

Statewide Educational Accountability Systems Under the NCLB ACT-

A Report on 2009 and 2010 Amendments to State Plans

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Statewide Educational Accountability Systems Under the NCLB Act—A Report on 2009 and 2010 Amendments to State Plans

**A Summary of State Requests in 2008–09 and 2009–10 for Amendments to
Their Educational Accountability Plans Under the
No Child Left Behind Act of 2001 (NCLB)**

A report commissioned by the CCSSO Accountability Systems and Reporting
State Collaborative on Assessment and Student Standards

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Executive Summary

The conclusion of the 2010–11 school year will mark nine plus years since enactment of the No Child Left Behind Act of 2001 (NCLB). Throughout this period, numerous states—sometimes almost every one—have annually sought to amend the educational accountability systems they first developed as “workbooks”¹ in 2002–03, consistent with the law’s requirements and goals to improve teaching and student achievement. In most cases, the proposed amendments were initiated by the individual states. However, some amendments came at the direction of the U.S. Department of Education (ED) as a result of the promulgation of regulations or a finding of noncompliance or other technicality usually resulting from a Title I monitoring visit.

In this paper, covering the 2008–09 and 2009–10 school years, the number of states continuing to submit amendment requests and the number of substantive amendments proposed remains surprising so long after NCLB’s enactment.² The highest number of states (49 and the District of Columbia) and greatest number of proposed amendments (over 275) occurred in 2008. In 2009, at least 36 states and the District of Columbia submitted approximately 90 substantive requests, and at least 31 states, the District of Columbia, and Puerto Rico submitted approximately 95 substantive, proposed amendments in 2010.³

For 2009 and 2010, the most frequent amendment requests related to the following:

- Modifying or clarifying the manner in which adequate yearly progress (AYP)⁴ is calculated generally (29).
- Continuing or initiating flexibility to use “modified” student academic achievement standards in AYP decisions for certain students with disabilities (SWDs; 28).
- Clarifying language regarding various elements of the state’s educational accountability workbook (21).
- Modifying or clarifying the manner in which graduation rates are calculated (17).
- Modifying starting points, annual measurable objectives (AMOs), and intermediate goals (IGs; 14).
- Modifying or clarifying the manner in which the achievement of limited English proficient (LEP) students is included in AYP determinations or in English language acquisition measures (11).
- Modifying or clarifying the manner in which the achievement of SWDs is included in AYP determinations (10).
- Modifying or clarifying the timeline for delivery of AYP information to schools and districts (8).

¹ States’ workbooks are posted at <http://www2.ed.gov/admins/lead/account/stateplans03/index.html>.

² States are permitted to submit proposed accountability workbook amendments at any time; there are no provisions in the statutes restricting either the nature or the scope of such proposals.

³ In late 2007 former Elementary and Secondary Education Assistant Secretary Kerri Briggs sent chief state school officers a letter in which she stated, “Given that Congress is actively working through the reauthorization process, we would not expect to receive major amendments to States’ accountability plans at this time” (Briggs, 2007). A similar message was conveyed to states in a November 26, 2008, letter from Student Achievement and School Accountability Director Zollie Stevenson, Jr. However, Stevenson’s letter cited a pending “full peer review of each state’s accountability workbook in summer and fall of 2009 as required by . . . [new] Title I regulations” as the basis on which the department would not consider “significant changes to accountability workbooks for the 2008-09 school year.” The peer review of states’ accountability workbooks was subsequently set aside by a change in administrations. On January 13, 2010, Stevenson sent a similar letter, this time cautioning that “significant changes [other than those associated with graduation rates]” would not be considered because the department would be “conducting a peer review of each state’s graduation rate, goal, and targets in the winter of 2010. . . .” Nevertheless, in spite of these admonishments, states continued to submit amendment requests and ED continued to, occasionally, modify earlier decisions or reach contradictory decisions regarding those requests.

⁴ Please see Appendix A for a list of the acronyms used in this paper.

- Modifying or clarifying the manner in which participation rates are determined (8).

Below a summary of the accountability workbook amendments states sought in 2009 and 2010 is presented. A few states continued to seek amendments that ED has consistently denied in prior years, such as AYP decisions based on missing the same target two years in a row. Some requests simply involved adoption of amendments previously approved for other states. Not included in this summary, or elsewhere, are the many minor requests that states submitted to update their workbooks. Also not included is a review and summary of amendments related to new graduation rate calculation requirements that states submitted for a separate peer review in early 2010.

The appendices include the following:

- List of acronyms used in this paper (Appendix A).
- Timeline of significant events related to the implementation of NCLB since its enactment in January 2002 (Appendix B).
- Selected information related to waiver provisions under sec. 9401 of the law (Appendix C).
- Table of substantive changes in ED policy with respect to decisions regarding states' amendment requests since 2002 (Appendix D).

Accountability workbook amendments sought by states for 2008–09 and 2009–10 AYP determinations were distributed across the following topical areas:

Standards and Assessments

Changes to Assessment Systems

- Revise schedule of or implement new statewide assessments: **Illinois** (2010), **Indiana** (2009), **Nebraska** (2010), **Puerto Rico** (2010), and **Washington** (2010).
- Implement an alternate assessment based on modified academic achievement standards: **Michigan** (2010), **North Dakota** (2010), and **Pennsylvania** (2010).
- Change the grades at which science assessments are administered: **Hawaii** (2009).

Recalculate AYP Using “Best Scores” or Results from Subsequent Test Administrations

- Permit students retaking state assessments to have their scores (if better) included in their school's AYP determinations: **Georgia** (2009), **Idaho** (2009), and **North Carolina** (2009, 2010).
- Discontinue permitting students to retake assessments when they score less than proficient: **Delaware** (2009).

AYP Model

- Clarify language regarding various elements in the state's educational accountability workbook: **Arizona** (2009), **District of Columbia** (2010), **Florida** (2009), **Hawaii** (2009, 2010), **Idaho** (2010), **Indiana** (2009), **Maine** (2009), **Michigan** (2010), **Nebraska** (late 2008, 2010), **Nevada** (2009), **North Carolina** (2010), **Oregon** (2010), **Puerto Rico** (2010), **South Carolina** (2009, 2010), **South Dakota** (2010), **Texas** (2010), **Utah** (2010), and **Washington** (2010).

AYP Application

- Delay the application of requirements to advance to the next level of improvement, corrective action, or restructuring if a school or district fails to make AYP due to severe weather: **Arkansas** (2009) and **Texas** (2009, 2010).
- Revise the manner in which reading and writing scores are combined for AYP decisions: **Delaware** (2009).

- Permit middle school students taking high school level courses to have their end-of-course test results applied to AYP determinations in lieu of the middle school level end-of-grade assessments: **North Carolina** (2009).
- Extend the timeline for all students at or above proficiency: **West Virginia** (2009).
- Modify the manner in which new schools and reorganized schools or districts are defined and AYP status determined: **Arkansas** (2010), **District of Columbia** (2009), **Idaho** (2010), **New Mexico** (2010), and **Puerto Rico** (2010).
- Modify AYP determinations for schools not covered by state assessments and for small schools and districts: **Arkansas** (2010), **Georgia** (2010), **Nebraska** (2010), **New Mexico** (2010), and **Puerto Rico** (2010).
- Exclude certain high schools from AYP determinations: **South Carolina** (2010).
- Modify how school districts or local educational agencies (LEAs) are identified for improvement or exited from same: **Arizona** (2009), **Georgia** (2010), **New Mexico** (2010), and **Utah** (2009).
- Modify or clarify the definition of full academic year (FAY): **District of Columbia** (2009), **Hawaii** (2009), **Idaho** (2010), **Nebraska** (2010), and **New Hampshire** (2010).
- Base school and district identification for improvement on missing AYP targets in the same content area by the same student group for two consecutive school years: **Utah** (2009).
- Modify the attribution of performance achievement data of students placed out of school or district or in alternative schools or juvenile institutions: **Michigan** (2010), **Tennessee** (2009, 2010), and **Texas** (2009).

AYP Indicators

- Modify or clarify the manner in which participation rates are calculated: **District of Columbia** (2010), **Florida** (2009), **Idaho** (2009), **Maryland** (2010), **Michigan** (2010), **Nebraska** (late 2008), and **New Hampshire** (2009, 2010).
- Modify graduation rate calculations: **Alabama** (2010), **Arizona** (2010), **Colorado** (2009), **Delaware** (2010), **District of Columbia** (2009), **Hawaii** (2010), **Iowa** (2009), **Massachusetts** (2009), **Michigan** (2009), **New Jersey** (2010), **North Carolina** (2010), **Oregon** (2009), **Pennsylvania** (2010), **Rhode Island** (2009, 2010), **Tennessee** (2009), and **Virginia** (2010).
- Modify the other academic indicator (OAI) targets or the manner in which they are calculated: **Alabama** (2010), **Maryland** (2010), and **Oregon** (2010).

Annual Measurable Objectives (AMOs) and Intermediate Goals (IGs)

- Modify starting points, AMOs, and IGs: **Arizona** (2010), **Delaware** (2009), **Georgia** (2010), **Idaho** (2010), **Michigan** (2010), **Nebraska** (2010), **New Jersey** (late 2008, 2009), **North Carolina** (late 2008), **South Carolina** (2009), **South Dakota** (2009), **Utah** (2009), **Virginia** (2010), and **West Virginia** (2009).
- One-year waiver of AYP determinations on the basis of AMOs, IGs, and participation rates: **Wyoming** (2010).

Strategies to Enhance Reliability

- Implement a growth model: **Texas** (2009, 2010).
- Use a composite index score for AYP determinations: **Idaho** (2009), **Pennsylvania** (2009, 2010), **South Carolina** (2009), and **West Virginia** (2009).
- Modify the application of the standard error of measurement in AYP determinations: **Hawaii** (2010).
- Modify minimum n's: **New Mexico** (2010) and **South Dakota** (2010).
- Use uniform averaging in AYP determinations: **Puerto Rico** (2010) and **Texas** (2010).

Safe Harbor

- Modify the manner in which safe harbor is calculated: **Colorado** (2009), **Kansas** (2010), **New Hampshire** (2009), **New Jersey** (late 2008, 2009), and **New Mexico** (2010).

Inclusion of All Students

Inclusion of Students with Disabilities (SWDs) and AYP

- One-year extension of the flexibility to use “modified” achievement standards for certain SWDs:
 - Option One: **Alabama** (2009), **Colorado** (2009), **Connecticut** (2009), **Florida** (2009), **Georgia** (2009, 2010), **Illinois** (2009, 2010), **Indiana** (2009), **Iowa** (2009), **Kansas** (2009), **Michigan** (2009), **Minnesota** (2009, 2010), **Montana** (2009), **New York** (2009, 2010), **Ohio** (2009), **Pennsylvania** (2009), **South Carolina** (2009, 2010), **Tennessee** (2009, 2010), **Virginia** (2009, 2010), and **Washington** (2009).
 - Option Three: **Maryland** (2009) and **Massachusetts** (2009).
- Exclude former SWDs in the participation rate calculations for that student group: **Hawaii** (2009).
- Include exited SWDs in that student group when making AYP determinations: **District of Columbia** (2010), **Georgia** (2009), **New York** (2010), and **North Carolina** (2009).
- Modify the application of FAY for the SWDs student group: **Georgia** (2009, 2010).
- Modify or clarify the manner in which the achievement of SWDs is included in AYP determinations: **District of Columbia** (2009), **Massachusetts** (2010), and **South Dakota** (2009).
- Count special education diplomas as regular diplomas for AYP purposes: **Georgia** (2009, 2010).

Inclusion of English Language Learners (ELLs) in Assessments and AYP

- Exclude former LEP students in the participation rate calculations for that student group: **Hawaii** (2009).
- Drop Spanish-language test in grade 3: **Oregon** (2009).
- Modify or clarify the manner in which the achievement of LEP students is included in AYP determinations or in English language proficiency measures: **Colorado** (2009), **Idaho** (2010), **Nebraska** (late 2008), **South Dakota** (2009), and **Texas** (2010).
- Modify the criteria for LEP students to exit services: **Florida** (2009), **Nevada** (2010), **South Carolina** (2009), and **South Dakota** (2009).
- Modify proficiency level descriptors due to changing language proficiency tests: **North Carolina** (2010).

AYP Consequences and Reporting

Public School Choice and Supplemental Educational Services

- Apply consequences to the specific student groups not making AYP or allow for differentiated consequences: **Utah** (2009).

Rewards and Sanctions

- Clarify timelines for imposing sanctions or otherwise modify the application of rewards and sanctions: **Idaho** (2009), **New York** (2010), and **South Dakota** (2009).
- Clarify rewards and sanctions in general: **Arkansas** (2010) and **Nebraska** (2010).
- Designating formerly non-Title I schools for improvement when they begin Title I participation: **Delaware** (2010).

Reporting

- Delay, modify, or clarify the timeline for the delivery of AYP information to schools and districts, including related parental notification requirements: **Arizona** (2009, 2010), **Arkansas** (2010), **Georgia** (2010), **Nebraska** (2010), **New Mexico** (2010), **South Carolina** (2009), and **Washington** (2010).
- Modify the annual state report card: **Arkansas** (2010), **District of Columbia** (2010), **Nebraska** (2010), and **North Dakota** (2010).
- Include National Assessment of Educational Progress (NAEP) data on annual state and district report cards: **South Dakota** (2009).

Appeals to Identification for Improvement Determinations

- Permit a district or school to appeal its AYP determination based on the scores of LEP students who have been in the U.S. for less than three years: **Colorado** (2009).

Chapter 1: 2008–09 and 2009–10 Amendment Requests and ED’s Decisions

In this chapter, the educational accountability plan amendments states have requested (or, in a few cases, were directed to make by the U.S. Department of Education [ED]) since the beginning of the 2008–09 and 2009–10⁵ school years are described, as are ED’s responses (approve or deny) to these requests. In spite of cautions (see footnote 2) that have been made in recent years by ED that states limit their amendments, the number of requests continues to be surprisingly high coming eight plus years after NCLB’s enactment in January 2002 and under the shadow of the law’s long overdue reauthorization.⁶ Fortunately, ED’s decisions for most states requesting amendments over the past two years are known as this paper is completed. It must be noted, however, that although ED has made public its decisions on nearly all amendment requests, response letters have not always reflected positions communicated by ED staffers to state officials during the negotiations preceding issuance of the letter.

As is consistently noted in this series of papers, the information reported should be interpreted in light of two important considerations. First, each paper has relied on state requests for accountability amendments shared with CCSSO in support of the papers. States occasionally seek workbook amendments without these requests being widely known or sometimes submit additional requests (via email or verbal communications) that are not shared with CCSSO or posted by ED. Thus it is possible that some requests have been made that are not captured here. Further, the communications, discussions, and negotiations that take place between ED and states over proposed amendments are, in large measure, unknown. States sometimes also separately request waivers that affect their accountability systems, and ED does not ordinarily post decision letters specific to waivers on the same website used to post educational accountability workbook decisions.⁷

Second, neither CCSSO nor the authors who have contributed to this series necessarily endorse any of the educational accountability strategies embedded in the described amendments. The purpose of these papers continues to be to chronicle accountability system plan amendment proposals and subsequent decisions, not to judge any state’s intent in making a given proposal, or whether the 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.

