

Statewide Educational Accountability Under the No Child Left Behind Act— A Report on 2006 Amendments to State Plans

A Summary of State Requests in 2005-06 for Amendments to
their Educational Accountability Systems Under NCLB

Ellen Forte
William J. Erpenbach



COUNCIL OF CHIEF STATE SCHOOL OFFICERS

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Council of Chief State School Officers
Attn: Publications
One Massachusetts Ave., NW, Suite 700
Washington, DC 20001
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Executive Summary

More than four years into the implementation of NCLB, it came as somewhat of a surprise this year that all but two States requested amendments to their educational accountability workbooks. The number of requested changes was the highest ever. Below, we present a summary of the more frequent accountability workbook amendments requested in 2006. A few States proposed additional amendments unique to their circumstances or which can best be described as far-reaching that are not included here. They are, however, covered in detail in the body of the paper including States' supporting rationale. The U.S. Department of Education (ED) has consistently denied previous requests in several of the areas described. Many of the requests simply involve adoption of amendments previously approved for other States; several of which, also surprisingly denied by ED in 2006.

We have also included in this summary a timeline of the significant events related to implementation of NCLB since its enactment in January 2002.

States' requested amendments for 2005-06 AYP calculations include:

Standards and Assessments

- Delay using results of newly assessed grades in the 3-8 span for AYP calculations until a State has two or three years of data (Wellstone Amendment): **Kentucky, Maine, Massachusetts, North Dakota, Oregon, Virginia (with variations), and Wisconsin**
- Adopt alternate methods of assessing students' subject mastery in grades 3-8 (besides participation in Statewide assessments): **Connecticut**
- Replace high school assessments with ACT or SAT or use Advanced Placement exams and International Baccalaureate exams in lieu of high school assessments: **Maine and Maryland**
- "Bank" scores of students taking State assessments early and scoring proficient or higher: **Maryland and Washington**

AYP Model

- Recalculate AYP if a student attending summer school retakes State assessments and achieves a proficient score or a student re-takes and passes tests required for graduation: **Delaware and Virginia**
- Modify how school districts (or Local Educational Agencies) are identified for improvement: **California, Colorado, Connecticut, Idaho, Louisiana, Massachusetts, North Carolina, South Dakota, Tennessee, Utah, and Washington**
- Restrict identification for improvement based on same student groups missing the same AMO in the same subject for two consecutive years (consistently denied by ED): **Connecticut, Nevada, Oklahoma, Pennsylvania, Utah, and Virginia**
- Modify the definition of Graduation Rate and other related issues, e.g., delay implementation, include students with disabilities (SWDs) earning "special education" diplomas: **Alabama, Arkansas, California, Georgia, Hawaii, Idaho, Michigan, New Mexico, Oklahoma, South Carolina, Tennessee, and Virginia**
- Modify the definition of "Full Academic Year" (FAY): **Alabama, Arkansas, Illinois, Michigan, Mississippi, Texas, Vermont, and West Virginia**

- Modify the calculation of Participation Rates including counting as non-participants students with invalid assessment scores: **Alabama, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maryland, North Carolina, Oregon, South Carolina, Tennessee, and Wyoming**
- Modify use or application of Other Academic Indicators: **Georgia, Hawaii, South Carolina, and South Dakota**
- Apply, increase, or modify level of confidence intervals to make AYP determinations: **Illinois, Nevada, New Hampshire, and Rhode Island**
- Modify or include proficiency indexing to make AYP calculations: **Alabama, Florida (“improvement model”), Iowa, Michigan, New Hampshire, New Jersey, Rhode Island, South Carolina, Vermont, Washington, Wisconsin, and Wyoming**
- Change minimum ‘n’ for AYP calculations: **Alabama, Alaska, Illinois, Kansas, Michigan, Nevada, New Hampshire, Oklahoma, and Vermont**
- Modify Starting Points, Annual Measurable Objectives and/or Intermediate Goals: **Arizona, Arkansas, Colorado, Kansas, Kentucky, Michigan, New Hampshire, New Jersey (2), Oregon, South Carolina, South Dakota, Vermont, Washington, West Virginia, and Wyoming**
- Discontinue averaging data over two or three years to make AYP determinations: **Rhode Island and Vermont**
- Modify method of determining AYP for schools not participating in State assessments: **Colorado and Illinois**
- Apply confidence intervals (ED limits these to 75% for safe harbor) and other changes in safe harbor determinations: **California, Connecticut, Georgia, New Hampshire, New Jersey, Tennessee, Texas (2), Washington, and Wyoming**

Inclusion of All Students

- Use “modified” achievement standards for AYP determinations with the SWD student group: **Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Hampshire, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, and Washington**
- Modify the manner in which SWDs, and students formerly served in special education, are included in State assessments and AYP determinations: **Montana, Nebraska (2), North Carolina, Pennsylvania, Rhode Island, Texas (2), Utah, Virginia, and Washington**
- Modify the manner in which limited English proficient students are included in State assessments and AYP determinations: **California, Connecticut, Kansas, Massachusetts, Nevada, New Jersey, Oklahoma, Tennessee, Virginia, and Washington (2)**
- Modify the manner in which schools are identified for improvement solely because of the performance of the SWD student group: **Pennsylvania**
- Modify the definition of Limited-English Proficient student: **Idaho**
- Create a new student group for students displaced by Hurricanes Katrina and Rita: **Alabama, Arkansas, Georgia, Louisiana, Pennsylvania, Tennessee, and Texas.**

AYP Consequences and Reporting

- Reverse the order of supplemental educational services (SES) and public school choice, permit schools to offer both in the first year, or permit use of SES in lieu of school choice when this option is non-existent or extremely limited: **Colorado, Delaware, Nevada, Utah, and Virginia**
- Target AYP consequences to the student groups not making performance targets or revise the AYP status of a school or district that fails to meet AYP solely due to the performance of the same student group: **Connecticut, Nevada, Pennsylvania, Utah, Virginia, and Washington**
- Modify appeals process for schools and districts challenging in need of improvement determinations. **Oregon**
- Permit school districts in improvement status to provide supplemental educational services to schools in improvement: **Illinois and Washington**
- Delay reporting AYP results due to implementation of new assessments or otherwise modify reporting cycles: **Connecticut, Kansas, Louisiana, Minnesota, Nevada, New Jersey, North Carolina, North Dakota, South Carolina, and Wyoming**

Timeline of Significant Events Related to State Accountability Plans Under NCLB

2002

- January—The No Child Left Behind Act of 2001 becomes law.
- July—ED issues Standards and Assessment Regulations.
- December (early)—ED issues Educational Accountability Regulations.
- December (late)—ED releases Accountability Workbook Templates to States.

2003

- January 31—Draft Accountability Workbooks due to ED.
- January – April—Peer Reviews of State Accountability Workbooks conducted in States.
- June 27—Secretary's Letter regarding inclusion of SWDs in AYP.
- June (late)—All State Accountability Plans tentatively approved by ED.
- July—CCSSO's Year One paper on State Accountability Plan requests and ED approval decisions released.
- August—States begin submitting Accountability Plan amendment requests to ED; a process that would become on-going.
- December 9—ED issues *Achievement of Students with the Most Significant Cognitive Disabilities* Regulations.
- December 11—Secretary Paige Letter regarding additional flexibility for SWDs in State Assessment and Accountability Systems.

2004

- February 5—Assistant Secretary Simon Letter setting April 1 deadline for accountability amendment requests applying to 2003-04 AYP decisions.
- February 20—Secretary's Letter announcing new flexibility related to ELLs.
- March 2—Secretary's Letter announcing further flexibility related to AYP for SWDs.
- March 29—Secretary's Letter regarding calculation of Participation Rate.
- April 1—State requests for Accountability Plan amendments due at ED.
- April 28—ED issues *Standards and Assessments Peer Review Guidance* for the NCLB Peer Reviews.
- May 21—Assistant Secretary Simon Letter elaborates on flexibility for Participation Rate calculations.
- May 21—Second Secretary Letter's regarding calculation of Participation Rate.
- October—CCSSO's Year Two paper on 2003-04 State Accountability Plan amendment requests and ED approval decisions released.
- January 27—Assistant Secretary Simon Letter setting April 1 Deadline for 2004-05 Accountability Plan Amendments.

2005

- February 16 – 19—ED conducts Standards and Assessments Peer Reviewer Training and first round of Standards and Assessments Peer Reviews under NCLB.
- April 7—Secretary Spellings announces *Raising Achievement: A New Path for No Child Left Behind* initiative.
- May 10—Secretary sets June 1 deadline for State accountability amendments and issues information related to serving SWDs with "Persistent Academic Difficulties."
- September 29—Secretary's letter concerning students displaced by Hurricanes Katrina and Rita.
- October—CCSSO's Year Three paper on 2004-05 State Accountability Plan amendment requests and ED approval decisions released.
- December—NPRM released regarding modified achievement standards and assessments for some SWDs; includes provision to end use of larger minimum n's for subgroups.

2006

- January 25—ED issues guidance for NCLB Growth Model proposals and sets February 17 application deadline. Eight States approved for peer review in April and two (Tennessee and North Carolina) approved in May.
- March 7—Assistant Secretary Johnson letter setting April 1 deadline for accountability amendment requests applying to 2005-06 AYP decisions and related transition information.
- May 15—Secretary's letter announcing separate application process for participation in extension of pilot program permitting schools to reverse order of choice and SES and some LEAs identified for improvement to serve as SES providers.
- June—all 49 yet-to-be-approved States (50 States, Puerto Rico, and DC) notified of assessment system peer review results.
- September 19—Assistant Secretary Johnson letter updating chief state school officers and ED's priorities and setting February 15, 2007, for receipt of 2006-07 accountability workbook amendments.

Section I: Introduction

Many of those who have followed the approval and amendment process for States' accountability plans under the *No Child Left Behind Act of 2001* (NCLB) assumed that the 2005-06 school year would be a relatively quiet one. In the fall of 2005, the use of growth models for adequate yearly progress (AYP) seemed a real and promising possibility, most States were busy implementing assessments in new grades and undergoing peer review of their standards and assessment systems, and conversations about reauthorization of the *Elementary and Secondary Education Act of 1965*¹ were beginning in earnest. There seemed little need to make other major adjustments in accountability plans. This assumption proved quite wrong: 2005-06 was the busiest and most surprising accountability amendment period thus far.

Between 2003 and 2005, nearly every State submitted at least one request to amend its plan. But, while 47 States sought amendments in 2003-04, only about twenty submitted requests in 2004-05. This year, the number went back up to 48. Many of these requests reflected changes that had been approved previously for other States so it came as a surprise when several of these requests were denied. In addition, ED solicited separate workbook amendments for States interested in reversing the order of public school choice and supplemental educational services (SES) sanctions under NCLB. (Spellings, May 15, 2006). Even though several States had already included this issue in their 2005-06 amendment requests, the Secretary's announcement set up a separate application process as well as participation conditions. In mid-August, the Secretary sent approval letters to five States (**Alaska, Delaware, Indiana, North Carolina, and Virginia**) permitting certain school districts there to reverse the sanctions. At the same time, the Secretary approved four school districts (**Anchorage, AK, Boston, MA, Chicago, IL, and Hillsborough County, FL**) identified for improvement to serve as SES providers. How these districts were chosen and whether there was an application process is unclear.

Perhaps even more surprising this year has been the nature of the U.S. Department of Education's (ED's) responses to States' amendment requests. While past responses have not always been quick or completely documented in writing, responses to 2005-06 requests have been notably slower and, when they include denials, far less likely to be documented in writing². Clear information about the much-anticipated but disappointing-in-hindsight Growth Model Pilot Program has been equally murky. Acknowledging these delays, ED moved the date for submittal of 2006-07 accountability workbook amendments from April 1 to February 15, 2007, to "better allow the Department to make timely decisions" (Johnson, 2005, September 19, p. 4).

Thus, this fourth installment of the Council of Chief State School Officers' (CCSSO's) annual review of changes to States' accountability plans traces a policy path that has been more obscure and convoluted than in past years. The basic structure of this paper parallels that of its predecessors, but emerging inconsistencies in ED's decisions across States and over time have undermined a fundamental assumption underlying the first three reviews. That is, previous amendment decisions no longer represent trustworthy precedents.

As with the previous three papers, we have based this paper primarily on information provided voluntarily by States to CCSSO. States submitted various types of information to support this work, including copies of the request documents, emails, phone conversations, and copies of ED's decision letters issued to them. CCSSO and the authors are especially grateful to staff in State Departments of Education who have borne a heavier share of the research burden this year due to the lack of public documentation of the amendment process.

¹ NCLB is not a new law: it is simply the most recent reauthorization of the *Elementary and Secondary Education Act of 1965* (ESEA). The most recent prior reauthorization was known as the *Improving America's Schools Act of 1994*. The first major section of ESEA, which includes the federal requirements for standards, assessments, and accountability, is referred to as Title I.

² As of September 25, 2006, ED had posted on its website decision letters to 30 (62.5%) of the 48 States submitting accountability workbook amendments for 2005-06.

In the remainder of this introductory section, the major issues that formed the 2005-06 accountability context are described. States' amendment requests and, to the extent that they have been detected, ED's responses to these requests are described in Section II of this paper. Brief comments regarding these decisions are provided in Section III along with some conclusions and speculations about what may lie ahead.

The 2005-06 Policy Context

Accountability and accountability-related topics maintained their prominent position in the education policy spotlight during the 2005-06 school year. As in the previous school year, calls to "fix the law", challenges to the adequacy of funding, and pledges from ED to support increased flexibility in implementation served as a backdrop for States' 2005-06 amendment requests. Several new themes also emerged this year, including:

- The Growth Model Pilot Program
- Controversy over use of minimum 'n'
- Displacement of students due to Hurricanes Rita and Katrina
- Release of 2005 NAEP results
- Debate regarding law's effectiveness continues
- Shifts in the orientation to flexibility
- Gearing up for reauthorization

The Growth Model Pilot Program

Shortly after her appointment in the spring of 2005, Secretary Spellings announced as part of her new approach to NCLB implementation that she would convene "a working group to find appropriate ways that growth models...might be used to measure [students'] academic growth." This working group was established in June of 2005. Six months later, Secretary Spellings (Spellings, November 18, 2005; November 21, 2005) introduced the Growth Model Pilot Program that would allow up to ten States to implement "high-quality" growth models in their adequate yearly progress (AYP) calculations for the 2005-06 school year. States were eligible to apply for this program if they adhered to four "bright line" principles identified in her April 2005 remarks to chief state school officers [(1) ensuring students are learning; (2) making the school system accountable; (3) ensuring information is accessible and parents have options; and (4) improving teacher quality].

In late January 2006, ED issued the peer review guidance that would be used in evaluating growth model proposals (U. S. Department of Education, January 25, 2006). While the guidance repeated the requirements that had been outlined by the Secretary in November 2005, it also elaborated on the concept of "universal proficiency" by 2013-14, first mentioned by the Secretary in November. Although this may sound like the 100% proficiency expectation always embodied in the NCLB AYP requirements, it allowed states to extend the definitions of proficiency on which their growth models were based to include students that were proficient as well as those who were "on track to be proficient or a related concept" [p. 5]. The notion of "on track to be proficient" seems to be that if a student had not attained the proficient cut score, he or she could be considered the same as a student who had in terms of AYP if that non-proficient was on a growth trajectory to proficient. States were expected to closely define what that meant. How and if this might impact the meaning of all students proficient by 2013-14 is unclear. Almost every State submitting a growth model proposal indicated that it would expect all students to be proficient or "on track to being proficient" by 2013-14.

Coincidentally, CCSSO convened a workshop on the use of growth models for accountability purposes on the same day the peer review guidance was released. Forty states attended this workshop designed to share expertise and experience across states concerning the use of growth models for school accountability (Goldschmidt, et al., 2005). At the point of the January workshop 17 states indicated that they were already preparing to submit proposals for the pilot program on or before the February 17, 2006, deadline.

Twenty States did submit proposals by the February deadline. After discussions with ED over the ensuing weeks, seven States decided to postpone consideration for one year. The most common reasons we could identify for these “withdrawals” were the lack of at least two years of data to do the growth calculations and assessment systems that had not been fully approved. The remaining 13 proposals were subjected to an initial internal review by ED “to determine that each State is at least minimally able to meet the seven core principles laid out by the Secretary”.³ After that review, each State was given feedback in early March and allowed a short window to submit revisions to its proposal based on the feedback. At the end of March, five States were informed that their growth model proposals would not be allowed to proceed to Peer Review (even though they had been modified to meet most of ED’s feedback).⁴ This action came as a surprise as ED had not indicated that pre-review rejection was a possibility.

Withdrawn by State	Rejected Before Peer Review	Peer Reviewed States⁵
Hawaii	Colorado	Alaska
Maryland	Indiana	Arizona
Nevada	Iowa	Arkansas
New Hampshire	South Carolina	Delaware
Ohio	Utah	Florida
Pennsylvania		North Carolina
South Dakota		Oregon
		Tennessee

On May 17, 2006, Secretary Spellings announced that Tennessee and North Carolina (provided that its assessment system was fully approved by July 1, 2006, which it was) had been approved to participate in the growth model pilot program⁶. The Secretary also set a September 15 deadline for receipt of revised proposals from the six other States peer-reviewed in April for consideration for the 2006-07 school year.⁷ The Secretary set November 1 as the deadline for additional States, including the seven that initially submitted for the 2005-06 school year but then chose to defer, to submit growth model proposals to the Department for the 2006-07 school year.

Also on May 17, ED released a summary of the growth model Peer Review process and a paper describing “cross-cutting themes” identified by the peers. This paper was authored by the review panel and accompanied by a statement that, “The opinions and views expressed do not necessarily reflect the position of the Department” ((U. S. Department of Education, May 17, 2006, p. 1). The Department’s summary and the reviewers’ paper shed some light on the otherwise opaque review process and clearly introduced review criteria beyond those communicated to the States in the Peer Review guidance⁸. For example, the peer reviewers’ paper noted the following points:

- States should be strongly encouraged to incorporate available years of existing achievement data on a student in its calculations instead of relying on two years to calculate individual growth when more data are available.

³ See Spellings, 2005, November 21. Successful models would be expected to meet each of the core principles.

⁴ At least one of these States was advised that a reason for its rejection was failure to meet a “bright line” principle announced earlier by the Secretary as a precondition for the additional flexibility required for growth model approvals (Spellings, 2005, April 7 and May 10).

⁵ For a summary analyses of these proposals, see *ED Trust Statement on State Proposals for the Growth-Model Pilot Program* at <http://www2.edtrust.org/EdTrust/Press+Room/statement4.17.06.html>

⁶ Copies of ED’s response letters to the peer-reviewed States can be found at www.ed.gov/admins/lead/account/growthmodel/index.html

⁷ In a letter to chief state school officers (September 19, 2006), Assistant Secretary Henry Johnson confirmed that all six States whose models were peer reviewed but not approved re-submitted their proposals. Peer reviews for the re-submittals were set for October 16-17 by a new group of reviewers.

⁸ A conclusion that appears supported in Assistant Secretary Johnson’s response letters to the six States not approved through the Peer Review process and in his September 19, 2006, letter to chief school officers which, in part, states with respect to growth models: “In this document [the cross-cutting document] the peers address several overarching issues, such as the use of confidence intervals and the resetting of growth trajectories, which will again help inform the Department’s decision-making process.”

- Confidence intervals are not technically appropriate for growth that involves repeated measures of the same students. If a confidence interval is used, it should be restricted to 68% (\pm one standard error of measurement). [It should be noted that several technical experts outside the Peer Review panel think this logic is incorrect.]
- When the timeline for students' growth measurement is not aligned with school or district configurations, the validity of inferences about the effectiveness of schools and districts inheriting students after the timeline has started is compromised. Resetting of timelines and trajectories could be perceived as fairer to schools and districts whereas more rigid timelines could be perceived as fairer to students.
- Growth models should not be restricted to just those currently not proficient. All students should be included in making a growth determination about the school, including students who are currently proficient but who might fall into non-proficient categories in future grades.
- There should never be an averaging of scores between proficient and non-proficient students in a way that would allow proficient students to compensate for or mask the performance of below proficient students.
- Match rates across student groups should not differ substantially. This principle is affected by problems with matching records over time for growth determinations in combination with minimum 'n' provisions and the need for groups of students on which AYP determinations are based to be representative of particular student groups at a school.

The outcomes of the Growth Model Pilot Program, such as any differences in the schools identified for improvement under traditional AYP models and under AYP models involving growth components, remain to be seen. To date, it is clear that although the review process may itself require some revision States remain interested in the use of growth models in their accountability systems.

The Minimum 'N' Controversy

In April 2006, the Associated Press (AP; Dizon, Feller, & Duncan, 2006) reported that the scores of 1.9 million students nationwide are not being included in State's AYP determinations and that the primary reason for these exclusions is the minimum 'n' each State uses to make AYP decisions:

State educators decide when a group is too small to count. And they've been asking the government for exemptions to exclude larger numbers of students in racial categories. Nearly two dozen states have successfully petitioned the government for such changes in the past two years. As a result, schools can now ignore racial breakdowns even when they have 30, 40 or even 50 students of a given race in the testing population.

