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The No Child Left Behind Act: An Overview of Reauthorization Issues for the 111th Congress

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Summary

Most programs of federal aid to K-12 education are authorized by the Elementary and Secondary Education Act (ESEA). The ESEA was most recently amended and reauthorized by the No Child Left Behind Act of 2001 (NCLB). The authorization for ESEA programs expired at the end of FY2008, although ESEA programs continue to operate as long as appropriations are provided, and the 111th Congress is expected to consider whether to amend and extend the ESEA.

Debates over reauthorization of the ESEA have thus far focused on the following overarching issues: (1) What has been the impact of the substantial expansion of standards-based assessments of pupil achievement required under the ESEA, and should these requirements be expanded further to include additional subjects or grade levels? (2) Are adequate yearly progress (AYP) requirements appropriately focused on improving education for disadvantaged pupil groups and identifying low-performing schools? (3) Have the program improvement, corrective actions, and restructuring required under the ESEA for schools and local educational agencies (LEAs) that fail to meet AYP standards for two consecutive years or more been effectively implemented, and have they significantly improved achievement levels among pupils in the affected schools? (4) What has been the impact of the requirements that all public school teachers (and many paraprofessionals) be *highly qualified* and that well-qualified teachers be equitably distributed across schools and LEAs? (5) Should ESEA programs be funded at levels closer to the maximum authorized amounts, and at what levels, if any, should authorizations be set for years beyond FY2008? (6) Should the ESEA place greater emphasis on enhancing the nation's international competitiveness in science, mathematics, and foreign language achievement? (7) The NCLB, with its numerous new or substantially expanded requirements for participating states and LEAs, initiated a major increase in federal involvement in basic aspects of public K-12 education. Should the active federal role in K-12 education embodied in the NCLB be maintained?

This report will be updated regularly.

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Each of these issues is discussed in turn below. These discussions are brief, and are intended primarily as an introduction to other CRS reports (referenced below) that provide much more detailed discussions and analyses of these broad issues.

Assessments

- What has been the impact of the substantial expansion of standards-based assessments of pupil achievement required under the ESEA, and should these requirements be expanded further to include additional subjects and/or grade levels (especially for senior high school pupils)?

The current generation of pupil assessment requirements under ESEA Title I-A began with the Improving America's Schools Act (IASA) of 1994 (P.L. 103-382), that required participating states to develop or adopt curriculum content standards, pupil performance standards, and assessments linked to these, at least in the subjects of mathematics and reading/English language arts, and for at least one grade in each of three grade ranges (grades 3-5, 6-9, and 10-12).[1] The NCLB substantially expanded these requirements to provide that all participating states are to implement assessments, linked to state content and academic achievement standards, for all

[1] For additional information on this topic, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne C. Riddle, and CRS Report RL33731, *Education for the Disadvantaged: Reauthorization Issues for ESEA Title I-A Under the No Child Left Behind Act*, by Wayne C. Riddle.

public school pupils in each of grades 3-8 in reading and mathematics by the end of the 2005-2006 school year. Participating states were also required to develop and implement assessments at three grade levels in science by the 2007-2008 school year.[2] Assessment results must be provided to LEAs, schools, and teachers before the beginning of the subsequent school year, so that they might be available in a timely manner to make adequate yearly progress determinations for schools and LEAs (see the following section of this report).

The primary rationale for requiring annual administration of standards-based tests in each of grades 3-8 is that the provision of timely information on the performance of pupils, schools, and LEAs throughout most of the elementary and middle school grades is of value for both diagnostic and accountability purposes. Arguably, such assessment results will improve the quality of the AYP determinations that are based primarily on the assessments, and help determine whether Title I-A is meeting its primary goals, such as reducing achievement gaps between disadvantaged and other pupils.

Achievement standards associated with the required assessments must establish at least three performance levels for all pupils—advanced, proficient, and basic (or partially proficient). State educational agencies (SEAs) must provide evidence from a test publisher or other relevant source that their assessments are of adequate technical quality for the purposes required under Title I-A.[3] The ESEA authorizes (in Title VI-A-1) annual grants to the states to help pay the costs of meeting the Title I-A standard and assessment requirements. States and LEAs participating in Title I-A must report assessment results and certain other data to parents and the public through "report cards." States are to publish report cards for the state overall, and LEAs are to publish report cards for the LEA overall and for individual schools. The report cards must generally include information on pupils' academic performance disaggregated by race, ethnicity, and gender, as well as disability, migrant, English proficiency, and economic disadvantage status.

In addition to these state assessment requirements, the NCLB requires all states participating in Title I-A to participate in National Assessment of Educational Progress (NAEP) tests in 4th and 8th grade reading and mathematics, which are administered every two years. Before enactment of the NCLB, participation in NAEP was voluntary for states. NAEP is administered by the National Center for Education Statistics (NCES), with oversight and several aspects of policy established by the National Assessment Governing Board (NAGB). The main NAEP assessment reports pupil scores in relation to performance levels based on determinations by NAGB of what pupils should know and be able to do at basic, proficient, and advanced levels with respect to challenging subject matter.

NAEP tests are administered to only a representative sample of pupils enrolled in public and private K-12 schools, and the tests are designed so that no pupil takes an entire NAEP test. While

[2] If no agency or entity in a state has authority to establish statewide standards or assessments (as is apparently the case for Iowa and possibly Nebraska), then the state may adopt either (a) statewide standards and assessments applicable only to Title I-A pupils and programs, or (b) a policy providing that each LEA receiving Title I-A grants will adopt standards and assessments that meet the requirements of Title I-A and are applicable to all pupils served by each such LEA.

[3] Several statutory constraints have been placed on the authority of the U.S. Secretary of Education to enforce these standard and assessment requirements, including a provision that nothing in Title I of the ESEA shall be construed to authorize any federal official or agency to "mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction" (Sections 1905, 9526, and 9527).

NAEP cannot currently provide assessment results for individual pupils, schools, or most LEAs, NAEP conducts assessments in 4th and 8th grade mathematics, reading, and science at the state level as well as for selected major cities. Under state NAEP, the sample of pupils tested is increased in order to provide reliable estimates of achievement scores for pupils in each participating state. An implicit purpose of this requirement is to confirm trends in pupil achievement, as measured by state-selected assessments, although such confirmation is limited and indirect, usually limited to comparisons of the percentage of pupils at various achievement levels on NAEP and state tests.

Possible Reauthorization Issues Regarding Assessments[4]

Issues regarding the expanded ESEA Title I-A pupil assessment requirements include the following:

- *When will states implement math and reading assessments in each of grades 3-8?* What will be the consequences for states that did not meet the deadline of the end of the 2005-2006 school year? Most states did not meet this deadline. As of January 2009, the assessment programs of 39 states have been fully approved. In recent years, a number of states have experienced the loss of a portion of their Title I-A state administration grants for failure to implement required assessments on schedule.
- *Should requirements for standards-based assessments in states participating in ESEA Title I-A be expanded for senior high school students?* As discussed above, the current assessment requirements are focused primarily, although not solely, on the elementary and middle school grades. Proposals have been offered to expand required assessments for pupils in grades 10-12 , including required state participation in a 12th grade NAEP assessment, in part to strengthen the process of determining adequate yearly progress for senior high schools. However, the substantial variation in senior high school instructional programs raises many issues, including the following: Might the required assessments include high school exit or graduation tests? Given the relatively high degree of curriculum differentiation at the senior high school level (e.g., career and technical education programs, college preparation programs, and so forth) might states be allowed to meet these requirements by adopting different types of tests for pupils in different types of academic programs? Is it appropriate to allow states to meet current or future high school assessment requirements through end-of-course tests that are different for students taking different courses? Might Advanced Placement or International Baccalaureate tests be used to meet the new assessment requirements for pupils participating in those programs?
- *Has the emphasis on reading and mathematics in the Title I-A assessment and adequate yearly progress requirements (see below) begun to "crowd out" the amount of time and attention devoted to other subjects, such as writing, science, history, civics, or foreign languages?* Concern has been expressed by some, and

[4] For additional information on possible reauthorization issues regarding pupil assessments under the NCLB, see CRS Report RL31407, *Educational Testing: Implementation of ESEA Title I-A Requirements Under the No Child Left Behind Act*, by Wayne C. Riddle, and CRS Report RL33731, *Education for the Disadvantaged: Reauthorization Issues for ESEA Title I-A Under the No Child Left Behind Act*, by Wayne C. Riddle.

there is some evidence,[5] that the emphasis placed on reading and mathematics (and, to a much more limited degree, science) through the Title I-A assessment and adequate yearly progress requirements has reduced time and energy devoted to other subject areas for many students. This might lead to proposals to either de-emphasize the current requirements, or to expand the assessment requirements to include more subjects in more grades.

- *Should "national standards" of pupil performance be incorporated in some fashion into the assessment process, as a way of addressing substantial differences in state performance standards?* Curriculum content and pupil performance standards are determined at the discretion of the states, and there appear to be very substantial differences in the degree of challenge embodied particularly in the pupil performance standards. Some have called for a more explicit role for "national standards," either as embodied in NAEP or in some other fashion, in the NCLB outcome accountability process, to more directly address national concerns about educational quality, and establish greater consistency in outcome accountability policies across the nation.[6] Others believe that in our federal system, where state and local governments pay a very large majority of educational costs and have more explicit constitutional authority to set educational standards, such basic matters of education policy should continue to be left to state discretion. They further argue that states can continue to successfully implement the detailed and challenging federal requirements regarding adequate yearly progress (see below) only if allowed to establish their own standards for pupil performance.

