



National School Boards Association
Initial Comments and Recommendations on the
Miller-McKeon Discussion Draft to Amend Titles II-XI of the
Elementary and Secondary Education Act (ESEA)
September 14, 2007

The National School Boards Association (NSBA), representing over 95,000 local school board members across the nation is pleased to respond to your request for comments regarding the Miller-McKeon Discussion Draft for Titles II - XI of the Elementary and Secondary Education Act (ESEA). As with our previously-submitted comments on the Title I draft, the following comments and recommendations represent only our initial reaction to the comprehensive discussion draft based on a preliminary review. We may follow-up with further comments or clarifications as we continue to review the language, consider its interaction with the Title I draft language, and hold discussions with our membership.

TITLE II – TEACHER EXCELLENCE FOR ALL CHILDREN

1. Sec. 2111. Premium Pay
Pages 5-13

This section establishes grants to LEAs to provide annual bonuses to “exemplary” teachers and principals who work in high-need schools, with an added bonus for such educators who teach a high-need subject.

Recommendation: NSBA supports efforts by states and LEAs to redesign and implement teacher compensation systems that are linked to the goals of raising student achievement and high standards, particularly as a way to recruit and retain talented teachers for high-need schools and subjects. As such, we support federal *incentives* that can assist those state and local efforts. However, experience has shown that the most successful innovative compensation systems are those developed closely with and securing substantial buy-in from local teachers. We recommend the committee provide for maximum flexibility for local districts in developing such a system to qualify for these grants, as opposed to prescribing certain details such as the number of classroom observations required annually.

Regarding hiring timelines for highly qualified teachers, this is an LEA responsibility, and not one in which the federal government should dictate specific requirements. At a minimum, the language should make clear that hiring decisions, including specific timelines, remain the discretion of LEAs.

OFFICE OF ADVOCACY

2. Sec. 2113. Teacher Residency Program Grants

Pages 19-28

This section establishes three-year competitive grants for up to ten high-need LEAs to create teacher residency programs that result in residency graduates teaching in a high-need LEA for five years after specialized mentoring.

Recommendation: NSBA believes this is one potentially promising strategy for helping local districts to recruit and retain teachers and improve teacher quality. As drafted, the program would be limited to just ten LEAs. We would encourage the committee to consider raising that cap or provide the Secretary of Education with the authority to do so depending on interest and quality of the applications. We also recommend specifying that LEAs have the discretion to provide, as part of the grant, a stipend or other financial assistance to the teacher residents so as not to discourage interest among prospective teachers.

On page 22, lines 1-3, it is unclear who the “director” of the residency program is and who selects or appoints this person.

On page 24, lines 1-5, we suggest the “experienced mentor” teacher have experience teaching in a “high-need school” specifically, not just any school in a “high-need LEA.” Continuing with that suggestion, on page 25, lines 11-12, we suggest the school chosen for placement of the program graduate (teacher) be a “high-need school” as opposed to a school in a “high-need area.”

On page 24, lines 24-25, we suggest changing the timeframe for participants to teach under the supervision of an experienced mentor teacher to “one academic year” to be consistent with the language on page 20.

3. Sec. 2122. Teacher Centers

Pages 30-35

This section establishes three-year grants to eligible entities to create new or support existing teacher centers to provide high-quality professional development.

Recommendation: NSBA supports comprehensive professional development programs and welcomes federal grants to assist states and districts in developing such programs. However, to maximize effectiveness, any professional development program must be created with LEA oversight to ensure it is aligned with current curricula and academic standards, and focuses on necessary improvements to teacher quality and instruction deemed by the LEA to be a priority. The draft bill delegates operating authority for the “teacher centers” to a policy board with inadequate representation by the LEA.

4. Sec. 2211. Assurance of Reasonable Progress Toward Equitable Access

Pages 39-40

This section ties receipt of Part B Teacher Quality State Grants to an adequate demonstration, based on the Secretary of Education’s judgment, by states regarding their efforts to determine whether poor and minority students are disproportionately taught by inexperienced, out-of-field or not highly qualified teachers than other students, and steps being taken at the state and local levels to address any disparities.

Recommendation: On page 40, following “Secretarial Obligation” regarding withholding of funds, NSBA believes language should be added clearly indicating that states first have the opportunity for a hearing and to revise or provide additional information regarding its efforts. It is also unclear in our initial reading of the discussion draft, how “inexperienced” teachers are defined.

5. Sec. 2222. Local Needs Assessment and Application
Pages 60-67

This section requires LEAs receiving subgrants to conduct and publish an assessment of its teacher distribution figures for each school, and submit application based on findings of assessment.