The AP's analysis suffered from major flaws. Most notably, it did not recognize that every student's score is reflected in at least one AYP calculation (the "all students" group) when the school as a whole meets the minimum n requirements and that student group scores roll up from the school to district to State levels when minimum n requirements are not met at the school level. In addition, the AP article implied that States apply minimum n's as a way to hide student performance rather than to ensure that high stakes consequences are not applied to schools on the basis of data that are unreliable. Exclusion rates for SWDs and limited English proficient students were not examined in the computer analysis.

Perhaps due in part to the publication of the article coming on the heels of other press releases on national studies criticizing the Department's NCLB stewardship, the AP article had an immediate and chilling impact on ED's responses to States' requests to modify their minimum 'n'. Almost overnight, the Department signaled that it would no longer consider increases of States' minimum 'n's or confidence intervals. At the time, at least eight States had pending requests in one or both of these areas; several other States commented privately they had intended to submit requests but decided not to do so when were told by ED representatives that the requests would not be approved.

Secretary Spellings conveyed her concern about States' minimum 'n' policies in a June 13, 2006, letter to Howard McKeon, Chair of the House Education and the Workforce Committee, regarding the disaggregation of minority students' test scores for school AYP determinations. In that letter, the

Secretary stated that, “While we continue to review data and take into account the precedent of previous decisions, we are increasingly taking the position that an increase in minimum group size...does not contribute to universal proficiency. From the Department’s perspective, changes in minimum group size are not likely to be approved this year absent the State’s providing a significant and compelling rationale supported with empirical data....For example, of the nine requests received this year about group size, six were requests to increase the n-size; upon review of the data and considering the additional tested grades, these requests were denied” (p. 3).

The Secretary went on to state that,

The Department...will invite States to participate in a national technical assistance conference to be held this fall to help States improve their systems for ensuring the validity and reliability of their accountability decisions. With full testing under NCLB now underway, we will work with States to acquire new impact data on school and student inclusion rates and discuss with them a process for justifying how their specific n-size is necessary for valid and reliable results. (p. 4)

Hurricanes Katrina and Rita Displace Thousands of Students Prompting One-Year Waiver of Some Accountability Provisions

Just as the 2005-06 school year was beginning, Hurricanes Katrina and Rita roared through gulf-coastal States causing wide-spread damage and displacing large numbers of students and their families. The relocation of these students had major implications for schools in the region directly affected by the storms as well as for schools that received these students.

In addition to their immediate focus on ensuring the safety and well-being of affected students, States that had been hit by the storms and those serving the relocated students had to consider how to implement AYP under conditions that were suddenly and radically different from those under which their accountability systems had been built. In support of these States, Secretary Spellings issued a temporary waiver of some NCLB accountability provisions (Spellings, September 29, 2005). The Secretary provided two temporary options for use in 2005-06 AYP calculations only. States could adopt either or both of these provisions:

- Option 1: School districts in **Alabama, Florida, Louisiana, Mississippi, and Texas** with schools in that sustained damage sufficient to requiring closure for a significant period of time would not have to move forward in a school improvement timeline if the reason for not making AYP is due to exceptional or uncontrollable circumstances such as a natural disaster.
- Option 2: Any State or school district heavily impacted by the hurricanes may request a one-year waiver that would permit establishing a separate subgroup of displaced students. The students in this subgroup would appear only in this subgroup for NCLB reporting and accountability and not in any other subgroup to which they would usually belong. Displaced students must participate in State assessments and be included in participation rate calculations. ED will make decisions, in conjunction with States, regarding school and district accountability and the extent to which accountability determinations will be applied in 2006-07. **Alabama, Arkansas, Georgia, Louisiana, Tennessee, and Texas** have been approved to exercise this option for 2005-06.

A third option was implied in the following text in Spellings’ letter: “I am willing to consider waivers for other schools or districts that have been otherwise adversely impacted by Hurricanes Katrina or Rita due to enrolling large numbers of displaced students or other factors.”

In May, the Secretary affirmed that these States would not be held accountable for AYP decisions for the hurricane-displaced students for 2005-06 only. However, the students must take State assessments and have their participation included in school, district, and State participation rate calculations for AYP. **Mississippi**, a State with high numbers of hurricane-displaced students, did not seek to exercise its option to establish a separate student group for AYP determinations. (Davis, 2006, May 24, pp. 27-28)

More recently, Davis (2005, September 20, p. 22) reported State assessment data showing that hurricane-displaced students “scored significantly lower on state tests than their peers in those new states.” Among the examples she cited were:

- In Texas...64 percent of displaced students in grades 3 – 8 and 10 passed assessments in reading/English language arts, compared with 85 percent of other Texas students. Forty-eight percent passed mathematics exams, while 76 percent of all other Texas students did.
- Seventy-four percent of displaced students in Georgia met standards in reading and language arts compared with 84 percent of the rest of the state's students. Sixty-seven percent of displaced students met standards in math, compared with 81.9 percent of other Georgia students.

NAEP Results Spark Renewed Debate Regarding Rigor of States' Achievement Standards

The October 2005 news was a “mixed bag” at best regarding the latest results for the annual National Assessment of Educational Progress (NAEP) measures of reading and mathematics achievement among the nation's 4th and 8th graders. Education Secretary Spellings called the results “encouraging” while spokespersons for the Education Trust and the National Council of Teachers of Mathematics both indicated that the results fall short for many students. (Olson, 2005, October 26, p. 22) The results did, however, serve to rekindle considerable debate regarding the rigor of States' academic content and student achievement standards; especially those cases where the performance of sampled students fell far below their achievement on State assessments.

It should be noted that NAEP is not designed to reflect the academic content standards of most States. Further, the legislation prohibits the use of NAEP results in NCLB AYP accountability determinations.

Ravitch (November 7, 2005), in a *New York Times* Op-Ed piece, believes that “states have embraced low standards and grade inflation.” In a review of the latest NAEP results, she notes that:

- Ninety percent of Idaho's fourth-grade students are reported proficient in mathematics on State tests but only 41% reached proficiency on NAEP. New York reported nearly 85% of its 4th graders meeting State standards for mathematics but only 36% reached this level on NAEP. The respective figures for North Carolina were 92% and 40%.
- For 4th grade reading, there are similar gaps between State and NAEP results. Georgia reported 87% proficient on State tests but only 26% met this level on NAEP. In Alabama, the respective figures are 83% and 22%.
- For 8th grade reading, similar discrepancies are noted. Texas reported 83% of its students meeting State standards but only 26% hit that level on NAEP. In Tennessee and North Carolina, 88% are reported as proficient or better on State assessments but only 26% for the former and 27% for the latter hit that level on NAEP.

Linn, Baker, & Herman (2005) examined the proportion of schools failing to make AYP using a State's assessments and achievement standards compared to 2005 NAEP scores. They concluded that, “The latitude given states in setting their own accountability systems...produces a system that treats schools in a very unequal way. This system will get more unequal as time goes by.” (p. 8) The authors include a six-State comparison of the percentages of schools making AYP in 2004 to the percent of 4th graders scoring proficient or above on the 2005 NAEP. They found:

- Two States (Alabama and Florida) reported 23% of their schools as making AYP in 2004 while 22% and 30% of the 4th grades, respectively, scored proficient or above on the 2005 NAEP.
- Four States (North Carolina, Mississippi, Louisiana, and Texas) with wide variations when making these same comparisons. The percent of schools making AYP in 2004 was 71, 76, 92 and 94 (in the same order) while the percent scoring proficient or above on the 2005 NAEP was 30, 18, 20, and 29 (in the same order).

Differences about what the annual NAEP results are showing will continue as will debate about whether every State's academic standards and assessments are sufficiently rigorous and challenging. However, Olson (October 26, 2005, p. 22) aptly describes the one growing area of agreement—"Based on the current rate of improvement on NAEP, the No Child Left Behind law's goal of all children will be proficient on state tests in reading and math by 2013-14 appears unlikely to be met, even assuming that what counts for 'proficient' in many states is closer to NAEP's basic achievement level."

Debate Regarding Law's Effectiveness Continues

Last year, we reported on the growing number of reports and studies that were being released regarding the effectiveness of NCLB. Additional studies were released this past year and the number is likely to increase as we move closer to the next reauthorization (scheduled for 2007).

Education Week Special Report

In December, *Education Week* published "Room to Maneuver," a special progress report on NCLB (Olson, December 14, 2005). Olson noted that, "Of the 45 states and the District of Columbia with data available, the percentage of schools that made AYP in 2005 rose in 21 states, fell in 25 compared with 2004...The percentage of schools in need of improvement declined in 19 states, compared with 2004" (p. S4). She concluded that, "While the proportion of students scoring at or above the proficient level on state tests also rose in many states,...the mixed national picture on AYP may have as much to do with how each state calculates progress as on overall test-score trends" (p. S4).

Education Week also conducted an analysis of amendments to State's accountability workbooks in light of ED Secretary Spelling's April 2005 announcement of a common sense approach to carrying out NCLB. The analysis "shows that much of the flexibility granted by the federal Department of Education since April [2005] has consisted of extending agreements already reached with some states to others" (p. S1). Olson continued, "what's most striking is the number of states that have taken advantage of already existing flexibility under the law to make it easier for schools and districts to make AYP" (p. S3). We concluded in our Year 3 paper, "the accumulation of amendments and 'flexibility' may result in educational accountability systems that lack any real connection to the achievement goals they were supposed to realize" (Erpenbach and Forte, 2005, p. 37). Sunderman (2006), in a report for The Civil Rights Project described below, argues that, "These changes reflect a political strategy by the administration to respond to the growing state opposition to the law by providing relief from some of the law's provisions and reducing, at least temporarily, the number of schools and districts identified for improvement. But they are also a concession by ED officials that NCLB is not working and have created a policy that has no consistent meaning across states" (p. 9).

The Civil Rights Project

In two reports (February and June, 2006), the Civil Rights Project at Harvard University concluded that ED is changing the meaning of NCLB through "negotiated deals" with States and that the law hasn't significantly impacted national achievement scores or narrowed racial gaps among students. In the case of the first report⁹, the author, G. L. Sunderman, observes, "During the first two years of NCLB, the administration strictly interpreted and enforced the NCLB requirements, rebuffing any attempt to introduce policies that would respond to the concerns raised about the law. This changed beginning in late 2003 and early 2004 when ED announced a series of new policies aimed at aspects of the law that were a source of dissatisfaction" (p. 9). According to Sunderman,

Because this process was politically motivated to respond to growing state opposition to the law, ED has not systematically addressed the underlying flaws in the law. These include the double counting of students in some subgroups for accountability purposes, the reliance on mean proficiency to determine AYP, arbitrary timelines for improving achievement and unrealistic achievement goals that have no connection to what can actually be achieved, a reliance on testing and sanctions to improve schools without corresponding attention to the resources or expertise schools need, and insufficient

⁹ The full report is available at http://www.civilrightsproject.harvard.edu/research/esea/nclb_unraveling.php

attention in the law to state capacity to turn around huge numbers of failing schools and districts. (p. 10)

In the second report, author Jaekyung Lee (2006) concludes that NCLB has not served to increase reading or mathematics achievement or reduced achievement gaps between various ethnic student groups. Lee draws extensively from comparisons between NAEP and State assessment data concluding that high stakes testing and sanctions required by NCLB are not working as planned under the NCLB. The findings contradict claims of the administration and some previous studies that showed positive results under NCLB. Lee notes that since NCLB enactment, there is evidence of improvement in reading and mathematics on State assessments but not on NAEP. He contends that students should perform well on both tests because they cover the same subjects. According to Lee, "NCLB's reliance on states assessments as the basis of school accountability is misleading since state-administered tests tend to significantly inflate proficiency levels and proficiency gains as well as deflate racial and social achievement gaps in the states. The higher the stakes of state assessments, the greater the discrepancies between NAEP and state assessment results. These discrepancies were particularly large for poor, black and Hispanic students." (p. 11)

Center on Education Policy

The Center on Education Policy (CEP) also published key two reports related to NCLB in 2005-06. In November 2005, CEP released its analyses of ED's decision-making practices related to amendments to States' accountability workbooks concluding that the Department has made it easier for schools and districts to make AYP and calling for more transparency in the workbook change process (Chudnowsky, N. & Chudnowsky, V., 2005). The authors studied changes in States' accountability workbook posted on ED's web site during 2005. While they noted that many changes are necessary adjustments in response to State's "difficulties in administering the law" (p. 2), the increased flexibility has also brought about greater complexity with great variation as to how States calculate AYP. They conclude that the changes in State accountability plans have not always been "transparent and clear to the public, including state officials in other states who might be interested in making similar changes" (p.2). Further, there is "almost no documentation of requested changes that were *rejected*, and very little public information about the rationales for accepting or rejecting changes" (p. 2). The more common changes to the way in which States now determine AYP include:

- Confidence intervals, which make allowances for natural fluctuations in test scores and essentially bolster a school's or student group's percentage of students scoring at proficient levels.
- Performance indexes that allow schools to get 'partial credit' for the performance of students below the proficient level.
- Retesting that allows students to retake a different version of the same test and permits schools to use a student's best score to count toward AYP.
- Increased minimum student group sizes, which may mean that in many schools some student groups do not get counted for AYP purposes. (p.1)

In March 2006, CEP released its fourth annual report on Federal, State, and local implementation of NCLB. CEP concluded that the law is having a greater impact than ever before. The report noted, "NCLB affects a range of state and local decisions, both large and small—when and how students take tests, which textbook series districts adopt, which children receive extra attention and how they are grouped, how states and districts spend their own money, how teachers are trained, and where principals and teachers are assigned to work..." (p. 1).

In a press release announcing the latest report, CEP representatives stated, "According to state and local officials surveyed, scores on state tests are rising in a large majority of states and school districts, and many school leaders cited NCLB requirements for adequate yearly progress (AYP) as an important factor in rising achievement, though far more credited school district policies and programs as important contributors to these gains." However, the organization's president noted that, "The effects of NCLB are complex, and this policy has both strengths and weaknesses....If anyone is looking for a simple judgment

on NCLB, such as ‘good’ or ‘bad,’ they will not find it in this report.” Among CEP’s findings and recommendations are:

- Teaching and learning have changed as a result of NCLB (pp. 1-2).
- Scores on state tests have risen in a large majority of states and school districts (p. 2).
- The number of schools identified for improvement has remained fairly steady despite earlier predictions that these numbers would soar over time (p. 2).
- Urban school districts are increasingly experiencing the greatest effects of the law (p. 3).
- ED should provide more information about the process for considering state requests for accountability plan changes and make public the criteria used to make these decisions (p. 9).
- ED should monitor and report on how confidence intervals, safe harbor, and other flexibility provisions are affecting the number of schools and districts making AYP (p. 9).

Shifts in the Orientation to Flexibility

As the 2005-06 school year wound down and ED began releasing decision letters in response to States’ accountability workbook amendments, it became increasingly clear that the Department was moving away from its earlier pronouncements of greater flexibility for States in the law’s implementation.¹⁰ Perhaps one of the most striking decision areas involved changes in minimum n’s as described above.

The apparent move away from flexibility is in sharp contrast to the Secretary’s April 2005 (Spellings, April 7, 2005) announcement of a “New Path for No Child Left Behind” and seems to have surprised many States. Andrew Brownstein, writing in *Title I online* (July 24, 2006) observed:

...there has also, in recent months, been an abrupt shift in tone from the Education Department (ED). On three major policy initiatives, ED has threatened States with substantial financial penalties for non-compliance, in one case making the unprecedented threat to bypass states and divert funds directly to school districts. ED has also signaled that it frowns on the once-accepted methods of tweaking the law’s accountability regimen. States that have proposed methods like changing minimum ‘n-counts’ or adopting confidence intervals—methods the department approved as recently as a year ago—have been denied this year.

Nonetheless, the shift has angered state officials who noted that other states were approved for changes in n-counts and confidence intervals as recently as last year. Complaints about a lack of transparency in the accountability plan approval process—a mainstay of NCLB criticism since its inception—have grown louder this year, with pointed exchanges between state superintendents and ED officials at several meetings. Such discussions are likely to increase as the department applies financial sanctions and states question whether consistent criteria are applied across the nation.

Gearing Up for Reauthorization

Reauthorization of the current iteration of the Elementary and Secondary Education Act of 1965—more commonly known as the No Child Left Behind Act of 2001—was another topic frequently in the news during this past year. The discussion will intensify over the next 12 months with various interested parties beginning to assert their viewpoints and pressing these for the law’s eventual amendment and reauthorization likely sometime well into 2007 or even later. Among developments of interest:

- **The Commission on No Child Left Behind**—a private, bipartisan panel— was appointed in March 2006 to seek public input and explore possible changes to NCLB. Funded by a number of private philanthropies and housed at the Aspen Institute (Washington, DC), the panel has held hearings to gather testimony and conducted surveys on testing and data collection. A final,

¹⁰ The lone exception appears to be a limited extension of two pilot programs approved in 2005 permitting a few school districts to reverse the order of school choice and supplemental educational services (SES) when a school is identified for improvement and permitting a few school districts identified for improvement to be SES providers (Spellings, 2006, May 15).

comprehensive hearing in Washington was scheduled for September. The goal is to present a set of recommendations to Congress in January 2007. The panel is headed by Tommy Thompson, former HHS Secretary and Wisconsin Governor, and Roy Barnes, former Georgia Governor. Thirteen other members comprise the full panel. (Klein, 2006, March 15, p. 26)

- **CCSSO** has established its own ESEA Reauthorization Task Force under the leadership of Elizabeth Burmaster, Wisconsin's State Superintendent of Public Instruction. The 19-member panel will be responsible for "ramping up the Council's efforts to reinforce sound state and local education practices and to craft CCSSO's reauthorization proposal." (CCSSO Chiefline, January 25, 2006, p. 1)

In Section II, we report on educational accountability workbook amendments States requested during 2005-06, and to the extent that they are known, ED's decisions on these proposed amendments.

This report should be interpreted in light of two important caveats. First, this paper addresses publicly available State requests for accountability amendments. Some States may have requested amendments without making these requests public or may have submitted additional requests (via email or verbal communications) that were not shared with CCSSO; thus, it is possible that some requests have been made that could not be captured here.

Second, neither CCSSO nor the authors necessarily endorse any of the educational accountability strategies embedded in the amendments described in this paper. The purpose of this paper is to describe amendment proposals, not to judge any State's intent in making specific proposals, or whether these proposals are appropriate or technically sound. Neither is this paper intended to serve as an evaluation of ED's responses or failure to respond as may be the case. No recommendation of sound, appropriate, or effective practice is implied or should be inferred.

Section II: 2005-06 Amendment Requests and ED's Decisions

In this section, we summarize the accountability plan amendments that States have requested since the summer of 2005 and, to the extent they have been announced, ED's responses to these requests. In cases where States have pending requests, but ED has not made public its decisions, we have attempted to determine the status of those through emails and conversations with State officials.

The issues are organized into the following major categories:

- Standards and Assessments
- Adequate Yearly Progress Model
- Inclusion of All Students in Accountability
- AYP Consequences and Reporting

Standards and Assessments

The past two years have been busy ones for State assessment directors; between February of 2005 and May of 2006, every State underwent a peer review of their systems of standards and assessments. These reviews involved the submission by each State of a significant amount of evidence in relation to peer review guidance that ED established in the spring of 2004. Currently, about a quarter of the States have been granted full approval of their standards and assessment systems; all others have to submit additional evidence and may have to make changes in their systems in order to earn approval¹¹.

With regard to accountability amendment requests involving standards and assessment issues in 2005-06, States asked for changes related to their academic achievement standards, linking of achievement standards from old tests to new ones, the use of college admissions or other exams in lieu of State tests at the high school level, delays in using the results of newly assessed grades in AYP determinations for up to three years, recalculation of AYP using results from subsequent administrations, banking of test results, changes in the attribution of scores due to shifts in a testing window, and the use of formative assessment results for AYP purposes.

Changes to Academic Achievement Standards

Two States requested permission to make changes to their general (i.e., not alternate) achievement standards. In July 2006, ED verbally approved **Kentucky's** request to implement cut scores associated with the State's new assessments in additional grades in the 3 through 8 span. The State's standard-setting process involved interpolation from existing cut scores using field-tested data with subsequent review of these empirically derived cut scores by committees of Kentucky educators. **New Hampshire** received verbal approval of its request to add a fourth proficiency level and to re-name its levels.

Hawaii was approved (July 6, 2006) to add the levels of "meets" and "exceeds" to the State's alternate academic achievement standards for significantly cognitively disabled students and to include six subdesignations within these levels. Scores will be included in the 1% cap for AYP calculations starting with those in the highest subdesignation and continuing through lower subdesignations until the 1% cap is reached.

Linking Achievement Standards for Previous and New Assessments

Georgia is transitioning to new academic content standards and assessments over an extended period of time. On July 19, 2006, ED approved that Georgia may, for AYP determinations in 2005-06 and for subsequent years until the transition is completed, use an equi-percentile methodology¹² to determine

¹¹ See Olson (2006, July 12) for additional background information.

