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# Reauthorization of the No Child Left Behind Act

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The No Child Left Behind (NCLB) Act celebrated its sixth anniversary on January 8, 2008, four months beyond the date on which it was due for reauthorization. NCLB is the most recent reauthorization of the Elementary and Secondary Education Act, which has guided federal education policy since its first passage in 1965. The sweeping legislation, passed with bipartisan support, has become a galvanizing political issue. Supporters note that the Act has directed a spotlight at school performance and demanded that poorly performing schools take steps to improve student learning or face consequences. The outcome of this attention, this group maintains, has been to raise the expectations and the outcomes for children who were previously slipping through the cracks. As evidence of the law's success, supporters point to rising test scores, shrinking achievement gaps, and improved student outcomes.

Critics of the Act contend that the effect of the law and its implementation has been to supplant local control of schools with federal mandates without corresponding federal funds and imposes a one-size-fits-all model on a highly diverse system. They also maintain that the Act's dependence on a single high-stakes assessment to determine student performance distorts instruction, fails to provide an adequate picture of student achievement, and penalizes schools for factors outside their control. Furthermore, this group suggests, while the Act measures schools' performance on a range of subcategories, it reports their progress as either passing or failing, with one single element sufficient in this calculation to cause a school to be regarded as failing. The role of sanctions in the law, the requirements for teachers, the manner in which special populations are assessed and included in state accountability programs also come under criticism.

Reauthorizing a piece of legislation as complex as the No Child Left Behind Act is a difficult matter. The most recent iteration of the Elementary and Secondary Education Act was 670 pages and the result of extensive debate and discussion.

There are many observers who do not anticipate Congressional action on reauthorization this year, with the Act continuing unchanged, possibly until after the 2008 congressional and presidential elections. Nonetheless, Representative George Miller, chair of the House Education and Labor Committee, and Senator Ted Kennedy, chair of the Senate Health, Education, Labor, and Pensions Committee, both have voiced a preference for bringing legislation reauthorizing the Act, with adjustments, to the floor before the end of the year.<sup>1</sup>

If the original legislation was a cornerstone of bipartisan cooperation, the reauthorization battle is gearing up to be the opposite. There is no shortage of voices in the debate over the Act, from those claiming it does not go far enough to those who see it as much too expansive. The debate also is far from neatly partisan, however, an element which likely will serve to complicate the reauthorization discussions.

It is appropriate and necessary that state legislators are a part of the debate on reauthorizing the Act. Education is the single largest budget item for almost all states, and there are few other pieces of federal legislation that have had such an impact on state educational expenditures and policy as NCLB. Over the past several years, the Education Committee of the Southern Legislative Conference has held a number of discussions on the Act and its implications for state policy. From these reflections on the Act and its impacts on states it is possible to draw some conclusions for guiding the reauthorization and continued implementation of NCLB.

<sup>1</sup> U.S. Representative George Miller, California, chair of the House Education Committee, released an initial proposal for the reauthorization of the Act at the end of August 2007, which includes a number of adjustments to the current Act, including expanding so-called growth models to all states and providing the use of multiple indicators in addition to assessments (which still must be performed annually) to determine whether schools achieve their annual yearly progress goals.

## In General...

In general, discussions held during the SLC annual and fall meetings, as well as legislative inquiries and responses to questions, register concerns with several aspects of the Act, even as they in many cases acknowledge some of its benefits. Chief among the positive aspects of the Act is its requirement for the reporting of disaggregated student data and establishing accountability for student performance. For the most part, concerns have been raised about the prescriptive nature of the Act, particularly with respect to the cascade of sanctions and the limited flexibility on spending of some federal funds. Two areas that have proven to be broadly unpopular are the testing requirements for special populations and the goal of having 100 percent of the student population performing at or above grade level by 2014.

State policymakers often note that the requirement that schools report student performance data by subgroup has had a generally beneficial impact, insofar as it has shone a light on gaps in performance among groups of students and increased pressure on schools to serve students who traditionally have slipped through the cracks. The use of a single assessment to determine the performance of students, and thus of schools, has been observed to have a number of negative impacts, including distorting assessment tools intended for diagnostic purposes and narrowing instruction.