Source documents for material quoted directly from a state’s submittal of proposed accountability workbook amendments or from one of ED’s decision letters are not included in the list of references at the end of this paper. The former are available on request to individual states and the latter are posted at <http://www2.ed.gov/admins/lead/account/letters/index.html#id>.

In previous papers, states’ proposed educational accountability system amendments were organized into four major categories:

- Standards and Assessments
- Adequate Yearly Progress (AYP) Model

⁵ Included as year 2009 amendments are those from three states—Nebraska, New Jersey, and North Carolina—for which ED issued decision letters after the 2008 paper in this series was published.

⁶ In a recent *Education Week* article, Alyson Klein describes efforts of education interest groups to push for regulatory relief from NCLB provisions seen as “most onerous” given the slim “prospects for an overhaul of the law” anytime soon.

⁷ The ED Secretary is required under sec. 9401(e)(4) to annually report to Congress on NCLB waivers issued during the year. (See <http://www2.ed.gov/nclb/freedom/local/flexibility/waiverletters/index.html>, although it is difficult to discern information regarding waivers requested and denied in these reports. More information on waivers is provided in Appendix C.)

- Inclusion of All Students in Accountability
- AYP Consequences and Reporting

In this paper, states' proposed educational accountability amendments are described following the template of Critical Elements prescribed by ED under ten principles. These principles are intended to reflect comprehensive educational accountability systems as set forth under NCLB. The template is commonly referred to as "the accountability workbook." There were no amendments proposed by states under principles 6 and 8; thus, those are not included as sections within the paper.

- PRINCIPLE 1. A single statewide Accountability System is applied to all public schools and LEAs (local educational agencies—commonly referred to as "school districts").
- PRINCIPLE 2. All students are included in the State Accountability System.
- PRINCIPLE 3. State definition of AYP is based on expectations for growth in student achievement that is continuous and substantial, such that all students are proficient in reading or language arts and mathematics no later than 2013–2014.
- PRINCIPLE 4. State makes annual decisions about the achievement of all public schools and LEAs.
- PRINCIPLE 5. All public schools and LEAs are held accountable for the achievement of individual student groups.
- PRINCIPLE 6. State definition of AYP is based primarily on the state's academic assessments.
- PRINCIPLE 7. State definition of AYP includes graduation rates for public high schools and an additional indicator selected by the state for public middle and public elementary schools (such as attendance rates).
- PRINCIPLE 8. AYP is based on reading or language arts and mathematics achievement objectives.
- PRINCIPLE 9: State Accountability System is statistically valid and reliable.
- PRINCIPLE 10: In order for a public school or LEA to make AYP, the state ensures that it assessed at least 95 percent of the students enrolled in each student group.

PRINCIPLE 1. A Single Statewide Accountability System Is Applied to All Public Schools and LEAs.

Element 1.1: Including all public schools and districts in the State Accountability System.

On June 22, 2009, ED approved three related amendments for the **District of Columbia**:

1. A consolidated school is defined as one that receives students from a sending school that has closed or merged. The approval included rules for determining AYP when the consolidation results in a change of at least 40 percent of the receiving school's population.
2. A school district may petition for a consolidated school to be designated as a "new" school if at least 50 percent of the student population or grades span change.
3. Eligible public school students placed in non-public schools for special education and related services must take the statewide assessments at a site approved by the originating school district's assessment coordinator and the students' scores will be included in that district's AYP determinations.

The **District of Columbia** also received approval (July 21, 2009) to permit a district to petition to assign a consolidated school the sending school's status regarding its identification for improvement rather than the receiving school's status "where a clear educational purpose exists" should the sending school be further advanced in the improvement timeline than the receiving school. Beginning in 2010, **Georgia** will attribute to a school enrolling only 9th and 10th graders the AYP determination "of the grades 11 and 12 school that at least 50 percent of the students in grades 9 and 10 will attend" (approved June 9, 2010). Similarly, **New Mexico's** proposal to

determine AYP status for schools enrolling only 9th and 10th grades by applying the scores of 11th graders who previously attended the school was approved (August 4, 2010).

Michigan received approval (July 2, 2010) for a comprehensive revision of the manner in which students' scores on the state assessment will be attributed:

Michigan will attribute student scores to the LEA and school of residence starting in the 2010-2011 school year based on assessments administered during the 2010-2011 school year. This policy will be uniform across the state and will apply to a Shared Education Entity with a signed agreement with participating school districts. This will not apply to a center that educates only from within its own district. All student scores from regional centers will be treated in the same way. This change will apply to regional centers including centers that provide special education programs, alternative education programs, and programs for gifted students. This policy will not apply to students who attend an LEA other than the LEA of residence under Michigan's schools-of-choice policies.

Beginning in 2010, **New Mexico** will define state charter schools as a "conversion school" or "start-up school" independent of any LEA that may have been authorized by the state as a charter school (approved August 4, 2010). On January 6, 2010, ED approved **Puerto Rico's** clarifications related to the attribution of AYP status "where there has been a significant change" in a school's student body, faculty, leadership, or location as a result of closure.

In a proposal not often seen, **South Carolina** sought to exclude two "Governor's Schools" from NCLB's adequate yearly progress requirements. The schools in question were the Governor's School for Science and Mathematics and the Governor's School for the Arts and Humanities. The state argued that both were

residential facilities that recruit students with consistent academic success for enrollment near the end of the high school program. For accountability purposes . . . the High School Assessment Program . . . administered in the tenth grade, is used to determine AYP for high schools. This assessment does not effectively determine progress for the South Carolina Governor's Schools since these schools serve a minimal number of students that are tested while being a student of a Governor's school. For this reason, the South Carolina Department of Education . . . requests the exclusion of the . . . [Governor's Schools] from the AYP requirements.

ED denied the proposed amendment on August 11, 2009, stating, "Although identified as 'special schools' by the state, both of the schools proposed for exclusion from AYP determinations are public and operate within South Carolina's jurisdiction. Therefore, South Carolina must develop a method of determining AYP for these schools." According to a state agency representative, South Carolina did not consider other assessment options such as ACT, SAT, or those approved earlier for **Maryland** and **Virginia** to use Advanced Placement and International Baccalaureate exams in place of state assessments in reading or language arts, mathematics, and science.

Element 1.2: Holding all public schools and districts to the same criteria when making an AYP determination.

States are occasionally confronted with the dilemma of how to apply accountability decisions when new schools are created as a result of restructuring or consolidation. This is a consideration that continues to increase as more schools and districts experience the progressive application of more stringent sanctions under NCLB.

On October 21, 2010, ED approved a request from **Arkansas** concerning how the state will assign an improvement status to new schools resulting from mergers. In these cases, the scores of students from schools that are closed will be combined to make that determination. The decision letter did not provide information regarding how the scores would be combined or how improvement designations will be finalized when the closed schools are at

different stages of improvement. **Idaho** submitted an amendment on September 15, 2010, to define a new school “for purposes of accountability” as “a wholly new entity receiving AYP determinations for the first time, or a school with a significant population change of 35% or more as a result of schools being combined or geographic boundaries changing, or as a result of successful school restructuring sanctioned by the Office of the State Board of Education.” The state had not received a decision letter from ED regarding this proposed amendment at the time this paper was completed.

Nebraska implemented new statewide reading assessments in 2010 and began using the results for AYP calculations (approved July 19, 2010). **Puerto Rico** has revised its academic content standards and implemented new, aligned assessments (approved January 6, 2010). ED’s approval included a three-year phase-in of uniform averaging procedures to make AYP determinations. On July 6, 2009, ED approved, for one year only, a request from **Texas** to delay the application of corrective actions for schools (referred to as “campuses” in Texas) or districts that were closed for ten or more days due to the impact of three hurricanes and one tropical storm. ED’s decision letter set forth seven options for various improvement activities for the impacted schools and districts. The state later (February 12, 2010) confirmed that it was removing these provisions from its accountability workbook.

Element 1.4: Providing accountability and AYP decisions and information in a timely manner.

On June 24, 2009, ED approved **Arizona**’s request for a one-year waiver regarding NCLB’s parent notification requirements (at least 14 days before the beginning of the school year) regarding available public school choice options for schools identified for improvement, corrective action, or restructuring. For 2008–09 the state had provided school districts with preliminary AYP determinations in mid-June with final determinations on July 29. In granting the request, ED required Arizona to do one of the following:

1. request a waiver on behalf of its school districts of the 14-day requirement and prioritize school appeals so that all districts, particularly those with schools that begin in July or early August, are able to notify parents of their available public school choice options prior to the start of the school year;
2. prioritize school appeals based on start dates so that all districts have AYP determinations in time to notify parents of their available public school choice options at least 14 days before the start of the school year; and/or
3. require schools to act on preliminary determinations.

ED also approved a similar one-year waiver request by **Arizona** the following year (June 14, 2010) because revised mathematics assessments were administered in 2009–10. This delayed the release of accountability determinations and the ability of school districts to timely notify parents of eligible students regarding public school choices. The approval was restricted to “parents of children attending Title I schools that could be newly identified for improvement . . . and parents of children attending Title I schools that could exit improvement . . . but do not do so.”

On the other hand, while ED approved **Arizona**’s 2009 waiver, it also denied (June 24, 2009) the state’s request to identify, for NCLB purposes only, an official start date (the second Monday in August for all schools). ED noted,

Actual start dates differ for schools across the state. For example, in 2009-10, start dates for the 15 largest schools districts are as follows: one district—July 28, 2009; three districts—August 4, 2009; one district—August 6, 2009; nine districts—August 11, 2009; and one district—August 18, 2009. The “official” start date Arizona proposed does not correspond with the start dates for any of these 15 districts for the 2009-10 school

year and has no legal significance. Further, start dates for schools change yearly, with the trend toward schools beginning earlier in the year.

The department further stated that “identifying a single start date is contrary to the letter and spirit of the statute and regulations with respect to states providing assessment results to LEAs prior to the start of the school year.” Unfortunately, this is a dilemma—and not a new one—faced by many states; many simply do not have statutory authority to set uniform starting dates for their public schools. Exactly what is meant by the “spirit of the statute and regulations” is unclear, and ED has yet to provide guidance that might help states more proactively address this problem accordingly. And this may become even more problematic in the future if more schools move to earlier start dates, moving closer and closer to testing windows in those states administering their assessments during the spring. Whether ED would then attempt to require states to move their testing windows in order to satisfy parent notification requirements remains to be seen.⁸

Like Arizona, **Georgia** also sought approval to set a specific date for the provision of AYP determinations to its school districts. The proposed date, August 1, would have affected 19 of the state’s 184 school districts. ED denied the request (June 9, 2010) citing identical reasons.

Arkansas received approval (June 12, 2009) to “invoke the ‘delay provision’ in section 1116(b)(7)(D) of the law for five school districts that closed their schools for an extended period of time during the 2008-09 school year due to severe weather conditions.” In these cases, due to the severe weather conditions, the five districts were allowed to delay, for a period not to exceed one year, implementation of the requirements to advance to the next level of improvement, corrective action, or restructuring if a school failed to make AYP. In its approval, ED described a set of scenarios that could apply to affected and non-affected schools in these districts with respect to making AYP determinations and the related statutory requirements. In 2010, **Arkansas** received approval (October 21) for plans to update “its timeline for delivery of AYP information to schools and LEAs.” In the future all schools and districts will be required to use preliminary AYP results (prior to appeals) to meet parent notification requirements when AYP sanctions could be required. The department’s decision letter included a requirement not often seen in earlier, similar approvals: “The district and school will be required to document these notifications.”

Nebraska clarified that it will release preliminary AYP decisions not later than August 1 annually (approved July 19, 2010). On November 5, 2010, ED also approved **New Mexico’s** educational accountability workbook revision related to making timely accountability decisions for new or reorganized schools

to include an audit of student enrollment data for new or reorganized schools for purposes of attributing annual yearly progress (AYP) history and school improvement designations to such schools. As part of this process, New Mexico will make preliminary school improvement designations for new or reorganized schools based on estimated enrollment. Parental notification of a school’s designation will occur before the start of the school year. All new or reorganized schools identified for improvement based on enrollment estimates will begin offering the appropriate level of interventions prior to the start of the school year. Final school improvement designations for new or reorganized schools will be based on actual student enrollment after the first reporting period rather than estimated enrollment prior to a school’s opening. Schools that are not initially designated for improvement but whose school improvement designations change based on results of

⁸ While the regulations promulgated in late October 2008 are silent on this matter (see §200.37), the department tangentially addressed the matter in its response to public comments received prior to finalization of the regulations: “The Secretary recognizes the practical challenges that some LEAs may face in meeting the 14-day notification requirement and acknowledges that AYP determinations take time and that States may need to consider changes to their assessment policies and contracts.”

the enrollment audit must immediately begin offering services. Schools that act on preliminary school improvement designations and then find out they are not in improvement after the enrollment audit is completed in November will not be required to continue to offer required services.⁹ Eligibility for school improvement funds will be based on a school's AYP history as determined by the final enrollment audit.

South Carolina implemented new reading and mathematics assessments in grades 3–8 in 2008–09. As a result, the state sought to modify its timeline for the release of final AYP determinations. ED approved the state's plans on August 11, 2009. **Washington** was also among the states approved (June 30, 2010) to delay, for one year, the reporting of assessment results due to bringing online new assessments; in this case, mathematics in grades 3–8. ED's decision letter set forth a series of implementation steps commonly required in previous decisions given similar circumstances.

Element 1.5: Producing an annual state report card.

Arkansas made a number of changes in its Annual School Performance Report Card required to fully comply with NCLB requirements (approved October 21, 2010). Beginning in 2010, the **District of Columbia** will use the scores of students taking the Biology assessment in a school year to determine and report science proficiency and participation rates based on 11th-grade enrollments (approved July 2, 2010). **Nebraska** updated its report card due to having new reading assessments (approved July 19, 2010). On July 21, 2009, ED acknowledged **South Dakota's** plan to include NAEP data in its annual state and LEA report cards beginning in 2009–10.

Element 1.6: Including rewards and sanctions for public schools and school districts.

Arkansas received approval (October 21, 2010) to include information regarding its Annual School Recognition Program. Under the program, public schools and charter schools may be eligible to receive performance-based incentives based on "school improvement gains." At the same time, ED approved another proposed amendment from **Arkansas**—updates of its Differentiated Accountability model to clarify the sanctions for school districts entering into the third year of improvement.

Beginning in 2009–10, **Delaware** will place into Year 1 of school improvement status any school that has not been previously designated as a Title I school but begins that participation and has missed AYP for two or more years prior to becoming a Title I school (approved June 14, 2010). The placement at Year 1 of improvement is made even if the school had been at Year 2 or higher. According to a state representative, a similar approval was made for **South Dakota** in 2009. On July 9, 2009, ED approved **Idaho's** timeline by which schools and districts are identified for improvement and the interventions that will be applied consistent with NCLB requirements. **Nebraska** adjusted its application of rewards and sanctions for public schools and districts as a result of new statewide reading assessments (approved July 19, 2010).