¹² According to Scott Marion at the Center for Assessment (personal communication, July 29, 2006), "When we change tests in ways that prevent us from doing a formal equating, our best bet is to simply project the growth trend from the past test on the new test scale (e.g., if the scores have been increasing 2% per year, we would project a score [mean score or % proficient] 2% higher on the new test). This is only used to allow us to do things like calculate safe harbor or roughly estimate trends. If the tests changed

performance levels for its new assessments based on its previous assessments. The equated data will be used for multi-year averaging, safe harbor, and other indicator calculations.

Use of ACT, SAT, AP, or IB Exams as High School Accountability Assessments

Legislatures or boards of education in several States decided to adopt or allow the use of results from college admissions tests, Advanced Placement (AP) tests, or International Baccalaureate (IB) exams for AYP purposes. These included **Kansas, Kentucky, Maine, Maryland, and Missouri**. **Colorado, Illinois** and **Michigan** transitioned to the ACT earlier. **Colorado** does not use the results in AYP determinations. In **Tennessee**, the tests are not required as part of the State's NCLB assessment system, but State law requires that all students have the opportunity to take either test and provides school districts with \$27 per student toward the tests' costs. Districts are required to pick up any additional costs for students taking the tests.

As reported by Olson (September 13, 2006), "Proponents argue that having all teenagers take the exams will encourage more young people to think about college and motivate them to take tests seriously." (p.1) However, Olson also noted these tests do not always align very well with States' academic content standards which then sets up serious problems with respect to the use of results for NCLB purposes (p. 24). Another concern she identifies is that when students want to use the results for college admissions, the State administration procedures must follow ACT and the College Board's "standards for secure test administration, which are often far more stringent than those used by states" (p. 25).

Michigan began using the ACT for AYP purposes in the spring of 2006. Michigan requires that all high school students take ACT, WorkKeys, and a State-specific section aligned to standards in English language arts, mathematics, science and social studies that are not covered adequately by the ACT or WorkKeys. ACT requires that testing be conducted on a single statewide administration date or a single make-up date and Michigan required every high school to meet the ACT security and administration criteria to qualify as a testing center. Accommodations for students with disabilities must be individually approved by ACT; some accommodated testing conditions yield scores that are reported to the student and the State for AYP but are not allowed to be used for college reporting.

The **Kentucky** State Senate passed a bill in March 2006 (that was then quickly approved by a key House committee) adopting the ACT entrance exam as one of the tests to be given to all 11th graders. Under the bill, the State will also "use other products from ACT Inc. to assess whether middle school students are on track to succeed in a high school curriculum" (Hoff, March 22, 2006, p. 28). State boards of education in **Kansas** and **Missouri** also started looking into use of the ACT early in 2006. According to Hoff, "State officials across the country are turning to college-admissions tests to measure the achievement levels and the college prospects of all their students." (March 22, 2006, p. 28).

Maine requested ED approval to replace the Maine Educational Assessment at grade 11 with the SAT beginning in 2006. Because the State uses two years of data to make proficiency determinations, it is seeking approval to base 2005-06 AYP decisions at this grade level solely on participation and graduation rates. All schools with an 11th grade would remain at their current AYP status unless they did not meet either the participation or graduation rate requirements. For more information on this, see, *Using the SAT as Part of the State of Maine's High School Assessment Program*, available through the Maine Department of Education (<http://www.state.me.us/education/>).

Maryland was the first State to request approval to use AP or IB exams in lieu of the end-of-course Maryland High School Assessments (HSA). The State argued that the "university-level work represented by AP and IB assessments exceeds the expectations of the Maryland High School Assessments and that these highly rigorous assessments in one of the related disciplines require a student to have fully mastered the content in a foundational course." On May 1, 2006, ED approved, for one year, the State's request to include students who score 3 or higher on the calculus, English language, and English

enough not to conduct formal equating, we will re-set the achievement standards and these will not be affected (except as impact data) by the equi-percentile linking."

literature AP exams or a score of 5 or higher on the mathematics studies, mathematics, and English 1A IB exams as proficient when making high school AYP determinations for algebra/data analysis and English 2. Maryland will limit use of these exams for AYP purposes to a small number of students who are either new to the State since having taken the course related to the Maryland HSA or who have missed the examination. The State will also conduct “an internal alignment study to determine whether the AP and IB exams meet or exceed the State HSA course content standards and whether the proposed proficiency scores are sufficient to ensure the student has met the State HAS achievement standards.”

Delay Use of Results in AYP Calculations for Newly Assessed Grades

The expanded NCLB testing requirements for reading/language arts and mathematics assessments in all grades, 3 through 8 (instead of just two grades in that span), came into effect in the 2005-06 school year¹³. As a result, many States implemented new assessments in 2005-06 and some requested amendments related to the use of scores from new assessments in additional grades in AYP determinations. Prior to this time, most States appear to have assumed that the results of assessments administered in the additional grades would have to be used in school, district, and State AYP calculations beginning in 2005-06. However, some States examined the legislation more closely and found:

- In section 1111(b)(2)(J)(ii) of the NCLB legislation: “Until the assessments described in paragraph (3) are administered in such a manner and time to allow for the implementation of the uniform procedure for averaging data described in clause (i), the State may use the academic assessments that were required under paragraph (3) as that paragraph was in effect on the day preceding the date of enactment of the No Child Left Behind Act... .” Thus, a State using a two- or three-year average of school scores for AYP could continue to use results from only those tests that have been in place for that number of years and met the grade-span testing requirements under the Improving America’s Schools Act of 1994 (IASA);
- In §200.20(d)(1)(ii) of the Regulations: “(B) Report data resulting from the assessment under §200.5(a)(2)” and (iii) “A State that averages data across years must determine AYP on the basis of the assessments under §200.5(a)(2) as soon as it has data from two or three years to average. Until that time, the State may use data from the reading/language arts and mathematics assessments required under §200.5(a)(1) to determine adequate yearly progress.”

Given these statutory and regulatory provisions, States introducing new or additional assessments in grades 3 through 8 in 2005-06 discovered that they had at least two options with respect to using the results in AYP determinations:

1. Use the results immediately in making AYP determinations following the applicable NCLB requirements and their approved educational accountability systems.
2. Wait to use the results for newly tested grades in AYP determinations until two or three years of data are available. To exercise this option, the State would have to affirm in its accountability system that it followed the uniform averaging provisions of section 1111(b)(2)(J) in making AYP determinations. That is, data for newly tested grades would have to be incorporated in AYP decisions beginning in 2006-07 if the State averaged data over two years or in 2007-08 if the State averaged data over three years. States exercising this option would still be required to “report” the new/additional scores annually. However, ED does not appear to have provided guidance regarding these reporting requirements.

Before deciding on which of the two options to follow, States need to weigh carefully a number of impacting variables (recognizing that how any given impact is viewed will be solely in the eyes of the beholder). Arguments for and against each option include the impact of:

¹³ Under section 1111(b)(3)(C)(vii), beginning in 2005-06, States must annually “measure the achievement of students...in each of grades 3 through 8 in, at a minimum, mathematics and reading or language arts... .” Previously, the assessments were required to be administered at least once annually in the grade spans of 3 through 5 and 6 through 9 in addition to once in the 10 through 12 grade span.

- Making AYP decisions across grade levels given school building grade level configurations. Current law requires AYP decisions based on student performance at only two grades in the 3 – 8 span but potentially changes in 2005-06 to six grades in the 3 – 8 span. Since all but one State appear to make AYP decisions across all grades in a building, the implications for a K – 6 or K – 8 building are quite different from that of a K – 3 building.
- Increased likelihood of meeting minimum ‘n’ requirements for student sub-groups.
- Meeting the 95% participation rate requirement.
- Meeting the State’s Other Academic Indicator at this level.
- Impact on the validity and reliability of AYP decisions by having more or less student achievement data to consider.
- Using student data across more grades that are based on “status” measures versus “growth” measures and the extent to which scores are vertically linked.
- Student data management systems.
- Making safe harbor determinations.

Last year, **Washington** made the first request in this area by indicating it would exclude assessment results in newly tested grades (3, 5, 6, and 8 in its case) from AYP calculations until 2006-07, the second year that the assessments would be administered in these grades. Although included among Washington’s 2004-05 accountability workbook amendments, ED did not approve the request until early 2006. The State also received approval to use the results of either reading or writing assessments to determine language arts proficiency in grades 4, 7, and 10, arguing that its “writing assessment is a sophisticated, stand-alone test that examines another dimension of language arts.”

This year, eight States—**Kentucky, Maine, Massachusetts, Minnesota, North Dakota, Oregon, Virginia, and Wisconsin**—requested amendments regarding the delayed use of data from newly tested grades in AYP calculations. ED’s responses to these requests have not always been consistent.

An example that highlights an inconsistency in ED responses involves the nearly identical requests made by **Minnesota** and **North Dakota** and the different manner in which each State choose to respond following receipt of ED’s decisions. In **Minnesota’s** case, the State asked ED to confirm its interpretation of the law in this area in writing. On August 11, 2006, the State received an email from an ED spokesperson confirming the State’s interpretation and allowing **Minnesota** to calculate AYP in three stages. For 2005-06 AYP calculations, the State first considered results for the current year using data from all tested grades. For elementary and middle schools that did not make AYP in this first stage, the State recalculated AYP by averaging two years of data for only grades 3, 5, and 7; the tests in grades 4, 6, and 8 were first administered in the spring of 2006 so were excluded from these averages. For schools that did not make AYP in this second step, Minnesota recalculated once again, this time averaging results for grades 3, 5, and 7 across three years. Note that ED’s decision for both of these States was different from that made in the cases of Washington (see above) and Kentucky, Massachusetts, and Oregon (see below). In none of these cases did ED insist that the States use data from all grades 3-8 in its first screen for AYP.

North Dakota sought to delay until 2006-07 incorporation of achievement results from its new assessments in grades 3, 5, 6, and 7 consistent with provisions of section 1111(b)(2)(J)(ii) of NCLB. The State uses up to three years of achievement data in making AYP determinations and also applies a 99% confidence interval (CI). The assessments in grades 3, 5, 6, and 7 were added to the State’s assessment system in 2004-05 so the State will not have three years of data for these tests until 2006-07.

On May 4, 2006 (three months earlier than the Minnesota decision), ED denied **North Dakota’s** request stating, “The statute does not permit this delay to occur in concordance with a State selecting the best outcome from one, two, or three years of test results.” In a response that seems almost entirely unrelated to its other public statements on this issue, ED instead permitted the State the option of comparing,

...the three-year averaged results for tests administered in grades 4, 8, and 11
retroactively with the two-year averaged results for tests administered in grades 3 – 8 and

11 and the single-year results in 2005-06 for tests administered in grades 3 – 8 and 11. If North Dakota wishes to use only the grade span assessments for 2005-06, it may not use the most advantageous results of averages over one, two, and three years when determining AYP. Rather, North Dakota must base AYP decisions for 2005-06 for every school and district upon the three-year uniform average of data from assessments in grades 4, 8, and 11.

On May 10, 2006, **North Dakota** responded to ED that it would, “use only the grade span assessments (grades 4, 8, and 11) during 2005-06 for the purposes of determining adequate yearly progress for all public schools and districts. During 2005-06, the State will not use the most advantageous result of averages over one, two, and three years when determining adequate yearly progress. The State will base adequate yearly progress decisions for 2005-06 for every public school and district upon the three-year uniform average of data from assessments in grades 4, 8, and 11.” The State Superintendent’s response letter indicated,

...profound disagreement with the terms that are being imposed on us and our State’s accountability system. We have worked faithfully to structure a valid and reliable system that is established on sound principles and practices, which have also been independently reviewed throughout this process. I am disappointed that, despite our efforts and proven record, the U.S. Department [of Education] has chosen to restrict the expression of these principles and to impose an inconsistent, transitional metric into the determination of adequate yearly progress. We accept this language with great reluctance.

Other States that were granted approval (in a manner similar to that for Washington) for delaying the use of results from newly tested grades include **Kentucky**, **Massachusetts**, and **Oregon**. ED informed **Kentucky** unofficially in the summer of 2006 that the State may delay use of the new assessments added in 2005-06 (reading in grades 3, 5, 6, and 8 and mathematics in grades 3, 4, 6, and 7) until they have three years of achievement data for these grades. Scores for these grades must be reported each year, however.

ED approved (July 5, 2006) **Massachusetts’** request to include in 2005-06 AYP determinations current year assessment results and 2004-05 results for only the grades in which assessments were administered in both years. Results for newly assessed grades will not be included in AYP determinations until 2006-07. The State operates in two-year accountability cycles and averages two years of data when making AYP decisions in even-numbered years. **Oregon** will first include student assessment results for grades 4, 6, and 7 in its 2006-07 for AYP determinations (approved July 20, 2006). The State currently averages across two years of achievement data for these decisions. **Oregon** agreed to ED’s stipulation to include the tested students in these grades in the calculation of participation rates, although this requirement is not actually prescribed under statute or regulation.

Maine is still awaiting a decision on its request to delay using the results of its new assessments in grades 3, 5, 6, and 7 for AYP decisions until the State has two years of data. However, the State intends to determine participation rates at the elementary and middle school levels on the basis of the combined total of students enrolled in grades 3 – 8. **Wisconsin** is also awaiting an official response from ED on its amendment request in this area. The State intends to calculate AYP, for 2005-06 only, in two stages. First, the State will consider results in all grades 3-8. Then, if a school or district does not make AYP based on these calculations, the State will consider the two-year average for grades 4, 8, and 10 only. AYP will be met if the AMOs for either “screen” is satisfied.

Virginia, for 2006-07, wants to calculate participation rate and percent proficient for the all students group based on reading and mathematics tests in grades 3-8 and end-of-course assessments in the same subjects at the high school level. The State has asked for approval to make 2005-06 and 2006-07 AYP decisions for other student groups based only on tests administered at grades 3, 5, and 8 with results of assessments at grades 4, 6, and 7 included only if that improves the school or division’s ratings. ED has not published an official response to Virginia’s request or its argument that:

A state may re-evaluate and adjust periodically the annual measurable objectives and starting points, especially as new tests are introduced. With the introduction of new tests at grades 4, 6, and 7 for the 2005-2006 school year, Virginia will need sufficient time to evaluate the resulting data and determine if adjustments...are warranted. Such data will not be available until the late summer or early fall of 2006. Based on this timeline, Virginia is requesting permission to evaluate the test data from 2005-2006 and to re-set, if necessary, the starting points and annual measurable objectives for the 2007-2008 school year based on tests administered in 2006-2007. For 2006-2007 AYP ratings, the current annual measurable objectives would be applied...[The proposed] procedure would take into account the fact that the reading and mathematics tests at grades 4, 6, and 7 were not represented when the initial starting points and annual measurable objectives were determined.

On a related note, **Vermont** indicated that it will no longer average its test results over two years due to the adoption of new tests in grades 3 – 8. Adoption of the new assessments will preclude the use of safe harbor reviews in the State for 2006.

Recalculation of AYP Using Results from Subsequent Test Administrations

In another “first” of sorts this year, two States have requested approval to recalculate AYP using scores for students who retest following participation in summer remediation. **Delaware** will recalculate AYP if a student attending summer school retakes the State assessments and achieves a level of proficient or higher (approved June 22, 2006). However, ED required Delaware to calculate and release these AYP results prior to the beginning of the next school year according to existing rules. Further, a school that was identified for improvement prior to the recalculation but makes AYP following the recalculation must continue to offer public school choice and supplemental educational support services to students for the remainder of the school year (if those services had begun prior to the recalculation).

Virginia has asked to include the passing scores of all students who retake tests needed for graduation. Currently, the State can count scores of students who take and pass expedited end-of-course tests. Expedited tests are re-tests afforded to students who either miss the scheduled administration of a test or take the tests but score below the passing score within a specified margin. The State’s rationale is that counting a student’s passing score on a retest rewards the student and the school for student success and increases the validity of AYP determinations. ED has not yet responded to this request.

Banking of Test Results

ED continued to approve requests to “bank” test results used in AYP analyses when students have two or more opportunities to take these tests. As we noted in our 2004 paper, “The version of this practice that...is acceptable to ED involves the designation of a single test administration as the ‘official’ point at which students are expected to have acquired the knowledge and skills specified in the standards on which the test is based” (Forte Fast & Erpenbach, 2004, p.4). Thus, if a student takes the test before the official point and achieves a “passing” or proficient score, the score is “banked” and the student does not have to participate in future administrations of the test.

On May 1, 2006, ED approved the **Maryland’s** request to modify its AYP calculations at the high school level. With this approval, the State will “bank” the scores of middle school students who score in or above the proficient level on the State high school English 2 or algebra/data analysis assessments. Their scores and participation will be included in AYP calculations when they enter high school. Middle school students will still have to take the grade-level assessments in addition to the high school assessments.

Utah is planning to use its grade 11 Utah Basic Skills Competency Test as its statewide high school accountability assessment rather than the elementary algebra and geometry assessments that it has been using to date. Students will have three opportunities to pass the UBSCT and the State wishes to bank scores in the proficient or above levels from earlier administrations for use in later AYP calculations. **Washington** has been approved (July 19, 2006) for a similar request to bank scores in or above the proficient level starting with students’ first attempt on the high school assessment. Scores for other

students will be included at the point they achieve proficient or above scores in subsequent attempts. It is interesting to note that the State submitted a number of accountability plan amendment requests in 2006, but this was one of the few to which ED responded in writing.

Shifts from Spring to Fall Testing

In 2005-06, **Rhode Island** changed its testing window from March to October. The State has requested permission to back-track test results by attributing scores to a student's prior grade (which will sometimes mean application to a different school).

Use of Formative Assessment Results for AYP

Connecticut requested approval to permit use of scores from its formative testing program, which encompasses a bank of items available to teachers, in lieu of statewide assessments in grades 3, 5, and 7. The State argued that formative tests are more effective in raising student achievement than statewide assessments, particularly for lower achieving students. The State's annual accountability assessments in grades 4, 6, 8, and 10 have been in place for nearly twenty years and the State is currently engaged in a lawsuit with ED over implementation of additional assessments, among other issues. ED has not yet responded to this request.

Adequate Yearly Progress Model

The requests summarized in this part of Section II relate to how AYP is calculated and applied. We first describe amendments related to the application of AYP to school and districts and then the amendments to AYP indicators. The final three summaries relate to annual measurable objectives and intermediate goals, States' strategies for enhancing the reliability of their AYP decisions, and safe harbor calculations.

Adequate Yearly Progress (AYP) Application

Requests related to AYP application involved accountability for small schools and schools not serving tested grades, separate AYP calculations for each grade within a school, accountability for new or reorganized schools, the definition of full academic year, identifications based on the same subject and student group, identifications based on scores for only those students served by targeted Title I services, and identification models for districts.

New AYP Groups for Students Displaced by Hurricanes Katrina and Rita

As noted in Section I, thousands of students were displaced as a result of the devastation caused by Hurricanes Katrina and Rita in late August of 2005. In the spring of 2006 ED offered States where school systems were particularly disrupted the option to create a separate student group of displaced students for AYP purposes. **Alabama, Arkansas, Georgia, Louisiana, Tennessee, and Texas** applied for and were granted permission in the summer of 2006 to exercise this option. As noted earlier, **Mississippi** was eligible to apply but did not for unknown reasons.

In **Louisiana's** case, ED approved some, but not all, of the requested amendments to address the inclusion of students attending schools in a declared disaster area or displaced last year to other schools both in and out of the State as a result of Hurricanes Katrina and Rita. The State argued, unsuccessfully, that the Secretary's September 25, 2005, letter regarding the inclusion of students in these circumstances in State's AYP calculations under NCLB afforded three, not two options. While the letter clearly set forth two options, **Louisiana** officials contended that the Secretary's statement with respect to considering waivers for other schools or districts adversely impacted constituted a third option for States. According to State representatives, ED told in negotiations that the requests them was being denied because it was the only State to seek use of the "third option."

As noted in response letters to the approved States, for the 2005-06 school year only, "displaced students will appear only in [the displaced students] student group for NCLB reporting and accountability purposes and not in any other student group (even the 'all students' student group) to which they would usually belong. AMOs and second indicators will not apply for this student group in the 2005-2006 school year."

Thus, only participation rates for these students were included in AYP calculations; performance for this group was to be reported but did not have to be considered for school or district AYP determinations. ED also required **Georgia** to automatically enroll displaced students who scored below the proficient level on statewide accountability assessments in Georgia's Early Intervention Program or in other remedial education programs.

ED denied **Pennsylvania's** application to use the displaced student flexibility, indicating that the number of eligible students was too small to warrant this option.

On a related note, **Texas** and ED signed a flexibility agreement (November 30, 2005) regarding the State's inclusion of SWDs in AYP calculations. As part of the agreement, **Texas** agreed to direct funds equal to 8% of their Title IA administrative funds toward educating students displaced by Hurricanes and Katrina. This agreement stemmed from a finding during a federal monitoring visit to the State.

Changes to AYP Student Group Definitions

Two States requested changes to the student groups used for disaggregation of AYP results. ED granted (July 6, 2006) **Alaska's** request to combine American Indian and Alaskan Native groups. The Department has not yet responded to **Oklahoma's** request to exclude students with disabilities and English language learners from the economically disadvantaged and racial/ethnic groups.

