areas of reading, mathematics and, shortly, science. Subsequently, schools are increasing their focus on these subject areas in order to make AYP. Many are concerned that this will cause other subjects to lose attention or get neglected altogether. The potential of this "narrowing of the curriculum" is even more likely for our low-performing students, whom schools will target for intense reading and math programs.
    a. Is there potential that certain subjects like art, history and geography will be available only to high performing students?
    b. Is this fair and in the best interested of low-performing students?
    c. Could this lead to more division between the opportunities of the haves compared to the have-nots?

4. Under NCLB, schools that fail to make AYP for two consecutive years must provide students the option of transferring to another school. Subsequently, if a schools fails to make AYP for another year, they must provide supplemental tutoring services. Many education experts have questioned the sequence of these sanctions.

    Additionally, the language of the law requires school choice and supplemental services to be provided to ALL students unless there is insufficient funding, then they are to be given to low-achieving and low-income students first.
    a. Can you speak to the AYP sanction process?

7) What are the benefits and disadvantages to norm-referenced (NRT) and criterion-referenced tests (CRT)?
   a) As they exist today, are state assessments typically norm-referenced, criterion-referenced or a combination of both?
   b) Are the tests reflective of modern assessment technologies? Please explain.
   c) Are there different costs associated with NRTs and CRTs?
   d) Do you feel NCLB will cause states to use one form of testing over the other?

8) NCLB uses standardized testing as the basis for measuring student performance and places sanctions on schools and districts based on student test results.
   a) Is it appropriate to place so much importance on student testing?
   b) Are there other methods that could be used to measure school performance?
   c) Is the data from standardized testing valuable for any other purpose?

9) Are high standards, an aligned curriculum and a rigorous system of standardized testing necessary and sufficient to improve student achievement?
   a) Do you feel that there are variables outside the control of our education system that affect a student's ability and desire to learn?

10) As we will later hear from Nebraska Commissioner of Education Doug Christensen, Nebraska has received approval for districts to use portfolios to measure student progress.
   a) Are portfolios a better gauge of student performance than using only standardized tests?
   b) Are all states allowed to implement portfolios into their assessment system? What other types of measurement mechanisms can states use? Has USED released any guidance or communication on the use of portfolios as an alternative to assessments for NCLB reporting?

11) NCLB requires states to increase testing significantly over the next couple of years. This creates a bigger demand of the few private companies that dominate the testing industry. New tests need to be developed, administered and scored and states' reliance on testing companies will only increase.
   a) Do you feel that testing companies will be able to meet states' needs for customized and timely service?
   b) Do they have the capacity to continue to develop accurate and valid assessments in response to growing demands?
   c) Are states becoming too reliant on testing companies?
      i) For example, Indiana is currently considering changing its testing dates in response to complaints from the testing company that more time is needed to return test scores, which are used to identify sanctioned schools before the start of the next school year (including allowing time for appeals).

   Many other states are running into problems with the errors in test questions or test scoring, and delays in getting test results returned.
   a) Do you feel this is a result of testing companies' inability to meet the new demands created by NCLB?
   b) Do you feel that more of these situations will arise as demands increase?

Accountability, Standards and Assessments and Adequate Yearly Progress Issues/Questions

1) Please provide a brief introduction and explanation of adequate yearly progress (AYP).
   a) What does it measure?
   b) How does it measure school and district performance?
   c) What are the potential implications for states, districts, and schools?

2) Is AYP a valid and accurate measure of student performance?
   a) Does it provide for a diagnosis of individual student deficiencies?
   b) Will it identify school and district weaknesses?
   c) Does it account for fluctuations in test scores, as a result of measuring different cohorts of students?

3) What are the implications of applying AYP on all states, considering the vast differences in state standards and assessments (i.e. cut scores, test rigor, definition of proficiency, starting points, etc)?
   a) How can states "level the playing field" so that those with higher standards are not unfairly penalized by AYP?
   b) Is the National Assessment of Educational Progress (NAEP) an accurate mechanism for comparing state standards and ensuring accountability?
   c) Is there a way to use NAEP to close the gap in state standards?

4) Distinguish between measuring cohort performance and individual performance.
   a) What is the "value –added" or the "growth-model" approach to measuring student performance?
   b) What does it mean to measure student performance longitudinally?
   c) Can value-added and longitudinal measurements be incorporated into the AYP framework?
   d) Do you believe these two features are more accurate than AYP as a means for measuring school and district performance?

5) Some have referred to AYP as a "conjunctive" measurement, requiring success on as many as 30 elements for a school to succeed. An entire school can fail to meet AYP because of the performance of any one sub-group in any subject area.
   a) Does this model impact schools equally?
   b) If no, what type of schools will have more of a challenge meeting the AYP goals?
   c) How will AYP affect urban, suburban and rural districts and schools? Does AYP put any of these schools at a disadvantage for complying?

6) What are the benefits and disadvantages to using confidence intervals (CIs) and standard errors of measurement (SEMs) in calculating AYP?
   a) Can you explain these statistical variables in further detail?
   b) Would you recommend that every state use CIs and/or SEMs in their AYP calculations?
   c) Do you believe that states will ever reach 100 percent proficiency without using CIs or SEMs?

3. What (denied) elements of your state plan do you wish had been approved?

4. How familiar is your state with the accountability plans of other states and the negotiation process with USED?
    a. Were there strategies approved or flexibility allowed in other state plans that your state was not originally aware of that you would now like to pursue?
    b. Has USED been forthcoming with information about the options and flexibility other states have been afforded in implementing the law?