New York clarified the manner in which schools identified for improvement that continue to fail to meet AYP targets will progress under the state's Differentiated Accountability pilot program (approved June 6, 2010). **South Dakota** clarified that public schools there must have an average of 10 or more students in the grades tested rather than exactly 10 or more in each grade tested in order to be eligible for the Distinguished Schools Award (approved July 21, 2009).

Utah again sought approval to target public school choice and supplemental educational services to only the non-proficient students in schools identified as in need of improvement. The state continued to argue,

⁹ This decision is contradictory to the position ED has maintained up to this point in all similar situations. Previously, as in the case of **Georgia** in 2009, the department has required that a school "continue to offer public school choice and SES to its students for the remainder of the school year" (see p. 14).

The priority must be to ensure that no child is left behind. Focusing resources on the students who are not proficient in language arts or mathematics will be the pivotal step in making sure that they receive the services that are needed to improve, and make sure that they do not get left behind. Students who have demonstrated proficiency in language arts and mathematics have shown that they can be successful, even while in programs that are in need of improvement.

On August 14, 2009, ED denied the request citing applicable NCLB statutes and regulations. The department also noted, “Only if a district needs to prioritize because it cannot meet all demand may it target these options to the lowest achieving of these students.” Utah had made similar requests in 2006, 2007, and 2008; all with the same result. Over the years, several states have sought a similar amendment to their accountability workbooks, which ED has consistently denied.

PRINCIPLE 2. All Students Are Included in the State Accountability System.

Element 2.1: Accountability system includes all students in the state.

Michigan clarified that students who engage in certain prohibited behavior during a test administration will be considered as “tested—but not proficient” in AYP calculations (approved July 2, 2010). The state’s test administration manual lists seven examples of prohibited behavior including communicating or collaborating in any manner with another student and copying another student’s work. The state will continue to treat instances of misadministration as “not tested” in determining participation rates for AYP purposes.

On June 12, 2009, ED approved **Tennessee’s** proposal to attribute the achievement assessment data of “students remanded to alternative schools to the school that remanded the student. With this change, a student’s resident school will be accountable for ensuring the student receives an equal level of education while remanded to the alternative school.” ED also approved **Tennessee’s** proposal to “assign achievement data for students in local special schools to the LEA in which the students are served when determining adequate yearly progress” (June 30, 2010). The state has five local special schools. **Texas** was approved on July 6, 2009, to exclude the academic achievement assessment results of students attending a Texas Youth Commission or Juvenile Probation campus from school district AYP determinations in instances where such a campus may be located within that district. Instead, these campuses will receive a school-level AYP determination and will also be included in statewide determinations.

Element 2.2: Full academic year definition.

States customarily calculate percent proficient based on the achievement of only those students who have been enrolled in a school or district for a full academic year (FAY). Under NCLB, states define FAY, and ED has given states considerable leeway in their definitions provided that these do not exceed one calendar year.

The **District of Columbia** revised its definition of full academic year to indicate that a student will be counted as being enrolled for a full academic year if that student is enrolled for 85 percent of the time between the fall enrollment date in October through the first day of testing in April (approved June 22, 2009). Further, the **District of Columbia** clarified that students who change schools within an LEA are included in the LEA and state proficiency calculations only, and students who change LEAs are included in state proficiency calculations only.

In 2009, **Hawaii** changed its FAY definition *from* March 1 of year 1 to March 1 of year 2 *to* May 1 of year 1 to May 1 of year 2 (approved May 15, 2009). **Nebraska** amended its FAY definition to be students “continuously enrolled from the official enrollment date in the fall . . . through the end of the testing window” (approved July 19, 2010). In a workbook amendment not often seen, ED approved (March 26, 2010) **Idaho’s** clarification

that, for purposes of determining whether a student has been enrolled in a school or district for a full academic year, an expulsion will constitute a form of withdrawal or exit from school that creates a break in continuous enrollment. A temporary suspension, however, does not constitute a break in continuous enrollment, which means that a student who is temporarily suspended, but not expelled, must be included in all AYP accountability measures for the school and district.

ED approved (March 31, 2010) **New Hampshire's** FAY revision. In this case, a student is “considered enrolled in the school or LEA for a ‘full academic year’ if the student had an average daily membership (ADM) greater than 90 percent for the previous school year (i.e., for the academic year prior to the fall in which the assessment is administered).” In requesting the amendment, **New Hampshire** pointed to instances where school enrollment records “indicate situations where a student would un-enroll on Friday and re-enroll on the subsequent Monday.” The change was intended to respond to situations like this and “other issues discovered within enrollment files.” ED also approved (August 4, 2010) a somewhat unusual proposal from **New Mexico** to address educational accountability determinations for small schools with highly mobile populations. In this case, “the AYP determination for a school without any . . . FAY students and whose exited students cannot be found in the tested population, such as a small school with a highly mobile student population [will] be determined by assigning the school the school district’s AYP determination.”

PRINCIPLE 3. State Definition of AYP Is Based on Expectations for Growth in Student Achievement That Is Continuous and Substantial, Such That All Students Are Proficient in Reading or Language Arts and Mathematics No Later Than 2013–2014.

Element 3.1: Requiring all students to be proficient in reading or language arts and mathematics by 2013–14.

Illinois revised its state assessment schedule in 2010 (approved July 2, 2010). **Indiana** received approval (March 25, 2009) for its plan to move annual assessments in grades 3–8 from fall to spring in the 2008–09 school year. For high schools, new spring end-of-course tests will be administered for the first time in the 2009–10 school year and used in AYP determinations at that time. ED’s decision letter also set forth transition requirements with respect to AYP determinations, school improvement planning, and parental notification in cases where public school choice options were to be made available. The department denied **West Virginia’s** request (2010) to waive the 2013–14 timeline for all students at or above proficiency in reading or language arts and mathematics. The state sought to extend the timeline to 2019–20.

Element 3.2: AYP determinations for each student group, public school, and school district.

Generally

Although the NCLB requirements for calculating AYP are quite prescriptive, states have nevertheless continually sought flexibility from ED with regard to the interpretation of these requirements. And, to some extent, the department has afforded some flexibility (see Appendix D for examples).

In **Delaware**, students scoring less than proficient in certain grades on the state’s reading or mathematics assessments will no longer be afforded a retake opportunity. On July 1, 2009, ED affirmed that the state will no longer include proficient retake scores in AYP determinations. **Delaware** also dropped the writing portion of the English/language arts assessment it uses for AYP determinations; instead the state will use solely its reading assessment to assess student proficiency in English/language arts. In approving the change (July 1, 2009), ED noted

that **Delaware** will not amend the starting points or intermediate goals used for making related AYP determinations (see p. 18 for further discussion).

On May 27, 2009, ED approved **Georgia's** request to include in AYP determinations the highest test results for grade 11 students retaking the Georgia High School Graduation Test (GHS GT) in July between grades 11 and 12. However, this cannot delay the reporting requirements associated with public school choice or supplemental educational services. ED noted, "If students retake the GHS GT in July and score better, those students' schools' accountability ratings will be recalculated and changed accordingly. For schools in improvement that make AYP and are re-classified, including those that are no longer identified as in need of improvement, the school will continue to offer public school choice and SES to its students for the remainder of the school year."¹⁰ Also, beginning in 2010, ED approved (June 9, 2010) **Georgia's** decision to make AYP determinations for school districts based on all grade spans, 3–5, 6–8, and 9–12, meeting AYP targets in the same subject or other academic indicator (see p. 16 for a similar approval for **Utah**).

ED approved (July 9, 2009) a request from **Idaho** to modify the manner in which the state calculates AYP. In this case, the state will permit students to retest in grades 11 and 12 and will include a student's highest score in making high school AYP determinations. The change was phased in with the best results at the end of grade 11 being used for 2009 and at the end of grade 12 beginning in 2010. **North Carolina** received approval (June 9, 2009, and June 23, 2010) of its plan to allow students in grades 3–8 to take end-of-grade assessments multiple times with the best score used in making AYP determinations. Beginning in 2009–10, high school students will be similarly permitted to retest on end-of-course assessments. School districts will determine when students will be given their first retest opportunity. The original test scores and the first retest scores must be submitted to the state by June 30 annually in order that preliminary AYP determinations can be made by mid- to late-July. **North Carolina** further clarified in 2010 its decision rules for retesting (approved June 23, 2010).

At the same time, ED denied **North Carolina's** proposed amendment to permit middle school students taking Algebra I to take that end-of-course (EOC) assessment in place of the grade-level mathematics assessment (and count the EOC results used in AYP determinations for 8th-grade mathematics). Once in high school, these middle school students would then take a different EOC test (e.g., geometry, Algebra II) and have the results count for high school mathematics AYP determinations. In denying the request, the department informed the state that it did not believe that the standards for the Algebra I test were the same as those for the 8th-grade EOG mathematics assessment. Thus, it would be inappropriate to use the Algebra I test results for students when they were in 8th grade and again when they were in 10th grade. ED's decision was virtually identical with those made for **Maryland** in 2006 and **Oregon** in 2007:

- On May 1, 2006, ED approved **Maryland's** request to 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." (Forte & Erpenbach, 2006, November, p. 16)
- On July 9, 2007, ED approved **Oregon's** proposal to "target up" students' scores "when they take a higher-grade assessment. The greatest number of students affected are typically 8th graders who want to take the high school mathematics assessment early. . . . Teachers must confirm prior to allowing early participation in the assessments that students have received the higher-grade academic content"

¹⁰ See the contradictory decision in 2010 regarding a very similar request from **New Mexico** (pp. 10–11).

(Erpenbach & Forte, 2007, December, p. 19). An Oregon SEA representative later clarified that 8th-graders “targeting up” must still take the 8th-grade mathematics assessment because it is used in AYP calculations.

In 2009, **Idaho** added the use of a performance index to the methods used to calculate AYP in that state (approved July 9, 2009). The performance index awards a school partial credit for students whose achievement improves even though they may not yet be proficient. The scores of students who score at the Basic achievement level are weighted 0.5 and the scores of students scoring at the Proficient and Advanced achievement levels weighted 1.0 to determine whether a school or district makes AYP. Idaho also reset its annual measureable objectives (AMOs) to coincide with the performance index. On August 11, 2009, ED approved **South Carolina’s** plan to apply the results of new grades 3–8 reading and mathematics assessments first administered in 2008–09 to its current performance index.

On August 6, 2009, ED approved **Pennsylvania’s** request to discontinue its use of a performance index “screen” in making AYP determinations (grades affected were not listed). ED had required that the state no longer use performance indexing as a part of its AYP calculations for schools and districts in order to receive full approval to implement a growth model in accountability determinations. However, on July 27, 2010, ED denied **Pennsylvania’s** request to reinstate its performance index in AYP determinations solely at the high school level, stating that it was “not aligned with the statute and regulations and is therefore not approved.” Unfortunately, ED again failed to cite those statutes and regulations. The state indicated at the time that it would continue to use the growth model previously approved for use at the elementary and middle school levels. In seeking the reinstatement, Pennsylvania argued that “no high school in Pennsylvania is capable of demonstrating growth using our current projection to proficiency model.” Pennsylvania would have limited the performance model to schools that administer the state assessments only to 11th-grade students.¹¹

In a letter dated November 26, 2008, **South Carolina** sought to delay until March 2010 a number of revisions to its educational accountability workbook due to “substantive changes in the state’s standards and assessment system.” Assessments in grades 3–8 had been replaced, the timeline for 2009 AYP determinations was likely to be significantly changed, and decision rules and procedures for making AYP determinations in general were also under revision. The state had alerted ED to the pending changes in a letter dated November 26, 2008, and also cited the request in a January 14, 2009, letter to ED requesting additional accountability workbook amendments. On August 11, 2009, ED denied the request stating, “South Carolina must edit and submit its accountability workbook in as timely a manner as possible and receive Department approval prior to making AYP determinations based on assessments administered in the 2008-09 school year.” South Carolina subsequently submitted the required information on September 17, 2009, and received full approval on December 18, 2009 (long after the deadline for making 2008–09 AYP determinations).

South Dakota received approval (May 25, 2010) to increase the minimum n used for AYP calculations from 10 to 25 students. **Texas** implemented a growth model as a means of making AYP determinations for its schools and districts (approved July 6, 2009). The Texas Projection Method (TPM)

¹¹ When **Pennsylvania** first sought approval to implement a growth model in 2008, ED denied the proposal stating, “The Department has concerns about the appropriateness of allowing a state to include both a performance index and a growth model in its accountability.” No statutes or regulations were cited in support of this opinion. ED’s latest decision seems to close out the possibility of a state accountability system including a growth model at the elementary and middle school levels and a performance index model at the high school level. In a December 10, 2008, letter to chief state school officers providing guidance with respect to performance indexes, former Assistant Secretary Kerri Briggs did not address this possibility or the prohibition of same.

is used to evaluate performance of students who do not meet the passing standard on certain assessments for purposes of AYP determinations. The TPM provides a measure of how student performance at the end of a school year positions a student to meet the passing standard in the future projection year after receiving grade-level instruction.

In 2010 (August 3) ED approved the state's request to broaden the growth measure to include assessments based on alternate assessments (TAKS-Alt) and modified assessments (TAKS-M).

In 2009, **Utah** modified the manner in which a school district can exit identification for improvement such that the district must make AYP across all grade spans in the same subject or other indicator for which it was first identified (approved August 14, 2009). **Utah** also again advanced a proposed amendment it had unsuccessfully sought in 2007 and 2008—the identification for improvement based on same student group and same subject. And, once again, the state observed that, “While it is a concern when any student group fails to meet its AMO in a particular content area in a given year, we recognize that this yearly failure could be due to a sampling error or other sources of error, therefore, we want to be confident of the need before implementing specific sanctions.”

Beginning almost immediately after NCLB was enacted, various states (some multiple times, such as **Utah**) have argued for identifying schools and districts for improvement only on this basis. ED has consistently denied such arguments relying on its interpretation of the statutes instead of specific provisions therein. However, in regulations promulgated in late 2008, ED included a provision explicitly prohibiting identification on this basis. In denying **Utah's** proposal (August 14, 2009), ED cited the regulation 34 C.F.R. §200.32(a)(1)(ii)(B).

On August 25, 2009, ED denied two proposed amendments from **West Virginia** related to AYP determinations:

- In the first instance, the state proposed a waiver to extend the timeline by which all students were expected to be at or above proficient in reading or language arts and mathematics. **West Virginia** wanted to push back (to 2019–20) the 2013–14 deadline set forth under NCLB. Citing sec. 1111(b)(2)(F) of the statutes, ED concluded, “The Secretary has stated that he does not intend to change this timeline through administrative action; this should occur through the reauthorization process.”
- In the second instance, **West Virginia** requested a waiver to base AYP determinations on a “composite index score” that includes several other measures in addition to assessment results. The state sought a two-year period to determine the measures to be included and relative weights that might be assigned to the measures. In this regard, ED's decision was interesting in that the department appears to have left the door open to further consideration of the matter, stating, “At this time, without specific details regarding that index, I [Thelma Meléndez de Santa Ana, Assistant Secretary, OESE] am unable to evaluate the appropriateness of the request.”