Accountability for Schools Not Covered by State Assessments and for Small Schools

NCLB requires States (and LEAs) to make AYP decisions for all schools. Although this may seem straightforward, it is not always clear how appropriate accountability decisions can be made for schools that do not serve grades covered by a State's assessment system (e.g., K-2 schools) or for schools where the total enrollment is less than the State's minimum n. In regulations issued in December 2002 (regarding educational accountability systems and the calculation of AYP), it was stated that ED "will issue non-regulatory guidance to provide examples of methodologies for handling this issue" (p. 71744). That guidance has yet to be issued.

With regard to the first issue, most states use a back-mapping strategy that involves sharing scores among sending schools that serve the lower grades and receiving schools where students attend subsequently and are tested. This year, two States requested permission to use this strategy. On July 6, 2006, ED approved **Colorado's** policies for making AYP determinations for K-1 and K-2 schools not participating in the Colorado State Assessment Program. **Colorado** will use third grade reading and mathematics results "of the students previously enrolled in the school that are gathered from the school(s) the K-1 and K-2 schools feed into." Similarly, **Illinois** (approved July 27, 2006) will eliminate the grade 2 assessments that have been administered in Title I schools and, instead, back-map grade 3 results to K-2 schools beginning in 2006-07. In its decision letter, ED noted, "For those lower-grade schools that merge into more than one feeder school, the feeder school with the majority of the students will be used as the basis for the lower-grade school's AYP status."

On a related note, **Wyoming** implemented new assessments, the Proficiency Assessments for Wyoming Students (PAWS), in the spring of 2006. ED acknowledged (July 21, 2006) the State's clarification that its move from grade-span assessments to 3 – 8 testing means that there are fewer schools without a tested grade that need to be paired to another school for the purposes of determining AYP.

Several States (California, Hawaii, Michigan, Montana, Nebraska, and Oregon) made approved changes to their accountability workbooks to address small school AYP last year, but only one Montana submitted a request related to this issue this year.

Montana requested approval to expand the State's rural small schools AYP process for use with all schools and districts, statewide. Given the rural character of the State, the vast majority of schools would not be included in AYP determinations under ordinary application of the NCLB requirements. The rural small schools accountability process involves teams of educators from across the State that review each school's performance with AYP determinations based on data points (participation, proficiency, and OAI's)

together with additional performance and improvement data. **Vermont** intends to drop its separate AYP calculations for small schools in favor of the use of content-specific indices for all schools. The State did not provide details.

Separate AYP Calculations for Each Grade within a School

Washington sought approval in 2006 to determine AYP status on the separate results of each grade tested. In its request, the State recognized that this approach increased the chance that a school or district would be identified for improvement. Although **Arizona** has been allowed to use this strategy, which appears to be permitted under section 1111(b)(2)(J)(iii) of the NCLB legislation, ED denied Washington's request on July 19, 2006, stating,

Washington establishes annual measurable objectives (AMOs) in grades 3, 5, 6, and 8. The AMOs increase in 2008, 2011, 2012, 2013, and 2014 to ensure that 100 percent proficiency is reached by 2014. (Please note that as Washington is delaying the use of these assessments until the 2006-07 school year, Washington must calculate adequate yearly progress (AYP) this school year with the grade span assessments based on a *uniform* averaging procedure, which means that AYP decisions for the 2005-06 school year must be based on an average of test results from 2005 and 2006. Further, this approved revision is not an approval for Washington to treat each grade's test results separately when calculating AYP. Washington should refer to my letter (and Attachment B¹⁴, in particular) of March 7, 2006, for additional guidance regarding these issues...)"

Accountability for New Schools, Reorganized Schools or Districts, and Changes in the Attribution of Scores Students Served in Alternate Settings

From time-to-time, States face the dilemma of how to apply accountability decisions when new schools are created as a result of restructuring or consolidation. Similar issues arise in the case of students served in alternate settings or settings away from their "home" schools or districts. This year, three States found themselves needing to amend their accountability workbook plans due to one of these situations.

Indiana was approved (August 1, 2006) to allow a new school, including a charter school that is created as a restructuring option, to start over in the school improvement timeline. The State defines a new school as one in which there is at least a 50% change in the student population from the previous year. The designation as a new school would also consider other criteria, including the AYP history of the school, significant changes in: grade configuration, educational philosophy, and staff changes—all to the extent that fair comparisons cannot be made to the prior year's performance. If a substantial number (not defined) of students at a new school would have been eligible to receive supplemental educational services (SES) based on the results for the original school, the LEA must continue those services until the new school demonstrated AYP for two consecutive years.

Earlier this year, **Nebraska** enacted legislation to enable school district consolidation and requiring all districts to serve grades K-12. As a result, the number of school districts will decrease from 476 to 254. This action required new business rules for making AYP determinations for consolidated districts and schools. The State will plans to restart improvement timelines for schools whenever:

- The grade configuration changes by two or more grade levels that include grades reported for proficiency determinations.
- When the enrollment of a school increases or decreases by at least 60% from the previous year.
- When the grade levels in the district changes from a Class IV (high school only) to a K-12 district.

Iowa requested approval to modify the attribution of test scores and AYP decisions for alternative high schools that serve both local students and students from other districts. The State would like to roll up test

¹⁴ This is a reference to Assistant Secretary Henry Johnson's letter to chief state school officers. Attachment B addressed a number of "transition issues" that appear to set forth previously unannounced or codified requirements related to NCLB's implementation. There does not appear to be anything in this attachment to prohibit approval of **Washington's** request.

and participation data for these schools to the LEA level when the number of local students alone (as opposed to the number of local students plus the number of students from other districts) is less than 30. In these cases, the district AYP decision will be attributed to the alternative school.

Full Academic Year Definition

States may calculate percent proficient based on the performance of only those students who have been enrolled in a school for a full academic year (FAY). Under NCLB, States define what constitutes enrollment for a FAY and ED has generally given States considerable leeway in their definitions provided that they do not go beyond one calendar year. Last year, five States requested amendments in this area and eight more made requests this year.

Alabama received approval (May 18, 2006) to modify its FAY definition from the first day of the testing window in one spring to September 1 of the following school year to the first day of testing in the following spring. Similarly, ED approved (June 27, 2006) **Michigan's** request to modify its definition of FAY to reflect enrollment on two official semi-annual student count days, the fourth Wednesday in September and the second Wednesday in February. FAY constitutes enrollment for the three most recent semi-annual office count days.

Arkansas revised its FAY definition (approved July 7, 2006) to involve continuous enrollment from October 1 through the test date (spring). **Illinois** clarified its FAY definition: "For 2006-07 and thereafter, students who are enrolled in the district on or before May of the previous school year and who stay continuously enrolled through State testing in the spring are considered to be enrolled for the full academic year." This request was approved on July 27, 2006.

Several States do not appear to have yet received ED responses to their requests. **Mississippi** has requested approval to revise the FAY definition to encompass a school entry date prior to August 27 and continuous enrollment through the end of month immediately preceding the test window (e.g., month 1 through month 7 for testing window in month 8—would include students enrolling in month 9 of the previous school year). **Vermont** has requested approval to revise its definition of FAY to include students continuously enrolled from the first day of school until the last day of school. **West Virginia** submitted a request to modify its definition of FAY to include students continuously enrolled in a school from the fifth day of instruction to the spring testing window. At the district level, the State wishes to define FAY as extending from the first instructional day of the first full month of school to the spring testing window; a change requested to accommodate districts with year-round schools that start in July.

Texas submitted a proposal to modify its FAY definition but did not provide the details of that request.

Identification for Improvement Based on Same Student Group and Same Subject

As reported in each of our three papers on State accountability plans and amendments to these plans (Erpenbach, Forte Fast, & Potts, 2003, Forte Fast & Erpenbach, 2004, Erpenbach & Forte, 2005), ED has consistently rejected proposals to limit identification for improvement to cases where the same student group misses the same AYP indicator twice in two consecutive years (misses in the same "cell" two years in a row). Both the law and regulations are silent on this matter, and the only published rationale we have found was included in a letter to **West Virginia** (December 31, 2003): "This identification [same cell two consecutive years] procedure is not consistent with the statute or regulations." No citation or support was provided for this statement.

As we noted in last year's paper (Erpenbach & Forte, 2005, p. 17), the amendment request of one of the States reflects the arguments other States have previously offered with regard to this subject:

After working with these schools [those identified for improvement based on missing AYP for any subgroup in the same subject for two consecutive years] for a number of years, [our] experience has shown that it is difficult for schools to develop meaningful school improvement plans when they face a moving target. Schools identified for improvement due to a different subgroup each year have a difficult time determining whether it the problem is

due to an anomaly, is a function of the definition, or whether it is truly a problem that can be traced to academic achievement and their program. A moving target, such as one in schools identified by a different subgroup each year, leads to a sporadic and inconsistent implementation of school improvement efforts. Applying sanctions only to schools consistently failing to make AYP for the same subgroup and subject will ensure that school improvement efforts are focused on schools with systemic issues of academic underperformance. This lends a great deal of credibility to the formal school improvement identification process and removes the convenient excuse that the identification was a function of the definition.

Last year, six States submitted accountability workbook amendments in this area. This year, six additional States submitted requests related to this issue. ED has not provided written responses to any of these requests.

Connecticut, taking a somewhat novel approach, would like to base identification for improvement on the conjunctive criteria of (1) more than one student group missing an AYP target and (2) failing to make AYP in the same subject and same subgroup for two consecutive years. In making a similar request, **Nevada** provided an example where a school "...fails AYP solely as a result of math achievement among its African American subpopulation and this is the only AYP criterion not met by the school, the school would be considered to have consecutive failure after the year 2 AYP determinations, and receive the In Need of Improvement designation, if in year 2 African American students fail to meet achievement targets in math." **Oklahoma** and **Utah** made requests to simply base AYP on same subject and same student group performance.

Pennsylvania sought two amendments in this area (the State has indicated to the authors that ED verbally denied both of these requests but has not provided a written response):

- If a school or district fails to make AYP solely because of the performance of the SWD student group, it will not proceed in the AYP improvement status for up to two years. A school or district would be required to write an improvement plan outlining steps that would be taken to address the needs of this student group. Last year, the State had 115 schools (out of 3,011 for which AYP status was reported) that failed to make AYP solely on the SWD student group participation or achievement (103 on achievement). Pennsylvania argued that "progression through the AYP improvement statuses based on the results of as few as 40 students (the State's minimum n) may result in a misuse of resources...."
- Revise the AYP status of a school or district that fails to meet AYP solely due to the performance of the same student group failing to meet the same subject for two consecutive years. According to the State, its rationale here was based on the fact that the composition of the student groups changes every year due to student mobility. The request was predicated on a desire to not have schools and districts move forward on the "improvement cycle" until there was an opportunity to determine the effect of mobility on the composition and performance of student groups over a period of years. The State is also concerned about the validity and reliability of AYP outcomes under the circumstances of mixed student groups missing targets but still resulting in identification for improvement. Pennsylvania considers it inappropriate to allocate resources to schools and districts that may be performing well overall, but due to changes in student group composition from year to year, fail to make AYP based on different student group performance each year.

Virginia also proposed identification for improvement based on same student group missing same AYP target two consecutive years. The State noted that,

USED regulations permit states to identify for improvement only those schools that fail to meet AYP for two consecutive years in the same subject, but prohibit states from treating subgroups the same way. This model raises reliability concerns given that many groups...could fail to demonstrate AYP for any given year. This policy also fails to recognize the different educational challenges and interventions that may be appropriate

in cases where different subgroups fail to make AYP. Identifying schools in improvement based on not making AYP for two consecutive years in the same subject and same subgroup will target resources to the particular subgroup(s) that need them the most.

Identification Based on Students Served Under Title I

In 2003-04, **North Carolina** became one of the first States to amend its accountability plan to allow school districts to calculate AYP for schools operating Targeted Assistance programs—as opposed to Schoolwide programs—based on only those students served or eligible to be served through Title I.¹⁵

California received approval for a similar amendment in October 2004. This year, **California's** request for a further modification was approved on July 26, 2006. The State will now base AYP decisions on the achievement of all students in tested grades in Title I Targeted Assistance schools and Schoolwide projects; not just on the achievement all students eligible to be served. ED's decision letter appears to have "opened an interesting door" by including, "In TAS [Targeted Assistance Schools], Title I funds are used to benefit only Title I eligible students. In SWP schools, Title I funds are used to benefit all students."

Identifying School Districts for Improvement

Two years ago (see Forte Fast & Erpenbach, 2004, p. 9), ED approved a new approach to how school districts could be identified for improvement. In this approach, initially referred to as the "Tennessee model" because that State was among the first to advance the concept, districts are identified for improvement only if they miss an AYP target for two consecutive years in the same subject across all grade spans (e.g., Reading 3 – 5, 6 – 9, and 10 – 12). Shortly after that, many other States requested and received approval to incorporate this approach into their accountability plans in 2005.

After the issuance of several decision letters related to this subject last year, ED added "missing AYP in the additional indicators across all grade spans" to the approval stipulations. This year, the Department issued a letter to States from Assistant Secretary Johnson regarding submittal of States' 2005-06 accountability workbook amendments. In that letter, Johnson noted (p. 2),

We have learned over the past few years that it is important to be clear and direct about policies included in the State accountability plan. For example, each State should ensure its accountability plan clearly explains its policy for identifying local educational agencies (LEAs) for improvement. As this policy, in particular, has led to questions from local and State educators, the Department is requesting that each State review its language on this matter and, if necessary, submit an amendment to the Department to clarify its position. For instance, many plans omit the State's policy regarding the use of the additional academic indicator in making district improvement decisions.

Assistant Secretary Johnson clarified five acceptable approaches for the identification of school districts for improvement and included the grade span approach that States began using in 2004. Each State was asked to "ensure [that] its accountability workbook clearly lays out the policy for identifying LEAs for improvement, and if necessary, submit an amendment to the Department to do so." If a State's previously approved method of identifying school districts for improvement does not conform to at least one of the five approaches, the State is expected to cease use of that method and instead adopt one of the five newly described approaches.

In 2004-05, at least 18 States submitted requests to amend their criteria for identifying school districts for improvement. This year, 10 States submitted amendment requests in this area. Many of the changes requested were to bring in line previously approved models with one of the five approaches identified in Assistant Secretary Johnson's March letter and involve consideration of the other academic indicator (OAI) in grade span district AYP models.

Connecticut was approved (July 19, 2006) to modify how LEAs are identified for improvement there—(1) miss the same AYP indicator in both grade spans (3 – 8 and 10) and (2) miss AYP in the same

¹⁵ This option is afforded under section 1116(b)(1)(D) of Title I.

subject or OAI in the same grade spans for two consecutive school years. ED also approved (August 2, 2006) **Louisiana's** plan for the identification of school districts for improvement based on missing AYP in the same subject or OAI in all grade spans—elementary, middle, and high school—for two consecutive school years. On July 21, 2006, ED approved **Idaho's** identification of school districts for improvement based on missing AYP in the same subject and grade span for two consecutive years or missing the OAI in the same grade span for two consecutive years. Note that this is slightly different from models used by other States.

Massachusetts was approved (July 5, 2006) to use the same subject, all grade spans model to identify school districts for improvement. Districts would still be expected to make their OAI targets at each of the three grade spans. In its request for this amendment, Massachusetts noted that the application of this model to last year's data would have resulted in 44 districts not making AYP versus 155 (of 242).

North Carolina will add missing the OAI in all three grade spans two years in a row as an additional means of identifying school districts for improvement (ED provided written approval on July 7, 2006 and repeated the approval in a second response letter dated July 20, 2006). **South Dakota**, will add missing the OAI in all three grade spans two years in a row as an additional means of identifying school districts for improvement (approved June 29, 2006). **Tennessee** will modify previously approved language pertaining to the identification of school districts for improvement—same subject, all grade spans—by including OAIs (approved July 21, 2006). **Utah** (July 26, 2006) was granted approval to identify school districts for improvement only after missing AYP in same subject area or OAIs in all grade spans for two consecutive years.

Colorado would also like to identify a district for improvement only when it misses the same content area target in the same grade span (or the OAI in the same grade span) for two consecutive years. The State would not make the policy retroactive although it noted that 62 (35%) of its school districts, and all districts enrolling 5,000 students or more, are already identified for improvement. ED has not yet responded to this request.

Washington is seeking approval (with no ED response to date) to identify schools or districts for improvement (or move to the next step of sanctions) when a majority of the grades tested do not make AYP in the same subject two years in a row.

Adequate Yearly Progress (AYP) Indicators

AYP indicators are the statistics States use in their AYP models and include percents proficient for reading or language arts and mathematics (or an approved proxy; see also the discussion of growth models in Section I of this paper); participation rates for reading or language arts and mathematics; and at least one other academic indicator, which must include the graduation rate at the high school level.

Percent Proficient

Indices in Lieu of Percent Proficient

Several States requested permission to use an index in lieu of percent proficient this year. These indices are based on one of two weighting schemes: either they weight performance levels or they weight by student enrollment across grades.

In past years, States have generally been permitted to use either type of index as long as separate indices were calculated for reading or language arts and mathematics. The performance-weighted type of index has carried the additional restriction that higher performance (e.g., proportion of students scoring in the advanced achievement level) cannot compensate for lower performance (e.g., proportion of students scoring in the below basic achievement level). In practice this has meant that the highest weight applies to performance at or above proficient; States could not weight performance in an advanced (above proficient) level higher than performance in the proficient level. Given the pattern of responses and non-responses this year, it appears that ED may be backing away from approving changes related to indices.

With regard to the weighted performance level type of index, **Alabama** submitted an amendment request (approved May 18, 2006, for use in 2005-06 only) to apply a model in which Levels III (meets academic content standards) and IV (exceeds academic content standards) are weighted 1.00, Level II (partially meets academic content standards) is weighted .5, and Level I (does not meet academic content standards) is weighted zero. To extend the approval beyond 2005-06, ED is requiring the State to “provide impact data from the 2005-06 assessments and AYP determinations regarding the use of this performance index and the uniform averaging procedure [used by Alabama] as soon as it is available for further review and consideration by the Department before this calculation is included in AYP determinations for 2006-07 and beyond.” The State was also asked to provide information regarding the number of schools that met the AMO under four conditions:

1. Using the traditional ‘status’ determination of AYP.
2. Using the new proficiency index for determining AYP.
3. Due to the application of the confidence interval.
4. Due to uniform averaging over three years.¹⁶

Vermont already uses a weighted performance index and submitted an amendment to split its lowest achievement level, substantially below proficient, into two parts with different values. Performance in the lower half of this lowest level would have a value of 100 points and performance in the upper half would be worth 200 points; performance in the proficient and advanced levels is worth 500 points. ED has not yet responded to this request. ED orally approved **New Hampshire’s** request to implement an indexing system in making AYP determinations (details were not provided for this paper). On a related note, **New Hampshire, Rhode Island, and Vermont** first administered a new set of common assessments (the New England Common Assessment Program) in 2005-06.

Wisconsin submitted a request to use a proficiency index in which one point is awarded for all proficient and advanced scores and one-half point for scores at the basic level. No points would be awarded for minimal level scores (the lowest level). ED has not yet responded to this request.

In our Year 3 paper (Erpenbach & Forte, 2005), we reported that on August 8, 2005, ED approved **South Carolina’s** use of a statewide proficiency index to calculate AYP (both status and safe harbor) along with the statutory calculations for AYP and safe harbor. ED’s decision letter did not outline the specifics of how the index would be applied especially in the case of safe harbor determinations. We have included the specifics of that application in the discussion of safe harbor reviews and determinations later in this section.

Washington state law requires the Office of the Superintendent of Public Instruction to establish an index that measures improvement in all levels of the State assessments and to report student achievement in schools and districts with regard to this Learning Index. The Learning Index is a weighted performance index with based on a 0-4 scale and is calculated using the percent of students scoring in each of four proficiency levels on the State assessments. In Washington, “Changes in the index over time reflect changes in student performance in all four performance levels of the WASL. This allows the identification of schools and districts that have succeeded in moving students along the entire continuum of performance, not just changing the percentage of students meeting the standard. According to State officials, ED verbally denied the State’s requested amendment to comply with this law.

Mississippi has been using an index that weights by student enrollment across grades and **Iowa** developed a similar index based on specific recommendations received from ED (although the State is still awaiting ED’s approval to use this index for AYP). As in Mississippi, the purpose of **Iowa’s** Proficiency Index is to facilitate a single AYP decision in situations where multiple AMOs may be at play due to grade level configurations (there are 20 possible school building grade configurations in Iowa). Data could be averaged over two or three years and safe harbor reviews would be based on performance at the 4, 8, and 11 grades until two years of additional data are available for grades 3, 5, 6, and 7 (the grades first tested under NCLB in 2005-06).

¹⁶ ED’s approval here may turn out to be instructive for other interested States in that it seems to establish the approval criteria.

Wyoming was approved on July 21, 2006, to implement a model similar to Iowa's. As indicated in ED's decision letter to Wyoming, "The reason [that this model is appropriate] is the implementation of assessments in grades 3 – 8 and high school and the fact that Wyoming has separate AMOs by grade span. The total percentage proficient in each school will be determined through a weighted average of the students in each grade who are proficient as a percentage of the total tested student population in the school."

