



# No Child Left Behind Act

## *Guide to “Frequently Asked Questions”*

**Committee on Education and the Workforce  
John Boehner (R-OH), Chairman  
Subcommittee on Education Reform  
Mike Castle (R-DE), Chairman**

*Updated February 17, 2005*

# Frequently Asked Questions

## The No Child Left Behind Act (NCLB)

### Table of Contents

<i>What are the major requirements of NCLB?</i> .....	1
<i>Does NCLB federalize education?</i> .....	1
<i>How many states are currently in compliance with the requirements of NCLB?</i> .....	1
<i>Does NCLB label schools as “failing?”</i> .....	1
<i>Accountability and Assessments:</i> .....	2
When will states have to begin administering reading and math assessments to all pupils in grades 3–8? .....	2
What will happen if states fail to have assessments in place by the 2005-2006 deadline? .....	2
What is “adequate yearly progress” (AYP)? .....	2
Are schools given credit for progress toward improved academic achievement for all students? .....	3
How are students with disabilities assessed under NCLB? .....	3
Why doesn’t NCLB contain one uniform definition of student proficiency? .....	4
Why is a school that only misses one AYP target treated the same as a school that misses multiple targets?.....	4
Why does NCLB call for 100 percent of students to achieve proficiency by the 2013-2014 school year? .....	5
How are schools affected if a large proportion of students are absent on the day assessments are given?.....	5
How is it possible for a school to be rated highly under a pre-existing state accountability system, yet fail to meet AYP under NCLB?.....	5
Are schools held accountable for students who may have only attended the school for a few months? .....	6
Did NCLB change the way Title I, Part A funds are allocated to states?.....	6
<i>National Assessment of Educational Progress (NAEP):</i> .....	6
What is the National Assessment of Educational Progress (NAEP) and when were states required to begin participating in it?.....	6
Why is NAEP important? .....	7
Will states be rewarded or punished on the basis of their NAEP scores? .....	7
<i>School Improvement, Corrective Action, and Restructuring:</i> .....	7
What are “school improvement,” “corrective action,” and “restructuring?” .....	7

How do schools get out of school improvement, corrective action, or restructuring? .....	8
What happens if a school in school improvement, corrective action, or restructuring meets AYP for only one year? .....	8
Is additional assistance provided to schools and districts that are deemed to be in need of improvement? .....	8
<i>Public School Choice:</i> .....	8
When are schools required to provide students with the option of public school choice? .....	8
When do parents have to be notified if their children are eligible for public school choice? .....	8
Which pupils in schools in need of improvement will be eligible for public school choice? .....	9
Will transportation be offered to pupils exercising public school choice options? .....	9
How much must districts spend to provide public school choice? .....	9
How will rural and geographically isolated schools comply with the public school choice requirements?.....	10
Do the public school choice options include only schools in the same district, or could they include schools in neighboring school districts? .....	10
Can a lack of capacity be used as an excuse to avoid providing public school choice? .....	10
<i>Supplemental Educational Services:</i> .....	11
What are “supplemental educational services?” .....	11
Which students are eligible to receive supplemental services? .....	11
Who provides supplemental educational services? .....	12
How much funding is available for supplemental educational services? .....	12
What will happen in sparsely populated rural areas where no providers of supplemental services may be available?.....	12
What is the total amount that must be spent on public school choice and supplemental services? ...	12
Must Local Educational Agencies (LEAs) spend any non-federal funds on public school choice or supplemental services?.....	13
Will schools in need of improvement lose funds if pupils exercise public school choice or supplemental services options?.....	13
For how long must public school choice and supplemental services options be offered? .....	13
Why are the criteria for supplemental educational service providers different from the requirements for highly qualified teachers? .....	13
<i>Highly Qualified Teachers:</i> .....	14
What is a “highly qualified” teacher?.....	14
Has Congress done anything to help states and school districts meet the “highly qualified” teacher requirements in NCLB? .....	15
What has the U.S. Department of Education done to provide states with additional flexibility	

when it comes to meeting the highly qualified teacher requirements (especially as it relates to rural, middle school and science teachers)? .....	16
Does the highly qualified teacher definition require all teachers to have a graduate degree?.....	17
How does the highly qualified teacher definition apply to middle school teachers? .....	17
How does the highly qualified teacher definition apply to alternative teacher certification programs? .....	17
Are special education teachers required to be highly qualified? .....	18
What are the new requirements regarding qualifications for teachers' aides (paraprofessionals)?....	18
<i>Limited English Proficient (LEP) Students:</i> .....	18
Are limited English proficient (LEP) students required to be assessed under NCLB? .....	18
Are states held accountable for teaching LEP students English under NCLB? .....	19
Has bilingual education been repealed? .....	19
Do parents of LEP students have any options under NCLB?.....	19
<i>Report Cards:</i> .....	20
What are the requirements of the No Child Left Behind Act for states and school districts to publish "report cards" on school performance?.....	20
<i>Reading First:</i> .....	20
What is Reading First, and what are its specific goals? .....	20
What is different about Reading First? .....	20
<i>General Provisions:</i> .....	21
How do NCLB and IDEA interact?.....	21
Are home schools affected by the provisions of NCLB, such as assessments for grades 3-8?.....	21
What are the requirements of the school prayer provision? What happens if a local educational agency fails to comply? .....	21
May the Boy Scouts be denied access to a school campus to conduct a meeting? .....	22
What student contact information must local educational agencies provide to military recruiters upon request? .....	22
Are high schools required to provide military recruiters with access to their campuses?.....	23
What is the "Unsafe School Choice Option" in NCLB? .....	23
What is Scientifically Based Research (SBR)? .....	23
Under NCLB are schools allowed to have single sex classrooms or schools?.....	23
<i>NCLB Funding:</i> .....	24
What is the total NCLB (ESEA) funding amount for fiscal year 2005? .....	24
Are federal funds available to pay for the cost of NCLB related assessments? .....	25
Is Congress "underfunding" NCLB or providing less than "promised" for the law? .....	26

## Frequently Asked Questions

### The No Child Left Behind Act of 2001 (NCLB)

#### *What are the major requirements of NCLB?*

In exchange for tens and hundreds of millions in increased federal aid, NCLB asks states to:

- Assess students in grades 3-8, and once during grades 10-12, in reading and math by the end of the 2005-2006 school year, using state-designed tests.
- Certify that all teachers of core academic subjects are highly qualified by the end of the 2005-2006 school year, using state-set definitions.
- Assess students in science once during grades 3-5, 6-9, and 10-12 by the end of the 2007-2008 school year, using state-designed tests.
- Provide public school choice and supplemental educational services to students in schools that have been unable to meet Adequate Yearly Progress (AYP) for two consecutive years.
- Accept nothing short of 100 percent student proficiency by 2014.

#### *Does NCLB federalize education?*

No. State flexibility is a key element within NCLB. Each individual state is given the flexibility to determine a variety of factors, including the definition of proficiency, the starting point for progress measurement, and the amount of progress that must be made from year to year. States also have the flexibility to develop their own test to determine if existing teachers should be deemed highly qualified.

#### *How many states are currently in compliance with the requirements of NCLB?*

According to the U.S. Department of Education, states have made significant progress in implementing NCLB. On June 10, 2003, President Bush announced that all 50 U.S. states (as well as Puerto Rico and the District of Columbia) had successfully submitted “accountability plans” to the U.S. Department of Education, detailing their plans for complying with NCLB. The plans describe the various ways that each state will meet NCLB requirements.

#### *Does NCLB label schools as “failing?”*

No. NCLB does **not** label any school as “failing.” In fact, the term “failing school” does not appear anywhere in the text of the NCLB law. If a school is unable to meet state

established proficiency targets for two consecutive years, that school will be identified by its state as “in need of improvement.” Schools receiving this designation are not “punished” under NCLB, as commonly suggested by education reform opponents; rather, schools receiving this designation qualify for extra help, which can include both additional federal funding and emergency technical assistance. This designation will ensure the school is provided with additional resources to make improvements in needed areas.

