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No Child Left Behind Act of 2001: Reauthorization of the Elementary and Secondary Education Act (ESEA) -- Overview

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Introduction

The No Child Left Behind Act (NCLB), passed by Congress in late 2001, is a compromise version of many of President Bush's education reform proposals intended to hold schools accountable for the academic achievement of their students. Below is a summary of the major highlights of the law. Following the summary of NCLB is a discussion of its major implications for special education policy and practice.

Annual Testing

The law now requires annual testing of children in grades 3 through 8, at a minimum in reading and math. States are allowed to design and select their own tests. While some States already have developed such tests, the law gives States until the 2005-2006 school year to develop and implement the math and reading tests for every child in grades 3 through 8. In addition, the new law requires a small biennial sample of students in each State to take part in the National Assessment of Educational Progress (NAEP). This test, which is administered to a sample of 4th through 8th grade students, would be used as an "independent benchmark" against which the rigor of State standards, tests and accountability mechanisms can be measured. The federal

government will cover the costs of State participation in the NAEP, and no federal rewards or sanctions would be based on the NAEP results. In addition, the law prohibits federally sponsored national testing and federally controlled curricula, as well as any mandatory national teacher test or certification.

Fiscal Flexibility Provisions

Local Fiscal Flexibility

In terms of local district flexibility, schools may transfer up to 50 percent of the federal funds they receive among a variety of programs (excluding federal IDEA funds) in exchange for improved educational results for children. ** School districts can transfer funds between the following programs: (a) Title II teacher quality programs; (b) the Safe and Drug Free Schools Program; (c) the Technology Grant Program; and (d) the Title V Block Grant Program. In addition, up to 50 percent of the funds from any of the above programs could be transferred into the Title I compensatory education program. The law does not, however, permit school districts to transfer money out of Title I programs.

State Fiscal Flexibility

The law permits States to transfer up to 50 percent of their State activity funds (i.e., funds reserved for use at the State level) between formula grant programs, such as Teacher Quality, Technology, Safe and Drug Free Schools, 21st Century Community Learning Centers, and Innovative Programs Block Grant programs.

Demonstration Projects

Local demonstration projects. The law permits 150 school districts to enter into performance agreements with the U.S. Department of Education in order to combine funds from specified non-Title I formula grant programs (i.e., Teacher Quality, Technology, Safe and Drug Free Schools, and Innovative Program Block Grant programs), in order to improve the educational achievement of students. In exchange for this flexibility, districts would be held accountable for improving academic achievement and would continue to be bound by current laws regarding civil rights and fiscal integrity.

State demonstration projects. The law also includes a State flexibility demonstration program under which seven States would be given additional flexibility in the use of federal funds for State administration and State activities, consistent with the local demonstration projects discussed above.

** Under previous law, school districts could transfer up to 5 percent of "unneeded" program funds to another federal education program, provided that the State approved.

Low-Performing Schools

NCLB authorizes financial and technical assistance to school districts to help them improve student achievement at low-performing schools. The law requires schools to show adequate yearly progress (AYP) toward meeting the goal of 100-percent proficiency in reading and math for *all* students within 12 years. States set the achievement level that must be reached in intervening years and are required to raise these interim goals gradually, but in equal increments. That is, a State cannot propose, for example, to make minimal improvements in student performance in the early years, in anticipation of later dramatic gains in performance by the end of the 12-year timeline. Instead, States and individual schools must demonstrate *linear incremental improvement* in student performance toward meeting 100-percent proficiency in reading and math for *all* students in the State by 2012.

Public School Choice

NCLB requires a school that fails to make adequate yearly progress (AYP) for two consecutive years to offer parents of the students the option for transfer to another public school, although the requirement would not apply if State law prohibits public school choice. Under this provision, districts must pay the costs of transporting students to the other public school and must use up to 5 percent of their Title I funds for that purpose. In addition, the law permits school districts to use an additional 10 percent of their Title I funds for transportation to pay for supplemental instructional services required after three years of failing to make AYP (see below). The school district is required under NCLB to provide technical assistance to the school to help it improve. The school is also eligible to receive federal funds for school improvement.

