

CRS Report for Congress

K-12 Education: Implementation Status of the No Child Left Behind Act of 2001 (P.L. 107-110)

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**Prepared for Members and
Committees of Congress**

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Summary

The No Child Left Behind Act of 2001 (NCLBA) amended and extended the Elementary and Secondary Education Act of 1965 (ESEA). ESEA programs are authorized through FY2008, and the 110th Congress is considering whether to amend and extend the ESEA.

The NCLBA, signed into law on January 8, 2002, expanded requirements for the use of standards and assessments to measure student academic achievement, and it strengthened state, local educational agency (LEA), and school accountability provisions related to student achievement and other outcomes. This report summarizes the provisions and the implementation status to date of several major NCLBA requirements as they relate to specific NCLBA programs, and it examines some of the implementation issues that have arisen as a consequence of these requirements. This report is divided by topic into eleven sections, following the sequential order (to the extent feasible) of NCLBA provisions. Although the report may be read in its entirety, each section is written to stand alone to assist readers who may elect to read only about topics of particular interest.

Section 1 of the report examines new standard and assessment requirements contained in Title I-A of the ESEA as amended by the NCLBA, as well as how these requirements build upon preexisting requirements, and the timeline for their implementation. Section 2 focuses on new requirements regarding the National Assessment of Educational Progress (NAEP) adopted by the NCLBA. Section 3 addresses the implementation of adequate yearly progress (AYP) requirements adopted in the NCLBA. Section 4 looks at the outcome accountability requirements included in the NCLBA. Section 5 examines NCLBA changes to ESEA provisions regarding the education of limited English proficient (LEP) students. Section 6 discusses NCLBA changes regarding teacher quality issues. Section 7 focuses on the Reading First program, newly authorized by the NCLBA. Section 8 discusses NCLBA changes that strengthen parental involvement requirements. Section 9 addresses NCLBA provisions requiring LEAs receiving funding under the ESEA to provide military recruiters with the same access to secondary school students that they provide to institutions of higher education or prospective employers. Section 10 addresses NCLBA changes to ESEA requirements applicable to the participation of children enrolled in private schools. Section 11 discusses the unsafe school choice option established by the NCLBA.

This report will be updated periodically.

Contents

Introduction	1
Section 1. Standards and Assessments	4
Implementation Status	7
Bush Administration Reauthorization Proposals	9
Implementation Issues	9
Section 2. National Assessment of Educational Progress	10
Implementation Status	12
Bush Administration Reauthorization Proposals	12
Implementation Issues	13
Section 3. Adequate Yearly Progress	14
Implementation Status	17
Implementation Issues	19
Section 4. Outcome Accountability Under ESEA Title I-A	22
Rewards, Support, and Recognition	23
School and LEA Improvement, Corrective Action, and Restructuring	23
Schools	24
LEAs	26
Assistance for Local School Improvement	26
Reports	27
Implementation Status	27
Data on Schools and LEAs Failing to Meet AYP and Identified for Improvement	27
School Choice and Supplemental Educational Services	31
Implementation Issues	32
Identification of Schools and LEAs for Improvement	32
Public School Choice	33
Supplemental Educational Services	33
Section 5. Education of Limited English Proficient Pupils	35
Language Acquisition State Grants	36
Implementation Status	37
Implementation Issues	38
LEP Assessments and Accountability	38
Implementation Status	39
Implementation Issues	41
Section 6. Teacher Quality	43
Requirement That All Teachers Be Highly Qualified	43
Implementation Status	44
Implementation Issues	45
Teacher and Principal Training and Recruiting Fund	46
Implementation Status	47
Implementation Issues	47

Section 7. Reading Skills Improvement Grants	48
Reading First	48
Implementation Status	49
Implementation Issues	50
Scientifically Based Research Requirements in the No Child Left Behind Act	51
Implementation Issues	52
Limitations of Existing Research	52
Identifying Relevant Resources	52
Section 8. Parental Involvement Requirements	55
ESEA Title I, Part A Requirements	56
Section 1118, “Parental Involvement”	56
Significant Title I-A Parental Involvement Requirements Outside Section 1118	58
Examples of Other ESEA Parental Involvement Requirements	60
Implementation Issues	61
Section 9. Military Recruitment at Secondary Schools	63
Implementation Status	64
Implementation Issues	66
Section 10. Participation of Children Enrolled in Private Schools	67
Implementation Status	69
Implementation Issues	70
Section 11. Unsafe School Choice Option	70
Implementation Status	71
Implementation Issues	71

List of Tables

Table 1. ESEA Title I-A Accountability Stages for Schools and LEAs	24
Table 2. Reported Percentage of Public Schools and Local Educational Agencies Failing to Make Adequate Yearly Progress on the Basis of Spring 2006 Assessment Results	29
Table 3. Number of Schools and LEAs Identified for Improvement	31

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Introduction

The No Child Left Behind Act of 2001 (NCLBA) amended and extended the Elementary and Secondary Education Act of 1965 (ESEA). ESEA programs are authorized through FY2008, and the 110th Congress is considering whether to amend and extend the ESEA.

The NCLB, signed into law on January 8, 2002, expanded requirements for the use of standards and assessments to measure student academic achievement; and it strengthened state, local educational agency (LEA), and school accountability provisions related to student achievement and other outcomes. This report summarizes the provisions and implementation status to date of several major NCLB requirements as they relate to specific NCLB programs, and it examines some of the implementation issues that have arisen as a consequence of these requirements. This report is divided by topic into eleven sections, following the sequential order (to the extent feasible) of NCLB provisions. Although the report may be read in its entirety, each section is written to stand alone to assist readers who may elect to read only about topics of particular interest. Selected issues raised in each section are briefly highlighted in the following synopsis.

Section 1 of the report examines new standard and assessment requirements contained in Title I-A of the ESEA, as amended by the NCLB, as well as how these requirements build upon preexisting requirements, and the timeline for their adoption. Section 1 also addresses two major questions regarding the implementation of standard and assessment requirements: what is the additional financial cost borne by states as they implement the newly required annual assessments in additional grades and incorporate new standards and assessments at three grade levels in science; and what are the potential educational costs and benefits of these changes?

Section 2 of the report focuses on the National Assessment of Educational Progress (NAEP), a federally funded series of assessments of the academic performance of elementary and secondary students in the United States. The NCLB includes a new requirement that states wishing to remain eligible for grants under ESEA Title I-A participate in biennial state NAEP tests in 4th and 8th grade. Section 2 addresses three implementation issues: will these new requirements increase the influence of NAEP on state standards and assessments; will problems arise as a result of the new mandatory requirement for participation of states, but continuing

voluntary participation of pupils; and can NAEP results be used to “confirm” state test score trends?

Section 3 of the report addresses the implementation of adequate yearly progress (AYP) requirements that were made more challenging under the NCLB. The primary purpose of AYP requirements is to serve as the basis for identifying schools and LEAs where performance is inadequate, so that these inadequacies may be addressed, first through provision of increased support and, ultimately, through a variety of “corrective actions.” The NCLB requires states to make concrete progress toward meeting an ultimate goal of all pupils reaching a proficient or advanced level of achievement within 12 years. Some of the implementation issues discussed in Section 3 include whether the Department of Education’s (ED) reviews of state AYP policies are rigorous, transparent, appropriate, and consistent; whether the goal of all students reaching a proficient or higher level of achievement within 12 years will lead to states weakening pupil achievement standards; whether “too many” schools and LEAs are failing to meet AYP goals; whether the wide variations in state standards for pupil achievement are undermining AYP provisions; whether some states are effectively excluding some disadvantaged pupil groups from being considered in school-level AYP determinations by setting minimum group sizes for these pupil groups too high; and whether the NCLB requirement for disaggregation of pupil groups in AYP determinations makes it too difficult for schools or LEAs with diverse populations to meet AYP standards.

Section 4 of the report looks at new outcome accountability requirements established in the NCLB. LEAs and schools are being held to higher accountability standards under the NCLB. This section discusses in detail the system of rewards and sanctions that has been established to hold Title I-A schools and LEAs accountable for their performance. Some of the implementation issues discussed in Section 4 include the impact of ED’s approval of changes in state accountability plans; difficulties that have arisen in implementing the requirement that students attending schools identified for school improvement be provided public school choice; and difficulties that have arisen in the implementation of the requirement that students attending schools identified for a second year of school improvement, corrective action, or restructuring be offered supplemental educational services.

Section 5 of the report examines NCLB changes to ESEA provisions regarding the education of limited English proficient (LEP) students. Among other things, the NCLB changed two grant programs for LEP students from competitive grants to formula grants, and it added new assessment and accountability provisions, including requirements regarding English language assessments. Implementation issues that have arisen include the effect on states of year-to-year fluctuations in funding under the newly adopted formula grant programs, the shortage of qualified bilingual teachers, and difficulties in meeting the new requirements for English language assessments.

Section 6 of the report discusses NCLB changes regarding teacher quality issues. Major changes include a requirement that all teachers be highly qualified by the end of the 2005-2006 school year, and the replacement of the ESEA Eisenhower Professional Development and Class Size Reduction programs with a new Teacher and Principal Training and Recruiting Fund. One implementation issue concerns the

scope and application of the highly qualified teacher requirements (HQT), the meaning of some of the HQT requirements, and the ability of different kinds of districts to meet them. A second implementation issue concerns the impact of enhanced flexibility in the new Teacher and Principal Training and Recruiting Fund. Concerns have been raised that this may result in a shift away from the emphasis on math and science professional development in the Eisenhower program.

Section 7 of the report focuses on the Reading First (RF) program. The RF program was newly authorized by the NCLB. The program is intended to incorporate the latest scientific understanding of what works in teaching reading to improve and expand K-3 reading programs to address concerns about student reading achievement and to reach children at younger ages. Implementation issues that have arisen include criticisms by some of the perceived “overprescriptiveness” of the RF program as it has been administered, perceptions of insufficient transparency regarding ED’s requirements of states, and allegations of conflicts of interest between consultants to the program and commercial reading and assessment companies. ED’s OIG has issued several critical audit reports on Reading First. In addition, the House Committee on Education and Labor has held oversight hearings on Reading First, and the Senate Committee on Health, Education, Labor and Pensions issued a report on Reading First Technical Assistance directors with financial ties to publishers.

Section 8 of the report discusses NCLB changes that strengthen parental involvement requirements. Examples of these changes include new requirements for school-parent compacts, a requirement that 1% of LEA Title I-A grants be set aside for parental involvement activities, and a requirement that states and LEAs participating in Title I-A provide aggregate assessment results and certain other data to parents and the public through report cards. National studies on implementation issues of current parental involvement provisions are not yet available. However, studies of previous parental involvement requirements found that 25% of Title I-A schools had not implemented school-parent compacts, that parents remained less involved with their children’s schools than desirable, and that parents were not receiving the desired level or types of information from school report cards.

Section 9 of the report addresses NCLB provisions requiring LEAs receiving funding under the ESEA to provide military recruiters with the same access to secondary school students that they provide to postsecondary institutions or prospective employers. Implementation issues that have arisen concern some confusion and controversy over the implementation of the requirements, in part due to provisions permitting secondary school students or their parents to choose to notify the LEA that they are opting out of the disclosure of this information. Among other concerns, ED has stated that some LEAs have misapplied the parental “opt out” requirements by requiring written parental consent before providing information to military recruiters, thereby creating an “opt in” rather than an “opt out” policy. On the other hand, some parent groups have criticized schools for failing to make the “opt out” option clearer to parents.

Section 10 of the report addresses NCLB changes to ESEA requirements applicable to the participation of children enrolled in private schools. The most significant changes address how services to eligible children must be arranged between LEAs and the private schools in which eligible children are enrolled; the

specific programs under which services must be provided; and how the effectiveness of these services must be assessed. Implementation issues that have arisen include concerns regarding the timeliness of LEA consultations with private school officials, and concerns regarding the availability of funding to serve eligible private school students.

Section 11 of the report discusses the unsafe school choice option established by the NCLB. This new provision requires states to establish statewide policies that provide an opportunity to transfer to another school within the same LEA to students attending persistently dangerous public schools, and to students who are victims of a violent crime that occurred on their school grounds. In implementing this provision, concerns have been raised because — although most states have established criteria for identifying unsafe schools and have established student transfer policies — few schools have actually been identified as unsafe.

Section 1. Standards and Assessments¹

The provisions of the Elementary and Secondary Education Act (ESEA) Title I-A, as amended by the No Child Left Behind Act (NCLB), regarding standards and assessments reinforced and expanded upon provisions initially adopted in the Improving America's Schools Act of 1994 (IASA). These standard and assessment provisions are linked to the receipt of financial assistance under ESEA Title I-A; that is, they apply only to states wishing to maintain eligibility for Title I-A grants.²

Requirements Initially Adopted Before the NCLB. The IASA of 1994 required states to adopt standards and assessments in the subjects of reading/language arts and mathematics at three grade levels — at least once in each of the grade ranges of 3-5, 6-9, and 10-12. States wishing to remain eligible for Title I-A grants are required to develop or adopt curriculum content standards, as well as academic achievement standards and assessments tied to the standards. States were given several years to meet the IASA requirements; the full system of standards and assessments was not required to be in place until the 2000-2001 school year. These requirements continue under the NCLB.

Standard and Assessment Requirements Newly Adopted Under the NCLB. In addition to the IASA's requirement for states to implement standards and assessments in reading/language arts and mathematics at three grade levels, the NCLB required states participating in ESEA Title I-A to

¹ This section of the report was written by Wayne C. Riddle. For additional information on this topic, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne C. Riddle.

² This currently includes all states (including the District of Columbia and Puerto Rico, which are generally treated as “states” under ESEA programs).

- develop and adopt standards and assessments in the subjects of mathematics and reading/language arts in *each* of grades 3-8 by the end of the 2005-2006 school year, assuming certain minimum levels of annual federal funding are provided for state assessment grants;
- adopt standards in science (at three grade levels) by the end of the 2005-2006 school year; and
- adopt assessments in science (at three grade levels) by the end of the 2007-2008 school year.

To the extent practicable, limited English proficient (LEP) pupils are to be assessed in the language and form most likely to yield accurate and reliable information on what they know and can do in academic content areas (in subjects other than English itself). However, pupils who have attended schools in the United States (excluding Puerto Rico) for three or more consecutive school years are to be assessed in English.³ In addition, “reasonable” adaptations and accommodations are to be provided for students with disabilities, consistent with the provisions of the Individuals with Disabilities Education Act (IDEA).⁴

Achievement standards must establish *at least* three performance levels for all pupils — advanced, proficient, and partially proficient (or basic). If no agency or entity in a state has authority to establish statewide standards or assessments (as is generally assumed to be the case for Iowa and Nebraska), then the state may adopt either (a) statewide standards and assessments applicable only to Title I-A pupils and programs, or (b) a policy providing that each LEA receiving Title I-A grants will adopt standards and assessments that meet the requirements of Title I-A and are applicable to all pupils served by each such LEA.

State educational agencies (SEAs) must provide evidence from a test publisher or other relevant source that their assessments are of adequate technical quality for the purposes required under Title I-A. Several statutory constraints have been placed on the authority of the Secretary of Education to enforce these standard and assessment requirements. First, the ESEA states that nothing in Title I shall be construed to authorize any federal official or agency to “mandate, direct, or control a State, local educational agency, or school’s specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction” (Sections 1905, 9526, and 9527). Second, states may not be required to submit their standards to the U.S. Secretary of Education (Section 1111(b)(1)(A)) or to have their content or achievement standards approved or certified by the federal government (Section 9527(c)) in order to receive funds under the ESEA, other than the (limited) review necessary in order to determine whether the state meets the Title I-A technical

³ LEAs may continue to administer assessments to pupils in non-English languages for up to a total of five years if, on a case-by-case basis, they determine that this would likely yield more accurate information on what the students know and can do.

⁴ For further information on this and related topics, see CRS Report RL32913, *The Individuals with Disabilities Education Act (IDEA): Interactions with Selected Provisions of the No Child Left Behind Act (NCLBA)*, by Richard N. Apling and Nancy Lee Jones.

requirements. Finally, no state plan may be disapproved by ED on the basis of specific content or achievement standards, or assessment items or instruments (Section 1111(e)(1)(F)). Assessment results must be provided to LEAs, schools, and teachers before the beginning of the subsequent school year so that they might be available in a timely manner to make adequate yearly progress determinations for schools and LEAs (discussed later in this report).

In addition, as discussed later in this report, states are to provide that their LEAs will annually assess the English language proficiency of their LEP pupils, including pupils' oral, reading, and writing skills. Finally, as is also discussed later in this report, the NCLB requires states receiving grants under ESEA Title I-A to participate in biennial state-level administrations of the National Assessment of Educational Progress in 4th and 8th grade reading and mathematics. The timing of several of the key requirements listed above is summarized in the following box.

**Schedule for Implementation
of NCLB Standard and Assessment Requirements**

School Year 2000-2001

- States were to have adopted content and performance standards, plus assessments linked to these, at three grade levels in mathematics and reading. These requirements were included in the 1994 reauthorization of the ESEA.

School Year 2002-2003

- States were required to begin to annually assess the English language proficiency of LEP pupils.
- States were first required to participate in biennial administration of the NAEP.

School Year 2005-2006

- Standards-based assessments in reading and mathematics were to be administered to pupils in each of grades 3-8 by the end of this year.
- States were required to adopt content and achievement standards at three grade levels in science by the end of this year.

School Year 2007-2008

- States must begin to administer assessments at three grade levels in science by the end of this year.

The ESEA authorizes (in Title VI-A-1) annual *grants to the states* to help pay the costs of meeting the Title I-A standard and assessment requirements added by the NCLB (i.e., assessments in science at three grade levels and at grades 3-8 in mathematics and reading). These grants may be used by states for development of standards and assessments or, if those have been developed, for assessment administration and such related activities as developing or improving assessments of

the English language proficiency of LEP pupils. Enforcement of the state assessment requirements that were newly adopted under the NCLB has been contingent upon the appropriation of minimum annual amounts for these state assessment grants; their implementation may be delayed by one year for each year that the following minimum amounts are *not* appropriated: FY2002 — \$370 million; FY2003 — \$380 million; FY2004 — \$390 million; and each of FY2005-FY2008 — \$400 million. For each of FY2002-FY2008, at least the minimum amounts have been appropriated for these grants.⁵

Implementation Status. Although the focus of this report is on the implementation of major new requirements of the NCLB, much of the implementation activity regarding standards and assessments during the initial years following enactment of the NCLB was focused on the extended process of implementing the requirements adopted under the previous version of the ESEA, the IASA. These requirements for standards and assessments in reading/language arts and mathematics at three grade levels were supposed to have been met by the end of the 2000-2001 school year, but few states met that initial deadline.⁶

In their reviews of state systems of standards and assessments, peer reviewers and ED staff have been considering only various forms of “evidence” submitted by the states that are intended to document that state standards and assessments meet the specific Title I-A requirements; that is, they are not reviewing the standards and assessments themselves. The peer reviews identified a number of common problem areas, including the following: (a) a lack of adequate accommodation or incorporation of alternate assessments for LEP and disabled pupils, (b) insufficient documentation of the technical quality of assessments, and (c) inadequate timelines for implementation of the assessments.

The Department’s final regulations on the NCLB standard and assessment requirements were published in the Federal Register on July 5, 2002.⁷ ED published supplementary “non-regulatory draft guidance” on all of the standard and assessment requirements, as well as those related to NAEP participation, on March 10, 2003.⁸ This document was intended to provide more detailed guidance consistent with the regulations discussed above. More recently, ED officials have published regulations and other policy guidance on participation rates, plus the treatment of LEP pupils and certain pupils with disabilities in assessments.⁹

⁵ The ESEA also authorizes competitive grants to states for the development of enhanced assessment instruments. Funds appropriated each year for state assessment grants that are in excess of the “trigger” amounts for assessment development grants listed above are to be used for enhanced assessment grants.

⁶ See [<http://www.ed.gov/admins/lead/account/finalassess/index.html>] for details regarding state compliance with the IASA assessment requirements.

⁷ Department of Education, “Elementary and Secondary Education: Disadvantaged children; academic achievement improvement,” 67 *Federal Register* 45038-45047, July 5, 2002.

⁸ Available at [<http://www.ed.gov/policy/elsec/guid/saaguidance03.doc>].

⁹ For details, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title* (continued...)

Beginning in the spring of 2006, ED has been conducting peer reviews for each state's assessment program, to determine if they meet the NCLB requirements to test pupils in each of grades 3-8 in reading and mathematics, and to adopt content and achievement standards in science. A letter sent to chief state school officers in April 2006 by the Assistant Secretary for Elementary and Secondary Education¹⁰ describes the current categories of results from the state reviews. These categories, and the number of states in each category as of January 3, 2008, include the following:

- *Full Approval.* Meets all statutory and regulatory requirements (24 states: Alabama, Alaska, Arkansas, Arizona, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Montana, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia).
- *Full Approval with Recommendations.* Meets all statutory and regulatory requirements, but ED makes selected recommendations for improvement (three states: Indiana, North Carolina, and Utah).
- *Approval Expected.* "Evidence to date" suggests that the state's assessment system is fully compliant with the statutory and regulatory requirements, but some elements of the system were not complete as of July 1, 2006. The state must provide evidence of compliance with remaining requirements before administering its assessments for the 2006-2007 school year (five states: Connecticut, Maine, New Mexico, New York, and Rhode Island, plus the District of Columbia).
- *Approval Pending.* A limited number (generally one to three) of fundamental components of the state assessment system fail to meet the statutory or regulatory requirements (18 states: all of those not listed in another category, plus Puerto Rico).