### ***Accountability and Assessments:***

#### ***When will states have to begin administering reading and math assessments to all pupils in grades 3–8?***

States have until the 2005-2006 school year to develop and implement the required assessments. A federal law enacted in 1994 – 10 years ago – required states to adopt regular testing systems as a condition of receiving federal education funds. So states have been receiving federal aid to help them design and implement student assessment systems for nearly a decade.

#### ***What will happen if states fail to have assessments in place by the 2005-2006 deadline?***

NCLB permits the U.S. Secretary of Education to withhold an unspecified amount of state administrative funds from states that fail to meet the requirements in NCLB. Under previous law, the Secretary was required to withhold 25 percent of state administrative funds from states that failed to meet the 1994 deadlines (or any deadlines contained in waivers or compliance agreements) for putting in place standards, assessments, and a system for measuring AYP.

#### ***What is “adequate yearly progress” (AYP)?***

AYP is a state developed measure of progress for all local educational agencies (local school districts) and schools in the state. Under NCLB, a state’s definition of AYP must apply specifically to disadvantaged subgroups of students, as well as to the overall student population. This expectation will serve to hold schools and districts accountable for improving the performance of disadvantaged students and to help educators, parents, and others determine whether progress is being made in closing the achievement gap.

States must define AYP so that all students are expected to improve and that by 2014 all students will achieve at the state defined “proficient” level on state reading and math academic assessments.

States set the starting point, or achievement “bar,” to reach 100 percent proficiency, but may choose where to set the initial bar based upon the lowest-achieving demographic subgroup, or the lowest-achieving schools in the state, whichever is higher. However, states are free to choose an even higher starting point. Once the initial bar is established, the state is required to “raise the bar” gradually, but in equal increments to reach 100 percent proficiency. The initial bar must be raised after two years and subsequent thresholds must be raised at least

once every three years.

***Are schools given credit for progress toward improved academic achievement for all students?***

Yes. NCLB includes a special “safe harbor” feature for schools that can demonstrate students in a particular subgroup are making significant progress toward proficiency but have not technically met AYP. This provision is intended to help prevent over-identification of schools as needing improvement.

When students in a school are making significant academic progress, a “safe harbor” is allowed if students in the subgroups make a 10 percent reduction in the number of students not proficient. For example, if students in a particular subgroup are 30 percent proficient and achieve a 7 percent increase in the number of proficient students (which is a 10 percent reduction in the percentage (70 percent) of students not proficient), then they would be deemed to have made adequate yearly progress and the school would not be identified as in need of improvement. This provision has the added advantage of requiring larger gains for the subgroups farthest from proficiency while allowing for smaller gains for those closer to proficiency, where gains are harder to achieve.

***How are students with disabilities assessed under NCLB?***

All parents want to know their children are learning. Parents of children with disabilities are no different. NCLB and the Individuals with Disabilities Education Act (IDEA) require that all students with disabilities participate in the state accountability and assessment system. Accordingly, states are required to include the scores of students with disabilities when determining whether schools and LEAs have met their AYP goals for the school year.

IDEA requires that the local educational agency develop an Individualized Education Program (IEP) for each child with a disability. This document describes the educational, developmental, and behavioral supports the child will receive. IDEA requires that the IEP, which is developed by a team consisting of school officials and the child’s parent, include a description of how the child will be assessed, not whether the child will be assessed.

Most students with disabilities should be able to participate in the regular assessment that all other students take. Students with disabilities can take the regular assessment, with appropriate accommodations, to receive an accurate measure toward the AYP goals. Appropriate accommodations vary according to disability and the assessment, but can include extra time to take the test, larger print, a quiet room, Braille, having the instructions repeated periodically, or more breaks than are normally allowed. When states develop or purchase assessments, they should work with the test publisher to determine which accommodations are appropriate to the assessment.

Other students with disabilities might not be able to take the regular assessment, but can take an alternate assessment. In 1997, when IDEA was last reauthorized, states were required to develop alternate assessments for students with disabilities. While many states have not yet complied with that requirement, NCLB allows alternate assessments aligned to grade level standards to count for AYP purposes for students with disabilities.

In December 2003 the U.S. Department of Education finalized a new regulation that would grant some additional flexibility to states. Under the regulation, states will be allowed to develop an alternate assessment aligned to an alternate achievement standard for 1 percent of all students, approximately 10 percent of students with disabilities nationwide. States will be able to assess those students with the most significant cognitive disabilities with this assessment in order to calculate AYP.

Each state will have the flexibility to allocate shares of that percentage across LEAs to ensure that schools with large populations of students with the most significant cognitive disabilities are able to appropriately assess those students. States will be able to seek a higher percentage than the 1 percent proposed by the department, but will be subject to strict scrutiny and regular review by the department to ensure students with disabilities are not being unfairly denied appropriate educational opportunities.

In 2004, the U.S. House of Representatives passed, and President Bush signed, legislation that would further align IDEA with NCLB. The legislation would reduce paperwork for special education teachers while still ensuring (through NCLB's requirements) that the academic progress being made by children with disabilities is tracked regularly and made available to parents. Parents would be given the option of working with local educators to create a three-year IEP for their children rather than an annual IEP, if that is the option the parent prefers.

***Why doesn't NCLB contain one uniform definition of student proficiency?***

One of NCLB's most important components is flexibility for states and local schools. By allowing individual states to develop their own definitions of student proficiency we can ensure that the federal government is not mandating a one-size-fits-all approach. NCLB recognizes that the educational issues in New York City may be very different from those in Lincoln, Nebraska. Therefore state variations may exist.

It should be noted that the National Assessment of Educational Progress (NAEP) will provide a uniform measure by which to judge the assessment systems of various states. Under NCLB, a small, randomly chosen sample of students in each state participates in NAEP periodically. The results are compared among states to verify that the progress being shown on the state-designed tests taken by all students is real. NCLB, it should be noted, explicitly bans anything resembling a national or federal test for all students. States design the tests to be taken by all students, not the federal government. (*More information on NAEP is available beginning on page 12*)

***Why is a school that only misses one AYP target treated the same as a school that misses multiple targets?***

AYP is a framework of accountability that is intended to help schools identify the areas they need to focus on in order to improve the academic achievement of all students. Additional resources and technical assistance are provided to schools that are unable to make AYP, regardless of how many targets they miss. It will undoubtedly be easier for a school that

misses the mark in only one category to address the problem. However, if a school is unable to correct the problems that are preventing students from making academic gains, then parents should have the right to determine if that school is providing the appropriate learning environment for their children.

***Why does NCLB call for 100 percent of students to achieve proficiency by the 2013-2014 school year?***

If the goal were anything short of 100 percent proficiency, Congress would in effect be saying – in federal law – that it is acceptable for states to leave a certain percentage of their students behind, even as those states accept billions in federal education funds. NCLB requires that 100 percent of students gain the skills that individual states have determined all students need to know in order to be successful. A standard lower than 100 percent would send the message that it is acceptable to leave a certain percentage of students without those skills. For example, if Congress were to require 95 percent instead of 100 percent, legislators would effectively be saying – in federal law – that it is acceptable for up to 5 percent of the nation’s children to be denied a quality education. That is not a message that should be sent to America’s parents, teachers, and students.

***How are schools affected if a large proportion of students are absent on the day assessments are given?***

NCLB requires that 95 percent of students participate in assessments. However, the law also gives states the flexibility to design their own assessment systems. This means that a state can allow students to take assessments during a “testing window” over several days, or even several weeks. This flexibility ensures that students who may unexpectedly be absent are given the opportunity to take the assessment.