The innovation of NCLB that has been hailed as having the most positive impact for improving educational outcomes is its requirement that data on all children be reported in state accountability systems. It has been observed that the increased attention on achievement for all students has increased the availability of student performance data that had heretofore not been available, and done so in a public, and generally transparent manner. States and schools have responded to the information this data has provided by focusing instructional resources where they are most needed.

Furthermore, the Act has placed a greater emphasis on teacher quality and the role it plays in increasing student performance, particularly in closing the achievement gap. Teacher quality is assessed under the Act principally through qualifications (such as a degree in the subject area and passage of a state certification exam) and not on teacher performance. The Act

also has served to increase the attention schools paid to the quality of teachers they recruited and the nature of professional development teachers in which teachers are expected to pursue. The Act requires all teachers to meet “highly qualified” standards and for schools to report to parents if their child’s teacher does not meet these requirements. While this requirement has been a challenge for teachers in general, educators who work in special education or in early grades, in which subject matter proficiency would cut across several academic disciplines, have found them to be very daunting.

Among the most common concerns voiced over NCLB is its dependence on single-iteration, high-stakes assessments to determine student performance. Critiques of this approach include concerns over teaching to the test, which both reduces the utility of the assessments and the breadth of the curriculum covered, and worries that gauging student performance based on a one-time assessment is an inappropriate and inexact means of determining student achievement. Furthermore, the emphasis on tests to determine school (and by extension teacher) performance has created disincentives for highly qualified teachers to work in schools showing difficulty in meeting Annual Yearly Progress (AYP) goals. Because these schools are in the greatest need of the best teachers, anything that serves to discourage teachers from working in these settings hampers the ability of states and school districts to better serve their students.

When the Act was unveiled, it was hailed as an end to a legacy of low expectations for students, and indeed it established for the first time standards for accountability for the performance of all students. But possibly most significant, the Act demands that all students meet the same proficiency target by 2014. Essentially, the Act demands that by the target date every student in public schools in the United States will be at grade level. It has been widely observed that this expectation is unrealistic and unattainable and fails to account for what educators know about how students learn. The effect of this mandate often is seen as both encouraging students to pursue unrealistic expectations and to set up schools and school systems to fail despite their best efforts.

Among the most affected by rigid targets for performance are students with disabilities and limited English proficient students. Because of the growth of these groups and the tendency toward concentration on the latter group in specific schools, the law's treatment of these subgroups has had a negative effect on how these children are welcomed into school systems. Supporters of the Act, while at times acknowledging that students' learning may proceed at different paces and on separate tracks, maintain that for too long students were not well-served in schools which were allowed to let them fall through the cracks. Something both sides of the issue have observed as an unintended consequence has been the creation of downward pressure on state standards, or, for those states that retain higher standards, unacceptably high levels of students unable to meet proficiency goals, thus creating a public perception problem.

A further concern with the Act is that it has created a situation in which state accountability systems are in a condition of constant adjustment to shifting federal rules and reporting requirements. This leads to difficulties at the instructional level and creates undue burdens on local education agencies. Additionally, by establishing a system of accountability based on state standards, the Act encourages comparisons among states based on "uneven yardsticks." Thus, states with more rigorous standards are essentially penalized (because fewer students are successful in achieving at top levels) in comparison with states with less rigorous standards.

An equally common concern of state policy-makers is the application of federally mandated sanctions with only limited local- and state-level flexibility. By establishing federal sanctions, state and local governments are compelled to adopt interventions and responses that do not necessarily suit local conditions and may have little impact on student learning.

## More specifically...

### *National Standards*

Concern has been mounting among some states that the No Child Left Behind Act allows states to measure student performance using “unequal yardsticks.” The U.S. Department of Education reviews each state accountability plan for approval, but has not established standards for academic rigor. This retains the historic local control of the curriculum, and places state education agencies, and at times state legislatures, as the arbiters of curricular excellence. States have established, over time, curricular standards and expectations based on their internal processes, often in consultation with national groups, and with consideration of local history and experience.

The process by which standards and expectations are established at the state level has led to disparities among states, with some states establishing highly rigorous standards closely aligned to national and international expectations and others choosing standards not as challenging. Because of this, states with more rigorous standards eventually will find themselves with more students failing to meet achievement targets, and more schools failing to meet AYP goals, than their neighbors.