Wyoming “encountered substantial difficulties during administration of the Spring 2010 assessments required by ESEA.” The state had gone to a hybrid online and paper/pencil assessment system in 2005 (online for multiple choice items and paper/pencil for writing and constructive response items in reading, mathematics, and science). As a result of the “significant malfunction . . . no valid achievement data from the 2009-10 test administration” could be reported. The malfunction also made it impossible to determine students' progress toward the AMOs; “progress” serving as the OAI at the elementary and middle school levels. On July 9, 2010, the Wyoming Department of Education submitted a request to ED asking for a one-year waiver of certain statutory and regulatory requirements related to calculating and making AYP determinations for its schools and districts. On November 16, 2010, ED approved the waiver request except for high schools. At this level, ED's position was, “A high school that does not meet the other academic indicator (graduation rate), and so would not make AYP

regardless of student results on the statewide assessments or participation rate, will enter or move further into school improvement status, as appropriate.” ED also required that **Wyoming** submit “a corrective action plan detailing the actions it will take to prevent this problem from arising in the future in the event of another malfunction of its online assessment system.” Wyoming is no longer using an online delivery of its assessments.

Safe Harbor Calculations

On June 9, 2009, ED approved an extension of **Colorado’s** safe harbor review processes to

add, for 2008–09, an additional safe . . . measure that uses a longitudinal model to compare the same students’ scores from the prior year to the current year. The longitudinal model allows Colorado to track achievement as a student progresses through a school system. Through the longitudinal safe harbor, any district, school, or student subgroup that has at least a 10 percent decrease in the percentage of matched non-proficient scores in the current year compared to the previous year, based on a comparison of individual student assessment results in the current and previous years, and meets the [statutory] requirements . . . regarding progress on the other academic indicator and participation, will make adequate yearly progress (AYP). Colorado will include this calculation for any district, school, or subgroup that does not meet the annual measurable objective or the traditional safe harbor, provided that the match rate for the group of students is 95 percent or higher. Colorado will not apply a confidence interval to this application, nor will Colorado apply this additional measure of safe harbor to K-3 schools.

On April 2, 2009, ED approved **New Hampshire’s** decision to “discontinue its use of the equi-percentile method for grade 11 safe harbor calculations.” The state had used this method solely in 2007–08 as it transitioned to new high school assessments. New Hampshire then resumed the safe harbor calculation methodology it had used prior to 2007–08. Due to the administration of new assessments in language arts literacy and mathematics in grades 3 and 4, **New Jersey** received approval (November 3, 2008) to use a transitional method in conducting safe harbor reviews. The department subsequently approved (November 13, 2009) a one-year extension of the transitional measure. New Jersey was able to determine scores on the new assessments (first given in 2008) that were statistically equivalent to a proficient score on the old test using a concordance table. ED also approved (August 4, 2010) **New Mexico’s** proposal that a school must be in existence for at least two years before a safe harbor review can be conducted.

Element 3.2(b): Establishing annual measurable objectives (AMOs) for determining AYP.¹²

In their original accountability plans submitted for peer review in early 2003, states were required to describe the trajectory of annual measurable objectives (AMOs) and intermediate goals (IGs) that would lead from their baseline percent proficient to 100 percent proficient by the 2013–14 school year. IGs represent 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 an increase 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.¹³

¹² The accountability workbook template provides for an Element 3.2(a)—Establishing starting points for calculating AYP—and and Element 3.2(c)—Establishing intermediate goals for determining AYP. There were no related requests from states for amendments under either of these elements in 2009 or 2010.

¹³ According to a 2008 study, 23 states “back-loaded” their proficiency trajectories for achieving proficiency in reading or language arts and mathematics by 2013–14. In these cases, the states expected smaller achievement gains initially followed by

On July 16, 2010, ED approved **Arizona's** request to amend its AMOs in mathematics following the administration of new assessments that spring. **Delaware** sought (May 29, 2009) to amend its English Language Arts (ELA) AMOs "because of switching to reading only for AYP determinations." According to a state representative, ED would not permit the amendment even though the state had reviewed its earlier AMOs validation study, determined that the former ELA targets needed to be changed, and provided supporting evidence. **Idaho** received approval (March 26, 2010) for its proposed revision of AMOs in reading, language arts, and mathematics that were reset the prior year. It has been common for states resetting AMOs to revise them once two years of student achievement data are available. In a decision that appears contrary to that experienced by **Delaware**, under almost identical circumstances, **Michigan** received approval (July 2, 2010) to adjust its *reading/language arts AMOs to AMOs for reading* beginning in 2009–10.

As a result of bringing online new statewide reading assessments in spring 2010, ED approved (July 19, 2010) **Nebraska's** proposal to reset starting points, AMOs, and IGs in this subject area. The department subsequently approved **Nebraska's** proposed new targets (October 4, 2010). In late 2008 ED approved **New Jersey's** plan to reset its AMOs due to new assessments in language arts literacy and mathematics (November 3, 2008). The department then subsequently approved (November 13, 2009) **New Jersey's** adjustments to the revised AMOs. In a late 2008 decision (November 18), ED approved **North Carolina's** plan to reset starting points, AMOs, and IGs following the administration of new reading assessments in grades 3–8 in 2007–08. ED also approved (August 11, 2009) a request from **South Carolina** to reset its starting points, AMOs, and IGs following administration of new assessments in reading and mathematics for grades 3–8 in 2008–09. **South Dakota** also revised its reading assessments in 2008–09, and, as a result, reset the related AMOs (approved July 21, 2009).

Utah also revised its mathematics assessments and thus submitted revised starting points, AMOs, and IGs (approved August 14, 2009). For safe harbor determinations, the changes were staged. For 2008–09 only, an equi-percentile method was used to "equate proficiency standards on the 2008 and 2009 assessments" in order to conduct safe harbor reviews given the use of different academic achievement standards. **West Virginia** also received approval (August 25, 2009) to reset its starting points, AMOs, and IGs based on new reading/language arts and mathematics assessments first administered in the 2009–10 school year. As has become typical when these measures are reset, the state will average the 2009–10 results with the 2008–09 results in order to establish the final AMOs and IGs that must result in all students at or above proficient by 2013–14.

Conversely, ED denied (June 9, 2010) **Georgia's** request to reset the AMOs and IGs for its mathematics assessments beginning with AYP determinations to be made in spring 2011. In this instance the new assessments will not be administered until spring 2011.¹⁴ However, the department's decision letter kept open the option for approval of revised AMOs and IGs at a later point:

Because Georgia will not administer its new high school mathematics assessment until spring 2011, it does not yet have the data necessary to adjust its AMOs and intermediate goals in a way that complies with the statute. Georgia may request to adjust the AMOs and intermediate goals after the first administration of its new high school mathematics assessment, when it has the data necessary to do so.

steeper gains in later years. How and whether these states will meet their achievement targets without the law changing remains unclear (Chudowsky & Chudowsky, 2008).

¹⁴ This denial is consistent with all of ED's prior decisions under similar circumstances. Since setting their original starting points, AMOs, and IGs, under NCLB, states have been permitted to reset these only after new or revised standards have been approved and new or revised aligned assessments based on these standards have been approved and administered and new student achievement data are available.

However, shortly after the denial of **Georgia’s** request, ED appeared to reverse course in approving (July 29, 2010) an almost identical request from **Virginia**. In this instance, according to the State Board of Education’s Agenda Item (Item G) notes of January 14, 2010,¹⁵ the state “recently adopted revised content standards in the area of mathematics and reading.” New tests measuring the revised standards are slated to be implemented in 2011–12 (mathematics) and 2012–13 (reading). The notes further provide, “Until the new tests are implemented and the necessary data to implement an index model using them are available, Virginia is proposing to hold the AYP targets at the 2008-2009 level, but only allow those schools and divisions [LEAs] that have made progress beyond the 2008-2009 targets to make AYP.” ED’s unexpected approval followed Virginia’s proposal:

Virginia will hold its annual proficiency targets (Annual Measurable Objectives, AMOs) for reading and mathematics at 81 percent for reading and 79 percent for mathematics for AYP calculations for the 2010-2011 school year based on assessments administered in 2009-2010. In order to make safe harbor for the 2010-2011 school year based on assessments administered in 2009-2010, the pass rates for state, divisions, and schools would have to exceed the 2008-2009 targets of 81 percent for reading and 79 percent for mathematics. Targets for assessments administered in 2010-2011 through 2013-2014 will be set at a later date.¹⁶

Revised AMOs:

Year of Test Administration	Reading		Mathematics	
	% Proficient Current	% Proficient Revised	% Proficient Current	% Proficient Revised
2008-2009	81	81	79	79
2009-2010	85	81	83	79
2010-2011	89	TBD	87	TBD

ED did not cite any statutory or regulatory basis for its decision, stating only that “the . . . amendment is aligned with the statute and regulations.” Although Attachment A of the January 14, 2010, State Board Agenda Item notes suggests that the state would seek a waiver under sec. 9401 of the statutes, no mention of a waiver is included in ED’s decision letter. Given the precedent-setting nature of the decision, more specificity would have been instructive. The need for specificity seems to be underscored by ED’s position in denying **Georgia’s** request because the state did “not yet have the data necessary to adjust its AMOs and intermediate goals in a manner that complies with the statutes.” What made **Virginia’s** request approvable and **Georgia’s** not should have been explained.

The decision seems to restrict the need for schools and divisions in **Virginia** to exceed the 2008–09 AMOs only when safe harbor reviews are conducted. It also appears from the Virginia State Board notes of January 14, 2010, that the state intended to make 2010–11 AYP determinations on the basis of either 2008–09 or yet to be determined targets.¹⁷ The effective result, then, is that the approval permits **Virginia** to “place on hold” previously

¹⁵ See http://www.doe.virginia.gov/boe/meetings/2010/01_jan/agenda_items/item_g.pdf.

¹⁶ According to an article in the January 2010 issue of the *Title I Monitor*, “ED’s approval of that facet [TBD AMOs] was short-lived. With little explanation, ED withdrew its approval of the TBD AMOs for future years” (Brownstein, 2011). Whether this “withdrawal” decision was communicated in writing is unknown, as are additional requirements or conditions, if any, ED may have imposed.

¹⁷ According to a Virginia Department of Education representative, ED contacted the state shortly after issuing its decision letter indicating that the AMOs could not be left as “TBD” for 2010–11 through 2012–13. Negotiations over what those AMOs will be were still in progress as this paper was completed.

negotiated (and required) increases in the AMOs and/or IGs while continuing to administer the same assessments based on the same content and achievement standards (instead of new assessments aligned to new standards).

PRINCIPLE 4. State Makes Annual Decisions about the Achievement of All Public Schools and LEAs.

Element 4.1: Making an annual determination of whether each public school and LEA in the state made AYP.

On June 24, 2009, ED approved **Arizona's** request to change its criteria for exiting an LEA from improvement status so that, if an LEA makes AYP for two consecutive years in the subject/indicator for which it entered improvement, the school district exits improvement status. If, in the second year, the district misses AYP in another subject/indicator, it is put on a "watch list" for that subject/indicator. **Arkansas** clarified the manner in which it will calculate AYP for schools with fewer than its minimum n of 40 students (approved October 10, 2010). The state will aggregate data for up to three school years to reach or exceed the 40-student minimum and, to the extent possible, for student groups as well. In instances where the minimum n is still not met, **Arkansas** will assign a status to extremely small schools. Issues that may arise in these instances will be handled on a case-by-case basis through an appeals process.

New Mexico (approved August 4, 2010) and **Puerto Rico** (approved January 6, 2010) will also aggregate student scores over one or more years in order to make AYP decisions for small schools and districts with fewer students than the required minimum n. At the same time, ED also approved **New Mexico's** plans to do the following:

- Use a minimum n of 25 students, 10 for reporting, and 40 for participation rate calculations.
- Identify LEAs for improvement when they do not make AYP targets in the same content area or OAI in any grade span for two years. This is a more stringent AYP determination model for school districts than that first proposed by other states and approved by ED in 2004—missing the same AYP targets in the same content area or OAI across all grade spans in the district. Since 2004, at least 27 states have moved to this AYP model for LEAs.

In 2010 **Nebraska** implemented new statewide reading assessments (statewide mathematics assessments will be implemented in 2011) following years wherein a system of local assessments had served this purpose. On July 19, 2010, ED approved the state's proposal of a methodology to make AYP determinations for schools and districts not meeting the minimum n size (30) required for proficiency determinations. The decision does not result in a distinct set of AMOs and IGs for these schools and districts. According to a state spokesperson, ED would not accept a separate set of goals and intermediate objectives for the very small schools and districts.

- Aggregate the results of all students in grades 3 through 8 and 11 (regular and alternate assessments);
- Determine the percent proficient for the aggregated data;
- Determine the participation rate for the aggregated data using the same process as used for all schools and districts;
- Determine whether the Other Academic Indicator was met by the grade spans having minimum group size;
- Determine whether the percent proficient met the intermediate goal of the grade span that contributed the largest number of students to the aggregated data (using the intermediate goals for all students in the state);
- Use a 99 percent confidence interval if needed; and
- Apply the AYP decision of the aggregated data to each of the grade spans.

Oregon will use grade 11 to make accountability determinations for the grades 10–12 span (approved February 17, 2010). A plan submitted by **Texas** to aggregate and average “two or more years” of assessment data in order to make AYP determinations in small schools and districts (described by the state as those with fewer than 50 students in the grades tested [summed across grades 3–8 and 10] for either reading/language arts or mathematics, or no students in the grades tested) beginning in 2010 was approved as well (October 29, 2010). The approval did not stipulate a maximum number of years over which data could be aggregated and averaged.

PRINCIPLE 5. All Public Schools and LEAs Are Held Accountable for the Achievement of Individual Student Groups.

NCLB extended federal policies regarding the inclusion of students with disabilities (SWDs) and English language learners (ELLs; referred to as Limited English Proficient [LEP] students in the law) in statewide assessment and accountability systems farther than any of the preceding versions of ESEA. SWDs and ELLs must now participate in assessments in grades 3 through 8 and once in grades 10 through 12. Their participation and performance must also be reflected in the AYP analyses for every school, district, and state.

Element 5.1: Including all required student groups in AYP determinations, including major racial and ethnic groups.

On June 1, 2010, ED approved a proposal from **Kansas** to revise the racial and ethnic groups used for data collection and AYP calculations, including the manner in which safe harbor reviews will be conducted when there are no data for a given student group. **Michigan** also received approval for its revision of major racial and ethnic groups used for data collection and AYP determinations (July 2, 2010). Beginning in 2010 **North Dakota** will no longer report the “Other” ethnic student group (formerly done on a voluntary basis) on the state’s report card (approved June 9, 2010). On August 3, 2010, ED approved two clarifications from **Texas** regarding inclusion of LEP students in AYP decisions. Beginning in 2010 “a student reported as LEP in any six-week period” will be considered as LEP in the calculation of attendance rates (elementary and middle school OAI). For graduation rate calculations, a “student reported as LEP at any time while attending grades 9-12 in Texas public schools” will be considered LEP.

