

***Improving No Child Left Behind:
Suggestions from
Education's Front Lines***

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Executive Summary

When the No Child Left Behind Act of 2001 (NCLB) became law, it brought with it fundamental changes in the relationships between local school districts and the federal government. Because the law so incontrovertibly linked federal dollars with education results, it led to new accountability requirements that – like it or not – have changed the business of education in American public schools in consequential ways.

In light of such broad-based changes, it came as little surprise to most observers that NCLB proved so controversial. The law's framers and federal stewards acknowledge that it has produced some "unintended consequences." On the other hand, its loudest critics, including state lawmakers and education interest groups, have called for either repealing (or opting out of) the law or changing its accountability provisions beyond recognition.

But other, often quieter, voices have begun to recognize recent trends and developments and come forward to suggest practical ways the law could be improved. The 8 essays that follow express valuable, diverse viewpoints from the frontlines of American education. The authors – including a California school superintendent, a public elementary school principal in Chicago, the CEO of The Princeton Review, and a tutoring provider who specializes in serving English Language Learners – do not agree about all aspects of the law. But they do believe their suggestions will make the law more effective.

Among their ideas:

- Revise the formulas for determining starting points for Adequate Yearly Progress (AYP) measures for the law's subgroups.
- Institute better monitoring of Supplemental Education Services (SES) tutoring providers to ensure that they deliver promised academic results.
- Designate third parties to administer the 20 percent set-asides required for some school districts for SES tutoring and public school choice, rather than continuing to allow districts to administer these funds themselves.
- NCLB's teacher quality provisions should provide broader latitude to states in determining qualifications for teachers working in innovative charter and other public schools and programs.

Details follow.

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Challenges Facing a Small California School District

Frank Betry

Superintendent, Terra Bella Union Elementary School District

Terra Bella, California (Tulare County) is a small, rural unincorporated township located in the southeastern San Joaquin Valley. Terra Bella Union Elementary School District is a two-school district that serves approximately 900 students ranging from pre-kindergarten through the eighth grade. Many of our students are members of families where farm labor is the primary source of income. Virtually all of our students qualify for participation in federal free-reduced lunch programs. Approximately 85% of our pupils are classified as English language learners. Our district has always educated English language learners using an immersion model.

The district employs 48 contracted certificated teachers. As of this date 47 teachers are highly qualified in accordance with the No Child Left Behind Act (NCLB). One teacher is currently taking coursework to meet the NCLB requirements for mathematics. This teacher is projected to be compliant by the beginning of the 2006-07 school year. Currently, 45 teachers are certified by the California Commission on Teacher Credentialing to provide instruction for English language learners. The three teachers who do not have such certification are the middle school band director and two part-time teachers who have come out of retirement to support class-size reduction programs. These three teachers are enrolled in coursework and should have appropriate certification by the end of the 2006-07 school year.

The district employs 32 paraprofessionals that are funded by Title I, Title III, or Migrant Funds. Currently, 31 paraprofessionals have met the education requirements or testing requirements of the No Child Left Behind Act of 2001.

Public Schools Accountability Act

High-stakes testing began in California in the late 1990's with the *Public Schools Accountability Act of 1999* (PSAA). The cornerstone of California's *Public Schools Accountability Act of 1999* is the Academic Performance Index (API). The API measures the academic performance and growth of schools on a variety of academic measures. The PSAA initiated a carrot and stick approach to motivate schools throughout the state to improve academic achievement of all students. Schools that met API growth targets were to be rewarded with financial incentives. Schools that failed to meet growth targets would be sanctioned. The financial incentives were paid for two years but have since fallen away due to budget cuts. However, the state continues to track awards eligibility each year as required by the *Public Schools Accountability Act*. An information packet regarding the API can be found at <http://www.cde.ca.gov/ta/ac/ap/documents/infoguide05b.pdf>.

No Child Left Behind Act v. Public Schools Accountability Act

PSAA and NCLB are somewhat similar. However, it is important to note that NCLB uses a static model for determining academic success and PSAA uses a growth model. The *Public Schools Accountability Act of 1999* holds schools and districts accountable for various

subgroups including ethnicity and socio-economic status. Both accountability models rely on data from the State's Standardized Testing and Reporting (STAR) program. The tests are given in English only.