This presents a number of problems. The application of an accountability system within a state provides an opportunity to measure students against the same scale and thus identify those students and schools in need of assistance. Because the application of this system at the federal level mandates corrective action for schools failing to meet AYP goals, states with more rigorous curricular expectations will necessarily have more schools needing to provide students with public school choice, supplemental educational services, or reorganization. Because these interventions are costly, they raise the amount of money states must allocate toward education and how that money will be spent.

Furthermore, a patchwork of standards poses complications for interstate comparisons and does not reflect the intention of the law to encourage an excellent education for all students. The former, in particular, has been the focus of some concern among state lawmakers as they seek to develop educational systems that will

place them in positions to expand the economic and social opportunities for their citizens.

In response, a chorus of voices at the national level, inside Congress and a number of national educational think tanks, has raised the issue of national standards. Several groups have undertaken an effort to create voluntary standards or guidelines for use on a national level: the National Council of Teachers of Mathematics, National Council of Teachers of English, The National Geographic Society, and the Center for Civic Education, among others.

Calls for the adoption of national standards generally are met with skepticism outside of a limited circle of education advocates. Many states in the region already have invested considerable resources in developing rigorous curricula and established challenging standards for their students. There also are significant practical obstacles to the implementation of national standards as well as constitutional issues that arise from the expansion of federal authority into a policy arena in which the federal government has essentially no constitutional mandate. Should these obstacles be overcome, there is an additional concern that national standards and any resulting national exam would further narrow the curriculum and almost entirely eliminate local control of instruction. A more practical approach toward encouraging harmonization among state standards, although one which does not eliminate the potential for variation, is the promotion of national guidelines for establishing state standards. These would be crafted by various educational professional associations (such as the National Council of Teachers of Mathematics, or the National Science Teachers Association) and submitted to states for adoption or adaptation, depending on the local needs. Indeed, this process often is what is used at the state level to set state standards when curricula are updated, although the degree of local customization remains fairly high. In the end, state flexibility on curricula points to a continuation of the patchwork nature of state standards.

## Funding

Funding for education historically is a shared local-state responsibility. While the proportion for each partner varies from state to state and within states, together state and local funds account for 90 cents to 93 cents on every dollar spent on public education at the K-12 level. Federal funds, mostly for students living in poverty and for other “compensatory” programs, make up less than 10 cents of every dollar spent on public education. This is very much in keeping with the reservation of education as a state and local concern. As federal demands on states for accountability have increased, federal funding for education has risen only slightly and not, in many observers’ view, enough to cover the costs of the new mandates.

An important issue in the debate over the No Child Left Behind Act is the adequacy of the funding. Many observers at the state level have raised concerns that the funds provided by the federal government were insufficient in relationship to the requirements of the Act, a claim that lately has been picked up among some in Congress. Federal funds for education are focused primarily in compensatory programs, which provide assistance to needy students, and to students with special needs. While the amount of money from the federal government is proportionately small, the reality of education finance is such that every dollar counts, and states are loathe to forgo federal funds. Federal education funds come with conditions, however, and it is in this area that state policymakers begin to object to the degree of control the federal government’s limited financial contribution to education affords it.

States have several areas of concern regarding federal funding of the Act, including increased flexibility on how Title I (the principal compensatory education program) dollars can be spent, and increased funds for teacher training, recruitment, professional development and retention. Policymakers also have called for additional funds for schools in corrective action in order to implement the mandated sanctions without compromising educational opportunities of students in other schools.

A common complaint with the Act is that, as it stands, schools are judged on a “snapshot” of the performance of their students, and not on how well they have served children. The absolute proficiency goal demands that all students be proficient, and the AYP targets track how well students and schools are proceeding in meeting that goal. But not all students start school at the same level of academic readiness, and not all schools have student populations with equal degrees of academic support at home. Measuring schools against one another in this manner does serve to unmask inequities in educational attainment, but it does

not necessarily reflect how well individual schools are doing in serving their students, since the assessments only measure where the students are and not where they have been in terms of academic achievement.