On June 27, 2006, ED approved **Michigan's** implementation of an index in which performance is first considered in relation to separate AMOs for each grade level. A grade is assigned a one if the AMO is met and a zero if it is not; these grade-by-grade indicators are weighted by grade-level enrollment and then averaged. A proficiency index score of zero or higher indicates that the annual measurable objective has been met by the school or student group.

Participation Rate

The most common amendment request regarding participation rates in 2005-06 involved a clarification to count as non-participants students with invalid test scores; in other words, States cannot count a student who attempted a test but whose score was invalidated as a participant. States making the clarification (all have been approved) included **Alabama, Colorado, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maryland, North Carolina, South Carolina, Tennessee, and Wyoming.**

Alabama also clarified language in its accountability workbooks with respect to averaging data across years to determine participation rates and percent proficient (approved May 18, 2006). If the AMO for proficiency or the 95% participation rate is not met in the current year, the State will average data for three years to determine if the AMO or participation rate has been met beginning in 2006-07. For 2005-06 only, the State will use two years of data.

In its decision letter to **Idaho**, ED added, "When using an average across years to determine the participation rate, the participation rate will be a weighted average." **Wyoming** found a similar requirement in its decision letter response from ED (July 21, 2006). On July 10, 2006, ED also approved **South Carolina's** clarification that when data are averaged across years for participation rate determinations, a weighted average will be used.

Iowa requested permission to weight its participation rate calculations by grade-level enrollment (see the discussion of percent proficient, above). The State also plans to use participation data from the preceding one or two years and a weighted averaging procedure (in place of un-weighted procedures). For schools not meeting the 95% requirement, the State plans to average up to three years (weighted by enrollment) of data for grades 4, 8, and 11 to determine whether the 95% is met on that basis. **Iowa** defines elementary schools to include grades 3-5, middle schools 6-8, and high schools 9-12.

Oregon will average participation rates across two years if a school or district does not meet the 95% goal using data from the current year only. The State will also exclude from participation calculations students excused from assessments due to medical emergencies (approved July 20, 2006); further discussion of this request is provided below. **Rhode Island** is seeking approval to apply a 95% confidence interval to participation rate calculations.

Participation Rate—Medical Emergencies

As we reported in our second paper (Forte Fast & Erpenbach, 2004, p. 12), ED allowed States to exclude from participation rate calculations students who miss State assessments due to medical emergencies (Paige, March 29, 2004). Secretary Paige's letter was followed by another from Assistant Secretary Simon (May 19, 2004) in which this flexibility was reconfirmed with respect to students with "significant medical emergencies" and included an example of a student recovering from an automobile accident. A number of States have received approval to exercise this flexibility in the recent.

Oregon and **Illinois** are the only States that requested an amendment in this area for 2005-06. **Oregon** was approved to exclude from participation rate determinations students excused from testing due to

medical emergencies. In responding to **Illinois'** efforts to clarify accountability workbook language regarding exemptions for medical reasons, ED described two acceptable categories (July 27, 2006):

- Medically exempt students may be excluded from the enrollment count in a school and from taking a State assessment if, at the time of testing, they a) have been admitted on an emergency basis to a hospital or residential facility (e.g., because of a motor vehicle or other type of accident, emergency surgery, psychiatric emergency) or on an emergency basis to a drug/alcohol/psychological treatment program; and b) are unable to be schooled.
- Homebound students at the time of testing who are too ill (based upon a specific written statement from a physician licensed to practice medicine in all its branches) to be tested may be excluded from the enrollment count in a school and from taking a State assessment.

This language appears to support States in exempting medically fragile students from testing, something that ED has not explicitly allowed before. To date, a number of States have been exempting these students from testing by invoking the statement in Secretary Paige's original letter that, "States do not have to include a student with a significant medical emergency in the participation rate calculation. States desiring to use this flexibility are responsible for determining what constitutes a significant medical emergency."

Based on this flexibility for determining what constitutes a medical emergency, some States earlier modified their accountability workbooks to include a statement such as, "The State plans to utilize the flexibility afforded in the Secretary's letter of March 29, 2004, with respect to not including in the calculation of Participation Rates those students not tested due to a medical emergency." Thus, although neither the Paige letter nor the Simon letter specifically mentioned "medically fragile students", some States have been excluding these students from participation rates by using the "medical emergency" flexibility. ED's response to Illinois suggests that ED tacitly approves this strategy and would also allow more explicit exemption statements. This would seem appropriate given the small number of medically fragile students likely to be enrolled in any school or district and any possibility that testing could interfere with their condition or care.

Other Academic Indicators

Over the past three years, only a few States have requested changes related to their other academic indicators (OAI) at the elementary, middle, and high school levels. The most commonly requested change over this time has allowed progress toward a specific target instead of meeting or exceeding the target.

OAI at the Elementary and Middle School Levels

This year, **South Carolina** received approval (July 10, 2006) to modify the goal for attendance, its OAI at the elementary and middle school levels, from meeting or exceeding the 94% target to meeting or making progress toward the target, with progress defined as improving at least 1/10 of one percent from the previous year. **South Dakota** will include performance on the OAI on its report cards at the district level; attendance rates will be calculated K-5 and 6-8 while graduation rates will be calculated 9-12 (approved June 29, 2006).

Graduation Rate

There has been considerable debate nationally this year about the accuracy of States' reported graduation rates how those rates are determined. In December, the National Governors Association was successful in an effort to get all 50 governors to commit to ensure that the manner in which their States determine and report graduation rates will be based on the number of entering 9th graders and those who graduate four years later.¹⁷

Twelve States submitted amendment requests related to their graduation rates this year; 11 States had submitted related requests last year and only five in 2003-04. As was the case in previous years, most

¹⁷ For an in depth review, see *Diplomas count: An essential guide to graduation policy and rates*, *Education Week*, June 22, 2006.

amendment requests in this area again relate to the continued use of proxy variables (e.g., drop-out rates) until graduation rates can be disaggregated, the averaging of rates across two or three years, and changing from a requirement for schools and districts to meet or exceed an annual target to making progress toward that target, and the inclusion of SWDs who take additional years to graduate as specified in their IEPs.

Alabama (approved May 18, 2006) will continue to use a projected drop out rate (including for safe harbor reviews) for one additional year while transitioning to graduation rate. Graduation rate will first be used in 2006-07; the goal will be for schools and districts to make progress toward a target of 90%. **New Mexico** was not able to implement its individual student identification number system until 2004-05. Therefore, through 2006-07, the State will continue to define graduation rate as the number of 12th grade graduates divided by the number of 12th graders enrolled on a school's 40th day of enrollment that same school year (approved through 2006-07, July 20, 2006); the State's transition to the cohort graduation rate will take place in 2007-08. **Oregon** will be able to calculate a 4-year cohort graduation rate beginning in 2007-08. ED also acknowledged (July 20, 2006) **Oregon's** affirmation that it will no longer use a separate formula for economically disadvantaged students in calculating graduation rate.

In **California**, high schools without a graduating class will compute a proxy graduation rate using available drop out and enrollment data (approved July 26, 2006). **Tennessee** has asked to include in the calculation of graduation rates students taking more than four years to complete high school. The State would report on-time graduation rates as well as extended time graduation rates but only the latter would be used for AYP calculations (this request is virtually identical to an amendment ED approved for Washington last year). ED did not make any reference to **Tennessee's** request in this area in its July 21, 2006, decision letter to the State regarding other requested amendments.

Idaho will evaluate graduation rates in different ways depending on the size of the graduating cohort, as described in ED's decision letter approving this approach (July 21, 2006):

Idaho will first determine whether each school met the State's 90 percent target or improved its graduation rate over the previous year. All schools with more than 100 students in the graduating cohort will continue to have AYP determined by this formula. Schools with graduating cohorts from 35–100 students will have graduation rates calculated to determine whether they have improved or reached 90 percent. A three-year rolling average of graduation rates will be applied to calculate AYP when they fail to meet 90 percent in the current year. For small schools at or below the State's minimum subgroup size of 34 students in the graduating cohort, Idaho will conduct a small school review for those schools that do not make AYP using the above methods. For these small schools, final AYP determination will be based on whether 1 student per year, or 4 students total, dropped out of the school. For student groups with less than 10 students, the graduation rate goal of 90 percent or improvement toward the goal will be applied at the LEA and State levels.

Oklahoma wants to modify its graduation rate definition to include students who receive a diploma by means of Adult Education. These students would be considered graduates within the "virtual school district." This high school exit option meets the criteria of the General Educational Development Testing Service and eligible students would have to meet standards prescribed by the SEA. On June 27, 2006, ED approved **Michigan's** use of a graduation rate target of 80% for 2005-06.

With regard to graduation requirements for students with disabilities (SWDs), ED approved (July 7, 2006) **Arkansas'** request to count SWD as graduates if they meet graduation requirements for a regular diploma within five or six years as specified in their IEPs. In **South Carolina**, the calculation of graduation rate will be modified in two ways: to (1) count as graduates those SWDs taking more than four years provided the additional number of years are specified in their IEP and (2) clarify that schools and districts meeting or exceeding the target will not be required to continue to equal or exceed that target in order to make AYP (approved July 10, 2006).

ED denied (April 19, 2006) **Georgia's** request to redefine a special education diploma as a regular diploma for AYP purposes. The State argued that SWDs who are unable to pursue a regular diploma, but who have completed at least 13 years of school and have successfully completed their IEP program, should be awarded credit for this completion. ED stated in its denial that regular diplomas must be aligned with a State's grade-level content standards and that, by definition, special education diplomas are not aligned with these expectations. **Hawaii** clarified that students receiving GEDs or any other degree not fully aligned with the State's content and performance standards are not included in the count of diploma recipients (ED acknowledged this clarification on July 6, 2006).

Growth Models

This year, two States—**North Carolina** and **Tennessee** were approved to incorporate growth models into their accountability decisions. Additional discussion and background material on growth models are provided in Section I of this paper.

Florida was not approved for participation in the Growth Model Pilot Program, but submitted an amendment request involving a variation of indexing the State refers to as “an improvement model.” According to the State, “the improvement model looks at subgroups that did not make AYP by meeting the status model, safe harbor model, or growth model, but have closed the gap on State proficiency by improving the percent of proficient students in the subgroup by more than the State average.” Last year, that would have required a student group to have shown a 2% improvement in reading over the prior year and 4% in mathematics. According to the State's 2005-06 AYP projections, 916 schools will make AYP based on status and safe harbor (2,193 will not); 1,237 will make these by adding a growth model (1,872 will not), and 1,327 will make the targets by adding the improvement model (1,782 will not).

Annual Measurable Objectives and Intermediate Goals

In their original accountability plans, States were required to describe the trajectory of annual measurable outcomes (AMOs) and intermediate goals (IGs) that would lead from their 2001-02 baseline percent proficient to 100% proficient by the 2013-14 school year. The IGs are increases in the performance targets and can occur every year (in which case they would be equivalent to the AMOs), every other year, or every third year. Regardless of the frequency of these increases, the amount of every increase must be the same. Most States initially chose patterns of annual increases or increases every third year, but a number later adopted a “back-loaded” model similar to one that **Ohio** originated. This model uses increases every third year in the beginning, but accelerates to annual increases as 2014 approaches.

Eight States requested changes to their trajectories last year and 14 made requests in this area this year. The increase in requests may be due to the implementation of additional tests grades 3 through 8 in the 2005-06 school year. For the most part, ED routinely approved these requests without extensive comment or conditions.

ED approved (July 20, 2006) **Oregon's** request to revise the State's AYP proficiency targets for 2007-08; **Oregon** is planning changes to its assessment system and will review/revise its academic achievement standards in December 2006. **Arkansas'** request for adoption of revised AMOs to incorporate additional grades tested was also approved (July 7, 2006).

On July 26, 2006, ED approved **Kansas'** request to modify the State's starting points, AMOs, and IGs after new achievement cut scores are set based on results of the new assessments in reading and mathematics administered in spring 2006. **Michigan's** request to use existing AMOs for grade levels previously assessed and implement new ones for newly assessed grades—3, 5, 6, and 8 in reading and 3, 5, 6, and 7 in mathematics was also approved (June 27, 2006).

ED approved (February 16, 2006) **West Virginia's** request to modify its AMOs and IGs. The Department also approved (July 21, 2006) **Wyoming's** plan to revise its starting points, AMOs, and IGs following the 2007-07 administration of the State's new assessments when there are two years of data available. The amendment was necessitated by the small student numbers represented in **Wyoming** schools.

New Hampshire reported that ED orally approved the State's request to create new starting points consistent with the implementation of new assessments and the implementation of an index for AYP purposes. ED indicated that the AMOs may need to be modified in 2006-07 if the index values change.

Kentucky submitted a request to revise the State's standard setting process for augmented assessments added in 2006. Using a two-stage process, the State and its testing contractor will draft achievement levels and cut scores for the additional grade levels by interpolating from existing cut scores and using field-test data. In the second stage, committees of Kentucky educators will be convened to study the draft cut scores in relation to the operational test scale as well as write the final achievement level descriptors. Also, **Kentucky** (August 15, 2005) will "use a rolling average when calculating AMOs for reading and mathematics." According to the approval, "if a school does not meet an AMO on the current year aggregated average of the performance of elementary, middle, or high school students, the aggregated average may be computed on the most recent two or three years of student performance data in reading and/or mathematics."

New Jersey is seeking approval to adopt starting points for grades in the 3-to-8 span in which new tests were implemented in 2005-06 and to establish new IGs. New Jersey will use a Compound Annual Growth Rate calculation to establish the intervening steps to proficiency. The State has also submitted a clarification indicating that AYP will be calculated for schools using AMOs and IGs set separately for grades 3 through 5 and 6 through 8. **Arizona** requested approval of new AMOs for grades 4, 6, and 7 for reading and mathematics. The State has separate AMOs for each grade tested for AYP calculations. All grades have to make AYP in a given subject for the school to avoid being identified for improvement. **Colorado** has requested approval of revised starting points and AMOs due to the addition of new mathematics assessments at grades 3 and 4.

Due to changes in State academic content and student achievement standards and its mathematics assessments, **South Dakota** submitted a request to adjust its starting points, AMOs, and IGs for mathematics. ED responded in writing on June 29, 2006, informing that the adjustments could be used for 2005-06. South Dakota will need to provide information regarding the revised starting points, AMOs, and IGs to support their future use. No specifics were provided. **Vermont** intends to adopt new grade span (3 through 8 and 7 through 12) AMOs using the 20th percentile method. The grade spans apply to schools and districts that include just grades 3 – 8; those that include 7 – 12; and those that include 9 – 12.

It appears that ED denied (July 19, 2006) **Washington's** plan to establish new AMOs and IGs for the grades in which new assessments were implemented in 2005-06 (grades 3, 5, 6, and 8).

Strategies to Enhance Reliability

As we described last year, States use a variety of strategies meant to enhance the reliability of their AYP decisions. Generally, States' primary concern is to reduce the likelihood that schools and districts will be misidentified as needing improvement when they do not. Most States specify a minimum number of students required for AYP calculations and many also use confidence intervals around one or more of the AYP indicators. Some States also combine data across two or more years to help reduce the impact of year-to-year differences in student samples on AYP decisions.

Minimum *n*

In each of the prior two years, several States requested approval for changes to their minimum *n*'s¹⁸ for AYP and ED tended to approve most of those requests. As noted elsewhere (see the related discussion in Section I), the ten States submitting minimum '*n*' requests this year found that the "rules" for approval had changed.

¹⁸ The minimum '*n*' is the fewest number of students for which AYP will be calculated according to the State's general AYP rules. If the total number of students in a school is below the minimum *n*, the State must use another method for determining AYP. AYP does not have to be calculated for groups within a school (e.g., students with disabilities) that do not meet the minimum *n*. Some States use a different minimum '*n*' for different groups and for each of the AYP indicators.

ED approved (July 6, 2006) **Alaska's** request to change its student group minimum *n* to a uniform 25; the State had previously used a higher minimum *n* for the SWD and LEP student groups. In addition, the State will make AYP decisions for the "all students" group for small schools and districts regardless of group size. **Kansas** asked to modify its minimum *n* from 40 for SWDs and 30 for all other groups to 40 for all groups. The State argued that this is warranted by the substantial increase in the number of students now assessed (the number of students tested each year has doubled since 2004-05) and would have very little, if any, impact on the various groups. ED responded on July 26, 2006, by approving a minimum of 30, not 40 as requested, for AYP determinations.

Alabama sought to change its minimum *n* from 40 to 40 or 10% of students tested in the school in the grades included in accountability with a cap of 75. Although similar requests were approved for other States in previous years (e.g., California, Florida, Georgia, Texas, and Virginia), ED denied Alabama's request on May 18, 2006, but did not provide a written rationale for this decision at that time. The State asked for a written rationale several times, and ED subsequently provided one¹⁹. In this response, the Department indicated that the denial was due in part to non-compliance of the request with the statute and regulations and its failure to meet the "bright lines" principles for additional flexibility as set forth in Secretary Spellings' May 10, 2005, letter. The response letter went on to indicate that since the State already had multiple ways to ensure the reliability of AYP decisions (use of a 99% confidence interval, uniform averaging, safe harbor, and indexing) an increase in minimum group size was not necessary. The Department's letter noted that there was also an increase in the State's testing population due to implementation of new assessments in grades in 3 through 8 this past year, so making statistically reliable decisions about student achievement should not require changes to the minimum *n*. This is the first time we have observed that the notion of "flexibility" has been linked as a prerequisite to increased minimum *n*.

Oklahoma requested a change in its minimum *n* from the current 30 for all students and general education students and 52 for all other student groups to 100 for all student groups except in those cases where a specific student group makes up 15% of the all students group. In these latter cases, the minimum *n* would be 52. ED has not yet responded to this request.

Michigan also entered into discussions with ED representatives regarding the use of a minimum *n* that increases proportionately as the size of a school or district increases; an approach requested by **Alabama** this year and approved in prior years as noted earlier. ED provided a verbal response to State officials that the proposed amendment would not be considered. State officials subsequently decided not to include it in their final package of amendment requests. A similar situation arose in **Tennessee**. An official from that State reported to the authors that ED officials told the State not to submit anything in its workbook amendment requests that had not been pre-approved in telephone conversations between ED and the State. The Tennessee official further commented that, "Since so much was done by phone this year, the connections between our letter and what we actually submitted are not always clear."

Illinois asked to increase its minimum *n* from 45 to 90 because tested grades have expanded to include all in 3 through 8. The State did not mention whether the grade 11 minimum *n* would remain at 45 or increase to 90. **Nevada** would like to increase its minimum *n* from 25 to 40 (but did not include a rationale in support of the request). According to **New Hampshire** education staff, ED verbally denied that State's request to change its minimum *n* size from 11 per school to an average of 10 per grade tested.

Rhode Island and **Vermont** have combined data across two or three years when a group has had too few students in a single year to reach the minimum *n*. With the implementation of new assessments in the 3 to 8 grade span, both of these States will shift to a single year minimum *n* (45 for **Rhode Island** and 40 for **Vermont**).

¹⁹ ED has not posted this letter on its web; instead, a letter dated June 22, 2006, was posted that does not include this statement and rationale.

Confidence Intervals and Standard Errors of Measurement

While some States included the use of confidence intervals (CIs) around their percent proficient indicators in their original accountability workbooks,²⁰ many more states have since amended their AYP models to include the use of CIs, to increase the size of CIs from 95% to 99%, and to apply CIs to all AYP indicators. A few States amended their plans to include the use of standard error of measurement (SEM) bands around their indicators. Until this year, ED routinely approved most of these requests and consistently limited CIs for safe harbor to 75%.

By late summer 2006, however, ED had not officially responded to any new requests related to the use of confidence intervals other than those concerning safe harbor determinations. In a letter (Spellings, June 13, 2006) to U. S. Representative Howard McKeon, Secretary Spellings provided some insight into the reasons for delays in responding to States' requests stating, "When considering a State's request for amendments to its accountability system that directly affect validity and reliability, the Department looks at the interaction of the full range of factors, such as the minimum group size, the confidence interval, if any, and the use of uniform averaging" (p. 3).

This year, six States sought to increase or modify the levels of CIs used to make AYP determinations. **Illinois** requested approval to increase from 95% CI to 99% the CI used for all students and other student group AYP calculations (the State is currently approved to use 95% with other student groups only) and add a 75% CI for safe harbor reviews—"as other States have done in the recent past". In its request, the State noted that with the use of a 99% CI, 303 more schools would have made their AYP targets based on 2004-05 data (there are 4,249 public schools and 23 charter schools in 881 school districts in Illinois); 54 more schools would have made AYP with a 75% CI for safe harbor reviews. ED approved the safe harbor request (July 27, 2006) but apparently did not approve the request from 95% to 99%: in its decision letter ED commented only that the State would be using a 95% CI for the all students and each student group calculation.