5. According to public reports, the percentage of schools failing to meet AYP targets range from less then 10 percent (Minnesota) to over 80 percent (Florida). Your state percentages are better than the norm, but still range from 10 percent to 30 percent.
    a. What do you believe accounts for the bulk of this differential?
    b. Has your state done any projections on the percentage of schools that will miss AYP as performance expectations are raised?
    c. Is your state looking at ways—other than improving student performance—to lower the percentage of schools that will be identified?
    d. Do you feel your SEA and LEAs will have the capacity and expertise to provide technical assistance to improve the schools that are identified?
    e. Could the over-identification of schools make it more difficult to recognize persistent weaknesses and appropriate adequate resources to improve?
    f. Would it be beneficial to lower the number of schools identified so that resources can be focused on the lowest performing schools?

6. The implementation schedule requires schools "in need of improvement" to provide school choice and/or supplemental services by the beginning of the following school year. This is problematic for states, especially for those schools/districts that have year-round schooling or for states that administer their assessments in the spring. In many cases, schools have only a few months to score tests, identify schools and inform them of sanctions, allow schools to appeal decisions, inform parents of their intervention options and make the arrangements to provide those services (i.e. scheduling transportation for students transferring schools).
    a. Do you feel this is an appropriate implementation schedule and will schools, districts and the state be able to comply with these requirements?
    b. Could you see a problem with testing companies complicating this process by miss-scoring tests or not returning test results in time?
    c. Could this pressure states to change their testing schedule to the fall or force them to use more simple, machine scored tests—rather than open-ended questions and constructed responses that take more time to score? What affect could this have on schools and student performance?
    d. Would it be easier to use the previous year's data to identify schools?

7. Will the attempts to comply with the proficiency requirements in math and reading narrow the curricula offerings for your students?

c) Is it appropriate for states to change testing dates or be penalized for test errors or delays in results due to the increased demands being placed on testing companies?
d) Does there need to be a way to ensure the quality and timeliness of services provided by testing companies?
e) Has USED communicated with the major testing companies to check if they will have the capacity to meet the new demands from states?

12) How could NCLB be changed to facilitate further learning through improved assessments?

13) How do large scale standardized tests promote student learning?

14) How do large scale standardized tests relate to classroom assessments?

15) Is there, or should there be, a link between the two (standardized tests and classroom assessment)?
a) How many states have 'closed the gap" between the large scale and classroom assessments?
b) Given that some tests and systems are better than others; do tests have any short or long term negative effects on students and learning?

State Implementation: Approaches, Flexibility and Implications
Issues/Questions

1. The U.S. Department of Education (USED) has set a challenging implementation schedule that relies on the dissemination of guidance and regulations from USED. Furthermore, some of the provisions and mechanics of NCLB—especially the AYP requirements—are new to states. We have heard complaints from state officials that this has put states (primarily state education agencies) into a "compliance mode," forcing them to focus almost entirely on meeting the law's implementation deadlines. If this is true, there are several potential areas for concern.
    a. Has the quick "roll-out" of NCLB caused confusion over the implementation of the law and/or controversy with the public?
    b. Did states have enough time to propose the most effective plans for improving student performance and meeting the NCLB goals?
    c. Did states have enough time to explain the complexities of the law to the public/media before AYP failure rates were released and the negative connotation began?
    d. Are states receiving enough guidance to help implementation and has this guidance been released in a timely fashion?
    e. Is the guidance helpful for implementation and is helpful for improving student performance?
    f. In what other areas would you like to see USED provide guidance?

2. What (approved) elements of your state plan do you believe are unique to your state?

b. Has the U.S. Department of Education explained to all states the broad definitions of "proficiency" and encouraged states to review the definitions in their plans to ensure states maximize their chances to meet AYP targets?

13. We have learned that despite the initial strong statements coming from the secretary and the U.S. Department of Education regarding compliance to the 'statewide' testing requirement, some approved state plans include a system of local assessments as the basis for AYP.
    a. Would your state be interested in amending its plan to include a system of alternate year state and local testing?
    b. Are there any other changes your state would like to make in regards to the statewide testing requirement?

14. The USED has insisted that consequences would apply to a school or district that has any sub-group fail in any subject in year one and any sub-group that fails in any subject in year two. This means for example that a school would be subject to consequences if special education students fail adequate yearly progress (AYP) math goals in one year and African-American students fail AYP reading goals the following year.
    a. Would school and district performance be better measured by patterns in poor performance, such as continued failure by a certain subgroup and same subject?
    b. Has your state approached USED about applying sanctions only in the case where there is a trend of poor performance? For example, special education students fail reading in year one and year two.

15. Many students belong to more than one subgroup. This causes an over-representation of subgroup population and compound the difficulty of a school or district making AYP. For example, a poor, minority, special education student, would be counted as a whole in three subgroups.
    a. Do you feel states should be allowed to apportion student membership across subgroups, so that a student who appears in three subgroups (race, disabled and economically disadvantaged) could be counted as .33 in each?

16. Being able to identify and focus resources on the lowest performing schools could be difficult if too many schools fail to meet AYP.
    a. Do you feel that the AYP requirements are too stringent and that too many schools will be identified? How would this affect an SEA or LEA's ability to provide technical assistance and affect change?
    b. Will teachers and administrators be tempted to focus on improving the scores of students just below the proficiency standard in order to keep up with the AYP projection, at the expense of the students who are the least performing (furthest from proficiency)?

17. Reaching 100 percent proficiency is a challenging goal. This is especially true considering most everyone in the education profession would agree that there are

8. Will the attempts to improve the test scores of low-performing students reduce the offerings of gifted or advanced programs for high performing students?

9. USED does not allow states to include a successful recipient of a GED in their graduation rates.
    a. Do you feel this will make it difficult for schools to reach the required graduation rates?
    b. Has your state considered any options that would allow these students to be counted as "graduates" (i.e. multi-tiered diplomas)? Have you presented these options to USED and if so, what was their response?