To remedy this, many states, as well as the federal government, are interested in pursuing accountability systems that track individual student progress as a means of determining performance. These are called “growth models” because they track a student’s academic growth over a year rather than the current model of taking a snapshot each year and comparing it to the previous year’s performance by a different cohort of students (for more on growth models, see p. 8). To implement this approach to accountability, states must have the capacity to track individual students as they move from school to school, system to system and even when they enter or leave the state. Such student data systems are complex, expensive, and time consuming to implement and costly to maintain. They will also provide a level of information necessary to fulfill the intention of the Act that is, for the most part, absent in most state student data systems. If such complex data management systems become a *de facto* requirement of measuring student progress, most states will need to make significant new investments in data collection, storage and management. Federal funding for this endeavor would be a critical factor in state adoption of new data systems.

In addition to a perceived insufficiency of federal funding for the mandates in the Act, there has long been an interest for increased flexibility for states in determining how this funding is to be used. Much of the funding associated with Title I schools and with implementation of the NCLB is distributed to schools based on a formula which does not account for the capacity of the local school and school system to maximize these funds. Schools, because of their internal funding dynamics, are encouraged to accept any federal funds available, but then are often obligated to use local resources in the fulfillment of federal mandates as well. Schools that are unable to fully utilize available federal funds may discover that they have to “leave money on the table” which would be beneficial to student performance, but which they cannot access because federal rules narrowly stipulate how funds can be used.

Among the specific areas in which more funds are necessary to meet federal mandates are special education, particularly with respect to teacher training and professional development, and transportation supplements, particularly for rural districts with schools in corrective action. A concern raised by policymakers in the past has been the withdrawal of resources from some students to serve others as a consequence of the Act’s accountability measures. Because federal

funding is relatively inflexible in how it can be spent, schools redirect resources toward NCLB-achievement oriented activities and away from instruction and other services.

### **Teacher Quality**

The issue of teacher competence and performance is at the heart of the No Child Left Behind Act. Teacher quality, and the mandate that every classroom have a highly qualified teacher, is a cornerstone of the federal approach to improving education. The mandates outlined in the Act, and the regulatory guidance established by the U.S. Department of Education, set a relatively high bar for teachers. Because these requirements apply to in-service teachers as well as those just entering the field, experienced teachers have had to prove their capabilities under the new system. In addition to contributing to morale problems, the bureaucratic component of the law has proven to be challenging. While few argue that the nation's children deserve the best teachers, the teacher supply-chain has chronic shortages in specific fields and geographic areas, especially those schools serving students most in need of excellent teachers.

The pressure the Act has placed on teacher quality has had some tangible benefits in focusing attention on the need for every child to have a teacher with content knowledge in the core academic subject they teach and the ability to teach this material. However, the process of documenting whether educators meet the requirements for being highly qualified does not provide guarantees that the teaching force is more capable at providing instruction, in large part because the standard remains exclusively based on meeting process benchmarks and is largely divorced from performance measures. Additionally, while content knowledge is a key element for teacher performance, the requirements for earning a "highly qualified" label do not measure mastery of teaching strategies, classroom management, and the ability to continue to develop professionally. These components of teaching are far more difficult to catalog and measure but play a major role in how effective teachers are at serving students.

With regard to teacher quality, flexibility is again a principal concern for states, with considerable interest in having flexibility in establishing what determines a highly qualified teacher and in crafting the procedures under which teacher quality and qualifications would be monitored. State policymakers have demonstrated a continued interest in the use of Highly Objective Uniform State Standard of Evaluation (HOUSSE) to determine teacher qualifications. In particular, HOUSSE is seen as a necessary component of state teacher validation systems for veteran teachers returning to the profession following a break in service;

veteran international teachers who have not taken validated content exams in their countries of origin; veteran teachers who are certified but are needed to teach a course in which they have not demonstrated content competency; and veteran teachers who are not eligible for reciprocity.

Discussions during several sessions of the SLC Education Committee have centered on the application of the highly qualified standard. Substitution of a "highly effective" standard for teachers has received much support as well from SLC members and other education policymakers. Moving away from a qualification-based standard to one which takes into account practice in the classroom is viewed by its supporters as promoting better teaching practice and improved outcomes. The complication, of course, comes in measurement. Teachers and administrators are cautious about using state accountability systems as a proxy for teacher effectiveness for a range of reasons, including the unintended consequence of discouraging teachers to serve in poorly performing schools and the lack of assessments across the full range of instruction (music, art and physical education are typically not assessed for accountability purposes). Introducing a layer of peer or supervisory review to teacher qualification determination, as is done for National Board certification, would increase the cost of and slow the progress for such a process. Thus, while the idea is conceptually sound, the current hurdles to implementation point toward alternatives which provide states and teachers greater flexibility in demonstrating their qualifications for instruction.

