



No Child Left Behind Key Areas Of State Discretion

The No Child Left Behind Act (NCLBA) establishes a federal framework within which states have substantial discretion to establish standards, select and operate their assessment programs, determine adequate yearly progress, as well as to intervene in Title I schools that fail to meet AYP. Additionally, the states have discretion in operationalizing specific mandates such as requirements pertaining to highly qualified teachers. This paper identifies several of the key areas of state discretion that local school boards and their state association may wish to discuss with their state board, state superintendent, and other state policy makers.

A. Standards

1. The state determines both content standards (what students need to know) and performance standards (the performance level expected). How high the bar is set, and how quickly, will influence the number of schools identified as needing improvement.
2. States can use the same standards to cover more than one grade level. (But if they do, the state must identify the performance level by grade).
3. States can phase in science standards provided they are in place by 2005-06.

B. Assessment

1. State assessments for grades 3 to 8 and one high school grade for language arts and math can be phased in provided all of those grades are covered by the 2005-06 school year. Prior to that year only one grade level needs to be assessed at each the elementary, middle and high school levels. The science assessment does not need to be implemented until the 2007-08 school year.
2. In determining the assessments they will use, states can use norm-referenced tests provided they are aligned with the state standards and student performance is expressed in terms of proficiency on state standards rather than student comparisons.

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3. States can permit locally determined assessments to be used, provided they can be related to the state assessment system to enable statewide comparisons and accountability to occur.
4. In addition to the assessments that are used to meet the requirements of NCLBA, the state can use additional academic assessments in the covered subjects. (However, they can not be used to reduce the number of schools identified for interventions, but the state can use them to identify additional schools).
5. The state can apply to the U.S. Secretary of Education for a one-year waiver to extend the full implementation of assessments for grades 3-8 and high school to the 2006-2007 school year based on certain exceptional circumstances.

C. Adequate Yearly Progress (AYP)

1. Definition Of Adequate Yearly Progress.

- a. State defines Adequate Yearly Progress. The state has flexibility in designing a definition provided that the approaches it uses is consistent with the ten criteria set forth in Secretary Paige's July 24, 2002 "Dear Colleague" letter and it is ultimately approved by the U.S. Department of Education.
- b. In designating schools that fail to meet AYP, the state may establish categories, such as schools that fail to meet AYP because of the performance of one or two subgroups. By being designated in this manner, a school's need for improvement won't be overstated as being overall failure.

2. Groups For AYP

In determining AYP of specific groups of at risk children,* the state has the following areas of discretion:

- a. The state designates those "major" racial and ethnic groups for whom the specific calculation of AYP will be made. (Consequently, the state can influence the number of groups, and whether children from a particular country or region, for example, will be included in a specific group, be a separate subgroup, or not be considered separately from the general population at all).
- b. Based on the technical aspects of the assessments used, the state sets the minimum number of students needed to determine whether a group in a school or school district is large enough for the assessment results to be statistically reliable and valid for AYP and reporting purposes.
- c. The state determines the annual progress needed to be obtained by each subgroup as long as 100% proficiency is achieved after twelve years.

In addition to meeting AYP for the general population, the state, school districts, and schools must meet that measure for 1) major racial and ethnic groups, 2) limited English proficient students, 3) students with disabilities, and 4) economically disadvantaged students.

- d. In calculating state AYP on the alternative assessments used for students with disabilities, the state may use different achievement standards for students with serious cognitive disabilities up to a statewide total of .5% of all students participating in that assessment. It may also allow school districts to do likewise with the allowable number identified for each school not to exceed the state and school district limit.

3. Measures of AYP

- The state has discretion and options in determining how AYP will be measured. The choices the state makes can influence the number of schools that will be identified for improvement or the number of such schools that are likely to be identified for two or more consecutive years. Item “a” below relates to state discretion in determining what the level of AYP will be in a given year. Items “b” and “c” identify areas of state flexibility in calculating whether the state, school districts, or individual schools met the AYP level that was set.
- a. Rather than setting annual goals, the state can set intermediate goals (based on equal annual increments) as a two-year goal (in the first two years) or as up to a three year goal thereafter. In so doing, the state can vary the percentage by which AYP will be raised each year as long as the level set for AYP will ultimately be consistent with the intermediate goals. (Hence, the AYP objective can be increased by less than the level of an equal annual increment in one year (e.g., the year a new assessment is introduced) so long as in the next year (or two) the difference is made up to reach the multi-year intermediate goal).
 - b. Within subject areas, the state determines whether to allow assessment results to be averaged over several grade levels in a school district or school to determine AYP (rather than to cause each grade level to be reviewed separately and thereby enabling failure in one grade level to become the basis for school failure).
 - c. The state may average assessment results over the previous one or two years. (This can smooth out an unusual dip in student performance in one year, such as the introduction of a new assessment, redrawing attendance lines, or the influx of lower achieving students).