Adequate Yearly Progress (AYP)

- Are adequate yearly progress (AYP) requirements appropriately focused on improving education for disadvantaged pupil groups and identifying low-performing schools?

A key concept embodied in the outcome accountability requirements of the ESEA is that of adequate yearly progress (AYP) for schools, LEAs, and (with much less emphasis) states overall.[7] The primary purpose of AYP requirements is to serve as the basis for identifying schools and LEAs where performance is inadequate, so that these inadequacies may be addressed, first through provision of increased support and opportunities for families to exercise choice to transfer to another school or obtain supplemental educational services from a third-party provider, and ultimately through a series of more substantial consequences (described in a later section of this report). These actions are to be taken with respect to schools or LEAs that fail to meet AYP for two consecutive years or more.

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[5] Center on Education Policy, "Choices, Changes, and Challenges: Curriculum and Instruction in the NCLB Era," July 2007, available at http://www.cep-dc.org.

[6] For example, see "To Dream the Impossible Dream: Four Approaches to National Standards and Tests for America's Schools," by Chester E. Finn, Jr. et al., Thomas B. Fordham Foundation, 2006, available at http://www.edexcellence.net/doc/National%20Standards%20Final%20PDF.pdf.

[7] For more information on this topic, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne C. Riddle, and CRS Report RL33731, *Education for the Disadvantaged: Reauthorization Issues for ESEA Title I-A Under the No Child Left Behind Act*, by Wayne C. Riddle.

AYP standards under the NCLB must be applied to *all* public schools, LEAs, and to states overall, if a state chooses to receive Title I-A grants. However, consequences for failing to meet AYP standards for two consecutive years or more (as discussed later in this report) need only be applied to schools and LEAs participating in Title I-A,[8] and there are no sanctions for states overall beyond potential identification and the provision of technical assistance.

Under the NCLB, AYP is defined primarily on the basis of multiple aggregations of pupil scores on required state assessments of academic achievement in mathematics and reading,[9] with a specific focus on the percentage of pupils scoring at a proficient or higher level, based on state-determined achievement standards. State AYP standards must also include at least one "additional academic indicator." In the case of high schools, this additional indicator must be the graduation rate; for elementary and middle schools, the attendance rate is often selected by states to be the additional indicator. The additional indicators may not be employed in a way that would reduce the number of schools or LEAs identified as failing to meet AYP standards.

In addition, AYP calculations based on assessment scores must be disaggregated; that is, they must be determined separately and specifically not only for all pupils but also for several demographic groups of pupils within each school, LEA, and state. The specified demographic groups (often referred to as subgroups), in addition to the "all pupils" group, are economically disadvantaged pupils, limited English proficient (LEP) pupils, pupils with disabilities, and pupils in major racial and ethnic groups.

However, there are three major constraints on the consideration of these pupil groups in AYP calculations. First, pupil groups need not be considered in cases where their number is so relatively small that achievement results would not be statistically significant or the identity of individual pupils might be divulged. The selection of the minimum number ("n") of pupils in a group for the group to be considered in AYP determinations has been left largely to state discretion, and state policies regarding "n" have varied widely. Since the same minimum group size policies are applied to schools and to LEAs overall, groups that are too small to be separately considered for individual schools often meet the minimum group size threshold at the LEA level. Second, it has been left to the states to define the "major racial and ethnic groups" on the basis of which AYP must be calculated. And third, pupils who have not attended the same school for a full year need not be considered in determining AYP at the school level, although they are still to be included in LEA and state AYP determinations, if they attended schools in the same LEA or state for the full academic year. A number of special rules, which have evolved over time, apply to two of the disaggregated pupil groups: LEP pupils and pupils with disabilities.[10]

Many states have used the statistical technique of *confidence intervals* in an attempt to improve the validity and reliability of AYP determinations, with an effect of substantially reducing the

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[8] States are encouraged to apply these consequences to *all* public schools and LEAs, but are not required to do so. State practices vary on this point.

[9] As noted earlier, the NCLB requires states participating in Title I-A to administer standards-based assessments in science at 3 grade levels by the end of the 2007-2008 school year. Although statutory provisions are somewhat ambiguous on this point, states are not required, under current Department of Education policy, to incorporate results from these science assessments into their AYP determinations.

[10] For a detailed discussion of these, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne C. Riddle, and CRS Report RL32913, *The Individuals with Disabilities Education Act (IDEA): Interactions with Selected Provisions of the No Child Left Behind Act (NCLB)*, by Richard N. Apling and Nancy Lee Jones.

number of schools or LEAs identified as failing to meet AYP standards. Use of this statistical technique is not explicitly authorized by the NCLB, but its inclusion in state accountability plans has been approved by ED. This concept is based on the assumption that any test administration represents a "sample survey" of pupils' educational achievement level, as well as the school's or LEA's performance over time. As with all sample surveys, there is a degree of uncertainty regarding how well the sample results—average test scores for the pupil group—reflect pupils' actual level of achievement. In practice, "confidence intervals" may be seen as "windows" surrounding a threshold test score level (i.e., the percentage of pupils at the proficient or higher level required under the state's AYP standards). The size of the window varies with respect to the number of pupils in the relevant group who are tested, and with the desired degree of probability that the group's average score represents their true level of achievement. If all other relevant factors are equal, the smaller the pupil group, and the higher the desired degree of probability (e.g., 99% as opposed to 95%), the larger is the window surrounding the threshold percentage. A school would fail to make AYP with respect to a pupil group only if the average score for the group is below the lowest score in the "window."

State AYP standards must incorporate concrete movement toward meeting an *ultimate goal* of all pupils reaching a proficient or higher level of achievement by the end of the *2013-2014* school year. This was adopted in response to pre-NCLB AYP requirements in most states that required little or no net improvement in pupil performance over time.

The NCLB AYP provisions include an assessment participation rate requirement—at least 95% of all pupils, as well as at least 95% of each of the demographic groups of pupils considered for AYP determinations for the school or LEA, must participate in each of the assessments that serve as the basis for AYP calculations. The participation rate requirement was adopted in part to minimize opportunities for schools or LEAs to raise their test scores by discouraging pupils from participating in the tests.

The primary basic structure for AYP determinations under the NCLB is specified in the authorizing statute as a *group status* model, with a required threshold level of achievement that is the same for all pupil groups, schools, and LEAs statewide in a given subject and grade level.[11] A "uniform bar" approach is employed: states are to set a threshold percentage of pupils at proficient or higher levels each year that is applicable to all pupil subgroups of sufficient size to be considered in AYP determinations. In addition, the NCLB statute includes a Safe Harbor provision, under which a school that does not meet the standard AYP requirements may still be deemed to meet AYP if it experiences a 10% reduction in the gap between 100% and the percent proficient or above in the preceding year for the specific pupil groups that fail to meet the "uniform bar," *and* those pupil groups make progress on at least one other academic indicator included in the state's AYP standards.

Another basic type of AYP model, the *individual/cohort growth* model, in which the achievement of the same pupils is tracked from year-to-year, is not explicitly mentioned in the NCLB statute. However, under an ED initiative, all states may be allowed to use growth models. To date, 15 states (Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Iowa, Michigan, Minnesota, Missouri, North Carolina, Ohio, Pennsylvania, Tennessee, and Texas) have been approved to use growth models.

[11] For a discussion of the models of AYP, see CRS Report RL33032, *Adequate Yearly Progress (AYP): Growth Models Under the No Child Left Behind Act*, by Wayne C. Riddle.

Schools or LEAs meet AYP standards only if they meet the required threshold levels of performance on assessments, other academic indicators, and test participation with respect to *all* of the designated pupil groups that meet the minimum group size criterion, as well as the "all pupils" group.

Available data on the impact of the NCLB's AYP provisions during the latest years for which data are available, may be summarized as follows:

- According to *Education Week*, based on results from 47 states (all except Indiana, Nebraska, and New York), an estimated 36% of all public schools failed to make AYP based on test scores for the *2007-2008* school year. Considering only the states for which data are available for both years, this represents *a 28% increase in the number of schools failing to make AYP between 2006-2007 and 2007-2008*.
- The percentage of all public schools failing to meet AYP standards for one or more years was approximately 29% of all public schools for *2006-2007*. The percentage of public schools failing to make adequate yearly progress for 2006-2007 varied widely among the states, from 4% for Wisconsin, 6% for Wyoming, and 7% for Iowa to 75% for the District of Columbia, 73% for Idaho, and 66% for Florida. These variations appear to be based, at least in part, not only on underlying differences in achievement levels but also on differences in the degree of rigor or challenge in state pupil performance standards, and on variations in state-determined policies on minimum group size.
- ED, in its "National Assessment of Title I: Final Report," published in October 2007, reported that 11,648 public schools, including 9,808 Title I-A schools, were identified for improvement during the *2005-2006* school year, on the basis of assessment results through the 2004-2005 school year. These constituted 12% of all public schools or 18% of all Title I-A schools. Schools most likely to be identified were those in large, urban LEAs, schools with high pupil poverty rates, and schools with large minority enrollment. The percentage of both all and of Title I-A schools identified varied widely among the states, from less than 1% (of all)/1% (of Title I-A) schools in Nebraska to more than 40% of all schools in Hawaii, New Mexico, and Puerto Rico, or more than 50% of all Title I-A schools in Florida, New Mexico, and Puerto Rico.
- Approximately 30% of all LEAs failed to meet AYP standards for one or more years for *2006-2007*. Among the states, there was even greater variation for LEAs than for schools. Two states—Alabama and Michigan—reported that none of their LEAs failed to make adequate yearly progress, and Wisconsin reported that only two of the state's 426 LEAs failed to make AYP, while 100% of the LEAs in Florida and South Carolina, plus the single, statewide LEA in Hawaii, failed to meet AYP standards. The percentage of all LEAs failing to meet AYP standards for 2 consecutive years or more, resulting in their being identified as in need of improvement as of 2005-2006, was approximately 10%.