Supplemental Instructional Services

NCLB requires that, if a school fails to meet AYP for three consecutive years, the school district must provide supplemental instructional services -- such as tutoring, after-school classes, and summer classes -- to students who are disadvantaged and low-achieving (from a provider chosen by the parents). These supplemental services could be offered by a variety of providers, including faith-based providers. The law also requires that districts use 5 percent of their Title I funds to pay for these supplemental services. As noted above, districts would also be able to use an additional 10 percent of their Title I funds for transporting students to other public schools to pay for supplemental instructional services.

Corrective Actions

NCLB requires that, if a school fails to make AYP for four consecutive years, the school district must implement certain corrective actions to improve the school, such as replacing certain staff or implementing a new curriculum. The district must continue to offer public school choice and provide supplemental services as discussed above.

Restructuring Activities

Under NCLB, if a school fails to make AYP for five consecutive years, the school district must implement a plan for significant changes in how the school is run, such as a State takeover, hiring a private management contractor, converting to a charter school, or overseeing restructuring of the staff. The requirements to offer public school choice and to provide supplemental instructional services would continue to apply.

Schools Currently Needing Improvement

Schools currently needing improvement since enactment of NCLB must offer public school choice during the current 2001-2002 school year, while schools in the second year of school improvement or in corrective action must offer supplemental services no later than the 2002-2003 school year.

Duration of Corrective Action and Restructuring

Under NCLB, once a school makes AYP for two consecutive years, it is no longer required to undertake corrective actions or restructuring activities.

Other Accountability Provisions

Report Cards

NCLB requires States, school districts, and schools to issue report cards to parents and the public on aspects of student performance and teacher qualifications. State and school districts that already have report cards may continue to use them, as long as they are modified to contain the required information.

Funds for Annual Testing

NCLB authorizes \$400 million in fiscal 2002, and such sums as may be necessary in each of the following five years, for a program to help States develop and administer their own tests. The law allows States to defer beginning, or to suspend, the annual tests if the appropriation to pay for the test does not reach certain specified levels. Under the law, States would not be required to administer these tests if the appropriation for fiscal 2003 is less than \$370 million. This "trigger" level increases by \$10 million yearly until it reaches \$400 million in fiscal 2005. It would remain at \$400 million after fiscal 2005. (Note: The FY 2002 federal appropriation exceeded the minimum \$370 million requirement.)

Funding for the National Assessment of Educational Progress (NAEP)

NCLB authorizes \$72 million in fiscal 2002, and such sums as may be necessary in each of the following five years, for States to administer the NAEP for 4th and 8th graders in reading and math proficiency.

Title I: Compensatory Education Grants to School Districts

NCLB authorizes, through fiscal 2007, the programs of basic, concentration, and target grants to school districts previously authorized under the ESEA, and raises the authorized funding levels more than 57 percent for fiscal 2002 and triple the current appropriate in fiscal 2006.

Provisions on Teachers and Teaching

Teacher Qualifications

NCLB requires States to develop a plan for ensuring that all teachers will be highly qualified by the end of the 2005-2006 school year. In addition, all new teachers leaving teacher preparation programs must fully meet "highly qualified" standards. Under NCLB, States set their own criteria for what constitutes a highly qualified teacher. This means that, by the 2005-2006 school year, "provisional" or "emergency" certification of teachers will no longer be allowable.** NCLB also increases qualifications for teachers' aides. No later than three years from now, all teachers' aides must have at least two years of study at an institution of higher education, or have an associate's degree, or have met a rigorous quality standard by demonstrating knowledge of, and ability to instruct in, reading, writing, and math or math readiness.

Teacher Training and Recruitment

Under NCLB, a number of teacher training and recruitment programs are consolidated into a single State Grant program, with the exception of separate authorizations for the State Grant Program, the Math and Science Partnership Program, Troops-to-Teachers, and the Transition-to-Teaching Program.

** In lieu of the implementing regulations, The Council for Exceptional Children interprets this provision as also applying to special education and related service providers.

