



NEW YORK STATE
**COUNCIL OF
SCHOOL SUPERINTENDENTS**

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NO CHILD LEFT BEHIND ACT

CRITICAL ISSUES FOR SCHOOL DISTRICT LEADERS

BULLETIN #1: Accountability for Failure to Make Progress in Raising Student Achievement

On January 8, 2002, President Bush signed the *No Child Left Behind Act* (NCLB) – the latest reauthorization of the federal Elementary and Secondary Education Act. The legislation dramatically expands both the federal government’s financial support for education and its influence in the operations of the schools.

This bulletin summarizes some of the **new accountability provisions** in the *No Child Left Behind Act*:

The NCLB prescribes consequences for schools and districts that fail to progress toward meeting standards.

Students in schools that fail to make “adequate yearly progress” (AYP) for two consecutive years are to be offered the choice of another public school.

Students in schools that fail to make AYP for three consecutive years are to be offered the option of “Supplemental Educational Services” – additional help, outside the regular school day, provided by the district, a BOCES, or a non-profit or for-profit agency.

Districts are required to divert some of their Title I funds to support these “choice” or SES activities.

A handful of districts will face consequences this year; the number will grow in future years.

This bulletin is one of a series on issues arising from the *No Child Left Behind Act* which warrant careful attention by school district leaders.

I. Overview of the Act and Bulletin Series

In January, President Bush signed the *No Child Left Behind Act* (NCLB) – the latest reauthorization of the federal Elementary and Secondary Education Act. The legislation dramatically expands both the federal government’s financial support for education and its influence in the operations of the schools.

Federal aid to New York schools is projected to rise by more than 20 percent for the 2002-03 school year. New accountability requirements will also take effect: all students in grades 3 through 8 are to be tested each year in math and English, schools that fail to make adequate progress in raising student achievement may face consequences, teachers and paraprofessionals will be required to hold or attain specific credentials.

This bulletin is one of a series on issues arising from the *No Child Left Behind Act* which warrant careful attention by school district leaders.

Taken together, the bulletins do not comprise a comprehensive summary of the Act. A short, reader-friendly summary of the complete law is available from the Learning First Alliance, a coalition of national education advocacy groups, including the American Association of School Administrators (AASA). The summary is available at:

<http://www.learningfirst.org/pdfs/nochildleft.pdf>

Many aspects of the legislation are complex and some implementation issues are still under consideration by the federal and/or state education departments. For these reasons, it is very important to consult other sources beyond this bulletin.

Additional information is available through the State Education Department’s *No Child Left Behind* website:

http://www.emsc.nysed.gov/deputy/nclb/nclb_home.htm

The American Association of School Administrators offers helpful information in two sections of its website:

http://www.aasa.org/government_relations/esea/index.htm

http://www.aasa.org/issues_and_insights/ESEA/ESEA_best_of_web_index.htm

The Council will attempt to advise superintendents of new developments concerning the implementation of the legislation through the web site and e-mail listserv.

II. Overview of Accountability Issues

The *No Child Left Behind Act* (NCLB) establishes the goal that all students will be proficient in math and reading within 12 years (by 2014). It requires each state to adopt an accountability system to promote progress toward that goal. As with the prior law, states are required have challenging academic standards and sound assessments. The new law expands upon these requirements.

Specifically, states are required to define what will constitute adequate yearly progress (AYP) in raising student achievement toward the goal of proficiency for all students. Performance on state assessments will be one of the measures; at the high school level, graduation rates will also be used. Schools will be evaluated not only on overall performance, but also on the performance of student sub-groups (e.g., gender, racial/ethnic category, English proficiency status, migrant status, disability, and economic disadvantage). *Importantly, consequences may be triggered either by inadequate performance at the **school or subgroup level**.*

An SED staff report the Board of Regents in March 2002 noted that,

“The Act will require New York State (NYS) to re-think our current school accountability/AYP system. Overall our approach is consistent with the law, but New York has set higher standards for schoolwide performance than the law initially requires. Unless adjusted, this means that schools that fail to meet AYP in NYS would be subject to the same sanctions as schools in other states that fail to make AYP based on their state’s far lower standards.”

The federal government has yet to issue regulations on this aspect of the law and SED is still working to define the measures and identify schools that have failed to make adequate yearly progress (as of this writing). The State Education Department shared preliminary findings with affected districts in mid-July and expects to release a final list to the public at-large by late August. The federal department is insistent that the consequences for persistent failure to make AYP will take effect this school year.

This bulletin summarizes potential consequences of failure to make AYP and does not address the mechanics of identification.

III. Consequences for School Failure to Make Adequate Yearly Progress

School failure to make AYP for two consecutive years – Public School Choice:

If a school fails to make adequate yearly progress for two consecutive years, it is designated as a school in need of ***school improvement*** and its district will be required to provide technical assistance and to give students in the school the option of attending another, acceptably performing public school in the district (including a charter school) by no later than the start of the next school year.

The State Education Department estimates that there will be about 30 districts that will be required to offer public school choice this September.

The districts that are directed to provide public school choice must use up to 5 percent of Title I funds to pay transportation costs, unless a lesser amount is needed, and may use an additional 10 percent.

A school that fails to make AYP for two consecutive years must also use at least 10 percent of its Title I allocation to provide “high quality” professional development to teachers and principals and specify how those activities will help to remove the school from school improvement status. These schools will also be required to “incorporate a teacher mentoring program.”

School Failure to make AYP for three consecutive years – Supplemental Educational Services:

If a school fails to make adequate yearly progress for three consecutive years, its district is required to continue to provide technical assistance and to offer public school choice to affected students. ***In addition, it must make available Supplemental Educational Services (SES) and use Title I funds to pay for the services.***

SED estimates that around 15 districts will be required to provide Supplemental Educational Services starting this fall.