Possible Reauthorization Issues Regarding Adequate Yearly Progress Requirements[12]

Issues regarding the ESEA Title I-A AYP requirements include the following:

- *Are the current AYP requirements so detailed and rigid that "too many" schools and LEAs are failing to meet them, especially those with diverse pupil populations?* Substantial percentages of public schools and LEAs overall have already failed to meet state AYP standards. Moreover, future increases in performance thresholds, as the ultimate goal of having all pupils at the proficient or higher level of achievement is approached, may result in higher percentages of schools and LEAs failing to make AYP. ED officials have emphasized the importance of taking action to identify and improve underperforming schools, no matter how numerous. Without specific requirements for achievement gains by each of the major pupil groups, it is possible that insufficient attention would be paid to the performance of the disadvantaged pupil groups among whom improvements are most needed, and for whose benefit the Title I-A program was established. Others have consistently expressed concern about the accuracy, efficacy, and complexity of an accountability system under which such a relatively high percentage of schools is identified as failing to make adequate progress, with consequent strain on resources to provide technical assistance and implement program improvement, corrective actions, and restructuring. Further, a number of studies have concluded that, when comparing otherwise similar public schools, those with a wider variety of demographic groups are substantially less likely to meet AYP standards.
- *Should states be allowed greater flexibility in the models of AYP they implement to meet the NCLB requirements?* Although ED has lifted the limit on use of growth models for AYP, the conditions established by ED are somewhat restrictive, and almost all of the "growth models" initially approved are relatively limited, essentially adding a projected achievement level option to the standard AYP model of the NCLB. The ESEA might be modified to allow states to use a wider range of growth and other models of AYP.
- *Should AYP determinations retain their current "pass-fail" structure, or should states be allowed to use a more varied, graduated rating scale?* Under current law and policy, schools, LEAs, and states simply do or do not meet AYP standards, and there is generally no distinction between those that fail to meet only one or two required performance or participation thresholds to a marginal degree versus those that fail to meet numerous thresholds to a substantial extent. Several analysts have suggested that a more nuanced grading scale be allowed (e.g., a division of schools or LEAs failing to make AYP into higher versus lower priority categories, or grades ranging from A to F), as is used in several state accountability systems. A major complication is determining at what point on

[12] For additional information on possible reauthorization issues regarding AYP under the NCLB, see CRS Report RL32495, *Adequate Yearly Progress (AYP): Implementation of the No Child Left Behind Act*, by Wayne C. Riddle, and CRS Report RL33731, *Education for the Disadvantaged: Reauthorization Issues for ESEA Title I-A Under the No Child Left Behind Act*, by Wayne C. Riddle.

such a scale the current "automatic" consequences (e.g., school choice or supplemental services, discussed below) are invoked.

- *Is the flexibility allowed to states and LEAs with respect to minimum group sizes and use of confidence intervals making it "too easy" for many schools and LEAs to meet AYP standards and resulting in the achievement of too many disadvantaged pupils not being specifically considered, especially at the school level?* Extensive use by states of these forms of flexibility could make the Title I-A AYP requirements substantially less challenging, and significantly reduce their focus on disadvantaged pupil groups. Consideration might be given to setting maximum levels for state group size and confidence interval policies.
- *Should at least some states be allowed to determine AYP using "multiple indicators," placing less emphasis on reading and math assessment scores?* Many educators object to the almost exclusive use of reading and math test scores to determine whether schools or LEAs make AYP. While acknowledging that such scores are a basic facet of school system effectiveness, they argue that such other important criteria as scores on assessments in additional subjects, the percentage of pupils scoring at levels above proficient (i.e., advanced), or the share of pupils taking and passing advanced courses should also be taken into consideration. Opponents of such proposals argue that "multiple indicators" concepts are sometimes ambiguous or complex and that the dominant focus should remain on math and reading test scores.
- *Do AYP requirements embody appropriately challenging—or unrealistic—expectations that all pupils will perform at a proficient or higher level by 2014?* Without an ultimate goal of having all pupils reach a proficient or higher level of achievement by a specific date, states might establish relative goals that require little or no net improvement over time. A demanding goal might maximize efforts toward improvement by state public school systems, even if the goal is not met. Nevertheless, a goal of having all pupils at a proficient or higher level of achievement, within any specified period of time, may be criticized as being unrealistic, if one assumes that proficiency has been established at a challenging level. It is likely that many states, schools, and LEAs will not meet the NCLB's 2014 AYP goal, unless state standards of proficient performance are significantly lowered or states are allowed by ED to aggressively pursue the use of statistical techniques such as setting high minimum group sizes and confidence intervals.

Performance-Based Sanctions

- Have the program improvement, corrective actions, and restructuring required under the ESEA for schools and LEAs that fail to meet AYP standards for two consecutive years or more been effectively implemented, and have they significantly improved achievement levels among pupils in the affected schools?

The NCLB requires states to identify LEAs, and LEAs to identify schools, that fail to meet state AYP standards for two consecutive years for program improvement, and to take a variety of further actions with respect to schools or LEAs that fail to meet AYP standards for additional

years after being identified for improvement.[13] Although states are encouraged to establish unitary accountability systems affecting all public schools, and some states do so to varying degrees, *the Title I-A statute requires them only to apply these sanctions to schools and LEAs that receive Title I-A funds, not all schools and LEAs.*[14]

School Improvement and Corrective Actions

Title I-A schools that fail to meet AYP standards for two consecutive years must be identified for program improvement. Once so identified, a school remains in "needs improvement" status until it meets AYP standards for two consecutive years.[15] At this and every subsequent stage of the program improvement and corrective action process, the LEA and/or SEA are to arrange for technical assistance, "based on scientifically based research" (Section 1116(b)(4)(c), to be provided to the school. Funding for this purpose is provided in part through a state reservation of 4% of total Title I-A grants for school improvement activities,[16] as well as a separate authorization for additional funds.[17] Parents of pupils in these schools are to be notified of the school's identification as needing improvement.

Pupils attending schools that have failed to meet AYP standards for two consecutive years or more must be provided with options to attend other public schools that have not been designated as needing improvement or as being unsafe.[18] Public school choice must be offered to such pupils by the next school year (unless prohibited by state law). LEAs are generally required only to offer public school choice options within the same LEA; however, if all public schools in the LEA to which a child might transfer have been identified as needing improvement, then LEAs "shall, to the extent practicable," establish cooperative agreements with other LEAs to offer expanded public school choice options.[19] Transportation must be provided to pupils utilizing public school choice options. Children who transfer to other public schools under this authority are to be allowed to remain in the school to which they transfer until they complete the highest grade in that school; however, the LEA is no longer required to provide transportation services if the originating school meets AYP standards for two consecutive years.

If a Title I-A school fails to meet AYP standards for a third year, pupils from low-income families in the school must be offered the opportunity to receive instruction from a supplemental services provider of their choice,[20] in addition to continuing to be offered public school choice options.[21]

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[13] For further information on this topic, see CRS Report RL33371, *K-12 Education: Implementation Status of the No Child Left Behind Act of 2001 (P.L. 107-110)*, coordinated by Gail McCallion.

[14] Over 90% of all LEAs, and approximately three-fifths of all public schools, participate in the Title I-A program.

[15] If a school that has been identified for improvement meets AYP standards for one year (only), then implementation of subsequent stages of corrective action or restructuring (described below) may be delayed for one year.

[16] No LEA is to receive less than its previous year Title I-A grant as a result of implementing this reservation. Due to this requirement, it is likely that some states have been unable to reserve the full 4% in some recent years, due to flat or declining Title I-A grants statewide.

[17] No funds were appropriated under this authority for FY2002-FY2006. However, for FY2007, $125 million was appropriated under this authority, and $491.3 million was appropriated for FY2008 under the Consolidated Appropriations Act (P.L. 110-161).

[18] On this and other school choice provisions and issues, see also CRS Report RL33506, *School Choice Under the ESEA: Programs and Requirements*, by David P. Smole.

[19] If a LEA is unable to offer public school choice options to eligible pupils, it may offer supplemental services options, as described below.

[20] For a more thorough discussion and analysis of this provision and related issues, see CRS Report RL31329, (continued...)

States are to identify and provide lists of approved providers of such supplemental instructional services—which might include public or private schools, LEAs, commercial firms, or other organizations—and monitor the quality of the services they provide. The amount spent per child for supplemental services is to be the *lesser* of the actual cost of the services or the LEA's Title I-A grant per child (from a poor family) included in the national allocation formula (approximately $1,400 on average for FY2008, although this amount will vary substantially in different states and LEAs).