State Grants. NCLB authorizes \$3.2 billion in fiscal 2002, and such sums as may be necessary in the five succeeding years, to fund a State grant teacher training program. The new State Grant Program funds activities previously authorized under the Eisenhower Professional Development and Class Size Reduction programs, both of which are discontinued under NCLB. States will receive grants under a formula that is based 65 percent on poverty and 35 percent on student population. No State will receive less under this program than under its fiscal 2001 allotment under the Eisenhower and Class Size Reduction programs. After reserving funds for State administration and State activities, States are required to distribute no less than 95 percent of funds to school districts.

Math and Science Partnership Program. NCLB authorizes \$450 million in fiscal 2002, and such sums as may be necessary in the five succeeding years, for this program. The Math and Science Partnership Program will provide grants to partnerships between States, local institutions, and institutions of higher education to offer summer and distant-education workshops for math and science teaching, to establish strategies to recruit teachers, and to provide other career development for teachers.

Troops-to-Teachers and Transition-to-Teaching Programs. NCLB authorizes \$150 million in fiscal 2002, and such sums as may be necessary in the five succeeding years, for these programs. The law reserves up to \$30 million for the Troops-to-Teachers program, which helps former members of the armed services to obtain certification or licensing as teachers. The Transition-to-Teachers program is intended to help qualified mid-career professionals, as well as recent college graduates, make the transition to teaching in high-needs schools.

New Reading Programs

NCLB authorizes two new reading programs as part of Title I.

Reading First

NCLB authorizes \$900 million in fiscal 2002, and such sums as may be necessary in each of the following five years, for the Reading First program. Reading First will distribute grants to States, and States will award funds on a competitive basis to school districts. This reading program replaces the Reading Excellence Program and will serve children in kindergarten through third grade.

Early Reading First

NCLB authorizes \$75 million in fiscal 2002, and such sums as may be necessary in each of the following five years, for a new program that will provide competitive grants to school districts or private organizations to develop and implement preschool reading programs.

Other Title I Programs

NCLB includes increased authorization of funds for the Even Start, Migratory Children, and Neglected or Delinquent Youth programs.

Bilingual Education

NCLB consolidates previous bilingual and immigrant education programs into one State program for State formula grants, once appropriations reach \$650 million. (Note: The FY 2002 appropriation exceeds this amount.) The law requires subsequent yearly increases in the five succeeding years. The U.S. Department of Education will distribute funds to States according to a formula based on 80 percent of the number of children with limited English proficiency (LEP) in the State, and 20 percent on the number of immigrant children in the State. Parents have the right under NCLB to choose among instructional programs if more than one type is offered. They also have the right to immediately remove their child from an LEP program.

NCLB also eliminates the previous requirement that 75 percent of funds be used to support programs in which the child is taught in his or her native language. Instead, it lets the local school district decide on the method of instruction used to teach children with LEP. Finally, the law requires that all children who have attended school in the United States for at least three consecutive years, and are enrolled in programs funded under this program, must be tested in English in reading and language arts -- although waivers to this rule may be granted on a case-by-case basis.

Innovative Programs

NCLB authorizes \$450 million in fiscal 2002, with \$25 million annual increases through fiscal 2007, for the existing block grant program known as the Innovative Education Program. In addition, NCLB authorizes \$300 million in fiscal 2002, and such sums as may be necessary thereafter, for the Charter School Program, and \$125 million for the Magnet Schools Assistance Program.

Technology Education

NCLB created a single education technology program to replace several smaller programs. The law authorizes \$1.0 billion in fiscal 2002, and such sums as may be necessary in the succeeding five years, for a new Enhancing Education Through Technology Program.

21st Century Learning Centers

The law authorizes \$1.0 billion in fiscal 2002, \$1.5 billion in fiscal 2003, and subsequent \$250 million annual increases through fiscal 2007 for the 21st Century Learning Centers. This program will provide grants to school districts or nonprofit organizations (including community-based organizations) to provide after-school programs.

Safe and Drug Free Schools

NCLB authorizes \$650 million in fiscal 2002, and such sums as may be necessary in the succeeding five years, for the Safe Schools program, which provides grants to school districts to ensure that schools are free of drugs and are safe for all children.

