

**No Child Left Behind: The Impact on Minorities Through Year 2**

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**GRADUATING MAY, 2004**

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## A) NO CHILD LEFT BEHIND - AN OVERVIEW

The No Child Left Behind Act (NCLB) re-authorizes the Elementary and Secondary Education Act of 1965, focusing on a number of objectives, including increased accountability for the education of all students, greater choice for parents and students, greater flexibility for state and local actors in the use of federal funding, and stronger emphasis on reading, math and science, and improved teacher qualifications.<sup>1</sup> NCLB embodies a number of policy changes over prior federal education programs, such as the Improving America's Schools Act (IASA), including:<sup>2</sup>

- Emphasizing equal educational outcomes
- Imposing timelines for improving student achievement
- Expanding test-based accountability to all students in public schools, not just those in schools receiving Title I funds
- Specifying consequences for noncompliance; reduces the use of timeline waivers
- Mandating specific sanctions for schools not performing well that rely on exit strategies or the transfer of money away from public schools
- Expanding the testing requirements and establishes a timeline for implementing the new tests
- Defining proficiency as test scores in reading and mathematics

To achieve its objectives, NCLB lays down specific procedures, assessment methods, and timetables that fundamentally shift the balance of education away from the prior federalist model to one allowing the federal government far more centralized oversight. These provisions are summarized below and outlined in somewhat greater detail in Appendix A.

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<sup>1</sup> See the US Dept of Education website pages related to the NCLB at <http://www.ed.gov/nclb/landing.jhtml?src=pb>.

<sup>2</sup> Gail L. Sunderman and Jimmy Kim, Expansion of Federal Power in American Education: Federal-State Relationships Under NCLB, Year One, Table 1, p. 17, The Civil Rights Project at Harvard University (February 2004).

## **1) Accountability**

The NCLB requires states to implement statewide accountability systems, applying “challenging” state standards in reading and math. States must test students in grades 3-8 on an annual basis, with results disaggregated by sub-groups of students identified by their poverty, race, ethnicity, disability, and English proficiency. States must evaluate schools against state defined progress objectives, ensuring that all students meet a state defined “proficiency” standard within 12 years. Schools that fail to make adequate yearly progress (AYP) must take corrective action to get back on track. The federal promise behind this notion of firm accountability is series of firm deadlines by which states must meet their accountability requirements or risk losing federal funding.

## **2) Choice**

NCLB expands the educational alternatives of students attending schools that fail to meet state standards. School districts (aka local educational agencies (LEAs)) must allow students attending schools that fail to make AYP the option of attending other schools that are meeting their progress goals, as well as provide transportation for any student that elect to pursue this option. Low income students attending schools that fail to meet AYP for 3 out of 4 years must be allowed to use Title I funds to purchase supplemental educational services (from providers meeting standards established by the states). To ensure LEAs’ commitment to choice, NCLB directs LEAs to dedicate up to 20% of their Title I funds for use by students utilizing the transfer option or seeking supplemental education. To ensure LEA and school commitment to improvement, NCLB subjects schools that fail to make AYP for 5 years to reconstitution.

In essence, NCLB seeks to create a competitive market for the provision of education to students. It achieves this in two ways. From a long term perspective, students of poor schools

will have the choice to attend better schools. Student departures are a warning sign that a school needs to improve and arguably make it easier for the school to improve because it will have less students over which to spread its funding.<sup>3</sup> Those schools that fail to improve over time eventually “fail” and are effectively weeded out for reconstitution. In the short term, NCLB directs money towards alternative educational services. That is, this money is available theoretically for students to spend in a market offering educational services that augment, substitute for, and effectively compete with state run legacy school systems. Of course, the near term viability of this market remains to be seen as the market of educational alternatives meeting state standards, or even existing, remains relatively undeveloped.

### **3) Flexibility**

Flexibility allowed under recent federal education efforts, such as President Clinton’s Improving America’s Schools Act (IASA), often arose simply through the waiver of program requirements. NCLB purports to allow States “unprecedented” flexibility in the use of Federal education funds in exchange for the stronger accountability system outlined above. Essentially, NCLB allows States greater flexibility in moving federal education funds between certain State grant programs. At the same time, NCLB seeks to take a hard line regarding state compliance with program requirements and deadlines.

### **4) Academic Emphasis**

NCLB reflects President Bush’s goal that every child can read by the end of the 3<sup>rd</sup> grade. The Reading First Initiative proposes to increase Federal investment in “scientifically based” reading instruction programs for early grades. These instruction programs involve screening K-3 students to identify those at risk of reading failure and the professional development of K-3

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<sup>3</sup> Note that Title I funding does not generally follow the Title I student to the new school.

teachers in the area of reading instruction. The Early Reading First program supports language and literacy development to better prepare pre-school age children from low income families to eventually learn to read. Furthering the focus on specific subject areas, the testing rules under NCLB require states to account for and report student development in reading, math, language arts, and eventually science.