### **Practicality and Applicability**

The No Child Left Behind Act has set a date for all students to reach proficiency: 2014, essentially mandating student achievement by a date certain. This element of NCLB marks a significant departure from previous authorizations of the ESEA, some of which called for improvement in student achievement or performances but stopped short of setting deadlines or benchmarks. In recent years, progress toward the goal of 100 percent proficiency has slowed. In part this is an aspect of how states designed their AYP schedules and, in part, it reflects the reality of schools closing the easiest gaps first. The tougher learning gaps to close, especially those of students with limited English proficiency, with learning disabilities, or living in poverty, have more complex solutions and require tremendous resources and intensive effort. Even with further investments of time and money, there are questions about whether all students are able to achieve at or above grade level. This "Lake Wobegon" problem (where all of the children are above average) was raised early on in discussions about the Act, but has

recently grown in importance as the Act passed its 5-year anniversary.

Many state policymakers and educational experts have noted that they agreed that the goal of 100 percent proficiency was laudable and worthy, but not practical. A component of this is the definition of proficiency, which, as has been noted earlier, varies from state to state and often diverges from national standards and expectations. But even accepting that there will be variation in the standard, there is little evidence to indicate that all children will meet the same benchmarks academically on the same schedule unless the standard for proficiency is set so low as to be essentially meaningless. Applying punitive sanctions to schools for not meeting an unattainable goal is counterproductive and may have the unintended consequence of increasing dropout rates as students become increasingly discouraged by their inability to meet standards for promotion or graduation.

Early reviews of schools' progress toward the proficiency goal indicate that even with the state's best efforts, a solid majority of Title I schools in the region,

and in some states a majority of schools, will fail to meet AYP goals in the next few years and will fall short of the 100 percent proficiency goal by 2014. The consequences of this, for local school systems as well as students, are difficult to comprehend, as it would result in a majority of schools in the South subject to corrective action and, quite possibly, reorganization. As the AYP goals have tightened up in recent years, the number of schools and districts entering the most extreme levels of corrective action has increased, but states have rarely taken the step of reorganizing them, largely because there is scant indication that local control of the system is entirely, or even largely, responsible for the failure to meet AYP targets. To date, there is little evidence to indicate that reorganization without radical reinvention of the school changes the trajectory of achievement for these students. Of course, reorganization provides an opportunity for reinvention, but states have been more inclined to experiment with this approach than to take on multiple schools simultaneously. If the majority of Title I schools become candidates for reorganization in the next few years, as federal law stipulates, the prospect of states assuming the management (and financial) responsibility for their operation remains unlikely.

## Emerging Issues

### *History and Science Assessments*

It has been suggested that in addition to math and reading assessments, a reauthorization of the Elementary and Secondary Education Act might expand testing to include history and science. Because these two subjects are so critical to the development of our democracy and our economy, setting standards and expectations for student performance in these areas would ensure that students learn the history and science necessary to maintain a strong American democracy and economy. Across a wide range of policymakers, there is little support for adding assessments to the current slate already mandated by federal law. Recognizing that schools already are administering a wide range of assessments, expanding these might further take away from instructional time and potentially shrink the curriculum for history and science, as has been reported to be the case in math and language arts. This concern can run both ways, however, insofar as it often is observed that under current testing structures, science and history could be diminished in importance in an effort to improve test results in core assessment areas. Thus, by having these subjects assessed, schools will be less likely to shift instructional time away from them.

An important distinction is to be drawn in the case of history assessments. Unlike math and language arts, which are skill-based subjects, history and social studies do not have related skill bases, which make assessments for these subject areas more complex. The same is true to a limited degree of science. In all of these subjects there is a degree of inconsistency as to what constitutes subject matter competence, which could lead to these new required assessments being even more uneven as national measures than the current math and language arts tests.