Recommendation: On page 63, line 17, the LEA application is to include an assurance that it will prioritize professional development to teachers at schools most in need. How does this interface with the above-mentioned professional development via the Teacher Centers (item 3)? We again would emphasize the need for the LEA to make those decisions.

6. Sec. 2223. Local Use of Funds
Pages 67-74

This section discusses the use of funds for professional development purposes.

Recommendation: On page 67, line 20, NSBA strongly urges the committee to keep the word “may” in the committee bill. LEAs should have maximum discretion over the use of these funds in order to meet its unique needs.

On page 67, line 24, NSBA recommends adding after “that” the following: “may include the following elements.”

On page 70, line 21, NSBA recommends adding after “that” the following: “may.”

On page 73, lines 1-5 appear to discuss differential pay. While NSBA supports such a concept we question why it is included in the professional development section.

On page 74, lines 7-10, refers to a limitation on expenditure of funds for activities described in subsection (b)(3)(S). Our initial read indicates no subsection beyond (b)(3)(Q).

7. Sec. 2513. Transition to Teaching, Grant Program
Pages 170-177

This section authorizes competitive grants to eligible entities to assist in the recruitment and retention of mid-career professionals and others to enter the teaching field.

Recommendation: On page 172, lines 11 and 20 refer to “outstanding” teachers and efforts by the applicant entity to recruit and retain them in high-need LEAs. However there is no definition for “outstanding.” How does this relate to “highly qualified” teachers or any of the other terms used throughout this title to refer to teachers, e.g. “experienced,” “novice,” etc.?

8. Sec. 2612. Achievement Through Technology and Innovation

Page 191, lines 17-23

This section indicates that the State Education Agency shall provide technical assistance to any LEA whose grant allotment is less than \$3,000.

Recommendation: NSBA supports an annual grant minimum allotment for LEAs of at least \$3,000 as contained in H.R. 2449. Under the current Enhancing Education Through Technology (EETT) program many districts receive grants that are inadequate to operate meaningful and effective programs. Indeed, over one-half of districts receiving EETT formula funds received under \$5,000, with nearly 20 percent (mostly small and rural LEAs) receiving less than \$1,000. Based on our estimates, larger districts currently receiving allocations above this minimum would be held harmless under current appropriations levels. The reallocation of funds would be small, totaling less than \$12 million annually, while the Title F draft increase in formula funds from 50 percent to 60 percent would more than offset this shift.

9. Sec. 2713. John Glenn Academy Summer Workshops

Pages 236-237

This section establishes requirements for summer workshops under the John Glenn Academies that would be created under the draft bill.

Recommendation: On page 236, line 20, NSBA suggests ensuring that the summer workshops use curricula that are aligned with state academic standards. We suggest inserting “aligned with state academic standards,” between “that” and “are” in line 20.

**TITLE III – LANGUAGE INSTRUCTION FOR
LIMITED ENGLISH PROFICIENT AND IMMIGRANT STUDENTS**

*Editorial Note: While Title III uses the term “Limited English Proficient,”
Title VI uses the term “English Language Learners”*

1. Sec. 303. Use of Data for Determinations; Averaging

Page 5, lines 7-10

This section authorizes states, in determining allotments, to average data over the previous two years in making allocations.

Recommendation: There may certain states where the averaging of the two years may adversely impact a particular state’s allocation. NSBA recommends that in the case where the increase from year one to year two exceeds 50 percent of more, the allocation should be based on the second year. Such an adjustment would benefit those states with significant increases in the number of eligible students.

2. Sec. 305. Authorized Subgrantee Activities

Page 7, lines 9-11

This section establishes developing instructional programs that promote academic proficiency in more than one language as an authorized subgrantee activity.

Recommendation: NSBA supports this expanded authority.

3. Sec. 311. Coordination of Reporting Requirements

Page 10, lines 15-16

This section strikes, “to the extent feasible.”

Recommendation: NSBA suggests that the term is amended to “to the extent practicable.” This change would essentially meet the intent of the proposed change, but provide sufficient flexibility in such cases where the desired levels of coordination are unable to be achieved for practical reasons.

TITLE IV – AMENDMENTS TO TITLE IV

1. Sec. 4112 (a). Set-Aside for Challenge Schools

Page 13, lines 1-12

This section creates a 20 percent set-aside within the Governor’s state reservation of funds for awarding “Challenge Grants” to schools determined not to have a safe climate for academic achievement.