#### **5) Improving Teacher Quality**

NCLB promotes the use of scientifically based research to prepare and recruit more highly qualified teachers (through the Improving Teacher Quality State Grants program), allowing States to determine the operation of the program so long as LEAs show progress in ensuring that all teachers are in fact “highly qualified”. NCLB generally defines “highly qualified” to mean a person licensed by the State to teach, holding a bachelors degree, and whom has demonstrated command of the subjects being taught (e.g., by state administered proficiency exam, having received a degree in that specific subject, or some state defined level of experience).<sup>4</sup> The Act further requires that all teachers teaching certain core subjects be highly qualified by the 2005-2006 academic year.<sup>5</sup>

#### **6) Minority Focused Provisions**

A review of the law itself reveals provisions specifically targeted at minorities. A key self-stated objective is to close “the achievement gap between high and low performing students, especially gaps between minority and non-minority students ...”<sup>6</sup> The NCLB requires that States develop accountability systems that ensure the Adequate Yearly Progress (AYP) of “major

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<sup>4</sup> P.L. 107-110, § 9101(23)

<sup>5</sup> Ibid, § 1119 (a)(2).

<sup>6</sup> Ibid, § 1001, (3).

racial and ethnic groups” towards eliminating this gap.<sup>7</sup> In fact, it requires LEAs to describe how they will eliminate this achievement gap when applying for Title I funds.<sup>8</sup> It increases transparency by requiring the annual assessments of student performance to be disaggregated and reported by ethnicity, among other factors.

In the area of teacher quality, NCLB requires that States develop education plans reflecting the steps that the “state educational agency will take to ensure that poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers ...”<sup>9</sup> It requires that LEAs receive state approval for local educational plans that ensure this result through the use of “incentives for voluntary transfers, the provision of professional development, recruitment programs, or other effective strategies...”.<sup>10</sup>

NCLB re-authorizes the use of magnet schools to promote diversity in education, noting the continued segregation between minority and non-minority students and the goal of achieving “voluntary desegregation”.<sup>11</sup> It requires LEAs to implement programs, activities and procedures for involving parents, in programs funded by NCLB, with particular emphasis on parents of any minority background.<sup>12</sup> It also authorizes grants to non-profit organizations that serve the parents of minority children enrolled in elementary and secondary schools.<sup>13</sup>

By 2006, it requires the Secretary of Education to independently review assessments used for State accountability purposes, examining the effect of academic assessments on minority children.<sup>14</sup>

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<sup>7</sup> Ibid, § 1111(b)(2)(C)(v).

<sup>8</sup> Ibid, § 2122 (b)(2).

<sup>9</sup> Ibid, § 1111 (b)(8)(C).

<sup>10</sup> Ibid, § 1112 (c)(1)(L); § 2124 (a)(4)(D); § 5411 (b)(3)(A).

<sup>11</sup> Ibid, § 5301.

<sup>12</sup> Ibid, § 1118 (a)(2)(E).

<sup>13</sup> Ibid, § 5563 (b)(9).

<sup>14</sup> Ibid, § 1503 (d)(3).

## B) FUNDING ISSUES

Sundermann and Kim note the shifting balance of power towards greater centralized, federal influence over local education. Nevertheless, their report cites little evidence of any adverse impact on minorities (or anyone else for that matter) associated with this change. States' criticism has focused on a shortfall between funds promised under NCLB and the costs they estimate will be incurred to implement it. New Hampshire estimates that NCLB related incremental costs will exceed incremental receipts by \$200 million.<sup>15</sup> Meanwhile, Vermont notes a \$100 million shortfall.<sup>16</sup>

Nevertheless, federal funding increased as promised during the initial years of NCLB but has since flattened out:

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### Title I Grants to Local Education Agencies (LEAs) and Total Elementary and Secondary Education Appropriations, FY 1998 – 2004 (*all number are in thousands*)<sup>17</sup>

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Fiscal Year	ESEA Title I Grants to LEAs	% Increase From Prior Year	Total Elem. & Secondary Appropriation	% Increase From Prior Year
1998	\$ 7,375,232	1.09	\$18,595,444	10.13
1999	7,732,397	4.84	21,413,447	15.15
2000	7,941,397	2.70	23,150,732	8.11
2001	8,762,721	10.34	27,974,746	20.84
2002	10,350,000	18.11	32,770,874	17.14
2003	11,350,000	9.66	35,797,897	8.45
2004	12,350,000	8.81	34,874,488	-2.65

Source: US Department of Education, Budget History Table: FY 1980 – present. Retrieved on 10-2-03 from [www.ed.gov/about/overview/budget/history/edhistory.pdf](http://www.ed.gov/about/overview/budget/history/edhistory.pdf)

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<sup>15</sup> NHSAA, Updated Analysis of Cost Impact of ESEA – No Child Left Behind Act on New Hampshire, p. 1 (March 24, 2004) at <http://www.nhsaa.org/NCLB8B459.pdf>.

<sup>16</sup> Sunderman and Kim, Expansion of Federal Power in American Education: Federal-State Relationships Under NCLB, Year One, supra note 2, 36.