4. Full Academic School Year

The state defines the meaning of “full academic year”. (This is relevant because students who transfer into a school are not included in determining that school’s AYP unless they enrolled in that school for a “full academic school year”).

5. Other Indicators.

- a. In addition to the academic assessment system, the state must select at least one other indicator of student progress in determining AYP for school districts and schools. (The specific indicators that the state selects can determine 1) whether additional schools will fail to meet AYP (in addition to those who fail on the basis of the state’s academic assessment), 2) whether some schools will be

spared from being designated as failing to meet AYP under the operation of the “safe harbor” provision for the four at-risk groups and 3) whether a school has other academically meaningful achievement measures to work toward and to report on).

- b. As another indicator, the state has discretion, subject to US Department of Education approval, to define graduation rates beyond the acquisition of an on time regular diploma—if that more effectively measures graduation rates in the state. (This is relevant because the state must include graduation rates as among the other indicators used at the secondary school level).

D. Report Cards

1. The state designs the state report card, and can play a strong role in determining requirements for the content, appearance, and characteristics that comprise local report cards.

E. Interventions in Local School Districts and Local Title I Schools

In administering its responsibilities regarding schools and school districts that fail to make AYP in consecutive years, the state has areas of discretion in terms of the kinds of interventions that will be employed, its technical assistance program, the identification/removal of school districts from improvement status on the basis of results from last year’s assessment.

1. State Interventions/Technical Assistance

- a. Although the law contains a list of interventions, both the state and local school district have discretion as to which ones they use. For example, in reconstituting a school district or school, closure is an option not a requirement.
- b. The state establishes a statewide system of school support and other state aid local school districts can use to meet their technical assistance responsibilities to schools designated for improvement. (Hence, the state program can influence the kind of technical assistance that is provided and the responsibilities that it will undertake.)

2. Choice and Supplemental Services

- a. A school district may invoke a prohibition on choice if state law prohibits choice through restrictions on transfers from one public school to another.
- b. The state determines the list of providers for supplemental services. In so doing, it has discretion for establishing the criteria that will be used to determine their educational and fiscal efficacy. The selection criteria can influence the likelihood that specific providers or kinds of providers will be used. The state can consult

with local districts in determining the criteria, the providers selected, and the evaluations of their year-to-year performance.

- c. The state may waive the requirement of supplemental services if it determines that the providers on its list cannot serve that geographical area and the school district cannot otherwise meet the requirement.

3. Review of Local School Districts

In reviewing the progress of local school districts, the state has areas of discretion, including the identification and removal of districts from intervention status following their 2001-2002 assessments.

- a. The state annually reviews the progress of each local school district, determines whether it is carrying out its responsibilities under NCLBA regarding technical assistance, parent involvement, and professional development.
- b. In reviewing the progress of a local school district, in the case of its Title I targeted assistance schools, it may consider the progress only of those students served or eligible for Title I services.
- c. If a local school district exceeds AYP for two consecutive years, the state may make rewards consistent with section 1117 of the Act.
- d. The state may identify a school district for improvement if, on the basis of 2001-2002 assessments, the district fails to make progress for two consecutive years.
- e. The state may remove a school district from improvement status if, on the basis of 2001-2002 assessments, the district makes AYP for a second consecutive year.
- f. The state may delay implementation of corrective action for a period of up to one year if the district meets AYP for one year or the failure to do so is due to exceptional circumstances.
- g. The state will influence a school district's school improvement plan and the nature of the technical assistance that it provides.
- h. The state (and local school districts) has flexibility in building specific intervention responses that will meet the specific cause or group of students who are not making AYP. In other words, the law does not necessitate a "one size fits all" intervention (or one that will apply to the school as a whole), but allows customization to meet the situation.
- i. Any future laws, regulations, or policies adopted by the state can not exempt a school district from taking actions regarding employees' rights, remedies or procedures in dealing with school improvement, corrective action, or

restructuring, (and by taking such action the state may enable school districts to make employee decisions to better implement NCLBA activities—that would have been prohibited under a provision that enables current state law, policy, or regulation to exempt employees from such decisions if their rights would be affected).

F. **Highly Qualified Teachers and Para-Professionals**

1. The criteria for highly qualified teachers includes a requirement that elementary teachers must demonstrate proficiency in teaching elementary level language and math as evidenced by performance on a state assessment of their skills. How the state approaches this requirements can influence the effectiveness and supply of elementary teachers.
2. The criteria for highly qualified para-professionals includes a) possession of a high school diploma or equivalent (immediate) and b) two years of post secondary education or performance on a state examination (for para-professionals in Title I programs and all others by 2005-06). The state has substantial discretion in determining the rigor of the criteria as well as the availability and nature of professional development programming.