In addition, in March 2004 the U.S. Department of Education announced it would allow states the option of averaging participation rates over either two or three years in order to take into account any unanticipated and unpreventable student absences. In addition, the U.S. Department of Education also clarified that students who were unable to take a state developed assessment anytime during the testing window due to a significant medical emergency (such as a car accident) would not be counted against a school’s participation rate.

***How is it possible for a school to be rated highly under a pre-existing state accountability system, yet fail to meet AYP under NCLB?***

Most state accountability systems that existed prior to NCLB looked at student achievement in the aggregate. This allowed the high scores of some students to mask the fact that many poor and minority students were being left behind. Achievement gaps between disadvantaged students and their peers were hidden from the view of parents and taxpayers. Now that NCLB requires student assessment results to be disaggregated by subgroups, it is easier for parents and teachers to identify achievement gaps, and schools can better target their resources in order to assist underperforming subgroups.

***Are schools held accountable for students who may have only attended the school for a few months?***

No. In order for a student's test scores to be counted for AYP purposes under NCLB, that student must have attended the school for a "full academic year" (as defined by the state). Students who have not attended a school for a full academic year are expected to take the assessment, but their scores will not be included in AYP calculations.

***Did NCLB change the way Title I, Part A funds are allocated to states?***

Yes. In addition to authorizing the significant increase in Title I appropriations states have received, NCLB modified the formulas under Title I-A in order to ensure that funds are better targeted to high poverty districts and schools than in the past. Federal Title I funds are now more accurately targeted than ever before to the poorest children and schools in America.

As under previous law, four different formulas are authorized for the allocation of Title I-A funds to states and local school districts: Basic, Concentration, Targeted, and Education Finance Incentive Grants (EFIG). An amount equal to the FY 2001 appropriation will be allocated under the Basic and Concentration Grant formulas, and for the first time under the law, any increases are allocated under either an updated version of the Targeted Grant formula, or a substantially modified version of the EFIG formula. Once funds reach local school districts, the amounts under the four formulas are combined and used jointly for local Title I programs. Both the Targeted Grant and the revised EFIG formulas allocate substantially higher shares of Title I-A funds to the highest poverty local school districts than do the previously funded Basic and Concentration Grant formulas.

In addition, NCLB requires the U.S. Department of Education to use the most updated and reliable poverty data in order to send funds to the areas where impoverished children are currently attending school. 2002 Census data was used in order to make FY 2005 allocations.

***National Assessment of Educational Progress (NAEP):***

***What is the National Assessment of Educational Progress (NAEP) and when were states required to begin participating in it?***

NAEP is the only nationally representative, continuing assessment of what America's students know and can do in various subject areas. While most states participated in NAEP prior to NCLB, beginning with the 2002-2003 school year, NCLB required biennial state participation in NAEP reading and math assessments for 4<sup>th</sup> and 8<sup>th</sup> grade students, so long as the U.S. Department of Education pays the costs of administering those assessments. NCLB, it should be noted, explicitly bans anything resembling a national or federal test for all students. Under NCLB, states design the tests to be taken by all students, not the federal government.

### ***Why is NAEP important?***

NAEP can be used as a benchmark in order to determine if state developed assessments are measuring the factors they are intended to calculate. For example, if 80 percent of a state's students score proficiently on a state developed assessment, but only 40 percent score well on NAEP, then that state may want to evaluate their assessment in order to determine if it is rigorous enough.

### ***Will states be rewarded or punished on the basis of their NAEP scores?***

No. There are no federal rewards or sanctions based on a state's NAEP scores. The purpose of state participation in NAEP is to provide a confirmation, or verification, of state assessment systems and data.

### ***School Improvement, Corrective Action, and Restructuring:***

#### ***What are "school improvement," "corrective action," and "restructuring?"***

Schools that have not made state defined adequate yearly progress for two consecutive school years will be identified by the district as "in need of improvement" before the beginning of the next school year. Immediately after identification, these schools will receive additional funding and/or technical assistance to improve performance; they are not "punished." These schools will develop a two-year plan to turn around the school, and will give all students in the school the option to transfer to another public school within the district that has not been identified as a school in need of improvement. These schools would also be eligible to receive federal funds for school improvement activities.

If the school does not make adequate yearly progress for three consecutive years, the school remains in school improvement and the district must continue to offer public school choice to all students in the school in need of improvement and provide low achieving, disadvantaged students within the school supplemental services from a state approved provider of their choice.

If the school does not make adequate yearly progress for four consecutive years, the district must implement certain corrective actions to improve the school, such as replacing certain staff or fully implementing a new curriculum, as well as continuing to offer public school choice and provide supplemental services. A school can only be deemed as needing "corrective action" if that school has not made adequate yearly progress for four consecutive years.

If a school does not make adequate yearly progress for five consecutive years, it would be identified for restructuring and would have to develop a plan and make the necessary arrangements to implement significant alternative governance actions, state takeover, the hiring of a private management contractor, converting to a charter school, or significant staff restructuring. Public school choice and supplemental services continue to be required.

***How do schools get out of school improvement, corrective action, or restructuring?***

Corrective action and restructuring measures are no longer required for school improvement-identified schools once they make adequate yearly progress for two consecutive years. Schools are no longer identified for school improvement if such progress has occurred.

***What happens if a school in school improvement, corrective action, or restructuring meets AYP for only one year?***

If a school in need of improvement meets AYP for one year, it remains in the same category it is in at the time. For example, if a school in corrective action meets AYP, it stays in corrective action. If this school were to then fail to meet AYP the following year, it would

then move into the next category, restructuring. If, however, this school were to meet AYP in the following year, it would no longer be identified as in need of improvement.

***Is additional assistance provided to schools and districts that are deemed to be in need of improvement?***

Yes. Under NCLB, when a school or school district is identified by its state as needing improvement, it immediately qualifies for additional help, including additional federal funding and/or technical assistance. NCLB increased the 0.5 percent set-aside of a state's total Title I allocation for school improvement activities to two percent for FY 2002-2003, increasing to four percent for FY 2004-2007. In addition, NCLB retained the separate authority for school improvement activities and authorized it at \$500 million in FY 2002 and such sums as may be necessary in FY 2003 through FY 2007. These funds augment state and local efforts to provide technical assistance and improve schools identified as needing improvement. Technical assistance provided with these funds must be based on scientifically based research.

***Public School Choice:***

***When are schools required to provide students with the option of public school choice?***

Schools identified as needing improvement are required to provide students with the opportunity to take advantage of public school choice not later than the beginning of the school year following their identification for school improvement. NCLB authorized – and Congress has subsequently appropriated – a substantial increase in funding for Title I aid, in part to provide funding for school districts to implement the law's parental choice requirements.

***When do parents have to be notified if their children are eligible for public school choice?***

Parents should be notified by the school district well before the beginning of the school year or school term in which choice will be offered, and the district must make choice available not later than the first day of the school year. The notification to parents must be in a

comprehensive, easy-to-understand format and, to the extent practicable, in a language the parents can understand.

However, if a district does not receive the information in time to offer choice before the beginning of the school year because of a delay outside of its control (e.g., a delay in receipt of identification of schools in need of improvement from the state), it must make choices available as quickly as possible so that parents can exercise choice and students can enter new schools before the school year gets well underway. Under no circumstances should a district wait until the next school year before providing the opportunity to transfer to eligible students.

In providing its notification to parents, the district must set a **reasonable** deadline by which parents must apply to exercise their choice and must ensure that the parents have sufficient time and information to make an informed decision about selecting a school. A district should ensure that its policies and practices for receiving choice-related responses from parents do not impede or inhibit parents' opportunities to exercise choice options. For example, parents should not have to appear in person to state their choices. Rather, parents should be able to communicate their choices in a variety of ways, including by standard mail, email, or fax. The district should confirm with parents that it has received their communication regarding choice.