LEAs are to use funds equal to as much as 20%[22] of their Title I-A grants for transportation of pupils exercising public school choice options plus supplemental services costs (combined), although the grant to any particular school identified for improvement, corrective action, or restructuring may not be reduced by more than 15% in order to provide these funds.[23] If insufficient funds are available to pay the costs of supplemental services for all eligible pupils whose families wish to exercise this option, LEAs may focus services on the lowest-achieving eligible pupils.

According to the report, "National Assessment of Title I: Final Report," published by ED in 2007, approximately 1% of pupils eligible for public school choice, and 19% of those eligible for supplemental services, in the 2004-2005 school year actually participated in these activities. It is unclear whether such low participation rates in most states, if continuing into the present, result from low levels of parental interest, inadequate dissemination of information about the options to parents, limited availability of alternative public schools or tutorial services, or other factors.

One or more "corrective actions" must be taken with respect to Title I-A schools that fail to meet AYP for a fourth year. These "corrective actions" include replacing relevant school staff; implementing a new curriculum; decreasing management authority at the school level; appointing an outside expert to advise the school; extending the school day or year; or changing the organizational structure of the school. Which of these specific actions is to be taken is left to state or LEA discretion (or both).

(...continued)

Supplemental Educational Services for Children from Low-Income Families Under ESEA Title I-A, by David P. Smole.

[21] A limited number of states and LEAs have been allowed by ED to reverse the order for introducing public school choice and supplemental services—that is, to offer supplemental services after two years of failing to meet AYP standards, and school choice after a third year. In addition, the requirement to provide supplemental services may be waived if none of the approved providers in the state offers such services in or near a LEA, and the LEA itself is unable to provide such services.

[22] More specifically, LEAs are to use an amount equal to 5% of their Title I-A grant for public school choice transportation costs, 5% for supplemental services, and up to an additional 10% for either, to the extent needed. These funds may be taken from the LEA's Title I-A grant, or from other sources.

[23] LEAs are also authorized to use any funds that might be available under the Innovative Programs block grant (ESEA Title V-A) to pay additional supplemental services costs; states are authorized to use funds they reserve for program improvement or administration under Title I-A, or funds available to them under Title V-A, to pay additional supplemental services costs. However, these funds may be rather limited, as the FY2007 appropriation for all of ESEA Title V-A was $99 million, and no funds were appropriated for FY2008. Finally, according to a 2004 report by the Government Accountability Office (GAO), approximately two-thirds of rural LEAs use some of their funds under the Rural Education Achievement Program (REAP, ESEA) to help pay costs of providing supplemental services. (GAO-04-909, "No Child Left Behind Act, Additional Assistance and Research on Effective Strategies Would Help Small Rural Districts," p. 34.)

Title I-A schools that fail to meet AYP standards for a fifth year must begin to plan for "restructuring," and those that fail to meet AYP requirements for a sixth year must implement their restructuring plan. Such restructuring must consist of one or more of the "alternative governance" actions: reopening as a charter school; replacing all or most school staff; state takeover of school operations (if permitted under state law); or other "major restructuring" of school governance. In September 2005, the Education Commission of the States (ECS) published a report on actions taken in the 13 states where one or more schools reached this final stage of school improvement in 2004-2005.[24] In general, the authors of the ECS study concluded that (1) SEAs vary widely in their involvement in the restructuring process; (2) in most cases, the restructuring options applied to affected schools have been relatively mild to "moderate" (e.g., changing curriculum, implementing a school reform strategy, or altering the school's management structure) rather than "strong" (e.g., reconstituting or closing the school, or converting it to a charter school); and (3) political difficulties have arisen in cases where stronger forms of restructuring have been applied. In several states, some restructuring options could not be implemented because they are not authorized under state law (e.g., charter schools).

LEA Improvement and Corrective Actions

Procedures analogous to those for schools apply to LEAs that receive Title I-A grants and fail to meet AYP requirements. While states are encouraged to implement unitary accountability systems applicable to all pupils and schools, states may choose to base decisions regarding LEA status and corrective actions only on the Title I-A schools in each LEA. Further, as noted earlier, identification as needing improvement and corrective actions need be taken only with respect to LEAs that receive Title I-A grants, although this includes over 90% of all LEAs.

LEAs that fail to meet state AYP standards for two consecutive years are to be identified as *needing improvement*. Technical assistance, "based on scientifically based research" (Section 1116(c)(9)(B)), is to be provided to the LEA by the SEA; and parents of pupils served by the LEA are to be notified that it has been identified as needing improvement.

SEAs are to take corrective action with respect to LEAs that fail to meet state standards for a fourth year (two years of failing to meet AYP standards after having been identified for improvement without, in the meantime, meeting AYP standards for two consecutive years). Such corrective action is to include at least one of the following (at SEA discretion): reducing administrative funds or deferring program funds; implementing a new curriculum; replacing relevant LEA staff; removing specific schools from the jurisdiction of the LEA; appointing a receiver or trustee to administer the LEA; abolishing or restructuring the LEA; or authorizing pupils to transfer to higher-performing schools in another LEA (and providing transportation) in conjunction with at least one of these actions.

Finally, ED is required to establish a peer review process to evaluate whether states overall have met their statewide AYP goals, beginning after the third year of implementation of the NCLB. States that fail to meet their goals are to be listed in an annual report to Congress, and technical assistance is to be provided to states that fail to meet their goals for two consecutive years or more.

[24] See http://www.ecs.org/clearinghouse/64/28/6428.pdf.

As noted in the previous section of this report, based on the latest available complete data, the percentage of public schools failing to meet AYP standards for 2 consecutive years or more, resulting (at least in the case of Title I-A participating schools) in their being identified as in need of improvement, is approximately 12% of all public schools, or 20% of Title I-A participating schools, while approximately 12% of all LEAs have been identified for improvement as a result of failing to meet AYP standards for two consecutive years or more. As implementation of the NCLB requirements continues, increasing percentages of schools and LEAs will likely face the prescribed consequences of failing to meet AYP standards for three, four, five, six or more cumulative years.

Finally, the NCLB has limited provisions regarding performance-based *rewards* for high-performing schools and LEAs that participate in the Title I-A program. States are to establish Academic Achievement Awards for schools that significantly reduce achievement gaps between pupil groups or exceed AYP requirements for two or more consecutive years, and to LEAs that exceed AYP requirements for two or more consecutive years. States may reserve up to 5% of their annual Title I-A grants that is in excess of the state's previous year's allocation for this purpose, but information on the extent to which states have actually reserved Title I-A funds for this purpose is unavailable.

Differentiated Accountability Pilot

On March 18, 2008, the Bush Administration announced a pilot program under which the Secretary of Education would grant waivers to up to 10 states proposing to implement alternative NCLB accountability policies incorporating *differentiated consequences*.[25] Under these policies, states could distinguish among schools identified for improvement, focusing resources upon, and applying the most significant consequences to, schools with the lowest performance levels. On July 1, 2008, the Secretary of Education announced that an initial group of six states—Florida, Georgia, Illinois, Indiana, Maryland, and Ohio—had been approved to participate in a Differentiated Accountability Pilot program. The approval of applications by three additional states—Arkansas, Louisiana, and New York—was announced on January 8, 2009. The accountability plans for the nine states have three characteristics in common. These are (1) placement of schools identified for improvement into two or more categories, particularly a highest-priority group on which the most substantial consequences and improvement resources would be focused; (2) some adjustment of the order and/or severity of consequences for schools placed into different improvement categories, particularly with respect to school choice and SES; and (3) in many cases, narrowing of certain consequences or actions to focus more specifically on pupil groups with the lowest levels of performance.[26]

Possible Reauthorization Issues Regarding Performance-Based Sanctions[27]

Issues regarding performance-based sanctions under the NCLB include the following:

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[25] See http://www.ed.gov/news/pressreleases/2008/03/03182008.html.

[26] The state plans may be found at http://www.ed.gov/admins/lead/account/differentiatedaccountability/index.html.

[27] For additional information on this topic, see CRS Report RL33371, *K-12 Education: Implementation Status of the No Child Left Behind Act of 2001 (P.L. 107-110).*

- *Because the NCLB's performance-based sanctions generally apply only to schools that receive Title I-A grants, and relatively few senior high schools participate in Title I-A, should new mechanisms be adopted to increase accountability among senior high schools?* Concerns have been expressed that the assessment, accountability, and performance-based sanctions of the NCLB have limited impact on senior high schools. Without increased participation by high schools in the Title I-A grant program, the application of performance-based sanctions to high schools would not expand.
- *With substantial numbers of public schools and LEAs identified as needing improvement, and increasing numbers likely to be identified for corrective action or restructuring as the 2013-2014 goal of all pupils at a proficient or higher level of achievement approaches, will the ability of states and LEAs to provide technical assistance, school choice and supplemental services options, and other resources necessary for effective corrective action and restructuring become increasingly limited?* Although the NCLB generally provides for the reservation of 4% of ESEA Title I-A grants for school improvement grants, this may not be sufficient to address the needs of the growing number of schools and LEAs identified for improvement and subsequent sanctions. An additional $125 million was separately appropriated for this purpose for FY2007, and $491.3 million was provided for FY2008. For FY2009, the total amount separately appropriated for School Improvement grants rose more than sevenfold to $3,545.6 million. Whatever the level of these grants, almost all of the funds must be spent at a local level, and there are concerns regarding the capacity of many state educational agencies to provide necessary guidance and technical assistance for turning around low-performing schools.
- *Why are relatively small percentages of eligible pupils taking advantage of the supplemental services and, especially, the school choice options required under the NCLB?* Are the low levels of participation primarily the result of a lack of meaningful options in many localities, of inadequate information dissemination and promotion activities by schools and LEAs, funding limitations, lack of parental interest, or other causes? Whatever the cause, how should this situation be addressed?
- *Have supplemental services provided by third parties been more effective than conventional public school instruction?* Available information on the effectiveness of instruction by supplemental services providers, either individually or in the aggregate, is highly limited. While some advocates appear to believe that competition and choice will be sufficient assurances of quality, others question how the impact of these services can be appropriately measured and evaluated.
- *Should there be more emphasis on rewards and other positive performance incentives for LEAs and schools?* While performance-based rewards are authorized under the NCLB, they are apparently little used, and the current focus is very much on a variety of sanctions.