The accountability process has in general terms been positive. State and federal strategies have encouraged schools and districts to focus on academic achievement for all students. Academic standards have provided teachers and school administrators with an excellent tool for delivering quality, uniform instruction. Additional funding has been made available to purchase instructional materials and textbooks. The quality of textbooks and materials is improving with each new adoption. Best of all, students are being challenged and are responding favorably to the challenge.

The following recommendations would enhance the accountability program and student academic growth.

- Develop an assessment that is reliable and valid for English language learners. Use the assessment primarily as a diagnostic/prescriptive tool.
- Establish nationwide standards with regard to student proficiency. Proficiency in Mississippi should be the same as New Jersey, New York, Florida, etc.
- Calibrate assessments so that English learners and special needs populations are not penalized. Expected outcomes and achievement benchmarks for such populations should be based on scientifically conducted research.
- The various states and the federal government need to get on the same page. As it is now, there are too many ways to be identified as a failing school and too few ways to be identified as a successful school. I prefer a growth model that is rigorous and takes into consideration various populations.
- The Supplemental Service Provider program is a waste of taxpayer dollars. I would prefer that our district's Title I allocation be reduced by 20% and used to balance the federal budget. The idea of providing such services is a good one. However, the reality is an overpriced after-school program that has no measurable outcome and no accountability. Further, there is no evidence that approved service provider curricula has anything to do with California standards.

The highly-qualified teacher issue has not posed an insurmountable problem for our district. However, it has been a challenge and the market for mathematics teachers is keen. Obviously, a strategy for dealing with mathematics and high-level science teachers will need to be developed. Collective bargaining issues are probably the greatest hindrance to recruiting qualified teachers to teach these types of classes. I hate categorical strings, but perhaps categorical monies that could only be spent to recruit and retain such teachers are needed.

Serving Chicago's ELL Communities Under NCLB

Miguel Velasquez

Principal, Eli Whitney Elementary

As implementation of the No Child Left Behind Act moves ahead in Chicago, it has put into motion important changes in how schools teach English Language Learners (ELLs). The adoption of new standards for ELLs by Illinois, as a member of the World-Class Instructional Design and Assessment (WIDA) Consortium, was one such change. But it has also raised new concerns we hope federal officials will consider.

Because Illinois state law mandates bilingual education, schools must factor this into their plans for complying with NCLB. In addition, many Chicago-area public schools with large ELL populations that are also designated for improvement under NCLB face additional challenges finding providers equipped to offer Supplemental Education Services (SES) tutoring to this important population.

Some SES providers with excellent track records have emerged, but more are needed. This is especially true in some of Chicago's northern suburbs where ELL populations are a relatively new phenomenon. This has added importance because public school choice, though required under NCLB, is rare in Illinois.

Another challenge facing school administrators in Chicago is that, for the most part, parents in Latino communities are unaware of NCLB and the educational opportunities it offers. Federal resources that could be used to raise awareness in these communities would make an important difference.

Some Chicago public schools, in particular some that serve large ELL communities, are forced to rely on outdated education technology. This makes it difficult for administrators seeking to incorporate new curricula and assessment tools into their programs.

Finally, many principals whose schools serve large ELL populations have expressed strong concerns that NCLB's current testing requirements may prove unrealistic. While they strongly believe in the value of accountability and progress for all students, it is hoped that some form of growth model can be incorporated, so that schools will be recognized for the progress their students are making, particularly those students starting near the bottom of the achievement ladder.

Redefining Federal and State Roles in Education and Accountability

John Katzman

Chief Executive Officer, The Princeton Review

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Introduction

No Child Left Behind brought meaningful accountability to the table at the national level, and then required everybody to sit there. In a sense, it was like a declaration of martial law to address the chaos that had resulted in American education from school systems not being held accountable for results. But we can't maintain martial law forever. So the question now becomes, 'what will be the continuing role for the federal government in education in a regimen that is sustainable?'

The Marketplace of Curricula

If we look to other areas of policy essential to our national vitality, it seems clear that the federal government has played the most constructive role when it has supported and policed information-based marketplaces. The best example is the Securities Exchange Commission, which requires that all publicly-traded companies report their assets, liabilities, and results in a consistent manner, but leaves it to investors to decide whether or not these are attractive businesses. Such a climate encourages a diverse ecosystem, supporting both mass-market and niche approaches of all kinds.

One fundamental problem with NCLB is that it encourages the confusion of "standards" with "standardization", and presumes that the best way to make progress towards better outcomes for all students – itself a noble and proper goal – is to have all students in each state be measured by the same standards. Neither good psychometrics nor good pedagogy requires this uniformity which, aside from precipitating all sorts of political sideshows (e.g. evolution) discourages positive instructional innovation. There is no industry in America that says, "We're done with research and development – we've figured it all out." But that is, in a sense, what NCLB assumes.