Finally, one state — Mississippi — has been granted a one-year waiver to meet the assessment requirements, in recognition of delays arising from the 2005 Gulf Coast hurricanes.

States in the last two categories above (Approval Pending and Not Approved) face the possibility of loss of Title I-A administrative funds (25% in the case of the two "not approved" states, 10% or 15% in the case of "approval pending" states), plus the additional sanctions of limitations on approval of flexibility requests, and heightened oversight by ED. According to ED, withheld funds (from the SEA) would be distributed to LEAs in the state. In addition, states that persistently and thoroughly fail to meet the standard and assessment requirements over an extended period of time potentially may be subject to elimination of their Title I-A grants

⁹ (...continued)

I-A Requirements Under the No Child Left Behind Act, by Wayne C. Riddle.

¹⁰ See [<http://www.ed.gov/admins/lead/account/saapr3.pdf>].

altogether, since they would be out of compliance with a basic program requirement.¹¹

Bush Administration Reauthorization Proposals. The Bush Administration's Reauthorization Blueprint,¹² released in January 2007, contains a proposal regarding the ESEA Title I-A state assessment provisions. Participating states would be required to develop content and performance standards in English and math covering 2 additional years of high school by 2010-2011 and assessments linked to these standards by 2012-2013. The assessments would include a pair of 11th grade assessments of college readiness in reading and math. However, states would be required only to report the results of these assessments, not to use them for adequate yearly progress determinations.

Implementation Issues. Issues raised in the implementation of the ESEA Title I-A standards and assessment requirements thus far include the following:

- *What is the financial cost of developing and implementing the required assessments, and to what extent have federal grants been sufficient to pay for them?* The addition of requirements to conduct annual assessments in at least four more grades than required previously, and to include standards and assessments at three grade levels in science, have required most states to significantly increase their expenditures for standard and test development and administration. It is very difficult, if not impossible, to specify all of these potential costs with precision. The NCLB conference report directs the Government Accountability Office (GAO) to conduct a study of the costs to each state of developing and administering the assessments required under Title I-A; however, no information is yet available from the study. Studies by private organizations of the costs of meeting the NCLB assessment requirements, and of whether those costs exceed the aggregate level of assessment development funds provided under the NCLB, have reached contradictory results.
- *What are the likely educational benefits and costs of the expanded Title I-A assessment requirements?* The primary benefit from annual administration of a consistent series of standards-based tests would be the provision of timely information on the performance of pupils, schools, and LEAs throughout most of the elementary and middle school grades. The availability of such consistent annual assessment results would be of value for both diagnostic and accountability purposes. Arguably, additional assessment information will improve the quality of the adequate yearly progress (AYP) determinations

¹¹ Thus far, the sanction of withholding 25% of state administration funds for failure to meet the 1994 assessment requirements has been applied at least twice, to Georgia in 2003 and the District of Columbia in 2005, for failure to administer assessments linked to state content standards.

¹² The document is available from the Department of Education at [<http://www.ed.gov/policy/elsec/leg/nclb/buildingonresults.pdf>].

that are based primarily on the assessments, and help determine whether Title I-A is meeting its primary goals, such as reducing achievement gaps between disadvantaged and other pupils. At the same time, the expanded Title I-A assessment requirements might lead to a variety of educational “costs,” or unintended consequences. One such cost would be expanded federal influence on state and local education policies; for example, assessment requirements attached to an aid program focused on *disadvantaged pupils* may broadly influence policies regarding standards, assessments, and accountability affecting *all pupils* in participating states. In the majority of states that did not previously administer standards-based assessments in each of grades 3-8, their policy may have resulted primarily from cost or time constraints, or the states may have determined that annual testing of this sort is not educationally appropriate, or at least that its benefits are not equal to the relevant costs. These costs may include an increased risk of “overemphasis” on preparation for the tests, especially if the tests do not adequately assess the full range of knowledge and skills that schools are expected to impart.

Section 2. National Assessment of Educational Progress¹³

The National Assessment of Educational Progress (NAEP) is a federally funded series of assessments of the academic performance of elementary and secondary students in the United States. NAEP tests generally are administered to a sample of public and private school pupils in grades 4, 8, and 12 in a variety of subjects, including reading, mathematics, science, writing, and less frequently, geography, history, civics, social studies, and the arts. NAEP assessments have been conducted since 1969.

NAEP is administered by the National Center for Education Statistics (NCES), with oversight and several aspects of policy established by the National Assessment Governing Board (NAGB). Both entities are part of the U.S. Department of Education. Since 1983, the assessment has been developed primarily under a cooperative agreement with the Educational Testing Service (ETS), a private, non-profit organization that also develops and administers such assessments as the Scholastic Assessment Test (SAT).

NAEP consists of two separate groups of tests. One is the *main assessment*, in which test items (questions) are revised over time in both content and structure to reflect more current instructional standards and practices. The main assessment also reports pupil scores in relation to *performance levels*, which are standards for pupil achievement that are based on score thresholds set by NAGB. The performance

¹³ This section was written by Wayne C. Riddle. For additional information on this topic, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne C. Riddle.

levels are considered to be “developmental,” and are intended to place NAEP scores into context. They are based on determinations by NAGB of what pupils should know and be able to do at basic (“partial mastery”), proficient (“solid academic performance”), and advanced (“superior performance”) levels with respect to challenging subject matter. The second group of NAEP tests form the long-term trend assessment, which monitors trends over time in math and reading achievement.¹⁴

All NAEP tests are administered to only a representative sample of pupils enrolled in public and private K-12 schools, and the tests are designed so that no pupil takes an entire NAEP test. The use of sampling is intended to minimize both the costs of NAEP and test burdens on pupils. It also makes it possible to include a broad range of items in each test. Since no individual pupil takes an entire NAEP test, it is impossible for NAEP to report individual pupil scores.

The frameworks for NAEP tests provide a broad outline of the content on which pupils are to be tested. Frameworks are developed by NAGB through a national consensus approach involving teachers, curriculum specialists, policymakers, business representatives, and the general public. In developing the test frameworks, various state and national standards are taken into consideration, but the frameworks are not intended to specifically reflect any particular set of standards. In addition, pupils and school staff fill out background questionnaires.

Although NAEP, as currently structured, cannot provide assessment results for individual pupils, the levels at which scores could be provided — the nation overall, states, LEAs, or schools — depend on the size and specificity of the sample group of pupils tested. NAEP has always provided scores for the nation as a whole and four multistate regions. Beginning in 1990, NAEP has conducted a limited number of state-level assessments in 4th and 8th grade mathematics, reading and, beginning in 1996, science. Under state NAEP, the sample of pupils tested in a state is increased in order to provide reliable estimates of achievement scores for pupils in each participating state. Beginning in 2002, NAEP mathematics and reading scores have also been compiled for a small number of large, central city LEAs, as part of a Trial Urban District Assessment program.

Until enactment of the NCLB, participation in NAEP was voluntary for states; the additional cost associated with state NAEP administration was borne by the states; and, after participating in any state NAEP test, states could separately decide whether to allow the release of NAEP results for their state. As with other main NAEP tests, state NAEP scores are reported with respect to performance levels — basic, proficient, and advanced — developed by NAGB. In general, approximately 40 states participated in state-level NAEP assessments in reading and mathematics between 1990 and 2000, and all “states” except two (South Dakota and Puerto Rico) participated in state NAEP at least once during this period.

¹⁴ Since the long-term trend assessment is not involved with the ESEA Title I-A assessment requirements, it will not be discussed further.

The NCLB provides that all states wishing to remain eligible for grants under ESEA Title I-A are required to participate in state NAEP tests in 4th and 8th grade reading and mathematics, which are administered every two years. The costs of testing expanded pupil samples in the states are paid by the federal government. An unstated but implicit purpose of this requirement is to “confirm” trends in pupil achievement, as measured by state-selected assessments.¹⁵ In addition, agents of the federal government are prohibited from using NAEP assessments to influence state or LEA instructional programs or assessments.

Consistent with these NCLB provisions, appropriations for NAEP and NAGB activities increased substantially from \$40 million for FY2001 to \$111.6 million for FY2002. Funding for subsequent years has varied within a more narrow range: \$94.8 million for each of FY2003 and FY2004, \$94.1 million for FY2005, \$93.1 million for each of FY2006 and FY2007, and \$104.1 million for FY2008.

Implementation Status. In the period since enactment of the NCLB, a number of steps have been taken toward implementation of the new requirements for state participation in NAEP. First, the schedule for test administration has been revised to provide for administration of state NAEP tests in 4th and 8th grade reading and mathematics every two years, beginning with the 2002-2003 school year (spring 2003). Initial NAEP 4th and 8th grade reading and mathematics results for all states (but not Puerto Rico; see below) were released in November 2003. Subsequent rounds of NAEP tests was administered in all states in 2005 and 2007.

In addition, several changes to NAEP policies and practices have been implemented to complement the expanded role of NAEP under the NCLB.¹⁶ For example, in recognition of the increased emphasis on measurement of performance gaps among different demographic groups of pupils in the NCLB, more questions are being added at the upper and lower ends of the difficulty range, so that achievement gaps among pupil groups can be more reliably measured.

Special issues arise with respect to Puerto Rico, which is treated as a state under ESEA Title I-A but did not participate in state NAEP tests prior to the enactment of the NCLB. Questions have been raised about the comparability of tests administered in different languages, especially in reading. NAEP tests in mathematics were administered to 4th and 8th grade pupils in Puerto Rico in 2003 and 2005; results from both test administrations were released in 2007.¹⁷

Bush Administration Reauthorization Proposals. The Bush Administration’s Reauthorization Blueprint contains proposes that states receiving Title I-A grants would be required to include NAEP results, along with results on

¹⁵ See the National Assessment Governing Board, *Using the National Assessment of Educational Progress to Confirm State Test Results*, report prepared by the Ad Hoc Committee on Confirming Test Results, March 1, 2002, available at [http://www.nagb.org/pubs/color_document.pdf].

¹⁶ See *NAGB Adopts Policies to Implement the No Child Left Behind Act of 2001* at [<http://www.nagb.org/>], plus [<http://nces.ed.gov/nationsreportcard/about/current.asp>].

¹⁷ See [<http://nces.ed.gov/nationsreportcard/puertorico/>].

state assessments, on state report cards, to facilitate cross-state comparisons of achievement levels. Finally, the Administration has requested an increased FY2008 appropriation of \$116.6 million for NAEP, in order to support expansion of biennial state-level NAEP assessments in reading and math to the 12th grade in 2009.

Implementation Issues. Although the NAEP participation requirements of the NCLB are being implemented fully and on schedule, a number of issues have been raised regarding these requirements:

- *Might the influence of NAEP on state standards and assessments be increased as a result of the increased attention to, and required participation in, NAEP tests?* State involvement with NAEP has changed significantly under the NCLB, although the stakes for states remain relatively low. State results are being published as an implicit “confirmation” of test score trends on state assessments, but these NAEP scores still have no direct impact on state eligibility for federal assistance. Nevertheless, even a small increase in the stakes associated with state performance on NAEP tests attracts attention to the possibility that NAEP frameworks and test items might influence state standards and assessments. To the extent that the required participation in NAEP increases attention to state performance on these tests, there might be a basis for concern that states would have an incentive to modify their curriculum content standards to more closely resemble the NAEP test frameworks. To counteract this potential issue, the NCLB prohibits the use of NAEP assessments by agents of the federal government to influence state or LEA instructional programs or assessments. Nevertheless, subtle, indirect, and/or unintended forms of influence may be virtually impossible to detect or prohibit.
- *Might a conflict arise between the requirement for NAEP participation by states participating in ESEA Title I-A and the provision that participation in NAEP tests is voluntary for pupils?* Some have expressed concern that, in a time of likely increased assessment activity for pupils nationwide, resistance to participation in NAEP might grow to an extent that it threatens the quality of the national and state samples of tested pupils, leaving states stuck between a requirement to participate in NAEP and an inability to recruit a sufficiently large sample of pupils to participate in order to produce valid and reliable assessment results. The primary counter to this concern is that the policies regarding voluntary participation in NAEP have, in practice, changed only modestly. While states or LEAs previously could have mandated participation by pupils in the past, apparently they generally attempted to avoid doing so.
- *Can NAEP results be used to “confirm” state test score trends? And, for the participating LEAs, can results under the Trial Urban Assessment be used to “confirm” score trends on state tests?* An unstated, but clearly implicit, purpose of the state NAEP participation requirement is to “confirm” trends in pupil

achievement, as measured by state-selected assessments by comparing them with trends in NAEP results. While still “developmental,” NAEP performance standards are implicitly a form of “nationally consistent” standards, in contrast to widely varying state standards. Some have questioned whether it is possible or appropriate to use results on one assessment to “confirm” results on another assessment that may have been developed very differently. State assessments vary widely in terms of several important characteristics, such as the content and skills that they are designed to assess, their format, the time of year that tests are administered, the stakes associated with test performance, and modes of response. State assessments are explicitly linked to state content and performance standards, which is not the case with NAEP. At the same time, there is substantial evidence that NAEP’s pupil performance standards are significantly more challenging than those of most states.¹⁸ As a result, some state assessments will be much more similar to NAEP in these important respects than others, and there will be consequent variation in the significance of similarities or differences when comparing trends in NAEP versus state assessment score trends for pupils.

Section 3. Adequate Yearly Progress¹⁹

Since the 1988 reauthorization of the ESEA (P.L. 100-297), the accountability provisions of Title I-A have been increasingly focused on achievement and other outcomes for participating pupils and schools. Since the subsequent ESEA reauthorization in 1994 (the Improving America’s Schools Act of 1994, P.L. 103-382), and particularly under the No Child Left Behind Act of 2001 (NCLB, P.L. 107-110), a key concept embodied in these outcome accountability requirements is that of “adequate yearly progress (AYP)” for schools, LEAs, and (with much less emphasis) states overall. The primary purpose of AYP requirements is to serve as the basis for identifying schools and LEAs where performance is inadequate, so that these inadequacies may be addressed, first through provision of increased support and, ultimately, through a variety of “corrective actions.” These actions are to be taken with respect to schools or LEAs that fail to meet AYP for *two consecutive years or more*; no action need be taken with respect to a school or LEA failing to meet AYP standards for only one year at a time. (See discussion below on “Outcome Accountability under ESEA Title I-A.”)

Through the NCLB, the Title I-A requirements for state-developed standards of AYP were substantially expanded in scope and specificity. The NCLB provisions

¹⁸ See, for example, “Keeping An Eye on State Standards, A Race to the Bottom?,” by Paul E. Peterson and Frederick M. Hess, *Education Next*, Summer 2006, p. 28.

¹⁹ This section was written by Wayne C. Riddle. For additional information on this topic, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*; and CRS Report RL33032, *Adequate Yearly Progress (AYP): Growth Models Under the No Child Left Behind Act*, both by Wayne C. Riddle.

regarding AYP may be seen as an evolution of, and as a reaction to perceived weaknesses in, the AYP requirements of the 1994 IASA. The latter were frequently criticized as being insufficiently specific, detailed, or challenging, especially in their failure to focus on specific disadvantaged pupil groups or to require continuous improvement toward any ultimate goal.

Under the NCLB, AYP is defined primarily on the basis of multiple aggregations of pupil scores on state assessments of academic achievement. State AYP standards must also include at least one additional academic indicator. In the case of high schools, this additional indicator must be the graduation rate; for elementary and middle schools, the attendance rate is often used as the additional indicator. The additional indicators may not be employed in a way that would reduce the number of schools or LEAs identified as failing to meet AYP standards. In addition, AYP calculations must be disaggregated; that is, they must be determined separately and specifically for not only all pupils but also for several demographic groups of pupils within each school, LEA, and state. The specified demographic groups are

- economically disadvantaged pupils,
- LEP pupils,
- pupils with disabilities, and
- pupils in major racial and ethnic groups,
- as well as all pupils.

However, there are three major constraints on the consideration of these pupil groups in AYP calculations. First, pupil groups need not be considered in cases where their number is so relatively small that achievement results would not be statistically significant or the identity of individual pupils might be divulged. The selection of the minimum number (n) of pupils in a group to be considered in AYP determinations has been left largely to state discretion, and state policies regarding “n” have varied widely, from as few as 5 pupils to as many as 200 in some cases, with consequent wide variation in the extent to which pupils in the groups listed above are actually taken into specific consideration in AYP determinations for schools and LEAs. Second, it has been left to the states to define the “major racial and ethnic groups” on the basis of which AYP must be calculated; some states have identified substantially more such groups than have other states. And third, pupils who have not attended the same school for a full year need not be considered in determining AYP at the school level, although they are still to be included in LEA and state AYP determinations (if they attended schools in the same LEA or state for the full academic year).

AYP standards under the NCLB must be applied to *all* public schools, LEAs, and to states overall, if a state chooses to receive Title I-A grants. However, corrective actions for failing to meet AYP standards need only be applied to schools and LEAs participating in Title I-A, and there are no consequences for states failing to meet AYP standards beyond the provision of technical assistance.

AYP standards developed by the states must incorporate concrete movement toward meeting an *ultimate goal* of all pupils reaching a proficient or advanced level of achievement by the end of the 2013-2014 school year. The steps — that is,

required levels of achievement — toward meeting this goal must increase in “equal increments” over time. The first increase in the thresholds had to occur after no more than two years, and remaining increases at least once every three years. Several states have accommodated these requirements in ways that assume much more rapid progress in the later years of the period leading up to 2013-2014 than in the earlier period.

The primary basic structure for AYP under the NCLB is now specified in the authorizing statute as a “group status model.”²⁰ A “uniform bar” approach is employed: states are to set a threshold percentage of pupils at proficient or advanced levels of performance each year that is applicable to all pupil subgroups of sufficient size to be considered in AYP determinations. The threshold levels of achievement are to be set separately for reading and math, and may be set separately for each level of K-12 education (elementary, middle, and high schools).

In determining whether scores for a group of pupils are at the required level, the averaging of scores over two to three years is allowed. In addition, the NCLB statute includes an alternative *safe harbor* provision, under which a school that does not meet the standard AYP requirements may still be deemed to meet AYP if there is a 10% reduction, compared to the previous year, in the number of pupils in each of the pupil groups failing to reach the standard requirement, and those groups also make progress on at least one other academic indicator included in the state’s AYP standards. This alternative provision adds “successive group improvement” as a secondary type of AYP model under the NCLB.

A third basic type of AYP model, not explicitly mentioned in the NCLB statute, is the *individual/cohort growth* model. The key characteristic of this model is a focus on the rate of change over time in the level of achievement among cohorts of the same pupils. Growth models are longitudinal, based upon the tracking of the same pupils as they progress through their K-12 education careers. Although the progress of pupils is tracked individually, results are typically aggregated when used for accountability purposes. In general, growth models would give credit for meeting steps along the way to proficiency in ways that a status model typically does not.

In November 2005, the Secretary of Education announced a growth model pilot program under which up to 10 states would be allowed to use growth models to make AYP determinations.²¹ Thus far, the proposals of nine states (Alaska, Arizona, Arkansas, Delaware, Florida, Iowa, Ohio, North Carolina, and Tennessee) have been approved to participate in this pilot program.²² In December 2007, the cap on the

²⁰ For a discussion of the models of AYP, see CRS Report RL33032, *Adequate Yearly Progress (AYP): Growth Models Under the No Child Left Behind Act*, by Wayne C. Riddle.

²¹ U.S. Department of Education, “Secretary Spellings Announces Growth Model Pilot, Addresses Chief State School Officers’ Annual Policy Forum in Richmond,” press release, November 18, 2005, at [<http://www.ed.gov/news/pressreleases/2005/11/11182005.html>].

²² For details on the growth model pilot, see CRS Report RL33032, *Adequate Yearly Progress (AYP): Growth Models Under the No Child Left Behind Act*, by Wayne C. Riddle.

number of states that could participate in the growth model pilot was lifted by the Secretary of Education.²³

Finally, the NCLB AYP provisions include an assessment participation rate requirement. In order for a school to meet AYP standards, at least 95% of all pupils, as well as at least 95% of each of the demographic groups of pupils considered for AYP determinations for the school or LEA, must participate in the assessments that serve as the primary basis for AYP determinations.²⁴

Implementation Status. States began determining AYP for schools, LEAs, and the states overall based on the NCLB provisions beginning with the 2002-2003 school year. The deadline for states to submit to ED their AYP standards based on the NCLB provisions was January 31, 2003, and all states met this deadline. On June 10, 2003, ED announced that accountability plans had been approved for all states. However, many of the approved plans required states to take additional actions following submission of their plan.²⁵

In the period preceding ED's review of state accountability plans under the NCLB, the Department published regulations in the *Federal Register* on December 2, 2002, that essentially mirrored the relevant provisions in the authorizing statute. Aspects of state AYP plans that apparently received special attention in ED's reviews of them included (1) the pace at which proficiency levels are expected to improve; (2) whether schools or LEAs must fail to meet AYP with respect to the *same* pupil group(s), grade level(s) and/or subject areas to be identified as needing improvement, or whether two consecutive years of failure to meet AYP with respect to *any* of these categories should lead to identification; (3) the length of time over which pupils should be identified as being LEP; (4) the minimum size of pupil groups in order to be considered in AYP determinations; (5) whether to allow schools credit for raising pupil scores from below basic to basic in making AYP determinations; and (6) whether to allow use of statistical techniques such as "confidence intervals" (i.e., whether scores are below the required level to a statistically significant extent) in AYP determinations.

