



**No Child Left Behind Act
of 2001:
Reauthorization of the
Elementary and Secondary
Education Act**

A Technical Assistance Resource

May 21, 2003

No Child Left Behind Act of 2001: Reauthorization of the Elementary and Secondary Education Act

The Council for Exceptional Children has engaged in a detailed review of the information available on the No Child Left Behind Act of 2001 (P.L. 107-110). Because of the importance of this legislation, we have prepared this comprehensive set of resources concerning the law, and its implications for the special education field. Included in this package of resources are the following:

- CEC's Summary of the Act
- An Overview of the Regulatory and Guidance Processes
- Key Policy Letters and Policy Guidance
- Regulations – Final and Proposed
- Announcements from the U.S. Department of Education
- CEC's *No Child Left Behind Act of 2001—Implications for Special Education Policy and Practice*

You should also refer to the Department of Education's NCLB Web site for ongoing information for training and technical assistance materials. <http://www.nochildleftbehind.gov/> and <http://www.ed.gov/offices/OESE/asst.html>

Summary of the No Child Left Behind Act of 2001

The No Child Left Behind Act (NCLB) passed by Congress late last year is a compromise version of many of President Bush's education reform proposals intended to hold schools accountable for the academic achievement of their students. Below is a summary of the major highlights of the law. Following the summary of NCLB is a discussion of its major implications for special education policy and practice.

Annual Testing

The law now requires annual testing of children in grades 3 through 8, at a minimum, in reading and math. States are allowed to design and select their own tests. While some states already have developed such tests, the law gives states until the 2005-2006 school year to develop and implement the math and reading tests for every child in grades 3 through 8, and science must be assessed by the 2007-08 school year. In addition, the new law requires a small biennial sample of students in each state to take part in the National Assessment of Educational Progress (NAEP) test. This test, which is administered to a sample of 4th through 8th grade students, would be used as an "independent benchmark" against which the rigor of state standards, tests and accountability mechanisms can be measured. The federal government will cover the costs of state participation in NAEP, and no federal rewards or sanctions would be based on the NAEP results. In addition, the law prohibits federally sponsored national testing and federally controlled curricula, as well as any mandatory national teacher test or certification.

Fiscal Flexibility Provisions

Local fiscal flexibility. In terms of local school district flexibility, schools may transfer up to 50% of the federal funds they receive among a variety of programs (excluding federal IDEA funds) in exchange for improved educational results for children.¹ School districts can transfer funds between the following programs: Title II teacher quality programs; the Safe and Drug Free Schools Program; the Technology Grant Program, and the Title V block grant-program. In addition, up to 50% of the funds from any of the above programs could be transferred into the Title I compensatory education program. The law does not, however, permit school districts to transfer money out of Title I Programs.

State fiscal flexibility. The law permits states to transfer up to 50% of its state activity funds (i.e., funds reserved for use at the state level) between formula grant programs, such as Teacher Quality, Technology, Safe and Drug Free Schools, 21st Century Community Learning Centers, and Innovative Programs Block Grant Programs.

Demonstration Projects

Local demonstration projects. The law permits 150 school districts to enter into performance agreements with the US Department of Education in order to combine funds from specified non-Title I formula grant programs (i.e., Teacher Quality, technology, Safe and Drug Free Schools, and Innovative Program Block Grant programs) in order to improve the educational achievement of students. In exchange for this flexibility, districts would be held accountable for improving academic achievement and would continue to be bound by current laws regarding civil rights and fiscal integrity.

State demonstration projects. The law also includes a state flexibility demonstration program under which 7 states would be given additional flexibility in the use of federal funds for state administration and state activities consistent with the local demonstration projects discussed above.

Low Performing Schools

NCLB authorizes financial and technical assistance to school districts to help them improve student achievement at low performing schools. The law requires schools to show adequate yearly progress (AYP) towards meeting the goal of 100% proficiency in reading, math, and science for ALL students within 12 years. States set the achievement level that must be reached in intervening years and are required to raise these interim goals gradually, but in equal increments. That is, a state cannot propose, for example, to make minimal improvement in student performance in the early years in anticipation of later dramatic gains in performance by the end of the 12-year timeline. Instead, states and individual schools must demonstrate linear incremental improvement in student performance toward meeting 100% proficiency in reading and math for all students in the state by 2012.

Public School Choice

NCLB requires a school that fails to make AYP for two consecutive years to offer parents of the students the option to transfer to another public school, although the requirement would not apply if state law prohibited public school choice. Under this provision, districts must pay the costs of

¹ Under previous law school districts could transfer up to 5% of “unnneeded” program funds to another federal education program, provided that the state approved.

transporting students to the other public school and must use up to 5% of their Title I funds for that purpose. In addition, the law permits school districts to use an additional 10% of their Title I funds for transportation or pay for supplemental instructional services required after three years of failing to make AYP (see below). The school district is required under NCLB to provide technical assistance to the school to help it improve. The school is also eligible to receive federal funds for school improvement.

