



No Child Left Behind



Position Paper & Recommendations

February 2004
(Updated January 2005)



No Child Left Behind Position Paper

Introduction

On January 8, 2002, President Bush signed into law the No Child Left Behind Act, significantly increasing the federal government's role in elementary and secondary education and representing the most sweeping changes in federal education policy in the last 30 years.

No Child Left Behind (NCLB) establishes a rigorous standard for the nation's public schools and a well-intended model to assess student, school and district achievement. However, in reality, local schools are struggling to comply with the spirit and intent of the law at a time when the unintended consequences are far more complex than had been anticipated by members of Congress.

Since evaluating Tennessee schools under the guidelines of NCLB, the Tennessee State Board of Education identified a number of the state's schools as falling short of NCLB performance mandates. To many in the general public and media not familiar with the complicated and confusing methodology of NCLB, this identification represents a broken system of public education in our state. However, a true examination of the requirements of NCLB and its flaws make apparent that falling short of NCLB mandates does not equal failure.

During the past three years, through communication with school board members, educators, parents and community leaders, the Tennessee School Boards Association has identified several defects in NCLB that need immediate attention. This position paper outlines these areas and recommends specific and reasonable ways that the federal government can revise NCLB to support public education while maintaining accountability, student achievement and the basic principles of the act.

1. ASSESSMENTS

NCLB requires states to test students in reading, math and science in grades 3-8 and at one grade level in high school. Unlike many states, Tennessee has long recognized assessments as an important tool for school improvement and had already mandated an extensive testing and accountability system for students and schools prior to enactment of NCLB. However, even with testing models in place, problems with implementation of NCLB testing requirements have emerged, particularly as they relate to the needs of students with disabilities and to students who are not proficient in English – both of which are required not only to take the same assessments as other students but also perform at the same proficiency level.

Recommendations

- **Allow states to adopt alternative assessments aligned to appropriate standards for special education students based upon Individual Education Plans.** [Current U.S. Department of Education regulations limit alternative assessments to one percent of all students or 10 percent of students with disabilities.] Bottom line – special education students that meet the goals established in their IEP’s are achieving. **[Partially Addressed - The U.S. Department of Education has approved (May 2004) Tennessee’s request to permit districts to exceed the one percent cap on the number of proficient and advanced scores based on the alternate achievement standards that can be included in AYP calculations if the LEA establishes that the number of students with significant disabilities exceeds the limit and if the LEA documents circumstances that explain the higher percentage.]**
 - **Allow states to delay the inclusion of test scores of English Language Learners for accountability purposes until the student has been enrolled for at least two years.** [Current law requires testing of ELL students and inclusion of their scores for school accountability purposes after a full academic year. However, including the test scores of these students unfairly penalizes schools and more importantly students, who are unreasonably expected to achieve proficiency on a test they cannot even read.] **[Addressed – U.S. Department of Education Rule Change – Feb. 2004.]**
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2. ADEQUATE YEARLY PROGRESS

At the heart of NCLB is the concept of Adequate Yearly Progress (AYP), a measure of year-over-year achievement based on student testing. NCLB requires a 100 percent student proficiency rate in reading and math by 2014, with incremental percentage goals leading up to this date. Within schools this determination must be made not only on the basis of the school’s enrollment as a whole, but also on the basis of the performance of student subgroups that have historically been associated with lower academic achievement, including children with disabilities and children with limited English proficiency.

Put simply, Congress has set a course where every child in every subgroup in every Tennessee school must perform at a state-defined proficient level within 10 years. While Tennessee’s local school boards applaud the federal government’s attention to the achievement of all students and share in the goal of closing the achievement gaps in our public schools, we fear the current system will over-identify students and schools as failures and undermine the credibility of public schools across the country.

Furthermore, while commendable, NCLB’s staunch focus on raising only the achievement levels of lower performing students could work to weaken efforts to improve student achievement for others, as it provides no incentive for continuing to improve the performance of those students who are already at or above the proficient levels. Congress should ensure that NCLB does not raise the achievement floor while lowering the achievement ceiling.