10. The Department has, over the last few months, released "new" flexibility provisions regarding special education students, participation rate, and limited English proficiency students.
    a. Do you feel these changes will reduce the increasing number of schools that many experts feel will fall short of the AYP requirements? To what degree—significantly lower, slightly lower, or little to no affect?

11. Reports show vast differences in the strategies states propose to use in meeting the NCLB requirements and the flexibility offered by USED during the negotiation process. Some of these differences include:
    - using confidence intervals (CIs) and standard errors of measurement (at least 20 states use neither),
    - the minimum subgroup size (n) for reporting proficiency, participation and safe harbor rates (ranging from 5 to 50 students),
    - different "n's" for certain subgroups (i.e. larger "n" for students with disabilities),
    - inclusion of reading and writing, or just reading, in the language arts standards,
    - setting different AYP projections paths (linear, stair-step, or back loaded approaches) and,
    - using two accountability systems (state system vs. federal system), etc.

    Regardless of which approaches states are using:
    a. Is USED informing states of these various strategies and the differences they will make in determining AYP rates?
    b. Has USED released any guidance that speaks to these options and their implications? Is USED allowing the same options for all states?
    c. Has your state tried to amend its plans based on what was approved for other states?
    d. What was your experience with the amendment process?

12. States have established different definitions of proficiency and levels of standards, which largely depend on where they set their cut scores on tests and the rigor of the test questions. While we applaud the flexibility USED has offered in allowing states to determine these features themselves, it creates a very unlevel playing field and makes the impact the law will have on states quite different.
    a. Do you feel that some states are pressured to lower their standards to avoid NCLB sanctions?

IDEA & NCLB: Requirements and Opportunities
Issues/Questions

1. How do the students in your special education consortium count toward their home districts' AYP calculation? Who is held accountable for their performance?

2. Some have indicated an inherent conflict between NCLB and IDEA. For example, IDEA requires that students with disabilities (SWD) be held to standards and tested based on the student's individualized education plan (IEP). However, NCLB requires all but about 10 percent of SWD to be tested based on grade-level standards, regardless of what has been proposed in the IEP.
    a. Is there conflict between IDEA and NCLB?
    b. Can these issues be reconciled and how?
    c. Which plan (IDEA or NCLB) do you feel could be more effective for raising the performance of SWD?
    d. Which plan's (IDEA or NCLB) expectations are more feasible?
    e. Do you feel that allowing 10 percent of the SWD subgroup to be tested on alternate standards is a sufficient exemption?
    f. Should districts and states be able to set the exemption levels based on student populations?

3. What is the appropriate exemption level for a state to use for exempting severe cognitively disorders from the grade—level standards established by the state. For example, the New York State Department of Education has suggested that a state be allowed to exempt up to 3 percent of the overall student population without prior USED approval.

4. Do you feel past and current practices have over-identified students with disabilities?
    a. Would early intervention lower the number of students referred to special education?
    b. Would this decrease in referrals be in-line with the 1 percent exemption level?

5. Do you see any unique challenges for teachers of SWDs?
    a. Will they have more difficulty becoming "highly qualified"?
    b. Will the new stakes involved in SWD performance add to the difficulty schools and districts are reporting in recruiting and retaining special education teachers?
    c. How do you think NCLB will affect the ability of schools, districts and states to recruit and retain quality special education teachers?

6. Current practices identify students with disabilities based on various categories of disorders. However, NCLB does not take into account the degree of disabilities students may have.
    a. Should NCLB be modified to take into account the different categories of disabilities?
    b. How would the law be best improved to do this?

7. Will there be exceptional challenges for magnet schools that specialize in educating students with disabilities?

8. Have you seen or do you expect to see a backlash toward SWDs when these students are the sole reason for a school or district to miss the AYP goals?

9. Do you feel that SWD will be discouraged by being taught to ability level and tested to grade level? If a conflicts arises between teaching to ability level and testing to grade level, should IDEA or NCLB take precedent and how should that be determined?

10. Do you think the "historic" increases in federal funding are sufficient to meet the requirements of both NCLB and IDEA?

11. Requiring students with disabilities (SWD) to perform at grade-level for determining AYP is inherently contradictory with state practices, which allow their standards to be evaluated using an individualized education plan (IEP). This requirement is very difficult for educators and administrators, and is the prevalent reason schools and districts are missing AYP.

    Furthermore, if an IEP student does meet the AYP goals, he or she would no longer be included in special education and would no longer count toward the goal of 100 percent proficiency for that sub-group. This is similar to the case with the limited English proficiency subgroup, in which USED relaxed the original policy. In any case, schools, districts and states will have a huge AYP failure rate just for IEP students. Currently, very few special education students will meet AYP goals.
    a. Should states be allowed similar flexibility as USED offered for the LEP subgroup in order to allow the SWD subgroup to attain 100 percent proficiency?
    b. Please comment on the conflict between IEP standards and AYP goals.

10. The U.S. Department of Education has, over the last few months, released "new" flexibility provisions regarding special education students, participation rates and limited English proficiency students. Will this significantly reduce the expected increase in the percentage of schools caught in the AYP net as NCLB proceeds? Can you explain any research basis for the original 0.5 percent exclusion and the subsequent expansion of that exclusion to 1.0 percent?

11. Accountability models that account for individual student growth (i.e. value-added models) have become a popular trend. Do you feel that such a model would be more appropriate for determining the performance of SWDs?

12. How would a value-added model impact or be impacted by individualized education plans (IEPs)?

13. Based on the structure of AYP, should SWDs be allowed different starting points than other students toward the goal of 100 percent proficiency?