Supplemental Instructional Services

NCLB requires that if a school fails to meet AYP for three consecutive years, the school district must provide supplemental instructional services—such as tutoring, after school classes, and summer classes—to students who are disadvantaged and low achieving, from a provider chosen by the parents. These supplemental services could be offered by a variety of providers, including faith-based providers. The law also requires that districts use 5% of their Title I funds to pay for these supplemental services. As noted above, districts would also be able to use an additional 10% of their Title 1 funds for transporting students to other public schools to pay for supplemental instructional services.

Corrective Actions

NCLB requires that if a school fails to make AYP for 4 consecutive years, the school district must implement certain corrective actions to improve the school, such as replacing certain staff or implementing a new curriculum. The district must continue to offer public school choice and provide supplemental services as discussed above.

Restructuring Activities

Under NCLB, if a school fails to make AYP for 5 consecutive years, the school district must implement a plan for significant changes in how the school is run, such as a state takeover, hiring a private management contractor, converting to a charter school or overseeing restructuring of the staff. The requirements to offer public school choice and to provide supplemental instructional services would continue to apply.

Schools Currently Needing Improvement

Schools currently needing improvement since enactment of NCLB must offer public school choice during the current 2001-2002 school year, while schools in the second year of school improvement or in corrective action must offer supplemental services no later than the 2002-2003 school year.

Duration of Corrective Action and Restructuring

Under NCLB, once a school makes AYP for two consecutive years, it is no longer required to undertake corrective actions or restructuring activities.

Other Accountability Provisions

- Report cards—NCLB requires states, school districts, and schools to issue report cards to parents and the public on aspects of student performance and teacher qualifications. State and school districts that already have report cards may continue to use them, as long as they are modified to contain the required information.
- Funds for annual testing—NCLB authorizes \$400 million in FY 2002 and such sums as may be necessary in each of the following 5 years, for a program to help states develop and administer their own tests. The law allows states to defer beginning, or suspend, the annual

tests if the appropriation to pay for the test does not reach certain specified levels. Under the law, states would not be required to administer these tests if the appropriation for FY 2003 is less than \$370 million. This “trigger” level increases by \$10 million each year until it reaches \$400 million in FY 2005. It would remain at \$400 million after FY 2005 (**Note: The FY 2002 federal appropriation exceeded the minimum \$370 million requirement**).

- Funding for NAEP—NCLB authorizes \$72 million in FY 2002, and such sums as may be necessary in each of the following 5 years, for states to administer the NAEP for 4th and 8th graders in reading and math proficiency.

Title I, Compensatory Education Grants to School Districts

NCLB reauthorizes through FY 2007 the programs of basic, concentration, and target grants to school districts previously authorized under ESEA, and raises the authorized funding levels more than 57% for FY 2002 and triple the current appropriation in FY 2006.

Teacher Qualifications

NCLB requires states to develop a plan for ensuring that all teachers will be highly qualified by the end of the 2005-2006 school year. In addition, all new teachers leaving teacher preparation programs must fully meet highly qualified standards.² NCLB also increases qualifications for teachers' aids. Under NCLB, no later than 3 years from now all teachers' aids must have at least 2 years of study at an institution of higher education, have an associate's degree or have met a rigorous quality standard by demonstrating knowledge of, and ability to instruct in, reading, writing and math or math readiness.

Teacher Training and Recruitment

Under NCLB, a number of teacher training and recruitment programs are consolidated into a singly state grant program, with the exception that separate authorizations for the State Grant program, Math and Science Partnership Program, and the Troops-to-Teachers & Transition-to-Teaching programs.

State Grants—NCLB authorizes \$3.2 billion in FY 2002, and such sums as may be necessary in the 5 succeeding years, to fund a state grant teacher training program. The new state grant program funds activities previously authorized under the Eisenhower Professional Development and Class Size Reduction programs, both of which are discontinued under NCLB. States will receive grants under a formula that is based 65% on poverty and 35% on student population. No state will receive less under this program than under its FY 2001 allotment under the Eisenhower and Class Size Reduction programs. After reserving funds for state administration and state activities, states are required to distribute no less than 95% of funds to school districts.

Math and Science Partnership Program—NCLB authorizes \$450 million in FY 2002, and such sums as may be necessary in the 5 succeeding years, for this program. This program will provide grants to partnerships between states, local institutions and institutions of higher education to offer summer and distant-education workshops for math and science teaching, establishing strategies to recruit teachers, and provide other career development for teachers.

² Under NCLB, states set their own criteria for what constitutes a highly-qualified teacher. This means that by the 2005-06 school year, “provisional” or “emergency” certification of teachers will no longer be allowable. In lieu of the implementing regulations, CEC interprets this provision as also applying to special education and related services providers.

Troops to-Teachers & Transition-to-Teaching Programs

NCLB authorizes \$150 million in FY 2002, and such sums as may be necessary in the 5 succeeding years, for these programs. The law reserves up to \$30 million for the Troops-to-Teachers program, which helps former members of the armed services obtain certification or licensing as teachers. The Transition-to-Teacher program is intended to help qualified mid-career professionals as well as recent college graduates make the transition to teaching in high-needs schools.