Nevada requested approval to increase its CI for AYP calculations from 95% to 99%. **New Hampshire** also wants to change its method of applying confidence intervals but did not disclose the details of that request. **New Jersey** submitted a request to apply a 95% CI in computing proficiency determinations. **Rhode Island** requested approval to use a 95% CI for participation rate calculations, noting that the State is now able to disaggregate this rate given implementation of a new student information system. **Vermont** has requested permission to a 99% CI. ED has not responded to any of these requests in writing.

In early January 2006, ED directed **Wisconsin** to remove its previously approved use of a standard error of measurement in making proficiency determinations. The State will continue to use a 99% confidence interval with these calculations.

Safe Harbor

Although the term "safe harbor" is not actually used in the NCLB legislation, it seems an appropriate description of provisions found under section 1111(b)(2)(I)(i) of the law. In its general form, safe harbor may be invoked when a student group misses the percent proficient target, but makes the other targets and reduces the percent of students scoring below the proficient achievement level by at least 10% from the previous year. The school or district makes AYP when it meets these safe harbor criteria.

This year, ten States requested changes to their safe harbor rules. ED approved (July 19, 2006) **Connecticut's** request to apply a 75% CI to safe harbor reviews as well as **Illinois'** request for the same (July 27, 2006). In ED's response letter to **Illinois**, no mention was made of the State's request to increase its CI for percent proficient from 95% to 99%. **Delaware** clarified that it also uses a 75% CI for this purpose while **New Jersey** is seeking approval to apply a 75% CI in these determinations. **California** is seeking to apply safe harbor reviews in school district AYP determinations.

²⁰ CIs are statistical estimates of the range in which a school's or a district's "true" AYP score might fall given the score it actually obtained. For further information about confidence intervals, see Hill and DePascale (2003); Jaeger and Tucker (1998); Linn, Baker, and Betebenner (2002); and Marion, et al (2002).

ED denied (April 19, 2006) **Georgia's** plan to waive use of the OAI in safe harbor reviews. The State argued that since all students are already in the OAI determination through the "all students" group, they should not be counted again in other student groups (although the specific requirements were not cited). In its denial letter, ED indicated that the request is not consistent with the statutory requirements. **Texas** is seeking to modify its procedures for considering OAIs when conducting safe harbor reviews, but did not provide related details.

ED also approved (July 21, 2006) **Tennessee's** request to apply two and three year averaging in safe harbor reviews. Tennessee's approach is the same as the approach approved for Hawaii and Washington last year (see Erpenbach & Forte, 2005). In this approach, a school or student group makes AYP if it meets participation rate and OAI criteria and the number of students who are not proficient decreases by 10% over one year, by 19% over two years, or by 27% over three years.

In a decision that should be of interest to other States in similar circumstances, ED approved (July 21, 2006) **Wyoming's** request for safe harbor determinations as it transitions to new assessments. In its decision letter, ED stated:

Due to the implementation of a new assessment system in the 2005–2006 school year, Wyoming will base Safe Harbor calculations on data solely from the grades assessed in 2004–2005. To provide a comparison between the data from WyCAS in 2004–05 and PAWS in 2005–06, the State will implement an equi-percentile procedure for this year only. When comparing results from May 2004 to results from May 2005, Wyoming will determine the statewide cut-score on the PAWS assessment in 2006 where there is an equivalent percentage that scored proficient on the WyCAS in 2005. Using this statewide cut-score on the PAWS, all schools will compare the percentage proficient on the WyCAS compared to the percentage that reached the comparison cut-score on the PAWS.

New Hampshire received verbal approval to use an "equi-percentile" method when comparing data across years for safe harbor determinations due to implementation of new assessments in the 3 through 8 grade span in 2005-06.

South Carolina received approval last year (August 8, 2005) to use a proficiency index in its safe harbor reviews. Details about this approach were not available last year and are included here as other States may find them of interest. The index that **South Carolina** applies to safe harbor reviews recognizes the progression of students from lower levels to higher ones at any point on a scale approaching proficiency even though they have not yet reached a required level. To establish the indices, a statewide index value is calculated that is used to determine if a group is making sufficient progress to lead the group to 100% proficiency by 2014. Then, index values are determined for each individual group to determine if the level of improvement is sufficient for the group to achieve 100% proficiency by 2014. The safe harbor indices are based on the same logic that underlies the absolute ratings used in **South Carolina**.

- Scores in a school/district/group are categorized into the levels Proficient or Advanced, Basic, Below Basic 2 and Below Basic 1 (Below Basic 1 is a level that was defined for use in the State's absolute ratings. It includes scores that fall two standard deviations below the cutoff between Below Basic and Basic) and then weighted as follows: Proficient or Advanced = 100; Basic = 75; Below Basic 2 = 50; and Below Basic 1 = 25. The results are summed and divided by the total number of scores. That result is the index value. If all students score at least Proficient, the index will equal 100.
- To set the statewide index value, the same procedures are applied that were used to set overall AYP objectives. Using current 2004 data, the percent of students scoring proficient/advanced on each test was calculated and the schools were sorted from highest to lowest. Schools at the twentieth percentile of the State's enrollment were identified, and performance indices calculated. The results became the State's baseline figures.

- To set the values for individual groups within schools or districts, the indices for each group were calculated and the indices subtracted from 100 (the highest possible value) and divided by the number of years until 2014.

Inclusion of All Students in Accountability

NCLB extended federal policies regarding the inclusion of students with disabilities (SWDs) and English language learners (ELLs) in statewide assessment and accountability systems farther than any of the preceding versions of ESEA. SWDs and ELLs must now participate in assessments in all grades, 3 through 8 and once in grades 10-12, and their participation and performance must be reflected in the AYP analyses for every school and district.

States requested a number of amendments related to the inclusion of SWDs and ELLs in their accountability plans; amendments involving SWDs are described first, below. A description of amendments to inclusion policies for ELLs follows.

Inclusion of Students with Disabilities in Assessments and AYP

NCLB requirements for the full inclusion of SWDs in statewide assessment and accountability systems have posed a number of challenges to States over the past three years. In 2005-06, States sought to modify their accountability workbooks to take advantage of flexibility related to the “2% proxy” flexibility ED first offered for 2004-05 AYP decisions, to change rules for the application of the 1% cap, to adjust their definitions of the SWD student group, and to reflect changes to their statewide assessment systems.

Modified Achievement Standards and the 2% Solution

On December 15, 2005, ED released a proposed notice of rulemaking (NPRM) intended to, “provide States with additional flexibility regarding State, local educational agency (LEA), and school accountability for the achievement of a group of students with disabilities who can make significant progress, but may not reach grade-level achievement standards within the same time frame as other students even after receiving the best-designed instructional interventions from highly trained teachers” (Federal Register, 2005, p. 74624). The release of the NPRM came eight months after Secretary Spellings announced in April 2005 that States would eventually be able to test “in a modified manner” 2% of special education students who have “persistent academic disabilities.” Prior to the implementation of an alternate assessment based on modified achievement standards, States could request permission to add for AYP purposes a number equivalent to 2% of all students assessed to the number of SWDs scoring at or above the proficient level.

Of particular interest in the NPRM is the inclusion of language (§ 200.7(a)(2)) that would prohibit a State from using a different minimum ‘n’ “for separate subgroups, regardless of whether the State chooses to implement modified achievement standards.” If included in the final regulations, this provision would have the effect of rescinding prior approvals for different minimum n’s across student groups. Also included in the NPRM are provisions that would:

- Require States to develop one or more alternate assessments for SWDs unable to participate in the regular assessments with or without accommodations (p. 74627). In addition to the alternates based on alternate achievement standards (1% assessments), there can be assessments that must be based on a State’s academic content and student achievement standards; an option that few States appear to have exercised. The need for these kinds of assessments reflects a belief that there are some students with disabilities who have mastered the content at the grade-level achievement standards, but who are not able to demonstrate their knowledge and skills through paper and pencil tests (or whatever format the state is using)—thus the need for an alternate based on grade-level achievement standards.
- Clarify that out-of-level assessments would not be permitted for students assessed against modified achievement standards (p. 74627). The use of out-of-level assessments for students studying at lower academic levels than their grade level was prohibited under regulations issued by ED on July 5, 2002. In regulations issued on December 9, 2003, pertaining to significantly

cognitively disabled students, ED recognized that out-of-level assessments “that meet the requirements of §200.1(d) may be considered to be an alternate assessment aligned with alternate achievement standards for the purposes of calculating AYP.”

- Permit the achievement of a student formerly served by special education to be included in SWD student group AYP determinations for up to two years (§ 200.20(f)(1)). A few States have argued that a longer period could be supported as long as students are still being monitored under IDEA provisions. The two-year limit may be a restriction is contrary to IDEA.

A release date for the final regulations has not been announced, and it is unlikely release will occur before the spring of 2007. Samuels (September 13, 2006) noted that a major hurdle in finalizing the regulations is the definition of the target group of students and the requirements for IEP teams to follow in “determining whether the modified assessment is right for a particular student” (p. 32). In an earlier article (Samuels, July 26, 2006), he observed that, “Since its passage, [ED] has issued a series of letters, guidelines, and regulations that now permit nearly one-third of special education students to take exams other than the regular state tests for their grade levels and have those scores count as proficient.” (p. 27)

Last year, more than 40 States applied to use the 2% option in their AYP calculations; most of which ED approved. This year, at least 33 States have applied for an extension of this option in making 2005-06 AYP determinations. The continued interest in this option is somewhat surprising given that there is little evidence that it changes AYP outcomes to any appreciable degree and that States are prohibited from applying confidence intervals when using the 2% proxy. (Erpenbach & Forte, 2005). There is, of course, the fact that States also face added costs for the additional assessment and development of modified achievement standards

States that have been approved to use the 2% proxy to 2005-06 AYP calculations include **Alabama, Alaska²¹, Arizona, Arkansas, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Michigan, Mississippi, Montana, Nevada, New Hampshire, New Jersey, Oklahoma, Oregon, South Dakota, Tennessee, Virginia, and Washington.**

Other related approvals include **Florida's** request to continue its approach for schools that missed AYP solely due to the performance of the SWD student group (June 5, 2006). For these schools, the State determines the number of students with disabilities that is equivalent to 2% of all students assessed and adds this figure (11%) to the percent proficient for the SWD student group. On June 5, 2006, ED approved requests from **Pennsylvania** and **Georgia** to use similar proxies of 14% and 16%, respectively.

Maryland was approved (May 1, 2006) to continue use of its AYP approach for schools that do not make AYP solely on the basis of the SWD student group performance. In these instances, teams will review the IEPs of individual students “who might have received proficient scores on a modified assessment if one had been available.” Student eligibility for the modified alternate assessment will be capped at 2% in the calculation of AYP results for schools and districts.

Massachusetts will be allowed (approved July 5, 2006) to continue its version of the 2% proxy. The State uses an index for AYP and assigns 100 index points per student for the number of students equal to 2% of all students in the assessed grades.

North Carolina was approved (July 20, 2006) to use its new assessment (EXTEND2) based on modified achievement standards providing the assessment meets technical quality standards. If the assessment is found to need additional developmental work, then the State will apply the 2% proxy model for one additional year. In its approval letter, ED clarified that, “approval of this amendment by the Department does not constitute approval of the NCEXTEND2 assessment by the Department as part of our responsibility to ensure that State standards and assessment systems meet NCLB requirements.”

Kansas and **Louisiana** received similar approval to use the results from their alternate assessments based on modified achievement standards for AYP purposes.

²¹ Alaska's application to use the 2% proxy for 2004-05 was denied last year because the State used different minimum n's across student groups.

Alternate Achievement Standards and the 1% Solution

Over the 2003-04 school year, ED offered States options for increased flexibility in their inclusion of SWDs in statewide accountability systems. Since then, many States have been approved to use the “1% option”, which involves use of an alternate assessment based on “alternate student achievement standards” for those SWDs with the “most significant cognitive disabilities.” Although there is no limit on the number of students who can participate in the alternate assessment, the number of students who can count as having scored at the proficient or above level for AYP purposes is capped at 1% of all students in the grades assessed. States could apply for a waiver of the 1% cap at the State level and were allowed to grant waivers of this cap to districts on a case-by-case basis.

This year, **South Dakota** amended (approved June 29, 2006) its accountability plan to eliminate its waiver of the 1% cap at the State level. **Montana** will be allowed to waive the 1% cap at the State level; the State allows every small school district (i.e., those with fewer than 200 students in the tested grades) to count up to two proficient scores based on alternate assessments when making AYP decisions and this could result in more than 1% of students statewide. ED has not yet responded to **West Virginia’s** request for a waiver of the 1% cap at the State level. (The State notes that, “Lack of an answer is also a no if never answered.”)

Minnesota did not formally request (see the earlier discussion on delay of use of assessment results for new grades) any amendments in 2005-06, but received a denial on October 26, 2005, of its request for a one-year increase of the 2% cap at the State level for the 2004-05 AYP cycle. The State had been administering two types of alternate assessments for SWDs, a developmental assessment and a functional assessment. ED indicated in a letter to the State that was not posted on the Department’s website that, “Minnesota’s current data do not differentiate between the two assessments. Therefore, Minnesota is not able to demonstrate that the students that would be included under the proposed 2% cap are those with the most significant cognitive disabilities.”

Under a State law predating NCLB, **Texas** had established a system of alternate assessments for SWDs that represented approximately 8-9% of all students in the grades assessed for AYP purposes. Under the November 20, 2005, agreement with ED (see the sub-section on Hurricanes Katrina and Rita, above), the State can count no more than 5% of all students in the grades assessed for AYP in 2004-05, no more than 3% in 2005-06, and no more than 1% (plus another 2% using modified achievement standards) in 2006-07.

Definition of Students with Disabilities AYP Student Group

A number of States requested changes to the definitions of the SWD student group used for AYP purposes this year. Although ED has responded in writing only to **North Carolina**, all other requests appear to have been denied at least orally. By way of background, **Georgia** was approved in 2003 to continue students in the SWD student group provided that they are still receiving special education services either in the form of monitoring or support in the transition to the regular classroom. **South Carolina** was approved in 2004 to include in the SWD student group students who are no longer directly served in special education as long as their IEP calls for monitoring services. In 2005, two more States submitted similar accountability workbook amendments but we could not determine ED’s decisions on those.

This year, **Pennsylvania** sought to include formerly served SWDs in the SWD student group AYP determinations for up to two years but ED orally denied the request. ED also denied a similar request from **North Carolina** on July 7, 2006 (although this letter is no longer posted at ED’s website), indicating that the approach does not comply with the statute or regulations, and does not meet the “Bright Lines” required for additional flexibility. Further, until such time as the Department issues final regulations related to the December 15, 2005, NPRM, ED is unable to extend this flexibility to States. ED has not yet responded to requests from **Nebraska, Rhode Island, Texas, or Utah** to extend the definition of the SWD student group to include students who were exited from services within the past two years nor to **Washington’s** request to use scores for exited SWDs when so requested as part of the AYP appeals process.

Delaware will be allowed to let districts to decide whether “tuition-based” special needs students are included for AYP calculations at their school of residence or at the school providing the services (approved June 22, 2006).

Use of Instructional Level Assessments and Assessment Accommodations

Under NCLB, States must include all SWDs in their statewide assessment systems through participation in general assessments with or without accommodations or through the use of alternate assessments. As in previous years, several States sought to make adjustments this year as well to the inclusion of SWDs in their assessment systems.

Prior to NCLB, **Connecticut** allowed some SWDs to participate in out-of-level assessments instead of grade-level assessments. The State is requesting permission to extend the use of these assessments as deemed appropriate for individual students by IEP teams. ED has not responded to this request. ED approved (July 10, 2006) **South Carolina’s** amendment to consider any students taking out-of-level assessments as non-participants for AYP purposes. South Carolina will end use of these tests beginning in spring 2007. **Mississippi** will also count students not tested on grade level as non-participants in statewide assessments.

Arizona would like to count SWDs taking tests with alternate accommodations as participants in statewide assessments, but will not count results from these assessments in performance calculations. The State defines alternate accommodations as “changes in the test administration that affect standardization...and may also involve substantial changes in what a student is expected to learn and/or in the way that learning is demonstrated.” **California** will require 10th grade SWDs who use a calculator on the mathematics high school exit examination to attain higher cut scores to be considered proficient or advanced.

Nebraska has asked permission to allow schools or districts not meeting AYP solely on the basis of the performance of the SWD student groups to request a safe harbor review. The review would be applied to students in this group who received modified instruction and modified assessments (out-of-level) on curriculum content that is on an appropriate level of instruction as defined in the student’s IEP and aligned with and progressing toward grade level standards for both SWDs and LEP students. The State counts results for these students as “beginning”, which is the State’s lowest achievement level. The intent of this amendment is to recognize the progress made by students who are not in the 1% group but who also do not meet ED’s requirements for the 2% group. ED has not yet responded to this request.

Inclusion of English Language Learners in Assessments and AYP

Most States excluded English language learners (ELLs)—referred to as Limited English Proficient (LEP) students in NCLB—from participation in statewide assessment and accountability systems prior to NCLB; as a result, few had viable options readily available for addressing NCLB requirements in this area. Less than one year after the initial approval of States’ accountability systems in 2003, ED offered some flexibility through Secretary Paige’s February 20, 2004, letter allowing States to: a) exempt ELLs from the reading or language arts assessments during their first year of enrollment in U. S. schools, b) exclude reading or language arts and mathematics scores for these same students from AYP calculations that year, c) count these same students as participants in the academic assessments if they take the English language proficiency assessments that year, and, d) extend the definition of ELL to include students who had exited ESL or bilingual education programs within the previous two years. Nearly all States have now taken advantage of these options; thus, the fact that they became part of final regulations published on September 13, 2006, is not likely to have much effect on States’ AYP models.

In 2005-06, the most common amendment requests related to the exemption of ELLs from testing or accountability, changes to the definition of the ELL student group, and the use of alternate assessments for ELLs.

Exemptions from Testing or AYP

Connecticut proposed three alternatives related to the inclusion of LEP students in its statewide assessments. ED has not provided a response to this proposal, but the State would like to implement one of the following (in order of preference):

1. Exempt all ELLs from reading and mathematics assessments until they have been in U.S. schools for three years. **Connecticut** argues that this is a compromise between the one year flexibility and the seven years typically required to attain English proficiency.
2. Exempt from testing ELLs enrolled in a U. S. school for more than 10 months and less than 20 school months and who score a 1 or 2 on the English language proficiency test. The State argues that it is unfair to require this group of students to participate in English-based academic assessments when more time is needed for them to improve their English proficiency skills.
3. Permit schools to exempt ELLs in their first year of U.S. schooling from the mathematics portion of State assessments. The State argues that its mathematics tests are highly language based and require considerable reading and writing; thus the exemption from the reading test should be extended to the mathematics test.

ED has also not responded to **Washington's** request to exempt all ELLs in their first year of enrollment in a U.S. school from taking any assessment in which test items require reading English. This would include the State's reading and mathematics assessments. The State argues that, "Washington's assessments in all grades and subjects are given entirely in English. No language other than English is permitted, no dictionaries are permitted, reading or translation in another language is not an allowable accommodation, and responses in a language other than English are not counted. Washington's mathematics assessment is composed entirely of word problems in English, so this exemption applies to this assessment as well."

In addition, **Washington** would not count in AYP the results of any assessment in which all items require reading English by ELLs who are in their first three years of the program unless they have demonstrated at least intermediate proficiency in English. ELLs taking assessments in their second and third years of enrollment would be counted in participation rates but not in other AYP calculations.

In anticipation of regulations that might allow a longer AYP exemption period for ELLs, **California** has asked permission to exclude test scores for ELLs in their first two years of enrollment in U.S. schools from AYP calculations. These students would be required to participate in statewide assessments during this time. ED advised the State that no such guidance or regulations would be forthcoming.

Definition of English Language Learner AYP Group

Requests for changes to the definition of the ELL student group included **New Jersey's** proposal to include in the ELL student group scores for students who have exited ESL or bilingual education services within the past two years and **Nevada's** application to extend the new immigrant flexibility (provided in the September 13, 2006, regulations) from 1 year to 3 years. New immigrants would be expected to participate in annual assessments but their results would not be included in AYP determinations for three years. ED has not responded to either of these requests.

Idaho was granted permission (July 21, 2006) to modify its definition of the ELL student group as described in ED's approval letter: "LEP students who receive a score in the low range on the State Board of Education approved language acquisition proficiency test and have an Education Learning Plan (ELP) shall be given the Idaho Standards Achievement Tests (ISAT) with accommodations or adaptations as outlined in the ELP. In addition, for AYP calculations, students can be categorized as LEP students for two years after testing proficient on the language proficiency test and exiting the LEP program. LEP students who do not have an ELP or a language acquisition score will be given the regular ISAT without accommodations or adaptations."

Use of Alternate Assessments and Accommodations for ELLs

Virginia asked to use results from the reading component of the English language proficiency test and the plain language forms of the Statewide mathematics assessments to determine AYP for ELLs in their first three years of enrollment in U.S. schools. Students not achieving a passing score on either test would not be counted in the proficiency calculations but would be counted toward the 95% participation rate requirement. The State notes that this would be consistent with State law in effect prior to the enactment of NCLB and argues that, "In some instances...it is not educationally valid or appropriate for newly enrolled LEP students with limited or no English proficiency to participate in English or mathematics state assessments. Additionally, since LEP students learn English at different rates, reporting their scores in AYP results may not be valid indicators of their performance in reading/language arts and mathematics for their first 1-3 years in U. S. schools."