On several occasions, beginning in late 2003, ED officials have published additional regulations and other policy guidance on selected aspects of AYP determination and related assessment issues, in an effort to provide additional clarification and, in many cases, increased flexibility. This guidance has addressed several aspects of AYP implementation that have created particular difficulties for many schools and LEAs: assessment participation rates, calculation of AYP with respect to LEP pupils and pupils with disabilities, plus options for determining AYP in targeted assistance Title I-A programs.²⁶

²³ See [<http://www.ed.gov/policy/elsec/guid/secletter/071207.html>].

²⁴ These participation rates may be averaged over a two- or three-year period.

²⁵ The plans have been posted by ED at [http://www.ed.gov/admins/lead/account/state_plans03/index.html].

²⁶ For details on these policy changes, see CRS Report RL32495, *Adequate Yearly Progress* (continued...)

Over the period following the initial submission and approval of state accountability plans for AYP and related policies in 2003 through the present, many states have proposed a number of revisions to their plans.²⁷ The major aspects of state accountability plans for which changes have been proposed and approved include (a) changes to take advantage of revised federal regulations and policy guidance regarding assessment of pupils with the most significant cognitive disabilities, LEP pupils, and test participation rates; (b) limiting identification for improvement to schools that fail to meet AYP in the same subject area for two or more consecutive years, and limiting identification of LEAs for improvement to those that failed to meet AYP in the same subject area and across all three grade spans for two or more consecutive years; (c) using alternative methods to determine AYP for schools with very low enrollment; (d) initiating or expanding use of confidence intervals in AYP determinations; (e) changing (usually increasing) minimum group size; and (f) changing graduation rate targets for high schools. Accountability plan changes that have frequently been requested but not approved by ED include (a) identification of schools for improvement only if they failed to meet AYP with respect to the same pupil group *and* subject area for two or more consecutive years, and (b) retroactive application of new forms of flexibility to previous years.²⁸

Bush Administration Reauthorization Proposals. The Bush Administration’s Reauthorization Blueprint,²⁹ released in January 2007, contains three proposals regarding the ESEA Title I-A AYP provisions. First, all participating states would be allowed to use growth models to make AYP determinations, subject to conditions comparable to those applicable to the current pilot program. In addition, by the end of the 2011-2012 school year, graduation rates used as the additional academic indicator in AYP determinations for high schools would have to be disaggregated according to the same demographic groups as achievement levels. Further, states would be required to use a standard measure in calculating graduation rates, known as the averaged freshman graduation rate (AFGR). Finally, the Administration proposes that science test results to be included in AYP determinations beginning in 2008-2009, although with a delayed goal for proficiency (2019-2020), in contrast to the 2013-2014 goal for reading and math.

²⁶ (...continued)

(*AYP*): *Implementation of the No Child Left Behind Act*, by Wayne C. Riddle.

²⁷ For information on accountability plan revisions proposed by each state, see [<http://www.ed.gov/admins/lead/account/letters/index.html>].

²⁸ See Center on Education Policy, “Rule Changes Could Help More Schools Meet Test Score Targets for the No Child Left Behind Act,” October 22, 2004, available at [<http://www.cep-dc.org/>]; “Changes in Accountability Plans Dilute Standards, Critics Say,” *Title I Monitor*, November 2004; Council of Chief State School Officers, “Revisiting Statewide Educational Accountability Under NCLB,” September 2004, available at [<http://www.ccsso.org/>]; and “Requests Win More Leeway Under NCLB,” *Education Week*, July 13, 2005, p. 1.

²⁹ The document is available from the Department of Education at [<http://www.ed.gov/policy/elsec/leg/nclb/buildingonresults.pdf>].

Implementation Issues. A number of issues have arisen during the implementation of the NCLB provisions regarding AYP. They include the following.

- *Have ED's reviews of state AYP policies been appropriately rigorous, transparent, flexible and consistent?* As ED staff and designated peer reviewers have examined initial and revised state AYP policies, several observers have expressed concerns about: a lack of transparency in the review procedures and criteria; inconsistencies (especially over time) in the types of changes that ED officials have approved (for example, approving a number of requests to increase minimum group sizes during some periods of time, but approving few or no such changes during other periods); whether the net effect of the changes is to make the accountability requirements more reasonable or to undesirably weaken them; whether the changes may make an already complicated accountability system even more complex; and timing — whether decisions on proposed changes are being made in a timely manner by ED.
- *Is the ultimate goal embodied in the NCLB's AYP provisions — all pupils at a proficient or higher level of achievement within 12 years of enactment — both desirable and achievable without a substantial weakening by states of pupil achievement standards?* The required incorporation of this ultimate goal is one of the most significant differences between the AYP provisions of the NCLB and those under the previous IASA. Without an ultimate goal of having all pupils reach the proficient level of achievement by a specific date, states might simply establish relative goals that provide no real movement toward, or incentives for, significant improvement, especially among disadvantaged pupil groups. Proponents of such a demanding ultimate goal argue that schools and LEAs frequently meet the goals established for them, even rather challenging goals, *if* the goals are very clearly identified, defined, and established, and are attainable. A demanding goal might maximize efforts toward improvement by state public school systems, *even if* the goal is not met. Nevertheless, a goal of having *all* pupils at a proficient or higher level of achievement, within any specified period of time, may be criticized as being “unrealistic,” if one assumes that “proficiency” has been established at a challenging level. It is likely that many states, schools and LEAs will not meet the NCLB's ultimate AYP goal, unless state standards of proficient performance are significantly lowered and/or states aggressively pursue the use of such statistical techniques as setting high minimum group sizes and confidence intervals to substantially reduce the range of pupil groups actually considered in AYP determinations and effectively lower required achievement level thresholds.
- *Are such statistical techniques as confidence intervals and data-averaging being appropriately applied in state AYP policies?* Many states have used one or both of these statistical techniques to attempt

to improve the validity and reliability of AYP determinations, with an effect in most cases of reducing the number of schools or LEAs identified as failing to meet AYP standards. The averaging of test score results for various pupil groups over two- or three-year periods is explicitly authorized under the NCLB; the use of confidence intervals was not explicitly envisioned in the drafting of the NCLB's AYP provisions, but has been approved by ED and widely adopted by states. The use of confidence intervals to determine whether group test scores fall below required thresholds to a *statistically significant degree* addresses the fact that test scores for any group of pupils will vary from one test administration to another, and these variations may be especially large for a relatively small group of pupils. At the same time, the use of confidence intervals reduces the likelihood that schools or LEAs will be identified as failing to make AYP. For small pupil groups and high levels of desired accuracy, the size of confidence intervals may be rather large. Ultimately, the use of this technique may mean that the average achievement levels of pupil groups in many schools will be below 100% proficiency by 2013-2014, yet the schools would still meet AYP standards because the groups' scores are within relevant confidence intervals.

- *Are some states setting minimum group size levels so high that a large proportion of some disadvantaged pupil groups is not being considered in school-level AYP determinations?* Another important technical factor in state AYP standards is the establishment of the minimum size (n) for pupil groups to be considered in AYP calculations. The NCLB recognizes that in the disaggregation of pupil data for schools and LEAs, there might be pupil groups that are so small that average test scores would not be statistically reliable, or the dissemination of average scores for the group might risk violation of pupils' privacy rights. The selection of this minimum number has been left to state discretion, and the range of selected values for "n" is rather large. The higher the minimum group size, the less likely that many pupil groups will be separately considered in AYP determinations. This gives schools and LEAs fewer thresholds to meet, and reduces the likelihood that they will be found to have failed to meet AYP standards. At the same time, relatively high levels for "n" weaken the NCLB's specific focus on a variety of pupil groups, many of them disadvantaged.
- *Does the requirement for disaggregation of pupil groups in AYP determinations make it too difficult for schools or LEAs with diverse pupil populations to meet AYP standards?* All other relevant factors (especially minimum group size) being equal, the more diverse its pupil population, the more thresholds a school or LEA must meet in order to make AYP. While this was an intended result of legislation designed to focus on specific disadvantaged pupil groups, the impact of making it more difficult for schools and LEAs serving diverse populations to meet AYP standards may also be seen as an unintended consequence of the NCLB. A number of studies have

concluded that, when comparing public schools with comparable aggregate pupil achievement levels or aggregate percentages of pupils from low-income families, schools with larger numbers of different NCLB-relevant demographic groups are substantially less likely to meet AYP standards. However, without specific requirements for achievement gains by each of the major pupil groups, it is possible that insufficient attention would be paid to the performance of the disadvantaged pupil groups among whom improvements are most needed, and for whose benefit the Title I-A program was established, since it is possible for many schools and LEAs to demonstrate improvements in achievement by their pupils overall while the achievement of their disadvantaged pupils does not improve significantly.

- *Are “too many” schools and LEAs failing to meet AYP standards?* As is discussed in the following section of this report, relatively large percentages of public schools and LEAs overall have failed to meet state AYP standards. Future increases in performance thresholds, as the ultimate goal of all pupils at the proficient or higher level of achievement is approached, may result in higher percentages of schools failing to make AYP. ED officials have emphasized the importance of taking action to identify and improve underperforming schools, no matter how numerous. They have also emphasized the possibilities for flexibility in taking corrective actions with respect to schools that fail to meet AYP, depending on the extent to which they fail to meet those standards. Further, some analysts argue that a set of AYP standards that a relatively high percentage of public schools fails to meet may accurately reflect pervasive weaknesses in public school systems, especially with respect to disadvantaged pupil groups. Others have consistently expressed concern about the accuracy, efficacy, and complexity of an accountability system under which such a relatively high percentage of schools is identified as failing to make adequate progress, with consequent strain on financial and other resources necessary to provide technical assistance, public school choice and supplemental services options, as well as other corrective actions.
- *Are the NCLB’s AYP provisions being undermined by wide variations in state standards for pupil achievement?* The percentage of public schools and LEAs failing to meet AYP standards is not only relatively large in the aggregate, but varies widely among the states. It is likely that state variations in the percentage of schools failing to meet AYP standards are based not only on underlying differences in achievement levels, as well as a variety of technical factors in state AYP provisions, but also on differences in the degree of rigor or challenge in state pupil performance standards and assessments. While the basic structure of AYP definitions is now substantially more consistent across states than before enactment of the NCLB, significant variations remain with respect to technical factors such as minimum group size and confidence intervals, and

there appear to be substantial differences in the degree of challenge embodied in state standards and assessments. Such variation reflects, and may be the inevitable result of, federalism in education policy-making. Nevertheless, as the NCLB is considered for reauthorization by the 110th Congress, there may be interest in attempting to make pupil performance expectations more consistent across the nation.

- *Is the 95% assessment participation requirement too high?* In several cases, schools or LEAs fail to meet AYP solely because participation rates in assessments fall marginally below the required level of 95% of all pupils, as well as 95% of pupils in each of the relevant demographic groups meeting the minimum size threshold. While few argue against having any participation rate requirement, it may be questioned whether it needs to be as high as 95%. The average percentage of enrolled pupils in attendance at public K-12 schools in recent years (93.5%) is below this level, and such attendance rates are generally assumed to be substantially lower than this national average in schools with high proportions of disadvantaged pupils. Even though schools are explicitly allowed to administer assessments on make-up days following the primary date of test administration, and it is probable that more schools and LEAs will meet this requirement as they become more fully aware of its significance, it is likely to continue to be very difficult for some schools and LEAs to meet a 95% test participation requirement. According to the recent ED report, “National Assessment of Title I: Interim Report,” 6% of the schools that failed to meet AYP requirements for the 2003-2004 school year did so on the basis of participation rates in addition to other factors.

Section 4. Outcome Accountability Under ESEA Title I-A³⁰

The No Child Left Behind Act (NCLB) strengthened the accountability provisions of ESEA Title I-A over what was required under the Improving America’s Schools Act (IASA) by requiring states to demonstrate in their state plans that they have a single, statewide accountability system, applicable to all elementary and secondary schools and LEAs in the state. Each state’s accountability system must be based on the academic assessments and other academic indicators it uses to measure academic progress. LEAs are required to annually review the status of each public school in making adequate yearly progress (AYP) toward state standards of academic achievement; and SEAs are required to annually review the status of each LEA in making AYP. (Accountability provisions for charter schools must be implemented to be consistent with state charter school laws.) The ESEA establishes a system of rewards and sanctions designed to hold Title I-A schools and LEAs accountable for

³⁰ This section was written by David P. Smole with contributions from Wayne C. Riddle.

their performance. Each year, states and LEAs are required to prepare and disseminate report cards containing academic achievement and other data. States are also required to prepare annual reports for submission to the Secretary. The Secretary, in turn, is required to compile national and state-level data for presentation in annual reports to Congress. While AYP determinations must be made with respect to every public school and LEA in a state that receives Title I-A funds, states vary in the extent to which they apply the sanctions to non-Title I-A schools or LEAs.

Rewards, Support, and Recognition

Each state participating in ESEA Title I-A is required to establish an Academic Achievement Awards Program for purposes of making academic achievement awards to schools that have either significantly closed academic achievement gaps between student subgroups or exceeded their AYP requirements for two or more consecutive years. States may also give awards to LEAs that have exceeded their AYP requirements for two or more consecutive years. Under Academic Achievement Award Programs, states may recognize and provide financial awards to teachers or principals in schools that have significantly closed the academic achievement gap or that have made AYP for two consecutive years. States may fund Academic Achievement Awards for schools and LEAs by reserving up to 5% of any Title I-A funding that is in excess of the state's previous year's allocation.³¹ States may fund teacher and principal awards by reserving such sums as necessary from the amount received under ESEA Title II-A-1 — Teacher and Principal Training and Recruiting Fund, Grants to States.

As part of its role in overseeing the implementation of the ESEA, ED's Office of Elementary and Secondary Education, School Achievement and School Accountability programs office (OESE/SASA) monitors various aspects of the implementation of ESEA achievement and accountability requirements, including procedures for reserving funds for school improvement and, if applicable, the State Academic Achievement Awards program.³² California is an example of a state that has implemented an extensive Academic Achievement Awards program.³³

School and LEA Improvement, Corrective Action, and Restructuring

When Title I-A schools do not make AYP for two or more consecutive years, they become subject to a range of increasingly severe sanctions, which are coupled

³¹ Guidance on procedures for reserving funds for State Academic Achievement Awards Programs is available in U.S. Department of Education, Office of Elementary and Secondary Education, *Guidance: State Educational Agency Procedures for Adjusting Basic, Concentration, Targeted, and Education Finance Incentive Grant Allocations Determined by the U.S. Department of Education*, May 23, 2003, pp. 32-34.

³² U.S. Department of Education, Office of Elementary and Secondary Education, "Title I Program Monitoring," at [<http://www.ed.gov/admins/lead/account/monitoring/index.html>].

³³ California Department of Education, "Academic Achievement Awards," at [<http://www.cde.ca.gov/ta/sr/aa/index.asp>].

with technical assistance provided by the LEA. LEAs become subject to sanctions — overseen by the SEA — in instances where they do not make AYP for two or more consecutive years. **Table 1** depicts the stages in which sanctions are applied to schools and LEAs under ESEA Title I-A. Requirements for schools and LEAs are described below for each accountability stage.

Table 1. ESEA Title I-A Accountability Stages for Schools and LEAs

Cumulative Years Not Making AYP	Accountability Stage	
	School	LEA
1	N/A	N/A
2	School improvement	LEA improvement ^a
3	2 nd year of school improvement ^b	LEA improvement ^a
4	Corrective action ^b	Corrective action ^b
5	Plan for restructuring ^b	Corrective action ^b
6	Implement restructuring ^b	Corrective action ^b

Source: ESEA, § 1116.

N/A — Not Applicable.

- a. SEAs *may* implement corrective action for an LEA identified for LEA improvement.
- b. Accountability requirements associated with the 2nd year of school improvement, corrective action, and restructuring may be delayed for up to one year for a school or LEA if it makes AYP for one year, or if its failure to make AYP is due to a natural disaster or a significant decline in financial resources.

Schools. After not making AYP for two consecutive years, a Title I-A school is identified for school improvement. Being designated for school improvement carries with it the requirement to develop or revise a school plan designed to result in the improvement of the school. LEAs are required to provide schools within their jurisdictions with technical assistance in the design and implementation of school improvement plans. Schools identified for improvement must use at least 10% of their Title I-A funding for professional development. All students attending Title I-A schools identified for school improvement also must be offered public school choice — the opportunity to transfer to another public school within the same LEA.³⁴ Under public school choice, students must be afforded the opportunity to choose from among two or more schools, located within the same LEA, that have not been identified for school improvement, corrective action, or restructuring, and that also have not been identified as persistently dangerous schools (described in Section 11). LEAs are required to provide students who transfer to different schools with transportation and must give priority in choosing schools to the lowest-achieving children from low-income families. LEAs may not use lack of capacity as a reason for denying students the opportunity to transfer to a school of choice.³⁵ In instances where there are no eligible schools in the student's LEA, LEAs are encouraged to

³⁴ For further information on public school choice, see CRS Report RL33506, *School Choice Under the ESEA: Programs and Requirements*, by David P. Smole.

³⁵ 34 CFR 200.44(d).

enter into cooperative agreements with surrounding LEAs to enable students to transfer to an eligible public school.

If, after being identified for school improvement, a school does not make AYP for another year, it must be identified for a second year of school improvement by the end of that school year. All students attending a school identified for a second year of school improvement must continue to be offered the option of attending another eligible public school within the same LEA. In addition, students from low-income families who continue to attend the school must be offered the opportunity to receive supplemental educational services (SES).³⁶ Supplemental educational services are educational activities, such as tutoring, that are provided outside of normal school hours and which are designed to augment or enhance the educational services provided during regular periods of instruction. Supplemental educational services may be provided by a non-profit entity, a for-profit entity, or the LEA, unless such services are determined by the state education agency (SEA) to be unavailable in the local area.³⁷ The SEA is required to maintain a list of approved SES providers (including those offering services through distance learning) from which parents can select. LEAs may be required to expend up to an amount equal to 20% of their Title I-A grants on transportation for public school choice and supplemental educational services combined.

If a school fails to make AYP for a total of two years after being identified for school improvement, it must be identified for corrective action by the end of the school year. For schools identified for corrective action, LEAs must continue to provide technical assistance, offer public school choice and supplemental educational services, and must implement one of the following corrective actions: replacing school staff relevant to the school not making AYP; implementing a new curriculum; limiting management authority at the school level; appointing an expert advisor to assist in implementing the school improvement plan; extending the school year or the school day; or restructuring the school's internal organization. If a school does not make AYP for a third year after being identified for school improvement, by the end of the school year the LEA must begin to plan for restructuring, while continuing to implement the requirements of corrective action. Restructuring of the school must involve implementation of some form of alternative governance structure, such as reopening the school as a charter school, replacing all or most of the school staff, contracting with an education management organization to operate the school, or turning the school over to the SEA. If an additional year passes without the school making AYP, the LEA must implement restructuring of the school.

Any of the sanctions described above may be delayed for up to one year if the school makes AYP for a single year, or if the school's failure to make AYP is due to unforeseen circumstances, such as a natural disaster or a significant decline in

³⁶ For further information on supplemental educational services, see CRS Report RL31329, *Supplemental Educational Services for Children from Low-Income Families Under ESEA Title I-A*, by David P. Smole.

³⁷ Schools identified for improvement, corrective action, or restructuring, and LEAs identified for improvement or corrective action, lose their eligibility to supplemental educational services providers.

financial resources of the LEA or school. Schools that make AYP for two consecutive years may no longer be identified for school improvement, nor subject to the sanctions associated with school improvement, corrective action, or restructuring.

LEAs. In instances where a Title I-A LEA fails to make AYP for two consecutive years, the SEA must identify it for LEA improvement and require the LEA to develop and implement a new or revised LEA education plan, with technical assistance provided by the state. If two more years pass without the LEA making AYP, the SEA must identify it for corrective action by the end of the school year. Corrective action must consist of at least one of the following activities: deferring programmatic funds or reducing administrative funds; implementing a new curriculum; replacing staff relevant to the LEA not making AYP; removing schools from the jurisdiction of the LEA; placing the LEA under receivership or trusteeship; abolishing or restructuring the LEA; or (in conjunction with one of the aforementioned activities), authorizing students attending a school in that LEA to transfer to an eligible public school in another LEA, with transportation costs provided by the sending LEA. SEAs also *may* implement the requirements of corrective action for an LEA that has been identified for improvement.

Sanctions for LEAs may be delayed for up to one year if the LEA makes AYP for a single year, or if failure to make AYP is due to unforeseen circumstances, such as a natural disaster or a significant decline in financial resources of the LEA. Once an LEA makes AYP for two consecutive years, it is no longer identified for improvement nor subject to corrective action.

Assistance for Local School Improvement. Currently, under ESEA § 1003(a), states are required to reserve 4% of their total Title I-A allocations for school improvement grants; however, grants to individual LEAs are not supposed to be reduced compared to the previous year as a result of reserving these funds in what amounts to a “hold harmless” provision. In addition, ESEA § 1002(i) authorizes the appropriation of such sums as may be necessary for grants to states under § 1003(g) for LEA school improvement assistance subgrants. States are eligible to apply for grants, which are allocated in proportion to each state’s share of funds provided under ESEA Title I, Parts A, C, and D. Subgrants to LEAs must be between \$50,000 and \$500,000 for each school, and must be renewable for up to two additional years if schools meet the goals of their school improvement plans. Subgrants must be used by LEAs to support school improvement and recognition as required under ESEA §§ 1116 and 1117. LEAs with the lowest-achieving schools must be given priority in the awarding of subgrants.