Recommendation: NSBA is supportive of providing resources within the state allocation of Safe and Drug Free funds to schools that have particular safety challenges. We appreciate the recognition that schools should not be stigmatized through labels such as “persistently dangerous,” and that they require additional resources to help improve their school climate. However, NSBA is concerned that, as drafted, this bill could have the unintended consequence of over-identifying schools with safety challenges, which would result in resources not being targeted to schools that need them most. For example, schools that report a significant number of bullying incidents may be designated by the state as Challenge Schools, despite these incidents not amounting to disciplinary action, and take precedence over schools where a few more severe criminal offenses occur.

2. Sec. 4112 (c). Data Collection and Reporting System

Page 14, lines 9-25; Page 15 lines 1-14

This section specifies the type of information to be collected by states in reporting incidents of violence and drug abuse in schools.

Recommendation: NSBA is concerned that this section significantly expands the data collection requirements on schools. For example, the draft would expand the type of information to be collected to include incidents of bullying, harassment, and gang activity and require the reporting of all offenses regardless of their severity and whether they resulted in disciplinary action by the school. Such requirements are overly burdensome on school administrators and detract from the intent of the program to target assistance to the schools most in need.

In addition, NSBA is opposed to extending reporting requirements to include offenses that do not occur at school, but rather *on a school bus, at a school function, or school-related activity*. Such incidents may occur outside of the control of school personnel and should not negatively affect a school’s standing as to whether it provides a “safe climate for learning.” Furthermore, this requirement evokes questions about the extent of a school’s liability in such matters, which, depending on the jurisdiction, may be inconsistent with legal precedent.

3. Sec. 4114. School Plan Requirement in LEA Application

Page 18, lines 7-23

This section details what must be included in a school’s safety plan in order for them to receive Safe and Drug Free funds.

Recommendation: NSBA believes this section goes too far in imposing federal directives on schools about their locally developed safety plans and policies. For example, as drafted, this bill would require schools to develop school discipline policies “through public comment,” as well as devise a system and timeline for registering and resolving complaints regarding school conduct. Such stipulations seek to micromanage schools and infringe on local control.

4. Sec. 4115. Designation of Challenge Schools

Page 21, lines 6-21

This section outlines the information to be considered by states in determining whether a school has “a safe climate for academic achievement.”

Recommendation: NSBA believes that in determining which schools should be identified as “Challenge Schools,” states should consider school-related crime data based only on incidents that take place on school grounds and result in the school taking disciplinary action against a student. Schools should not be negatively affected by incidents that occur outside of their control or that they themselves do not believe warrant disciplinary action. In addition, NSBA cautions against the use of outside measures, such as the National Incident-Based Reporting System, which may or may not be consistent with information compiled by schools, in determining the safety of schools for purposes of this program.

5. Sec. 402. 21st Century Community Learning Centers Competitive Grants

Page 33, lines 14-18

This section would restructure the priority system given to grant applicants from those seeking to target schools in need of improvement to those schools in need of improvement where *more than one subgroup* has not met their annual measurable objectives.

Recommendation: NSBA questions the decision to give service priority to schools where more than one subgroup has not met AYP, irrespective of the size of these subgroups. As is often the case, a school where only one subgroup has not met AYP, may in fact have a larger proportion of their students not meeting annual measurable objectives than a school in which multiple subgroups have been identified. Consideration should be given to the relative size of the student population not meeting academic benchmarks when targeting resources to the neediest schools.

TITLE V – AMENDMENTS TO TITLE V (PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS)

1. Sec. 501 (a). Innovative Programs

Page 50, lines 16-21

This section clarifies that consultation with private school officials should be consistent with consultation requirements in Title IX.

Recommendation: Consistent with other areas of the law, NSBA supports the requirements that non-public schools receiving such services be subject to the same accountability requirements as public schools.

TITLE VI— FLEXIBILITY AND ACCOUNTABILITY

*Editorial Note: While Title III uses the term “Limited English Proficient,”
Title VI uses the term “English Language Learners”*

1. Sec. 6112. Pilot Programs Established

Page 153, lines 1-14

This section authorizes the Secretary to establish up to ten pilot programs to develop advanced and innovative assessment systems through the incorporation of performance-based measures into state assessment systems and to allow such advances and innovative assessment systems to be used to determine AYP under section 1111(b)(2).

Recommendation: NSBA recommends that the Secretary not limit the number of pilots to ten, but rather allow any state that meets the requirements to participate.

2. Sec. 6112. Applications

Page 154, lines 1-5

This section establishes requirements that must be met in the application process, by requiring that applications “demonstrate” how each of the requirements will be met.

Recommendation: NSBA recommends that the term “demonstrate” is deleted and that the term “describe” is inserted. The term “demonstrate” could be interpreted as requiring a higher level of details and/or evidence.