Instead, imagine a system where the federal government issued a broad invitation to groups of all kinds to develop curricula for each grade and subject. While there would be few if any restrictions on content and approach, curricula would be required to present themselves in a consistent manner, analogous to an instructional prospectus. A prospectus would include a description of the goals and philosophy of the curriculum; textbooks and workbooks, if used; exemplars of work or responses that achieved different grade levels; and, of course, the yearly assessment used to evaluate student proficiency.

We would leave the testing methodology to the curriculum developers: multiple-choice, essays, portfolio, performance, or all or none of these. Similarly, we would allow a curriculum to forego textbooks in favor of primary sources, and list those in its prospectus. The U.S. Department of Education would pass no judgment as to the rigor, content, appropriateness or validity of any of these curricula. Rather, it would simply certify that the information in the prospectus is presented in standard format, and establish penalties for any fraud or

misrepresentation therein. (Undoubtedly, an industry would spring up of experts giving their opinion of each curricula, using a variety of lenses).

Some curriculum providers would be for-profit companies like textbook publishers, charging along the same lines as they do for textbooks. Others might be professional organizations like the American Council of Teachers or Mathematics, offering content for free to districts that are willing to produce the materials themselves. They would control (and disclose) such things as pricing.

Accountability with Flexibility

Under this plan, which we inelegantly refer to as Multiple National Curricula, states would then be free to adopt any number of certified curricula for use in their schools, based on evaluative criteria that are entirely in their hands. Depending upon the political processes in each state and the degree of local control, districts and schools may have further autonomy in choosing what they teach. One state might adopt eight elementary school science curricula, each reflecting a unique approach or aimed at particular student needs, while another adopts only one and requires it be taught in every classroom. Whatever the range of choice, parents and educators will have a clear understanding of all aspects of the curriculum and, one hopes, of the rationale for its choosing.

In practice, most states and most schools are likely to converge in their choices, such that most students are studying one of perhaps a dozen curricula for each subject. This is ideal, because it provides enough variety for meaningful and informed choice (again, at whatever level state and local policies support) while still allowing the performance of each district, school, or student following any given curriculum to be compared against other students, schools, and districts following the same curriculum (or, using equating techniques, against those using other curricula). Performance information would flow to the state and the Department of Education, each of whom would maintain it in a publicly-accessible database linked to as much other information about student and school characteristics as is feasible.

We believe in measuring students and schools. But this approach would also let us measure the curricula themselves. This database would provide tremendously useful information about what works – and what doesn't – for different students and schools. Woven into the NCLB subgroup structure, and potentially linking inputs and outputs from pre-K to college and beyond, we would find meaningful patterns that would inform education policy debates and curricular choices.

Other Ways to Evolve NCLB

In general, we believe the federal Department of Education should be the facilitator of competing approaches and the disinterested curator of data, rather than educational Vatican. We favor, for instance, NCLB's emphasis on sub-group disaggregation, but are less excited about regulation of inputs like its Highly Qualified Teacher requirement. Requiring disclosure of the level of teacher certification is great, but in a world where we're able to correlate teacher characteristics with student outcomes, we should be able to relax control over the inputs and let states and districts make decisions about what level of certification to require based on the data.

NCLB labels too many schools as failing – many more than any state has the stomach or budget to fix. We need to ask the basic question, “How many schools should we try to fix in a year?” Perhaps we can effectively invest a lot of time, energy and dollars on, say, the lowest-performing 10 percent. If a state is willing to intervene in 15 percent, terrific. But if tens of thousands of schools are considered failing, then effectively none are, and resources and attention spread that thinly are unlikely to make much difference. Better perhaps to focus more closely on fewer schools each year, raise them up, and move on to the next neediest decile in turn.

Finally, we’re very encouraged by the Department’s cautious embrace of value-added as a means of judging school effectiveness. Without it, NCLB puts enormous pressure on districts to ignore the lowest-performing students in favor of those “bubble kids” who are just barely on the wrong side of proficient and hence make easier targets for improving the profile of a school or district. Ignoring improvement in favor of absolute score levels also does a tremendous disservice to the most invisible and ignored group of kids, those who are academically strong but attend poorly-performing schools.