It is not entirely necessary for states to add assessments for these subject areas in order to determine student achievement in them. Although it would serve as an indirect measure, it is possible for history, social studies, civics, and science content material to be combined with existing reading and math assessments. While these assessments would not necessarily have the strength of primary subject tests for accountability purposes, they would provide a useful picture

of what students understand and can articulate about these subject areas.

### *National Curriculum*

As has been noted, concern has been raised that state accountability systems may not provide a meaningful measure of actual student performance because of the great variability in the state standards which underpin these systems. This variability has been illustrated recently by research demonstrating wide discrepancies between student performance on state assessments and the National Assessment of Educational Progress (NAEP) tests. Essentially, states with less rigorous standards have an advantage over those states with more demanding expectations of students under the rules of NCLB because federal sanctions are assigned based upon student performance against state standards.

This situation exists in large part because the United States has a very decentralized educational system that reflects local interests and concerns. One noteworthy aspect is the absence of a national curriculum, a feature of the education system in many industrialized countries. A number of national political leaders have suggested that a national curriculum would be advantageous for the United States. Among the arguments for a national curriculum is that it would remove the broad variability among states' expectations of students and would give employers greater confidence in the content guarantee that a high school diploma carries.

The idea of a national curriculum has been raised during the past several years and has made little progress because it has been seen as either undesirable or unworkable by the state policymakers who would have to implement it and the national policymakers who would have to craft it. In much the same manner that the related issue of national standards often is seen as a usurpation of state authority and an inappropriate shift of control away from parents, the concept of a national curriculum is perceived as an unwelcome shift.

Interestingly, however, there has been some movement among states to harmonize, at least to a

limited degree, their curricula and standards with their neighbors, as well as to base new curricula and standards on the work of independent national groups. If this trend continues and expands, it will essentially help to establish regional and, potentially, national core curricula and standards from the ground up. The time-frame for harmonization on this track is much longer than an imposition of a set of expectations from the federal level, but the political obstacles are far fewer. An example of this model in practice is Achieve, Inc., an organization created by governors and business leaders in 1996 to help coordinate state efforts to raise academic standards, improve assessments and strengthen accountability. Achieve has worked with states to help develop a shared set of expectations for students (in addition to many other activities, it coordinates the American Diploma Project). In 2005 Achieve crafted an agreement among nine states (five more joined later) to develop shared specifications for an end-of-course exam in Algebra II. By participating, states will have the ability to measure their progress in this key high school course against other states. Furthermore, subject specific education groups, such as the National Council for the Social Studies and the National Council of Teachers of Mathematics, have created standards documents for their disciplines outlining what students need to know or be able to do and when. States are adapting these documents to meet their needs, a practice that could lead to a degree of common expectations, although the levels expected for mastery may not necessarily standardize to the same degree.

### ***Growth Models***

State accountability systems, which are at the heart of the No Child Left Behind Act, are underpinned by assessments that measure student performance toward achievement goals. Schools and school systems are sanctioned based upon how students perform at each assessed grade level on these tests. While this is intended to provide a check on how schools are performing, the nature of this system is based on the performance of the previous year's students. To remedy this shortcoming, it has been suggested that schools be graded on the progress of individual students, an approach known as growth models.

Growth models essentially measure how much progress students make on meeting performance goals during a year by tracking their individual scores on assessments. While conceptually quite straightforward, implementing these systems have tremendous data management demands. The greatest demand on states and school systems for this to be practical is a data system that can track individual students across schools and districts, and capable of identifying and sharing student data between districts and states. For

many states and school systems, when a student moves in or out of a school, accessing student performance data can be very difficult. Without the ability to track individual students from year to year, schools have no way to determine how that student's achievement has advanced since the previous assessment. Essentially, schools cannot determine how much the student has learned over the course of the year, but instead get a "snapshot" of student performance at a given time.

A growth model takes a student where he or she starts, which is to say from the previous year's assessment, and updates that against the current year's assessment. If the student has made greater progress toward achieving state standards (or surpassed expectations), then the school (and the teacher) can "take credit" for this achievement. If the student has fallen further behind, the school and the teacher are provided an opportunity to review individual student progress to determine what areas are in need of intervention.