***Which pupils in schools in need of improvement will be eligible for public school choice?***

All children attending schools identified for school improvement, corrective action, or restructuring are eligible to exercise public school choice, but LEAs must give priority to low-income students if it is not possible to serve all students. "Low-income" is determined according to the same criteria the LEA uses to make Title I, Part A allocations to schools. However, the bottom line is that every student enrolled in a Title I school in need of improvement who wishes to transfer to a school that is not in need of improvement must have that opportunity.

***Will transportation be offered to pupils exercising public school choice options?***

Yes. LEAs must provide, or pay for, transportation required for a student to exercise public school choice under school improvement, corrective action, restructuring or interdistrict choice offered as part of corrective action for a LEA. NCLB authorized – and Congress has subsequently appropriated – a substantial increase in funding for Title I aid, in part to provide funding for school districts to implement the law's parental choice requirements.

***How much must districts spend to provide public school choice?***

LEAs must provide transportation for public school choice, and must use up to five percent of its Title I, Part A funds for transportation costs. Also, the school district must use an additional 10 percent of its Title I, Part A funds for public school choice transportation costs or for supplemental services. Districts may also use funds from the Innovative Programs Block Grant to pay for public school choice transportation costs.

***How will rural and geographically isolated schools comply with the public school choice requirements?***

A small number of districts may not have schools available to which students can transfer. This situation could occur if all schools in the district at a specific grade level are in school improvement or when the district only has a single school serving that grade level. It could also occur in some states where the schools in a district are so remote from one another that choice is impracticable. For example, if the only other elementary school is over 100 miles away, then choice is likely impracticable. On the other hand, if other potential elementary school choices are located outside a district's own self-defined attendance zone or internal boundary, these boundaries may not be used to limit student transfers.

In cases where there are no schools available, the district must, to the extent practicable, enter into cooperative agreements with other districts in the area (or with charter and "virtual schools" in the state) that can accept its students. The district may also wish to offer supplemental services to students attending schools who cannot be given the opportunity to change schools.

***Do the public school choice options include only schools in the same district, or could they include schools in neighboring school districts?***

If a school is identified for school improvement, corrective action, or restructuring, the LEA must provide, not later than the first day of the school year following identification, all students in the underperforming school the option to transfer to another public school served by the LEA that is not in need of improvement. However, if all public schools served by the LEA are in school improvement, corrective action, or restructuring, the LEA must try to establish a cooperative agreement with other LEAs to provide students the option to transfer to another public school. In addition, nothing in NCLB prohibits LEAs from establishing cooperative agreements, regardless of whether all schools in a particular LEA are in need of improvement. Public school choice must be provided unless state law prohibits it.

***Can a lack of capacity be used as an excuse to avoid providing public school choice?***

No. A district cannot use lack of capacity as an excuse to deny students the option to transfer. While a district may take capacity into consideration in deciding which choices to make available to eligible students, the bottom line is that every student enrolled in a Title I school in need of improvement who wishes to transfer to a school that is not in need of improvement must have that opportunity.

Some states and districts may have laws, such as those that mandate specific student-teacher ratios, that may make providing choice options more difficult, but these laws may not be used to prohibit parental choices. Even where a district provides a priority to the lowest-achieving eligible children, it does not diminish the requirement for the district to provide choice to *all* students in its Title I schools that are in school improvement status.

If a district does not have sufficient capacity in its own schools that are not identified for improvement (or as persistently dangerous) to accommodate the demand for transfers, the

district must create additional capacity or provide choices of other schools. School officials will need to employ creativity and ingenuity in creating capacity in schools to receive additional students. The range of possible options might include:

- Reconfiguring, as new classrooms, space in receiving schools that is currently not being used for instruction;
- Expanding space in receiving schools, such as by reallocating portable classrooms within the district;
- Redrawing the district's attendance zones, if insufficient capacity is available within the existing zones within which students would ordinarily select schools;
- Creating satellite divisions of receiving schools, that is, classrooms that are under the supervision of the receiving school principal and whose teachers are part of the school faculty but that exist in neighboring buildings;
- Creating new, distinct schools, with separate faculty, within the physical sites of schools identified for improvement;
- Encouraging the creation of new charter schools within the district;
- Developing distance learning programs, or entering into cooperative agreements with "virtual schools;"
- Reshaping long-range capital construction and renovation plans in order to ensure that schools that are likely to receive new students have additional space;
- Modifying either the school calendar or the school day, such as through "shift" or "track" scheduling, in order to expand capacity; and
- Easing capacity by initiating inter-district choice programs with neighboring districts or even by establishing programs through which local private schools can absorb some of the district's students.

### ***Supplemental Educational Services:***

#### ***What are "supplemental educational services?"***

Supplemental educational services, also known as supplemental services, are "tutoring and other supplemental academic enrichment services" that are (1) in addition to the instruction provided during the regular school day and (2) high-quality and specifically designed to increase student achievement on state assessments and help students meet state academic achievement standards.

LEAs must provide supplemental educational services to eligible children attending a school that has failed to make AYP for three or more consecutive years. These services are to be delivered by a provider selected by the student's parents from a list of providers approved by the state.

#### ***Which students are eligible to receive supplemental services?***

An eligible child is from a low-income family attending a school in its second year of school

improvement, in corrective action, or identified for restructuring. “Low-income” is determined according to the same criteria the LEA uses to make Title I, Part A allocations to schools. If there are insufficient funds for supplemental services, the LEA must give priority to the lowest-achieving eligible children, or if the number of spaces at approved providers is insufficient to serve all eligible students, the LEA must “apply fair and equitable procedures for serving students.”

***Who provides supplemental educational services?***

No Child Left Behind defines a provider as a financially sound non-profit or for-profit entity or LEA with a “demonstrated record of effectiveness” in increasing student academic achievement that is capable of providing supplemental educational services consistent with the instructional program of the LEA and the state’s academic standards. In addition, providers must give parents and the LEA with information on the progress of the children served; ensure that instruction is consistent with state and local standards, including state student academic achievement standards; and meet applicable health, safety, and civil rights laws.

***How much funding is available for supplemental educational services?***

NCLB authorized – and Congress has subsequently appropriated – a substantial increase in funding for Title I aid, in part to provide funding for school districts to implement the law’s supplemental services requirements.

The per-child amount available for eligible children is capped at the lesser of (1) the LEA’s per-child Title I, Part A allocation, or (2) the actual cost of the services. LEAs must use five percent of their Title I, Part A funds to pay for supplemental educational services. Also, the school district must use an additional 10 percent of their Title I, Part A funds for public school choice transportation costs or for supplemental services. School districts may also use funds from Part A of Title V (Innovative Programs Block Grant) to help pay for supplemental educational services.

***What will happen in sparsely populated rural areas where no providers of supplemental services may be available?***

NCLB requires state education agencies (SEAs) to promote maximum participation by providers to ensure parents have as many choices as possible. In addition, LEAs may also serve as providers. NCLB includes report language to encourage SEAs to actively consider the inclusion of distance learning providers. Finally, an SEA may waive, at an LEA’s request, all or some of the requirements of supplemental services if the SEA determines that there are no providers in the area served by the LEA or within a “reasonable distance” of the LEA, and if the LEA is not able to provide the services.

***What is the total amount that must be spent on public school choice and supplemental services?***

LEAs must spend a total of 20 percent of their Title I, Part A allocations, if necessary, to satisfy the demand for choice-related transportation costs and supplemental services.

***Must Local Educational Agencies (LEAs) spend any non-federal funds on public school choice or supplemental services?***

Non-federal funds would be required only for public school choice transportation. If a LEA's Title I, Part A funds are insufficient to cover all choice-related transportation costs, LEAs must use other federal, state, or local funds.