Caution is appropriate when incorporating value-add, however, because, at the end of the day, all kids should have an equal shot at achieving respectable academic performance, not just moving towards it. Probably the mix of value-added and absolute performance measures should shift as you move up the policy chain, with teachers and schools getting lots of credit for moving kids along from where they started, while states and districts – as the arbiters of policies and inputs – are held accountable for the outputs of their schools writ large.

Preserving and Growing Supplemental Educational Services

Submitted by a Former Professional Staff Member for a Congressional Education Committee

Supplemental Education Services (SES) – additional academic instruction or tutoring – is one of the core strategies of NCLB for improving the academic performance of students who attend underperforming schools. The concept of extending the school day with high quality academic enrichment and instruction is an accepted method of achieving and sustaining student achievement, particularly in the earlier grades. Further, SES is an incremental step toward achieving true “portability” of federal education dollars, whereby parents are able to decide which educational solution is appropriate for their child and obtain that solution with their child’s share of the educational funding stream.

SES was designed to give parents a choice and the means to choose a highly quality tutoring provider with a demonstrated record of effectiveness if they have a child attending a chronically underperforming school. The district is required to set aside 20% of its Title I budget to pay for the extra academic assistance. Such tutoring usually has only been the domain of more affluent families. But under NCLB, the same opportunity now exists for poor students trapped in underperforming schools. Unfortunately, for the vast majority of poor parents and students nationally, this pathway to better achievement has not materialized.

SES is at a crossroads. The current situation is untenable for SES, as districts and states increasingly play antagonistic or aloof roles that leave providers unable to serve the large number of eligible – and academically needy – students. Overall, after two years of quick growth, the 2005-06 school year is proving to be no better than 2004-05 and will likely be worse in terms of students participating in SES.

According to the U.S. Department of Education, while student participation in supplemental educational services increased more than five-fold over the two-year period from 2002-03 to 2003-04, rising from 42,000 to 233,000 participants, this represents only 17% of the total number of SES eligible students. For 2004-05, estimates vary, but representatives of the U.S. Department of Education have stated that only 12% of eligible students are participating in SES.

Further, according to the Department, private organizations served a majority of participating students (59%) in 2003-04; about one-third of participants were served by national for-profit companies (34%), while 12% were served by other for-profit companies and 13% by community-based organizations. Although there is a growing number of schools falling into school improvement and required to offer SES, the number of eligible students will increase while the total percentage of students actually receiving services decreases.

There are myriad reasons for the stagnation of SES: predatory providers who aggressively hustle districts and parents and don’t deliver academic results; a lack of aggregated, national, third-party evidence of the effect of SES on student learning; a highly combative implementation environment due largely to district resistance to having to pay for SES (an attitude based on the lack of evidence of academic success with students receiving SES, the

fact that SES providers are seen as taking money away from the districts, and most districts' dislike for how NCLB identifies schools as failing and the consequences for that failure); a lack of awareness of SES by parents; a statutory construct that failed to anticipate the vehement and creative district opposition to SES (including a lack of facility access, a lack of cooperation in enrollment, communication and program execution, etc.); and Department of Education waivers allowing districts in need of improvement to provide SES despite a regulatory prohibition against such activity.

To address the fundamental problems with SES as currently implemented, four main areas need to be addressed:

1. Unless and until the issue of the use of the 20% set-aside for SES (and public school choice) is addressed, it will impossible for SES to reach its potential. Otherwise, districts will continue to believe it is in their best financial interest to suppress SES enrollment in order to retain the 20% set-aside of Title I funds. There is an overwhelming disincentive for districts to encourage SES enrollment since "unused" funds revert back to the school district that school year for other uses. Most of the obstacles to SES implementation and increasing SES enrollments stem from this single issue. There are a number of possible solutions to this core problem, although the surest way to avoid any perverse incentives or conflicts of interest would be to have a third party administer the 20% set-aside for the district.
2. More widespread facility access must become a reality, as it can increase enrollment, parental satisfaction, safety and even academic achievement. Many districts use facility access as a back door means to regulate SES, including using it to lower per-pupil costs and recapture SES dollars leaving their control. There is a simple way to address this issue that puts providers on the same footing as other groups seeking access to school facilities after the regular school day. Federal law should require districts to select an approved provider or providers, using a fair, transparent and objective process, to operate on-site in the school or schools identified free of charge, or for a reasonable fee, on the same basis and terms as are available to other groups that seek access to the school building, which process may take into account the performance of a provider.
3. Evaluation needs to be addressed to tightly focus it on determining SES academic success or failure. A general set of principles should be developed that any evaluation must address and encourage its adoption by the U.S. Department of Education as well as by states. According to the Department, as of early 2005, half of the states had not yet established any standards for evaluating provider effectiveness and none had finalized their evaluation standards. Seventeen states say they will evaluate provider effectiveness based on student achievement on state assessments, despite the fact that most state assessments are not capable of measuring individual student gains that are less than a grade level's worth of improvement. Thirteen states plan to allow the use of provider-developed tests, and 10 states will use other measures, such as student grades, homework completion, or school- or teacher-administered tests. Seventeen states plan to measure parent or student satisfaction with the services. If poorly designed and/or unfair