11. Is NCLB requiring states to spend their education dollars differently, and is that not in conflict with section 9527 of Title 9?

12. If states do need to spend their education dollars more effectively, who has the answers to which programs work and don't work in each state, district and school across the country?

13. Do you feel these answers will be identified in time to allow schools to keep up with the AYP goals? Will it not take time to implement these programs and to see actual results in test scores?

14. Considering the large increases in the numbers of schools that are expected to miss the AYP goals, where do you expect states and districts to find the resources to provide technical assistance and turn around performance? Again, is a 1percent to 2 percent increase in federal money going to allow states to turn around the performance of the additional schools that miss AYP, whose numbers could increase by 30 percent in just a few years?

3. What conclusions have you reached in studies conducted by yourself, or in those conducted by others and reviewed by your organization, in regard to the costs associated with implementation of NCLB?

4. What assumptions have you made in regard to predictions of future state and federal K-12 appropriations?

5. Do states have the capacity to implement wide-spread technical assistance to schools and districts which fail to meet AYP? Are estimates of the costs to do this included in your analysis?

6. Some researchers exclude the "remediation" costs of meeting the 100 percent proficiency goal because the federal law does not explicitly require 100 percent proficiency. However, since schools, districts and states will face federally required consequences (which presumably have cost implications) for failure to meet AYP goals, shouldn't remediation costs be included in cost estimates?

7. A shift in Title I formula funds will mean a net loss for some LEAs and SEAs. What impact does this have on states' ability to fully implement NCLB?

8. Since the initial consequences of failing to meet AYP goals (setting aside federal Title I funds for public school choice busing and supplemental services) can only apply to schools receiving those funds, do you anticipate that some schools will reevaluate the wisdom of taking those funds?

9. USED has provided "historic" levels of federal funding for elementary and secondary education, approximately $37 billion, according to USED (about $24 billion of which is related to NCLB). Since 2001, federal K-12 funding has increased 50. percent ($24.4 billion to $36.6 billion), while NCLB funding has increased 61.5 percent ($14.3B-$23.1B). However, it is also recognized that of the approximately $440 billion states spent on K-12 education in 2001, roughly 7 percent came from the federal government. Although the federal government has increased spending, the federal contribution has only increased to 8 percent of a state's total expenditures for K-12 education. More than 90 percent of funding still comes from state and local revenue. In addition, the aggregate impact of these federal appropriations means a net increase of less then 2 percent of overall K-12 funding. Yet, NCLB is not asking for a slight improvement in education. It calls for 100 percent proficiency, a complete closing of the achievement gap, schools to be provided with technical assistance, students to be offered school choice and supplemental services, and teachers to meet new qualifications—only to name a few of the requirements with direct costs. (Statement applies to questions 10 through 14.)

   a) Do you believe that a 1percent to 2 percent increase in the amount of money states receive for K-12 education is going to be sufficient to enable them to meet the goals of NCLB?

10. If states knew how to spend their education dollars more effectively, do you believe they would be (able to meet NCBL goals?)?

12. Article I, Section 8, cl. 1. United States Constitution

13. Ryan, *The 10th Amendment and Other Paper Tigers*

14. *Virginia Department of Education vs. Riley*, 106 F.3d (1997), p. 559.

15. "The lack of clarity is also evident in the Department of Education's review of state accountability plans. The accountability plans reflect the State's efforts to comply with the conditions of NCLB. It is the clearest measure of how they are responding to the legislation. If NCLB was clear, then the approval process would be fairly straight-forward; states either meet the conditions or they do not. Instead, the approval process has been characterized by confusion, inconsistent standards, and even reversals in positions by the Department of Education. On numerous occasions, the Department has allowed some states to proceed with their accountability programs after having rejected similar plans for other states... to the extent that these shifts prevented a state from knowingly accepting the terms of the contract, then it is unconstitutionally ambiguous and is an invalid exercise of Spending Clause power. Ann McColl, *Tough Call: Is NCLB Constitutional?* (Place: publisher, date).

16. U.S. Secretary of Education Rod Paige, Dear Colleague Letter, June 14, 2002, "Key Policy Letters Signed by the Education Secretary or Deputy Secretary,." http://www.ed.gov/policy/elsec/guid/secletter/020614.html.

17. .Dr, Susan Sclafani, *Presentation to the Task Force, September 11, 2004.*

18. and Colorado, among others.

19. Hess and Finn, *On Leaving No Child Behind.*

20. Michael Heise, *Educational Jujitsu*, Education Next, Fall 2002

21. Ryan, The Perverse Incentives of the NCLB Act. New York University Law Review

22. Kane, Staiger and Geppert: Assessing the Definition of "Adequate Yearly Progress in the House and Senate Education Bills", Hoover Institution/UCLA

23. *Richmond Times Dispatch*, Editorial., January 29, 2004.

24. NCLBA-Title IX, Part D; Section 9401, Waivers of Statutory and Regulatory Requirements.

25. NCSL letter to David Dunn, August 26, 2003.

26. Title IX, General Provisions, Section 9527(a).

27. Public Law 107-110, Section 1111, Part A.

28. Public Law 107-110, Section 1116 (b) (10)—"(C) INSUFFICIENT FUNDS.—If the amount of funds described in subparagraph (A)(ii) or (iii) and available to provide services under this subsection is insufficient to provide supplemental educational services to each child whose parents request the services, the local educational agency shall give priority to providing the services to the lowest-achieving children.