<sup>17</sup> Sunderman and Kim, Expansion of Federal Power in American Education: Federal-State Relationships Under NCLB, Year One, supra note 2, Table 7, p. 35.

Furthermore, the General Accounting Office (GAO) released a report in May 2003 estimating incremental NCLB related testing costs ranging from \$1.9 billion to \$5.3 billion, depending on the testing method employed, with appropriations under NCLB estimated at 2.34 billion.<sup>18</sup> Of course, the GAO report only covered the narrow area of assessment / testing related expenses. Left unaddressed were the many other areas in which states have estimated additional unfunded NCLB costs. For example, New Hampshire indicated that no less than \$100 million (a suspiciously large, round number) of its \$224 million estimated NCLB funding shortfall related to conflicts with existing state and local practices arising from federal interventions under NCLB.<sup>19</sup> Clearly then, States foresee large costs, and the associated uncertainties, that will only begin arising as the various provisions of NCLB are applied over time.

### **C) NCLB'S IMPACT ON MINORITIES**

While the goal of NCLB was to provide high poverty schools in serious academic trouble with greater resources and better teachers, some commentators have noted that the opposite has occurred in practice: minority dominated schools are publicly branded failures at a far greater rate than affluent schools, more often facing sanctions and losing resources.<sup>20</sup> In fact, minority schools are often required to show more improvement than their less diverse peers, just to be seen as keeping up under NCLB. Furthermore, NCLB incorporates few of the civil rights lessons learned over the last several decades, for example lacking restrictions on student / parent choice that would increase (or at least preserve) segregation.<sup>21</sup> In particular, “the choice

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<sup>18</sup> Title I, Characteristics of Tests Will Influence Expenses; Information Sharing May Help States Realize Efficiencies, p. 3-6, Report of the GAO to Congressional requesters (May 2003).

<sup>19</sup> NHSAA, Updated Analysis of Cost Impact of ESEA – No Child Left Behind Act on New Hampshire, supra note 15, p. 10.

<sup>20</sup> Gary Orfield, Inspiring Vision, Disappointing Results: Four Studies on Implementing the NCLB Act, p. 6, The Civil Rights Project at Harvard University (February 2004).

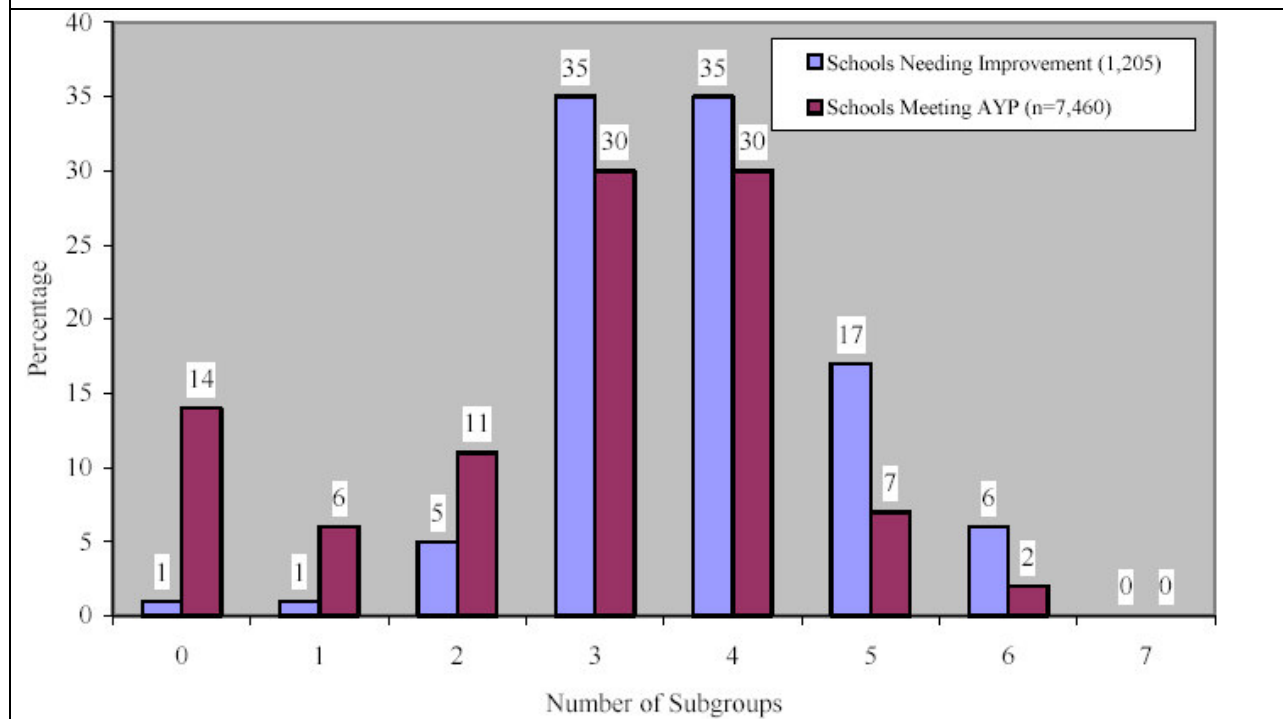
<sup>21</sup> *Ibid*, p. 8.

