



Elementary and Secondary Education Act Summary 2001-2014

The Elementary and Secondary Education Act (ESEA) was first enacted in 1965. It emphasized equal access to education and established high academic standards and accountability. Funds are authorized in the law for developing standards, assessments, professional development, instructional materials, educational programs, and for promoting parental involvement. The last reauthorization of ESEA was called the No Child Left Behind Act (NCLB) of 2001. Reauthorization is the process Congress uses to amend existing laws. NCLB is a very important law because it increases state, district and school accountability for the achievement of students with disabilities and impacts implementation of the Individuals with Disabilities Education Act (IDEA).

There have been multiple unsuccessful attempts at reauthorization since 2007. There is a great deal of controversy about annual testing and the law's requirements that hold states, districts and schools accountable for closing achievement gaps and providing equitable educational opportunities for certain subgroups of students (such as racial and ethnic minorities, economically disadvantaged students, and students with disabilities).

NCLB Requirements

Under NCLB, states are required to have annual assessments in grades 3-8 and once in high school to test student performance on challenging state content standards. Content standards define the knowledge and skills students are expected to learn in each grade. Also, states must use proficiency rates from their assessments in math and English language arts, as well as the graduation/attendance rate, to determine whether Adequate Yearly Progress is being made at the state, district and school levels. "Proficiency rate" refers to the percent of students taking the assessments who meet the requirements set by the state for expected performance. The data has to be calculated for all students at the school as a whole. It also has to be calculated separately for each subgroup. This "disaggregation" of data by subgroup is important for community reporting, accountability, and for improving programs.

A school is generally not considered to have met Adequate Yearly Progress if a required subgroup does not meet the proficiency rate and graduation/attendance goals set by the state for that year (called annual measurable objectives or AMOs), even if the school as a whole met the AMOs. The AMOs are supposed to increase each year toward the goal of 100% student proficiency by 2014. This focus on subgroup

accountability encouraged schools to start paying closer attention to the achievement of the disability subgroup. There is an exception in NCLB to subgroup accountability if the subgroup is smaller than the “minimum subgroup size.” This exception is supposed to protect confidentiality and reliability of the data. Unfortunately, some states set the minimum subgroup size higher than necessary, allowing many schools to claim there weren’t enough students with disabilities for them to count this group separately for Adequate Yearly Progress. Even so, data shows that achievement has gone up and gaps between groups of students has narrowed since 2002. NCLB also requires students to have teachers who meet the definition of “highly qualified.” The data on the assessments, graduation/ attendance rate, and highly qualified teachers must be provided to parents.

NCLB requires the same state content standards to be used for all students when curriculum and assessments are developed. Under regulations that were passed in 2003, states are allowed to use alternate achievement standards when assessing the performance of students with the most significant cognitive disabilities on the state content standards. Some states also had an alternate assessment based on modified achievement standards. However, they were recently phased out. Therefore, each states has one content standard for all students, but two assessments (the general assessment and the alternate assessment) each with different achievement standards.

The alternate achievement standards are supposed to reflect professional judgment of the highest achievement standards possible for students who take alternate assessments. This part of the regulations reflects high expectations. However, for many years NDSC has been involved in an advocacy effort to change other provisions in the regulations, which have been interpreted to limit opportunities, including access to the general education curriculum and the chance to earn a regular high school diploma in some states.

NCLB regulations also put a cap on the number of proficient and advanced scores from alternate assessments that can be used when states/districts calculate overall proficiency rates and subgroup proficiency rates. States/districts have to count the advanced and proficient scores that exceed the cap as below proficient. Therefore, the cap discourages the practice of inflating proficiency rates by putting students in the alternate assessment who should be taking the general assessment. The cap is called the 1% rule because the number used for the cap equals 1% of the number of students taking any assessment in the state/district (this cap covers approximately 10% of students with disabilities).

NCLB Flexibility

NCLB allows states a great deal of flexibility. Under the law, states can define their content standards, set the score for proficiency, determine AMOs to be met each year for Adequate Yearly Progress, set the achievement standards, determine (within a framework in the law) the steps that are taken to help low performing schools and

subgroups, and make other decisions that affect accountability. There is also a safe harbor rule that states can use, which that will not get them to the 100% proficient goal by 2014. Instead, it requires the percentage of students who are not proficient to be lowered by 10% from year to year. The U.S. Department of Education has the authority to approve state accountability plans, as well as determine whether the state standards and the assessments are acceptable for the purposes of the law.

ESEA Flexibility Requests

As the years passed, even greater flexibility was being considered. In September of 2011, Secretary of Education Duncan offered states the opportunity to waive specific requirements of NCLB in exchange for rigorous and comprehensive state-developed accountability plans. These waivers are called ESEA Flexibility Requests. The District of Columbia, Puerto Rico and every state except California, Montana, Nebraska, Vermont, and North Dakota received approval for their ESEA Flexibility Requests. (Washington and Oklahoma lost their waivers in 2014). States without waivers must follow the original requirements of NCLB. The waivers eliminate the requirement for 100% proficiency by 2014 and allow states to determine many more details of their accountability plans, including whether to make Adequate Yearly Progress determinations. However, there is still oversight by the U.S. Department of Education.

Many disability and other civil rights advocates have been concerned about the impact of these Flexibility Requests on accountability for the education of the students who ESEA was enacted to support. One reason is that many states are combining their subgroups for accountability purposes, so it is easier not to be held accountable for the poor performance of one subgroup. Many Flexibility Requests are vague as to critical details, including how students who take the alternate assessment will be transitioned to college and career ready content standards and fit into the new accountability systems. Most new accountability plans have a student growth component. However, not all the states have valid ways to measure growth for students who take the alternate assessment. We don't want IEP goals used to measure student academic growth. IEP goals are intended to provide the skills a student needs to make progress in the general education curriculum. Too many policymakers think the IEP goals ARE the curriculum.

ESEA Reauthorization- what lies ahead.....

Currently states are in the process of applying for the renewal of these ESEA Flexibility Requests. However, when the next ESEA reauthorization is completed, the new law will take precedence. NDSC will be sending out information and action alerts as Congress works on ESEA reauthorization in 2015. The outcome is critically important for student with Down syndrome and will set the stage for IDEA reauthorization.