29. Lynn Olson, *Education Week*. "Value-Added' Models Gain in Popularity." (November, 17, 2004).

30. Allan Olson and Gage Kingsbury; Northwest Evaluation Association. Presented to the Task Force on October 10, 2004

31. Kyo Yamashiro; National Center for Research on Evaluation, Standards and Student Testing. Presented to the Task Force on October 10, 2004

32. Margaret E. Goertz, University of Pennsylvania, Consortium for Policy Research in Education (CPRE).n.d.) *The Federal Role in Defining "Adequate Yearly Progress:" The Flexibility/Accountability Tradeoff*, n.d.

33. NCLB's safe harbor provision says that, if a school or subgroup does not meet the performance threshold but does reduce the percentage of students who scored below-proficient in the previous year by 10 percent or more, it will be considered to have met AYP. Although this allows groups that experience significant growth to be considered proficient, it still does not recognize growth that occurs below proficiency.

Example: A subgroup makes AYP under safe harbor if 30 percent passing in 2001 improves to 38 percent passing in 2002. This translates to 70 percent nonproficient in 2001 and 62 percent non-proficient in 2002:

70%-62%=8% 8% divided by 70%=11.4%

34. Goertz (CPRE).

35. Lorna Jimerson, The Devil is in the Details: Rural Sensitivity Best Practices for Accountability Under NCLB. (Powerpoint presentation to the Task Force, Septmeber 10, 2004.

NOTES

1. Louis Brandeis served on the US Supreme Court from 1916-1939 and upheld the benefits of states as laboratories for innovation with comments such as "...a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." American Enterprise Institute for Public Policy Research. http://www.federalismproject.org/outlook/5-2001.html.

2. F. Hess and C. Finn. *On Leaving no Child Behind.* Washington, DC (The Public Interest, October 2004).

"NCLB's sprawling 1,100-plus pages radically overhaul the federal role in education, rewrite the rules, and reassign power-including more to Washington than ever before."

3. Presentation from Michael Cohen, Achieve Inc. (www.achieve.org), April 30, 2004 , Meeting of Task rce

4. House Report No. 103-425, p. 717.

5. See, for example, the remarks of Dr. Susan Sclafani, Counselor to the Secretary, U.S. Department of Education, appearing before the NCSL Task Force, September 11, 2004.

6. Dahmus, "The Effects of NCLB on the Balance of Power Among Local, State and Federal Educational Authorities," *LBJ Journal of Public Affairs.* "No Child Left Behind serves as an example of the increasing usurpation of power by the federal government." The federal government now seeks to regulate "every public school student" and "all teachers of core subjects," rather than just those students who directly participate in federally funded programs or those teachers who are paid directly with federal funds."

7. "... it is clear that federal involvement and control are on an upward trajectory. There is little indication that federal involvement will subside any time soon. Indeed, the signs point in the opposite direction. ..Consider the No Child Left Behind Act (NCLB), which is Washington's most recent reauthorization of the Elementary and Secondary Education Act. It imposes unprecedented requirements on the states and localities:.. In addition, NCLB inflicts a slew of reporting requirements on state and local education agencies and contains literally hundreds of specific directives that states and localities must follow." James E. Ryan, *The 10th Amendment and Other Paper Tiger, Brookings 2004, Washington, DCs—*

8. "Whether in favor or against NCLB, there is little doubt of the intrusiveness of NCLB on choices made by states and school systems: the only difference is that the intrusiveness is hailed as effective national reform by some and as detrimental, politically motivated mandates by others." Ann McColl, *Tough Call: IS NCLB Constitutional?* Phi Delta Kappan, Washington DC, April 2005.

9. James E. *Ryan, The 10th Amendment and Other Paper Tigers, Brookings 2004, Washington, DCs*

10. *San Antonio Independent School District vs. Rodriguez,* 411 U.S. 1, 29 (1973).

11. *Epperson vs. Arkansas,* 393 U.S. 97, 104 (1968).

58. William Mathis, *The Cost of Leaving No Child Left Behind? OR The Cost of Implementing the Federal NCLB Act?: Two Very Different Questions,* The Peabody Journal of Education, Spring 2005

59. Augenblick & Palaich, *Overview of NCLB Cost Studies*, Power Point presentation April 30, 2004 to the Task Force.

60. The Civil Rights Project at Harvard University, *Inspiring Vision, Disappointing Results: Four Studies on Implementing The No Child Left Behind Act,* (Cambridge, MA, date)

61. Education Next, Peyser and Costrell, Spring 2004

62. Center on Education Policy, *Title I Funds: Who's Gaining, Who's Losing & Why*, (Washington DC: Center on Education Policy, June 2004).

63. Chester E. Finn Jr. and Frederick M. Hess, *On Leaving No Child Behind*, (Place: The Public Interest, October 2004).

64. Accountability Works, *NCLB Under a Microscope*, (Place: Accountability Works and Education Leaders Council, January 2004).

65. Richard Rothstien, *Class and Schools: Using Social, Economic, and Education Reform to Close the Black-White Achievement Gap. Washington, DC. Economic Policy Institute,* May, 2004).

66. Kevin Carey, *Education Funding and Low-Income Children: A Review of Current Research*, (Washington, D.C.: Center on Budget and Policy Priorities, November 2002).

67. W illiam Mathis, *The Cost of Leaving No Child Left Behind? OR The Cost of Implementing the Federal NCLB Act?: Two Very Different Questions.*

68. In its review of UMRA, the General Accounting Office, recently concluded that their "findings raise the question of whether UMRA's procedures, definitions, and exclusions adequately capture and subject to scrutiny federal statutory and regulatory action that might impose significant financial burdens on affected nonfederal parties". Unfunded Mandates: *Analysis of Reform Act Coverage*, GAO May 2004

69. *CCSSO, Preliminary Analysis of Implications of State/District Nonparticipation in NCLB*, (Washington, D.C.: February 2004).