Element 5.2: Including students with disabilities in AYP determinations (the “2% Option”).

As noted in earlier papers in this series, NCLB requirements for the full inclusion of SWDs in statewide assessment and accountability systems have posed a number of challenges to states ever since the law’s enactment. As in the prior several years, states again sought permission in 2009 and 2010 to exercise the “2% proxy” flexibility ED first offered for 2004–05 AYP decisions to modify their definition of the SWDs group for AYP decisions and to change AYP measures for this student group. Regulations related to modified standards and assessments were promulgated in April 2007. However, ED continued to extend the transition flexibility period through the 2007–08 school year and, for an additional year, for the few states that successfully demonstrated they were moving to complete an alternate assessment based on modified academic achievement standards (AA-MAAS).¹⁸

Option One

Through 2008–09 states that were developing modified academic achievement standards and assessments could request to use the “proxy method” for calculating AYP for the SWDs group for a given school year. Thus if a school missed AYP solely on the basis of SWDs, a proxy of SWDs equivalent to 2.0 percent of all students assessed could be added to the actual percentage of SWDs in the school that were proficient or advanced. The state could then use this adjusted percent proficient to re-examine whether the school or district made AYP for the school year. The actual percentage proficient must be reported to parents and the public.

¹⁸ Under §200.20(g), the flexibility is not authorized beyond the 2008–09 school year.

On April 6, 2009, ED approved **Alabama's** request to use the "proxy method" for calculating AYP for the SWDs group for that school year. The department also approved similar requests for **Connecticut** (March 30, 2009), **Georgia** (May 27, 2009), **Illinois** (June 4, 2009), **Indiana** (March 25, 2009), **Iowa** (July 30, 2009), **Kansas** (April 14, 2009), **Michigan** (June 17, 2009), **Minnesota** (June 1, 2009), **Montana** (June 4, 2009), **New York** (May 19, 2009), **Ohio** (July 21, 2009), **Pennsylvania** (August 6, 2009), **South Carolina** (2009), **Tennessee** (June 12, 2009), and **Virginia** (May 10, 2009).

Approval of the request from **Illinois** was interesting in that the state's request letter (January 15, 2009) made it clear that Illinois was not working on an AA-MAAS because (1) funds were not available, (2) a new staff position to work on the assessment could not be filled due to "fiscal constraints," and (3) priority was being given to ELL assessment issues. However, the state's request letter included a statement that, "ISBE [the Illinois State Board of Education] commits to making the AA-MAAS a top priority for 2009." On the other hand, **Florida** (see below), making the same argument, on the same date, on very similar grounds—and providing more impact data—found its request denied.

ED also denied similar requests from **Colorado** (June 9, 2009), **Florida** (August 11, 2009), **Virginia** (July 29, 2010), and **Washington** (June 9, 2009) to use the proxy method, reiterating the department's earlier position that as of the 2007–08 school year, "only states that are moving expeditiously to adopt and administer alternate assessments based on modified academic achievement standards are eligible for this flexibility." With respect to these four states:

- **Colorado** and **Florida** had indicated to ED that they had decided not to develop an alternate assessment based on modified academic achievement standards.
- **Florida**, which had sought to continue using an innovative "mathematical adjustment" with the SWDs group commented in its request letter (January 15, 2009) that "fiscal constraints . . . have prohibited us from further implementation of a modified assessment since no federal funding is provided specifically for this activity." Although the state provided extensive evidence of the positive impact of the "2% Option" for its schools and districts, it was apparently not persuasive.
- **Virginia** cited its significant progress in improving the achievement of SWDs and stated that it is "making substantial progress in developing an alternate assessment based on modified achievement standards."
- In **Washington's** case ED noted, "While Washington has expressed interest in developing an AA-MAAS, at this point it has not conducted any research, such as identifying the population for whom an AA-MAAS is appropriate, revised standards-based [IEPs] . . . or worked toward developing an AA-MAAS."

Georgia's proposal to extend its approval for Option One into 2010 was denied on June 9, 2010. ED cited the regulation "which explicitly limits this flexibility to the 2007–08 and 2008–09 school years." Although **Georgia** noted that its new AA-MAAS assessment would be first given in spring 2011, the department concluded, "the transition flexibility that was previously offered is no longer available." However, shortly afterward ED reversed its decision on July 8, 2010, approving **Georgia's** subsequent request for a one-year waiver¹⁹ "to extend use of the two percent transition flexibility. . . ." In approving the waiver,²⁰ Assistant Secretary Meléndez de Santa Ana stated,

Georgia requested this waiver because severe resource issues prevented the State from being able to implement an operational alternate assessment based on modified academic achievement standards (AA-

¹⁹ It is unknown whether **Georgia** followed the provisions of sec. 9401 of NCLB governing waivers to make this request and, if so, when that waiver process started.

²⁰ As noted in the introduction to Chapter 1 (p. 6), ED does not ordinarily post online decision letters regarding the waivers it grants under NCLB, in spite of the fact that the decisions often impact states' educational accountability systems.

MAAS) in spring 2010. The foundation for the assessment has been developed, including identifying the population, pilot testing, analyzing the pilot test results, and preparing a draft technical manual based on the pilot test. In early fall 2010, the State intends to pilot test additional forms of the test in order to implement an operational AA-MAAS test in spring 2011.

Illinois (July 2, 2010), **Minnesota** (July 2, 2010), **New York** (June 6, 2010), **South Carolina** (June 9, 2010), and **Tennessee** (June 30, 2010) were among the states confirming that this option had been removed from their accountability workbooks because they did not develop or have an approved AA-MAAS.

On the other hand, **Michigan** received approval (July 2, 2010) to begin using the MEAP-Access in grades 3–8, an alternate assessment based on modified academic achievement standards, as part of its educational accountability plan under NCLB. Michigan also indicated that it “may” expand the assessment to grade 10 in the future. ED also approved (June 9, 2010) **North Dakota’s** plan to “include results from its alternate assessment based on modified academic achievement standards (AA-MAAS) for AYP determinations. . . .” **Pennsylvania** received approval (July 27, 2010) to include proficient and advanced scores of eligible SWDs taking the mathematics AA-MAAS assessment in AYP determinations. The state cannot exceed the 2 percent cap for the use of such scores.

Option Two

States that have administered a high-quality modified assessment statewide for two or more years were previously able to use the results from this assessment for AYP purposes. Such assessments were required to be aligned with modified academic achievement standards.

No states developed an assessment that would have met this option prior to 2010 after which the option was no longer available.

Option Three

States may also offer an alternative for ED’s consideration.

On June 17, 2009, ED approved **Maryland’s** request that for schools that do not make AYP targets solely on the SWDs group, school IEP teams will review individual students’ IEPs to affirm the identity of those students in grades 3–5 who might have received proficient scores on a modified assessment had such a test been available. The state will comply with all related regulations and policies.

Massachusetts received approval (June 24, 2009) to continue its performance index model originally approved in 2005 and renewed annually thereafter. Under the state’s review, 100 “performance index” points are assigned to students selected based upon set criteria, with the total number of students so selected being equivalent to 2.0 percent of all students assessed. For any school or district that did not make AYP solely due to its students with disabilities subgroup, **Massachusetts** used this adjusted index score to re-examine whether the school or district made AYP for the 2008–09 school year.

Element 5.3: Including students with disabilities in AYP determinations (generally).

Beginning in 2010 the **District of Columbia** will include students receiving a read-aloud accommodation as non-participants in the calculation of participation rates (approved July 2). **Georgia** will include, for two AYP calculation periods, the scores of students who were previously identified as SWDs but who no longer receive special education services (approved May 27, 2009). In that same decision letter, ED once again denied **Georgia’s** request, for purposes of AYP determinations for the SWDs group, to include only those SWDs who were reported as such from the fall full-time equivalent count day through the spring testing window (the state’s definition of FAY).

Georgia also unsuccessfully sought this amendment in 2007, 2008, and again in 2010 (denied June 9, 2010)

arguing, “The scores of the SWD subgroup should reflect on the performance of children served by special education programs and services during the school year rather than students who might have only received services for a matter of days.” In its decision letters, the department has consistently stated, “The length of time a student receives services has no impact on whether a student meets the definition of a student with a disability.”

On June 14, 2010, ED approved a revision in the manner in which **Massachusetts** will meet the NCLB requirements related to the 1% cap on the number of students taking alternate assessments whose scores can be counted as proficient in computing AYP. Toward this end, the state will take the following actions:

(1) [I]nitially assigning 100 index points only to students scoring Progressing on the Massachusetts Comprehensive Assessment System Alternate Assessment (MCAS-Alt) who have been identified through the state’s data system as having the following primary disability types: Intellectual, Sensory/Deaf and Blind, Multiple Disabilities, Autism, or Developmental Delay; and (2) except as provided below, assigning 75 index points to any student scoring Progressing on the MCAS-Alt who was reported as having the following primary disability types: Sensory/Hard of Hearing or Deaf, Communication, Sensory/Vision Impairment or Blind, Emotional, Physical, Health, Specific Learning Disabilities, or Neurological.

If the number of students with the primary disability types listed in group (1) above scoring Progressing on the MCAS-Alt exceeds 1.0 percent of all students assessed, the state will prioritize amongst those students based on their reported level of need for special education services and, to the extent necessary, based on disability type and/or composite level of complexity score on the MCAS-Alt. If the number of students scoring Progressing on the MCAS-Alt and having a primary disability type of Intellectual, Sensory/Deaf and Blind, Multiple Disabilities, Autism, or Developmental Delay is less than 1.0 percent of all students assessed, Massachusetts will assign 100 index points to students scoring Progressing who have other disability primary types (Sensory/Hard of Hearing or Deaf, Communication, Sensory/Vision Impairment or Blind, Emotional, Physical, Health, Specific Learning Disabilities, and/or Neurological) and a High or Moderate level of need for special education services, up to the 1.0 percent cap.

The **District of Columbia** (approved July 2, 2010), **New York** (approved June 6, 2010), and **North Carolina** will include, for up to two years, in determining AYP for the SWDs group, the scores of students who previously received special education services (approved June 9, 2009). However, in North Carolina, the inclusion will only occur in instances where the SWDs group has not met AYP targets. Beginning in 2009, **Hawaii** clarified that it would no longer include former SWDs in its participation rate calculations for that student group (approved May 15, 2009). On July 21, 2009, ED approved **South Dakota’s** clarification that the state’s alternate assessment (Dakota STEP-A) is based on extended content standards and alternate academic achievement standards. Further, in making related AYP determinations for the SWDs group, the state applies a confidence interval, safe harbor, and two-year averaging.

Element 5.4: Including LEP students in AYP determinations.

In previous papers on states’ annual requests for amendments to their accountability workbooks, it has been observed that prior to the enactment of NCLB many states excluded ELLs from participation in statewide assessment and school and district accountability decisions. Thus when NCLB was signed into law in January 2002 and included significant provisions for the inclusion of these students in state assessment and accountability systems, few states were prepared to meet the requirements. Additionally, states were required under Title III of the law to conduct annual measures of the English language acquisition of these students.

In 2009 **Colorado** sought to allow a school district or school to appeal its AYP determination based on the scores of the reading/language arts assessment of LEP students who have been in the U.S. for less than three years if the appellant had made its Title III annual measurable achievement objectives in (1) progress toward English proficiency and (2) attainment of English proficiency. On June 9, 2009, ED denied the request stating,

Allowing Colorado to use the appeal process to exclude many, if not all, LEP students from AYP determinations simply because they have not been in the United States for at least three years would effectively override the explicit statutory requirements that LEP students be included in AYP determinations and that schools be held accountable for their academic achievement [not later than the end of the second school year that they have been enrolled in a U.S public school].

Florida made several changes regarding the inclusion of LEP students in its assessment and accountability systems (approved August 11, 2009). However, ED approved the state’s revised criteria for exiting from LEP services for the 2009–10 school year only. In its decision letter, the department stated that it “is concerned with the fact that there will necessarily be different criteria within and across districts for exiting LEP students and the Department has questions about the relationship between the CELLA [Comprehensive English Language Learning Assessment] and the other tests that may be used to exit LEP students.” ED also required that **Florida** provide data on the number of students who exit LEP status by each of the approaches described in its revised exit criteria and information on students’ scores on the CELLA cross tabulated by each of the approaches. **Florida’s** revised exit criteria (students must meet at least two of these to exit) are the following:

- A minimum composite grade level score on the CELLA, which is the state’s English language proficiency test, as defined in state rule 6A-6.0903.
- A score at or above the proficient level on a Florida Department of Education–approved listening and speaking assessment or above the publisher’s cut score on an aural and oral assessment. For students in grades 3 through 12, the second measure must be an assessment in reading and writing.
- A score at or above the 33rd percentile on the reading comprehension and writing or language usage subtests on a nationally norm-referenced test. The second measure shall be a listening and speaking or aural and oral assessment.
- A score at Level 3 or higher on the Florida Comprehensive Assessment Test (FCAT) in reading (or equivalent developmental scale score). The second measure shall be an assessment in listening and speaking (or aural and oral) and writing.
- An FCAT score of 3.0 or higher on the writing subtest. The second measure shall be an assessment in listening and speaking (or aural and oral) and reading.

In 2009 **Hawaii** changed its participation rate calculation rules to no longer include former LEP students in that student group (approved May 15, 2009). **Idaho** (approved March 26, 2010) and **Nebraska** (approved October 8, 2008) clarified that limited English proficient students who have exited from related programs may be counted for up to two years after they exit the program in school and district AYP determinations. **Idaho** will not include exited LEP students in that student group if the group does not already meet the minimum group size of 34. **Nevada** clarified its exit criteria for LEP students (approved July 2, 2010). In the future, LEP students will have to “achieve an overall score of proficient (Level 5) on the English Language Proficiency Assessment . . . to be considered proficient and exit the . . . [ELP] program.”

ED denied (November 29, 2010) a request from the **Manchester, New Hampshire School District** to “exempt English learners from the New England Common Assessment Program . . . [assessments] in mathematics and reading/writing for two years and, refugee or recently arrived immigrant students for an additional three years.”

The department noted that the request would be inconsistent with current regulations and the waiver request would need to be filed by the New Hampshire Department of Education since it has statewide impact.

On June 23, 2010, ED approved **North Carolina's** proposal to change references to "intermediate high" on the state's former language proficiency test to "Level 4.0 Expanding" on its new language proficiency test for ELLs (Access for ELLs). **Oregon** dropped its Spanish-language assessments in grade 3 (approved May 22, 2009). **South Carolina** sought to redefine how a student exits "former LEP student" status for Title I and Title III purposes. However, on August 11, 2009, ED denied the request stating that it could not "approve **South Carolina's** proposal to exit a student from LEP status if that student tested proficient once (composite score of 5) on the state's English language proficiency . . . test . . . and/or tested proficient once on the state's high school English/language arts assessment." The department's denial included a summation of applicable regulatory requirements.