In general, SEAs are required to allocate 95% of any funds reserved under § 1003(a) and received under § 1003(g) directly to LEAs for schools identified for improvement, corrective action, or restructuring; however, with LEA approval, SEAs may directly provide or arrange for the provision of school improvement activities through other entities. The remaining 5% of funds may be used for state-level school improvement activities and administration. For FY2007, \$125 million was appropriated for school improvement activities authorized under § 1003(g); for FY2008, \$491.3million has been appropriated for school improvement grants.

Reports

States and LEAs are required to prepare annual report cards containing academic achievement information for the state, LEAs, and schools, and must make them publicly available. LEAs are also required to provide parents of students attending Title I-A schools with information on the professional qualifications of the student's teachers. Annual report cards must, at a minimum, contain the following information:

- information on student achievement at each proficiency level on state academic assessments, in the aggregate and disaggregated according to each student subgroup;
- a comparison between actual student achievement levels and the state's AYP goal, for each student subgroup;
- the percentage of students not tested, in the aggregate and disaggregated by student subgroup;
- trends in student achievement in each subject area for each grade level assessed, for the most recent two-year period;
- aggregate information on any other indicators used in determining AYP;
- secondary school graduation rates;
- AYP data for LEAs, including the number and names of schools identified for school improvement; and
- information on the professional qualifications of teachers.

Each year, states are required to prepare reports for the Secretary containing information on the implementation of academic assessments; student academic achievement, in the aggregate, and disaggregated by student subgroup; information on the acquisition of English proficiency by students with limited English proficiency; information on each school identified for school improvement; the number of students and schools participating in public school choice and supplemental educational services; and information on teacher quality, including the percentage of classes being taught by highly qualified teachers at the state, LEA, and school levels. The Secretary is required to compile the data reported by states into reports to be submitted annually to the House Committee on Education and the Workforce and the Senate Committee on Health, Education, Labor, and Pensions.

Implementation Status

Data on Schools and LEAs Failing to Meet AYP and Identified for Improvement. A substantial amount of data has become available on the number of schools and LEAs that have failed to meet the AYP standards of the NCLB based on assessments administered during the 2002-2003 through 2006-2007 school years. A basic problem with these data, however, is that they frequently have been incomplete and subject to change. Currently available compilations of state AYP data are discussed below in two categories: reports focusing on the number and percentage of schools failing to meet AYP standards for one or more years versus reports on the number of public schools and LEAs identified for improvement — that is, they had failed to meet AYP standards for at least two consecutive years.

Schools Failing to Meet AYP Standards for One Year. Beginning with the 2002-2003 school year, data on the number of schools in each state that made or did not make AYP have been reported by the states to ED, in a series of Consolidated State Performance Reports. Until recently, these Reports were not disseminated by ED; however, the Consolidated State Performance Reports for the 2005-2006 school year have been made available by ED on its website.³⁸

According to these Consolidated State Performance Reports,³⁹ for the nation overall, 28% of all public schools failed to make adequate yearly progress based on assessment scores for the 2005-2006 school year. The percentage of public schools failing to make adequate yearly progress for 2005-2006 varied widely among the states, from 4% for Wisconsin and 9% for Louisiana to 86% for the District of Columbia and 71% for Florida. **Table 2** provides the percentage of schools failing to make adequately yearly progress, based on 2005-2006 assessment results, for each state.

LEAs Failing to Meet AYP Standards. Although most attention, in both the statute and implementation activities, thus far has been focused on application of the AYP concept to schools, a limited amount of information is becoming available about LEAs that fail to meet AYP requirements, and the consequences for them. According to the Consolidated State Performance Reports referred to above, approximately 30% of all LEAs failed to meet AYP standards on the basis of assessment results for the 2005-2006 school year.⁴⁰ Among the states, there was even greater variation for LEAs than for schools. Two states — Alabama and Michigan⁴¹ — reported that none of their LEAs failed to make adequate yearly progress, and Wisconsin reported that only one of the state's 426 LEAs failed to make AYP, while 100% of the LEAs in Florida and South Carolina, plus the single, statewide LEA in Hawaii, failed to meet AYP standards.

³⁸ See [<http://www.ed.gov/admins/lead/account/consolidated/sy05-06/index.html>].

³⁹ For one state, Maine, these data were not available in the Consolidated State Performance Report and were obtained directly from the state educational agency.

⁴⁰ This calculation was based on data for all states except Maine.

⁴¹ See endnotes ^a and ^d in Table 2 regarding the LEA data for Alabama and Michigan.

Table 2. Reported Percentage of Public Schools and Local Educational Agencies Failing to Make Adequate Yearly Progress on the Basis of Spring 2006 Assessment Results

State	Reported Percentage of Rated Schools Not Making AYP, 2006	Reported Percentage of LEAs Not Making AYP, 2006
Alabama	11	0
Alaska	38	54
Arizona	33	39
Arkansas	39	2
California	34	37
Colorado	25	40
Connecticut	34	19
Delaware	19	11
District of Columbia	86	94
Florida	71	100
Georgia	21	65
Hawaii	65	100
Idaho	27	48
Illinois	21	23
Indiana	51	27
Iowa	17	4
Kansas	14	12
Kentucky	34	56
Louisiana	9	39
Maine ^b	19	NA ^c
Maryland	23	13
Massachusetts	41	64
Michigan	14	0
Minnesota	31	46
Mississippi	16	48
Missouri	29	39
Montana	10	16
Nebraska	18	29
Nevada	47	12
New Hampshire	39	32
New Jersey	29	13
New Mexico	54	76
New York	29	45
North Carolina	56	97
North Dakota	10	11
Ohio	39	68
Oklahoma	11	19
Oregon	32	63
Pennsylvania	18	5
Rhode Island	32	39
South Carolina	62	100
South Dakota	20	4
Tennessee	17	7
Texas	19	13

State	Reported Percentage of Rated Schools Not Making AYP, 2006	Reported Percentage of LEAs Not Making AYP, 2006
Utah	12	15
Vermont	25	26
Virginia	23	37
Washington	16	25
West Virginia	14	91
Wisconsin	4	0%
Wyoming	15	10
National Average	28	30

Source: State Consolidated Performance Reports [<http://www.ed.gov/admins/lead/account/consolidated/sy05-06/index.html>] for all states except Maine.

- a. While Alabama reports that all of its LEAs made AYP based on assessment scores for the 2005-2006 school year, it also lists 43 LEAs, or 33% of the state total number of LEAs, as being in improvement status for the 2006-2007 school year.
- b. For Maine, the data for schools were acquired from the state educational agency [<http://www.maine.gov/education/pressreleases/ayp/ayplistmenu.htm>].
- c. NA — Not available. Thus, the national total for LEAs excludes Maine.
- d. While Michigan reports that all of its LEAs made AYP based on assessment scores for the 2005-2006 school year, it also lists 11 LEAs, or 2% of the state total number of LEAs, as being in improvement status for the 2006-2007 school year.
- e. Wisconsin reports one LEA as failing to make AYP out of a total of 426 LEAs.

Schools and LEAs Identified for Improvement, Corrective Action, and Restructuring. Schools and LEAs are identified for improvement, corrective action, or restructuring according to the cumulative number of years of not making AYP. States are required to report the improvement status of schools and LEAs to the Department of Education as part of their Consolidated State Performance Reports. According ED, 10,676 schools were identified for improvement for the 2006-2007 school year, with 2,302 of these identified for restructuring.⁴² ED has released more detailed data on the number of all schools identified for improvement (any stage) and Title I schools identified for improvement, corrective action, or restructuring for school years 2003-2004 through 2005-2006. These data are presented in **Table 3**.

⁴² U.S. Department of Education, Mapping America's Educational Progress, 2008, at [<http://www.ed.gov/nclb/accountability/results/progress/nation.html>].

Table 3. Number of Schools and LEAs Identified for Improvement

Year	All Schools	Title I Schools				Title I LEAs
	Any Stage	Improvement	Corrective Action	Restructuring	Total	Total
2003-2004	11,531	4,199 ^a	926 ^a	838 ^a	6,219	N/A
2004-2005	11,617	6,559 ^a	977 ^a	1,199 ^a	9,333	1,511
2005-2006	11,648	6,068 ^a	1,223 ^a	1,683 ^a	9,808	1,578

Sources: U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, *National Assessment of Title I, Final Report: Volume I: Implementation*, 2007; and U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *State and Local Implementation of the No Child Left Behind Act, Volume III — Accountability Under NCLB: Interim Report*, 2007.

N/A = Not available.

a. Data for Puerto Rico are not provided by accountability stage but are included in the total.

Available data show that increasing numbers of schools have been identified for improvement each year since the enactment of NCLB. For 2005-2006, of the 6,068 schools identified for improvement, 3,167 were identified for the first year of school improvement. As more schools have been identified, increasing proportions are becoming identified for the latter accountability stages of corrective action and restructuring. However, ED reports that 23% of the Title I schools that had been identified for improvement, corrective action, or restructuring for the 2003-2004 school year were no longer identified for the 2004-2005 school year.⁴³ This shows that a large portion of schools have been able to demonstrate sufficient improvement to exit NCLB sanctions.

School Choice and Supplemental Educational Services. Data from Consolidated State Performance Reports show that for 2006-2007, 5.4 million students were eligible for public school choice and that 119,988 (2.2%) participated. Data also show that more than 3.6 million students were eligible for supplemental educational services and that 529,627 (14.5%) participated.⁴⁴ Overall, since the enactment of NCLB, relatively few students have taken advantage of the opportunity to transfer to different schools under the public school choice option, with only 48,000 transferring during 2004-2005 and fewer in earlier years.⁴⁵ Department of

⁴³ U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *State and Local Implementation of the No Child Left Behind Act, Volume III — Accountability Under NCLB: Interim Report*, 2007, p. 60.

⁴⁴ U.S. Department of Education, Mapping America's Educational Progress 2008, at [<http://www.ed.gov/nclb/accountability/results/progress/nation.html>].

⁴⁵ U.S. Department of Education, Office of Planning, Evaluation and Policy Development, (continued...)

Education data, drawn from multiple sources, indicate that during the first years of implementation, supplemental educational services have been provided to increasing numbers of students each year, rising from 42,000 in 2002-2003 to 446,000 in 2004-2005 and to over half a million at present. ED estimates that for 2003-2004, LEAs expended \$24 million to support transportation for public school choice and \$192 million for supplemental educational services.⁴⁶

Implementation Issues

A number of issues have arisen as states and LEAs have proceeded to implement the ESEA Title I-A accountability provisions. Some of the most notable issues are discussed below.

Identification of Schools and LEAs for Improvement. Over the past several years, states have sought, and in many cases have had approved by ED, changes to their state accountability plans. In most instances, these changes have facilitated a relaxation of accountability requirements. A result has been that some schools and LEAs that would have been identified for improvement under state plans as initially approved might not be so identified under amended versions of state plans. Examples of approved changes include the use of confidence intervals, increasing the minimum subgroup sizes used to calculate AYP, and specifying that LEAs need to fail to make AYP for two consecutive years in the same subject area and across each of the elementary, middle, and high school grade spans in order to be identified for improvement or that schools should be identified for improvement only if they fail to make AYP in the same subject area for two consecutive years.⁴⁷

The expansion of the minimum subgroup sizes to large numbers, such as 40 students or 10% of school enrollment, may have the effect of excluding students from subgroups with small populations from consideration in the determination of AYP at the school level. Since beginning with the 2005-2006 school year, states are now required to administer assessments in reading/language arts and mathematics to all students in each of grades 3-8, it is expected that fewer student subgroups will be excluded from AYP determinations on the basis of minimum subgroup size. Also, at the LEA level, it is more likely that there will be sufficient students to include more subgroups in the determination of AYP. Still, LEAs that have no schools identified for improvement may, nonetheless, be identified for improvement, if low-achieving students in subgroups with small populations are dispersed across several schools. These LEAs incur no obligation to provide public school choice or

⁴⁵ (...continued)

Policy and Program Studies Service, *State and Local Implementation of the No Child Left Behind Act, Volume III — Accountability Under NCLB: Interim Report*, 2007, p. 88.

⁴⁶ U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, *National Assessment of Title I, Final Report: Volume I: Implementation*, 2007, p. 91.

⁴⁷ Naomi Chudowsky and Victor Chudowsky, *States Test Limits of Federal AYP Flexibility*, Center on Education Policy, November 16, 2005, pp. 13-15.

supplemental educational services to their students because these sanctions are only applicable at the school level.

Public School Choice. LEAs were first required to provide public school choice to students attending schools identified for school improvement beginning with the 2002-2003 school year. In instances where public school choice is required to be offered to students at a particular school, it must be made available to all students, regardless of their family income or academic achievement level. However, LEAs are required to give priority to the lowest-achieving students from low-income families. LEAs also may not deny students the opportunity to transfer to another school on the basis of a lack of capacity. In instances where there are no eligible schools to which a student could transfer (e.g., all schools at the applicable grade level have been identified for school improvement, corrective action, or restructuring), then the LEA must, to the extent practicable, establish a cooperative agreement with one or more LEAs in the area (including public charter schools) to provide school choice transfer options.

Concerns about the implementation of public school choice include that information identifying schools for improvement has in many instances been released during the summer only a short time before the new school year was about to begin, and as a consequence parents have had limited time to select new schools for their children to attend. Also, as more schools have been identified for school improvement, corrective action, or restructuring, some LEAs have experienced difficulty in making space available in schools that have not been identified for improvement — many of which were already overcrowded. Meanwhile, LEAs with few or no schools identified for improvement may decline to accept transfers from neighboring districts. In very rural areas, public school choice can be difficult to implement because of the great distances between schools. Finally, concerns have been raised that despite provisions designed to give priority for public school choice to low-achieving and low-income students, higher-achieving students and those from moderate to upper-income families may be most alert to, or more willing to take advantage of, school transfer options, thus leaving lower achieving students behind in under-performing schools.⁴⁸

Supplemental Educational Services. Beginning with the 2002-2003 school year, students attending schools identified for a second year of school improvement, corrective action, or restructuring have been required to be offered the opportunity to receive supplemental educational services. Issues regarding the implementation of SES include the process through which parents are notified of the availability of supplemental educational services; the availability of services to students with special needs or with limited-English proficiency; approval of SES providers and the negotiation of contracts with LEAs; student usage of supplemental educational services; the sequencing of school choice and SES as sanctions; and how providers are held accountable for performance.

⁴⁸ Maria Glod, "High Achievers Leaving Schools Behind; Transfers in Fairfax and Elsewhere Were Meant for Struggling Students," *The Washington Post*, November 10, 2004, p. A01.

During the first few years of NCLB implementation, information on schools being required to offer supplemental educational services has often been made available late in the summer or even after the start of the school year.⁴⁹ Also, notice of the opportunity to receive these services has in many instances not been provided to parents in a clear and concise manner. It appears that in some LEAs, this has resulted in fewer students receiving supplemental educational services than might be entitled to receive them.⁵⁰ The availability of providers has also been a concern in some LEAs, particularly in rural areas. Additionally, some providers may not be willing or able to offer services in remote areas or in schools in which their services may be selected by only one or two students. Some providers may not be able to serve students with special needs or limited-English proficiency. However, in instances where no providers are available to serve students with special needs or limited-English proficiency, the LEA must arrange for these students to be served, either by providing services directly or through a contract — even if the LEA is not otherwise approved as an SES provider.

Responsibility for approving entities as eligible SES providers resides with SEAs, although contracts for the provision of services must be negotiated between each provider and each LEA in which it will offer services. Regulations promulgated by ED prohibit schools and LEAs that have been identified for improvement from being approved as SES providers. SES providers may not be required to hire only staff who meet the highly qualified teacher and paraprofessional requirements of ESEA § 1119. The process of approving and negotiating contracts for providers has been challenging for many SEAs and LEAs, as each LEA has unique needs and requirements, and the amount of funding available per student differs from one LEA to another. The conditions that SEAs and LEAs may impose on SES providers is often raised as an implementation issue. During the course of the past year, ED has issued a number of policy letters clarifying the types of conditions that SEAs and LEAs may impose. While SEAs have overall responsibility for overseeing SES providers, LEAs may impose certain conditions on providers, such as requiring background checks on personnel, requiring liability insurance, and charging for the use of school facilities.⁵¹

The sequencing of public school choice and supplemental educational services as sanctions has been raised as a policy issue. Intuitively, some believe that it may make sense to offer supplemental educational services prior to being required to offer public school choice. In 2005, 2006, and 2007, the Secretary of Education has announced that flexibility in the provision of supplemental educational services

⁴⁹ Michael Casserly, *No Child Left Behind: A Status Report on Choice and Supplemental Services in America's Great City Schools*, Council of Great City Schools, January 2004.

⁵⁰ Gail L. Sunderman and Jimmy Kim, *Increasing Bureaucracy or Increasing Opportunities? School District Experience with Supplemental Educational Services*, (Cambridge, MA: The Civil Rights Project, Harvard University, February 2004), pp. 19-21, at [http://www.civilrightsproject.harvard.edu/research/esea/increasing_bureaucracy.pdf].

⁵¹ U.S. Department of Education, Office of Elementary and Secondary Education and Office of Innovation and Improvement, "Supplemental Educational Services (SES) Policy," at [<http://www.ed.gov/policy/elsec/guid/stateletters/index.html>].

would be provided in limited circumstances through SES Pilot Programs.⁵² Under the SES Pilot Programs, ED has approved a reversal in the sequencing of SES and school choice as sanctions in LEAs in Alaska, Delaware, Indiana, North Carolina, and Virginia. Also as part of the SES Pilot Programs, ED has granted several LEAs the flexibility to remain as SES providers even though they have been identified for improvement.⁵³ In addition, ED has clarified that certain entities loosely affiliated with LEAs may be providers of supplemental educational services even if the LEA has been identified for improvement. Examples of such entities include 21st Century Community Learning Centers, community education programs, and parent information and resource centers.⁵⁴ Finally, while SEAs are required to withdraw approval from providers that fail for two consecutive years to increase student academic proficiency, little is known about the effectiveness of particular SES providers. It is expected that better data on the effectiveness of supplemental educational services will become available as LEAs participating in SES Pilot Programs are required to provide ED with achievement data for students receiving supplemental educational services.

Section 5. Education of Limited English Proficient Pupils⁵⁵

The No Child Left Behind Act of 2001 (NCLB) made several changes to ESEA provisions regarding the education of limited English proficient (LEP) students. One major change concerns the distribution and use of funds for LEP student instruction. Namely, the NCLB converted the competitive grant programs for this purpose into a single formula grant program based on enrollment of LEP and immigrant students. A second set of changes enacted by the NCLB fall under the category of assessment and accountability. As mentioned earlier in this report, these changes include requirements for annual assessments of LEP students' English language proficiency, language accommodations for LEP students' academic assessments in subjects other than English, and separate adequate yearly progress (AYP) calculations for LEP students as a subgroup.

⁵² U.S. Department of Education, "New Options For Families: Supplemental Educational Services Pilot Programs," at [<http://www.ed.gov/nclb/choice/help/sespilot-2006.html>].

⁵³ U.S. Department of Education, "SES Flexibility Agreements 2007-2008," at [<http://www.ed.gov/nclb/choice/help/ses/07agreements.html>].

⁵⁴ U.S. Department of Education, Office of Elementary and Secondary Education and Office of Innovation and Improvement, "District-affiliated entities becoming SES providers," May 10, 2006, at [<http://www.ed.gov/policy/elsec/guid/stateletters/choice/ses051006.html>].

⁵⁵ This section was written by Rebecca R. Skinner, with previous contributions made by Jeffrey J. Kuenzi. For more information on this issue, see CRS Report RL31315, *Education of Limited English Proficient and Recent Immigrant Students: Provisions in the No Child Left Behind Act of 2001*, by Jeffrey J. Kuenzi.

Language Acquisition State Grants

Prior to the NCLB, Title VII of the ESEA supported two major competitive grant programs that awarded funds to LEAs specifically for the education of LEP and immigrant students and a third competitive grant program to institutions of higher education (IHEs) for teacher professional development in this area.⁵⁶ Under the NCLB the first two of these programs were replaced by a single formula grant program; provided that the total appropriation for this purpose exceeds \$650 million (which has been the case since the first grants were awarded in FY2002).

This new formula grant program, the English Language Acquisition State Grant program (ESEA, Title III), distributes grants to states according to their share of the LEP and recent immigrant populations. The formula allocates 80% of the program's funds according to the population of LEP students and 20% according to the population of recently arriving immigrants. The Secretary is given the authority to determine the most accurate data for these allocations from either state reported enrollment counts or from data collected by the U.S. Census Bureau.

Prior to determining state grant allocations, statutory language provides for several reservations of funds. These include reservations for national activities, for schools serving Native American and Alaska Native students, and for the outlying areas. A reservation is also specified for LEAs and other eligible recipients of pre-NCLB Title VII multi-year grants to continue to receive funds until their grants expire. Set-asides for these continuation grants were no longer needed after FY2004, as all continuation grants had expired.

After reserving funds for these purposes, ED makes grants to states based on the aforementioned population factors. The minimum state grant amount is \$500,000. States subsequently make subgrants to LEAs according to each LEA's share of the state's LEP student enrollment.⁵⁷ The minimum grant amount for an LEA is \$10,000.⁵⁸

The NCLB also made changes to the activities supported by these grants. SEAs and LEAs were given greater flexibility in the design and administration of language instructional programs. The law also removed or weakened provisions that encouraged bilingual instruction methods (i.e., curricula that develop proficiency in English as well as students' native language). Instead, the law placed an emphasis on annual measurable increases in English language proficiency.

⁵⁶ Prior to the enactment of the NCLB, the Bilingual Education Act (ESEA Title VII) supported grants for instructional services, support services, and professional development.

