

NCLB: Its Problems, Its Promise

The AFT has long championed the principles underlying the No Child Left Behind Act (NCLB), the reauthorized Elementary and Secondary Education Act: high standards for all children, with appropriate tests to measure whether the standards are being met; disaggregation of student achievement data; “highly qualified” teachers and well-trained paraprofessionals in every classroom; and, extra support for students and schools performing below proficient levels.

Title I, the cornerstone of NCLB, represents the federal government’s commitment to raising the achievement of students in high-poverty schools. NCLB was passed in 2001 with broad bipartisan support, largely based upon the administration’s promise of significant increases in funding. But President Bush has reneged on that promise, and experience has shown that the goals of NCLB cannot be met without changes in the law, proper implementation and the necessary funding.

Threats to NCLB’s Promise

While the AFT is committed to the core goals of NCLB, there are serious flaws in the law and its implementation that must be fixed. The AFT is committed to assuring that NCLB is amended and appropriately funded to accomplish them.

Problems include:

- The adequate yearly progress (AYP) formula does not give schools sufficient credit for improvements in student achievement. Its implementation does not allow schools to present valid and reliable evidence of student progress and

the mandated interventions for schools not making AYP are not based on scientific research and are sometimes punitive rather than constructive;

- The “highly qualified” teacher requirements, as currently implemented, are unworkable for some teachers and do not apply to all individuals who teach public school students;
- Paraprofessionals are not being provided with the range of options necessary to demonstrate that they are qualified nor the financial support necessary to meet the requirements;
- The public school choice provision is designed in a way that can undermine schools rather than improve student achievement; and
- Supplemental educational service providers (other than school districts) are permitted to discriminate by ignoring the non-discrimination provisions of the law.

This policy brief discusses these problems and suggests legislative and/or regulatory remedies.

Accountability, Adequate Yearly Progress, Assessments

Adequate Yearly Progress

With each additional analysis of how the AYP formula is working in states across the country, it is increasingly clear that expert predictions about the unintended and arbitrary consequences of AYP were accurate. AYP, despite the word “progress” in its title, does not give appropriate credit for progress (see AFT paper, “Eight Misconceptions about AYP”).

The issue is not that many schools and districts are failing to make AYP; ineffective schools should be identified. The problem is that many of these so-called failing schools and districts are being identified more for statistical than educational reasons, and more because their students were starting further behind than for the lack of progress their schools and districts are making with them. Indeed, as the Council of Chief State School Officers' State Collaborative on Assessment and Student Standards noted ("Making Valid and Reliable Decisions in Determining Adequate Yearly Progress," Dec. 2002), being faithful to the AYP formula means being forced to break substantial faith with the law's mandate that states' define AYP in a valid and reliable manner.

Recommendation: While recent accommodations in rules regarding assessment of limited English proficient (LEP) students and students with disabilities (SWDS) will relieve some of the egregious difficulties with implementation of the current law, the conceptual flaws in the AYP formula cannot be fixed without changes in the law. New formulations must be developed that allow states to use measurements that are valid and reliable and that permit schools and districts to demonstrate the progress they are making with their students.

Assessment of Students with Disabilities

Although the U.S. Department of Education has revised its Title I regulations pertaining to the assessment of SWDS, the regulations are still problematic for two reasons. First, the revised regulations require that, except for the 1 percent of students with the most severe cognitive disabilities, the scores of students taking an alternate assessment must be measured against grade-level standards. This policy means that students who are performing well below grade level,

but who do not fall into the 1 percent, will almost certainly be rated as not proficient. These are students who may be improving, but the regular assessment, even with accommodations, does not accurately measure their academic progress. Typically, the Individualized Education Program (IEP) team recommends that such students, often referred to as "gap students," take an out-of-level assessment because it is considered to be a better, more accurate, and more humane way to measure the progress of these children toward meeting grade-level standards. The way the revised Title I regulations are written, out-of-level tests, for AYP purposes, will only count for the significantly cognitively disabled, not the "gap" students. Districts and schools are left with no sound options for appropriate assessment of these students for AYP purposes.

Second, the revised Title I regulations allow states and districts to include in the calculation of AYP the proficient scores of students with severe cognitive disabilities who take alternate assessments measured against alternate standards, *only if they don't exceed 1 percent of all students in the grades tested*. Proficient scores that exceed the 1 percent cap may not be included in AYP calculations. Setting a cap on the scores that may be counted is extremely arbitrary. Preliminary evidence suggests that the cap may be particularly unfair for urban districts, which tend to educate more students with significant disabilities.