***Will schools in need of improvement lose funds if pupils exercise public school choice or supplemental services options?***

NCLB provides schools in need of improvement with additional resources and technical assistance in order to improve the academic achievement of all students. While it is possible for a school that experiences a dramatic and sustained decrease in enrollment to lose funds, NCLB ensures that LEAs may not reduce the Title I allocation for a school identified for corrective action or restructuring by more than 15 percent to make funds available for choice transportation costs or supplemental services.

***For how long must public school choice and supplemental services options be offered?***

Students may continue to attend a public school of choice for the duration of the time they would have attended the school in need of improvement, but the LEA is no longer required to provide transportation if the student's original school is no longer identified for improvement, corrective action, or restructuring. A student would continue to receive supplemental services as long as he or she is eligible and the school is identified as in need of improvement.

***Why are the criteria for supplemental educational service providers different from the requirements for highly qualified teachers?***

A major focus of NCLB is to use only those educational practices that have evidence to suggest that they will increase student academic achievement. This means the *most important consideration* in assessing the educational practices of a supplemental educational services providers should be whether those practices result in improved academic achievement. Supplemental educational service providers must have a demonstrated record of effectiveness in improving student academic achievement and must use instructional strategies that are high quality, based upon research, and designed to increase student academic achievement. Providers must also ensure that their services are consistent with the state's academic content and achievement standards.

However, supplemental educational service providers are independent entities that provide additional services, unlike districts and schools who provide the core academic services. As such, these independent providers are not required to meet the teacher quality requirements of Section 1119, but may choose to do so. These criteria serve to promote participation by the providers and to ensure that parents have as many quality choices as possible.

## ***Highly Qualified Teachers:***

### ***What is a “highly qualified” teacher?***

NCLB asks states, as a condition of accepting federal education funds, to have a highly qualified teacher in every public classroom by the end of the 2005-2006 school year. To help states achieve this goal, NCLB authorized – and Congress appropriated – a large increase in federal teacher quality aid. Federal teacher quality aid to states and schools has increased by more than 35 percent since NCLB was enacted – to more than \$2.91 billion, an increase of more than \$790 million over President Clinton’s final level. This money comes on top of the large increases also appropriated for states and schools for Title I, reading, and other NCLB priorities.

Under NCLB, states establish a specific definition for what constitutes a highly qualified teacher; the federal government does not impose a specific definition on the states. In fact, NCLB explicitly bans anything resembling a national teacher test or certification procedure.

NCLB requires states to adopt a definition that includes a number of basic features. To be highly qualified, a **public elementary or secondary school teacher** must meet the following requirements:

- **Any public elementary or secondary school teacher** must have full state certification (a charter school teacher must meet the requirements in the state charter school law) and must not have had any certification requirements waived on an emergency, temporary, or provisional basis.
- A **new public elementary school teacher** must also have at least a Bachelor’s degree and have passed a test demonstrating subject knowledge and teaching skills in reading, writing, math, and other basic elementary school curricular areas (such tests may include state certification exams in these areas).
- A **new public middle or secondary school teacher** must also have at least a Bachelor’s degree and have either demonstrated a high level of competency in all subjects taught by passing rigorous state academic tests in those subjects (may include state certification exams in those subjects), or completed an academic major (or equivalent course work), graduate degree, or advanced certification in each subject taught.
- A **veteran public elementary, middle, or secondary school teacher** must:
  - Meet the requirements just described for a new teacher (depending upon his or her level of instruction) **OR**;
  - Demonstrate competency in all subjects taught using a state evaluation standard. Among other requirements, such a standard must provide objective information about the teacher’s content knowledge in subjects taught and considers, but is not primarily based on, time teaching those subjects.

***Has Congress done anything to help states and school districts meet the “highly qualified” teacher requirements in NCLB?***

President Bush and congressional Republicans have taken numerous steps since the enactment of NCLB to help teachers, LEAs, and states meet the law’s “highly qualified” teacher requirements.

Congressional Republicans worked with President George W. Bush to extend popular tax relief legislation enacted in 2002 that allows school teachers to deduct up to \$250 a year for out-of-pocket expenses such as books and crayons. The popular deduction was enacted originally by President Bush and Congress in February 2002, a month after the signing of the No Child Left Behind Act.

To further support school teachers, the House twice passed legislation during the 108th Congress to more than triple current student loan forgiveness available to highly qualified teachers of math, science, and special education who teach for five years in high-poverty schools.

The Taxpayer-Teacher Protection Act (H.R. 5186) was signed into law by President Bush on October 30, 2004. Similar legislation was proposed in 2003 by Rep. Joe Wilson (R-SC). His bill, the Teacher Recruitment and Retention Act (H.R. 438), closely resembled a similar loan forgiveness proposal included in President Bush’s FY 2004 and FY 2005 budget proposals. The Wilson bill was approved with overwhelming bipartisan support in the House on July 9, 2003, but was not acted upon by the Senate. That bill, like the Taxpayer-Teacher Protection Act signed by President Bush, proposed increasing loan forgiveness from \$5,000 to \$17,500 for highly qualified teachers of math, science, or special education who teach for five years in needy, Title I-eligible schools.

The House (led by Rep. Phil Gingrey, R-GA) also passed legislation in 2003 to strengthen teacher-training programs at America’s colleges. The Ready to Teach Act (H.R. 2211) attempted to reauthorize and strengthen teacher-training programs under the Higher Education Act to ensure the teachers of tomorrow are prepared to meet the needs of the nation’s students, and are highly qualified.

The desire to provide relief and support for school teachers was also a major driving factor in the Committee’s successful effort during the 108th Congress to revamp the Individuals with Disabilities Education Act (IDEA).

Recognizing outdated federal rules are pushing some good teachers out of the classroom, President Bush signed legislation authored by Rep. Mike Castle (R-DE) in 2004 revamping the 1975 Individuals with Disabilities Education Act (IDEA) and reducing paperwork burdens for special education teachers, who are striving to meet NCLB’s high standards. The bill included a proposal originally introduced by Rep. Ric Keller (R-FL) that reduced paperwork for special education teachers by allowing parents of children with special needs to select a three-year Individualized Education Program (IEP) for their children instead of an annual one, as teachers are required to complete under current law. Academic progress

would still be monitored annually, since NCLB calls for annual testing of all students, including students with special needs.

Since NCLB was enacted, Congress and President Bush have continued to provide record teacher quality aid to states and school districts, at levels far higher than provided under President Bill Clinton. Federal teacher quality aid has been increased by more than 35 percent under President Bush to more than \$2.9 billion in annual teacher quality funding for states and teachers in FY 2005 -- compared with just \$787 million provided to states and teachers under President Clinton's final enacted budget.

In March 2004, the U.S. Department of Education took steps to ensure rural school districts have maximum flexibility in meeting NCLB's call for highly qualified teachers. The policy allows states to tailor their teacher quality systems to suit their own unique needs without undermining every child's right to learn from a high quality teacher. The steps taken by the Education Department demonstrate the NCLB law includes more flexibility for states and schools than education reform opponents contend.

Contrary to claims made by reform opponents, the NCLB law does not require current teachers to return to school or get a degree in every subject they teach to demonstrate that they are highly qualified, and never has required this. In addition to clarifying this point, the Education Department specified that teachers in eligible, rural districts who are highly qualified in at least one subject will have three years to become highly qualified in the additional subjects they teach; and states can create alternative methods of certification for veteran teachers.

***What has the U.S. Department of Education done to provide states with additional flexibility when it comes to meeting the highly qualified teacher requirements (especially as it relates to rural, middle school and science teachers)?***

In March 2004, the U.S. Department of Education provided states with new guidance on the highly qualified teacher requirements that gives additional flexibility for teachers in rural school districts; streamlines procedures for veteran teachers to demonstrate subject matter competency; and clarifies state authority over requirements for science teachers.