Staff Qualifications

- What has been the impact of the requirements that all public school teachers (and many paraprofessionals) be *highly qualified* and that well-qualified teachers be equitably distributed across schools and LEAs?

The NCLB established new requirements regarding teacher qualifications for all public schools in states participating in ESEA Title I-A.[28] The NCLB also expanded upon previous ESEA Title I-A qualification requirements for teacher aides or paraprofessionals, although these provisions are limited to most paraprofessionals paid with Title I-A funds.

First, the NCLB required LEAs participating in ESEA Title I-A to ensure that, beginning with the 2002-2003 school year, teachers newly hired with Title I-A funds were "highly qualified." Second, participating states were to develop and implement plans providing that *all* public school teachers statewide in core academic subjects[29] were "highly qualified" by the end of the 2005-2006 school year. However, the U.S. Secretary of Education stated that the 2005-2006 deadline could be extended by one year (to the end of the 2006-2007 school year) for states that provided evidence that they were making a "good faith effort" toward meeting the highly qualified teacher (HQT) requirement. In a July 23, 2007, letter to chief state school officers, the Secretary of Education stated that the plans for meeting the highly qualified teacher requirements of all states except one had been approved.[30] However, the Secretary also noted that on the basis of data submitted by states in their Consolidated State Performance Reports for the 2005-2006 school year, no state yet met the goal of having 100% of teachers highly qualified.

The criteria that teachers must meet in order to be deemed to be "highly qualified" include some elements that are applicable to all public school teachers, and others that apply only to teachers who either are, or are not, "new to the profession." The criteria applicable to *all* public school teachers are that they must hold at least a bachelor's degree, must have obtained full state certification or passed the state teacher licensing examination, and must hold a license to teach, without any certification or licensure requirements having been waived for them. An exception is made for teachers in public charter schools, who must meet the requirements established in the state's charter school law. Program regulations also provide that individuals participating in alternate certification programs meeting certain requirements would be considered "highly qualified" on a provisional basis and given three years to obtain the necessary credentials.

The additional criteria applicable to *teachers who are new to the profession* are that they must (a) demonstrate, by passing a "rigorous" state test, subject area knowledge and teaching skills in basic elementary curricula (if teaching at the elementary level); or (b) demonstrate "a high level of competency" by passing a rigorous state academic test or completing an academic major (or

[28] For additional information on this topic, see CRS Report RL33333, *A Highly Qualified Teacher in Every Classroom: Implementation of the No Child Left Behind Act and Reauthorization Issues for the 111th Congress*, by Jeffrey J. Kuenzi.

[29] Program regulations (*Federal Register*, December 2, 2002) define core subject areas as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography (34 C.F.R. § 200.55(c)).

[30] See http://www.ed.gov/policy/elsec/guid/secletter/070723.html.

equivalent course work), graduate degree, or advanced certification in each subject taught (if teaching at the middle or high school level).

Finally, a public school teacher at any elementary or secondary level who is *not new to the profession* may be deemed to be "highly qualified" by either meeting the preceding criteria for a teacher who is new to the profession, or by demonstrating competence in all subjects taught "based on a high objective uniform State standard of evaluation" (HOUSSE) which is not based primarily on the amount of time spent teaching each subject.

Special flexibility has been granted by ED to teachers in certain circumstances. For example, teachers in small, rural LEAs who teach multiple subjects and are highly qualified in at least one of those subjects were given an additional three years to meet the highly qualified requirements in all core subjects they teach. In addition, science teachers may not need to be highly qualified in each field of science they teach (e.g., biology, chemistry), depending on state certification policies for such teachers.[31] States have also been granted a degree of flexibility in treating middle school teachers the same as other secondary school teachers (as provided under the statute) or as elementary teachers.

Paraprofessionals, also known as teacher aides, constitute approximately one-half of the staff hired with ESEA Title I-A grants, and approximately 15% of Title I-A funds are used to pay their salaries.[32] The NCLB established requirements for paraprofessionals paid with Title I-A funds, effective as of the end of the 2005-2006 school year. The affected paraprofessionals must have either:

(a) completed at least two years of higher education; *or*

(b) earned an associate's (or higher) degree; *or*

(c) met a "rigorous standard of quality," established by their LEA, and "demonstrate, through a formal State or local assessment ... knowledge of, and the ability to assist in instructing, reading, writing, and mathematics"[33] or readiness to learn these subjects, as appropriate.

These requirements apply to all paraprofessionals paid with Title I-A funds *except* those engaged in translation or parental involvement activities or other non-instructional services. Finally, all paraprofessionals in Title I-A programs, regardless of duties, must have at least a high school diploma or equivalent.

States and LEAs have adopted a wide variety of approaches to meeting these requirements. According to the ECS, twelve states have established paraprofessional qualification requirements that exceed those under the NCLB, and five states are applying their requirements to all paraprofessionals, not just those providing instructional services in Title I-A programs. Eleven states have established certification requirements for paraprofessionals (which is not specifically

[31] For details, see CRS Report RL33333, *A Highly Qualified Teacher in Every Classroom: Implementation of the No Child Left Behind Act and Reauthorization Issues for the 111th Congress*, by Jeffrey J. Kuenzi.

[32] For more information on this topic, see CRS Report RS22545, *Paraprofessional Quality and the No Child Left Behind Act of 2001*, by Jeffrey J. Kuenzi, and CRS Report RL33731, *Education for the Disadvantaged: Reauthorization Issues for ESEA Title I-A Under the No Child Left Behind Act*, by Wayne C. Riddle.

[33] Or reading readiness, writing readiness, or mathematics readiness, where appropriate (e.g., for paraprofessionals serving preschool or early elementary pupils).

required by the NCLB). Thirty-six states are using the "ParaPro" test published by the Educational Testing Service (ETS) to assess paraprofessional qualifications, while 17 are using the "WorkKeys" test published by the American College Testing Program (ACT), and 21 are allowing LEAs to use tests of their choice (several states are following multiple approaches).

In addition, the types of responsibilities to which all paraprofessionals paid with Title I-A funds may be assigned are outlined in the NCLB. These include tutoring of eligible pupils, assistance with classroom management, parental involvement activities, translation, assistance in computer laboratories or library/media centers, and instruction under the direct supervision of a teacher.

Possible Reauthorization Issues Regarding Staff Qualification Requirements[34]

Issues regarding the ESEA Title I-A teacher and paraprofessional qualification requirements include the following.

- *Are the special forms of flexibility given to small, rural schools and multi-subject teachers justified, and are there other circumstances that warrant special flexibility?* Current flexibility has been focused on teachers in small, rural LEAs, and it may be questioned whether this flexibility should be expanded to other school settings. One general area of concern is middle schools. The NCLB currently treats middle school teachers the same as those in high schools in several respects, although many middle school teachers work in settings that are more comparable to elementary schools. While ED has allowed a degree of flexibility to states with respect to middle school teachers, the special role of teachers at this level might be more explicitly recognized in reauthorization proposals.
- *Are these minimum qualification requirements reliable indicators of teacher quality and effectiveness?* The NCLB's HQT requirements are closely linked to state teacher certification requirements and, in the case of secondary school teachers, attainment of baccalaureate or higher degrees with a major in the subject(s) taught. While widely accepted as minimum qualifications, these are not the only attributes closely associated with teacher effectiveness in improving student achievement,[35] nor do they address issues of instructional methods used by teachers in the classroom. Further, there is evidence that a very large majority of teachers already met the HQT requirements when the NCLB was enacted.[36] However, the characteristics often identified in research on teacher effectiveness

[34] For additional information on possible reauthorization issues regarding staff qualification requirements under the NCLB, see CRS Report RL33333, *A Highly Qualified Teacher in Every Classroom: Implementation of the No Child Left Behind Act and Reauthorization Issues for the 111th Congress*, by Jeffrey J. Kuenzi.

[35] For example, several studies have found such characteristics as the selectivity of the institution of higher education attended by a teacher, or his/her cognitive level as measured by achievement test scores, to be closely associated with achievement test score gains by their pupils. See, for example, *Teacher Quality: Understanding the Effectiveness of Teacher Attributes*, by Jennifer King Rice, Economic Policy Institute, 2003.