⁵⁷ Prior to making these subgrants, states are required to reserve up to 15% of their state allocation to provide grants to LEAs that have experienced a significant increase in the percentage or number of immigrant students enrolled.

⁵⁸ Based on the subgrant calculations, the SEA may not make an award to an LEA if the amount of the award would be less than \$10,000.

Implementation Status. All states, including Puerto Rico and the District of Columbia, submitted plans for implementing Title III programs beginning in 2002.⁵⁹ According to the Secretary's report on the implementation of Title III, the new formula grant awarding process appears to have been implemented without major problems.⁶⁰ However, after the issuance of the Secretary's report, a problem arose in the allocation of funds in the 2005 fiscal year because some states experienced sizable changes in their award amount from the previous year.

Grants were distributed to states in fiscal years 2002, 2003, and 2004 based on the Census 2000 LEP and immigrant estimates. Starting in 2005, these state grants were allocated using LEP and immigrant estimates from the American Community Survey (ACS), also administered by the Census Bureau. The distribution of FY2005 grants showed large changes in the amount awarded to states compared to their FY2004 grants. The fluctuation between FY2004 and FY2005 is in contrast to the relative stability of grant awards from FY2002 to FY2003 and from FY2003 to FY2004.⁶¹ With the change to reliance on ACS data to determine FY2005 grants, 20 states experienced increases in grant awards of 20% or higher; 13 of these increases were 30% or higher, and 1 increase exceeded 98%. Four states lost more than 10% of their funds, and one lost more than 20% of its funds. These declines occurred despite an 8% increase in the funds allocated by formula created by a decrease in the amount of funding needed to support continuation grant awards.⁶² From FY2005 to FY2006, nine states lost 20% or more of their funding, while 15 states received increases of 20% or more. Again, these declines occurred despite an almost 7% increase in the funds for state grants generated by a continued decrease in the amount of funding needed to support continuation grants. Funding available to support state grants did not change from FY2006 to FY2007, but eight states received increases of 20% or more in their funding, while four states experienced decreases of 20% or more. These types of fluctuations have continued through the FY2008 award year.⁶³

For several states, increases in one year have been accompanied by decreases either the preceding or succeeding year. In some cases, these changes have been fairly substantial from year to year. For example, Nevada received a 26.3% increase

⁵⁹ U.S. Department of Education, *Biennial Evaluation Report to Congress on the Implementation of the State Formula Grant Program* (Washington, DC: 2005).

⁶⁰ U.S. Department of Education, *Biennial Evaluation Report to Congress on the Implementation of Title III, Part A of ESEA* (Washington, DC: 2005).

⁶¹ From FY2002 to FY2003, 11 states had increases in funding of 20% or more; 2 states had funding increases in excess of 55%. From FY2003 to FY2004, six states experienced increases of 20% or more; no increases exceeded 35%. Two states lost funding during this time period — one lost less than 1% of its funding, the other lost just over 10% of its funding.

⁶² The decrease in continuation award obligations helped to offset a 1% decrease in overall appropriations that affected Title III and other education programs. FY2005 was the last year in which continuation grant awards were made.

⁶³ For more information about Title III state grants and data options, see CRS Report RL34066, *English Language Acquisition Grants Under the No Child Left Behind Act: Analysis of State Grant Formula and Data Options*, by Rebecca R. Skinner.

from FY2005 to FY2006, a 30.7% decrease from FY2006 to FY2007, and a 21.1% increase from FY2007 to FY2008.

Implementation Issues. Large year-to-year fluctuations in Title III awards could pose problems for program implementation. Such shifts reflect instability in the underlying population estimates on which the formula is based. Instability in the current LEP data provided by the ACS derives primarily from the small and concentrated nature of LEP populations. It had been anticipated that once the survey was fully implemented that the LEP population estimates would become more stable from year to year.⁶⁴ The ACS was fully implemented in 2005 and used to make FY2007 awards. While the number of states experiencing increases or decreases in state grant amounts of 20% or more declined in FY2007 and FY2008, 12 states in FY2007 and 13 states in FY2008 continued to see fluctuations of 20% or higher.

Changes in funding of the magnitude just discussed might make it difficult for schools to provide service continuity to LEP students and may be particularly challenging in states experiencing large increases in funding one year and large decreases the next. Schools with a small number of LEP students and a single teacher qualified to teach them might not be able to retain that teacher in consecutive years under such budget conditions. An LEA that in a given year had an LEP population large enough to exceed the minimum grant requirement may in the next year fall below that requirement and be required to enter into a consortium of LEAs that share service provision. Fluctuation in the amount of SEA administrative set-asides may also disrupt professional development, program evaluation, and technical assistance.

Another issue concerns the availability of qualified bilingual teachers. Many LEAs report being unable to fill teaching positions in LEP classrooms. One study found the LEP teacher shortage to be the number one complaint from LEAs in regard to implementing Title III.⁶⁵

LEP Assessments and Accountability

In addition to the general Title I assessment and accountability provisions, there are specific provisions that apply to LEP students. As briefly mentioned earlier, LEP students must be annually assessed for English language proficiency; may be given accommodations for academic assessments in subjects other than reading/language arts; and must be treated as a separate subgroup for state, LEA, and school AYP calculations.

⁶⁴ The survey employs a county-based sampling strategy and will not include all counties until it is fully implemented. The Census Bureau's plan for full implementation to occur for the 2005 survey year would make LEP data available in the fall of 2006. For more information on ACS sampling issues, see [<http://www.census.gov/acs/www/Downloads/OpsPlanfinal.pdf>].

⁶⁵ Center on Education Policy, *From the Capital to the Classroom: Year 3 of the No Child Left Behind Act* (Washington, DC: March 2005), p. 185.

States are required to demonstrate that their LEAs have conducted annual assessments of LEP students' English language proficiency beginning with the 2002-2003 school year. These assessments must include measures of students' proficiency in speaking, reading, writing, listening, and comprehension of English. Assessments used for this purpose need not be uniform across all LEAs in a state. If a state allows multiple English language proficiency assessments, the SEA should (1) set technical criteria for the assessments; (2) ensure the assessments are equivalent to one another in their content, difficulty, and quality; (3) review and approve each assessment; (4) ensure that the data from all assessments can be aggregated for comparison and reporting purposes, as well as disaggregated by English language proficiency levels and grade levels; and (5) ensure that the assessments are aligned with the state English language proficiency standards. SEAs and LEAs may use Title III funds as well as funds they receive by formula under ESEA section 6111 (Grants for State Assessments Program) or competitively under section 6112 (Grants for Enhanced Assessment Instruments Program) for developing English language assessments. (These programs were discussed in Section 1 of this report).

States must establish annual measurable achievement objectives (AMAOs) for LEP students' development and attainment of English language proficiency. AMAOs must include goals for increases in the number or percentage of children in an LEA making progress in learning English and achieving English proficiency. States must also establish an AMAO that specifies AYP targets for LEP student achievement. Each state must ensure that all LEAs in the state meet the AMAO requirements. If an LEA repeatedly misses its AMAOs, the LEA must develop an improvement plan, and the SEA must provide relevant technical assistance to the LEA. Continued failure to meet AMAOs will lead to state intervention, and can result in the loss of funds to the LEA.

States must also include all LEP students in their state academic assessment system.⁶⁶ Inclusion of LEP students may involve providing appropriate linguistic accommodations and/or using an assessment in the student's native language that is aligned to the state content and achievement standards. However, after three years of attending a school in the United States (except for those residing in Puerto Rico), students must be assessed for reading/language arts achievement in English. LEAs can, on an individual basis, continue to provide accommodations for up to two additional years for students who have not yet reached a level of English proficiency sufficient to yield valid and reliable information on what the student knows and can do on a reading/language arts assessment written in English.

Implementation Status. ED reports that states have made "significant progress" in implementing programs to support LEAs in providing English language assessments. Although many states had already developed language assessment systems prior to enactment of the NCLB, many other states had not, as they had historically enrolled low numbers of LEP students. During 2003 and 2004, 35 states used grants under ESEA Title VI to develop English language standards and

⁶⁶ However, as discussed in a subsequent section, LEP student participation varies based on how long the student has been enrolled in a U.S. school.

assessments.⁶⁷ By June 2004, 40 states reported having English language assessments; although at different stages of readiness.⁶⁸ Some states developed their own English language assessments, some contracted with commercial assessment developers, and others joined multi-state consortia that have developed assessments. ED also reported that, by February 2005, all states had developed their AMAOs.

With the flexibility to extend language accommodations for academic assessments an additional two years, 2007-2008 is the first school year in which LEP students (who began receiving Title III services during the 2002-2003 school year) will be required to take assessments in English. ED indicated that academic assessments were implemented relatively smoothly; however, “in many cases, [states] were not able to implement the data system fully” to report the results of these assessments.⁶⁹ For example, some states reported that they either did not have data for LEP students available at the time of the report or that data on LEP students served by Title III could not be separated from data on all LEP students.

In response to concerns that the transient nature of the LEP subgroup would prevent states from reaching AYP goals, the Secretary issued guidance in June 2004 that provided additional flexibility in the treatment of the LEP subgroup. Specifically, students determined to be LEP would not have their scores counted in AYP calculations until after they have been in school in the United States for at least 10 months. In addition, LEP students that have attained proficiency in English may continue to be counted in the LEP subgroup for another two years. In September 2006, ED issued final regulations that formalized and modified this guidance. States are not required to include the scores of recently arrived LEP students on reading/language arts assessments for AYP purposes.⁷⁰ The regulations define a newly arrived LEP student as an LEP student that has been enrolled in U.S. schools⁷¹ for less than 12 months. The regulations also clarify how the provision allowing former LEP students to be counted with the LEP subgroup for two additional years is to be implemented with respect to data reporting.

In July 2006, ED announced a new initiative to assist 20 states in their development of reading and math assessments for LEP students. In the press release announcing the initiative, the Secretary stated that, “These states submitted evidence for the Department’s 2005-2006 peer review of state assessment systems, focused on tests tailored to LEP students. In most cases the tests designed for LEP students have not yet met with full approval under NCLB.” To comply with the law, these states must agree to a Plan for Improvement, negotiated with the Department, that will

⁶⁷ U.S. Department of Education, *Biennial Evaluation Report to Congress on the Implementation of Title III, Part A of ESEA* (Washington, DC: 2005), p. 6.

⁶⁸ Center on Education Policy, *From the Capital to the Classroom: Year 3 of the No Child Left Behind Act* (Washington, DC: March 2005), p. 188.

⁶⁹ U.S. Department of Education, *Biennial Evaluation Report to Congress on the Implementation of Title III, Part A of ESEA* (Washington, DC: 2005).

⁷⁰ Federal Register, September 13, 2006, vol. 71, no. 177, 54187-54194.

⁷¹ This includes schools in the 50 states and the District of Columbia. It does not include schools in Puerto Rico, the outlying areas, or the freely associated states.

result in the implementation of LEP content assessments and accommodations by the time of the 2006-2007 administration of state assessments in reading and math.

The Government Accountability Office (GAO) recently completed a study of how states are measuring the progress of LEP students.⁷² The study found that many states have not ensured the validity or the reliability of their tests for LEP students. It was also determined that only a few states used native language or alternative assessments for LEP students. GAO noted, however, that the use of these assessments is expensive and may not be appropriate for all LEP students. As a result of the findings, GAO recommended that the Secretary of Education support research on effective accommodations and identify and provide technical support that states need to ensure the validity of the academic assessments they use. GAO also recommended that the Secretary of Education publish additional guidance on requirements for assessing English language proficiency, and explore ways to provide additional flexibility in measuring annual progress for LEP students.

In October 2007, ED released a draft version of a *Framework for High-Quality English Language Proficiency Standards and Assessments*.⁷³ The framework is designed to provide states with information to assist them in evaluating and improving the quality of their current English language proficiency (ELP) standards and assessments, including the establishment of “rigorous, valid, and accessible State ELP standards and assessments that support effective instruction” (p. 3). More specifically, the framework addresses the validity and reliability of ELP standards and assessments for placement and proficiency determinations. Adherence to the framework by states is not required. However, in December 2007, ED sent a letter to all Chief State School Officers asking them to conduct an independent and voluntary self-directed review of ELP standards and assessments.⁷⁴ Through the LEP Partnership,⁷⁵ ED offered to provide technical assistance for four to six months in 2008 to states interested in engaging in the self-review process. The review activities conducted by peer experts and technical assistance providers to assist states will not be reported to ED. State engagement in the self-review process is not considered to be a formal review of state ELP standards and assessments by ED.

Implementation Issues. The requirement that LEP students no longer receive accommodations when taking academic assessments after their third year in U.S. schools may not be appropriate at all grade levels. Many analysts point to research suggesting that non-English speakers’ ability to attain English proficiency diminishes with age. Older LEP students may continue to have difficulty taking academic assessments at their grade-level in English even after three years in U.S.

⁷² Government Accountability Office. (2006). *Assistance from Education Could Help States Better Measure Progress of Students with Limited English Proficiency* (GAO-06-815). Available online at [<http://www.gao.gov/cgi-bin/getrpt?GAO-06-815>].

⁷³ The draft framework is available at [<http://www.ed.gov/about/inits/ed/lep-partnership/framework.doc>].

⁷⁴ The letter is available at [<http://www.ed.gov/policy/elsec/guid/secletter/071217.html>].

⁷⁵ The LEP partnership is an ED initiative to improve assessments of ELP, reading, and mathematics for LEP students.

schools. Some argue that the two additional years of flexibility in determining when LEP students should be tested in English is insufficient.

The group size issue, discussed earlier in this report, is particularly relevant in the application of AYP requirements to LEP students. In some instances, the state may set a minimum group size at a level so high that few LEAs or schools are held accountable for properly serving LEP students. On the other hand, setting group size too low may make it difficult for LEAs, particularly those with diverse student populations, to meet NCLB's annual requirements for improvement.

States face additional difficulty implementing AYP requirements for LEP students because these students are likely to fall into several subgroups. There exists a high correlation between membership in the LEP subgroup and membership in the Hispanic and the economically disadvantaged groups. In light of this, some have advocated that students classified in two or more categories should be counted only in one category or weighted proportionally in each of the categories in which they are classified. For example, students who are LEP, Hispanic, and poor could have their scores given one-third weight in each subgroup.

Section 6. Teacher Quality⁷⁶

The No Child Left Behind Act of 2001 (NCLBA) made two major amendments to the teacher quality provisions of the Elementary and Secondary Education Act of 1965 (ESEA). First, the NCLB established a requirement that all teachers be *highly qualified* by the end of the 2005-2006 school year. Second, the NCLB replaced the ESEA Eisenhower Professional Development and Class Size Reduction programs with a new Teacher and Principal Training and Recruiting Fund.

Requirement That All Teachers Be Highly Qualified

Each state educational agency (SEA) receiving ESEA Title I-A funding must have a plan to ensure that no later than the end of the 2005-2006 school year, all teachers teaching in core academic subjects within the state will meet the definition of a *highly qualified* teacher (HQT).

As defined in the ESEA, Section 9101(23), to be highly qualified, a public elementary or secondary school teacher must meet the following requirements:

- Every public elementary or secondary school teacher, regardless of whether he or she is new or experienced, (1) must have full state certification (a charter school teacher must meet the requirements in the state charter school law), (2) must not have had any certification requirements waived on an emergency, temporary, or provisional basis, and (3) must have at least a baccalaureate degree;
- Each new public elementary school teacher must pass a rigorous state test demonstrating subject knowledge and teaching skills in reading, writing, math, and other basic elementary school curricular areas (such tests may include state certification exams in these areas);
- Each new public middle or secondary school teacher must demonstrate a high level of competency in all subjects taught by: (1) passing rigorous state academic tests in those subjects (may include state certification exams in those subjects), *or* (2) completing an academic major (or equivalent course work), graduate degree, or advanced certification in each subject taught;
- Each experienced public elementary, middle, or secondary school teacher must meet: (1) the requirements just described for a new teacher (depending upon his or her level of instruction), *or* (2)

⁷⁶ This section was written by Jeffrey J. Kuenzi. For a discussion of teacher quality issues in general, see CRS Report RL33333, *A Highly Qualified Teacher in Every Classroom: Implementation of the No Child Left Behind Act*, by Jeffrey J. Kuenzi.

demonstrate competency in all subjects taught using a “high objective uniform state standard of evaluation” (HOUSSE).⁷⁷

Implementation Status. The NCLB required each state to submit its plan to meet the HQT deadline along with its Consolidated State Application for State Grants on July 12, 2002.⁷⁸ This plan must establish annual measurable objectives for each local educational agency (LEA) and school that, at a minimum, include annual increases in the percentage of HQTs at each LEA and school to ensure that the 2005-2006 deadline is met, and an annual increase in the percentage of teachers receiving high quality professional development. In turn, each LEA must also have a plan to meet this deadline. In addition, beginning with the first day of the 2002-2003 school year, any LEA receiving Title I funding must ensure that all teachers hired after that date who are teaching in Title I-supported programs are highly qualified.

States and LEAs must also submit annual reports to ED describing progress on the state-set annual objectives. The most recent of these Consolidated State Performance Reports (CSPR), for the 2003-2004 school year, consisted of two parts. The first part, providing information on the status of the HQT requirement, was to be submitted to ED by January 31, 2005. Although states appear to have met the reporting deadline, significant problems with the detailed data requirements of the CSPR have prompted ED to delay enforcement of the 2005-2006 deadline.

In an October 21, 2005 policy letter to chief state school officers, ED reported widespread problems in state data systems and offered a series of regional data workshops to support states in collecting data.⁷⁹ The letter also announced additional flexibility in meeting the HQT deadline. The Secretary stated that the letter’s purpose was “to assure you that States that do not quite reach the 100% goal by the end of the 2005-2006 school year will not lose federal funds if they are implementing the law and making a good-faith effort to reach the HQT goal in NCLB as soon as possible.” Instead, states that “meet the law’s requirements and the Department’s expectations in these areas but fall short of having highly qualified teachers in every classroom” would be given an additional year to reach the 100% goal. No state is expected to meet that goal and as many as nine states may not be considered as having made a “good-faith” effort.⁸⁰

The most recently published data on meeting the HQT goal became available in January 2008. As part of the congressionally mandated assessment of NCLB, the

⁷⁷ Among other requirements, the state-set HOUSSE must provide objective information about teachers’ content knowledge in all subjects taught; be aligned with challenging state academic and student achievement standards; be applied uniformly statewide to all teachers in the same subjects and grade levels; and consider, but not be based primarily on, time teaching those subjects. It may use multiple measures of teacher competency.

⁷⁸ Although some states have made their plans available to the public, the Secretary has yet to release the plans of any state.

⁷⁹ The Secretary’s letter is available online at [<http://www.ed.gov/policy/elsec/guid/secletter/051021.html>].

⁸⁰ Education Week, *No State Meeting Teacher Provision of ‘No Child’ Law*, May 24, 2006.

Department's Institute for Educational Sciences found that "91 percent of classes were taught by highly qualified teachers in 2004-05." Two additional findings from the study are (1) students in schools that have been identified for improvement were more likely to be taught by teachers who said they were not highly qualified than were students in non-identified schools and (2) among teachers who said they were highly qualified under NCLB, those in high-poverty schools had less experience and were more likely to be teaching out-of-field, compared with their peers in low-poverty schools.⁸¹

Implementation Issues. Questions have been raised about the scope and application of the HQT requirements, the meaning of some of the requirements, and the ability of different kinds of LEAs to meet them. ED has sought to address some of these concerns through regulation, non-regulatory guidance, and other means. Early in the implementation of these provisions ED was asked whether they apply to *all* teachers, including vocational education teachers, special education teachers, or others not teaching core academic subjects. Final regulations for the Title I program published December 2, 2002, in the *Federal Register* clarify that these requirements only apply to core academic subject teachers. However, these requirements would apply to a vocational education teacher or a special education teacher providing instruction in a core academic subject.⁸²

The final regulations also clarify that a teacher in an alternative certification program will have a maximum of three years in which to become fully certified without being in violation of the highly qualified requirements regarding certification. This allowance is made only for a teacher in an alternative certification program who is receiving high quality professional development, intensive supervision, and making satisfactory progress toward full certification.

In March of 2004, ED announced that additional flexibility could be applied in the implementation of the HQT requirements with regard to: teachers in small rural school districts, science teachers, and teachers teaching multiple subjects.⁸³ In small rural districts, ED provided that teachers teaching core academic subjects who meet the highly qualified requirements in at least one of the subject areas they teach may have an additional three years to meet these requirements in the other subjects they might teach. For *current* teachers, this three-year grace period began with the 2004-2005 school year, meaning that rather than facing a deadline of the end of the 2005-2006 school year to be highly qualified in all core subjects taught, current rural teachers may have until the end of the 2006-2007 school year. For *newly hired* teachers, a full three-year grace period can be provided from the date of hiring. But

⁸¹ U.S. Department of Education, *National Assessment of Title I: Final Report*, January 3, 2008, available at [<http://ies.ed.gov/ncee/pubs/20084012/>].

⁸² According to ESEA Section 9101(11), "The term 'core academic subjects' means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography."

⁸³ A two-page fact sheet on these policies is available on the web at [<http://www.ed.gov/nclb/methods/teachers/hqtflexibility.html>]. A more detailed letter to each of the chief state school officers, dated March 31, 2004, is available at [<http://www.ed.gov/policy/elsec/guid/secletter/040331.html>].

those newly hired teachers will have to be highly qualified in one of their core subject areas when hired. States decide whether to offer this flexibility to eligible rural districts.