Under this new policy, teachers in small, rural districts who teach multiple subjects (that are eligible for the Small, Rural Achievement Program under the Rural Education Achievement Program in NCLB) who are highly qualified in at least one subject will have three years to become highly qualified in additional academic subjects that they teach. To qualify for this extension, teachers in these small, rural districts must receive high-quality professional development that provides content knowledge in additional academic subjects they are teaching, intensive supervision with ongoing support, or structured mentoring to become highly qualified in those additional subjects.

Under NCLB, veteran teachers can demonstrate subject matter competency by passing a state-designed subject matter test, completing an academic major in each academic subject they teach, or using the high, objective, uniform state standard of evaluation (HOUSSE). Under the new guidelines issued by the ED, states have the authority to streamline HOUSSE

procedures for teachers of multiple subjects so they can demonstrate competency in each subject they teach through one set of procedures.

Finally, the new guidance from the ED provides authority for states to determine – based on their current state certification requirements – qualifications for their science teachers. Some states allow such science teachers to be certified under a general science certification, while others require a subject-specific certification (such as physics, biology or chemistry). The new guidelines from the ED reiterate each state’s ability to define certification and subject matter competency requirements for science teachers.

***Does the highly qualified teacher definition require all teachers to have a graduate degree?***

No. Contrary to what is claimed by some education reform opponents, NCLB does not require current teachers to return to school or get a degree in every subject they teach to demonstrate that they are highly qualified. Under NCLB, a “highly qualified” teacher is a teacher who: (1) has obtained full state certification; (2) holds a minimum of a Bachelor’s degree; and (3) has demonstrated subject matter competency in each of the academic subjects in which the teacher teaches. If, however, middle or secondary school teachers have completed a graduate degree in the subject they teach, then they already meet the subject matter knowledge portion of the “highly qualified” teacher definition.

***How does the highly qualified teacher definition apply to middle school teachers?***

States have the ultimate authority in defining what constitutes elementary and middle school, and therefore may determine the appropriate procedures middle school teachers must undergo to demonstrate subject matter competency. For example, if a state determines that a middle school operates as an elementary school, then such teachers would be subject to the elementary school demonstration of competency requirements. If, however, a state determines that a middle school operates as a secondary school, then such teachers would be required to demonstrate subject matter competency in each of the academic subjects they teach. In addition, states have the authority to use rigorous content-area assessments that are developed specifically for middle school teachers and aligned with middle school content and academic standards.

***How does the highly qualified teacher definition apply to alternative teacher certification programs?***

A “highly qualified” teacher is a teacher who: (1) has obtained full state certification; (2) holds a minimum of a Bachelor’s degree; and (3) has demonstrated subject matter competency in each of the academic subjects in which the teacher teaches. According to guidance issued by the Department of Education, all teachers must have a 4-year college degree and demonstrate subject matter competence. However, states are given flexibility in how they implement teacher certification requirements. Teachers who are not yet fully certified may be considered to meet the certification requirements of the highly qualified definition if they are enrolled in a state-approved alternative certification program under which they: (1) receive high-quality professional development; (2) participate in a program of intensive supervision (such as a teacher mentoring program); (3) assume functions as a

teacher only for a specified period of time not to exceed three years; and (4) demonstrate satisfactory progress toward full certification as prescribed by the state.

***Are special education teachers required to be highly qualified?***

The No Child Left Behind Act calls for a highly qualified teacher in every public school classroom by the 2005-2006 school year to ensure all children learn from high quality teachers. To align IDEA with NCLB, and provide guidance for states and schools on how special education teachers can meet the highly qualified standard, the 2004 reauthorization of IDEA required *all* special education teachers to be certified in special education. For special education teachers teaching students with the most significant cognitive disabilities – those who take alternate assessments aligned to alternate standards – the teachers will also be required to have an elementary certification, or for those teaching above the elementary grade level, demonstrate the ability to teach at the appropriate instructional level for their students. New special education teachers teaching multiple subjects must meet the NCLB highly qualified standard in at least one core subject area (language arts, math, or science) and will have two years from the date of employment to take advantage of the NCLB High Objective Uniform State Standard of Evaluation (HOUSSE) to demonstrate competence in other core subject areas. Veteran special education teachers teaching multiple subjects can take advantage of the HOUSSE to demonstrate competence in other core subject areas.

***What are the new requirements regarding qualifications for teachers' aides (paraprofessionals)?***

NCLB requires LEAs to ensure that teachers' aides hired with Title I, Part A funds or working in local programs supported with Title I, Part A funds after enactment of NCLB have: (1) completed at least two years of study at an institution of higher education; (2) obtained an associate's degree or higher; or (3) met a rigorous standard of quality established at the local level, which includes an assessment of math, reading and writing. LEAs must also ensure that teachers' aides hired with Title I, Part A funds or working in local programs supported with Title I, Part A funds (under previous law) meet these requirements no later than four years after enactment.

***Limited English Proficient (LEP) Students:***

***Are limited English proficient (LEP) students required to be assessed under NCLB?***

Yes. NCLB requires limited English proficient (LEP) students to be tested in both reading/language arts and math. NCLB allows these students to be tested in their native language for up to three years, after which time they should be tested in English. LEAs may determine to assess students in their native language for an additional two years on a case-by-case basis, in order to yield more accurate and reliable information. LEP students must also be assessed in English language acquisition in order to ensure they are learning English.

In addition, the U.S. Department of Education also recently clarified that newly-arrived LEP students, during their first year in the United States, will be allowed to take either the English proficiency assessments or the state language arts assessment, while being allowed

to use appropriate accommodations for the math assessment. These first-year students' scores will not be computed for AYP purposes, but they will still be calculated as participants, and the students scores will be included in AYP calculations beginning in their second years.

ED also clarified that states are allowed to include limited English proficient students in a school's LEP subgroup (for AYP purposes) for up to two years after these students attain English proficiency, helping to ensure schools receive credit for the good work they have done in helping LEP students attain full proficiency.

***Are states held accountable for teaching LEP students English under NCLB?***

Yes. States are required to develop annual measurable achievement objectives to monitor the progress of LEP students in attaining English proficiency. States will be held accountable for meeting such objectives. Grant recipients that do not meet their annual measurable achievement objectives for two years are required to notify the parents of LEP students of the program's failure to meet such achievement objectives. After four years of failing to meet the achievement objectives, a state must require the eligible entity to modify its curriculum, program, or method of instruction. The state is also required to make a determination as to whether such entity will continue to receive funding and whether to require the replacement of their language instruction educational program personnel.

Grant recipients are required to complete an evaluation every year and report to the state on the progress students are making towards learning English and achieving at the same high levels of academic achievement as other students.

***Has bilingual education been repealed?***

No. However, the requirement that not less than 75 percent of funds for the previous competitive grant program be used for programs that use a child's native language in instruction was repealed by NCLB. States and localities may choose the best method for teaching LEP students as they see fit, including bilingual education.

NCLB does not prohibit bilingual education. It does, however, change the focus of existing programs to emphasize teaching English to LEP students so that they can be mainstreamed into regular classroom settings, not tailored for LEP instruction, as soon as possible.

***Do parents of LEP students have any options under NCLB?***

Yes. NCLB requires LEAs to provide parental notification as to why a child is in need of placement in a language instruction educational program. Parents have the right to choose among instructional programs if more than one type of program is offered and have the right to immediately remove their child from a program for LEP children. LEAs are also required to implement effective means for parental outreach to encourage parents to become informed and active participants in their child's participation in a language instruction educational program.