On July 21, 2009, ED approved **South Dakota's** plan to amend its criteria for exiting a student from LEP status. Instead of scoring proficient for two consecutive years, students will need to score proficient for one year on the state's English language proficiency (ELP) assessment (the Assessing Comprehension and Communication in English State-to-State for ELLs) to exit LEP status. **Texas** received approval (August 3, 2010) to modify the manner in which LEP students are included in OAI measures in grades 3–8 (attendance) and 9–12 (graduation). For attendance rate calculations, a student reported as limited English proficient in any six-week period will be considered to be in that student group. For graduation rate purposes, a student reported as LEP at any time while attending a public high school there will be considered to be in that student group.

PRINCIPLE 7. State Definition of AYP Includes Graduation Rates for Public High Schools and an Additional Indicator Selected by the State for Public Middle and Public Elementary Schools (Such as Attendance Rates).

Element 7.1: Graduation rate.²¹

On April 5, 2010, **Alabama** submitted a request to amend the "methods used to determine improvement for the graduation rate" (approved May 3, 2010). Beginning in 2010–11 **Arizona** will combine a four- and five-year graduation rate in making AYP determinations (approved June 9, 2010). The state will weigh the four-year rate at 60 percent and the five-year rate at 40 percent.

Colorado received approval (June 9, 2009) to "delay its previously approved change to begin implementing a longitudinal cohort graduation rate similar to the definition approved by the National Governors Association. Instead of making this change, beginning with the graduating class of 2010, Colorado will use a longitudinal cohort graduation rate that is consistent with the Department's regulations. . . ." The department added "that Colorado's graduation rate target is approved only for use in making AYP determinations based on the results of assessments administered during the 2008–09 school year." The state would then have to submit for peer review and ED approval its graduation rate goal and targets for 2009–10 and beyond. On May 5, 2010, **Delaware** submitted a revision of its definition of "substantial growth" used to determine whether a school or district's graduation rate

²¹ All states were required to submit to ED by January 15, 2010, information demonstrating compliance with changes in NCLB graduation rate requirements set forth in regulations promulgated in October 2008 (Stevenson, 2009, September 9). That information and accompanying evidence was peer reviewed shortly after that time. Specifics of the peer review process are not reported in this paper. However, several states did propose graduation rate revisions in their 2009 and 2010 accountability workbook amendment requests. The result of these amendment requests are reported in this paper to the extent that ED responded to same in the workbook amendment decision letters. A summary report showing each state's approved graduation rate goal and target is available at <http://www2.ed.gov/admins/lead/account/stateplans03/gradratechart92210.pdf>.

target is met. The revision resulted from a February 2010 peer review of the state's graduation rate policies and procedures. According to a state representative, ED later approved the revision.

On June 22, 2009, ED approved the **District of Columbia's** request to use a four-year adjusted-cohort graduation rate for reporting purposes in 2010–11 and in making AYP determinations in 2011–12. In the interim, the **District of Columbia** will continue to define its graduation rate as the total number of graduates in a given year with a regular diploma divided by the sum of graduates for that year and dropouts for that year and the three preceding years. For the third year in a row, ED denied (May 27, 2009) **Georgia's** proposed amendment to include its "Special Education Diploma" as a regular diploma for the purposes of calculating graduation rates for AYP purposes. As in its previous denials, the department commented, "A regular diploma must be aligned to regular grade-level content standards, as defined by the state. Georgia's Special Education Diploma is not aligned to grade-level content standards; rather, it measures a student's achievement of his/her Individualized Education Program (IEP) goals." **Georgia** again re-submitted this proposal in 2010 with the same result (June 9, 2010). The state had argued,

Students with disabilities who are unable to pursue a regular diploma as stipulated in their IEP (college preparatory or career technical) even with high quality instruction, have completed 13 or more years of school, and have successfully completed their IEP program should be awarded credit for completion of their program. Their successes should be included in Georgia's graduation rate calculations.

Hawaii will use the same minimum n size (40) in graduation rate calculations that it does for other AYP purposes (approved July 12, 2010). **Iowa** "revised its graduation rate calculation from a three-year to a four-year adjusted-cohort measure (approved July 30, 2009). The state will adjust the rate calculations for special education students who take longer to graduate and also for early graduates. **Massachusetts** increased its graduation rate target from 60 to 65 percent (approved June 24, 2009). The state also added a five-year adjusted cohort rate calculation consistent with applicable NCLB statutes and regulations. **Michigan** also added a five-year extended adjusted cohort graduation rate in 2009 (approved June 17, 2009). **New Jersey** was approved (November 9, 2010) to continue the use of dropout rates as the high school level OAI through 2010–11. The approval stipulated that the state would "comply with the regulatory timeline for implementing the four-year adjusted rate" for AYP purposes in 2011–12.

North Carolina redefined the manner in which it will define improvement in graduation rates (approved May 10, 2010). Beginning in 2010–11 progress will be defined as at least a "2 percentage point increase from one year to the next (up to a threshold of 80%) for the 4-year cohort graduation rate, or at least a 3 percentage increase from one year to the next (up to a threshold of 80%) for the 5-year cohort graduation rate." **Oregon** affirmed that it will first implement a four-year adjusted-cohort rate with its class of 2009—rather than 2008 (approved May 22, 2009). The 2009 rate will be used with assessment results from 2009–10 in making AYP determinations.

In a January 6, 2010, amendment proposal, **Pennsylvania** sought to modify the manner by which schools and districts demonstrate continuous and substantial improvement of their graduation rates. ED's July 27, 2010, decision letter to the state did not refer to this proposal. The **Pennsylvania** amendment would require that improvement "be demonstrated by an increase of at least 10% from the distance they [schools/districts] were in the previous year from the 80% goal." Pennsylvania stated that,

The new requirements for improvement will ensure that LEAs/schools are recognized only if they're making substantial movement toward the goal of 80%. In 2008-2009, 73 Pennsylvania high schools failed to meet the 80% goal. Of those, 23 met their graduation threshold because they showed improvement from the previous

year. However, only 19 of the 23 met the 10% reduction meaning four schools that met the threshold using any improvement would not have met the threshold using the 10% reduction.

According to a **Pennsylvania** staff member, ED initially denied the proposal. Following negotiations with the state, ED approved a goal of 85% with a target of 82.5% or the 10% increase.

Rhode Island (approved May 12, 2009) began using a four-year adjusted cohort graduation rate consistent with NCLB requirements. The graduation rate was set at 70.1 percent and included an “improvement component.” Under the improvement, for any district, school, or student group that does not meet the graduation rate target, the state will examine whether that entity/group experienced a 10 percent decrease in the gap between the prior year's graduation rate and the 2013–14 goal of 90 percent. **Rhode Island** further amended its determination of graduation rates in 2010, adding a four- and five-year adjusted cohort measure (approved September 3, 2010). The state will weigh the four-year rate at 60 percent and the five-year rate at 40 percent when making AYP determinations. **Rhode Island's** amendment included a proviso to apply to the five-year rate measure a previously approved alternate improvement measure (technically a “safe harbor” application) for schools that fail the meet the requirement—“at least a 10% reduction of the gap between the graduation rate of the prior year and the 2013-14 target rate of 90%.”

In 2010 **Georgia** modified the manner in which the scores that students earn on the state's high school graduation test will be applied in AYP determinations (approved June 9, 2010). In the future only the scores that high school students earn the first time they take this assessment will be used, regardless of the student's grade of enrollment at the time. On June 12, 2009, ED denied **Tennessee's** proposal “to use an extended-year graduation rate . . . that would include students who take more than the standard number of years to receive a regular diploma.” The denial was based on the fact that the state was not able to calculate an adjusted cohort rate. In a January 14, 2010, letter to ED, **Virginia** included two interesting proposed amendments to its educational accountability workbook affecting the determination of graduation rates for the state's public schools:

1. For purposes of reporting graduation rates, students who meet the NCLB definition for limited English proficient—see sec. 9101(25)—at any time since first entering the cohort (in or after grade 9) will be included in the LEP student group. **Virginia** argued that students identified as LEP in the early high school years but who no longer meet that definition when they graduate have benefited from instruction provided and the reporting should reflect the success of both the schools and students. ED's decision was unknown as this paper was completed.
2. With respect to the second amendment, **Virginia** requested waivers from certain regulatory provisions in order to make high school graduation AYP determinations using its Graduation and Completion Index (GCI) as adopted by the state's Board of Education. The GCI would be calculated for each cohort using an index of weighted percentages based on points according to student status. The state would set targets for continuous and substantial improvement toward a statewide goal of 85 with points awarded according to student status:
 - Graduate with a diploma—100 points in the graduation year.
 - Earn a GED certificate—75 points.
 - Remain in school beyond expected cohort graduation year—75 points.
 - Earn a certificate of completion—25 points.

Regarding the proposed amendment, **Virginia** argued in part that “use of the GCI offers schools incentives to continue to support students who require more than four years to graduate by giving them points for

students who stay in school beyond their four-year (or ‘expected’) graduation year, and by giving schools full credit when such students earn diplomas.”²²

Element 7.2: Other academic indicators.

On February 3, 2010, ED approved—for 2009–10 only—**Alabama’s** request to lower from 95 to 90 percent its attendance rate requirement used as the OAI for AYP determinations. Although not cited in the decision letter, **Alabama** had requested this one-time only amendment due to the outbreak of the H1N1 flu. For the same reason, in **Maryland**, ED approved (May 21, 2010) the state’s request to lower the attendance rate used as the OAI in making AYP determinations for the 2009–10 school year only. The rates were lowered by approximately four percentage points in grades K–8. **Oregon** received approval (February 17, 2010) to “calculate attendance rates based on the period of time from the first day of the school year through the first school day in May.”

PRINCIPLE 9: State Accountability Model Is Statistically Sound and Reliable

Element 9.1: AYP determinations meet the state’s standard for acceptable reliability.

On July 12, 2010, ED approved **Hawaii’s** plan to “adjust the formula for applying the standard of error used in determining whether student” groups met the AMOs. Hawaii adjusted the rate from 5 percent to 7.9 percent.

PRINCIPLE 10: In Order for a Public School or LEA to Make AYP, the State Ensures That It Assessed at Least 95 Percent of the Students Enrolled in Each Student Group.

Element 10.1: Participation rate.

Florida received a one-year waiver to permit the state to “exclude Haitian earthquake refugees from assessment rate participation rate calculations” (approved September 22, 2009). In **Idaho**, the state clarified its current procedures related to calculating participation rates (approved July 9, 2009). Idaho calculates this rate by dividing the number of students assessed on the spring Idaho Standards Achievement Tests divided by the number of students reported on the class roster files at the time of testing. ED approved (April 20, 2010) **Maryland’s** request for a one-year waiver from the requirement of at least a 95 percent participation rate on state assessments due to the potential adverse impact of an H1N1 flu virus outbreak during the testing window.

New Hampshire added two appendices to its educational accountability workbook detailing participation guidelines for including all students in the state accountability system (approved April 6, 2009). In 2010, **New Hampshire** further revised its participation rate calculation rules to provide for the aggregation of data for three consecutive years for schools with less than 40 students in order to make an AYP determination for the school (approved March 31, 2010).

In late 2008 ED approved **Nebraska’s** modification of how the participation rate “will be calculated so that the count of not assessed students will be taken from the total of all students enrolled on the last day of the school year and reported . . . as having:

- Parent waivers;

²² According to a Virginia official, ED did not approve use of the GCI for AYP calculations. While ED has long approved the use of indexing to recognize students’ progression toward proficient or above in AYP determinations, the department does not appear ready to broaden that principle.

- Unapproved modifications or out-of-level assessments; or
- Designations of 'N' (Not Assessed) for all achievement levels on every standard.”

The Next Chapter

In Chapter 2, observations and conclusions are presented regarding states' 2009 and 2010 accountability workbook amendment requests and ED's responses as posted at the department's website. There are also comments on approvals that were either somewhat surprising or unanticipated together with likely next steps regarding states' continuing efforts to strengthen their educational accountability systems. Whether this will continue to include the frequency, range, and extent of accountability workbook amendment requests seen over the past four years as reauthorization of NCLB looms ever closer can only be a matter of speculation. However, it is highly probable, absent reauthorization, that 2011 will see an increase in both the number and scope of waivers of various NCLB provisions sought by states.

Chapter 2: Observations and Conclusions

In this chapter states' accountability amendments that were somewhat surprising, unanticipated, or seemingly contradictory to those who have followed the decision making process over the past eight plus years are described along with consistently denied requests. The number of surprise and unanticipated decisions was in and of itself surprising at this stage of NCLB's history. The observations and conclusions reached here are again more informative in that ED has continued the practice primarily begun in 2007 of responding in writing to all states submitting accountability workbook amendments (as well as the District of Columbia and Puerto Rico), posting on its website both approved amendments and, in most cases, denied requests—sometimes with supporting rationale.

Surprise and Other Noteworthy Decisions

For the 2008–09 and 2009–10 approvals, there were five distinctly “surprise” accountability workbook amendment approvals. There were also other noteworthy decisions that seemed to add new dimensions to earlier decisions.

The surprises were:

- ED's approval (2010) of **Virginia's** request to “reset” its AMOs without first administering new or revised assessments aligned to new or revised standards, in that it contradicted both past practice and the department's previous interpretation of NCLB statutes and regulations. Prior to this decision ED consistently required states that substantively changed their standards to first administer assessments aligned to those new standards before resetting starting points, AMOs, and IGs. In **Virginia's** case, the state reset its AMOs by holding them constant for a period of time instead of increasing them four percent annually in reading and mathematics as previously required, all absent changes to their standards and assessments and the presentation of “new [student achievement] data” (see discussion on pp. 18–20).
- The waiver granted to **Georgia** to continue using the “2% proxy” related to the assessment of SWDs against modified academic achievement standards through 2010. After ED initially denied use of this flexibility beyond 2009 (and the regulations prohibited same), the state submitted a one-year waiver request that the department quickly approved (see discussion on p. 22–23).
- ED's 2010 decision concerning a request from **New Mexico** related to making timely accountability decisions for new or reorganized schools (see pp. 10–11). In this case, ED—consistent with similar requests in prior years from other states—required the state to make preliminary school improvement designations in order that parental notification of a school's designation could occur before the start of the school year. What was surprising, and inconsistent with prior decisions, was ED's determination that schools acting on preliminary improvement determinations and later finding out that they are not in improvement would not be required to continue to offer required services.

The decision was in sharp contrast to that received by **Georgia** a year earlier (see p. 14). In **Georgia's** case, the state sought to include the highest test results for grade 11 students retesting on the high school graduation test during July and to recalculate accountability determinations when students score better. ED approved the proposal stipulating that this could not delay the reporting requirements associated with public school choice or the provision of SES services. The department further stipulated that if schools in improvement make AYP and are reclassified and “are no longer identified for improvement, the school will continue to offer public school choice and SES to its students for the remainder of the school year.”