In response to findings from its standards and assessments peer review, **Kansas** will cease to use a listening assessment as an accommodation for the reading assessment for ELLs (approved July 26, 2006). **Indiana** will no longer use the Indiana Standards Tool for Alternate Reporting as an alternate content assessment for ELLs and will count students who took this assessment in the 2005-06 school year as non-participants for AYP (approved August 1, 2006). ED acknowledged (July 21, 2006) that **Tennessee** is planning to develop alternate assessments for ELLs aligned to grade-level expectations in reading/language arts and mathematics. Until that assessment is approved by ED and implemented, ELLs will be expected to participate in the general Statewide assessments in reading/language arts and mathematics.

Massachusetts had hoped to use results from its English language proficiency assessment in lieu of results from its reading/language arts assessment for ELLs with relatively low English proficiency scores in its Composite Performance Index; the basis for school and district AYP determinations. The State submitted extensive evidence in support of its request noting that, "2005 statewide results indicate that by grade level between 70 and 80 percent of LEP students at the end of their second year of U. S. schooling do not demonstrate sufficient English language competence to perform grade-level classroom work in English. These students who score at the lower MEPA [Massachusetts English Proficiency Assessment] performance levels do not render valid and reliable results on MCAS [Massachusetts Comprehensive Assessment System] reading/language arts tests. When making school and district accountability decisions, we seek the authority to use our most valid and reliable measures of student performance." ED made no reference to this request in its July 5, 2006, response letter, but appears to have indicated that this request would be denied until the State can provide evidence that the MEPA is aligned to the grade level content standards measured by the MCAS.

AYP Consequences and Reporting

Summarized below are States' requests in 2005-06 to modify the order of supplemental educational services (SES) and public school choice, extend reporting timelines, or modify the content of report cards.

Supplemental Educational Services and Public School Choice

Several weeks after States had submitted their 2005-06 accountability workbook amendment requests, Secretary Spellings (May 15, 2006) wrote to chief state school officers announcing a separate application process for States seeking approval to reverse the order of school choice and supplemental educational services (SES) for some or all of their schools identified for improvement. ED approved a pilot project last year permitting four school districts in **Virginia** to reverse the order of these sanctions. **Colorado**, **Delaware**, **Nevada**, and **Utah** included requests in their 2005-06 accountability workbook amendments for similar approvals while **Virginia** sought permission to expand its approval. The Secretary's letter made no mention of these earlier requests and ED has yet to officially respond to them.

In late July and mid-August, four States—**Alaska**, **Delaware**, **Indiana**, and **North Carolina**—received letters from ED informing them that selected school districts in their States had been approved to offer SES in year one of school improvement. The announcement signaled an expansion of the pilot program launched last year but did not provide details on which States applied and how the decisions were made.

However, ED denied **Virginia's** request for an expansion because the State has not yet received approval for its final State assessment system. ED did permit the State to continue its prior approval for four school districts to offer SES in year one.

The Secretary's May 15 letter also indicated that the pilot program approved in 2005 permitting the **Boston** and **Chicago** school districts to serve as SES providers despite being identified as in need of improvement might be expanded. No details were provided regarding how the expansion would be implemented. Subsequently, at the same time that the above States were informed regarding their applications to reverse school choice and SES, at least for some school districts, the Secretary also notified the **Anchorage, Alaska** and **Hillsborough County, Florida** school districts that they had been approved to join **Boston** and **Chicago** as SES providers even though they had been identified for improvement under NCLB. How these school districts were determined and what the application process was if any, are unknown.

Just prior to the Secretary's May 15 letter, another letter went to the chiefs (Johnson & Doherty, 2006, May 10) regarding the provision of SES by school districts. In this letter, Assistant Secretary Johnson and Acting Assistant Deputy Secretary Doherty affirmed that Federal regulations prohibit school districts and schools identified for improvement from serving as an SES provider. "However," the letter noted, "the Department believes that there may some entities that are *affiliated* with an LEA, yet sufficiently separate and distinct from the LEA to be eligible to apply to become an SES provider even if the LEA has been identified for improvement. These entities may include 21st Century Community Learning Centers, community education programs, parent information and resource centers, and other entities loosely affiliated with an LEA." The letter went on to set forth criteria for a State's consideration in determining approvability of a school district to serve as an SES provider under these circumstances.

Changing the Order of SES and Choice Sanctions

Arguing that in many schools, especially those in rural areas, have no viable school choice alternatives, **Colorado's** request would permit schools identified for improvement to offer both school choice and supplemental educational services (SES) in year one of improvement. The State would also like to give equal priority for school improvement grant funds to districts identified for improvement even when these districts may not have any schools identified for improvement. Colorado recognizes that these funds must be awarded to districts on behalf of schools identified for improvement with priority going to those farthest along in the improvement cycle. In its request, Colorado noted that the State Education Agency is not staffed in such a way that it can provide school level support to all schools identified for improvement. ED has not yet responded to this request.

Nevada would like to switch the order of public school choice and SES corrective actions for schools and extend the timeline for exercising the most invasive actions. According to the State, "The current sequence does not allow reasonable time for planned actions to have anticipated positive effects on student performance."

Delaware originally asked to switch the order of SES and school choice because choice is already provided for under State law (as noted above, the State also submitted a follow-up request that was approved). Students in schools identified for improvement for a second year would continue to receive SES and be offered the option of choosing another school in the district. ED did not mention this request in its June 22, 2006, decision letter to the State. ED also has not responded to **Utah's** request to switch the order of SES and choice; as in Delaware, choice is provided for under State law in Utah.

Virginia asked to expand Statewide the practice of providing SES in the first year of improvement status in lieu of public school choice; ED approved this switch in August 2005 for four school districts as part of pilot program. The State reports favorable results in both participation and improvement in achievement. As the State argued in advancing this request last year, "An effective school choice plan requires time to develop and communicate to parents and the public. AYP is calculated using test scores from spring administration and, therefore, AYP determinations are not available until late July or early August. This is too close to the opening of school for choice plans to be implemented effectively. A more effective

intervention strategy is offering eligible students supplemental [educational] services while planning for choice implementation.” ED has not yet responded to this request.

Targeting SES and Choice

Several States would like to target the SES and choice sanctions to specific student groups. **Utah** has asked for permission to target SES and choice to the lowest performing students.

Connecticut, Nevada, Virginia, and Washington have asked to limit these options to students in the groups not making AYP. ED has not yet responded to these requests either, but has denied similar requests in previous years.

Virginia’s rationale for this request points out that,

The statute treats all schools that fail to make Adequate Yearly Progress...equally, regardless of whether such failure is based on one subgroup failing to make AYP in one subject, or all subgroups failing to make AYP in both reading and mathematics.... Using federal funds to provide school choice to all students reduces the amount of funds available to serve students in the school that are not meeting the proficiency targets.... Additionally, school divisions have reported that the majority of students who choose the choice option are not from low-income families nor are they students who are struggling academically. Similarly, using federal funds to provide tutoring to all low-income students in a school [the regulations provide for serving the lowest achieving, low-income students first in the case of limited funds] reduces funds available to serve subgroups and individual students that are not meeting the proficiency targets....

Both **Connecticut** and **Washington** submitted requests to allow school districts that are identified for improvement to provide SES. As Washington noted, “Currently there is no requirement that SES providers have highly-qualified teachers, and districts may be able to use highly-qualified teachers from other schools when providing SES.”

These two States included other requests related to sanctions, as well. **Connecticut** would like to impose additional (unspecified) consequences for schools in improvement. **Washington** proposed a modification such that a school or district in improvement could move one step backward in the improvement timeline if at least one of following four conditions is met:

1. The number of groups not making AYP was reduced by at least 75% from the previous year;
2. At least 95% of the groups with the minimum ‘n’ make AYP;
3. AYP is made two consecutive years in the subject that caused the original identification for improvement; or
4. AYP is made.

The State argues, “Moving a school or district backward one step rewards it for making substantial progress compared to the previous year. Relatively few districts and schools accomplish this level of improvement, but allowing this option on a case-by-case basis can provide an incentive to work toward as much improvement as possible. If the reason for being in improvement has been addressed, some reward should be provided short of moving them back to the beginning of the timeline.”

Arguing that 91% of its school districts comprise a single school for a given grade level and, therefore, cannot offer any public school choice options, **Illinois** would like to allow districts identified for improvement to offer supplemental educational services to schools in lieu of public school choice. To date, no districts in this State have made their facilities available to support choice across district boundaries.

South Dakota was granted approval (June 29, 2006) for minor modifications to language regarding sanctions for districts.

Reporting

As had been anticipated by many States, the introduction of new assessments during the 2005-06 school year necessitated a longer reporting timeline for AYP results in many. States had to engage in standard-setting activities for these new assessments and revise AYP algorithms to incorporate the expanded testing data.

For the 2005-06 school year only, **Kansas** sought a four-month extension of the AYP reporting timelines due to the implementation of new reading and mathematics assessments. On July 26, ED approved the request and specified the improvement timeline:

Kansas will conduct standard setting for new assessments in August 2006, with preliminary AYP results available in September. At the beginning of the 2006-07 school year, all schools and districts will have the same AYP status as during the 2005-06 school year. All schools and districts that will not exit improvement status will implement the appropriate interventions prior to the start of the school year. If these schools and districts fail to make AYP based upon the 2005-06 assessment data, they will begin offering the next level of services. Schools and districts on the 'watch list' (i.e., schools and districts that did not make AYP based upon 2004-05 assessment data) have been notified to plan for the possibility of offering services (i.e., public school choice) and must act immediately on the preliminary building assessment reports. Schools and districts previously identified as in need of improvement that make AYP for the first time will continue to offer the same level of services. Schools and districts previously identified as in need of improvement that make AYP for the second consecutive year based upon 2005-06 assessment data are no longer identified for improvement and no action is required.

Kansas is also now using its new Kansas Individual Data on Students system to support AYP reporting.

Louisiana introduced new assessments in grades 3, 5, 6, 7, and 9 in 2005-06 and requested a delay in reporting AYP results to November 2006. Schools in improvement at the beginning of 2005-06 would continue in the same sanction level and any changes to 2005-06 results would be applied beginning in the second semester of the 2006-07 school year. In addition, a school that was first identified for improvement on the basis of 2005-06 results would offer SES instead of school choice because that would be less "disruptive of schooling."

In a March 7, 2006, letter that has not been posted publicly, ED indicated that Louisiana must make preliminary AYP decisions by October and schools initially identified for improvement would be required to offer school choice immediately. **Louisiana** responded to this notice on April 3, 2006:

Although Louisiana will comply with this mandate, we do not believe it represents the best approach for our state. Having students exercising choice and transferring to schools in mid-January may cause disruptions with new enrollees. Also, this would cause rescheduling of school bus routes, shifting teachers at mid-year, and large numbers of students might be eliminated from subgroup accountability due to the Full Academic Year requirement. We would prefer to have schools newly identified for School Improvement offer Supplemental Educational Services (SES) rather than offer School Choice for the remainder of the academic year 2006-2007. Schools entering School Improvement due to Subgroup Component failure *would* offer choice the following year (2007-2008). All other schools will advance in levels of sanctions according to policy and NCLB at mid-year.

ED stood firm and informed the State in an August 2, 2006, decision letter that preliminary AYP results must be available by October 20 and schools and districts must immediately implement consequences based on those results including school choice.

Final standard setting activities for **Nevada's** new assessments in grade 4, 6, and 7 occurred in August 2006, but State law requires that preliminary AYP determinations be made by June 15 of each year. The State was granted approval (July 7, 2006) to use preliminary cut scores in making AYP determinations for 2005-06 and to adjust AMOs and re-analyze 2005-06 AYP results following formal adoption of the final cut scores by the State Board of Education. As part of its approval, ED stipulated that **Nevada** "must submit the revised AMOs and intermediate goals, as well as the plan and timeline for re-issuing AYP determinations and re-classifying schools and districts, to the Department for approval and subsequent addition to the State accountability plan before re-analyzing the data."

On July 21, 2006, ED approved **Wyoming's** request for a short delay in its AYP reporting timeline due to the implementation of new assessments. ED stated, "Wyoming will, for adequate yearly progress (AYP) following the 2005-06 school year, release results by August 1, with a 15-day window for appeals and release final determinations by August 15. For 2006-07 and all years thereafter, preliminary AYP results will be made by July 15, with a 15-day window for appeals. Final determinations will be made by August 1."

ED also approved (July 7, 2006, and July 20, 2006) AYP reporting delays due to new assessments in **North Carolina**. In an approval letter, ED commented that,

North Carolina will report AYP results for the assessments in the 2005-06 school year under a staggered schedule. The State will report all high school AYP results and elementary and middle school AYP reading/language arts results by June 30. Due to the implementation of a new mathematics assessment and subsequent standards setting, the State will not report elementary and middle school AYP mathematics results until October. Consequently, AYP determinations for elementary and middle schools and local educational agencies (LEAs) based upon reading/language arts results will be made in July. The State will prioritize AYP mathematics calculations for those schools that are on the State "watch list" (i.e., those schools and districts that have failed to make AYP for at least one year). Schools and districts that are identified for improvement based upon the 2005-06 mathematics results will begin offering interventions immediately based upon the preliminary data released in October.

South Carolina was also granted approval for a staggered AYP reporting timeline for 2005-06. The State's contractor does not deliver test results until July; therefore, the State will make preliminary AYP determinations based upon a historical review of data and report these results by June 15. Schools and districts identified for improvement in this preliminary analysis must begin offering the appropriate level of interventions at the start of the 2006-07 school year and parental notification regarding public school choice and SES will occur by August 1. Final AYP decisions based on data from 2005-06 assessments will be made by September 30. Any schools or districts newly identified for improvement based on final AYP data must begin offering public school choice immediately. Schools and districts that are no longer identified for improvement in the final analyses must continue to honor commitments to public school choice and SES for the remainder of the school year. The State will also be merging its report cards for NCLB and State accountability systems. ED encouraged the State to obtain data from its testing contractor more quickly in subsequent years. In addition, the State was asked to submit documentation to the Department to allow an examination of the impact of using a historical data for preliminary AYP determinations.

Connecticut will make preliminary AYP decisions for its high schools due to a delay in the receipt of test scores from its testing contractor (approved July 19, 2006). The State must inform high schools of their identification status based on preliminary results by September 6, 2006. Final AYP results must be reported by October 26th. As noted in the approval letter:

No later than October 5, 2006, districts that would be required to implement consequences based on preliminary data will be contacted to confirm their status and inform them of consequences, expectations and timelines. Schools and districts that are currently in any of the AYP consequence stages must continue being in that stage until

the final publication of data no later than October 26, 2006. Schools and districts that move into or further along the AYP consequences must act on preliminary data and begin the improvement process including: parental notification, mandated set-asides, and the appropriate consequences.

New Jersey has asked permission to modify its AYP reporting cycles. The State would issue a preliminary report to ensure that schools and districts are notified prior to the beginning of each school year if they will need to provide public school choice or supplemental educational services. A second and final report that incorporates any necessary adjustments would be issued subsequently.

South Dakota will include district-level performance on the OAls on its report cards; attendance rates will be calculated separately for grades K-5 and 6-8 and graduation rates will be calculated for grades 9-12 (approved June 29, 2006).

Appeals

Oregon and **Pennsylvania** requested changes to the processes used to appeal AYP decisions in their States.

During the review process following preliminary AYP designations, **Oregon** permits LEAs the opportunity to correct data errors. In rare cases, data in the preliminary AYP report cannot be corrected through district initiated changes to student test records or student level data collections. In these cases, the State was granted permission (July 20, 2006) to allow districts to submit a “substantive appeal” that will be considered by a representative committee of educators when (1) the school is determined to not meet AYP based on unique events that could not be predicted and/or controlled by the school or district, or (2) the data issue contributing to the substantive appeal could not otherwise be remedied through district corrections of related data. Substantive appeals will not considered when based on (1) problems that could have been avoided based on correction to student test records or student level data, (2) challenges to State policy and rules, federal law, regulations or non-regulatory guidance or provisions described in the State’s Accountability Workbook, or (3) Lack of knowledge of policies outlined in the AYP/RC manuals and/or the Assessment Administration Manual or numbered memos.

Pennsylvania’s request to allow appeals in situations where a school or district fails to make AYP solely because of the performance of the SWD student group was verbally denied. The State had wanted to delay progressions to AYP improvement status for up to two years for these schools and districts, but require them to write an improvement plan outlining steps that would be taken to address the needs of this student group. Last year, the State had 115 schools (out of 3,011 for which AYP status was reported) in which only the SWD student group did not make AYP (the performance criterion was missed in 103 of these cases). Pennsylvania argued that “procession through the AYP improvement statuses based on the results of as few as 40 students (Pennsylvania’s minimum N) may result in a misuse of resources....”

Section III: Observations and Conclusions

In prior annual reports, we summarized States' accountability amendments that ED consistently rejected as well as approvals that were new or surprising. The categorization of requests and approvals this year are limited by the lack of formal responses from ED to many requests. As of October 1, ED had posted on its website responses to only 30 (62.5%) of the 48 States submitting accountability workbook amendments this year.

Requests Consistently Denied

As in previous years, ED consistently rejected States' requests to limit identification for improvement to schools and districts that missed AYP in the same subject and group for two consecutive years. New this year was ED's general rejection of proposals to increase a minimum 'n' or confidence interval. The latter set of rejections may be more appropriately described as "unanticipated" denials given earlier approvals.

Unanticipated Approvals

The surprises this year tended to be denials rather than approvals. However, three approvals were unanticipated. These were:

- Use of college entrance exams in lieu of state high school assessments (however, approval of accountability amendments involving these assessments does not suggest approval of these assessments as part of a State assessment system).
- Recalculation of AYP results to include scores for students who retest following summer school.
- Expansion, albeit limited, of the pilot programs approved in 2004-05 related to switching the order of public school choice and supplemental educational services (SES) in some school districts and permitting a few school districts identified for improvement to serve as SES providers.

Next Steps

The 2006-07 school year might be predicted to have fewer accountability amendments as ED and States shift their foci to ESEA reauthorization discussions. However, given the developments over the 2005-06 school year, the next year's activity with accountability amendments is hard to predict. The issues of greatest interest may be the inclusion of ELLs in assessments and accountability systems, as suggested by the LEP Partnership that ED established in August 2006, the expansion of the Growth Model Pilot Program, and the future of use of minimum 'n's and confidence intervals for AYP calculations.

References and Resource Materials

- Brownstein, A. (2006, July 24). Meet the "new path:" Same as old path? *Title I Online*. Retrieved August 13, 2006, from http://www.thompson.com/libraries/titleionline/news_desk/tioo00724.html.
- CCSSO creates ESEA reauthorization task force. (2006, January 25).. *Chiefline*,, p. 1.
- Center on Education Policy. (2006). *From the Capital to the classroom: Year 4 of the No Child Left Behind Act*. Washington, DC: Author.
- Chudnowsky, N., & Chudnowsky, V. (2005). *Rule changes make it easier for schools to meet test score targets under No Child Left Behind, but harder to gauge real progress*. Washington, DC: Center on Education Policy. Retrieved July 15, 2006, from www.cep-dc.org.
- Council of Chief State School Officers. (2003, September). *Glossary of assessment terms and acronyms*. Washington, DC: Author, State Collaborative on Assessment and Student Standards, Assessing Special Education Students.
- Davis, M. R. (2006, May 24). Displaced students' test scores won't count for AYP. *Education Week*, pp. 27-28.
- Davis, M. R. (2006, September 20). Students displaced by storms score lower on state tests. *Education Week*, p. 22.
- Diplomas count: An essential guide to graduation policy and rates. (2006, June 22). *Education Week*.
- Dizon, N. Z., Feller, B., & Duncan, V. (2006, April 18). States play politics with school test scores. *The Capital Times*, [Madison, WI], p. A6.
- Education Trust. (2006, April 17). *Ed Trust statement on state proposals for the growth-model pilot program*. Washington, DC: Author.
- Erpenbach, W. J., Forte Fast, E., & Potts, A. (2003). *Statewide educational accountability under NCLB: Central issues arising from an examination of state accountability workbooks and U.S. Department of Education reviews under the No Child Left Behind Act of 2001*. Washington, DC: Council of Chief State School Officers.
- Erpenbach, W. J., & Forte, E. (2005). *Statewide educational accountability under the No Child Left Behind Act—A report on 2005 amendments to state plans*. Washington, DC: Council of Chief State School Officers. http://www.ccsso.org/projects/Accountability_Systems/Resources/
- Final Regulations, Title I—Improving the Academic Achievement of the Disadvantaged: Final Rule* [regarding academic standards and state assessment systems], 67 Fed. Reg. 45038 (2002, July 5) (to be codified at 34 C.F.R. pt. 200).
- Final Regulations, Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule* [regarding educational accountability systems and the calculation of adequate yearly progress], 67 Fed. Reg. 71710 (2002, December 2) (to be codified at 34 C.F.R. pt. 200).
- Final Regulations, Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule* [regarding the achievement of students with the most significant cognitive disabilities], 68 Fed. Reg. 68698 (2003, December 9) (to be codified at 34 C.F.R. pt. 200).
- Final Regulations, Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule* [regarding the inclusion of limited English proficient students in State assessments], 71 Fed. Reg.