The U.S. Department of Education has endorsed growth models and has invited states to apply to conduct pilot programs of this model of accountability system. Several states in the region have had their pilot programs approved, including North Carolina and Tennessee (which have been approved since the 2005-2006 school year), and Arkansas and Florida (which were approved beginning with the 2006-2007 school year). State leaders are supportive of the approach, but have noted that in order to make a transition to such a model, states would need additional resources and technical support, particularly with respect to data management. As more states enter into pilot agreements with the U.S. Department of Education to use growth models for accountability purposes, those states lacking the technical or financial capacity to do so would increasingly be at a disadvantage vis-à-vis federal education sanctions. Increased, targeted financial support from the federal government for data collection, management and analysis will need to be a part of any policy that advances growth models for school and district accountability.

### ***Special Populations***

The inclusion or exclusion of special student populations has long been an issue in the No Child Left Behind Act. The rules guiding the implementation of the Act provide a cap on the percentage of students who may be included in proficiency counts who take alternative assessments (1 percent). Recently arrived (within 12 months) limited English proficient (LEP) students may be exempted from one administration of the state language arts assessment, but must be included in science and math assessments. It has been observed in relation to both of these instances that the federal government's objective—to ensure that the academic

progress of these populations is accounted for—at times seems to supersede the individual interests of these students. For students with cognitive disabilities or those who have recently arrived in the United States with no English background and, possibly illiterate in their native language, participation in state assessments can be a frustrating experience which underscores how far behind their peers they lag. Schools also object to the rigid timetable and inflexible quotas which do not reflect realistic expectations for these populations.

There have been concerns raised about the practice, promoted in NCLB, of assessing students with disabilities with their age or grade placement, which establishes an arbitrary performance standard for students who already have had detailed learning plans and goals crafted for them. Students with individualized Education Plans (IEPs) that stipulate below-grade-level competence expectations but are assessed on grade level often can have the effect of discouraging students with disabilities, reminding them of how much they do not know rather than measuring what they have accomplished.

Concerns also have been raised about sanctions being applied to schools based exclusively on the performance of students with disabilities. As this subgroup currently is the most likely to not meet AYP, schools often are found to be in need of improvement based on this one subset of the school population, which essentially mislabels the school for the greater majority of its population, obligates the school to expend resources to make interventions such as choice and supplemental educational services available to the general population, and diverts essential resources from addressing the core needs of students with disabilities. A recommended response to this issue is to separate the sanctions for specific subgroups. Thus, if students with disabilities are the only subgroup in a school that fail to meet AYP goals, interventions only apply to the school for that subgroup. This approach would better target resources and assets toward addressing the needs that currently are unmet. Schools would still publicly report their progress in meeting the needs of these students, but the response to not meeting targets in this instance shifts from a penalty to the entire school to increased resources to resolve the problem. Other responses to this situation include providing schools greater discretion in whether to include students with disabilities in accountability systems and on how to assess their progress or, at the very least, an upward adjustment in the exclusion percentage for students with cognitive disabilities.

With respect to LEP students, there is particular concern that including all students into language arts assessments within one year of arriving in the United

States is unrealistic and would lead to schools being unfairly identified as failing to meet students' needs, particularly in schools in which the LEP population is rapidly expanding. Experts and educators frequently recommend extending this deadline to two or three years, depending on the age of the child and the extent of educational experience the child had in their country of origin. Furthermore, for schools that fail to meet AYP for their LEP students, providing specific interventions for this population, as with students with disabilities also would provide a more targeted response than the current approach of globally holding the school in need of improvement.

In large part, growth models could resolve some of the problems inherent in assessing any special populations, but there remain specific concerns regarding the appropriateness, accuracy and effectiveness of existing assessment tools used for accountability purposes with students with special needs. The current provision to allow students who leave English language acquisition programs and enter the general population to be identified as former LEP students plays into this approach. This also would provide more meaningful analysis of how schools serve this highly diverse group of students while protecting the objectives of accountability that are the cornerstone of the Act. This approach does, however, significantly complicate data collection and management as well as the overall system by which a school determines its progress toward serving these students.