The flexibility announced in March 2004 modified earlier non-regulatory guidance (issued in January 2004) which stated that science teachers teaching more than one field of science (e.g., biology and chemistry) would have to be highly qualified in *each* of the fields being taught. Under the new flexibility, states determine whether science teachers need to be highly qualified in each science field they teach or highly qualified in science in general, based on how the state currently certifies teachers in these subject areas.

Finally, ED allowed states to design their HOUSSE procedures to allow a teacher to go through the process a single time to demonstrate competency in multiple subjects. This new flexibility, along with other changes, were incorporated into revised non-regulatory guidance issued on August 3, 2005.⁸⁴

Teacher and Principal Training and Recruiting Fund

This new formula grant program replaced the former Eisenhower Professional Development and Class Size Reduction formula grant programs. The allocation formula provides each state with a base guarantee of funding equal to the amount it received for FY2001 under the Eisenhower and Class Size Reduction programs. Any excess funding is allocated by formula among the states based 35% on school-aged population (5-17), and 65% on school-aged population in poverty. The allocation of subgrants to LEAs follows the same procedure except that the excess is distributed by a formula based 20% on school-aged population, and 80% on school-aged population in poverty. Additional grants under this program are awarded competitively to partnerships lead by State Agencies of Higher Education (SAHEs) that must include a higher education institution and its division preparing teachers and principals; a higher education school of arts and sciences; and a *high-need* LEA.⁸⁵

Partnerships must use their funds for professional development in the core academic subjects for teachers, highly qualified paraprofessionals, and principals. LEAs are authorized to use their funding for one or more of various specified activities. Among the authorized activities are the following:

- assistance to schools in the recruitment and retention of highly qualified teachers, principals, and, under certain conditions, pupil services personnel;

⁸⁴ The most recent version of the ESEA Title II non-regulatory guidance is available on the Web at [<http://www.ed.gov/programs/teacherqual/guidance.doc>].

⁸⁵ In this program, a high-need LEA is defined as one with at least 10,000 poor children or a child poverty rate of at least 20%, and in addition, has either a high percentage of out-of-field teachers or a high percentage of teachers with emergency, provisional, or temporary certificates.

- assistance in recruiting and hiring highly qualified teachers through such means as scholarships and signing bonuses; use of these teachers to reduce class sizes;
- initiatives to increase retention of highly qualified teachers and principals, particularly in schools with high percentages of low-achieving students, through mentoring, induction services during the initial three years of service, and financial incentives for those effectively serving all students;
- professional development, including professional development that involves technology in teaching and curriculum and professional development delivered through technology;
- improvement of the quality of the teaching force through such activities as tenure reform, merit pay, and teacher testing in their subject areas; and
- professional development for principals and superintendents.

Implementation Status. Since the grant allocation procedures of the new program are largely based on those of the Eisenhower and Class Size Reduction programs, the distribution of funds to SEAs and LEAs has occurred smoothly and according to the requirements of the law. That is, a higher proportion of funds have been directed to large and high-poverty districts. Although the new program allows for a much wider set of activities, ED reports that most of the Title II funds have been spent on class size reduction and professional development.⁸⁶ Districts reported spending 58% of their Title II funds on teacher salaries to reduce class size and 25% on professional development. Preliminary evidence from a more recent ED survey of grantees indicates that funds are being increasingly shifted toward the latter.

Implementation Issues. In a departure from the Eisenhower program, which targeted professional development primarily toward math and science, districts are using their Title II funds to support professional development in a number of areas. ED reported that LEAs are spending 39% of their Title II funds for professional development in math and science, an equal share (39%) in reading and English, 8% in history, and 7% in technology. ED officials have stated that this shift is likely a response to the HQT requirements and the need to reduce the number of out-of-field teachers in other fields.⁸⁷

⁸⁶ U.S. Department of Education, Policy and Program Studies Service, *Improving Teacher Quality in U.S. School Districts: Districts' Use of Title II, Part A, Funds in 2002-2003*, Policy and Program brief, February 6, 2004, available at [<http://www.ed.gov/programs/teacherqual/uof.doc>].

⁸⁷ November 28, 2005, phone conversation with Robert Stonehill, Deputy Director, Academic Improvement and Teacher Quality Programs Office of Elementary and Secondary Education, U.S. Department of Education.

A shift away from math and science professional development in the Title II program might concern some observers who see serious deficits in the U.S. educational system in these areas. The National Academy of Sciences recently released a report on this issue in which upgrading current math and science teachers' skills was among its top recommendations.⁸⁸ The flexibility provided by ED which eases the HQT requirements for science teachers (mentioned earlier) may be seen by some as a loophole that will allow districts to hire and retain sub-par teachers.

Section 7. Reading Skills Improvement Grants⁸⁹

Reading First⁹⁰

The Reading First program was authorized as part of the Reading Skills Improvement Grants, Title I-B of the No Child Left Behind Act of 2001 (NCLB). Reading First was drafted with the intent of incorporating the latest scientific understanding on what works in teaching reading to improve and expand K-3 reading programs to address concerns about student reading achievement and to try and reach children at younger ages.

The Reading First program includes both formula grants (states are allocated funds in proportion to the number of children, aged 5 to 17, who reside within the state from families with incomes below the poverty line) and targeted assistance grants to states.⁹¹ States then competitively award grants to eligible local educational agencies (LEAs). LEAs that receive Reading First grants *shall* use those funds for the following purposes:

- selecting and administering screening, diagnostic, and classroom-based instructional reading assessments;
- selecting and implementing a learning system or program of reading instruction based on scientifically based reading research that includes the essential components of reading instruction;

⁸⁸ "Rising Above the Gathering Storm: Energizing and Employing America for a Brighter Economic Future," a report by the National Academies Committee on Science, Engineering, and Public Policy (Washington, DC: National Academies Press, October 2005).

⁸⁹ This section was written by Gail McCallion. For more information on program implementation issues, see CRS Report RL33246, *Reading First: Implementation Issues and Controversies*, by Gail McCallion.

⁹⁰ For more information on the structure of the Reading First Program, see CRS Report RL31241, *Reading First and Early Reading First: Background and Funding*, by Gail McCallion.

⁹¹ The NCLB specifies that beginning with FY2004, 10% of funds in excess of the FY2003 appropriation or \$90 million, whichever is less, is to be reserved for targeted assistance state grants. Targeted assistance grants are intended to reward schools that are achieving the goals of increasing the percentage of 3rd graders who are proficient readers and improving the reading skills of 1st and 2nd graders.

- procuring and implementing classroom instructional materials based on scientifically based reading research;
- providing professional development for teachers of grades K-3, and special education teachers of grades K-12;
- collecting and summarizing data to document the effectiveness of these programs, and to accelerate improvement of reading instruction by identifying successful schools;
- reporting student progress by detailed demographic characteristics; and
- promoting reading and library programs that provide access to stimulating reading material.

Implementation Status. The Reading First program required significant startup time on the part of states. Because the program is complex and many of its requirements are new, it took time for states and LEAs to put together the necessary staff, curriculum, assessment, and evaluation components for the program. By the end of October 2003, all states and the District of Columbia had received their FY2002 and FY2003 Reading First awards. The Virgin Islands received its first Reading First funds in September 2004. Reading First state grants are awarded for a six-year period, pending a satisfactory midterm review. Puerto Rico's situation is unique because it did not spend the first Reading First funds it received (for FY2003), and it declined funds for FY2004 because of disagreements with ED over instruction and methods to be employed. Puerto Rico's application for FY2005 was not found acceptable by ED. Puerto Rico reapplied for FY2006 funds, however its application was not approved. Puerto Rico received the Reading First Advisory Committee's comments on its application in November of 2007.⁹² ED has notified Puerto Rico that it may revise its application to incorporate responses to the Committee's comments and resubmit it for FY2007 funds.

The awarding of the first targeted assistance grants was delayed so that there would be more states meeting the requirement of having one year of baseline data and two years of follow-up data showing improvement. The first Reading First targeted assistance award of \$3 million was awarded to Massachusetts in September of 2005 (out of FY2004 funds). Tennessee was the only state to receive a FY2005 targeted assistance grant; it received \$4.81 million. FY2006 awards were given to Massachusetts (\$950 thousand), Tennessee (\$1.4 million), and Virginia (\$1.2 million).

⁹² ED published a notice in the Federal Register on March 1, 2007, announcing the establishment of the Reading First Advisory Committee. The panel evaluates state Reading First applications and mid-term progress reports. The committee consists of individuals selected from each of the following agencies: ED, the National Institute for Literacy, the National Research Council of the National Academy of Sciences, and the National Institute of Child Health and Human Development. The committee members will serve for three years or until the date of reauthorization of the ESEA, whichever comes first.

The NCLB specifies that a mid-term peer review of states' performance in the Reading First program be conducted after the completion of the program's third grant period (which would have meant a review in the fall of 2005). Because of the time involved in initial implementation of the program, ED made adjustments to the time line to provide states with sufficient time to have participated in three grant cycles, as envisioned by the statute, before undergoing a midterm peer review. ED established November 2006 as the deadline for states' submission of their midterm progress reports.

The Reading First program is required to meet relatively extensive evaluation and reporting standards. In addition to midterm reviews of states performance, districts are required to track the progress of individual students, and states are required to submit annual evaluations to ED with data on overall school, district, and state progress. ED has also contracted to have both an impact and implementation study of the program conducted. It is anticipated that the first report from the impact study, which is being conducted by Abt Associates and MDRC, will be available sometime in 2008. The implementation study is also being conducted by Abt Associates. The interim implementation report was issued in July of 2006; the final implementation report is expected to be issued in the summer of 2008.

Implementation Issues. Information from ED's April 2007 report on state performance data; the 2006 *Reading First Implementation Evaluation: Interim Report*; an October 2007 Center on Education Policy report, *Reading First: Locally Appreciated, Nationally Troubled*; and a February 2007 Government Accountability Office (GAO) report have all provided relatively positive information about the states and local school districts opinions of the impact of the Reading First program on student achievement.⁹³ ED's report, *The Reading First Annual Performance Report Data*, provided encouraging news based on state data, about the impact of RF on student achievement. According to these data, on average, between 2004 and 2006, the 26 states with baseline data increased the performance of students meeting or exceeding proficiency on fluency outcome measures by 16% for 1st graders, 14% for 2nd graders, and 15% for 3rd graders. In addition, these 26 states also increased the performance of students meeting or exceeding proficiency on comprehension outcome measures — by 15% for 1st graders, 6% for 2nd graders, and 12% for 3rd graders.⁹⁴ However, state assessment measures and cut-off scores for determining reading proficiency vary from state to state, making it difficult to draw definitive conclusions on Reading First's performance from these data.

⁹³ For more information see CRS Report RL33246, *Reading First: Implementation issues and Controversies*, by Gail McCallion.

⁹⁴ *Reading First Annual Performance Report Data*, is available online at [<http://www.ed.gov>]. ED has also issued a report providing profiles of state implementation of reading first, including data on the level of funding and the numbers of LEAs, schools, students, and teachers who have participated in the program. This report, titled *The Reading First State Data Profiles*, is also available on ED's website.

Scientifically Based Research Requirements in the No Child Left Behind Act

The NCLB has endorsed the use of scientifically based research (SBR) in funded activities, including over 100 references to the use of SBR in choosing instructional and assessment programs as well as for professional training programs, and other NCLB-funded activities. The emphasis is on experimental research, particularly randomized controlled trials (RCTs).⁹⁵

Programs in the NCLB affected by the requirement that funded educational interventions be based on SBR include Title I, Part A grants for the education of the disadvantaged, Reading First, Early Reading First, Even Start, Literacy Through School Libraries, Comprehensive School Reform, Improving Teacher Quality State Grants, Mathematics and Science Partnerships, English Language Acquisition State Grants, and Safe and Drug-Free Schools and Communities. This discussion focuses on the application of SBR to the Reading First program.

The NCLB language authorizing Reading First makes clear that the intent of the program is to require recipients of Reading First funds to implement programs which are based on scientifically based reading research (SBRR). ED's application of SBRR to the Reading First program draws extensively on the work conducted by the National Reading Panel (NRP). In 2000, the NRP issued a report titled: *Teaching Children to Read*. The NRP was convened by the National Institute of Child Health and Human Development (NICHD) in consultation with ED in response to a congressional charge to review the literature on reading and use it to assess the effectiveness of different techniques for teaching reading, and whether these techniques were ready to be applied to classroom settings. Based on the NRP's research, the NCLB incorporated five essential components of reading as requirements for reading instruction funded under the Reading First program. These essential components are defined in the NCLB as "explicit and systematic instruction in — (A) phonemic awareness; (B) phonics; (C) vocabulary development; (D) reading fluency, including oral reading skills; and (E) reading comprehension strategies."⁹⁶

⁹⁵ For an in depth discussion of RCTs, see CRS Report RL33301, *Congress and Program Evaluation: An Overview of Randomized Controlled Trials (RCTs) and Related Issues*, by Clinton Brass, Blas Nunez-Neto, and Erin D. Williams. Some authors argue that in the context of encouraging basic educational research, SBR must be interpreted more broadly, in contrast to the more prescriptive definition of SBR contained in the NCLB, "narrowly conceived for service providers trying to justify their use of federal dollars." Margaret Eisenhart and Lisa Towne, "Contestation and Change in National Policy on 'Scientifically Based' Education Research," *Educational Researcher*, vol. 32, October 2003.

⁹⁶ P.L. 107-110, Section 1207. [20 U.S.C. 6367]. CRS Report RL32145, *Early Intervention in Reading: An Overview of Research and Policy Issues*, by Gail McCallion.

Implementation Issues.

Criticisms of the Application of Scientifically Based Reading Research to the Reading First Program. Some criticisms have been raised regarding ED's application of SBRR to the Reading First Program. For example, Robert Slavin, of the Success for All Program, has argued that the NCLB's requirement that interventions be based on SBR does not differentiate between programs that have themselves been rigorously evaluated and those programs that have not been rigorously evaluated for efficacy, but can cite SBR that supports their interventions. The Success for All Foundation argued in a letter to the Office of the Inspector General of the U.S. Department of Education (OIG), that ED has inappropriately narrowed the definition of scientifically based research in its implementation of the Reading First program:

In essence, through the implementation of Reading First, the U.S. Department of Education has narrowed the definition of SBRR to the five "essential components" of reading as identified by the National Reading Panel. Research on program efficacy has been ignored. Because Reading First was so closely managed by the U.S. Department of Education, and because it contains such a strong focus on the use of scientifically based research, it is paving the way for how states, districts and schools are coming to understand the meaning of SBR, and how they will apply it to other Federal programs.⁹⁷

As a consequence of the alleged "narrowing" of the definition of SBRR, states have been unnecessarily limited in their choices of reading programs, assessments and professional development packages, according to critics of ED's implementation of Reading First.

Limitations of Existing Research. Some of the controversies that have surrounded implementation of SBRR in the Reading First program reflect the current state of SBRR and the difficulties of applying existing research to concrete educational interventions. Some observers have noted that there are many areas of education research with few if any RCT studies to draw upon.⁹⁸

Some have argued that navigating the existing array of resources is difficult for states and LEAs because much of the research is academic. In addition, although there is more user-friendly material available than ever before, evaluations of the application of SBRR to concrete educational interventions is still limited, and there is no single federal website or resource that currently catalogs and evaluates all the available user-friendly resources. The following discussion summarizes some of the resources that are currently available.

Identifying Relevant Resources. A variety of federally funded offices and resources provide information or technical assistance offering guidance more broadly on SBR, including SBRR, to states and LEAs. There are also guides intended to

⁹⁷ Robert Slavin, *Letter to U.S. Department of Education*, The Success for All Foundation, May 27, 2005.

⁹⁸ Lynn Olson, "Law Mandates Scientific Basis for Research," *Education Week*, January 30, 2002.

provide user-friendly information on SBR that states and LEAs can access through ED websites and publications. Online resources include an NCLB website with information on SBR and related resources, a searchable ERIC database on education research, and access to educational statistics and National Assessment of Educational Progress (NAEP) data on ED's National Center for Educational Statistics website.⁹⁹ The Institute of Education Sciences (IES) has made publications and other resources available on SBR. In December of 2003 IES published a report titled "Identifying and Implementing Educational Practices Supported by Rigorous Evidence: A User Friendly Guide."

In addition, ED has awarded 20 five-year grants to comprehensive centers to provide advice to states and LEAs on meeting the requirements of the NCLB. There are also ten regional centers with functions defined in the Education Sciences Reform Act of 2002.¹⁰⁰

These resources are, however, not all centralized in one location, and relatively few provide analysis of specific educational instruction or assessment packages that might meet the SBR requirements of the NCLB. It can be difficult for states and LEAs to sift through the volume of information that is available and find what they need to choose effective curriculum and assessment programs.

ED's IES created a What Works Clearinghouse (WWC) to address this need for clear, user-friendly information on SBR, including evaluations of specific educational interventions.¹⁰¹ The WWC publishes reviews of educational interventions that have SBR to back up efficacy claims on education topics that the WWC has identified as priorities. Initially, the WWC intended to issue only topic reports, but in May of 2006, the WWC modified its website to include new intervention reports. These intervention reports have been introduced so that potentially useful information can be made available as quickly as possible. After an intervention that meets WWC standards is reviewed, an intervention report is posted on the website. After all such interventions on a specific topic have been reviewed, a topic report will be posted on the website. The information provided in intervention reports includes program descriptions, costs of implementing the programs, and ratings of program effectiveness — including a category of "potentially positive" for promising results.

Local Control. Perhaps in part because of the difficulties in finding specific information on SBRR based educational interventions that meet the requirements of the NCLB, many states have chosen to rely upon a limited number of instructional, assessment and professional training programs. This raised concerns by some about what they call the "overprescriptiveness" of ED's application of SBRR to Reading First and the potential infringement on states' and LEAs' ability to choose curricula.

⁹⁹ See [<http://www.ed.gov/nclb>], [<http://www.ed.gov/about/pubs/intro/pubdb.html>], and [<http://www.nces.ed.gov>].

¹⁰⁰ The mission of the regional centers includes serving regional needs, disseminating SBR, providing professional training and technical assistance, and responding to the needs of stakeholders to ensure the academic success of all students. *Responding to Regional Needs and National Priorities*, Regional Educational Laboratories, 2004 Annual Report.

¹⁰¹ See [<http://www.whatworks.ed.gov>].

Some argue that this “overprescriptiveness” is not consistent with section 9527 of the No Child Left Behind Act.¹⁰²

A 2005 CEP report examined ED’s administration of the state application process for Reading First grants, among other things.¹⁰³ The CEP study found that states were “remarkably consistent” in their choice of programs. It noted that many states were required to revise their initial application for Reading First grants one or more times before ultimately having their application accepted. It found that in their final accepted applications, almost all included DIBELS on their approved assessments list,¹⁰⁴ and used the same program (Consumer’s Guide) for evaluating and choosing a reading curriculum.¹⁰⁵ CEP analysis of a sample of original and final applications from 10 states found that 4 of the 10 switched to DIBELS and the Consumers Guide after the initial review of their application.¹⁰⁶ Additionally, the CEP study found that state recommendations of specific reading programs appeared to have influenced districts’ choice of reading programs. The survey of districts receiving Reading First funds found that half changed the reading programs used by the district to qualify for a grant from their state.

In addition, The Reading Recovery Council of North America submitted a complaint to ED which, among other things, contends that ED has infringed on state and local control to select curricula through its nonregulatory guidance and discussions with state officials, which, Reading Recovery argues, effectively excludes LEAs from using Reading First funds for one-to-one tutoring interventions, like Reading Recovery.¹⁰⁷

Advocates of Reading First believe that the program needs to be prescriptive in order to produce significant results. They argue that the success of Reading First will

¹⁰² This section states: “(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. (B) PROHIBITION ON ENDORSEMENT OF CURRICULUM — Notwithstanding any other prohibition of Federal law, no funds provided to the Department under this Act may be used by the Department to endorse, approve, or sanction any curriculum designed to be used in an elementary or secondary school.” (Elementary and Secondary Education Act of 1965, Section 9527.)

¹⁰³ The CEP report is based on state and district surveys and case studies conducted for its 2005 study on the No Child Left Behind Act, an overview of all state Reading First applications, an in-depth review of 15 randomly selected state applications, and a review of revisions to state applications based on 10 representative states.

¹⁰⁴ DIBELS is the *Dynamic Indicators of Basic Early Literacy Skills*.

¹⁰⁵ Both publications were produced by the University of Oregon.

¹⁰⁶ Caitlin Scott and Tom Fagan, *Ensuring Academic Rigor or Inducing Rigor Mortis? Issues to Watch in Reading First*, Center on Education Policy (Washington, DC: 2005).

¹⁰⁷ The Reading Recovery Council of North America, “Evidence Ignored, Learning Denied: The Attack on Reading Recovery”, submitted to the Inspector General’s Office of the U.S. Department of Education, (March 2006), available at [<http://www.readingrecovery.com>].

be in large part attributable to its strict requirement that programs implemented with Reading First funds be supported by scientifically based research: “Advocates have long argued that ‘entitlement’ programs like Title I failed to improve reading scores because of a lack of quality control on how the money was spent.”¹⁰⁸

Three groups representing different reading programs filed separate complaints with ED’s Office of Inspector General (OIG), asking that the Reading First program be investigated. The three groups that filed complaints are Dr. Cupp’s Readers and Journal Writers, Success For All, and the Reading Recovery Council of North America. In response, the OIG conducted several audits of the Reading First program. It issued its first report on the federal Reading First program, specifically on Reading First’s grant application process, in September of 2006. In addition, several audits of state Reading First programs have been issued, and audits have been conducted on ED’s administration of the Reading First program and on the RMC Research Corporation’s Reading First Contract.¹⁰⁹ These three reports on the federal Reading First program essentially validated many of the concerns that had been raised in complaints filed with the OIG. ED concurred with the OIG’s recommendations in all three reports, and has addressed all of the recommendations. In addition, the House Committee on Education and Labor has held oversight hearings on Reading First, and the Senate Committee on Health, Education, Labor and Pensions issued a report on Reading First Technical Assistance directors with financial ties to publishers.