- 58187 (2006, September 13) (to be codified at 34 CFR Part 200). Retrieved September 30, 2006, from <http://www.ed.gov/legislation/FedRegister/finrule/2006-3/091306a.html>.
- Forte Fast, E., & Erpenbach, W. J. (2004). *Revisiting statewide educational accountability under NCLB: A summary of state requests in 2003-2004 for amendments to state accountability plans*. Washington, DC: Council of Chief State School Officers.
- Goldschmidt, P., Roschewski, P., Choi, K., Auty, W., Blank, R., & Williams, A. (2005). *Policymakers' guide to growth models for school accountability: How do accountability models differ?* Washington, DC: Council of Chief State School Officers.
http://www.ccsso.org/projects/Accountability_Systems/Resources/
- Hill, R., & DePascale, C. A. (2003). *Adequate yearly progress under NCLB, reliability considerations*. Paper presented at the Annual Meeting of the National Council on Measurement in Education, Chicago, IL. Retrieved September 21, 2004, from http://www.nciea.org/publications/NCMEconf_RHCD03.pdf.
- Hoff, D. J. (2006, March 22). Kentucky moves toward college test for all. *Education Week*, pp. 26 & 30.
- Jaeger, R., & Tucker, C. (1998). *Analyzing, disaggregating, reporting, and interpreting students' achievement test results: A guide to practice for Title I and beyond*. Washington, DC: Council of Chief State School Officers.
- Johnson, H. L. (2006, March 7). *Letter to chief state school officers regarding April 1, 2006, for the submittal of 2006 accountability workbook amendments and transmitting information related to the identification of LEAs for improvement and other information related to other aspects of state accountability system potentially impacted by the addition of grades required to be assessed in the 3 – 8 span beginning in 2005-06*. Washington, DC: U. S. Department of Education.
- Johnson, H. L., & Doherty, C. J. (2006, May 10). *Letter to chief state school officers regarding clarification related to the provision of supplemental educational services*. Washington, DC: U. S. Department of Education. Retrieved September 19, 2006, from <http://www.ed.gov/print/policy/elsec/guid/ssstateletters/choice/ses051006>
- Johnson, H. L. (2006, September 19). *Letter to chief state school officers regarding updates on the Department's 2006-07 priorities*. Washington, DC: U. S. Department of Education. Retrieved September 24, 2005, from <http://www.ed.gov/policy/elsec/stateletters/priorityltr.doc>.
- Klein, A. (2006, March 15). NCLB panel plans to study teachers, student progress, but not funding levels. *Education Week*, p. 26.
- Lee, J. (2006). *Tracking achievement gaps and assessing the impact of NCLB on the gaps: An in-depth look into national and state reading and math outcomes*. Cambridge, MA: Harvard University, The Civil Rights Project.
- Linn, R. L., Baker, E., & Betebenner, D. (2002). *Accountability systems: Implications of requirements of the No Child Left Behind Act of 2001*. CSE Technical Report 567. Los Angeles: University of California at Los Angeles, National Center for Research on Evaluation, Standards, and Student Testing, Center for the Study of Evaluation,. Retrieved September 21, 2004, from http://www.aera.net/pubs/er/pdf/vol31_06/AERA310602.pdf.
- Linn, R. L., Baker, E. L., & Herman, J. L. (2005). Chickens come home to roost. *CRESST Line—Newsletter of the National Center for Research on Evaluation, Standards, and Student Testing*, pp. 1, 3, 7-8.

Marion, S., White, C., Carlson, D., Erpenbach, W. J., Rabinowitz, S., & Sheinker, J. (2002). *Making valid and reliable decisions in determining adequate yearly progress*. Washington, DC: Council of Chief State School Officers. Retrieved September 21, 2004, from <http://www.ccsso.org/content/pdfs/AYPpaper.pdf>.

No Child Left Behind Act of 2001. Public Law 107-110. Information available at <http://www.ed.gov/nclb/landing.jhtml>.

Notice of Proposed Rulemaking. Title I—*Improving the Academic Achievement of the Disadvantaged; Individuals With Disabilities Education Act (IDEA)—Assistance to States for the Education of Children with Disabilities*, 70 Fed. Reg. 74624 (2005, December 15) (to be codified at 34 CFR Parts 200 and 300).

Olson, L. (2005, October 26). NAEP gains are elusive in key areas. *Education Week*, pp. 1, 22-23.

Olson, L. (2005, December 14). Room to maneuver [Special section]. *Education Week*, pp. S1-S10.

Olson, L. (2006, July 12). Department raps states on testing. *Education Week*, pp. 1, 36-37.

Olson, L. (2006, September 13). In more states, it's now ACT or SAT for all. *Education Week*, pp. 1, 24-25.

Paige, R. (2003, June 27). *Key policy letters signed by the education secretary or deputy secretary* [regarding inclusion of students with disabilities in AYP]. Washington, DC: U.S. Department of Education. Retrieved September 21, 2004, from <http://www.ed.gov/policy/speced/guid/secletter/030627.html>.

Paige, R. (2003, December 11). *Key policy letters signed by the education secretary or deputy secretary* [regarding additional flexibility related to including students with disabilities in state assessment and accountability systems]. Washington, DC: U. S. Department of Education. Retrieved March 25, 2005, from <http://www.ed.gov/print/policy/elsec/guid/secletter/031211.html>.

Paige, R. (2004, February 20). *Key policy letters signed by the education secretary or deputy secretary* [regarding additional flexibility related to limited English proficient students]. Washington, DC: U.S. Department of Education. Retrieved March 25, 2005, from <http://www.ed.gov/policy/gen/guid/secletter/040220.html>.

Paige, R. (2004, March 2). *Letter to chief state school officers regarding inclusion of students with disabilities in state accountability systems*. Washington, DC: U.S. Department of Education. Retrieved March 25, 2005, from <http://www.ed.gov/admins/lead/account/ccss030204.html>.

Paige, R. (2004, March 29). Secretary Paige issues new policy for calculating participation rates under No Child Left Behind. Washington, DC: U.S. Department of Education. Retrieved March 25, 2005, from <http://www.ed.gov/news/pressreleases/2004/03/03292004.html>.

Paige, R. (2004, March 31). *Key policy letters signed by the education secretary or deputy secretary* [related to flexibility for rural schools and science teachers]. Washington, DC: U.S. Department of Education. Retrieved March 25, 2005, from <http://www.ed.gov/print/policy/elsec/guid/secletter/040331.html>.

Paige, R. (2004, May 19). Calculating participation rates. Washington, DC: U. S. Department of Education. Retrieved March 25, 2005, from <http://www.ed.gov/print/kpolicy/elsec/guid/stateletters/prates.html>

- Public Education Network (2006). *The public speaks out on NCLB*. Washington, DC: Author. Retrieved September 20, 2006, from: http://www.publiceducation.org/2006_NCLB/main/2006_NCLE_National_Report.pdf.
- Ravitch, D. (2005, November 7). Every state left behind. *New York Times*. Retrieved November 10, 2005, from <http://www.nytimes.com/2005/11/07/opinion/07ravitch.html>.
- Rose, L. C., & Gallup, A. M. (2006). The 38th annual PDK/Gallup poll of the public's attitudes toward the public schools (online version). Bloomington, IN: Phi Delta Kappa International. Retrieved September 20, 2006, from: <http://www.pdkintl.org/kappan/k0609pol.htm#major>.
- Samuels, C. A. (2006, January 4). Flexibility detailed for testing students with disabilities. *Education Week*, p. 20.
- Samuels, C. A. (2006, July 26). Dept. mum on rules for special ed. testing. *Education Week*, pp. 27, 29.
- Samuels, C. A. (2006, September 13). Regulations on '2 percent' testing awaited. *Education Week*, pp. 31-32.
- Simon, R. J. (2004, February 5). *Letter to chief state school officers regarding April 1 for submittal of 2004 accountability workbook amendments*. Washington, DC: U.S. Department of Education. Retrieved April 13, 2005, from <http://www.ed.gov/admins/lead/account/amproc.doc>.
- Simon, R. (2004, May 19). *Letter to chief state school officers regarding elaboration on the flexibility in participation rate calculations*. Washington, DC: U. S. Department of Education. Retrieved May 1, 2005, from <http://www.ed.gov/print/policy/elsec/guid/stateletters/prates.html>.
- Simon, R. (2004, August 26). *Letter to chief state school officers regarding supplemental educational services policy*. Washington, DC: U. S. Department of Education. Retrieved September 9, 2004, from <http://ed.gov/print/elsec/guid/stateletters/choice/ses082604.html>.
- Simon, R. (2005, January 27). *Letter to chief state school officers regarding April 1 for submittal of 2005 accountability workbook amendments*. Washington, DC: U. S. Department of Education. Retrieved May 1, 2005, from <http://www.ed.gov/admins/lead/account/amproc05.doc>.
- Simon, R. (2006, June 13). *Deputy Secretary Simon testified before the House Committee on Education and Workforce*. Washington, DC: U. S. Department of Education. Retrieved September 29, 2005 from <http://www.ed.gov/print/news/speeches/2006/06132006.html>.
- Spellings, M. (2005, April 7). *Raising achievement: A new path for No Child Left Behind. Speech by the Secretary of Education presented at Mount Vernon, VA*. Retrieved May 2, 2005, from <http://www.ed.gov/print/news/speeches/2005/04072005.html>.
- Spellings, M. (2005, April 7). *Secretary Spellings announces more workable, "common sense" approach to implement No Child Left Behind. Press release by the Secretary of Education*. Retrieved April 14, 2005, from <http://www.ed.gov/print/news/pressreleases/2005/04/04072005.html>.
- Spellings, M. (2005, May 10). *Key policy letters signed by the education secretary or deputy secretary* [transmitting information to explain the process for requesting additional flexibility for making AYP decisions regarding certain students with disabilities]. Retrieved June 28, 2005, from <http://www.ed.gov/print/policy/elsec/guid/secletter/050510.html>.
- Spellings, M. (2005, August 25). *Letter to the Honorable Thomas M. Jackson, Jr., Virginia Board of Education President*. Washington, DC: U. S. Department of Education. Retrieved September 11, 2005, from <http://www.ed.gov/print/admins/lead/account/letters/acva5.html>.

- Spellings, M. (2005, September 29). *Key policy letters signed by the education secretary or deputy secretary* [transmitting information on the inclusion of students displaced by hurricanes Katrina and Rita in state accountability determinations under NCLB]. Washington, DC: Retrieved June 21, 2006, from <http://ed.gov/print/policy/elsec/secletter/050929.html>.
- Spellings, M. (2005, November 21). *Key policy letters signed by the education secretary or deputy secretary* [transmitting information on applications for growth models under NCLB]. Retrieved December 21, 2005, from <http://www.ed.gov/print/policy/elsec/guid/secletter/051121.html>.
- Spellings, M. (2005, May 17). *Growth models: Ensuring grade-level proficiency for all students by 2014*. Press release by the Secretary of Education. Retrieved June 21, 2005, from www.ed.gov/print/admins/lead/account/growthmodel/proficiency.html.
- Spellings, M. (2006, June 13). *Letter to the Honorable Howard "Buck" McKeon*. Washington, DC: Office of the Secretary of Education.
- Spellings, M. (2006, May 15). *Key policy letter signed by the education secretary or deputy secretary* [transmitting information on applications to reverse the application of school choice and supplemental educational services sanctions under NCLB]. Retrieved September 19, 2006, from <http://www.ed.gov/print/policy/elsec/guid/secletter/060515.html>.
- Sunderman, G. L. (2006, February). *The unraveling of No Child Left Behind: How negotiated changes transform the law*. Cambridge, MA: Harvard University, The Civil Rights Project.
- U. S. Department of Education. (2004, April 28). *Standards and assessments peer review guidance: Information and examples for meeting requirements of the No Child Left Behind Act of 2001*. Washington, DC: Author, Office of Elementary and Secondary Education.
- U. S. Department of Education. (2006, January 25). *Peer review guidance for NCLB growth model pilot applications*. Washington, DC: Author, Office of Elementary and Secondary Education.
- U. S. Department of Education. (2006, May 17). *Summary by the peer review team of April 2006 review of growth model proposals*. Washington, DC: Author, Office of Elementary and Secondary Education.
- Viadero, D. (2006, April 12). U. S. pilot of AYP 'growth' models advances. *Education Week*, pp. 30, 32.

Appendix A

Acronyms Used In This Paper

AMOs	Annual Measurable Objectives
AYP	Adequate Yearly Progress
CIs	Confidence Intervals
CCSSO	The Council of Chief State School Officers
ED	United States Department of Education
ELL	English Language Learner
EOC	End-of-Course Test
ESEA	The Elementary and Secondary Education Act of 1965
ESL	English as a Second Language
FAY	Full Academic Year
IASA	The Improving America's Schools Act of 1994
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
IGs	Intermediate Goals
LEAs	Local Educational Agencies (aka school districts)
LEP	Limited English Proficient
NCLB	The No Child Left Behind Act of 2001
OAs	Other Academic Indicators
SWDs	Students with Disabilities

Appendix B

State Educational Accountability Workbook Decisions by the U. S. Department of Education That Changed Between 2002 and 2006

Topic	Original Decision	Final Decision ²² and Year Changed	Comment
1. Dual accountability systems	Permitted only when a school could not achieve a high performance level if it were identified for improvement.	States can have dual systems that recognize schools regardless of their AYP outcomes (2003).	ED approved use of the term, "Provisional AYP," by a State as a category for schools ranking at the top of its accountability system but not making AYP under NCLB.
2. Out-of-level testing	Not permitted.	Permitted as an alternate assessment aligned to alternate achievement standards and subject to 1% cap for SWDs reported at the proficient or higher level (2004).	Modified in Regulations adopted on December 9, 2003 (<i>Federal Register</i>). See Paige (2004, March 2) policy letter on SWDs.
3. Alternate assessments for SWDs	Permitted but must be based on the State's academic content and student academic achievement standards.	Alternate assessments based on alternate achievement standards permitted, but not more than 1% of total student population in the assessed grades can be counted as proficient in relation to the alternate standards (2004). Alternate assessments based on modified achievement standards permitted, but not more than 2% of total school population tested (in addition to 1% above) can be counted as proficient in relation to the alternate standards (2005).	Modified in regulations adopted on December 9, 2003 (<i>Federal Register</i>). See Paige (2004, March 2) policy letter on SWDs. Announced by Secretary Spellings in April 2005 with guidelines issued May 10, 2005. NPRM issued December 2005.

²² A State that would like to amend its plan based on these decisions would be required to submit a request for amendment to ED; that is, States cannot simply amend their plans without approval even if other States have been approved to make the same amendment.

Topic	Original Decision	Final Decision ²² and Year Changed	Comment
4. Use of first test score for AYP when students have multiple opportunities to take an assessment	First test score counts for AYP determinations.	<p>States may “bank” results when students afforded multiple opportunities to test provided an “official” point has been designated at which they are expected to have attained the tested standards (2003).</p> <p>ED approved a State’s request to count scores of students who re-test after either missing the original testing or who originally scored just below the passing score (2005).</p> <p>Another State approved to recalculate AYP following summer school assessment “retakes” (2006).</p>	ED stated in comments with Regulations adopted on December 9, 2003 (<i>Federal Register</i>) that States have more flexibility toward this end than originally understood.
5. Re-calculate AYP when students re-test	Not permitted.	<p>State may count passing scores of students re-tested due to missing original end-of-course test administrations or who initially scored below passing but within a specified margin (2005).</p> <p>State may recalculate AYP when students successfully “re-test” following summer school remediation (2006).</p>	
6. Exemption from testing	Not permitted.	States permitted to exempt students from testing on a case-by-case basis due to significant medical emergencies (2004).	<p>See Paige (2004, March 29) policy letter on calculating participation rates.</p> <p>See also Illinois 2006 decision letter from ED for further guidance.</p>
7. Identification for improvement	School or district missing any AYP target two consecutive years is identified for improvement.	School or district must miss any target in the same subject or the same other academic indicator in two consecutive years to be identified for improvement (2004).	

Topic	Original Decision	Final Decision ²² and Year Changed	Comment
8. AYP decisions for school districts	Districts required to “roll up” data across schools for AYP determinations.	Districts may examine AYP outcomes by grade spans (elementary, middle, and high school) and then be identified for improvement only when the same content area target is missed in all spans for two consecutive years (2004). ED clarified in 2006 that missing OAI's must be factored in as well.	See Johnson (2006, March 7) letter to chief state school officers.
9. Participation Rate	Based on all students enrolled during a State's annual test window.	States may average participation rates over a three-year period (2004). Students with invalid test scores must be counted as non-participants in calculating this rate (2006).	See Paige (2004, March 29) policy letter on participation rates.
10. Full academic year extending beyond one calendar year for SWDs	Not permitted.	Full academic year for SWDs may extend beyond one year when IEP indicates that longer period is needed to collect achievement information (2004).	
11. Graduation rate covering more than four years	Students taking more than four years to graduate could not be counted as graduates in calculating graduation rates.	SWDs who take more than four years to graduate, consistent with their IEPs may be counted as graduates (2004). ELLs who take up to six years to graduate, consistent with a local plan, may be counted as graduates (2005).	
12. Calculating percent proficient	Use number of students enrolled full academic year for the denominator.	Use number of students enrolled for a full academic year <i>and tested</i> for the denominator (2004).	
13. Different minimum “n’s” for subgroups	Not permitted initially.	Permitted (2003). Models permitted with even larger minimums which increased proportionally as enrollments across tested grades increases—subject to caps (2005).	Not permitted for SWD student group if State elects 2% option for AYP decisions (2005).

Topic	Original Decision	Final Decision ²² and Year Changed	Comment
	In 2006, policy changed back to non-approval.	Not permitted in 2006.	December 2005 NPRM would retract previous approvals to use larger minimum “n’s” for subgroups.
14. Larger minimum “n’s” for school districts	Not permitted initially. In 2006, policy changed back to non-approval.	Models approved permitting the use of a minimum ‘n’ which increases proportionally as the size of the district increases—subject to caps (2003). Not permitted in 2006.	
15. Uniform averaging	Uniform averaging required.	States permitted to apply “non-uniform” averaging such that schools and districts may use the scores from only current school year or average across up to three years, whichever benefits the school or district more (2003).	
16. Use of statistical tests for participation and graduation rates	Not permitted for “count” elements. In 2006, policy changed to non-approval for requests to increase CIs (e.g., 95% to 99%).	Permitted (2004).	States have been allowed to apply confidence intervals (CIs) to AYP calculations in general. But when requests for CIs have been specifically around “count” items, they have been denied previously.
17. Rounding up AYP decisions	Unclear.	Some States permitted to round up when calculating AYP elements (2004).	
18. Use of growth models as accountability measures	Not permitted.	Pilot growth models (up to 10) permitted subject to peer review (2006).	Two States approved to implement models in 2006-07.

Topic	Original Decision	Final Decision²² and Year Changed	Comment
19. Use of statistical tests in safe harbor reviews	Not permitted.	Use of a 75% confidence interval allowed (2004).	
20. Safe harbor reviews for small schools in percent proficient determinations	Unclear.	A State may conduct a review of current year and prior year performance even when its minimum 'n' requirements are not met (2004).	
21. Averaging for up to three years for safe harbor determinations in percent proficient determinations	Not permitted.	Permitted (2005). Percent not proficient would have to decline by 10% over one year, 19% over two years, and 27% over three years.	
22. Safe harbor reviews applied to other academic indicator determinations	Not permitted.	Permitted (2005).	
23. Including scores for "exited" SWDs in subgroup AYP outcomes	Not permitted initially. In 2006, policy changed back to non-approval.	Permitted to the extent that monitoring or support services in transition to the regular classroom services are required in student's IEP (2003).	A December 2005 NPRM includes at §200.20(f) proposed language to codify this inclusion.
24. Use of scores for ELLs in AYP	Required.	Permitted for up to two years after student no longer meets the definition of LEP under section 9101(25) consistent with the Secretary's policy letter (2004).	See Paige (2004, February 20) policy letter on ELLs. States using Title IX definition of LEP could include such students for longer than two years.
25. Use of scores for ELLs in AYP	Required.	Scores may be excluded from percent proficient calculations during an ELL's first year of enrollment in U.S. schools; if the student takes the English Language Proficiency test that year (as required), the student may be counted as a participant in the assessments (2004).	See Paige (2004, February 20) policy letter on ELLs.

Topic	Original Decision	Final Decision²² and Year Changed	Comment
26. Reverse order of public school choice and provision of supplemental educational services when a school is identified for improvement.	Not permitted.	Permitted on a pilot basis for some LEAs (2005). Small expansion in 2006.	See Secretary's response letter to Virginia (2005, August 25).
27. Permit LEAs identified for improvement to be supplemental educational services providers	Not permitted.	Permitted on a pilot basis (2005). Limited expansion in 2006.	

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