regulations [have] none of the civil rights protections that were typical in the earlier federal magnet school requirements or in the 1964 civil rights act.”<sup>22</sup>

**1) A Greater Burden for Diversified Schools**

Generally speaking, schools that are more diverse will have more sub-groups that NCLB requires to make AYP. Whereas non-diverse schools must meet AYP for the single group of students comprising the student body, diverse schools then must meet multiple AYP targets, with the scores of some students actually counting for multiple sub-groups. As such, a real risk exists that NCLB sanctions will apply disproportionately to minority schools.<sup>23</sup> Kim and Sunderman note exactly this result in their study:

**Percentage of Schools Needing Improvement and Schools Meeting AYP with a Particular Subgroup in Reading, California, Spring 2003 Administration.**<sup>24</sup>



<sup>22</sup> Sunderman and Kim, Expansion of Federal Power in American Education: Federal-State Relationships Under NCLB, Year One, supra note 2, p. 31.

<sup>23</sup> Jimmy Kim and Gail L. Sunderman, Large Mandates and Limited Resources: State Responses to the No Child Left behind Act and Implications for Accountability, p. 9, The Civil Rights Project at Harvard University (February 2004).

<sup>24</sup> Ibid, Figure 9, p. 37.

Nevertheless, the actual effect of this disproportionate impact remains uncertain. Kim and Sunderman themselves note that “[i]t remains to be seen how these federal sanctions will affect schools and student achievement outcomes.”<sup>25</sup> Some suggest that the practical impact from sanctions will be small, particularly given that the harshest remedies for failing schools do not apply in the near term. It remains to be seen even how the various NCLB provisions will be applied in practice (but see the discussion below regarding school choice).<sup>26</sup> Furthermore, the early results will likely vary from state to state, making it difficult to draw valid across-the-board conclusions.

## 2) Consequences of High Stakes Test Based Accountability

A majority of states support the notion that annual measurable objectives will increase the academic achievement of minority students, and none have noted negative or unintended consequences for minority groups.<sup>27</sup> Nevertheless, a number of studies have suggested that high stakes tests like those promoted by NCLB result in teachers and schools “teaching to the test”.<sup>28</sup> One study noted in particular the narrowing of the liberal arts curriculum, including for example arts, foreign language, and social studies offerings.<sup>29</sup> This study noted that schools with high minority student populations tended to show the largest decreases in liberal arts instruction time, speculating this resulted from having less funds available per pupil and greater distance to travel

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<sup>25</sup> Kim and Sunderman, Large Mandates and Limited Resources: State Responses to the No Child Left behind Act and Implications for Accountability, supra note 23, p. 40.

<sup>26</sup> Ibid.

<sup>27</sup> From the Capitol to the Classroom, Year 2 of the No Child Left Behind Act, p. 16, Tables 1-A (p. 17) and 1-C (p. 22), and p. 54, Center on Education Policy (January 2004).

<sup>28</sup> Making Sense of Test-Based Accountability in Education, p. 91, Rand Corporation (Laura S. Hamilton, Brian M. Stecher, and Stephen P. Klein, eds. 2002), available at <http://www.rand.org/publications/MR/MR1554/index.html>.

<sup>29</sup> Claus von Zastrow, Helen Janc, Academic Atrophy, The Condition of the Liberal Arts in America’s Public Schools, p. 7, Council for Basic Education (March 2004) at <http://www.ecs.org/html/offsite.asp?document=http%3A%2F%2Fwww%2Eec%2Db%2De%2Eorg%2FPDF%2Fcbe%5Fprincipal%5FReport%2Epdf>.

in meeting AYP obligations than non-minority dominated schools.<sup>30</sup> Some state programs aimed at reversing the achievement gap, for example by distributing state education funds inversely proportional to district wealth, base their requirements on NCLB criteria, possibly furthering the pressure on schools to focus on tested subjects at the expense of others.<sup>31</sup>

### **3) Impact of Subgroup Accountability Rules**

Kim and Sunderman note that, due to the legacy of test score discrepancies inherent in the educational system, minorities will be forced to make greater strides just to break even with AYP requirements.<sup>32</sup> This phenomenon arises from the greater transparency required under NCLB (we are now better able to see specific groups that under-perform) and the inherent inflexibility in NCLB's use of a "one-size fits all" approach to required annual progress.

Surveying states' views on the possibility of narrowing the achievement gap at the sub-group level (e.g., between white and black students), the Center on Education Policy noted that a majority of schools in its "representative" sample indicated that the relative black / white sub-groups were too small to track.<sup>33</sup> The report does not explore the cause of this situation, but one might speculate that it reflects the segregation inherent in our schools. One can hope that education officials will be better adept at examining and reducing the achievement gap between whites and minorities at the state and national level than early data apparently allows at the district level.