Section 8. Parental Involvement Requirements¹¹⁰

Requiring or encouraging parents’ involvement in decisions affecting the education of their children and in their actual education has been a long-standing goal of the Elementary and Secondary Education Act (ESEA). One of the purposes of the No Child Left Behind Act (NCLB) was to continue and expand certain aspects of ESEA parental involvement provisions, for example by requiring that parents receive information on school performance. As the House committee report on H.R. 1 (the originating bill of NCLB in the House) points out,

... the No Child Left Behind Act of 2001 expands upon current provisions of the Elementary and Secondary Education Act, which require schools to collect and report to the public information on the academic quality of Title I schools, in order to empower parents with information about their schools. Reporting this information is crucial to empowering parents to hold schools accountable and

¹⁰⁸ Andrew Brownstein and Travis Hicks, “Reading First Under Fire,” *Title I Monitor*, Education Funding Research Council, (Thompson Publishing Group, September 2005), p. 4.

¹⁰⁹ The state audits were issued on October 3, 2005 (Alabama), October 20, 2006 (Wisconsin), November 3, 2006 (New York), and January 18, 2007 (Georgia).

¹¹⁰ This section was written by Richard N. Apling and Wayne C. Riddle.

getting them involved, and helping fix schools that fail and choose another public school if their child's school fails.¹¹¹

Most of the ESEA parental involvement requirements are contained in Title I, Part A and are linked to local educational agencies (LEAs) and schools receiving Title I, Part A funding.¹¹² As a result, most of this section dwells on Title I, Part A parental involvement requirements. However, examples of other, non-Title I, Part A requirements are mentioned.

ESEA Title I, Part A Requirements

Increasing the involvement of parents in the education of their educationally disadvantaged children has been a stated goal of ESEA Title I, Part A, since the beginning of the program in 1965. For many years, representative advisory committees of parents at the school and LEA level were a major, concrete aspect of these parental involvement requirements. The statutory requirement for these committees was dropped under the Education Consolidation and Improvement Act of 1981, although some schools and LEAs have continued to support such committees at their own discretion. The parental advisory committee requirement was dropped, in part, in response to program studies that found the role and authority of the committees to be ambiguous, leading to occasional tension between parent groups and school administrators.¹¹³

The relatively numerous current ESEA Title I-A statutory requirements for parental involvement¹¹⁴ are summarized below. They include many broad statements about the importance of parental involvement activities and their effective implementation, but comparatively few concrete requirements. Many of the specific requirements deal more with notification of parents than with more active forms of involvement, or specific authorities or rights for parents. Of the latter, several apply only to parents of limited English proficient pupils assigned to language instruction programs funded under Title I-A.

Section 1118, “Parental Involvement”. Many, but by no means all, of the relevant Title I-A requirements may be found in Section 1118. Section 1118(a) requires all LEAs receiving grants under Title I-A to have a written policy on parental involvement, prepared jointly with parents of pupils participating in the program. Among other provisions, the policy must: describe how the LEA will involve parents in the development of the overall LEA plan for Title I-A (Section 1112), and in school identification and improvement procedures (Section 1116); support school-

¹¹¹ H.Rept. 107-63, p. 275.

¹¹² The vast majority of LEAs qualify for Title I-A funding. Only those with very few poor children (fewer than 10) or very low poverty rates (under 2%) fail to qualify. However, only about 60% of all public schools receive Title I-A funding.

¹¹³ See U.S. Office of Education, *Compensatory Education Study, A Final Report from the National Institute of Education*, Chapter IV, 1978.

¹¹⁴ Current non-regulatory guidance on the Title I-A parental involvement requirements may be found at [<http://www.ed.gov/programs/titleiparta/parentinvguid.pdf>].

level efforts to implement parental involvement activities; coordinate parental involvement activities under Title I-A with those of other relevant federal programs;¹¹⁵ and conduct an annual evaluation of the effectiveness of the LEA's parental involvement activities in improving the quality of schools receiving Title I-A funds.

Similarly, each school participating in Title I-A must have a written policy on parental involvement. Schools as well as LEAs may substitute parental involvement policies applicable to *all* parents of pupils in the school for specific Title I-A policies in meeting these requirements.

Each LEA participating in Title I-A is required to reserve at least 1% of its grant for parental involvement activities, with at least 95% of these funds distributed to individual Title I-A schools. However, if 1% of the LEA's Title I-A grant would be equal to \$5,000 or less, then this requirement does not apply.

Schools participating in Title I-A are required to convene at least one annual meeting to which parents of participating pupils are to be invited, to explain the program's requirements and the right of parents to be involved. Participating schools must also offer to parents a "flexible number" of additional meetings, including "regular meetings" to participate in decisions relating to the education of their children, if requested by parents. Participating schools must involve parents in planning, improvement, and review of Title I-A programs, and provide to them information on the curricula and assessments used at the school.

More specifically, each participating school is to develop a *school-parent compact* of shared responsibilities to improve student achievement. The compact is to: describe the responsibilities of the school and parents for activities to support children's learning; and provide for communication through parent-teacher conferences held at least annually for elementary school pupils, frequent reports to parents on their children's progress, and "reasonable" access for parents to school staff and opportunities for classroom observation.

Participating schools and LEAs are further required to "build capacity" for parental involvement through activities such as: helping parents understand state academic content and pupil performance standards and how to help their children meet them; providing materials and training to parents to help them work with their children; educating teachers and other school staff in the value of parental involvement activities; providing literacy training to parents using Title I-A funds, if necessary and other sources of funding are unavailable; and providing transportation and child care in order to facilitate participation in parent involvement activities. In addition, LEAs *may* establish a district wide parental advisory council.

All of the parental involvement activities supported or required under Section 1118 are to be provided, "to the extent practicable," in a format and language that is

¹¹⁵ These include the Reading First program and the Even Start program (see below for discussions of the parental involvement requirements for these ESEA programs) as well as Head Start, which is not an ESEA program.

accessible to parents with disabilities, with limited English proficiency, or who are migratory. In states where Parental Information and Resource Centers¹¹⁶ are located, LEAs and schools are to inform the parents of participating pupils about these Centers and the services they provide. State educational agencies (SEAs) are to review LEA parental involvement policies to assure that they meet the requirements of Section 1118.

Significant Title I-A Parental Involvement Requirements Outside Section 1118 . There are a number of important parental involvement provisions in portions of ESEA Title I-A other than Section 1118. First, under Section 1111(d), state plans for Title I-A must include information on how the SEA will collect and disseminate information on effective parental involvement practices, based on the “most current research.”

Second, as discussed in Section 4 of this report, under Section 1111(h)(2), states and LEAs participating in Title I-A must report assessment results and certain other data to parents and the public through report cards. States are to publish report cards for the state overall, and LEAs (including charter schools which are treated under state law as individual LEAs) are to publish report cards for the LEA and individual schools. The report cards must generally include information on pupils’ academic performance disaggregated by race, ethnicity, and gender, as well as disability, migrant, English proficiency, and economic disadvantage status. The report cards must also include information on pupil progress toward meeting any other educational indicators included in the state’s adequate yearly progress (AYP) standards, plus secondary school student graduation rates, the number and identity of any schools failing to meet AYP standards, and aggregate information on the qualifications of teachers. The report cards *may* include additional information, such as the extent and type of parental involvement in schools, average class size, or the incidence of school violence. LEA and school report cards are to be disseminated to parents of public school pupils and to the public at large; there are no specific provisions regarding dissemination of the state report cards.

Third, under Section 1111(h)(6), “Parents Right-To-Know,” the parents of any pupil attending a school participating in Title I-A must be provided, upon request, with information on the professional qualifications of their child’s teachers. The information provided must include whether the teacher meets state licensing criteria for the grades and subject areas they teach; whether any such criteria have been waived for the teacher; and the postsecondary degree(s) held by the teacher, including their major area(s) of study. The qualifications of any paraprofessionals who serve their child must be provided to parents, upon request, as well. In addition, participating schools are required to provide to each parent information on the performance of their child on state academic assessments, and to notify parents if their child is taught for four or more consecutive weeks by a teacher who is not “highly qualified.”¹¹⁷

¹¹⁶ Parental Information and Resource Centers are funded by IDEA grants and run by parent organizations to provide training and information to parents of children with disabilities.

¹¹⁷ For the definition of “highly qualified” teacher under the ESEA, see Section 6 of this (continued...)

Fourth, under Section 1112(g), Local Educational Agency Plans, LEAs using Title I-A funds to provide a language instruction program for limited English proficient (LEP) pupils must notify the parents of the pupils served by this program within 30 days of the beginning of the school year (or within two weeks if identification occurs during the school year).¹¹⁸ The parental notification must include the basis for identifying their child as LEP, including the assessment method and the child's level of English proficiency; the instructional methods that will be used in the language instruction program, as well as other programs that might be available; the exit requirements of the language instruction program; how the program meets the objectives of the individualized education program of the child (if the child has a disability); and information on the rights of the parents to remove their child from the program, and to receive guidance on the selection of alternative language instruction programs. In addition, a school that is using Title I-A funds to provide a language instruction program for LEP pupils, and that fails to meet the annual measurable achievement objectives specified under ESEA Title III, Section 3122,¹¹⁹ must separately notify the parents of participating pupils within 30 days of such failure.

Section 1112(g)(4) also includes a separate series of parental participation requirements applicable specifically to parents of pupils receiving language instruction for LEP pupils funded under Title I-A. These essentially duplicate some of the provisions in Section 1118 applicable to the parents of all participating pupils (e.g., outreach to inform parents how they may help their children meet state academic content and achievement standards, or holding meetings with parents), though with a specific emphasis on helping pupils attain proficiency in English. In addition, Section 1112(g)(5) prohibits the admission to, or exclusion from, any federally-assisted education program on the basis of a pupil's surname or language minority status.

Fifth, under Section 1116(b)(6), LEAs are required to inform parents of all pupils attending a school that has been identified for improvement, corrective action, or restructuring under Section 1116; that is, the school has failed to meet AYP standards for two or more consecutive years.¹²⁰ The notice is to include the reasons for and an explanation of the identification; how the school's performance compares to that of other schools in the LEA and state; an explanation of actions being taken in response to the identification, and how parents can become involved in these activities; and an explanation of the parents' right to transfer their child to another public school or, where relevant, to obtain supplemental educational services for their

¹¹⁷ (...continued)
report.

¹¹⁸ There are virtually identical requirements for LEAs and other eligible entities using funds under ESEA Title III (Language Instruction for Limited English Proficient and Immigrant Students) "to provide a language instruction educational program" (§3302).

¹¹⁹ For information on these objectives, see Section 6 of this report as well as CRS Report RL31315, *Education of Limited English Proficient and Recent Immigrant Students: Provisions in the No Child Left Behind Act of 2001*, by Jeffrey J. Kuenzi.

¹²⁰ For more information, see Section 4 of this report.

child. Similarly, under Section 1116(c)(6), SEAs must inform parents when the LEA serving their child has been identified for improvement (fails to meet AYP standards for LEAs for two or more consecutive years), the reasons for the identification, and how parents can become involved in improving the LEA's instructional programs. Similarly, under Section 1116(C)(10)(E), SEAs must inform parents of all children attending schools of an LEA that has been identified for corrective action (may be taken any time after identification of the LEA for improvement, but must be taken after four consecutive years of failing to meet AYP standards for LEAs).

Examples of Other ESEA Parental Involvement Requirements

As noted above, Title I-A has the most extensive ESEA requirements for parental involvement. At the same time, other programs authorized under the ESEA require some form of parental involvement or permit funds to be spent on parental involvement activities. The following are some examples.

- *The Reading First program (Subpart 1 of ESEA Title I-B).* As discussed in Section 7 of this report, the Reading First program aids programs “based on scientifically based reading research” for pupils in kindergarten through 3rd grade. Section 1202(c)(7)(B) permits LEAs to use funds for certain family literacy programs and to provide training and assistance to parents to encourage their children to read.
- *The William F. Goodling Even Start Family Literacy Programs (Subpart 3 of ESEA Title I-B).* This program supports efforts to integrate “early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program...” (§ 1231(1)) In general, Even Start funds support “intensive family literacy services that involve parents and children, from birth through age seven, in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners.” (§ 1234(a))
- *Parental notification requirements under Language Instruction for Limited English Proficient and Immigrant Students (§3302).* As noted above, LEAs and other eligible entities using funds under ESEA Title III must notify parents of limited English proficient pupils of certain information and rights. Among these are the reasons why their child has been identified as needing a language instruction educational program and the parents' rights to decline enrolling their child in such program and to withdraw their child from the program if services have already started.
- *Parental consent regarding armed forces recruiter access to student information (ESEA §9528(a)(2)).* The ESEA, as amended by the NCLB requires LEAs receiving assistance under ESEA to provide secondary school students' names, addresses, and telephone numbers

to military recruiters.¹²¹ This section further provides that the student or the parent of the student may request that this information “not be released without prior written parental consent,” that the LEA notify parents of this option, and that the LEA comply with the parent’s written request.¹²²

Implementation Issues

National studies on the implementation of current parental involvement provisions are not yet available. It is possible that such studies may find some issues similar to those found by past national studies. For example, the most recent published ESEA Title I-A evaluation that focused, in part, on the impact of the parental involvement provisions was “Promising Results, Continuing Challenges: The Final Report of the National Assessment of Title I,” published by the Department of Education’s Planning and Evaluation Service in 1999.¹²³ Chapter 7 of this report reviews the parental involvement provisions of Title I-A, particularly those that were newly adopted in the 1994 reauthorization of the ESEA (the Improving America’s Schools Act). These provisions included the requirements (described above) for school-parent compacts and, in most cases, the reservation of at least 1% of LEA Title I-A grants for parental involvement activities. This report chapter also provides a review of research on the importance and effects of increased parental involvement in relatively high poverty schools.

Key findings of this study included the following:

- The staff at a high proportion of schools, especially schools with the highest poverty rates among pupils’ families, found the school-parent compacts to be helpful in promoting desired behaviors among pupils, such as homework completion. However, only 75% of a representative sample of Title I-A schools had actually implemented this provision.
- Overall, parents remained less involved with their children’s Title I-A schools than is desirable. Major obstacles to increased involvement included a failure of many schools to offer outreach and assistance to parents, lack of time on the part of both school staff and parents, and lack of education on the part of parents of children attending high poverty schools.
- School staff found there to be substantial overlaps and duplication in the parental involvement requirements of multiple federal programs.

¹²¹ Without this provision, LEAs would be prevented from providing such information under §444 of the General Education Provisions Act (GEPA).

¹²² For more information, see Section 9 of this report.

¹²³ Available at [<http://www.ed.gov/rschstat/eval/disadv/promisingresults/natirpt.pdf>].

- In many cases, parents were not receiving the desired level or types of information from school “report cards.”¹²⁴

Information from some education advocacy groups suggest that similar implementation issues are still relevant. In a press release announcing an open letter to President Bush and Secretary of Education Spellings, the Public Education Network (PEN) maintained that

[i]n most school districts parents reported having met resistance from school officials when they tried to get involved, and 75 percent of survey respondents had not been involved in any NCLB-related activity. By enforcing provisions already in the law, the federal government can send a strong signal to states and school districts that parents can and should be active partners in school improvement, and can build public ownership of the schools.¹²⁵

Another press release, issued jointly by PEN and Campaign for Fiscal Equity, Inc. (CFE), reported on testimony by parents in the New York City area. Among other concerns, PEN and CFE reported that

[p]arents expressed frustration over the lack of communication and timely information from schools about school performance and services available to students. While NCLB requires reporting of school and student performance through annual report cards, parents testified that school information rarely reaches parents, and when it does, it is often late and difficult to understand. In particular, parents expressed the need for timely information about supplemental educational services and recommended that school data be made available in multiple languages. Parents also testified that they often feel unwelcome by administrators at the school and district levels, making it difficult for them to get involved.¹²⁶

Since one rationale for current parental involvement provisions is to “empower” parents so that they can influence school improvement, a central implementation issue is the degree to which parents’ involvement improves schools and improves student achievement. The *Washington Post* reported on a recent study based on data from 257 California elementary schools with high numbers of low-income pupils. The study found that parent involvement is positively correlated with student achievement. However, the study also found that other factors (most of which are also emphasized in current law), such as emphasizing student achievement, aligning

¹²⁴ It should be noted that this report was published before enactment, under the No Child Left Behind Act of 2001, or implementation of the school and LEA report card requirements discussed earlier in this memorandum.

¹²⁵ “American Public Calls on Bush Administration, Congress To Strengthen Public Information & Involvement in NCLB & To Hold States Accountable for Progress,” press release from the Public Education Network, March 16, 2005, available at [http://www.publiceducation.org/doc/press_releases/march16_2005.doc].

¹²⁶ “New Yorkers Speak Out on No Child Left Behind Act Bring Community Voice to Federal Law,” press release, Public Education Network and Campaign for Fiscal Equity, Inc., September 30, 2005, available at [http://www.publiceducation.org/pdf/NCLB/hearings/NY_News_Release.pdf].

curriculum with state academic standards, and providing experienced teachers and principals, are more highly correlated with achievement test scores.¹²⁷

Section 9. Military Recruitment at Secondary Schools¹²⁸

The Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLBA; P.L. 107-110), contains several provisions requiring local educational agencies (LEAs) receiving funding under the ESEA to provide military recruiters with the same access to secondary school students as they provide to institutions of higher education (IHEs) or prospective employers (Section 9528).¹²⁹ For example, if postsecondary institutions are permitted to come to the school to provide information to students about their programs, military recruiters must be afforded the same opportunities. In addition, upon request by military recruiters or IHEs, LEAs receiving ESEA funding must provide access to secondary school students' names, addresses, and telephone numbers, unless a parent or the student has opted out of providing this information. Failure to meet these requirements may result in the loss of ESEA funding. An exception to these requirements may be granted, however, to a private secondary school that maintains religious objections to military service.

Under the Family Educational Rights and Privacy Act (FERPA), LEAs are generally required to obtain written consent from parents prior to disclosing personally identifiable information from a child's education records. However, LEAs are permitted to disclose data designated as "directory information" without prior written consent, unless a parent or the student has specifically asked the LEA not to release the information.¹³⁰ Under FERPA, directory information, such as students' names and addresses, may be provided to outside organizations, such as yearbook publishers and military recruiters, if the LEA chooses to do so. FERPA does require

¹²⁷ The study was led by the nonprofit EdSource group in Mountain View, CA. ("Parents' Effect on Achievement Shaky," *Washington Post*, November 22, 2005, p. A10.)

¹²⁸ This section was written by Rebecca R. Skinner.

¹²⁹ Similar requirements are also contained in 10 U.S.C. § 503, as amended by Section 544 of the National Defense Authorization Act for Fiscal Year 2002 (P.L. 107-107). While there are some differences between this provision and those contained in the ESEA, both statutes are designed to accomplish the same goal. The provisions authorized by NCLBA and 10 U.S.C. § 503 are unrelated to similar provisions at the postsecondary level which require colleges and universities that receive federal funds to allow military recruiters on campus. The requirements at the postsecondary level are commonly referred to as the Solomon Amendment. For more information on the Solomon Amendment, see CRS Report RS22405, *Military Recruiting and the Solomon Amendment: The Supreme Court Ruling in Rumsfeld v. FAIR*, by Charles V. Dale.

¹³⁰ Directory information is information that is generally not considered harmful or an invasion of privacy if released. (U.S. Department of Education, October 9, 2002, "Family Educational Rights and Privacy Act (FERPA) Model Notice for Directory Information," available online at [<https://www.ed.gov/policy/gen/guid/fpco/hottopic/ht10-09-02a.html>].)

an LEA to notify parents about the types of student information the LEA releases publicly.¹³¹ This notice must include an explanation of a parent's right to request that directory information not be disclosed to a third party without prior written consent. LEAs must also notify parents that they routinely disclose the names, addresses, and telephone numbers of secondary school students to military recruiters, unless a parent has requested that such information not be distributed without written consent. Parents must be notified about how to opt out of the public disclosure of directory information, including the process for doing so and associated deadlines.¹³² It should be noted that even if an LEA does not disclose any directory information to any third parties, it is still required to provide military recruiters with access to secondary students' names, addresses, and telephone numbers.¹³³ Parents must be notified of their option to opt out of this disclosure of information, as well.

Implementation Status. The Department of Defense (DoD) has developed a national high school data base to track whether military recruiters are provided with access. As of fall 2002, 95% of approximately 22,000 secondary schools in the United States provide military recruiters with student access that is in compliance with statutory requirements.¹³⁴ In an interview about military recruiters and high school access that took place in spring 2003, a spokeswoman for the DOD indicated that there were only six high schools that they were aware of that were not providing access to military recruiters.¹³⁵ Even prior to the passage of the NCLBA, military recruiters generally had access to high schools with only 12% of high schools denying recruiters access to students' directory information.¹³⁶

DOD has also developed a database to collect personal information (e.g., contact information) of individuals who meet age and minimum school requirements for military service to support DOD's recruitment efforts to maintain the nation's all-volunteer military. Although DOD has been able to populate its database, the database has raised controversy and been subject to a lawsuit.¹³⁷ In May 2003, DOD

¹³¹ For more information about parental notification requirements, see [<http://www.ed.gov/policy/gen/guid/fpco/pdf/ht100902b.pdf>].