What are Supplemental Educational Services?: SES resemble Academic Intervention Services in that they must be designed to increase the academic achievement of students on the state’s academic assessments required and attain proficiency in meeting the state’s academic achievement standards. However, where AIS may be provided within or outside the regular school day, SES must be provided outside the regular day. Also, AIS is targeted to low-performing students, SES is offered to all students within a low-performing school, with priority given to low-performing students. Most important, however, families must be given a choice of SES providers.

What are SES providers?: SES providers may include public schools, BOCES, private schools, charter schools, faith-based organizations, and private companies, including for-profit enterprises (e.g., Sylvan Learning). Families will be allowed to select from a list of providers approved by SED. Criteria for approval include: a demonstrated record of effectiveness in improving student achievement in English language arts (including) reading and mathematics, alignment with New York state learning standards, and use of services are of high quality, research-based, and specifically designed to increase academic achievement of eligible students on the required State assessments. School districts which have been identified for improvement or corrective action (discussed below) cannot be approved as SES providers.

School districts and BOCES must apply to SED to become approved SES providers – they are not granted automatic approval. Applications must be received by SED by August 9, 2002. Districts that do not become approved SES providers and have targeted schools assure that the services will be provided by other agencies.

SED's "Request for Qualifications" for potential SES providers is available at:
<http://www.emsc.nysed.gov/deputy/nclb/SES RFQ.htm>

How are SES funded? The district must use 5 percent of its Title I funds to pay for SES and must use up to an additional 10 percent to pay for SES and/or public school choice. Recall that the district is also required to continue providing public school choice and to use at least 5 percent of its allocation for that purpose, so that a school district must use up to a total of 20 percent of its Title I allocation to support choice and SES, unless a lesser amount is required. The SES amount per pupil is the lesser of the actual cost of services or the district's Title I, Part A allocation divided by the number of students in poverty (using Census data). If more families request services than the district can fund, priority must be given to the lowest achieving low income students.

What are school district responsibilities in regard to SES? Districts are required to:

Notify parents of eligible students annually (in an understandable and uniform format, and, to the extent practicable, in a language or other mode of communication the parents can understand) of:

- The availability of supplemental educational services.
- The identity of the Department-approved providers of those services that are within the district or whose services are reasonably available in neighboring districts and,
- A brief description of the services, qualifications, and demonstrated effectiveness of each such provider.

If requested, assist parents in choosing an approved provider.

Contact providers selected by the parents and enter into a contractual agreement

Monitor the “Responsibilities of the Approved Provider”, including, for example, records of student attendance, academic achievement of students receiving services, adherence to timelines in the agreement, adherence to the other terms and conditions of the agreement, and compliance with all assurances.

Notify the State Education Department of any noncompliance with “Responsibilities of the Approved Provider.”

Districts are not required to provide transportation to the location where supplemental educational services are provided.

Districts must continue to offer supplemental educational services until the school(s) or districts in question is no longer on school improvement according to requirements of NCLB.

School failure to make AYP for more than three years – “Corrective Action” and “Alternative Governance:

If a school fails to make adequate yearly progress *four consecutive years*, it is designated for *corrective action*. In addition to continuation of the requirements described above, its district must do at least one of the following:

Replace the school staff who are relevant to the failure;

Institute and implement a new curriculum, including professional development for staff, that offers substantial promise of improving the achievement of low

achieving children;

Significantly decrease management authority at the school level;

Appoint an outside expert to advise the school;

Extend the school year or school day; or

Restructure the school.

After *five years* of failing to make progress, in year six the district must develop a plan for significant *alternative governance* actions, such as replacing all or most of the staff, allowing state takeover, hiring a private management contractor, or converting to a charter school.

IV. Consequences for District Failure to Make Adequate Yearly Progress

The law also prescribes consequences for *school districts* that fail to make adequate yearly progress.

District failure to make AYP for two consecutive years:

SED is required to identify for improvement any district which has failed to make adequate yearly progress for two consecutive years (including the period immediately prior to the signing of the law on January 8, 2002). Districts identified will be required to develop or revise an improvement plan; the plan must be developed in consultation with parents and school staff. Some of the items which the plan must include:

- incorporating scientifically based strategies to strengthen core academic programs;
- identifying actions that have the greatest likelihood of improving student achievement;
- setting aside at least 10 percent of the district's Title I allocation to support professional development;
- incorporating, as appropriate, activities to extend the school day or year; and
- including measurable achievement goals and target for each student group.

SED is required to provide technical assistance to districts identified for improvement.

District failure to make AYP for three or more years:

If a district continues to fail to make adequate yearly progress, SED is required to identify it for corrective action. The Department must continue to provide technical assistance and must take at least one of the following actions:

- reduce administrative funds or defer programmatic funds;
- institute a new curriculum and provide appropriate professional development;
- replace all district personnel who are "relevant to the failure to make adequate yearly progress;
- remove particular schools from the jurisdiction of the district and establish alternative governance arrangements;
- appoint a receiver or trustee to run the district in place of the superintendent and school board; or
- abolish or restructure the district.

Commentary

Only a relative handful of school districts will be affected this year by the requirement to provide public school choice or Supplemental Educational Services this year. However, the number of districts required to provide these services can be expected to grow.

As explained above, in future years, consequences will be triggered not only by schoolwide failure to make adequate yearly progress, but may also be triggered if a student subgroup fails to make AYP. SED anticipates that there will be as many as nine subgroups based upon gender, racial/ethnic category, and English proficiency, migrant, disability, or economic status.

The U.S. Education Department has stated that it anticipates that 15 to 20 percent of all schools nationwide will be in school improvement status and therefore affected by at least the requirement to provide public school choice.