Suggesting that NCLB is a success even in its early stages, some point to the fact that AYP assessment at the sub-group level has already allowed states to identify those schools

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<sup>30</sup> Ibid, p. 13-14

<sup>31</sup> See e.g., Maryland's Bridge of Excellence Act of 2002, described by von Zastro, supra note 29, p. 22.

<sup>32</sup> Kim and Sunderman, Large Mandates and Limited Resources: State Responses to the No Child Left behind Act and Implications for Accountability, supra note 23, p. 12.

<sup>33</sup> From the Capitol to the Classroom, Year 2 of the No Child Left Behind Act, supra note 27, p. 78 and Table 2-1 (p. 79).

previously identified as “successful” that nevertheless have large latent achievement gaps and are now considered in need of improvement under NCLB.<sup>34</sup> Often, these schools passed muster under prior state based accountability regimes due to standards that only looked at average student performance across multiple demographic groups within a school. Supporters of this view note that NCLB’s identification of the schools in need of improvement is the inevitable first step in actually achieving valid education reform. It further validates the success of those schools not needing improvement, showing that “schools educating large numbers of low income and minority students are perfectly capable of reaching high levels of achievement.”<sup>35</sup>

#### 4) Effect of School Choice

Kim and Sunderman note that the inflexibility of NCLB’s school choice rules “compel districts to implement choice by any means necessary, even if it puts federal desegregation efforts at risk or strains the capacity of overcrowded schools.”<sup>36</sup> Their study indicates that actual school transfers to date have occurred on an intra-district basis only and almost always between schools with high average poverty rates.<sup>37</sup> They fail to explore the actual impact of NCLB on school diversity, simply noting that “one way to increase the quality of schooling [from a civil rights perspective] is to expand access to suburban schools”.<sup>38</sup>

In fact, NCLB requires inter-district transfer “to the extent practicable” where all of the schools under an LEA’s authority are identified for improvement, corrective action or

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<sup>34</sup> Daria Hall, Ross Wiener, and Kevin Carey, What New “AYP” Information Tells Us About Schools, States, and Public Education, p. 2, The Education Trust (2003), at <http://www2.edtrust.org/NR/rdonlyres/4B9BF8DE-987A-4063-B750-6D67607E7205/0/NewAYP.pdf>.

<sup>35</sup> Ibid, p. 6.

<sup>36</sup> Jimmy Kim and Gail L. Sunderman, Does NCLB Provide Good Choices for Students in Low Performing Schools?, p. 7, The Civil Rights Project at Harvard University (February 2004).

<sup>37</sup> Ibid, p. 23.

<sup>38</sup> Ibid, p. 32.

restructuring (or the LEA itself is subject to corrective action).<sup>39</sup> Nevertheless, Kim and Sunderman found that no district in fact was able to establish an inter-district transfer arrangement.<sup>40</sup>

Even where the transfer option was used on an intra-district basis many parents were disappointed in the choice options, not because of quality as measured by test scores but the fact that alternative schools offered different educational services. Particularly, if an alternative school was not a Title I school, the possibility existed that such school simply had less resources to offer certain intervention and after-school programs, for example.<sup>41</sup> As a result, the number of eligible students actually availing themselves of choice options was extremely low:

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**Participation in Transfer Program: Eligible Students, Transfer Requests, Transfers Granted in ten Districts, 2002-03<sup>42</sup>**

District	Eligible Students (#)	Transfer Requests (#)	Transfer Requests (%)	Transfers Granted (#)	Requests Granted (%)
Mesa, AZ	16,008	0	0.0	0	0.0
Washington, AZ	11,372	0	0.0	0	0.0
Fresno, CA	33,218	183	0.6	111	60.7
Los Angeles, CA	215,535	n/a	n/a	n/a	n/a
Chicago, IL	127,451	2,401	1.9	1,165	48.5
Buffalo, NY	19,933	79	0.4	65	82.3
New York, NY	278,185	6,400	2.3	1,507	23.6
Richmond, VA	8,201	123	1.5	30	24.4
Atlanta, GA	14,967	32	0.2	21	65.6
DeKalb, GA	14,855	49	0.3	34	69.4

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<sup>39</sup> P.L. 107-110, § 1116 (b)(11) and § 1116 (c)(10)(C)(vii).

<sup>40</sup> Kim and Sunderman, Does NCLB Provide Good Choices for Students in Low Performing Schools?, p. 30,

<sup>41</sup> Kim and Sunderman, Does NCLB Provide Good Choices for Students in Low Performing Schools?, p. 18.

<sup>42</sup> Kim and Sunderman, Does NCLB Provide Good Choices for Students in Low Performing Schools?, Table 3, p. 16,.

## 5) Supplemental Educational Services

The use of supplemental education services to counteract deficiencies in state provided education remains an unproven model with no supporting research.<sup>43</sup> Furthermore, schools are only required to offer this option after having failed to make AYP for three consecutive years.<sup>44</sup> As we are only now in the third academic year after enactment of the NCLB, no schools have even been subjected to this provision in practice.