[36] For details, see CRS Report RL33333, *A Highly Qualified Teacher in Every Classroom: Implementation of the No Child Left Behind Act and Reauthorization Issues for the 111th Congress*, by Jeffrey J. Kuenzi.

are much more difficult to measure and evaluate than the current HQT requirements.

- *Does the current statute give the U.S. Department of Education sufficient authority to ensure an equitable distribution of teacher quality across schools and LEAs?* One issue regarding these NCLB staff qualification requirements is whether high-poverty LEAs and schools will be able to meet the teacher qualification requirements. Schools and LEAs disadvantaged by high pupil-poverty rates have generally had particular difficulty attracting highly qualified staff.[37]
- *Have the NCLB's paraprofessional qualification requirements significantly affected either the quality of these staff or the extent to which ESEA Title I-A funds are used to employ them?* The NCLB's qualification requirements for paraprofessionals performing instructional duties in Title I-A programs have received much less attention from ED than the HQT requirements. States and LEAs are responding to these requirements in widely varying ways. While concern has been expressed that substantial numbers of paraprofessionals previously employed in Title I-A programs would be unable to meet these requirements, and might lose their jobs, there is not yet any systematic evidence that this has occurred.

Funding Levels

- Should ESEA programs be funded at levels closer to the most recent maximum authorized amounts, and at what levels, if any, should authorizations be set for future years?

Both during its consideration, and especially after enactment, a great deal of the debate surrounding the NCLB has been focused on the level of funding appropriated for ESEA programs, particularly on funding trends over time and on differences between amounts authorized and appropriated. Over the decades since enactment of the original ESEA in 1965, the typical pattern of ESEA authorizing statutes has been to specify an authorized level of appropriations only for the first year of the authorization period (if at all) for most ESEA programs, and to simply authorize "such sums as may be necessary" for the remaining years.[38] The NCLB broke with this pattern, but only with respect to five of the 45 separately authorized ESEA programs (plus approximately 20 specified subprograms). However, one of the five programs is the largest federal K-12 education program, for which approximately one-half of all ESEA funding is appropriated and to which most of the major ESEA requirements are linked: Grants to LEAs[39] for the Education for the Disadvantaged under ESEA Title I, Part A. Thus, the

[37] See, for example, The Education Trust, *Honor in the Boxcar: Equalizing Teacher Quality*, Spring 2000.

[38] For the largest ESEA program—Title I, Part A—many program advocates have argued that the "full funding" level should be based on maximum payment calculations under the Basic Grant allocation formula, even in years when no authorization level was explicitly specified. The Title I-A Basic Grant formula establishes a maximum payment based on poor and other "formula children" multiplied by a state expenditure factor. The total of these maximum payments is understood by a number of analysts to represent the "full funding" level for Part A. For FY2008, this amount would be approximately $33.2 billion.

[39] This excludes ESEA Title I-A School Improvement Grants, which constitute a substantial and increasing share of total Title I-A appropriations in recent years, but for which the authorization level has not been specified for years beyond FY2002.

following discussion will focus on (1) the ESEA overall, (2) the group of ESEA programs with specified authorization levels, and (3) Title I-A LEA grants in particular.

Table 1, below, provides appropriations for FY2001-FY2009, plus the FY2010 Administration budget request, compared to authorization levels where available, for three groups of ESEA programs: (1) Title I-A LEA grants only; (2) all ESEA programs for which an authorization level is specified in the ESEA for that year (i.e., no programs for the pre-NCLB year of FY2001, almost all ESEA programs for FY2002, and five programs only for FY2003-FY2008), including Title I-A grants to LEAs; and (3) *all* ESEA programs (appropriations only for each year, because there is no recent year for which authorization levels are specified for every ESEA program). Under the automatic extension provisions for the General Education Provisions Act, ESEA authorization levels for FY2008 were the same as the FY2007 levels, but there are no authorization levels for years beyond FY2008.

For *FY2009*, funding has been provided under both regular appropriations legislation (Omnibus Appropriations Act, 2009, P.L. 111-8) and the *American Recovery and Reinvestment Act of 2009* (ARRA, P.L. 111-5). The ARRA provides a total of *$13.95 billion* in *additional* FY2009 appropriations for ESEA programs—$10 billion for Title I-A grants to LEAs, $3 billion for Title I-A School Improvement Grants, $650 million for education technology under ESEA Title II-D, $100 million for construction and renovation grants for schools eligible under the Title VIII Impact Aid program, and $200 million for the Teacher Incentive Fund program under ESEA Title V-D-1. While all of these ARRA funds are FY2009 appropriations, they are available for use over two school years, 2009-2010 and 2010-2011.

Table 1. Authorizations and Appropriations for ESEA Programs, FY2001-FY2010

(in millions of dollars)

	ESEA Title I-A LEA Grants			All ESEA Programs for Which Authorization Levels Are Specified for the Indicated Fiscal Year			All ESEA Programs
Fiscal Year	Approp.	Auth.	Approp. as % of Auth.	Approp.	Auth.	Approp. as % of Auth.	Approp.
2001	8,763	na	na	na	na	na	18,442
2002	10,250	13,500	76%	20,003	26,347	76%	21,954
2003	11,689	16,000	73%	13,901	18,650	75%	23,610
2004	12,342	18,500	67%	14,435	21,450	67%	24,275
2005	12,740	20,500	62%	14,631	23,750	62%	24,352
2006	12,713	22,750	56%	14,331	26,300	54%	23,332
2007	12,838	25,000	51%	14,358	28,875	50%	23,487
2008	13,899	25,000	57%	15,616	28,875	54%	24,417
2009[a]	14,492	na	na	16,259	na	na	24,829
2009[b]	10,000	na	na	10,200	na	na	13,950
2009[c]	*24,492*	*na*	*na*	*26,459*	*na*	*na*	*38,779*
2010[d]	12,992	na	na	15,091	na	na	25,474

Source: Prepared by CRS.

a. This row shows amounts provided in the FY2009 regular appropriations act for the ESEA, P.L. 111-8.

b. This row shows amounts provided under the American Recovery and Reinvestment Act, P.L. 111-5.

c. This row shows the total amount appropriated for FY2009 under both P.L. 111-5 and P.L. 111-8.

d. This row shows amounts under the Administration's budget request for FY2010.

As noted above, the only year for which authorization amounts were specified under the NCLB for almost all ESEA programs was the first year of the current authorization period, FY2002. For that year, as indicated in **Table 1**, the total amount authorized for all ESEA programs with specified authorization levels was $26,347 million, and the appropriation for these programs was $20,003 million. The grand total ESEA appropriation for FY2002 was $21,954 million. For ESEA Title I-A specifically, the authorization was $13,500 million, and the appropriation was $10,350 million.

These FY2002 appropriation levels represented substantial increases over the FY2001 level for the ESEA overall (+19.0%) and for Title I-A LEA grants (+17.0%). Appropriations also increased significantly for FY2003 compared to FY2002, although less so for the ESEA overall (+7.5%) than for Title I-A (+14.0%). Appropriations continued to increase at a declining rate for FY2004 compared to FY2003 (+3.8% for the ESEA overall and +5.6% for Title I-A). Funding was essentially flat over the period of FY2004-FY2007 for the ESEA overall and Title I-A in particular. For FY2008, funding for Title I-A increased by 8.3% and for the ESEA overall by 4.0%.

Analysis of ESEA funding trends for FY2009 and FY2010 depends heavily on how one treats appropriations provided under the ARRA. As noted above, all ARRA funds for ESEA programs are FY2009 appropriations, but they are available over the two-year period of FY2009 and FY2010. If all of these funds are associated with FY2009 alone, then total ESEA funding for that year increases quite substantially: from $13,899 million for FY2008 to $24,492 million for FY2009 for Title I-A grants to LEAs (+76.2%), from $15,616 million for FY2008 to $26,459 million for FY2009 for the five ESEA programs that had specified authorization levels in FY2008 (+69.4%), and from $24,417 million for FY2008 to $38,779 million for FY2009 for the ESEA overall (+58.8%).

Another trend is that over the period FY2002-FY2007, appropriations represented a decreasing share of authorizations for those ESEA programs with specified authorization levels, although these proportions rose somewhat in FY2008. For FY2002, the first year under the NCLB, appropriations were 76% of the amount authorized both for the ESEA overall and for Title I-A. By FY2007, the appropriations represented 50% of the authorized level for all ESEA programs with specified authorizations, and 51% of the Title I-A authorization. For FY2008, these proportions rose to 54% and 57%, respectively. For *FY2009*, the total amount appropriated under both regular appropriations legislation and the ARRA was close to the *FY2008* authorization level both for Title I-A LEA grants and for the five ESEA programs that had specified authorization levels in FY2008.

A less concrete issue is the question of whether ESEA funding has increased sufficiently since FY2001 to pay the increased costs incurred by states and LEAs of meeting the expanded programmatic requirements included in the NCLB. It is likely that no definitive answer to this question will ever be available, but a brief evaluation of the issue is worthwhile, if only to enhance one's understanding of the meaning of the question.