Recommendations

- **Apply sanctions to schools or school districts only when the same subgroup or subgroups do not meet AYP targets in the same subject for two consecutive years.** [Current law applies sanctions when a school or district misses AYP targets in a subject for two consecutive years regardless of whether it is the same subgroup.]
 - **Provide flexibility in calculating AYP where students belong to multiple subgroups by allowing their proficiency scores to be included in one subgroup or apportioned among the groups, so that the total sum of the apportioned scores does not exceed 1.00.**
 - **Allow states, like Tennessee, that have the proper assessment measures in place to use value-added or gain scores, which measure the progress of all students from year to year, for the purposes of meeting AYP.** [Tennessee requested to use this measurement as one way to identify the progress of schools but was denied by the U.S. Department of Education in May 2004.]
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3. PARTICIPATION IN ASSESSMENTS

In addition to meeting proficiency standards for schoolwide populations and subgroups, schools and districts must have 95 percent participation on assessments in order to meet the federal benchmarks required by NCLB. In 2003, 22 Tennessee schools were placed on the target list for missing only this one requirement. Yet, not meeting the participation category does not necessarily signify that a school is not high performing. For example, if a test is given on a day when many students are sick with the flu, it is quite possible that 95 percent of the students or of a subgroup will not participate in the assessment. In addition, when considering that schools cannot control attendance and that Tennessee's attendance goal for K-8 is less than 95 percent, it seems unrealistic and unfair to require a 95 percent participation rate on state assessments in every case.

Recommendation

- **Provide states the flexibility to grant waivers to local schools when they do not meet the 95 percent participation rate if the school can provide valid reasons for failure to meet the requirement.** [Partially Addressed – U.S. Department of Education Rule Change – March 2004. Allows systems to average participation rates over a three-year period.]
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4. SCHOOL CHOICE

If a school does not meet Adequate Yearly Progress in the same subject for two consecutive years, parents must be notified of their option to transfer their children to another school, regardless of whether the student is within the subgroup or subgroups that did not meet the performance goal. This requirement is overly burdensome on schools when considering that even those students that are doing well are permitted to transfer to a different school at the district's expense. Also, NCLB prevents physical capacity of the receiving schools from being a factor in offering transfer options, increasing costs to school systems further through the addition of portable classrooms and teachers.

Recommendation

- **Limit school choice provisions to those students belonging to subgroups not meeting AYP.**

5. SUPPLEMENTAL SERVICES

If a school does not meet AYP for three consecutive years, it must provide options to students whereby they can acquire supplemental services, in the form of tutoring, after school services and summer school. Supplemental service providers may include private agencies; however, the instructional personnel employed by these private providers are not required to meet the same qualification requirements as those in public schools. This is difficult to understand, especially considering the importance Congress has placed on having all teachers “highly qualified.”

Recommendation

- **Require instructional personnel employed by supplemental service providers to meet the same qualifications as comparable employees in the local school district.**
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6. HIGHLY QUALIFIED TEACHERS

Local boards of education concur with Congress that if students are going to meet high standards, they must be taught by highly qualified teachers. But, federal lawmakers must understand that if the demand for highly qualified teachers and the goals of NCLB are going to be met by 2005-06, access to these teachers and maximum flexibility on the part of school management are essential.

Recommendations

- **Allow school districts to apply for time extensions in meeting the “highly qualified” provisions when they can document a lack of “highly qualified” employees and/or applicants. [Partially Addressed – U.S. Department of Education Rule Change – March 2004. Provides flexibility for science teachers, teachers teaching multiple subjects and teachers in rural school districts; however under current definitions, a school district must have less than 600 students to be considered rural, doing little to help states like Tennessee.]**
 - **Clarify that collective bargaining agreements and state tenure laws do not prohibit school districts from transferring or dismissing teachers that do not meet the “highly qualified” requirements.**
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7. FUNDING

In the course of complying with the mandates of NCLB, school districts and states throughout the country have raised questions regarding the costs of implementing the law. Several studies including one by the U.S. Government Accounting Office suggest that funds appropriated by the federal government are not adequate to cover the mandates

imposed through the act. Congress itself authorized \$20.5 billion in Title I funds for Fiscal Year 05, yet provided \$12.7 billion – a federal shortfall of \$7.8 billion for this year. The fear on the part of local school boards is that NCLB will become another IDEA – an unfunded mandate from its beginning.