Given the likelihood that schools with large minority populations will be among the first schools required to offer this option, they likely will also disproportionately bear the burden of perfecting the system. In the meantime, a very real risk exists that many students in “early-adopting” schools, again likely to be disproportionately minorities, will lack access to these services in the meantime.<sup>45</sup> One could argue that this is inherent in offering any new solution – there will always be kinks to work out. However, the point here is that the unproven (relatively non-existent) nature of alternative education services, generally, makes this alternative something more like a “potential solution” than an alternative that can alleviate a problem in the near term. That is, it is more of an experimental approach the results of which we might know at some point in the future.

Furthermore, schools must set aside Title I funds to pay for alternative education services.<sup>46</sup> The ability of schools and outside education providers to mesh their academic

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<sup>43</sup> Gail L. Sunderman and Jimmy Kim, Increasing Bureaucracy or Increasing Opportunities? School District Experience with Supplemental Educational Services, p. 6, The Civil Rights Project at Harvard University (February 2004).

<sup>44</sup> P.L. 107-110, § 1116 (b)(5).

<sup>45</sup> The National Alliance of Black School Educators noted “The Alliance considers educational vouchers as a “bad” quick-fix solution that addresses the needs of only a few children while ignoring the continuing educational plight of the majority of poor children. It is morally dishonest to divert attention from existing structures and resources to assure quality education for all poor children by directing attention and resources through vouchers to a symbolic “lucky few.” See <http://www.nabse.org/washingtonupdate.htm>.

<sup>46</sup> Gail L. Sunderman and Jimmy Kim, Increasing Bureaucracy or Increasing Opportunities? School District Experience with Supplemental Educational Services, p. 10.

offerings into a comprehensive education product remains unproven. As such, it is unclear that Title I funds expended on a disaggregated pupil-by-pupil basis will have the same per dollar benefit as funds kept within the centralized school system. Sundermann and Kim note that “research on the implementation of Title I suggests that all students benefit in schools that adopt a comprehensive approach to educating children.”<sup>47</sup>

## 6) **Teacher Qualifications**

Research shows a pressing need to improve teacher quality, particularly in schools serving minority dominated student bodies. In a recent article, The Education Trust recognized the difficulty of defining teacher “quality”, but noted studies citing the striking disproportion of less qualified and less experienced teachers serving low income and minority students.<sup>48</sup> It further pointed out that not all states track teacher “quality” and certainly do not do so in a consistent manner.<sup>49</sup>

The Center for Education Policy (CEP) noted that most states report a large majority of their teachers as being highly qualified. However, the report questions this result, given admissions by states that the reported percentages of highly qualified teachers were guesses, estimated high to protect teachers feelings, or simply inaccurately based on the misunderstanding that a state teaching license alone fulfilled the requirement of being “highly qualified”. Even diligent states admit their ongoing struggles with the definition of “highly qualified” for those teachers qualifying based on teaching experience, which NCLB leaves to state discretion.<sup>50</sup>

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<sup>47</sup> Ibid, p. 10-11.

<sup>48</sup> The Real Value of Teachers, If Good Teachers Matter, Why Don't We Act Like It?, in Thinking K-16 (A Publication of the Education Trust), v. 1 (Winter 2004) at <http://www2.edtrust.org/NR/rdonlyres/5704CBA6-CE12-46D0-A852-D2E2B4638885/0/Spring04.pdf>.

<sup>49</sup> Ibid, p. 2.

<sup>50</sup> From the Capitol to the Classroom, Year 2 of the No Child Left Behind Act, p. 123-132 , at <http://www.ctredpol.org/pubs/nclby2/>.

The CEP study separately found that the number of districts reporting that all of their teachers are highly qualified falls steadily as the minority enrolment rate of a school increases:<sup>51</sup>

**Table 4-G Percentage of Districts Reporting That All of Their Teachers at the Following Levels Are Highly Qualified, by Percentage of Minority Enrollment**

PERCENT MINORITY ENROLLMENT IN THE DISTRICT	ELEMENTARY TEACHERS	MIDDLE SCHOOL TEACHERS	HIGH SCHOOL TEACHERS
No Minority	62%	38%	53%
1-10% Minority	70%	52%	58%
11-25%	73%	52%	48%
26-50%	49%	34%	23%
51-75%	22%	22%	22%
76-100%	22%	13%	0%

Table Reads: An estimated 53% of school districts with no minority students report that all of their high school teachers are highly qualified, while 0% of school districts where 76–100% of their students are from minority groups report that all their high school teachers are highly qualified.

Source: Center on Education Policy, December 2003, District Survey, Item 48

Unfortunately, the study provides no year on year comparative data that might allow an assessment of NCLB’s impact on this situation.

**7) Reform Fatigue**

A real risk of “reform fatigue” exists in minority dominated schools staffed by minority teachers and administrators so often located in overwhelmingly minority districts. Setting aside the economic and social problems afflicting their communities that they deal with on a daily basis, these schools and the people they employ and serve have been subjected to a “long succession of reforms imposed from the outside that have failed.” Sunderman and Kim note that:

“[t]he worst kind of reform would further demoralize already overburdened staffs, undermine the kind of reforms that produce lasting change, drive qualified teachers and administrators out of the most needy schools, and take resources from them when they cannot meet standards that no school district has ever met.”<sup>52</sup>

<sup>51</sup> Ibid, p. 134, Table 4-G.