There are varying contexts in which both the costs and the benefits of NCLB participation by states and LEAs may be evaluated. First, are the "costs" to be defined relatively narrowly—that is, including only the direct costs of meeting such specific requirements as the development and administration of standards-based assessments of reading and mathematics achievement to public school pupils in each of grades 3-8, plus science assessments at 3 grade levels? Alternatively, are the "costs" to be defined more broadly, to include, for example, all estimated costs associated with helping low-performing schools to meet AYP standards, especially as the "ultimate goal" deadline of 2013-2014 approaches? Studies have been conducted of some aspects of this issue as narrowly defined. For example, the Government Accountability Office (GAO) conducted a study of the costs to each state of developing and administering the assessments required under Title I-A.[40]

According to the GAO, the level of state costs for assessment development and administration, as well as whether those costs could be met with funding provided by the assessment development grants that are specifically provided under the NCLB, depends primarily on the kinds of test questions states choose to utilize. In contrast, it is almost impossible to systematically estimate the broader costs of improving pupil performance sufficiently for all schools to meet AYP requirements, and to meet all of the performance-based sanctions that the NCLB requires states and LEAs to implement. If it were possible to estimate these costs, they would likely exceed total ESEA appropriations. However, it may be questioned whether the federal government should be responsible for all of the costs associated with identifying and improving low performing schools, and there is no agreement on what are the most cost-effective ways to improve school performance.

Second, should the "costs" associated with NCLB implementation be compared to the total funding level for Title I-A and other ESEA programs, or only with the increases adopted since FY2001? Both the requirements associated with, and the appropriations provided for, the NCLB built upon a body of previous ESEA requirements and funding. It may be questioned whether any "cost-benefit" focus should be on marginal changes, or on the entirety.

Third, should costs and benefits be evaluated separately for states vs. LEAs vs. individual schools? Costs and benefits of ESEA participation may differ substantially for state governments vs. varying types of LEAs. For example, SEAs are responsible for developing, implementing, and reporting to ED and the public on policies embodying many of the NCLB's distinctive requirements (such as assessments, AYP, or highly qualified teachers). However, with very few exceptions (e.g., assessment development grants), SEAs have experienced increases in federal funding to help meet these costs that are simply proportional to total program funding levels. At the LEA level, increased targeting of ESEA Title I-A funds on LEAs with relatively high numbers or percentages of pupils from low-income families[41] has resulted in declining funding levels for a large number of relatively low-poverty or low-growth LEAs at the same time that they must implement a number of expanded ESEA requirements.

Finally, should costs and benefits be evaluated purely in financial terms, or should they include broader concepts such as changes in pupil achievement level or shifts in control over education

[40] Government Accountability Office. *Title I: Characteristics of Tests Will Influence Expenses; Information Sharing May Help States Realize Efficiencies*, GAO-03-389.

[41] See CRS Report RL33731, *Education for the Disadvantaged: Reauthorization Issues for ESEA Title I-A Under the No Child Left Behind Act*, by Wayne C. Riddle.

policy by different levels of government? Beyond finances, the benefits of the expanded NCLB requirements may include increased attention to the educational status of disadvantaged pupils and the schools they attend, a heightened emphasis on applying high achievement expectations to all pupils, and a wider range of assessment data for pupils, schools, LEAs and states. Non-financial costs may include a limited yet substantial increase in federal influence on basic policies affecting all public school pupils, and an emphasis on assessments that may narrow the curriculum of instruction if the tests do not measure the full range of skills and subjects that public schools are expected to impart.

Possible Reauthorization Issues Regarding NCLB Funding Levels

Possible reauthorization issues regarding ESEA/NCLB funding levels include the following.

- *Should the authorization level for at least some ESEA programs continue to be specified in future years, and if so, at what levels?* Congressional intent regarding anticipated funding levels could be clarified by explicitly stating appropriation authorization levels for each program and each year of the authorization period. At the same time, this would generate debates over the level at which authorizations should be set. Further, given that the appropriation for the largest ESEA program, Title I-A, has been below the authorized amount each year, it may be questioned whether the specification of authorization levels has a significant impact beyond generating debate. At the same time, specified authorizations do provide a goal for those seeking increased funding, and express the judgment of those involved in the authorizing process of an appropriate level of funding.
- *Should the implementation of existing or additional requirements be linked to the provision of specified minimum ("trigger") levels of funding?* In the NCLB, implementation of certain new pupil assessment requirements was made contingent upon the provision of specified minimum levels of funding for assessment development grants to the states. This policy might become a model for possible expanded assessment or other requirements in a reauthorized ESEA, to address ongoing funding level debates as well as concerns about the costs vs. benefits of ESEA participation for states and LEAs.
- *Do the costs to states and LEAs of meeting the ESEA's requirements that were initiated under the No Child Left Behind Act exceed the benefit of federal aid increases since 2001?* This question will likely be raised, but it will be exceptionally difficult to resolve. A key issue is whether accountability provisions such as those initiated under the NCLB are seen as appropriate mechanisms for assuring effective use of all federal, state, and local funds, rather than just a trade-off for marginal increases in federal funds.

International Competitiveness

- Should the ESEA place much greater emphasis on enhancing the nation's international competitiveness in science, mathematics, and foreign language achievement?

National policy discussions have increasingly focused on the relationships between the performance of the nation's educational system and the long-term competitiveness of the nation's economy. While much of this discussion has been focused on higher education, concerns also arise from average academic achievement levels of U.S. K-12 pupils in science and mathematics that are below those of many other developed nations, especially at the high school level. This concern is combined with widely held assumptions that there is a significant relationship between academic achievement levels in mathematics and science with a variety of indicators of international economic competitiveness.

In the 2006 administration of assessments under the Organization for Economic Cooperation and Development's (OECD's) Program for International Student Assessments (PISA), 15-year old pupils in the United States scored significantly below 23 other OECD nations in mathematics,[42] and below 16 other OECD countries in science. In each case, U.S. scores were below the OECD average as well.[43]

International comparisons of achievement in mathematics and science of 12th grade students in the United States and other developed and developing nations were most recently conducted in the mid-1990s; these were coordinated by the International Association for the Evaluation of Educational Achievement (IEA).[44] The scores of U.S. students in these assessments were lower than those for 18 of the 20 other participating countries in mathematics (all except Cyprus and South Africa), and were below those of 15 of the 20 other participating countries in science.

At the same time, the relative performance of younger pupils in the United States is somewhat more positive. The average scores of U.S. pupils in 4th and 8th grades on the Trends in International Mathematics and Science Study (TIMSS) conducted in 2007 were above the international average in mathematics and science. In terms of country rankings, the United States performance was approximately in the middle overall on the latest TIMSS assessments.[45] However, in addition to focusing on earlier grades, these TIMSS assessments include a wider range of nations than the OECD or IEA assessments, with a larger proportion of less-developed nations participating.

Although the ESEA currently has a few programs that are specifically focused on improving instruction in mathematics, science, or foreign languages, these are relatively small.[46] One of the largest ESEA programs—the Teacher and Principal Training and Recruiting Fund (Title II, Part A)—was initially focused on improving the skills and content knowledge of K-12 teachers of mathematics and science, but no longer focuses on any specific subject areas. Aside from targeted programs, perhaps the most significant competitiveness-related element of the current ESEA is

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[42] Among OECD countries, the scores of only Portugal, Italy, Greece, Turkey, and Mexico were below those of U.S. pupils.

[43] See http://nces.ed.gov/pubs2008/2008016.pdf.

[44] International Association for the Evaluation of Educational Achievement. *Mathematics and Science Achievement in the Final Year of Secondary School: IEA's Third International Mathematics and Science Study, 1998*, by Ina V.S. Mullis et al.

[45] See CRS Report RL33434, *Science, Technology, Engineering, and Mathematics (STEM) Education: Background, Federal Policy, and Legislative Action*, by Jeffrey J. Kuenzi.

[46] The largest current ESEA program focused on mathematics, science, or foreign languages is the Mathematics and Science Partnership Program authorized under Title II, Part B, and funded at $179.0 million for FY2008. This program is focused primarily on providing professional development activities for K-12 mathematics and science teachers.

the inclusion of mathematics and (to a lesser degree) science in the ESEA Title I-A assessment requirements, and the required use of mathematics assessment results in AYP determinations.

During the 111th Congress, Members are likely to consider possible changes to federal K-12 education policies regarding assessments, accountability, and other aspects of science and mathematics education through proposed amendments to the No Child Left Behind Act. The 110th Congress adopted the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act, also known as the America COMPETES Act (P.L. 110-69). Among several other provisions, that legislation authorizes support for a variety of non-ESEA programs of K-12 mathematics and science education administered by the Departments of Education and Energy plus the National Science Foundation.[47]

As discussed earlier, the ESEA currently requires states participating in Title I-A to implement standards-based assessments in reading and mathematics in each of grades 3-8 plus once in high school, and in science at three grade levels. Further, while statutory provisions are ambiguous on this point, current ED policy does not require states and LEAs to incorporate science assessment results in making AYP determinations. One series of options to address competitiveness concerns would be to expand K-12 science and even mathematics assessment requirements, especially at the high school level, and to require incorporation of science assessment results into AYP determinations.

The ESEA provisions regarding K-12 teachers could be modified to encourage more postsecondary graduates in STEM to enter, and remain in, positions as K-12 teachers. For example, a previous focus on science and mathematics in the largest ESEA teacher program (Title II-A) might be revived in some form. Finally, proposed ESEA amendments might focus on improvement of the infrastructure (equipment, facilities, and quality of instructional materials) for K-12 science and mathematics instruction.