Recommendation: Amend NCLB so that the IEP team is responsible for determining how SWDS are assessed. This change would conform to assessment requirements under the Individuals with Disabilities Education Act (IDEA). IEP team members work directly with the student and therefore are best able to determine the manner in which the student should participate in state assessments. If the IEP team recommends

an out-of-level assessment, that assessment should count for AYP participation and proficiency purposes. States should be required, as they are under IDEA, to establish clear eligibility criteria for IEP teams to use in determining how students with disabilities participate in state assessments, including alternate and out-of-level assessments. Districts should be required to train IEP team members in how to apply the criteria.

Assessment of Limited English Proficient (LEP) Students

The law requires states to offer academic assessments to LEP students in their native language “to the extent practicable,” but many states have failed to do so. Furthermore, due to the way AYP has been calculated, most LEP students would never be proficient because these students are often removed from the LEP subgroup once they master English. While the U.S. Department of Education has recently offered new policies that offer some flexibility in this area—allowing states to exempt students who are new to this country from some testing during their first year of enrollment and allowing states to include students who have attained English proficiency in the LEP subgroup for up to two years—more needs to be done.

Recommendation: Require states to develop native language and linguistically modified tests and to provide guidelines for school districts on appropriate accommodations for LEP students so that their academic performance is accurately measured. In addition, permit states, for the calculation of AYP, to not count the scores of LEP students on content area tests who have less than three years of instruction in English and to include students who have attained English proficiency in the subgroup calculation for three years.

Teacher Quality

Options for Veteran Teachers To Demonstrate that They Are “Highly Qualified”

The law indicates that veteran teachers may demonstrate their qualifications by means other than a test, that is, by meeting a “high, objective uniform state standard of evaluation” (HOUSSE). The U.S. Department of Education’s most recent guidance, however, suggests that states are not required to offer this option. Some states have not yet developed the HOUSSE, which will make it more difficult for teachers to meet the requirement to be “highly qualified” by the deadline in the law.

Recommendation: Clarify that states are required to develop the HOUSSE in order to ensure that veteran teachers have an option other than a test for demonstrating their qualifications. Provide veteran teachers with an extension to the law’s deadline for becoming “highly qualified” in states that have delayed defining the HOUSSE. Teachers should have three years from the time the HOUSSE option is made available to meet the “highly qualified” requirement.

Definition of “Highly Qualified” Special Education, Bilingual, and Vocational Education Teachers

The requirements that special education teachers must meet to be considered “highly qualified” in subject areas are unworkable. Under current interpretations by the U.S. Department of Education, special education teachers who are fully certified in their field are also required to meet separate subject-matter requirements for each core academic subject they teach. This requirement is simply unrealistic, particularly in the case of those who teach multiple subjects in self-contained classrooms. The unreasonable

burden placed on special education teachers is likely to exacerbate the shortage of teachers in this field.

A teacher who is fully certified as a special education teacher by the state should be considered “highly qualified” under NCLB. Fully certified special education teachers have a solid base of understanding in the content areas of math, reading, English/language arts, science, social studies, and the arts. They command a core body of knowledge in the disciplines and draw on that knowledge to design and deliver instruction, facilitate student learning, and assess student progress. Such teachers also draw on their specialized knowledge of specific disabilities and the instructional issues such disabilities pose in order to set meaningful goals for their students and appropriately instruct them in the core subject areas.

The situation is similar for bilingual education teachers. Teachers of LEP students who are certified in bilingual education or similar areas (English as a Second Language or English for Speakers of Other Languages, for example) should be considered “highly qualified” under NCLB. In addition to meeting the requirements of the core curriculum in education, teachers that obtain bilingual certification and licensure have completed a specialized course of study in language acquisition, culture, and pedagogy specifically designed to address the various instructional needs of linguistically and culturally diverse students. The qualifications include demonstrable proficiency in linguistic skills and core subject content, as well as an ability to teach in cross-cultural settings.

Vocational education teachers who are fully certified should also be considered “highly qualified.” Fully certified vocational education teachers command a core body of knowledge about the world of work in general and the skills and processes that cut

across industries, industry-specific knowledge, and a base of general academic knowledge. Such teachers foster experiential, conceptual, and performance-based student learning of career and technical subject matter, and are able to integrate them with academic disciplines. Vocational education teachers also develop student career decision-making and employability skills by creating opportunities for students to gain understanding of workplace cultures and expectations.