¹³² An LEA may provide a single notice that informs parents about the types of information that are publicly released, public disclosure of student information to military recruiters, and process for requesting that information not be disclosed without prior written consent. (U.S. Department of Education, October 9, 2002, "Policy Guidance - Access to High School Students and Information on Students by Military Recruiters," available at [<http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-10-09-02a.html>]. Hereafter referred to as ED, Policy Guidance.)

¹³³ ESEA, § 9528.

¹³⁴ ED, Policy Guidance.

¹³⁵ Ibid.

¹³⁶ "Military Recruiters Meet Pockets of Resistance," *Education Week*, April 23, 2003. Also see "Military Faces Parental Counterattack: High School Recruitment, a Longtime Tradition, Raises Worries in Wartime," *Washington Post*, November 1, 2005, p. B01.

¹³⁷ The New York Civil Liberties Union (NYCLU) sued the DOD on behalf of several high school students after the JAMRS database began collecting, maintaining, and distributing (continued...)

issued a Federal Register announcement regarding the proposed database referred to as the Joint Advertising and Market Research Recruiting (JAMRS) Database.¹³⁸ The system was designed “to provide a single central facility within the Department of Defense to compile, process and distribute files of individuals who meet age and minimum school requirements for military service. The information will be provided to the Services to assist them in their direct marketing recruiting efforts.”¹³⁹

The announcement indicated that the JAMRS Database would include data on high school students ages 16-18, current college students, and Selective Service System registrants, as well as individuals who had taken the Armed Services Vocational Aptitude Battery (ASVAB) test and individuals who had responded to various paid/non-paid advertising campaigns seeking enlistment information since July 1992. Also included in the database were military personnel on active duty or in the reserves, individuals in the process of enlisting, and individuals who have asked to be eliminated from any future recruiting lists. Data collection was planned to collect, among other items, students’ contact information, social security numbers, ethnicity, high school name, and grade point averages. Individual data were to be maintained for five years.

In January 2007, DOD issued a second Federal Register announcement to provide “further explanation and clarification of the manner in which the JAMRS Database is maintained” in response to comments received during the comment period for the May 2005 Federal Register announcement.¹⁴⁰ The following are examples of changes or clarifications that were made regarding the database.

- Student data will only be stored for three years.
- Social security numbers will only be collected through the Selective Service System and not from any other governmental or private database.
- Student information will be used for military recruiting purposes and will not be disseminated to law enforcement, intelligence, or other agencies.
- A process will be available for students to have their names removed from the JAMRS list provided to the Services for recruiting purposes.¹⁴¹

¹³⁷ (...continued)

individuals’ personal information.

¹³⁸ Federal Register, vol. 70, no. 98, 29486-29487. A subsequent Federal Register notice (vol. 72, no. 5, 952-956) changed the name of the database to the Joint Advertising, Market Research & Studies Recruiting Database. The acronym, JAMRS, was not changed.

¹³⁹ Federal Register, vol. 70, no. 98, 29486.

¹⁴⁰ The NYCLU notes that DOD made changes to the JAMRS database to settle the lawsuit it filed on behalf of several high school students after the JAMRS database began collecting, maintaining, and distributing individuals’ personal information. For more information, see [<http://milrec.nyclu.org/archive/00000016.html>].

¹⁴¹ Specific information on how to opt out of the JAMRS database is available at

(continued...)

Implementation Issues. Although there has been general compliance with requirements that high schools grant access to military recruiters, there has also been confusion and controversy over the implementation of the requirements.¹⁴² According to the U.S. Department of Education (ED), two areas of concern have focused on the application of 10 U.S.C. § 503 and the “opt out” provision in the ESEA.¹⁴³ Requirements similar to those included in the ESEA for the release of student information are included in 10 U.S.C. § 503, as amended by Section 544 of the National Defense Authorization Act for Fiscal Year 2002 (P.L. 107-107).¹⁴⁴ In addition, 10 U.S.C. § 503 only applies to LEAs (including private secondary schools) that receive funds under the ESEA. Under 10 U.S.C. § 503, the governing body of an LEA (e.g., school board) could vote to have a policy to deny military recruiters access to students or students’ “directory information.” The ESEA requirements on providing access to military recruiters do not include this policy exemption. Thus, while denying access to military recruiters would be permitted under 10 U.S.C. § 503 and not subject the LEA to any sanctions,¹⁴⁵ the action would violate the statutory requirements of the ESEA and the LEA could be subject to sanctions by ED.

The second major issue, according to ED, focuses on compliance with the provision specifying that a secondary school student or the parent of the student may request that directory information not be released without prior written parental consent.¹⁴⁶ According to ED, this provision has been “misapplied” by LEAs that require written parental consent before they will provide information to military recruiters; thereby creating an “opt in” rather than an “opt out” policy. Statutory requirements do not permit LEAs to establish an “opt in” policy.

LEAs have interpreted the “opt out” provision in different ways regarding what type of notification is provided, how a parent’s response to notification is interpreted, and whether they have actually implemented an “opt in” policy rather than an “opt out” policy. For example, some schools have provided a general notice to parents

¹⁴¹ (...continued)

[http://www.defenselink.mil/sites/jamrs_optout.html].

¹⁴² There are also related legal concerns. For example, critics of the policy have questioned whether the provisions violate a student’s right to privacy. For more information on legal issues related to the military recruitment policy, see CRS Report RS22362, *Military Recruitment Provisions Under the No Child Left Behind Act: A Legal Analysis*, by Jody Feder.

¹⁴³ U.S. Department of Education, July 2, 2003, “Key Policy Letters Signed by the Education Secretary or Deputy Secretary,” available at [<http://www.ed.gov/print/policy/gen/guid/secletter/030702.html>].

¹⁴⁴ For more information about 10 U.S.C. § 503, see [<http://www.ed.gov/policy/gen/guid/fpco/pdf/ht100902b.pdf>].

¹⁴⁵ Under 10 U.S.C. § 503, within 120 days a senior military officer must visit an LEA failing to comply with the statutory requirements. If the access problem cannot be resolved, the state governor is notified. If after a year, the Secretary of Defense determines that the LEA is denying recruiting access to at least two of the armed forces, the issue is reported to Congress.

¹⁴⁶ ESEA, Section 9528.

about their rights to opt out of the release of student directory information without mentioning how the information will be used, while other schools have issued more explicit notices informing parents that student information may be shared with military recruiters unless they opt out. In some cases, a lack of response to the notification of the opportunity to opt out is interpreted as a willingness to have information released, while other LEAs interpret a lack of response as an indication that parents do not want to have their children's information released.¹⁴⁷ The latter interpretation requires parents to "opt in" to have information released.

Some parents and organizations have criticized schools for failing to make the opt out policy clearer to parents. For example, the National Parent-Teacher Association (PTA) is asking that statutory language be changed to require that parents provide explicit permission for military recruiters to access students' information.¹⁴⁸ Some schools and school districts are examining their current policies on military recruiters.¹⁴⁹ For example, Tucson Unified School District in Arizona established a policy limiting military recruiters to one visit per month at each school in response to complaints received from parents about the number of days military recruiters were spending at schools.¹⁵⁰ The Seattle school district is also re-evaluating its policy with respect to military recruiters after a parent-teacher-student association at a local high school passed a resolution stating that military recruiters were not welcome at the school.¹⁵¹

Section 10. Participation of Children Enrolled in Private Schools¹⁵²

Under the ESEA, services are provided to private school students according to the "child benefit" model. Accordingly, children enrolled in private schools may benefit from publicly-funded services, yet funding for and the provision of these services remain under public control. Children enrolled in private elementary and secondary schools have been eligible to be served under the ESEA in some capacity since its inception in 1965.¹⁵³ The NCLB made a number of amendments to the ESEA requirements applicable to the participation of children enrolled in private schools. The most significant changes address how services to eligible children must

¹⁴⁷ "Schools and Military Face Off; Privacy Rights Clash With Required Release of Student Information," *Washington Post*, June 19, 2005.

¹⁴⁸ "Military Faces Parental Counterattack: High School Recruitment, a Longtime Tradition, Raises Worries in Wartime," *Washington Post*, November 1, 2005.

¹⁴⁹ "Schools and Military Face Off; Privacy Rights Clash With Required Release of Student Information," *Washington Post*, June 19, 2005.

¹⁵⁰ "Recruiting in Schools, a Priority for Military, Is Targeted by Critics," *Education Week*, June 22, 2005.

¹⁵¹ *Ibid.* Also see "Schools and Military Face Off; Privacy Rights Clash With Required Release of Student Information," *Washington Post*, June 19, 2005.

¹⁵² This section was written by David P. Smole.

¹⁵³ P.L. 89-10, § 205(a)(2).

be arranged between LEAs and the private schools in which eligible children are enrolled; the specific programs under which services must be provided; and how the effectiveness of these services must be assessed. Also, in response to the U.S. Supreme Court's ruling in *Agostini v. Felton*,¹⁵⁴ which permits ESEA funded services to be provided on the premises of private religious schools, ESEA Title I-A funding for capital expenses to support the provision of equitable services to private school students on neutral sites was terminated.

Private school students are eligible to be served under the following ESEA programs: Title I-A (Education for the Disadvantaged), Title I-B-1 (Reading First), Title I-B-3 (Even Start Family Literacy), Title I-C (Migrant Education), Title II-A (Teacher and Principal Training and Recruiting Fund), Title II-B (Mathematics and Science Partnerships), Title II-D (Enhancing Education Through Technology), Title III-A (English Language Acquisition, Language Enhancement and Academic Achievement), Title IV-A (Safe and Drug-Free Schools and Communities), Title IV-B (21st Century Community Learning Centers), Title V-A (Innovative Programs), and Title V-D-6 (Gifted and Talented Students). Under these programs, services typically are provided to private school students either directly by the LEA responsible for the geographic area in which a private school student resides, or by a third-party contractor. LEAs must consult with private school officials as they establish the terms according to which private school students will be served.

Key changes under the NCLB to the requirements for the participation of children enrolled in private schools in ESEA programs include the following:

- Expanding the equitable participation requirement to apply to the teachers and families of eligible private school children with respect to services and activities developed pursuant to ESEA § 1118 (Parental Involvement) and § 1119 (Qualifications for Teachers and Paraprofessionals);¹⁵⁵
- Expanding the topics and strengthening the requirements according to which LEAs must consult with private school officials during the design and development of the ESEA programs under which they will serve private school children;
- Requiring documentation of private school officials' affirmation that required consultation with the LEA has taken place, and establishing procedures through which private school officials may raise procedural complaints through the SEA;
- Modifying the assessment provisions for Title I-A services to private school pupils to require that services be academically assessed, and that the results of these assessments be used to improve services; and

¹⁵⁴ 521 U.S. 203 (1997). *Agostini v. Felton* overturned a previous ruling by the U.S. Supreme Court, *Aguilar v. Felton*, 473 U.S. 402 (1985), which had held that the provision of ESEA services to students in private religious schools by public school teachers necessitated an excessive entanglement between church and state in violation of the Establishment Clause of the First Amendment to the Constitution.

¹⁵⁵ This does not mean that the "highly qualified" requirements for teachers and paraprofessionals apply to private school staff.

- Adding new requirements specifying how eligible private school children may be counted to ensure the provision of equitable services.

Implementation Status. Following the enactment of the NCLBA, the Department of Education issued ESEA Title I regulations in December 2002,¹⁵⁶ and non-regulatory guidance in October 2003,¹⁵⁷ that address the provision of Title I services to private school children. ED also issued non-regulatory guidance in August 2005¹⁵⁸ on the provision of services to private school children under ESEA programs covered under Title IX; and in August 2002 on the provision of services under Title V-A.¹⁵⁹ In implementing the ESEA, ED has taken steps to ensure that states and LEAs are adhering to the requirements to serve private school students. For example, ED's Student Achievement and School Accountability (SASA) Programs Team has conducted compliance reviews of SEA implementation of NCLBA requirements — including those pertaining to the equitable participation of private school children.¹⁶⁰ Also, ED's Office of Inspector General has conducted audits of LEA compliance with NCLBA requirements to provide equitable services to private school students.¹⁶¹ According to data from Consolidated State Performance Reports, in school year 2004-2005, of the more than 20 million students served under Title I, 187,951, (0.94%) were students enrolled in private schools.¹⁶²

¹⁵⁶ 34 CFR §§ 200.64-200.67.

¹⁵⁷ U.S. Department of Education, Office of Innovation and Improvement, Office of Non-Public Education, *Title I Services to Private School Children: Non-Regulatory Guidance*, October 17, 2003.

¹⁵⁸ U.S. Department of Education, Office of Innovation and Improvement, Office of Non-Public Education, *Equitable Services to Eligible Private School Students, Teachers, and Other Educational Personnel: Non-Regulatory Guidance*, August 2005.

¹⁵⁹ U.S. Department of Education, Office of Innovation and Improvement, *Guidance for Title V, Part A of the Elementary and Secondary Education Act, as reauthorized by the No Child Left Behind (NCLB) Act (State Grants for Innovative Programs)*, August 2002.

¹⁶⁰ U.S. Department of Education, Office of Elementary and Secondary Education, *Student Achievement and School Accountability Program (SASA) Monitoring Plan for Formula Grant Programs for October 1, 2005 to September 30, 2006*, (see item 3.3, Within District Allocation Procedures), available at [<http://www.ed.gov/admins/lead/account/monitoring/indicators0506.pdf>].

¹⁶¹ See, for example, U.S. Department of Education, Office of Inspector General, 2004 Audit Reports, Office of Elementary and Secondary Education, *Detroit City School District's administration of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (the Act), Set-Aside programs for the period July 1, 2002, through May 31, 2003*, (ACN# A05D0021), available at [<http://www.ed.gov/about/offices/list/oig/areports/2004.html>].

¹⁶² U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, *National Assessment of Title I, Final Report: Volume I: Implementation*, 2007, p. 153.

Implementation Issues. Participating LEAs have been required to provide equitable services to eligible private school students under the ESEA since 1965. However, despite both the long history of the requirement and the recent strengthening of the provisions for LEAs to consult with private school officials, it appears that timely consultation continues to remain a concern. In response, ED and many SEAs have highlighted the equitable participation requirements to address concerns about consultation and the availability of services.¹⁶³ The amount of funding available to serve eligible private school students under Title I-A also has been raised as a concern. This is due to the statutory requirement (addressed earlier) that LEAs reserve up to 20% of their Title I-A allocation to cover the costs of transportation for public school choice and supplemental educational services for students enrolled in public schools identified for improvement, corrective action, or restructuring. Depending on how LEAs pay for school choice transportation and supplemental educational services, this requirement may result in proportionally less funding being available for services to private school students than before enactment of the NCLBA, because private school students are not eligible for these services. Several provisions of the ESEA provide that in instances where equitable services are not provided to eligible private school students — either because of state constitutional prohibitions or the failure of LEAs to comply — the LEA may be “bypassed” and services provided through a third party.¹⁶⁴ Bypass arrangements for certain ESEA programs are currently used in Missouri, Nebraska, and Virginia.

Section 11. Unsafe School Choice Option¹⁶⁵

The NCLBA established a new Unsafe School Choice Option (USCO) policy under ESEA Title IX-E-2, § 9532. The USCO policy is administered by the U.S. Department of Education (ED), Office of Safe and Drug-Free Schools. Under the USCO policy, in order to be eligible to receive ESEA funding, states are required to establish statewide policies under which students who attend persistently dangerous public elementary or secondary schools, or who become victims of a violent crime while in or on the grounds of the public elementary or secondary schools they attend, must be offered the opportunity to transfer to another public school within the same LEA. Each year, states must certify their compliance with USCO requirements prior to receiving ESEA funding for the next year.

ED has issued non-regulatory guidance outlining the steps that states must take to comply with the USCO policy. These steps include the following:

- Establish a state USCO policy,
- Identify persistently dangerous schools,
- Identify types of offenses that are considered to be violent criminal offenses,

¹⁶³ “Private School Consultation Takes More Than Two Days’ Notice, ED Says,” *Title I Monitor*, vol. 8, no. 9 (September 2003), pp. 1, 9-12.

¹⁶⁴ See, for example, ESEA §§ 1120(e), 1307, 5142(i), and 9502.

¹⁶⁵ This section was written by David P. Smole.

- Provide a safe public school choice option, and
- Certify compliance with USCO.¹⁶⁶

States are required to develop their USCO policies in consultation with a representative sample of LEAs within the state.

Implementation Status. States were required to implement the USCO beginning with the 2002-2003 school year. Each state's USCO policy is somewhat different. While most states establish some threshold number of violent offenses relative to school enrollment that must be exceeded for either two or three consecutive years in order for a school to be designated as persistently dangerous, the definitions of violent offenses or incidents measured tend to vary considerably across states. Typically, states' USCO policies identify which crimes or types of crimes constitute violent offenses, although these tend to differ from state to state. Some state policies reference primarily felony offenses (e.g., homicide, manslaughter, aggravated assault, or sexual assault). Others also reference violation of weapon possession laws (e.g., Gun-Free Schools Acts), or drug possession laws. Some state policies also consider student expulsions for offenses such as drug or alcohol possession, or violence.¹⁶⁷

Limited information is available on both schools being determined to be persistently dangerous and on students transferring to different schools under the USCO policy. However, it does appear that differences in the criteria used by states to identify schools as persistently dangerous may be a factor that has led to considerable variation among states in the number of schools determined to be persistently dangerous. The U.S. Department of Education, Office of Safe and Drug-Free Schools reports that for 2003-2004, 47 schools were identified as persistently dangerous (5 states); for 2004-2005, 39 schools were identified as persistently dangerous (4 states); and for 2005-2006, according to preliminary reports, there were 41 schools identified (7 states).¹⁶⁸ A review of the implementation of the USCO policy found that in Pennsylvania (under whose USCO policy there has been a comparatively large number of determinations) during the 2003-2004 school year, 75 students in the Philadelphia school district transferred from the 27 schools identified as persistently dangerous, and 58 students transferred from the one school so identified in the Chester-Upland school district.

Implementation Issues. An examination by the Education Commission of the States (ECS) of states' implementation of USCO requirements reveals that by March 2004, nearly all states had established criteria for identifying unsafe schools,

¹⁶⁶ U.S. Department of Education, *Unsafe School Choice Option: Non-Regulatory Guidance*, May 2004, p. 6, available at [<http://www.ed.gov/policy/elsec/guid/unsafeschoolchoice.pdf>].

¹⁶⁷ For a compilation of criteria used by the various states to identify persistently dangerous schools, see Education Commission of the States, *Persistently Dangerous School Criteria*, compiled by Gloria Zradicka, September 2004, available at [<http://www.ecs.org/clearinghouse/52/98/5298.pdf>].

¹⁶⁸ U.S. Department of Education, Safe and Drug-Free Schools and Communities Advisory Committee, *Unsafe School Choice Option Report*, 2006, at [<http://www.ed.gov/about/bdscmm/list/sdfscac/topics.html#Unsafe>].

and had implemented policies under which students in unsafe schools and students who were victims of violent crimes could transfer to other public schools within the same LEA.¹⁶⁹ The U.S. Department of Education, Office of Inspector General (OIG), has examined five states for compliance with the USCO requirements and has found that, in general, four of these states (California, Georgia, Iowa, and New Jersey) are complying with the requirements of the law. (A common weakness identified in the audit findings of these four states was inconsistency in the implementation of the USCO by LEAs.) The OIG found that Texas had not adequately implemented the USCO policy at the state and LEA levels.¹⁷⁰

While as noted above, relatively few schools have been identified as unsafe, school safety remains an important concern for students and their families. For example, according to the School Survey on Crime and Safety (SSOCS), the percentage of schools experiencing one or more violent incidents (e.g., rape, sexual battery other than rape, physical attacks or fights with or without a weapon, threat of physical attack with or without a weapon, and robbery with or without a weapon) increased from 71% in 1999-2000 to 81% in 2003-2004.¹⁷¹ In 2003-2004, 18% of schools reported at least one serious violent offense (e.g., rape, sexual battery other than rape, physical attack or fight with a weapon, threat of physical attack with a weapon, and robbery with or without a weapon).¹⁷² The SSOCS survey found that on a per-student basis, middle schools had the highest rates of crime, with 53 violent crimes per 1,000 students versus 28 violent crimes per 1,000 students in elementary schools and 28 violent crimes per 1,000 students in high schools.¹⁷³ Given these findings, it appears that the small number of schools identified as persistently dangerous may be a result in part of the high thresholds for identification set by many states, which often must be met for two or three consecutive years.

¹⁶⁹ Education Commission of the States, *ECS Report to The Nation: State Implementation of the No Child Left Behind Act, Indicator 4 — Safe Schools*, (2004), available at [http://www.ecs.org/html/Special/NCLB/ReportToTheNation/docs/Indicator_4.pdf].

¹⁷⁰ U.S. Department of Education, Office of Inspector General, 2005 Audit Reports, Safe and Drug-Free Schools, (ACN#: A09E0025, A04E0007, A07E0027, A03E0008, and A06E0028), available at [<http://www.ed.gov/about/offices/list/oig/areports.html>].

¹⁷¹ U.S. Departments of Education and Justice, *Indicators of School Crime and Safety: 2006 (NCES 2007 — 003/NCJ 214262)*, by R. Dinkes, E.F. Cataldi, G. Kena, and K. Baum (2006), p. 24, at [<http://www.nces.ed.gov/pubs2007/2007003.pdf>].

¹⁷² *Ibid.*

¹⁷³ *Ibid.*