Possible Reauthorization Issues Regarding International Competitiveness

Possible reauthorization issues regarding international competitiveness include the following.

- *Does the requirement that all students must attain proficiency on state academic assessments in reading and mathematics by 2013-2014 have any adverse effect on the ability of schools and LEAs to devote adequate resources toward providing a challenging educational experience to students who are already achieving at a proficient or higher level?* Some have questioned whether the requirement that all students must attain proficiency on state academic assessments in reading and mathematics by 2013-2014 may be having an indirect, adverse effect on our long-term competitiveness by reducing the ability of schools and LEAs to devote adequate resources toward providing a challenging educational experience to students who are already achieving at a proficient or higher level. Currently, specific federal support for more challenging academic programs for advanced K-12 students is quite limited. The

[47] See CRS Report RL33434, *Science, Technology, Engineering, and Mathematics (STEM) Education: Background, Federal Policy, and Legislative Action*, by Jeffrey J. Kuenzi.

implicit, primary federal strategy of recent decades has been to focus on raising the base achievement level for the disadvantaged, rather than challenging the more advanced students. Alternative proposals might place greater emphasis on maximizing achievement by more advanced students, for example, by giving some credit toward meeting AYP requirements in return for increases in the number or percentage of students scoring at an advanced level of achievement.

- *Should states and LEAs be explicitly required to include the results of assessments in science in their AYP determinations, and should the number of required science assessments be expanded?* The ESEA's emphasis on science education in particular could be significantly expanded by increasing the number of grades in which science assessments must be administered by participating states, and explicitly requiring the inclusion of science assessment results in AYP determinations. Opponents would likely argue that the ESEA's assessment and AYP provisions are already extensive and complex, and should not be expanded.
- *Should programmatic aid under the ESEA be targeted more specifically on science, mathematics, and foreign languages?* Major options here include focusing teacher recruitment and professional development programs on these subjects, or providing new forms of aid for instructional infrastructure (such as classroom laboratories). The opposing argument is that these decisions are best left to state and local educational authorities.

Federal Role

- The NCLB, with its numerous new or substantially expanded requirements for participating states and LEAs, initiated a major increase in federal involvement in basic aspects of public K-12 education. Should the active federal role in K-12 education embodied in the NCLB be maintained?

Although ESEA reauthorization debates have been substantially focused on major specific aspects of the current federal role in K-12 education discussed above—such as assessments, AYP, performance-based sanctions, or staff qualifications—there has also been a broader consideration of the aggregate impact of current federal K-12 education policies. The NCLB represented a quantum increase in federal involvement in the nation's K-12 education systems, and several issues have arisen with respect to not only the statutory provisions but also the manner in which they have been implemented and administered by ED.

Previous to enactment of the NCLB, the scope of most federal K-12 education program requirements was limited to specific programs or activities supported by federal grant programs.[48] Although steps in the direction of a broader scope for some federal program requirements began with the Improving America's Schools Act of 1994 (IASA),[49] the NCLB represented a major expansion of the scope of federal requirements. As discussed above, provisions associated with participation in the ESEA Title I-A program of Education for the Disadvantaged have a major

[48] One long-term exception to this pattern would be civil rights requirements applicable to the total operations of federal aid recipient agencies.

[49] For example, the assessments in reading and mathematics at three grade levels, required under the IASA for states participating in ESEA Title I-A, were generally to be the same assessments as used statewide.

impact on assessment, accountability, staff qualifications, and other basic policies affecting *all* public schools and students.

Not only are the statutory provisions in these areas broad in scope and detailed in nature, but in the view of many observers, during the Bush Administration they have been administered by ED in a comparatively active and strict manner. As ED staff and designated peer reviewers have examined initial and revised state policies regarding assessments, AYP, performance-based sanctions, and teacher qualifications, several observers have expressed concerns about a lack of transparency in the review procedures and criteria; inconsistencies (especially over time) in the types of changes that ED officials have approved; whether the net effect of the changes is to make the accountability requirements more strict or more flexible; whether the changes may make an already complicated accountability system even more complex; and whether decisions on proposed changes are being made in a timely manner by ED.[50]

In addition, especially during the stalemate over ESEA reauthorization proposals in the 110th Congress, the Bush Administration took the opportunity to expand federal regulation of ESEA programs as well as allow selected, substantial forms of flexibility through the expansive use of waiver authority provided under Title IX of the ESEA. For example, new regulations published in October 2008 substantially expanded ESEA Title I-A requirements dealing with high school graduation rates, as used in AYP determinations, as well as school choice and supplemental educational services for pupils in schools identified for improvement. At the same time, these regulations codify a previously initiated waiver program allowing use of growth models of AYP, and a new waiver pilot allows a limited number of states to implement differentiated consequences for schools that fail to make AYP (see page 15). These actions reflected a trend toward not only increased federal influence but more specifically increased control over the federal influence by Administration initiatives, as opposed to statutes.

Although the NCLB substantially increased federal involvement and direction in the K-12 education policies of participating states, debates during the 2001 reauthorization of the ESEA also featured numerous proposals to increase state and LEA flexibility in the use of federal aid, and some of these proposals were included in the NCLB. For example, the eligibility threshold for schools to be allowed to use their ESEA Title I-A funds on a schoolwide basis was reduced to 40%, a level that is approximately the national average percentage of pupils from low-income families.[51] The statute allows the use of funds under most federal aid programs, not just Title I-A, on a schoolwide basis, if basic program objectives and fiscal accountability requirements are met. In addition, the NCLB amended the ESEA to allow most *LEAs* to transfer up to 50% of their grants among four programs—Teachers, Technology, Safe and Drug Free Schools, and the Innovative Programs Block Grant—or *into* (not from) Title I-A. The NCLB further authorized additional forms of special flexibility to states and LEAs, although participation in most of these authorities has been extremely limited.[52]

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[50] See, for example, Center on Education Policy, *From the Capital to the Classroom: Year 4 of the No Child Left Behind Act*, and Council of Chief State School Officers, *Statewide Educational Accountability Under the NCLB Act—A Report on 2006 Amendments to State Plans*.

[51] Under this provision, any school participating in Title I-A with 40% or more of its pupils from low-income families may qualify to operate a schoolwide program.

[52] See CRS Report RL31583, *K-12 Education: Special Forms of Flexibility in the Administration of Federal Aid Programs*, by Wayne C. Riddle.

Another aspect of this active federal role is continuation of a strategy of providing ESEA aid through a large number of separate, categorical programs. The NCLB eliminated some previous ESEA programs, and in some other cases it consolidated groups of related ESEA programs into a single program. At the same time, the NCLB authorized several new ESEA programs, and there are currently 45 authorized ESEA programs. While this is a reduction from the 57 authorized programs in the pre-NCLB version of the ESEA, this comparison is somewhat misleading, as the current statute combines approximately 20 distinct sub-programs under one authorization.[53]

As a result of the detailed and broadly applicable requirements adopted under the NCLB, federal involvement in public K-12 education is significantly more extensive than in the past, while the aggregate federal contribution to public K-12 education revenues remains relatively small (approximately 9%). In considering the ESEA for reauthorization, the Congress will decide whether to continue this active federal strategy, perhaps expanding it further through increased assessment or other requirements, or alternatively to place tighter limits on the scope of federal involvement in state and local K-12 education systems. A hybrid approach might involve continued or expanded federal requirements regarding pupil outcomes combined with fewer requirements regarding the purposes for which federal grant funds can be used. Examples of the latter might include program consolidation, an expansion of current authority to transfer funds among ESEA programs, or policies offering increased flexibility in return for reaching specified levels of performance.

Possible Reauthorization Issues Regarding the Federal Role in K-12 Education

Possible reauthorization issues regarding the federal role in K-12 education include the following:

- *Should the current relatively active level of federal involvement in broad K-12 education policies be sustained or expanded?* An active federal role is an expression of the national interest in improving educational performance, and an effort to assure effective use of federal aid funds. At the same time, a federal role of less scope would be consistent with the limited federal contribution to public K-12 education revenues, as well as the historical primacy of states and LEAs in K-12 education policy.
- *Have major NCLB requirements been implemented by ED in a consistent, transparent, and effective manner?* An expansion of the scope of federal requirements has been accompanied by increased attention to the ways in which those requirements are administered and enforced by ED. Efforts might be devoted to ways to enhance the transparency and consistency of future ESEA implementation activities—for example, through increased public dissemination of information on policies proposed by states and ED's responses to those proposals.
- *Should the level of flexibility provided to states and LEAs in their use of ESEA grant funds be expanded?* As with the NCLB, efforts to sustain or expand outcome accountability requirements are likely to be coupled with efforts to

[53] Under the Fund for the Improvement of Education, ESEA Title V-D, 20 distinct programs are combined under a single authorization. In practice, appropriations are provided individually for many of these programs.

increase state and local flexibility in other respects, particularly with respect to how federal aid funds may be used.

- *Should new constraints be placed on the authority of the Secretary of Education to change ESEA policies through regulations or waivers?* As exemplified during the final years of the Bush Administration, the Secretary of Education has extensive authority to change many important ESEA policies through new program regulations and waivers. In particular, although the ESEA's waiver authority places limits on types of requirements that can be waived, those limits were established several years ago (in 1994, under the IASA) and do not include the major assessment, AYP, or accountability policies of ESEA Title I-A, virtually all of which could be waived at the discretion of the Secretary.

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