evaluations are allowed to determine the efficacy of SES, then this promising reform will never be allowed to grow and flower.

4. The Department of Education has granted waivers to two school districts that, by regulation, can not themselves offer SES because they have failed to make sufficient academic progress for two or more years: Chicago and Boston. It is likely the Department will seek to grant more of these waivers, which represent both an opportunity and problem. Although still in the first year of these waivers, vigilance is required to ensure the waivers serve their intended purpose: to increase student enrollment in SES. The Department of Education has also stated its intention to leverage these waivers to limit obstacles to increased enrollment through simplifying the enrollment process for parents, increasing facility access, and instituting high quality evaluations of the SES programs to determine effectiveness. To the extent these goals are achieved, the waivers present an interesting opportunity to move beyond the current logjam; to the extent that these waivers simply provide large urban districts with a way to further stifle SES, they will effectively end SES before it ever really has a chance to succeed.

Subgroup Accountability and English Learners

Christine Rossell, Ph.D.

Boston University

Despite the shortcomings in the law, there is much that is good about the No Child Left Behind Act. The first and most obvious improvement it has provoked in state monitoring of Limited English Proficient (LEP) performance is the trend towards a single standard for identifying, assessing and redesignating an LEP child within a state. Prior to NCLB every school district in most states used a different home language survey and a different English language proficiency test, which meant that LEP achievement could not be compared from district to district.

Educators and education policymakers across the United States need to come up with ambitious, yet achievable goals tailored to the different starting points and facts about sub-groups and what schools can reasonably be expected to accomplish.

The Starting Point for Adequate Yearly Progress (AYP)

The starting point for the annual AYP goals makes little educational or logical sense. The legislation states:

The starting point shall be, at a minimum, based on the *higher* [emphasis added] of the percentage of students at the proficient level who are in—“(i) the State’s lowest achieving group of students described in subparagraph (C)(v)(II);” or“(ii) the school at the 20th percentile in the State, based on enrollment, among all schools ranked by the percentage of students at the proficient level.”

Why the 20th percentile in enrollment, and not the 15th or the 25th? Why focus on *school enrollment* rather than on state proficiency test scores? In particular, the designation of the *higher* of the two makes no sense at all. Since the goal is 100 percent proficiency for every sub-group, it is not lowering the standards for any group to select the *lower* rather than *higher* of these two measures as the starting point.

The accountability provisions of NCLB are what make this unequal starting point so dangerous. By using the higher of the two standards, the starting point for every sub-group except whites in almost every state is much higher than their actual starting point. Schools with large numbers of sub-groups whose starting point was set 20 points above their actual starting point could encounter penalties despite having made as much progress as another school which was lucky enough to have a sub-group whose starting point matched their actual starting point.

Based on this reasoning, the law’s fundamental requirement that all sub-groups end at 100 percent proficiency in 2013-14 seems arbitrary and even capricious when they started at very different places. Students start school with very different amounts of social capital and they are in school only 13 percent of their waking hours. If the current time table and standards are kept uniformly for all groups, the states will either lower the standard for proficient or ignore

the accountability provisions of the law or in the case of LEP students, test them in their native language or an alternative test on which they can be declared proficient.

My recommendation is that each sub-group should have its own starting point for percentage proficient and it should have a realistic ending point. One size fits all is not realistic.

Native Language Tests

It is a glaring contradiction in NCLB that LEP students can take the state proficiency tests in their native language for up to five years. It is hypothetically possible that 100 percent of LEP students might make the state's proficient level in every subject (except English language arts) because they took it in their native tongue. Is a student really at the state's proficient level if he or she cannot pass the test in the language of this country? Native-language tests should be prohibited by the U.S. Department of Education. They are misleading and could encourage native language instruction for the purpose of meeting the state's proficient level.