Immunity for Teachers

NCLB includes a provision that exempts teachers, principals, school board members, and other school professionals from liability if the teacher or other professional was acting within the scope or his or her duties related to providing educational services; applying student discipline procedures consistent with federal, State, and local laws and regulations; and that harm was not caused by willful or criminal misconduct or gross negligence.

Implications for Special Education

The enactment of NCLB has significant implications for special education policy and practice, mainly in the areas of accountability and personnel certification/licensure issues.

Accountability

The Council for Exceptional Children believes that some of the most significant implications of NCLB, in terms of special education policy and practice, are found within the requirements of average yearly progress (AYP) and the set of graduated accountability measures that flow from NCLB when students fail to meet AYP. As discussed earlier, the law requires schools to show AYP toward meeting the goal of 100-percent proficiency in reading and math for *all* students in grades 3 through 8, within 12 years. States set the achievement level that must be reached by schools in intervening years and are required to raise these interim goals gradually but in equal increments. That is, a State cannot propose, for example, to make minimal improvement in student performance in the early years in anticipation of later dramatic gains in performance by the end of the 12-year timeline. Instead, States must ensure and demonstrate linear incremental improvement in student performance toward meeting 100-percent proficiency for *all* students in the State by 2012.

The performance of students is disaggregated, based on a host of identifying factors that include race, ethnicity, and *disability status*. If children with disabilities in grades 3 through 8 within a school fail to make AYP toward reaching 100-percent proficiency in reading and math by 2012, the school will face a host of accountability measures intended to improve performance of students failing to make AYP. These measures include being required to provide supplemental instructional services, public school choice (if allowed under State law), corrective actions (such as replacing school staff), and re-constitution of the school by allowing outside parties (such as a private contract manager) to operate the school.

Because of these new provisions, the performance of children with disabilities on statewide and district-wide assessments will partly determine whether a school faces possible remedial action in the future, although it is not entirely clear how these new accountability measures will affect special education practice. In general, however, it seems likely that these accountability measures will create an even greater impetus than does IDEA '97 to link special education IEP goals with the content standards of the general education curriculum.

Related to AYP and student proficiency levels is the participation of students with disabilities in general statewide assessments and alternative statewide assessments. IDEA '97 requires the participation of children with disabilities in statewide and district-wide assessments, with appropriate accommodations as necessary, or their participation in appropriate alternative assessments. NCLB requires that all students participate in annual State performance assessments, at a minimum in reading and math, in grades 3 through 8. Early indications from the Negotiated Rule Making process currently taking place on NCLB (i.e., development of implementing regulations) are that the guiding regulations will judge a student to have participated in the general statewide assessment only if his or her score is counted in the new accountability system. That is, if accommodations provided to a student with a disability result in his or her test scores being deemed unreliable or invalid, the student shall not be considered as having participated in the assessment. If the participation rate does not meet the minimum requirement (i.e., 95-percent participation rate for all students), the State will be judged out of compliance with the law and subject to appropriate sanctions.

** Thus, the extent to which current State performance

** It is unclear what the participation rate will be. However, early indications are that the aggregate participation rate for all students in the general statewide assessment will need to be at least 95 percent.

assessment tools sufficiently allow for individualized accommodations for children with disabilities, while ensuring continued reliability and validity of results, is critical. In other words, States will need to ensure that their standards and assessment tools are sufficiently inclusive to allow and account for individualized accommodations determined by the child's IEP team, without watering down the standards or jeopardizing the credibility of the results.

Personnel Certification and Licensure

In order to ensure that all students, including children and youth with disabilities, achieve 100-percent proficiency in reading and math by the 2012 school year, NCLB requires that every teacher hold full State certification or licensure by 2005. NCLB precludes States from providing teachers with emergency, temporary, or provisional certification or licensure. In addition, NCLB requires that all first-year teachers hold full State certification or licensure during the 2002-2003 school year.

Although the final implementing regulations have not yet been issued, The Council for Exceptional Children interprets the NCLB statute as holding the same requirements for special education teachers and related services providers, and for early intervention teachers. In this era of personnel shortages in special education, meeting the requirements of NCLB with regard to highly qualified personnel will be a major undertaking and will likely require a dramatic expansion of teacher preservice and inservice training to ensure that all special education personnel are highly qualified by the 2005-2006 school year.

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