<sup>52</sup> Sunderman and Kim, Expansion of Federal Power in American Education: Federal-State Relationships Under NCLB, Year One, supra note 2, p. 5.

NCLB creates this risk by employing unproven methods with inflexible requirements in the very short term. Further augmenting this risk is the potential for dramatic instability created by NCLB's mandatory reform and improvement measures, for example ultimately culminating in a school's reconstitution.

#### **D. CONCLUSION**

NCLB seeks to add integrity to the conditions traditionally attached to federal funding of education administered by states at the local level. It does this by requiring equal beneficial results for all groups of students within a strict timeline. Despite its worthy aims, the strategy it employs fundamentally alters, if only slightly, the way in which education is delivered in the United States. For this it creates much uncertainty and suffers much criticism. It fails to explicitly protect historic values central to the Civil Rights movement. Perhaps, its greatest weakness in this respect, though, is the simple fact that minorities will continue to suffer the greatest burden of implementing uncertain changes that, if effective, will bring benefits to the country as a whole. It appears then that even under NCLB equality of opportunity for all continues to rely on the disproportionate burden of the few.

## APPENDIX A – OUTLINE SUMMARY OF NCLB TITLE I PROVISIONS<sup>53</sup>

### Generally

- Requires the development of science standards by the 2005-06 school year.
- Requires annual assessments in reading and math for grades 3-8 beginning in 2005-2006, with the addition of science assessments in 2007-2008 (but only in same three grade spans as the 1994 law).
- Requires reading assessments using tests written in English for any student who has attended school in the US (excluding Puerto Rico) for 3 or more consecutive years.
- Proposes that Title I funds are used only for effective educational practices using methods and instructional strategies based on scientifically based research.
- Other provisions call for school improvement plans, professional development, and the technical assistance provided by LEAs to low-performing schools all to be based on scientifically based research.

### Accountability

- Requires a single, statewide accountability system for all LEAs and public schools.
- Tightens the definition of adequate yearly progress (AYP) to include annual statewide measurable objectives for improved achievement by all students as well as specific groups.
- Sets an overall goal for all students to meet the "proficient" level no later than 12 years after the 2001-02 school year.
- Requires State and LEA report cards to the public no later than the beginning of the 2002-2003 school year.
- Requires the Secretary to withhold 25 percent of funds for State administration from States that have failed to meet the 1994 deadlines for putting in place standards and a system for measuring AYP.
- Permits the Secretary to withhold an unspecified amount of State administrative funds from a State that fails to meet requirements of new law.
- Adds "Parents Right to Know" requiring LEAs to annually notify parents of their right to request information on the professional qualifications of their child's teachers.

### School Improvement

#### Funding

- Requires States to reserve 2 percent of Part A allocations for school improvement purposes in fiscal years 2002 and 2003, rising to 4 percent in 2004 and thereafter. States must distribute 95 percent of these funds to LEAs for schools identified for improvement, corrective action, or restructuring.
- Establishes a separate \$500 million authorization for a new Assistance for Local School Improvement grant program under which States would make subgrants ranging from \$50,000 to \$500,000 to help LEAs comply with the improvement provisions of Sec. 1116.

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<sup>53</sup> Excerpted from the Dept of Education's web site at [http://www.ed.gov/nclb/overview/intro/progsum/sum\\_pg2.html](http://www.ed.gov/nclb/overview/intro/progsum/sum_pg2.html).

### Schools Identified for Improvement (failing to make AYP for 2 consecutive years)

- Requires development of two-year improvement plans incorporating strategies from scientifically based research to strengthen the core academic subjects.
- Requires schools to reserve annually at least 10 percent of their Part A funds for professional development to address the problems that led to need for improvement.
- Requires LEAs to immediately provide students attending schools the option of attending another public school, which may include a public charter school, that is not identified for improvement. LEAs must provide or pay for transportation to the new school, subject to cap.
- Permits students attending schools in the second year of school improvement (failure to make AYP for 3 consecutive years) to use Title I funds to obtain supplemental educational services from the public- or private-sector provider of their choice, subject to cap.
- Requires LEAs to "promptly" notify parents of eligible students attending schools identified for improvement, corrective action, or restructuring of their option to transfer or obtain supplemental services.
- Requires LEAs to give priority to low-achieving students from low-income families in making available choice and supplemental educational services. Only low-income children are eligible for supplemental services.
- Requires LEAs identified for improvement to spend at least 10 percent of their annual Part A allocations on professional development.
- Permits a student who transferred to another school under these provisions to remain in that school through its highest grade, but the LEA is required to provide transportation to the new school only as long as the student's original school is subject to school improvement, corrective action, or restructuring.