## ***Report Cards:***

### ***What are the requirements of the No Child Left Behind Act for states and school districts to publish “report cards” on school performance?***

One of NCLB’s most important elements is its emphasis on giving parents and teachers better information, so they know whether or not children are learning.

In order to hold federally-funded schools accountable for improving the academic achievement of all students, beginning with the 2002-2003 school year state assessment results are reported to the public. The information provided on the state and school district report cards is broken down into the following categories: student academic achievement on state assessments, disaggregated by subgroup; a comparison of students at basic, proficient, and advanced levels of academic achievement on state assessments; graduation rates; the number and names of schools identified for improvement; the professional qualifications of teachers; and the percentages of students not tested.

By the 2002-2003 school year, school districts must prepare annual reports for parents and the public on the academic achievement of schools in the aggregate in the school district and by school. The school district report cards include the same information in the state report card as applied to the school district and its schools, and in the case of an individual school, whether it has been identified for school improvement, and how its students performed on the state assessment compared to the school district and state as a whole.

States or school districts providing report cards prior to enactment may continue to use those report cards so long as they contain the required information.

## ***Reading First:***

### ***What is Reading First, and what are its specific goals?***

President Bush believes every child in America deserves the chance to read by the third grade. Reading First is a national initiative, established through NCLB, aimed at helping every child in every state become a successful reader. Funds are specifically dedicated to helping states and local school districts establish high-quality, comprehensive reading instruction for all children in kindergarten through third grade.

### ***What is different about Reading First?***

Reading First, unlike previous national reading initiatives, is a classroom-focused nationwide effort designed to help each and every student become a successful reader. Every state is eligible to apply, and the most needy schools and districts receive the funds and other support they will need to succeed. It differs from earlier initiatives by establishing clear, specific expectations for what can and should happen for all students. Reading First specifies that teachers’ classroom instructional decisions must be informed by scientifically

based reading research. Through Reading First funds, grants are available for state and local programs in which students are systematically and explicitly taught five key early reading skills: phonemic awareness - the ability to hear, identify, and play with individual sounds - or phonemes - in spoken words; phonics - the relationship between the letters of written language and the sounds of spoken language; fluency - the capacity to read text accurately and quickly; vocabulary - the words students must know to communicate effectively; and comprehension - the ability to understand and gain meaning from what has been read.

### ***General Provisions:***

#### ***How do NCLB and IDEA interact?***

NCLB and IDEA are complimentary pieces of legislation that work together to improve results for students with disabilities. NCLB provides the structure of systemic accountability for results through the AYP system established in Title I. IDEA provides the individual child with a disability with rights and responsibilities to ensure that the child receives a free appropriate public education.

Most importantly, IDEA requires that the local educational agency develop an Individualized Education Program (IEP) for each child with a disability. This document describes the educational, developmental, and behavioral supports that the child will receive. IDEA requires that the IEP, which is developed by a team consisting of school officials and the child's parent, include a description of how the child will be assessed, not whether the child will be assessed.

Students with disabilities must be included in the assessment system required under NCLB. IDEA and NCLB require states to provide appropriate accommodations on the regular state assessment (e.g., more time, quiet room, larger print), offer an alternate assessment aligned to grade level standards (e.g., use of Braille, portfolio assessments), or develop an alternate assessment aligned to alternate standards for up to 1 percent of all students, approximately 10 percent of those students with the most significant cognitive disabilities. This array of appropriate assessments allows NCLB and IDEA to work jointly to improve results for students with disabilities and ensure that no child with a disability is left behind.

#### ***Are home schools affected by the provisions of NCLB, such as assessments for grades 3-8?***

No. Nothing in NCLB affects a home school or permits any federal control over any aspect of a home school, whether that home school is treated as a home school or a private school under state law. Students who are home schooled are not required to take any assessment referenced in NCLB. However, home school students may participate in NCLB programs and services, similar to private school students.

#### ***What are the requirements of the school prayer provision? What happens if a local educational agency fails to comply?***

On February 7, 2003, the U.S. Department of Education issued guidance on constitutionally protected prayer in public elementary and secondary schools. This guidance explains the

responsibilities of state educational agencies and local educational agencies. As required by NCLB, this guidance has been jointly approved by the Office of the General Counsel in the Department of Education and the Office of Legal Counsel in the Department of Justice as reflecting the current state of the law concerning constitutionally protected prayer in public elementary schools and secondary schools.

As a condition of receiving funds under NCLB, a LEA must certify in writing to its SEA that no policy of the LEA prevents or otherwise denies participation in constitutionally protected prayer in public elementary schools and secondary schools, as detailed in the Secretary's guidance. The certification must be provided by October 1 of each year. The SEA must report to the Secretary by November 1 of each year a list of those LEAs that have not filed the certification or against which complaints have been made to the state educational agency that the LEAs are not in compliance.

The Secretary is authorized and directed to enforce this provision by issuing, and securing compliance with, rules or orders with respect to a LEA that fails to certify, or is found to have certified in bad faith, that no policy of the LEA prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary schools and secondary schools.

***May the Boy Scouts be denied access to a school campus to conduct a meeting?***

No. If the public elementary school, public secondary school, LEA, or SEA receives funds from the Department of Education and has a designated open forum or a limited public forum that permits one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory, then the Boy Scouts may not be denied access to the school campus.

If the school or agency has a designated open forum or limited public forum, the school or agency may not deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts.

If the public school or agency does not comply with rules or orders issued by the Secretary of Education to secure compliance with this provision, no funds made available through the Department of Education shall be provided to that school or to that agency or any school served by that agency.

The NCLB does not require any school or agency to sponsor any group officially affiliated with the Boy Scouts of America.

***What student contact information must local educational agencies provide to military recruiters upon request?***

Each LEA receiving assistance under NCLB must provide, on a request made by military

recruiters, access to secondary school student names, addresses, and telephone listings. However, a secondary school student or the parent of the student may request that the student's name, address, and telephone listing not be released without prior written parental consent. The LEA must notify parents of this option to make a request and must comply with any request.

***Are high schools required to provide military recruiters with access to their campuses?***

Local educational agencies receiving assistance under NCLB must provide military recruiters the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students.

***What is the "Unsafe School Choice Option" in NCLB?***

States receiving any funds under NCLB must establish and implement a statewide policy to determine whether any of its public elementary and secondary schools are persistently dangerous. The statewide policy must be developed in consultation with a representative sample of LEAs, and should also include input from parents and other community leaders. Any student who attends a persistently dangerous public elementary and secondary school, as determined by the state under this policy, may transfer to a safe public elementary or secondary school within the LEA, including a public charter school or virtual school. States must certify in writing to the Secretary that they are in compliance with this provision as a condition of receiving funds under NCLB.

Additionally, any student who becomes a victim of a violent criminal offense, as determined by state law, while in or on the grounds of a public elementary or secondary school that the student attends may transfer to a safe public elementary or secondary school within the LEA, including a public charter school or virtual school.

***What is Scientifically Based Research (SBR)?***

As defined in the General Provisions of NCLB, scientifically based research requires that federally funded education programs or practices must be based on evidence that validates their usefulness in achieving the stated outcome specified in law. Research is simply the careful search or examination of evidence about any theory, practice, or method. Medical research has engaged in this inquiry for decades and produced some of the most effective remedies for disease that the world has ever seen. The application of the findings of SBR, as defined in NCLB, can be found in the new Reading First program (Subpart 1 of Title I, Part B). The five essential components of reading instruction - explicit and systematic instruction in phonemic awareness, phonics, oral reading fluency, vocabulary development, and comprehension strategies - have been validated through years of research into the practice of reading instruction. These findings were reported in the National Reading Panel report in April of 2000, and have now been codified in NCLB.