70. Include the Harvard Civil Rights Project, Congressional Research Service (CRS) and the UCLA School of Public Policy and Social Research (in partnership with Douglas Staiger from Dartmouth College and Jeffrey Geppert from the National Bureau of Economic Research.

71. Center on Education Policy, "From the Classroom to the Capitol: Year 2 of the No Child Left Behind Act," January 2004.

72. Jimmy Kim and Gail L. Sunderman, *Does NCLB Provide Good Choices for Students in Low-Performing Schools?* (PLACE: The Harvard University Civil Rights Project, February 2004).

73. Maria Glod, "High Achievers Leaving Schools Behind." *Washington Post*, November 10, 2004.

36. Portfolios combine attendance and graduation or dropout rates, honors/awards, the amount of improvement that occurs (i.e., growth), writing samples and other indicators—with test scores—to provide a broader reflection of performance.

37. Tracy Dell'Angela, "Nebraska Shuns State Tests: Schools Get Leeway to Judge Progress." *Chicago Tribune*, April 5, 2004.

38. Jack Jennings, "Rule Changes Could Help More Schools Meet Test Score Targets for the No Child Left Behind Act, " (Place: Publisher, October 22, 2004).

39. This included the Harvard Civil Rights Project, Congressional Research Service (CRS) and the UCLA School of Public Policy and Social Research (in partnership with Douglas Staiger from Dartmouth College and Jeffrey Geppert from the National Bureau of Economic Research.

40. Wayne Riddle; Richard Hapling, and David Smole; "Adequate Yearly Progress Under ESEA Title I: Possible Impact of H.R. 1 and Alternative Provisions in Three States," Washington DC, Congressional Research Service, July 26, 2001).

41. Office of the Legislative Auditor, State of Minnesota, *Evaluation Report: No Child Left Behind* (#04-04) (Minneapolis, Minnesota, March 2004).

Edward Moscovitch, Cape Ann Economics, Projecting AYP in Connecticut Schools. Hartford, Connecticut: Connecticut Education Association , March 2004).

42. Although schools are required to accept transfer, many cite health code violations and other policy conflicts as reasons for not accepting transfers.

43. Center on Education Policy, *From the Classroom to the Capitol: Year 2 of the No Child Left Behind Act*, Washington, DC. January, 2004).

44. Jimmy Kim and Gail L. Sunderman, *Does NCLB Provide Good Choices for Students in Low-Performing Schools?* (Cambridge MA. Harvard Civil Rights Project., February, 2004).

45. Maria Glod, "High Achievers Leaving Schools Behind," *Washington Post*, November 10, 2004.

46. The Task Force agrees with USED that schools identified by AYP should not be labeled "failing" schools. However, the media repeatedly uses the terms "failure" and "failing" when reporting their status to the public.

47. States are actually allowed to exempt 1 percent of the overall student population from AYP calculations. On average, this equates to 10 percent of the special education population.

48. National Association of State Directors of Special Education and National Education Association, *IDEA & NCLB: The Intersection of Access and Outcomes*, Washington, DC. NASDSE/NEA Joint Publication, November 2004).

49. John Herner; Michael Demczyk; and Michael Cox, "Leveling the Playing Field for Students with Disabilities" (Dayton, OH, State Accountability for All Students (SAAS), University of Dayton , January, 2005).

50. http://www.ed.gov/nclb/accountability/schools/factsheet-english.html.

51. U.S. Government Accountability Office, *NCLB: Additional Assistance and Research on Effective Strategies Would Help Small Rural Districts*, (GAO-04-909) (Washington, D.C.: U.S. GAO, September, 2004).

52. Rural Schools and Community Trust. *Most Rural Students Left Behind Under Department of Education's New "Flexibility" Rules Regarding Highly Qualified Teachers*, http://www.ruraledu.org/issues/nclb/HQT_Flex_factsheet.pdf , May, 2004).

53. "...high standards and accountability for results -not just endless spending increases- will do the most to help our schools close the achievement gap between disadvantaged students and their peers." Committee on Education and the Workforce, Press Release, October 16, 2003.

54. Grissmer, Flanagan, Katawa, and Williamson, *Improving Student Achievement: What State NAEP Test Scores Tell Us*, (Washington DC: Rand Corporation, 2000); Richard Rothstein, *Class and Schools*, Washington, DC. Economic Policy Institute, 2003).

55. Richard Rothstein, *Class and Schools: Using Social, Economic, and Educational Reform to Close the Black-White Achievement Gap.*, Washington, DC. Economic Policy Institute, May 2004).

56. John Augenblick of Augenblick & Palaich, a well known national expert on school finance issues, in his May 30, 2004 presentation to the NCSL Task Force on NCLB.

57. State courts and adequacy case law generally consider local education agencies as instrumentalities of the state, hence local money and state money are considered as one for this analysis.

HANDOUT # 4

Senate Counsel, Research, and Fiscal Analysis
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Senate
State of Minnesota

S.F. No. 1244 -No Child Left Behind (NCLB) Implementation and Continuation Conditions

Author: Senator Steve Kelley

Prepared by: Shelby Winiecki, Senate Research (651/296-5259)

Date: March 14, 2005

This bill proposes coding for a new law in Minnesota Statutes, chapter 127A.

Section 1. [Implementation of the No Child Left Behind Act.]

Subdivision 1. [Continued Implementation.] The Minnesota Department of Education will implement NCLB without interruption until June 30, 2006.