Alternative Tests

These may be as misleading as native language tests. What does it mean for an LEP student to reach their state's proficient level if they have taken a different test than other students? In short, they have not reached the proficient level – who knows what level they have reached? Alternative tests are misleading and should be prohibited by the Department of Education, but only if LEP and formerly LEP students are exempted from meeting the state's proficient level until they have been in the U.S. for five full years.

Title I AYP

Current data indicate that it is impossible for all current LEP students as a group to meet any state's proficiency standards. Policymakers must consider that when a group is defined by their low achievement in English, they must have low achievement in English or someone has made a mistake. Moreover, there is the LEP definitional problem – when an LEP child's achievement rises to the proficient level, they are removed from the LEP group.

The recent revisions to Title I for LEP students, are inadequate for solving this problem. Allowing states to include formerly LEP students for up to two years in the category called LEP will have little effect, because the two year redesignated students will have only slightly higher scores than the currently LEP students. They are also a small population compared with a large category of children defined by their low achievement. In short, current LEP students and monitored LEP students as a group should not be expected to achieve at the state's proficient level unless that level is at the median of children who are learning English, which I do not think is a good idea nor what the framers of NCLB had in mind nor what the states would want.

Current and formerly LEP students should be exempted from meeting the state's proficient level in any subject matter – math, language arts, science, social science and whatever other subjects are added in the future – until they have been educated in the U.S. for five full academic years. I would also suggest that LEP, and formerly LEP, students should show annual progress towards meeting the state's proficient level in all subject matters. That

progress should be assessed for *individual* students for whom there are two years of test scores and the progress should be in terms of scores, not categories or levels which are too broad.

Title III Standards

English language proficiency tests will always over-identify a child as LEP because they cannot tell the difference between a child who does not know English and a child who does not know the answer. And educators are, unfortunately, generally too deferential to test results, often misunderstanding their meaning, and often too committed to the notion that a child should not be redesignated until they have fully mastered “academic English.” Therefore, there must be a mechanism to override the English proficiency test results, both in terms of initial designation and annual assessment. Although I personally would like to substitute the term “language minority family” for “limited English proficient,” the test industry is too strong to ever let that happen and they have the support of much of the education industry in that regard.

Any child from a language minority family who has been educated in the U.S. for three years who is designated LEP by an English language proficiency test either at entry or exit should have the test overridden and be designated fluent English proficient for purposes of measuring AYP. States should also administer the LEP English proficiency test to samples of English monolingual students to see what percentage are misidentified as LEP so they understand the extent of the bias they are dealing with.

Attaining English Proficiency

The goal of attaining English proficiency is fraught with error even if all states were monitoring individual students. The cohort of students that should be expected to attain English proficiency (which is different from the state’s proficient level) should be elementary (K-5) students who have been in the U.S. for three years and older students who have been in the U.S. for five years. States should also experiment with administering their English proficiency test to English monolingual students to determine the extent of false positives (students who are fluent in English, but classified as LEP) and adjust the percentage of the cohort that must attain English proficiency downward by the false positive percentage.

Supplemental Education Services – Key Issues in Chicago

Caroline Sanchez Crozier

President and CEO, CSC Julex Learning

Five main areas of concern rise quickly to the surface when considering the role of Supplemental Education Services (SES) in Chicago.

First, **funding** is not adequate to meet the needs of all eligible English Language Learner (ELL) students in Chicago. There were long lists of enrolled students throughout Chicago that did not receive SES tutoring services due to an overwhelming response within some communities. Since the law's public school choice provisions have not been even minimally implemented due to various factors and challenges, any opportunity to bring these popular afterschool tutoring programs to new communities and students would be especially valuable.

Second, there is a need for **increased parent education** on NCLB within Chicago's Latino communities. Communication and dissemination of bilingual information that educates Latino parents, many of whom are not fluent in English themselves, on the various NCLB policies is insufficient, especially on SES tutoring. As a result, Latino parents are less likely to take advantage of the free tutoring available for their children. Many parents either don't believe it is free or don't understand the whole process of becoming well informed and making educational choices for their children.

Third, **enhanced services for ELL students** are needed. Unfortunately, most SES providers are not adequately prepared to serve students with language development needs. Although the focus of SES tutoring is on reading instruction in English, many ELL students need the support of bilingual tutors so that Spanish (or other language) directions can be provided as needed.