Recommendation: Amend the law to permit special education, bilingual, and vocational education teachers who are fully certified by their state to be considered “highly qualified.”

Definition of “Highly Qualified” Middle School Teachers

In previous guidance the U.S. Department of Education said that middle school generalist exams could not be used to meet the subject-area requirements of the “highly qualified” definition. This policy is unfair to veteran middle school teachers who have already demonstrated their competence in subject areas by passing the generalist test that was offered when they received their license. More recent guidance has modified the U.S. Department of Education’s position somewhat, but does not adequately clarify the issue.

Recommendation: Amend NCLB to state that veteran middle school teachers who passed state-approved middle school generalist exams when they received their license shall be considered “highly qualified.”

Qualifications for Charter School Teachers

Under NCLB, teachers in charter schools are not required to meet all the requirements of the “highly qualified” definition.

Specifically, they are not required to be certified if the state's charter school law does not require certification of charter school teachers. Charter schools are public schools, and their teachers should be required to meet the same standards as other public school teachers. Students in charter schools deserve to be taught by fully certified teachers.

Recommendation: Require teachers in all schools that receive federal funds to meet all the requirements of the "highly qualified" teacher definition.

Qualifications for Teachers in Supplemental Services and Extended Learning Time Programs

NCLB and the Title I regulations do not require supplemental service providers to employ "highly qualified" teachers, and the regulations go so far as to prohibit states from requiring that they do so. The U. S. Department of Education also has said that third-party contractors and teachers in extended learning time programs are not required to adhere to the "highly qualified" provisions in the law. The requirement that public school districts ensure that every classroom has a "highly qualified" teacher is a core component of the law's goal to guarantee that every child receive a high-quality education. The U. S. Department of Education sends a contradictory message by prohibiting states from requiring providers of supplemental services to hire only "highly qualified" teachers, and indicating third-party contractors and extended learning time programs need not employ "highly qualified" teachers. Excusing these providers from having to hire "highly qualified" teachers will undermine the quality of the services provided to students participating in these programs.

Recommendation: Require supplemental service providers, third-party contractors,

and extended learning time programs to employ "highly qualified" teachers.

Paraprofessionals

Paraprofessional Qualifications

The law provides three options for paraprofessionals to demonstrate that they meet the requirements of NCLB with respect to their qualifications: (1) completing two years of study at an institution of higher education; (2) obtaining an associate's degree; or (3) meeting a rigorous standard of quality and demonstrating, through a formal state or local academic assessment, knowledge of, and the ability to assist in the instruction of reading, writing, and mathematics (or reading, writing, and mathematics readiness). Unfortunately, many states and local school districts have not yet provided paraprofessionals access to the third option required under the law. This delay will make it difficult for paraprofessionals to demonstrate their qualifications by the deadline specified in the law and could force dedicated, experienced paraprofessionals out of classrooms where they are needed most.

Recommendation: Clarify that states and districts must provide paraprofessionals with all three options outlined in the law for demonstrating their qualifications, including the option for an assessment. Provide paraprofessionals with an extension to the law's deadline for meeting the new standards in states and districts that have delayed developing or approving the required assessment. Paraprofessionals should have three years from the time the assessment option is made available to them to meet the requirements.

Funding to Assist Paraprofessionals to Meet the New Requirements

NCLB allows LEAs to use Title I funds to assist paraprofessionals to meet the new

NCLB requirements. However, many states are not providing the needed financial assistance to help paraprofessionals who cannot afford to meet the new requirements without financial support.

Recommendation: Require states and districts to fund the costs of any education, training/professional development, or assessments required of paraprofessionals to meet the NCLB requirements.

School Improvement, Public School Choice, and Supplemental Services

Funding for Public School Choice and Supplemental Services

Under the law, districts are required to set aside an amount equal to as much as 20 percent of their Title I funds to pay for choice-related transportation and supplemental services. Requiring schools to use scarce Title I funds to support public school choice and supplemental services funnels already limited classroom resources toward often unproven interventions. Districts should not be required to divert scarce Title I funds from classrooms to finance these programs. States, districts, and schools must be able to use all available Title I funds for research-based interventions—such as early intervention, intensive professional development, and/or reduced class size—that have proven effective in improving student achievement.

Recommendation: Permit districts to propose to the state that they be allowed to use a different, research-based intervention for schools in school improvement instead of choice or supplemental services. Provide a separate authorization of funding for choice and supplemental services and other research-based interventions.