Subdivision 2. [No Child Left Behind Nullification.] The Department of Education will report to the House and Senate education funding and policy divisions that the following conditions have been met and, if necessary, approved by the federal Department of Education:

(1) The Department of Education may use value-added measures of student achievement for determining adequate yearly progress (AYP);

(2) The Department of Education may use multiple measures in addition to standardized test results to determine AYP;

(3) The Department of Education may average three years of data to identify a school for improvement;

(4) The Department of Education will correct errors in accountability reports in a manner such that a school will not be adversely affected by the error;

(5) The Department of Education has outlined the additional costs for the fiscal years 2006 through 2009 that the implementation of the NCLB Act imposes on the state.

(6) The Department of Education uses NCLB money to provide supplemental education services only in the academic subject area that causes a school to miss adequate yearly progress;

(7) The Department of Education may exclude from sanctions a school that is classified as not making AYP solely due to a subgroup of students with disabilities not testing at a proficient level;

(8) The Department of Education may exclude from sanctions a school that is classified as not making AYP solely due to different subgroups testing below proficient levels for at least two consecutive years;

(9) The Department of Education will identify a school as not making AYP only after missing AYP targets in the same subject and subgroup for two consecutive years;

(10) The Department of Education will identify a district as in need of improvement only after missing the AYP target in the same subject across multiple grade spans for two consecutive years;

(11) The Department of Education will limit the score of a student to one subgroup when calculating AYP. Currently under NCLB, a student that falls under several subgroups is counted in the AYP calculations as many times;

(12) The Department of Education has implemented a uniform financial reporting system for use by school districts;

(13) The Department of Education will determine the percentage of special education students that would be best educated based on out-of-level standards;

(14) The Department of Education will determine when to hold schools accountable for including a student with limited English proficiency in AYP calculations; and

(15) The Department of Education will consider a teacher teaching multiple subjects to be "highly qualified" based on one evaluation rather than multiple evaluations at different times.

The NCLB Act will be discontinued July 1, 2006, unless the Legislature passes a law during the 2006 regular session establishing satisfaction with the conditions and requirement described above.

Subdivision 3. [Department of Finance Certification.] If the Legislature does not pass a law allowing the NCLB Act to continue, the Commissioner of Finance will report to the Legislature the amount of revenue, if any, that has been withheld by the federal government as a result of the state's discontinued implementation of NCLB.

Subdivision 4. [Annual contingent Appropriation.] The amount equal to the federal revenue withheld as stated in subdivision 3 is appropriated from the general fund to the commissioner of education.

SW:vs

HANDOUT # 5

MINNESOTA
BUSINESS PARTNERSHIP

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March 3, 2005

The Honorable Steve Kelley, Chair
MN Senate Education Committee
205 State Capitol Building
St. Paul, Minnesota 55155

The Honorable Gen Olson,
Ranking Republican Member
MN Senate Education Committee
119 State Office Building
St. Paul, Minnesota 55155

Dear Senators Kelley and Olson:

We are writing to express our concerns with S.F. 1244 and to encourage you to not adopt this proposal. S.F. 1244 would have the State of Minnesota poised to withdraw from the federal No Child Left Behind Act (NCLB) and consequently jeopardizes significant levels of federal education aid.

We share your apprehension over federal involvement in state elementary and secondary (K-12) education policy development. We also recognize that NCLB needs further refinement to improve its implementation and the achievement of its goals. However, rather than create a deadline for opting out of NCLB unless certain conditions are met, we believe the state - and our students - are better served by working cooperatively to correct the problematic aspects of the law.

Within this context, the Minnesota Department of Education has convened an NCLB Stakeholder Committee, which includes representatives from most education and parent organizations. Over time, this committee has worked to find consensus on changes in NCLB to make its implementation in Minnesota more effective.

Working with the Department and its stakeholders' committee, and in conjunction with other states, we will have an effective voice in working with the federal government to make appropriate changes to NCLB.

Thank you for your time and consideration and we look forward to working with you as the 2005 Session progresses.

Sincerely,

Jim Bartholomew
Education Policy Director

Senators Kelley, Stumpf and Skoe introduced--

S.F. No. 1244: Referred to the Committee on Education.

A bill for an act

relating to education; providing condition for the continued implementation of No Child Left Behind; appropriating money; proposing coding for new law in Minnesota Statutes, chapter 127A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [127A.095] [IMPLEMENTATION OF NO CHILD LEFT BEHIND ACT.]

Subdivision 1. [CONTINUED IMPLEMENTATION.] The Department of Education shall continue to implement the federal No Child Left Behind Act, Public Law 107-110, without interruption until June 30, 2006.

Subd. 2. [NO CHILD LEFT BEHIND NULLIFICATION.] (a) The consolidated state plan submitted by the state to the federal Department of Education on implementing the No Child Left Behind Act, Public Law 107-110, and any other Minnesota state contract or agreement under the provisions of the No Child Left Behind Act, shall be nullified and revoked by the commissioner of education on July 1, 2006.

(b) The commissioner shall report to the education funding divisions and the education policy committees of the house of representatives and the senate by April 1, 2006, whether the following conditions have been met:

(1) the Department of Education has received approval from the federal Department of Education to allow the state to use a

value-added measurement of student achievement for determining adequate yearly progress;

(2) the Department of Education has received approval from the federal Department of Education to allow the state to develop a plan using multiple measures in addition to relying on standardized test results to evaluate school and student performance for the purpose of determining adequate yearly progress;

(3) the Department of Education has received approval from the federal Department of Education to allow the state to average three years of data for the purposes of identifying a school for improvement;

(4) the Department of Education has developed a plan and model legislation to ensure that if an adequate yearly progress determination was made in error, that the error will not adversely affect the school's or school district's sanction status in subsequent years. The Department of Education must have a policy in place to correct errors to accountability reports;