Fourth, **better monitoring of SES providers** who promise incentives to get parents to enroll would ensure that a program's academic value is the main criteria for selection. For some providers, promising giveaways is the main strategy to enroll students. The larger providers have an advantage in recruitment when they can offer free computers, etc. to prospective students. However, the parent should look at the providers' history with their school and ask other parents for feedback. Equally important, the principal and teachers should play a role in guiding the parents to making the right choices.

Finally, it would be extremely helpful for Congress or the Department of Education to clarify for principals and other administrators what their **expectations** should be for SES providers and what standards should be used to measure their success. For instance, given the limited number of hours of tutoring Chicago SES providers are able to offer within modest per-pupil allotments, expectations for overall improvements on standardized tests should be reasonable. But because this is still a relatively new program, many administrators are unclear what measures of success to apply.

Implementing NCLB Across an Evolving Educational Landscape

Nelson Smith

President, National Alliance for Public Charter Schools

The No Child Left Behind Act has changed the landscape of public education in America. Its sweeping accountability provisions impact all public schools, requiring 100 percent of tested students to perform at the proficient level (as defined by states) in math and reading by 2013-14.

As public schools, charter schools are subject to these requirements. The principles underlying NCLB – using clear standards and assessments to hold schools accountable for improving the achievement of all students – are completely consistent with the charter model. However, NCLB implementation must be monitored carefully to ensure that the challenging goals and accountability mechanisms of individual schools are protected. NCLB implementation, done properly, will preserve the right of charters to raise achievement through innovative methods and programs within the clear, rigorous accountability framework established by NCLB.

Interest in these matters is not unique to the charter world. Improved implementation of these NCLB provisions will benefit other types of public schools, particularly small schools, new schools, schools with non-traditional learning programs and schools that predominantly serve at-risk and highly mobile student populations.

The following principles and priorities, several of which have implications well beyond charter schools, should be addressed.

1. “Adequate Yearly Progress” (AYP) should reflect student-level growth in addition to the average proficiency of schools and student groups.
 - The Department of Education should encourage more states to develop accountability systems that combine “status” and “growth” measures. While the charter movement strongly supports the goal of full proficiency by 2014, and measuring schools' annual progress toward that goal, the current system can produce apples-to-oranges results in schools that have high mobility; can fail to disclose significant student-level gains that do not reach the AYP bar; and provides incentives for educators to focus on students at the cusp of proficiency rather than those who are far behind. Several states have “dual” accountability systems that disclose not only federally-mandated proficiency status, but also year-to-year growth. The Department of Education should actively encourage and evaluate such efforts so that useful models for correlating growth and proficiency are available by the time of reauthorization.
 - AYP measurement should not inhibit the supply of schools serving low-performing student populations. Later in this decade, as the AYP threshold rises, charter schools that actively recruit low-performing students will increasingly be labeled “in need of

improvement” despite substantial gains in student achievement. This may act as a huge disincentive to open such schools. Adding a growth component to AYP is one response to this problem, but NCLB might also include a broader “Good Samaritan” clause for any new charter or other public school that recruits a student population substantially below grade level.

- Revising NCLB’s pass-fail AYP judgments. NCLB should allow states to develop more thorough, instructive approaches to evaluating school performance instead of the current two-tiered (Meet AYP/ Don’t Meet AYP) system. For example, states should be encouraged to report which schools missed a single AYP measure vs. those that missed a dozen or more. The use of additional categories would provide parents more meaningful information in choosing schools, and would enable states to place schools along a more specific continuum of performance and prioritize resources and interventions accordingly.
 - Recognizing charter accountability systems. So long as they are at least as rigorous as the state’s general accountability systems, charter accountability rules should be a recognized part of state NCLB compliance systems. In particular, the role of non-Local Education Agency and non-State Education Agency authorizers in establishing and overseeing charter accountability requirements – and then making independent renewal decisions within the multi-year terms established in each state – should be preserved.
2. NCLB should strictly enforce the federal definition of “charter school” to ensure that the new schools created as a result of NCLB restructuring are provided with the necessary funding and freedom to succeed. The Department should guard against districts’ simply redefining low-performing schools as charter school as a means of complying with NCLB; such a strategy would be a detriment to the students in these schools, states’ efforts to improve all public schools, and the charter movement.
 3. NCLB’s teacher quality provisions should provide broader latitude to states in determining qualifications for teachers working in innovative charter and other public schools and programs. While subject mastery should be required of all teachers, those working in innovative schools and programs (e.g. those using interdisciplinary curricula, internet-based learning, experiential and service learning, etc.) that successfully achieve their states’ standards should not be required to receive state certification.