Recommendations

- **Fully fund all NCLB programs at their authorized levels.**
- **Direct an NCLB implementation study to include Congressional hearings with a focus on federal and state funding requirements.**

Conclusion

Tennessee's local boards of education fully support the goal of NCLB – to ensure the success of each and every student. This was the aim of our public schools long before NCLB and it will undoubtedly continue. If Congress truly wants to help public education succeed, it can start by focusing on these fair and realistic recommendations and by recognizing the unique challenges that face a system where children from all walks of life are welcomed and where the life challenges of each child become the academic challenges of each school.

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For more information, contact:

Tennessee School Boards Association
Government Relations Department
101 French Landing Drive
Nashville, TN 37228
615-741-4706



No Child Left Behind Recommendations

1. Allow states to adopt alternative assessments aligned to appropriate standards for special education students based upon Individual Education Plans. [Partially Addressed - The U.S. Department of Education has approved (May 2004) Tennessee's request to permit districts to exceed the one percent cap on the number of proficient and advanced scores based on the alternate achievement standards that can be included in AYP calculations if the LEA establishes that the number of students with significant disabilities exceeds the limit and if the LEA documents circumstances that explain the higher percentage.]
2. Allow states to delay the inclusion of test scores of English Language Learners for accountability purposes until the student has been enrolled for at least two years. (Addressed – U.S. Dept. of Education Rule Change – Feb. 2004)
3. Apply sanctions to schools or school districts only when the same subgroup or subgroups do not meet AYP targets in the same subject for two consecutive years.
4. Provide flexibility in calculating AYP where students belong to multiple subgroups by allowing their proficiency scores to be included in one subgroup or apportioned among the groups, so that the total sum of the apportioned scores does not exceed 1.00.
5. Allow states, like Tennessee, that have the proper assessment measures in place to use value-added or gain scores, which measure the progress of students from year to year, for the purposes of meeting AYP.
6. Provide states the flexibility to grant waivers to local schools when they do not meet the 95 percent participation rate if the school can provide valid reasons for failure to meet the requirement. (Partially Addressed – U.S. Department of Education Rule Change – March 2004. Allows systems to average participation rates over a three-year period.)
7. Limit school choice provisions to those students belonging to subgroups not meeting AYP.
8. Require instructional personnel employed by supplemental service providers to meet the same qualifications as comparable employees in the local school district.
9. Allow school districts to apply for time extensions in meeting the “highly qualified” provisions when they can document a lack of “highly qualified” employees and/or applicants. [Partially Addressed – U.S. Department of Education Rule Change – March 2004. Provides flexibility for science teachers, teachers teaching multiple subjects and teachers in rural school districts; however under current definitions, a school district must have less than 600 students to be considered rural, doing little to help states like Tennessee.]
10. Clarify that collective bargaining agreements and state tenure laws do not prohibit school districts from transferring or dismissing teachers that do not meet the “highly qualified” requirements.
11. Fully fund all NCLB programs at their authorized levels.
12. Direct an NCLB implementation study to include Congressional hearings with a focus on federal and state funding requirements.

The Tennessee School Boards Association firmly believes in the success of Tennessee's public schools and the opportunities they have provided and continue to provide to children. The association acknowledges the challenges that public schools face as well as the need for continued improvement, and its member boards of education are dedicated to reaching the goal of every child achieving to his or her highest potential.

For more information, please contact:

Tennessee School Boards Association
101 French Landing Drive
Nashville, TN 37228
615-741-4706
615-741-2824 (fax)