***Under NCLB are schools allowed to have single sex classrooms or schools?***

On March 3, 2004, the Department of Education proposed to clarify its regulations regarding

when single-sex classes and schools are permitted at the elementary and secondary school levels. In issuing this proposal, the Department is, in large part, continuing the bipartisan language co-authored by Sen. Hillary Rodham Clinton (D-NY) and Sen. Kay Bailey Hutchison (R-TX) in the No Child Left Behind Act that allows public school districts to use federal funds for single-sex schools and classes. The proposal gives more flexibility to educators to provide a wide range of educational programs and more options for parents, while neither encouraging nor favoring single sex education.

The proposal addresses two specific areas - single sex classes and single sex schools. With regard to classes, current regulations prohibit school districts (and private schools that receive federal assistance) from offering single-sex classes except in areas involving physical education, sex education, or chorus. The proposed changes would allow these schools and districts to offer single-sex classes when the single-sex nature of the class is substantially related (a) to providing a diversity of educational options or (b) to meeting the particular, identified needs of students. Schools and districts must treat male and female students evenhandedly in providing single-sex classes. Student participation in single-sex classes would be on a *voluntary* basis. A substantially equal coeducational class in the same subject would always be required. Schools and districts would be required to evaluate single-sex classes periodically to ensure consistency with these nondiscrimination requirements.

While currently a school district may provide a single-sex public school when it offers comparable benefits and opportunities to students of the other sex in another school, the Department has interpreted this provision to require two comparable single-sex schools, one for boys and one for girls. The proposed change would clarify that a district that provides a single-sex public school may offer the required substantially equal benefits and opportunities to students of the other sex in either a single-sex school or coeducational school. There would be an exemption to the requirement to provide either a single-sex school or coeducational school for students of the other sex for single-sex public charter schools that are single-school district.

### ***NCLB Funding:***

#### ***What is the total NCLB (ESEA) funding amount for fiscal year 2005?***

In FY 2005, states will receive more than \$24.35 billion to implement No Child Left Behind's education reforms. This represents a 40 percent (\$6.97 billion) increase in federal K-12 spending since FY 2001. Contrary to what is commonly claimed by education reform opponents, No Child Left Behind does not authorize any specific overall funding level for 2003, 2004, or beyond. A small number of individual programs have specific amounts authorized, but only "such sums as may be necessary" is authorized overall for years 2003 and beyond.

President Bush and Congress have provided historic levels of federal education funding to help states implement NCLB. In FY 2005, federal funding for the U.S. Department of Education increased to \$56.6 billion, which is more than a \$14 billion increase since NCLB was signed into law.

In FY 2005, Title I funding for America's most disadvantaged students will increase to more than \$12.7 billion, representing a \$4 billion increase since NCLB was signed into law. During the first two years of NCLB, Title I received a larger increase than it received during the previous eight years combined under President Clinton.

Reading First and Early Reading First grants, President Bush's initiative to help states ensure every child can read, are funded at \$1.15 billion for FY 2005. Under NCLB, federal funding for reading programs based on proven reading instruction methods has more than tripled.

States are provided \$2.91 billion in FY 2005 to recruit, train, and retain highly qualified teachers. This represents a 35 percent increase in teacher quality funding since President Bush took office.

***Are federal funds available to pay for the cost of NCLB related assessments?***

Yes. \$412 million was appropriated specifically for NCLB assessments in FY 2005. Congress has appropriated a total of \$1.57 billion for this purpose since NCLB was signed into law. States can use these funds to develop the annual 3-8 state assessments, or if a state has already developed those assessments and standards, to administer the assessments, or to carry out other activities related to ensuring accountability in the state's schools and LEAs, or improving the quality of state assessments. In addition, states may enter into partnerships with other states to develop assessments, although such partnerships are not required.

NCLB also includes an appropriations "trigger" to ensure sufficient federal funds are available to the states to enable them to comply with the 3-8 assessment requirement. A state may defer the commencement or suspend the administration of the annual 3-8 assessments for one year for each year that the appropriated funds do not reach the set amount. However, a state must continue to develop the 3-8 assessments even if the appropriation is below the set amount and the state must continue to comply with the law as it existed prior to NCLB. This would mean that states would be required to continue to administer academic assessments in reading and math in one grade in each grade span of 3-5, 6-9, and 10-12. The trigger amounts are: \$370 million for FY 2002; \$380 million for FY 2003; \$390 million for FY 2004; and \$400 million for FY 2005 - 2007.

Congress has appropriated these set amounts every year since NCLB's passage in order to ensure states have the resources to develop the required assessments.

A May 2003 study by the independent General Accounting Office (GAO) confirmed the federal government is providing sufficient funding to states to cover the costs of NCLB's testing requirements. The GAO report concluded Congress is providing more money than necessary for all states to design and implement reasonable, reliable and valid measures of student achievement in reading and math, which is what is required by NCLB.

Also, as indicated earlier, a federal law enacted in 1994 – 10 years ago – required states to adopt regular testing systems as a condition of receiving federal education funds. So states

have been receiving federal aid to help them design and implement student assessment systems for nearly a decade.

A second GAO report, requested by Sen. George Voinovich (R-OH) and released in 2004, upholds Republican claims that the No Child Left Behind Act is not an unfunded mandate. The GAO reviewed more than 500 different statutes and regulations enacted in 2001 and 2002, including Congressional Budget Office (CBO) reports about NCLB, and concluded NCLB was not an unfunded mandate.

According to the report, NCLB “did not meet the UMRA’s [Unfunded Mandates Reform Act of 1995] definition of a mandate because the requirements were a condition of federal financial assistance” and “any costs incurred by state, local or tribal governments would result from complying” with conditions of receiving the federal funds. A copy of the GAO’s report, “Unfunded Mandates: Analysis of Reform Act Coverage,” can be found at <http://www.gao.gov/new.items/d04637.pdf>.

***Is Congress “underfunding” NCLB or providing less than “promised” for the law?***

Republicans promised to dramatically increase federal education funding, linked to high standards and accountability for the first time, and this is exactly what has happened. As a direct result of NCLB, the federal government is spending more money on elementary and secondary (K-12) education than at any other point in our nation’s history. More than ever is being spent to educate our children – and more than ever is being expected from the educational system.

In fact, government data suggests federal education funding has increased more quickly than states can spend the money, with states collectively returning more than \$66 million in unused federal education funds to the U.S. Treasury at the end of last fiscal year (September 30, 2004). Non-competitive “formula” funds for initiatives such as Title I aid to disadvantaged students and IDEA accounted for approximately \$42,199,680 of the returned funds. “Discretionary” funds awarded to states, local school districts, and schools on a competitive basis accounted for \$24,049,951.

Additionally, states collectively had access to more than \$6 billion in unexpended federal education funds appropriated for their use in FYs 2000, 2001, 2002 and 2003 as of January 7, 2005. States had more than \$325 million in unexpended funds originally appropriated under President Clinton (FYs 2000, 2001).

According to data provided by the U.S. Department of Education Budget Services office, the total amount of federal education money unused by states is increasing, not decreasing. As of January 6, 2004, states had approximately \$5.75 billion in unused federal education funds. As of last month, the total was \$6.05 billion – an increase of more than \$295 million.

Democrat leaders and their allies continue to charge that proposed and enacted appropriation levels for NCLB provided less funding than “authorized” under the law. However, when they were in control of the White House and Congress, Democrats used the same approach to fund education in 1994, the last time the Elementary & Secondary Education Act (ESEA)

was reauthorized – yet not a single Democrat leader accused President Clinton or then-Majority Leader Gephardt of providing “less than promised” for education. The total authorization level for the Improving America’s Schools Act of 1994 (IASA) for FY1995 was \$13 billion. However, IASA activities were appropriated at \$10.3 billion for FY1995 – a discrepancy of \$2.7 billion. Yet not a single Democrat accused President Clinton of “underfunding” elementary and secondary education by \$2.7 billion.