- The contradictory decisions concerning continued use of the “2% proxy” flexibility related to the assessment of SWDs beyond 2007–08. In this case ED approved continued use through 2008–09 for

Illinois while denying the same for **Florida**. Both states had, coincidentally, submitted their requests on the same date. Both had indicated they were unable to continue working on development of an AA-MAAS due to fiscal constraints. Up to this point, ED had consistently denied approval for continued use of the “2% proxy” option unless the state was “moving expeditiously to adopt and administer alternate assessments based on modified academic achievement standards. . . .” (see discussion on p. 22).

- The contradictory decisions related to revising AMOs in **Delaware** and **Michigan**. In the former case ED denied (May 29, 2009) **Delaware’s** request to amend its English language arts AMOs due to changing to reading only for AYP determinations. Less than one year later ED approved (March 26, 2010) **Michigan’s** proposal to adjust its reading/language arts AMOs to AMOs for reading only (see page 18).

Other noteworthy decisions:

- ED’s denial (2010) of **Pennsylvania’s** request to reinstate the use of its performance index at the high school level was more puzzling than surprising. When **Pennsylvania** sought to implement a growth model as part of AYP determinations in 2008, ED denied the request noting that the state could not use both a performance index and a growth model in its accountability determinations. The state subsequently dropped its performance index in all grade spans and implemented a growth model at the elementary and middle school levels. In seeking the reinstatement **Pennsylvania** argued that “no high school in Pennsylvania is capable of demonstrating growth using our current projection to proficiency model.” The state would have limited the performance index model to schools that administer the state assessments only to 11th grade (see discussion at p. 15).
- ED’s denial (2010) of **West Virginia’s** request of a waiver in order to base AYP determinations on a “composite index” was not surprising in and of itself. What seemed surprising is that the denial appears to have left the door open to further consideration if “specific details” were presented. **West Virginia** proposed to study student achievement data over the next two years in order to then include a “number of measures in addition to the assessment results” to make AYP determinations. Whether this model might fit that of a “multiple measures” approach in reauthorization remains to be seen—or argued (see discussion on p. 16).
- ED’s denial of **Virginia’s** rather innovative proposal of an index to calculate graduation rates merits mention here. As described in detail under Element 7.1 above, **Virginia** sought waivers from certain regulatory provisions in order to make high school graduation AYP determinations using its Graduation and Completion Index (GCI). The GCI would be calculated for each cohort using an index of weighted percentages based on points according to student status. While ED has long approved the use of indexing to weight students’ progression to proficiency in AYP determinations, the department did not apparently see a similarity of principle with respect to **Virginia’s** proposed use indexing for determining graduation rates (see discussion on pp. 28–29).
- ED’s approval of **Idaho’s** clarification that, for purposes of determining whether a student has been enrolled in a school or district for a full academic year, an expulsion will constitute a form of withdrawal or exit from school that creates a break in continuous enrollment. A temporary suspension, however, does not constitute a break in continuous enrollment, which means that a student who is temporarily suspended, but not expelled, must be included in all AYP accountability measures for the school and district (see discussion on p. 13).
- ED’s insistence that states cannot establish uniform NCLB start dates for their public schools looms increasingly problematic as the dates for more and more schools move closer to states’ test windows for those with spring administration. In denying the request from **Arizona** (see pp. 9–10) to set a uniform NCLB start date, the department commented, “identifying a single start date is contrary to the letter and

spirit of the statute and regulations with respect to states providing assessment results to LEAs prior to the start of the school year.” Unfortunately, this is a dilemma—and not a new one—faced by many states; many simply do not have statutory authority to set uniform starting dates for their public schools. Exactly what is meant by the “spirit of the statute and regulations” is unclear, and ED has yet to provide guidance that might help states more proactively address this problem in a manner that would satisfy the “spirit of the statutes and regulations” (see discussion on pp. 9–10).

Consistently Denied Requests

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
- target public school choice and supplemental educational services to only non-proficient students in schools identified as in need of improvement
- recognize a “special education diploma” as a regular diploma in graduation rate determinations
- include in the special education student group only those SWDs served FAY
- designate a specific start date for accountability purposes when the start dates for schools across the state vary

Next Steps

In concluding each of the papers on educational accountability workbook amendments since 2006, it was opined that the coming school year would likely be a quiet one for amendments. This was because ED and many states had started shifting more of their focus to ESEA reauthorization issues. As it has played out, this forecast has been consistently wrong—states have continued to spend time on fine-tuning their accountability systems—especially as they have made changes in their standards and assessments or added alternate or modified assessments. Looming reauthorization, related issues, and cautions from ED have not dissuaded states from making changes to their accountability systems.

Some states continue to struggle with achieving final approval of their alternate assessments, and a few are working to receive approval for new assessments based on modified academic achievement standards. The promulgation of additional regulations in late 2008 has also resulted in additional work for states to develop and implement substantive changes in their graduation rate requirements and related data management systems. It seems to be too early to forecast whether reauthorization will actually happen in 2011. Also unclear is the future, if any, of the National Technical Advisory Council, established by former Secretary Spellings in 2008. The group met twice during 2008 and has not met since.

Major focal points related to standards, assessments, and accountability during 2011 are certain to include the following:

1. Reauthorization of the ESEA of 1965.
2. Continuing work on the Common Core State Standards.
3. Ongoing work of the *Smarter Balanced* and *Partnership for the Assessment of Readiness for College and Career* (PARCC) assessment consortia.
4. Assessment of students with disabilities and English language learners.
5. Waivers of various NCLB provisions and regulations.

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Appendix A: Acronyms Used in This Paper

AA-MAAS	Alternate Assessment based on Modified Academic Achievement Standards
AMAOs	Annual Measurable Achievement Objectives
AMOs	Annual Measurable Objectives
ASR SCASS	Accountability Systems and Reporting State Collaborative on Assessment and Student Standards
AYP	Adequate Yearly Progress
CCSSO	Council of Chief State School Officers
CELLA	Comprehensive English Language Learning Assessment
CIs	Confidence Intervals
ED	United States Department of Education
ELL	English Language Learner
ELP	English Language Proficiency
EOC	End-of-Course Test
EOG	End-of-Grade Test
ESEA	Elementary and Secondary Education Act of 1965
ESL	English as a Second Language
FAY	Full Academic Year
IASA	Improving America’s Schools Act of 1994
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
IGs	Intermediate Goals
LEAs	Local Educational Agencies (also referred to as school districts)
LEP	Limited English Proficient
NAEP	National Assessment of Educational Progress
NCLB	No Child Left Behind Act of 2001
NPRM	Notice of Proposed Rulemaking
OAI	Other Academic Indicators
OESE	Office of Elementary and Secondary Education, U. S. Department of Education
SCASS	State Collaborative on Assessment and Student Standards
SEAs	State Educational Agencies (also referred to as State Departments of Education)
SES	Supplemental Educational Services
SWDs	Students with Disabilities

Appendix B: Timeline of Significant Events Related to State Accountability Plans Under NCLB

2002

- January—The No Child Left Behind Act of 2001 signed into 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 (several with compliance agreements).
- July—CCSSO releases Year One paper on State Accountability Plan requests and ED approval decisions.
- 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’s Letter regarding additional flexibility for SWDs in state assessment and accountability systems.
- December 18—ED releases Q & A regarding alternate achievement standards.

2004

- February 5—Assistant Secretary’s Letter setting April 1 deadline for accountability amendment requests applying to 2003-04 AYP decisions.²³
- 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 28—ED issues *Standards and Assessments Peer Review Guidance* for the NCLB Peer Reviews.
- May 21—Assistant Secretary’s Letter elaborates on flexibility for calculating participation rate.
- May 21—Second Secretary’s Letter regarding calculation of participation rate.
- October—CCSSO releases Year Two paper (2003-04) on State Accountability Plan Amendments.

2005

- January 27—Assistant Secretary’s Letter setting April 1 Deadline for 2004-05 Accountability Plan Amendments.
- 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.

²³ States are permitted under NCLB to submit proposed amendments to the secretary at any time.

- May 10—Secretary sets June 1 deadline for state accountability amendments and issues information related to serving SWDs with “Persistent Academic Difficulties.”
- June 13—ED issues updated non-regulatory guidance concerning the provision of supplemental educational services.
- August—ED releases non-regulatory guidance concerning alternate achievement standards for students with the most significant cognitive disabilities.
- September 29—Secretary’s Letter concerning students displaced by Hurricanes Katrina and Rita.
- October—CCSSO releases Year Three paper (2004–05) on State Accountability Plan Amendments.
- December—NPRM released regarding modified achievement standards and assessments for some SWDs.

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 to implement model in May.
- March 7—Assistant Secretary’s Letter setting April 1 deadline for new accountability amendment requests 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—49 yet-to-be-approved states (plus **Puerto Rico** and the **District of Columbia**) notified of assessment system peer review results.
- July 21—ED releases revised non-regulatory guidance related to LEA and school improvement.
- September 13—ED issues new regulations related to the achievement of LEP students.
- September 19—Assistant Secretary’s Letter updating chief state school officers on ED’s priorities.
- November—CCSSO releases Year Four paper (2005–06) on State Accountability Plan Amendments.
- November—ED announces that **Arkansas, Delaware, and Florida** are approved for growth models following submittal of revised plans in September.

2007

- February 7—Secretary’s Letter updating chief state school officers on matters related to the implementation of Title I assessment and accountability requirements.
- March—second round of peer reviews for growth model proposals conducted. Four states—**Alaska, Arizona, Iowa, and Ohio**—eventually approved.
- April—CCSSO releases paper on alternate assessments for SWDs with significant cognitive disabilities.
- April 9—ED issues regulations related to modified academic achievement standards and other matters as well as draft non-regulatory guidance related to the modified achievement standards.
- May—ED releases non-regulatory guidance for the assessment and accountability of LEP students.
- May—ED releases *An Update on State Standards and Assessment Systems*.
- June 27—Secretary conducts National Summit on Supplemental Educational Services.
- June 27—Assistant Secretary’s Letter to chief state school officers announcing department’s intent to review the use of performance indexes in AYP determinations.
- July 25—ED conducts invitational meeting for states without approved alternate assessments for students with significant cognitive disabilities.
- July 26–27—ED hosts meeting for interested states to discuss development of standards and assessments based on modified achievement standards.

- September 5—Secretary’s Letter to chief state school officers conveying information about the department’s review of state assessment systems. Includes, for the first time, a listing of the peer reviewers.
- November 17—Assistant Secretary’s Letter to chief state school officers announcing process and timelines for amending accountability workbooks in 2008.
- December—CCSSO releases Year Five paper (2006–07) on State Accountability Plan Amendments.
- December 7—ED announces that all states with approved assessment systems may now use growth models in their AYP designs.
- December 21—ED releases revised *Standards and Assessments Peer Review Guidance* to include modified academic achievement standards.

2008

- February 28—Assistant Secretary’s Letter to chief state school officers announcing science standards and assessments peer reviews.
- March 10—Secretary announces differentiated accountability model pilot program aimed at how sanctions may be applied when schools and districts are identified for improvement under Section 1116.
- April 23—Secretary announces Notice of Proposed Rulemaking related to nine areas of NCLB including graduation rates, minimum group size, and same subject-same student group identification for improvement (prohibiting same).
- May 2—ED issues Notice of Proposed Interpretations intended to ensure uniformity across the states in matters related to the assessment of English language acquisition and when LEP students may exit special services programs.
- June—ED announces that **Michigan** and **Missouri** are approved to use growth models.
- June 4—ED announces that pilot program permitting school districts to reverse the order of public school choice and the provision of supplemental educational services will be open to all states with approved statewide assessment systems.
- July—Secretary announces that **Florida, Georgia, Illinois, Indiana, Maryland, and Ohio** are approved to participate in the differentiated accountability model pilot program.
- August 4—Secretary Spellings announces that seven states—**Alabama, Alaska, Arkansas, North Carolina, Tennessee, Utah, and Virginia**—are the first states approved under the pilot program permitting school districts to reverse the order of public school choice and supplemental educational services in schools sanctioned under NCLB.
- September 16—first meeting of ED’s National Technical Advisory Council.
- October—CCSSO releases Year Six paper (2007–08) on State Accountability Plan Amendments.
- October 29—ED releases far-reaching final regulations “to clarify and strengthen current Title I regulations in the areas of assessment, accountability, public school choice, and supplemental educational services.” According to ED, the regulations were necessary in the absence of reauthorization.
- November 20—second meeting of ED’s National Technical Advisory Council.
- November 26—Director, Student Achievement and School Accountability Letter to chief state school officers announcing process and timelines for amending accountability workbooks in 2009.

2009

- April 1—Secretary releases letter to chief state school officers regarding implementation of regulations promulgated October 29, 2008. Among changes to be proposed to the regulations and flexibility to be

provided states, the secretary includes repeal of the requirement for re-submittal and peer review of accountability workbooks.

- September 9—Director, Student Achievement and School Accountability Letter to chief state school officers announcing upcoming peer review of each state’s graduation rate.
- November 4—Administrative Judge rules that ED may not withhold state administrative funds under NCLB without giving states an opportunity for a formal hearing before a neutral body.

2010

- January 13—Director, Student Achievement and School Accountability Letter to chief state school officers announcing process and timelines for amending accountability workbooks in 2010.
- February—Peer Review of States’ graduation rate submittals.
- March 29—**Delaware** and **Tennessee** receive first Race to the Top grants.
- April 12—Director, Student Achievement and School Accountability Letter to chief state school officers announcing department’s intent to consider requests for the waiver of certain statutory and regulatory requirements related to the provision of supplemental educational services (solely for the 2010–11 school year).
- August 24—**District of Columbia, Florida, Georgia, Hawaii, Maryland, Massachusetts, New York, North Carolina, Ohio,** and **Rhode Island** receive Race to the Top grants.

Appendix C: Waivers (Selected Provisions)

The absence of reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) and NCLB's looming 2013–14 deadline for all students at or above proficiency in language arts or reading and mathematics is accelerating states' interest in seeking waivers of various provisions of the law's AYP requirements. This interest is only likely to intensify in the coming months—particularly with respect to the type and scope of waivers ED has received and acted on over the past few years.

More recently, CCSSO (Wilhoit, 2011, February 1) submitted a letter to the leadership of the U.S. Senate Health, Education, Labor, and Pensions Committee reflecting this very interest. Set forth and detailed in the letter were three core points related to pending reauthorization and shortcomings of NCLB requiring immediate attention. The third core point—offered in anticipation or absence of ESEA reauthorization—stresses the need for states, using the waiver provisions of sec. 9401, “to develop and propose new, innovative policy models in terms of accountability and other areas that move beyond NCLB.” The letter signals both the Council's intent, if reauthorization is delayed, to explore with Congress and the Administration the use of waivers as well as to support states interested in same to advance innovative accountability systems that go beyond seemingly outdated NCLB requirements hampering true educational reform.