Public School Choice—Capacity

The regulations do not adequately address capacity problems in the choice program while requiring districts to offer more than one choice of school to transferring students. School capacity must be a factor if public school choice is to be successful for the students it was intended to benefit.

Recommendation: Amend the law to make clear that overcrowded schools with class sizes that surpass state averages should not be required to accept additional students under the public school choice regulations. Codify the U. S. Department of Education's guidance that districts may provide public school choice by creating schools -within-schools. Indicate that districts may offer transferring students the choice of one or more schools.

Public School Choice—Desegregation Plans

The U. S. Department of Education's regulations indicate that if a desegregation plan interferes with a district's ability to offer school choice, the district must go to court to get the desegregation plan changed. This policy raises serious constitutional issues and places an unrealistic and unfair burden on districts that are grappling with other responsibilities under NCLB.

Recommendation: Amend NCLB to say that nothing in the section on school choice shall be construed to override the requirements of a desegregation plan.

Supplemental Services—Civil Rights Protections

The U. S. Department of Education is permitting supplemental service providers to discriminate by ignoring the non-discrimination language in section 9534 of NCLB and by declaring that supplemental service providers are not recipients of federal funds for purposes of the application of civil rights laws. This interpretation is

simply wrong. In addition, the U. S. Department of Education makes it clear that providers are not required to serve students with disabilities or English-language learners.

Recommendation: Clarify that supplemental service providers are recipients of federal funds subject to federal civil rights laws and that they may not discriminate with respect to employment or provision of services on the basis of race, color, religion, sex (except as otherwise permitted under Title IX), national origin or disability. Providers should be explicitly required to accept all students, regardless of disability or language limitations.

Restructuring

The sanctions to be imposed on schools that have reached the restructuring phase include several options that experience and research tell us are unlikely to improve their performance, such as converting the school to a charter school, turning the school over to a private company, or to the state. Other research-based alternatives are more likely to prove effective in turning these schools around. For example:

Pilot Schools. During the 1993 contract negotiations, the Boston Public Schools and the Boston Teachers Union created pilot schools as in-district charter schools. These schools are semi-autonomous with full control of their budget. They make all educational decisions at the school site, and staff are employees of the district, covered by the contract for the purposes of salary and benefits. Schools determine the working conditions, including length of school day and year. Still within the district, these schools have the advantage of being supported by both the district and union.

Community Schools. Community schools offer non-academic resources to students while supporting the academic mission of the schools. In such schools, community-

based organizations provide mental health, social and recreational services to students and the community at-large. These organizations become part of the school improvement or site-based management team, which provides continuity of programs and generates support from the community. Beacon Schools in New York City, Communities in Schools and the Children's Aid Society's programs are examples of community schools.

Schools-Within-Schools. Schools-within-schools are schools that operate independently from the rest of the school, including separate administration and programs. They can establish small learning communities with the focus or mission that best meets the needs of the students, based on the school's data. Many districts, such as Cincinnati, Minneapolis and New York City, operate small learning communities or schools-within-schools as part of the district offerings.

Small Schools. School districts across the country are breaking up large, comprehensive high schools into smaller learning communities. With help from a number of large foundations—Annenberg, Carnegie and Gates among them—small schools provide structural and curricular changes designed to improve student achievement. Generally, small schools are designed around a particular focus such as business, law, arts, science and technology. Many creative ideas exist that can serve as models or starting points for redesigning large high schools. For example, the Knowledge Works Foundation, the Gates Foundation, the Toledo Federation of Teachers and the Toledo Public Schools are collaborating together to create small learning communities within large high schools.

Recommendation: Include options to reopen a school as a magnet or theme school

or to restructure a larger school into a series of smaller schools. These are significant restructurings that the evidence

demonstrates will be more likely to result in improved performance than the options currently in the law.

AFT's Commitment to High-Quality Education

Increasing student achievement, especially for disadvantaged children, is a central educational goal of the American Federation of Teachers. AFT will continue to address the problems with NCLB and to work tirelessly to achieve the necessary change in the law. AFT will lobby Congress and work with parents and other groups to secure the funding promised for our students. We will lobby the U.S. Department of Education to amend regulations and issue new guidance to clarify areas that are not aligned with the letter of the law and lobby Congress to make the necessary changes. We will call for a Congressional hearing to address the many problems associated with AYP and other aspects of the law and its implementation.

AFT will also assist state and local affiliates by creating tools to help them: respond to the law's shortcomings; communicate with elected officials and others about the law's strengths and weaknesses; navigate its requirements to mitigate its punitive effects; and, negotiate effective interventions and corrective actions.