In addition, the Department should make clear that NCLB does not require certification of special education teachers in those states whose charter school law provides exemption from such certification.

Some Thoughts About Supplemental Education Services

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As we predicted when the No Child Left Behind Act was enacted, there are some flaws in the legislation and regulations around Supplemental Education Services (SES). Left unaddressed, these flaws will undermine the program's goal of creating a marketplace of supplemental providers from which parents make informed choices.

While some of these can be addressed in reauthorization, we suggest the U.S. Department of Education make changes in the following areas prior to that time.

- 1) *SES should be more closely enforced at the Local Education Agency (LEA) level.* The Department of Education guidance currently leaves LEA compliance mostly to the states, many of which are hostile to the intent and/or letter of NCLB. As a result, districts in many states are openly subverting SES. We suggest the Department extend enforcement efforts to "help" states in their enforcement efforts. Penalties should not be draconian, since the kids would ultimately suffer from any withholding of funds. Instead, we suggest reasonable fines or, better, a roll-over of previously unspent SES funds from all prior years to the following years.
- 2) *Federal decisionmakers should not ask or expect districts to do the work of the SES providers.* Expecting them to appropriately promote SES providers, efficiently provide rooms, etc. is unrealistic. Rather than expect districts to hold compelling parent events or create their own useful provider catalogues, we suggest you instead require them to forward materials from providers and to facilitate provider-sponsored events, with all costs to be paid by providers.

That said, the Department of Education should allow, and even encourage, districts to communicate to parents their experience with providers. They are an authoritative source of information, and their studies of gains or attendance would be useful in building trust in the programs.

In terms of rooms, the regulations are being met in different ways in different cities, and we suggest simple guidance drawing from best practices. For example, districts should be required to run at least two SES programs at each eligible school.

- 3) *At the same time, SES should be more district-friendly, so they will fight it less.* This starts with bringing the per-student fee to roughly what the district would spend on its own after-school program, around \$500. One way to do this without changing the statutes is to permit districts to charge substantial per-student fees for their facilities and promotion, as Chicago attempted to do. An alternative is to change the regulations such that a district expecting to be oversubscribed can prospectively cut its per-student allocation in half, rather than cap eligibility. This will make some providers unhappy, but will result in more kids getting help and a greater portion of funds going to instruction.

- 4) *Attendance-based fees are a two-edged sword.* We understand the need for attendance-based fees. Without them, providers can simply sign students up with no intention of having anyone show up for class. However, these fees create their own dislocations. Since no one can fully predict attendance, providers jack up prices to hedge their risk. Districts allocate funds to SES based on full attendance, knowing that between 20 and 40% of those funds will return to them, and do nothing to promote attendance. Attendance-based fees are also the reason so few providers serve high school students, whose attendance is significantly worse than K-8 students, for obvious reasons.

There is no perfect solution, but the Department of Education could create a rule that monies not spent due to attendance rules (to which district programs would also be subject to) should be returned to the Federal government or rolled over. In this way, at least, districts would not themselves benefit from their students' poor SES attendance.

- 5) *Enrollment in exemption-based district-run programs should be capped.* When the Department of Education gives an exemption to an LEA which would otherwise not be able to run its own program, it should limit that program to no more than 50% of all SES students.
- 6) *Require rigorous accountability.* The lack of accountability in SES subverts the message of NCLB, that education should be rigorous and measured. Since districts have much better access to data than State Education Agencies, LEAs should be able to evaluate providers and issue reports, and the State agencies should be permitted to fulfill their monitoring obligations by auditing those LEA reports.

To facilitate LEA reporting (making sure to include their own programs in those evaluations), the Department of Education should issue a standard report template to make this process simpler and more uniform.

- 7) *SES should recognize life after high school.* Successful high schools are judged so because of the success their students enjoy afterwards in college or careers and, increasingly, states are seeking to create unified K-16 systems. At the same time, SES participation and attendance are worst by far in grades 9-12. We believe it would be in keeping with the goals of SES and the needs of secondary school students to allow them to spend their SES funds on a wider range of programs and services, including post-secondary counseling, preparation for high school exit and college entrance exams, career education, and the like.

In the end, these changes will create a more robust marketplace for academic after-school programs, with better outcomes for students and schools.