Presented in this appendix is information about NCLB waivers that ED has granted and selected provisions of NCLB's Section 9401 governing waivers. Information on waivers received, but not approved, is also available in the federal reports, but harder to discern. With respect to the information presented in this appendix:

- Reports required under sec. 9401(e)(4) can be found at the first website listed below.
- The first NCLB Report to Congress was presented in 2007 and covered the intervening years since 2002–07.
- No reports covering waivers granted or denied in 2010 or 2011 could be located.
- Exactly what is meant by the requirement at sec. 9401(g) is unclear: “and the Secretary shall provide for the dissemination of the notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.” No evidence could be found that ED is disseminating a separate notice to SEAs as implied by this statutory requirement (except for waivers invited for 2009–10 related to the provision of SES).
- Also, when and how often ED must report is not specified in sec. 9401(g).

Websites

- Information on waivers granted under NCLB:
<http://www2.ed.gov/nclb/freedom/local/flexibility/waiverletters/index.html>.
- Information on flexibility initiatives and how states, school districts, and others may use the flexibility available to them to improve teaching and learning:
<http://www2.ed.gov/nclb/freedom/local/flexibility/index.html>.

According to ED, under several education laws, states, school districts, and other educators have flexibility in how they may use federal program funds to support state and local school improvement efforts. Flexibility initiatives, such as Ed-Flex, waivers, and other forms of flexibility including schoolwide programs, and certain provisions in Title IX of the Elementary and Secondary Education Act (ESEA) as reauthorized by the No Child Left Behind Act of 2001, offer states, school districts, and others an opportunity to adapt federal programs in ways that best educate children and improve teaching and learning.

Selected Provisions of Section 9401

Subject to the restrictions and conditions in [Section 9401](#) of ESEA as amended by NCLB in 2001 (Public Law 107-110), the U.S. Secretary of Education may waive statutory or regulatory requirements of the ESEA that are applicable to State Educational Agencies, local educational agencies, Indian tribes, or schools. Section 9401(b) of the ESEA details the information that a waiver applicant must submit to the Department. Section 9401(c) specifies certain requirements that the Secretary may not waive.

(a) IN GENERAL—Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirement of this Act for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that

- (1) receives funds under a program authorized by this Act; and
- (2) requests a waiver under subsection (b).

(b) REQUEST FOR WAIVER-

(1) IN GENERAL—A State educational agency, local educational agency, or Indian tribe that desires a waiver shall submit a waiver request to the Secretary that

- (A) identifies the Federal programs affected by the requested waiver;
- (B) describes which Federal statutory or regulatory requirements are to be waived and how the waiving of those requirements will

- (i) increase the quality of instruction for students; and
- (ii) improve the academic achievement of students;

(C) describes, for each school year, specific, measurable educational goals, in accordance with section 1111(b), for the State educational agency and for each local educational agency, Indian tribe, or school that would be affected by the waiver and the methods to be used to measure annually such progress for meeting such goals and outcomes;

(D) explains how the waiver will assist the State educational agency and each affected local educational agency, Indian tribe, or school in reaching those goals; and

(E) describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.

(c) RESTRICTIONS—The Secretary shall not waive under this section any statutory or regulatory requirements relating to

- (1) the allocation or distribution of funds to States, local educational agencies, or other recipients of funds under this Act;
- (2) maintenance of effort;
- (3) comparability of services;
- (4) use of Federal funds to supplement, not supplant, non-Federal funds;
- (5) equitable participation of private school students and teachers;
- (6) parental participation and involvement;
- (7) applicable civil rights requirements;
- (8) the requirement for a charter school under subpart 1 of part B of title V;
- (9) the prohibitions regarding
 - (A) State aid in section 9522;
 - (B) use of funds for religious worship or instruction in section 9505; and
 - (C) activities in section 9526; or
- (10) the selection of a school attendance area or school under subsections (a) and (b) of section 1113, except that the Secretary may grant a waiver to allow a school attendance area or school to participate in activities under part A of title I if the percentage of children from low-income families in the school attendance area or who attend the school is not more than 10 percentage points below the lowest percentage of those children for any school attendance area or school of the local educational agency that meets the requirements of subsections (a) and (b) of section 1113.

(e) REPORTS—

(4) REPORT TO CONGRESS—Beginning in fiscal year 2002 and for each subsequent year, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report

(A) summarizing the uses of waivers by State educational agencies, local educational agencies, Indian tribes, and schools; and

(B) describing whether the waivers

(i) increased the quality of instruction to students; or

(ii) improved the academic achievement of students.

(g) PUBLICATION—A notice of the Secretary's decision to grant each waiver under subsection (a) shall be published in the Federal Register and the Secretary shall provide for the dissemination of the notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.

Appendix D: State Educational Accountability Workbook Decisions by the U.S. Department of Education that Changed Between 2003 and 2010

Topic	Original Decision	Final Decision ²⁴ and Year Changed	Comments
1. Accountability systems—dual	Permitted only when a school could not achieve a high performance level on state system if it was identified for improvement under NCLB.	States can have dual systems that recognize schools' performance regardless of their AYP outcomes (2003). Number of states using dual systems increases (2005 and 2006). ²⁵	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. 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 academic achievement standards permitted, but not more than 2% of total school population (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. Codified in regulations promulgated April 2007. Illinois approved to continue use of the "2% option" through 2008–09 although it still had not

²⁴ A state that would like to amend its plan based on these decisions would be required to submit an amendment proposal to ED. States cannot simply amend their plans without approval, even if other states have been approved to make the same amendment. The decisions should not be considered precedent setting (i.e., approval for one state does not necessarily mean that another state will receive approval for the same amendment).

²⁵ See also Perie, Park, & Klau (2007).

Topic	Original Decision	Final Decision ²⁴ and Year Changed	Comments
		ED provided three options for states to use this flexibility through 2007–08 with the understanding that they would be developing related assessments.	developed an AA-MAAS. Georgia granted a one-year waiver in 2009 to continue using the “2% proxy” option through 2010.
3. AYP: Banking test scores	Schools and districts permitted to “bank” test results when students have two or more opportunities to take a test up to the point at which students are expected to have acquired specific knowledge and skills.	Expanded in 2006 (Maryland) and 2007 (Oregon) to include banking when middle school students “pass” a high school level English language arts/reading or mathematics assessment that is used for AYP determinations at the upper level.	
4. 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 must be factored in as well.	See Johnson (2006, March 7) letter to chief state school officers.
5. AYP: 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).	ED has consistently denied states’ requests to base identification on the same target two consecutive years. Regulations issued October 29, 2008, codified the prohibition.

Topic	Original Decision	Final Decision ²⁴ and Year Changed	Comments
6. AYP: Preliminary identification for improvement; reversal of	Schools identified for improvement on the basis of preliminary information but later determined to have made AYP targets must continue to offer public school choice and SES to their students for the remainder of the school year.	Schools in New Mexico acting on preliminary school improvement designations but later found to have made AYP targets not required to continue to offer required services (2010).	
7. AYP: Re-setting Starting Points, AMOs, and Intermediate Goals	States may reset these whenever they bring online new/revised standards and aligned, approved assessments based on those standards provided that they have at least one year's student achievement data.	Virginia approved (2010) to reset its AMOs without any changes in standards or assessments.	
8. AYP: Rounding up decisions	Unclear.	Some states permitted to round up when calculating AYP elements (2004).	
9. AYP: Use of first test score when students have multiple opportunities to take an assessment	First test score counts for AYP determinations.	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). ED approved a state's request to count scores of	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.

Topic	Original Decision	Final Decision ²⁴ and Year Changed	Comments
		<p>students who retest after either missing the original testing or who originally scored just below the passing score (2005).</p> <p>Delaware approved to recalculate AYP following summer school assessment “retakes” (2006); Virginia to include retesting results for high school end-of-course assessments (2006); and Michigan to include retest scores due to the “high stakes” nature of its high school assessments (2007).</p> <p>Three additional states—Georgia, Maryland, and Tennessee—approved in 2008.</p>	<p>In April 2007 ED rescinded the regulatory requirement pertaining to the use of the first test score.</p> <p>ED clarified in a 2007 decision letter to Pennsylvania that a state may not include retesting results for high school assessments beyond the grade level for which the assessment is aligned to the state’s academic content standards.</p>
<p>10. ELLs: Including scores for “exited” ELLs in the ELL student group AYP decisions</p>	<p>Not permitted.</p>	<p>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).</p> <p>Codified in regulations issued September 2006.</p>	<p>See Paige (2004, February 20) policy letter on ELLs.</p> <p>States using Title IX definition of LEP (sec. 9101(25)) could include such students for longer than two years.</p>
<p>11. ELLs: Use of achievement scores in AYP calculations</p>	<p>Required.</p>	<p>Recent arrivals in the U.S. may be exempted from one administration of a state’s reading or language arts assessments. As long as these students take an English language proficiency assessment, they may be counted as a participant.</p>	<p>See Paige (2004, February 20) policy letter on ELLs.</p> <p>See also September 2006 regulations.</p>

Topic	Original Decision	Final Decision ²⁴ and Year Changed	Comments
		Recent arrivals cannot be exempted from a state's mathematics and science assessments but mathematics scores may be exempted from one cycle of AYP determinations (science results are not required to be included in AYP measures).	
12. Full academic year extending beyond one calendar year for SWDs	Not permitted.	Iowa approved (2004) to extend Full Academic Year for SWDs beyond one year when IEP indicates that longer period is needed to collect achievement information.	
13. 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.	<p>SWDs who take more than four years to graduate, consistent with their IEPs, may be counted as graduates (2004).</p> <p>ELLs who take up to six years to graduate, consistent with a local plan, may be counted as graduates (2005).</p> <p>Tennessee approved (2007) to define standard number of years as five plus one summer session for early college/middle college high schools.</p> <p>Michigan received a similar approval that year.</p>	Regulations promulgated October 29, 2008, modify many of these.
14. Growth models as accountability measures	Not permitted.	<p>Pilot growth models (up to 10) permitted subject to peer review beginning in 2006.</p> <p>Secretary opens the pilot to all states with approved assessment systems (December 2007).</p>	Two states approved to implement models in 2006–07; seven additional states approved in late 2006 and early 2007; two additional states in June 2008.

Topic	Original Decision	Final Decision ²⁴ and Year Changed	Comments
15. Minimum n's for school districts—larger	Not permitted initially.	Models approved permitting the use of a minimum n that increases proportionally as the size of the district increases—subject to caps (2003).	Colorado approved (2008) to use 30 or 1% when enrollment exceeds 3,000.
	In 2006, policy changed back to non-approval.	Not permitted in 2006.	
16. Minimum n's for student groups—larger	Not permitted initially.	Permitted (2003).	Not permitted for SWDs group if state elects 2% option for AYP decisions (2005).
	In 2006, policy changed back to non-approval.	Models permitted with even larger minimums that increase proportionally as enrollments across tested grades increases—subject to caps (2005).	April 2007 regulations effectively retracted previous approvals to use larger minimum n's for student groups.
		Not permitted in 2006.	
17. 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.
18. Percent proficient determinations	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).	
19. Percent proficient: Indexing	Unclear.	Permitted beginning in 2006. In June 2007, ED signaled its intent to review the	Regulations promulgated October 29, 2008, required states using indexing to “re-justify” their

Topic	Original Decision	Final Decision ²⁴ and Year Changed	Comments
		<p>use of indexing for AYP decisions.</p> <p>In June 2008, ED denied two states' requests for growth models because the states used performance indexing in their AYP decision rules.</p>	<p>methodologies.</p>
<p>20. Public school choice and supplemental educational services: Reverse order of application when a school is identified for improvement</p>	<p>Not permitted.</p>	<p>Permitted on a pilot basis for some LEAs (2005).</p> <p>Small expansion in 2006 and 2007.</p> <p>Opened to all states with approved assessment systems in June 2008.</p>	<p>Secretary announced "differentiated accountability model" pilot program in March 2008. Program aimed at a differentiated approach to the application of NCLB sanctions for schools and districts identified for improvement.</p>
<p>21. Safe harbor: Averaging for up to three years for percent proficient determinations</p>	<p>Not permitted.</p>	<p>Permitted (2005). Percent not proficient would have to decline by 10% over one year, 19% over two years, and 27% over three years.</p>	
<p>22. Safe harbor: Reviews for other academic indicator determinations</p>	<p>Not permitted.</p>	<p>Permitted (2005).</p>	
<p>23. Safe harbor: Reviews for small schools in percent proficient determinations</p>	<p>Unclear.</p>	<p>A state may conduct a review of current year and prior year performance even when its minimum n requirements are not met (2004).</p>	
<p>24. Statistical tests—for participation and</p>	<p>Not permitted for "count" elements.</p>	<p>Permitted (2004).</p> <p>In 2008, ED denied Tennessee's request to use a</p>	<p>States have been allowed to apply confidence intervals (CIs) to</p>

Topic	Original Decision	Final Decision ²⁴ and Year Changed	Comments
graduation rates	In 2006, policy changed to non-approval for requests to increase CIs (e.g., 95% to 99%).	CI in graduation rate calculations.	AYP calculations in general. But when requests for CIs have been specifically around “count” items, they have been denied.
25. Statistical tests—in safe harbor reviews	Not permitted.	Use of a 75% confidence interval allowed (2004).	
26. Supplemental educational services: Permit LEAs identified for improvement to be providers	Not permitted.	Permitted on a pilot basis (2005). Limited expansion in 2006 and 2007.	On April 12, 2010, ED announced that it would accept waivers (for 2010–11 only) permitting LEAs identified for improvement to be providers and schools to provide SES during the first year that it is identified for improvement.
27. SWDs: Including scores for “exited” SWDs in student group AYP decisions	Not permitted with two exceptions—those for Georgia (2003) and South Carolina (2004).	In regulations promulgated in April 2007, states permitted to include exited SWDs in the student group for up to two years after receiving services.	The two-year limit may contradict IDEA provisions related to the provision of monitoring services to formerly served SWDs.
28. Testing—Advanced Placement (AP) and International Baccalaureate (IB) exams as substitutes for states’ high school assessments	Unclear.	Maryland approved for one year, limited scope trial (2006). Approval expanded to include more students and approved for four-year period (2007). Maryland also approved in 2008 to substitute AP or IB scores for its high school biology assessment. Virginia also approved (2007) for use of AP and IB scores, although with slightly different	ED’s decision letters provide guidance for interested states.

Topic	Original Decision	Final Decision ²⁴ and Year Changed	Comments
		achievement scores.	
29. Testing—exemption from	Not permitted.	States permitted to exempt students from testing on a case-by-case basis due to significant medical emergencies (2004).	See Paige (2004, March 29) policy letter on calculating participation rates. See also Illinois' 2006 decision letter from ED for further guidance.
30. Testing—out-of-level	Not permitted.	Permitted as an alternate assessment aligned to alternate academic achievement standards and subject to 1% cap for SWDs reported at the proficient or higher level (2004). Prohibited as an alternate assessment based on “modified” achievement standards in regulations issued April 2007.	Modified in Regulations adopted on December 9, 2003 (<i>Federal Register</i>). See Paige (2004, March 2) policy letter on SWDs.
31. 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 two or three years, whichever benefits the school or district more (2003).	Alaska approved to use -year averaging (2008).