### Corrective Action

- Strengthens corrective action (required after 2 years in school improvement) to include actions more likely to bring about meaningful change at the school, such as replacing school staff responsible for the continued failure to make AYP, comprehensive implementation of a new curriculum (including professional development), and reorganizing the school internally. Corrective action schools also must continue to provide choice and supplemental services options to their students.
- Adds a new restructuring requirement for schools that fail to respond to corrective actions. If a school fails to make AYP after one year of corrective action, it must begin planning for restructuring, which involves some type of fundamental change, such as reopening the school as a public charter school, replacing all or most of the school's staff, or turning operation of the school over to a private management company with a demonstrated record of effectiveness, and implement its restructuring plan the following year. Schools identified for restructuring also must continue to provide choice and supplemental services options to their students.
- Permits LEAs to end school improvement, corrective action, or restructuring if the school involved makes AYP for 2 consecutive years.

## **Rewards**

- Authorizes State Academic Achievement Awards to schools that close achievement gaps or exceed AYP requirements, the designation of schools that make the greatest gains as Distinguished Schools, and financial awards to teachers in schools that receive Academic Achievement Awards. States may reserve up to 5 percent of annual Part A increases for Academic Achievement Awards, and 75 percent of these funds must be awarded to high-poverty schools.

## **Qualifications for Teachers and Paraprofessionals**

- Requires LEAs to ensure that all Title I teachers hired after the first day of the first school year following the date of enactment are "highly qualified".
- Requires States to develop plans with annual measurable objectives that will ensure that all teachers teaching in core academic subjects are highly qualified by the end of the 2005-2006 school year.
- Requires LEAs to use between 5 and 10 percent, inclusive, of their Part A allocations for fiscal years 2002 and 2003, and at least 5 percent thereafter, to ensure that all teachers are highly qualified by the end of the 2005-06 school year.
- Strengthens paraprofessional requirements to include two years of postsecondary education or, for an applicant with a high school diploma, the demonstration of necessary skills on a "formal State or local academic assessment."
- Specifies permitted paraprofessional duties and emphasizes that paraprofessionals "may not provide any instructional services" except under the direct supervision of a teacher.
- Requires principals to "attest annually in writing" that their schools are in compliance with the teacher and paraprofessional qualification requirements in section 1119.

## **Services to Students in Private Schools**

- Requires equitable inclusion of private school parents and teachers in parent involvement and professional development activities.
- Expands consultation requirements to cover who will provide the services, including a "thorough consideration and analysis" of the potential use of third-party providers and a written explanation if an LEA decides not to honor a private school's request that services be provided by a third-party provider.
- Outlines complaint procedures if private school officials are dissatisfied with the outcome of the consultation.
- Specifies methods for determining the number of poor children in private schools and permits such determinations to be made biennially.

## **Other Provisions**

- Continues to permit States to reserve 1 percent of allocations under parts A, C, and D for State administrative activities, but caps the reservation at the amount a State would reserve if the total appropriation for those parts was \$14 billion.
- Lowers the poverty threshold for schoolwide programs to 40 percent.

## BIBLIOGRAPHY

- Daria Hall, Ross Wiener, and Kevin Carey, What New “AYP” Information Tells Us About Schools, States, and Public Education, The Education Trust (2003)
- Jimmy Kim and Gail L. Sunderman, Does NCLB Provide Good Choices for Students in Low Performing Schools?, The Civil Rights Project at Harvard University (February 2004).
- Jimmy Kim and Gail L. Sunderman, Large Mandates and Limited Resources: State Responses to the No Child Left behind Act and Implications for Accountability, The Civil Rights Project at Harvard University (February 2004).
- Gary Orfield, Inspiring Vision, Disappointing Results: Four Studies on Implementing the NCLB Act, The Civil Rights Project at Harvard University (February 2004).
- Gail L. Sunderman and Jimmy Kim, Expansion of Federal Power in American Education: Federal-State Relationships Under NCLB, Year One, The Civil Rights Project at Harvard University (February 2004).
- Gail L. Sunderman and Jimmy Kim, Increasing Bureaucracy or Increasing Opportunities? School District Experience with Supplemental Educational Services, The Civil Rights Project at Harvard University (February 2004)
- Claus von Zastrow, Helen Janc, Academic Atrophy, The Condition of the Liberal Arts in America’s Public Schools, Council for Basic Education (March 2004)

## Un-attributed Papers

- From the Capitol to the Classroom, Year 2 of the No Child Left Behind Act, Center on Education Policy (January 2004)
- Making Sense of Test-Based Accountability in Education, Rand Corporation (Laura S. Hamilton, Brian M. Stecher, and Stephen P. Klein, eds. 2002)
- NHSAA, Updated Analysis of Cost Impact of ESEA – No Child Left Behind Act on New Hampshire, (March 24, 2004) at <http://www.nhsaa.org/NCLB8B459.pdf>.
- The Real Value of Teachers, If Good Teachers Matter, Why Don’t We Act Like It?, in Thinking K-16 (A Publication of the Education Trust), v. 1 (Winter 2004)
- Title I, Characteristics of Tests Will Influence Expenses; Information Sharing May Help States Realize Efficiencies, Report of the GAO to Congressional requesters (May 2003).