3. Sec. 6112. Technical Assistance (Panel)

Page 157, lines 20-25; Page 158, lines 1-6

This section establishes an independent Technical Assistance Panel to provide ongoing review of state assessment systems funded under this subsection.

Recommendation: NSBA supports the need for technical assistance. However it is unclear how the members of the panel would be selected and what specific authority would be delegated to the panel. NSBA recommends further clarification regarding the general process for selection and the panel’s authority.

4. Sec. 602. Transferability of Funds

Pages 160-163

This section raises the caps on the percentage of funds that may be transferred from identified programs to Title I, Part A by the SEA and LEA.

Recommendation: NSBA supports the proposed increases in the caps for transfer of funds.

TITLE VIII—AMENDMENTS TO TITLE VIII

1. **Sec. 501. Impact Aid**

Page 185, lines 18-25; Page 186 lines 1-2

This section would extend impact aid through 2013.

Recommendation: NSBA urges Congress to authorize and fully fund Impact Aid to local districts to help support the education of all students whose parents or legal guardians reside and/or work on federal tax-exempt property or within local school districts that include federal tax-exempt property. Further, NSBA urges Congress to review the threshold for eligibility in those circumstances where the parent or legal guardian has been called to active duty outside the geographical boundaries of a school district that does not meet the 400 students or 3% enrollment requirement for Impact Aid. The review would explore the possibility of expanding eligibility requirements for Impact Aid without displacing funds from districts that are currently eligible.

TITLE IX—GENERAL PROVISIONS

1. **Sec. 901. Definitions. Highly Qualified.**

Pages 187-190

This section revises the definition for Highly Qualified Teachers.

Recommendation: NSBA is disappointed that the discussion draft does not offer adequate flexibility for certain groups of teachers to meet the highly qualified requirements, and particularly opposes the whole sale elimination of the “high objective uniform State standard of evaluation,” or HOUSSE, for veteran teachers.

NSBA and other organizations have noted that special education teachers of multiple core subjects have a particularly difficult time meeting the HQT requirements and districts already have difficulty recruiting and retaining such teachers. (See “Implementing the No Child Left Behind Teacher Requirements,” Center on Education Policy, August 2007 for more on this problem). NSBA recommends amending the requirements to permit special education teachers of multiple core subjects who have a bachelor’s degree and full state special education certification to be considered highly qualified, or to provide another route via HOUSSE. We also suggest streamlining existing requirements for social studies teachers receiving a “broad field” state certification in social studies to meet the highly qualified definition.

NSBA opposes the draft bill’s whole sale elimination of HOUSSE. Even the Department of Education, which tried to phase-out HOUSSE last year, acknowledged multiple exceptions would be needed, including: 1) for rural school teachers of multiple core subjects as long as they are highly qualified in at least one core subject when hired, 2) for new special education teachers of multiple core subjects, but who are highly qualified in either math, language arts or science, and, 3) for teachers who come to the United States from other countries to teach on a temporary basis.

NSBA would add to that list teachers who are hired after moving from another state, and teachers who are rehired by LEAs after temporarily leaving the profession or retirement. Given

the draft bill's focus on wanting to ensure that LEAs have qualified and experienced teachers, it would be counterproductive to require a veteran teacher who returns to the classroom or moves into a new state to have to jump through new hoops based on a federal mandate.

2. Sec. 904 Participation by Private School Children and Teachers

Page 196, lines 17-24, page 197 lines 1-25, page 198 lines 1-7;

This section expands the list of programs to which equitable private school participation requirements apply to include: Striving Readers, Advanced Placement/International Baccalaureate (as it relates to fees), the National Writing Project, Gifted and Talented, Foreign Language Assistance, Physical Education, Arts in Education, Civic Education, and Teaching of Traditional History programs.

Recommendation: NSBA is opposed to the expansion of educational services for private school students. Since non-public schools are not accountable under ESEA for how well they use tax dollars to educate children, they should not be rewarded by receiving more resources at the expense of under-funding children in public schools. Furthermore, the inclusion of these small programs imposes additional administrative burdens on school districts that will waste resources unless these costs can be charged against the equitable participation grants themselves.

3. Sec. 904 Documentation of Consultation

Page 200, lines 12-22;

This section requires each LEA to obtain written affirmation from private school officials that consultation has taken place and to submit this paperwork to the SEA.

Recommendation: NSBA believes that this reporting requirement is unnecessary and overly burdensome on school districts.

Thank you for the opportunity to comment. Questions regarding the NSBA comments may be directed to Reginald M. Felton, director of federal relations at 703-838-6782, or by e-mail, rfelton@nsba.org.