### *Cascade of Sanctions*

Under NCLB, each successive year that a school fails to meet AYP targets for any subgroup of students (or overall) various cumulative sanctions are applied. In the first year, schools are required to offer public schools choice. In the next year, in addition to choice, schools must provide students with supplemental educational services (SES), such as tutoring. These are followed by corrective action and restructuring by the states in the following two years, with the fifth year of failing to meet AYP resulting in the school operating under alternative governance.

Since NCLB was implemented, this “cascade of sanctions” has been applied to an ever-widening net of schools. Experiences with them have been less than encouraging. According to a report from the University of Indiana School of Education, fewer than 5 percent of students eligible for public school choice exercise that option, either due to a lack of communication from the school, lack of attractive or feasible options for the student, unwillingness on the part of the parent or the student to leave the school, or any number of other reasons. Supplemental educational services have been spotty in many parts of the country where they

are in the greatest demand—rural areas and urban centers—and need not be accredited, which has led to lamentably inconsistent quality. Again, few students (perhaps as few as 15 percent) take advantage of these services when offered, and the Government Accountability Office reports that as many as 20 percent of districts have no eligible students taking advantage of the services. As the sanctions increase in seriousness, including changes in school governance, experiences have been more limited, but these are very difficult politically and practically for states to put into effect, with the handful of states in the region embarking on these often having mixed results with their efforts.

While sanctions often are unpopular among schools and administrators, supporters of the Act insist that an accountability system that lacks enforcement mechanisms falls back into a compliance model and abandons the goal of improved student performance. The cascade of sanctions is scaled in such a way as to provide students and their parents with the greatest amount of control, the most options, and the best hope for improved outcomes for their student. This having been said, the U.S. Department of Education has acknowledged that some components of the system have not worked as intended. Chief among these has been the absence of SES in the very areas in which they are most needed and the restriction on providing these services by school systems themselves. The Department also has recognized that waiting until the second year of being in need of improvement in some ways handicaps schools from accessing the full range of tools that can help them improve their performance. As a remedy, limited pilot programs and waivers have been approved to allow school districts to offer these services and to offer them in the first year of NCLB actions.

While these moves will be welcome to many, a number of policymakers suggest that the sanctions be entirely reconsidered, including the possibility of allowing all to be selectively applied at the discretion of state education agencies. Furthermore, the order of the application of sanctions, particularly the application of school choice before supplemental services, is a matter of some concern as such a progression could serve to aggravate schools' challenges in meeting AYP goals by encouraging an exodus of highly motivated students but not providing any interventions for those students who remain in the school. An alternative is to require supplemental educational services, possibly onsite at the school during the school day to remove barriers to participation, in the first year a school misses AYP targets. This would entail increased resources directed to the district to hire appropriate staff to work with these students.

Also, given the paucity of options for school choice and providers of SES in urban and rural school districts, the application of sanctions tilts heavily toward suburban school districts. Providing incentives for tutoring services to enter rural and urban districts is one possibility for overcoming this disadvantage, but there is little opportunity for expanding public school choice options in these areas. Given this, school districts which are able to demonstrate severe limitations in options for school choice, private providers or supplemental education services should earn waivers allowing for adaptation of their implementation along with additional resources to accommodate the needs of students within the school.

## Recommendations & Observations

Five years after its passage, the overarching goal of the No Child Left Behind Act—to improve the educational achievement of all students in U.S. public schools—remains the driving force in educational policy. Questions remain as to whether the Act has had a beneficial effect on student learning, and the five-year span of the Act has not provided sufficient time for its provisions to have noticeable impacts on student achievement. All of this complicates efforts at reauthorization.

Nonetheless, the conversations and responses of state policymakers to the Act over the past several years point to some clear recommendations, such as:

Provide for increased state flexibility.

Provide states with greater latitude in addressing accountability for special populations.

Allow for expanded metrics for student performance (multiple measures) and differentiate between schools which fail to make AYP in one or two areas and those which struggle more broadly.

Provide financial incentives to states whose standards track closely to national and international expectations, and provide these states with greater flexibility and resources in dealing with schools that fail to meet AYP.

Increase federal dollars for NCLB and provide expanded flexibility to school systems and states in how these funds can be applied.

Maintain HOUSSE rules and provide states with additional flexibility in establishing highly qualified teacher requirements.

Reconfigure the cascade of sanctions and allow states to apply them in an order that best suits the needs of the school or school district.



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