(5) the Department of Education has reported the additional costs for state fiscal years 2006 to 2009 that the No Child Left Behind Act imposes on the state, the state's school districts, and charter schools that are in excess of costs associated with the Improving America's Schools Act of 1994, Public Law 103-382;

(6) the Department of Education has received approval from the federal Department of Education to allow the state to use No Child Left Behind money to provide supplemental education services only in the academic subject area that causes a school to miss adequate yearly progress;

(7) the Department of Education has received approval from the federal Department of Education to exclude from sanctions schools that have not made adequate yearly progress solely due to a subgroup of students with disabilities not testing at a proficient level;

(8) the Department of Education has received approval from the federal Department of Education to exclude from sanctions a

school that is classified as not having made adequate yearly progress solely due to different subgroups testing below proficient levels for at least two consecutive years;

(9) the Department of Education has received approval from the federal Department of Education to identify a school as not making adequate yearly progress only after missing the adequate yearly progress targets in the same subject and subgroup for two consecutive years;

(10) the Department of Education has received approval from the federal Department of Education to identify a district as in need of improvement only after missing the adequate yearly progress target in the same subject across multiple grade spans for two consecutive years;

(11) the Department of Education has received approval from the federal Department of Education to limit the score of a student within multiple subgroups to the one subgroup that is the smallest subgroup in which that student is a part of when calculating adequate yearly progress;

(12) the Department of Education has implemented a uniform financial reporting system for school districts to report costs related to implementing No Child Left Behind Act requirements, including the costs of complying with sanctions;

(13) the Department of Education has received approval from the federal Department of Education to determine the percentage of the special education students that would be best educated based on out-of-level standards and tested accordingly based on an individual education plan;

(14) the Department of Education has received approval from the federal Department of Education to determine when to hold schools accountable for including a student with limited English proficiency in adequate yearly progress calculations; and

(15) the Department of Education has received approval from the federal Department of Education to consider a teacher teaching multiple subjects to be highly qualified based on a single means of evaluation.

(c) The state's continued implementation of the No Child

Left Behind Act shall be discontinued effective July 1, 2006, unless the legislature passes a law during the 2006 regular legislative session establishing the legislature's satisfaction that the requirements under paragraph (b) have been met.

Subd. 3. [DEPARTMENT OF FINANCE CERTIFICATION.] If the legislature does not pass a law authorizing continued implementation of the No Child Left Behind Act under subdivision 2, paragraph (c), the commissioner of finance shall certify and report to the legislature beginning January 1, 2007, and each year thereafter the amount of federal revenue, if any, that has been withheld by the federal government as a result of the state's discontinued implementation of the No Child Left Behind Act. The report shall also specify the intended purpose of the federal revenue and the amount of revenue withheld from the state, each school district, and each charter school in each fiscal year.

Subd. 4. [ANNUAL CONTINGENT APPROPRIATION.] For fiscal year 2007 and thereafter, an amount equal to the federal revenue withheld in the same fiscal year as a result of the state's discontinued implementation of the No Child Left Behind Act, as certified by the commissioner of finance under subdivision 3, is appropriated from the general fund to the commissioner of education. The commissioner of education shall allocate the appropriation under this section according to the report from the commissioner of finance in subdivision 3.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

To: Senator Cohen, Chair

Committee on Finance

Senator Stumpf,

Chair of the K-12 Education Budget Division, to which was referred

S.F. No. 1244: A bill for an act relating to education; providing condition for the continued implementation of No Child Left Behind; appropriating money; proposing coding for new law in Minnesota Statutes, chapter 127A.

Reports the same back with the recommendation that the bill be amended as follows:

Page 1, delete lines 24 and 25

Page 2, delete lines 1 and 2

Page 2, line 3, delete "(2)" and insert "(1)"

Page 2, line 5, after "measures" insert "including value-added measurement of student achievement"

Page 2, line 9, delete "(3)" and insert "(2)"

Page 2, line 13, delete "(4)" and insert "(3)"

Page 2, line 20, delete "(5)" and insert "(4)"

Page 2, line 25, delete "(6)" and insert "(5)"

Page 2, line 30, delete "(7)" and insert "(6)"

Page 2, line 35, delete "(8)" and insert "(7)"

Page 3, line 4, delete "(9)" and insert "(8)"

Page 3, line 9, delete "(10)" and insert "(9)"

Page 3, line 14, delete "(11)" and insert "(10)"

Page 3, line 19, delete "(12)" and insert "(11)"

Page 3, line 23, delete "(13)" and insert "(12)"

Page 3, line 28, delete "(14)" and insert "(13)"

Page 3, line 32, delete "(15)" and insert "(14)"

And when so amended that the bill be recommended to pass and be referred to the full committee.

..LeRoy Stumpf.....
(Division Chair)

March 15, 2005.....
(Date of Division action)

Senators Stumpf and Langseth introduced--

S.F. No. 591: Referred to the Committee on Finance.

A bill for an act

relating to education finance; authorizing the sale of a school facility; forgiving any remaining balance on the maximum effort capital loan issued to former Independent School District No. 566, Askov.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [MAXIMUM EFFORT CAPITAL LOAN FORGIVEN; EAST CENTRAL.]

Subdivision 1. [SALE REQUIREMENTS.] Independent School District No. 2580, East Central, may sell its middle school building in accordance with Minnesota Statutes, section 16A.695. The net proceeds from the sale of the property must be paid to the commissioner of finance and deposited in the state bond fund.

Subd. 2. [OUTSTANDING LOAN BALANCE FORGIVEN.] Any remaining outstanding balance on the maximum effort capital loan issued in January 1982 to former Independent School District No. 566, Askov, after the application of the sale proceeds according to subdivision 1, is forgiven.

[EFFECTIVE DATE.] This section is effective the day following final enactment.