New Reading Programs

NCLB authorizes the following 2 new reading programs as part of Title I:

- Reading First—NCLB authorizes \$900 million in FY 2002, and such sums as may be necessary in each of the following 5 years, for the Reading First program, which will distribute grants to states and then states will award funds, on a competitive basis, to school districts. The reading program replaces the Reading Excellence Program and will serve children in kindergarten through 3rd grade.
- Early Reading First—NCLB authorizes \$75 million in FY 2002, and such sums as may be necessary in each of the following 5 years, for a new program that will provide competitive grants to school districts or private organizations to develop and implement preschool reading programs.

Other Title I Programs

NCLB includes increased authorization of funds for Even Start, Migratory Children, and Neglected or Delinquent Youth.

Bilingual Education

NCLB consolidates previous bilingual and immigrant education programs into one state program for state formula grants once appropriations reach \$650 million (**Note: the FY 2002 appropriation exceeds this amount**), with subsequent yearly increases of the 5 succeeding years. The US Department of Education will distribute funds to states according to a formula based 80% on the number of children with Limited English Proficiency (LEP) in the state, and 20% on the number of immigrant children in the state. Parents have the right under NCLB to choose among instructional programs if more than one type is offered. They also have the right to immediately remove their child from a LEP program. NCLB also eliminates the previous requirement that 75% of funds be used to support programs in which the child is taught in his or her native language. Instead, it lets the local school district decide on the method of instruction used to teach children with LEP. Finally, the law requires that all children who have attended school in the United States for at least 3 consecutive years and are enrolled in programs funded under this program must be testing in English in reading and language arts, although waivers to this rule may be granted on a case-by-case basis.

Innovative Programs

NCLB authorizes \$450 million in FY 2002, with \$25 million annual increases through FY 2007 for the existing education block grant program known as the Innovative Education Program. In addition, NCLB authorizes \$300 million in FY 2002, and such sums as may be necessary thereafter, for the charter school program; and \$125 million for the Magnet Schools Assistance Program.

Technology Education

NCLB created a single education-technology program to replace several smaller programs. The law authorizes \$1.0 billion in FY 2002, and such sums as may be necessary in the succeeding 5 years, for a new Enhancing Education Through Technology Program.

21st Century Learning Centers

The law authorizes \$1.0 billion in FY 2002, \$1.5 billion in FY 2003, and subsequent \$250 million annual increases through FY 2007 for the 21st Century Learning Centers. This program will provide grants to school districts or nonprofit organizations (including community-based organizations) to provide after-school programs.

Safe and Drug Free Schools

NCLB authorizes \$650 million in FY 2002, and such sums as may be necessary in the succeeding 5 years, for the Safe Schools state grant program, which provides grants to school districts to ensure that schools are free of drugs and that schools are safe for all children.

Immunity for Teachers

NCLB includes a provision that exempts teachers, principals, school board members, and other school professionals from liability if the teacher or other professional was acting within the scope of his or her duties related to providing educational services; applying student discipline procedures consistent with federal, state, and local laws and regulations; and that harm was not caused by willful or criminal misconduct, or gross negligence.

Implications of NCLB for Special Education

The enactment of NCLB has significant implications for special education policy and practice mainly in the areas of school accountability and personnel certification/licensure issues.

Accountability

One of the most significant implications of NCLB in terms of special education policy and practice concern adequate yearly progress (AYP) and the set of graduated accountability measures that flow from NCLB when students fail to meet AYP. As discussed above, the law requires schools to show adequate yearly progress (AYP) towards meeting the goal of 100% proficiency in reading and math for all students, in grades 3 through 8, within 12 years. The performance of students is disaggregated based on a host of identifying factors, including poverty, race, ethnicity, limited English proficient, and disability status. If children with disabilities (grades 3 through 8) within a school fail to make adequate yearly progress toward reaching the 100% proficiency goal in reading and math by 2014, the school will potentially face a host of remedial actions intended to improve performance of students failing to make AYP. Thus, the performance of children with disabilities on statewide and district wide assessments will partly determine whether a school faces possible remedial action in the future.

While it is not entirely clear how NCLB's accountability measures will directly affect special education practice, it seems realistic to expect that local educators will experience greater pressure from state and district policymakers to ensure that students with disabilities are exposed to the general education curriculum so that they can achieve the statewide general curriculum content

standards as required by NCLB. Along the same lines, it seems equally likely that NCLB's accountability measures will create a greater impetus than does IDEA '97 to link more students' IEP goals with the content standards of the general education curriculum.

Related to AYP and student proficiency levels is the participation of students with disabilities in statewide assessments. These assessments must be based on challenging state standards in reading and mathematics and annual statewide progress objectives ensuring that all groups of students reach proficiency within 12 years. IDEA '97 requires the participation of children with disabilities in statewide and district wide assessments, with appropriate accommodations as necessary, or their participation in appropriate alternate assessments. NCLB requires a minimum 95% participation rate for each of the disaggregated groups of students in these assessments, including students with disabilities (e.g., 95% of students with disabilities must participate in the statewide assessment). A student is deemed to have participated in the general assessment only if his or her test score is counted in the statewide accountability system. That is, if testing accommodations provided to a student with a disability results in his or her test scores being deemed unreliable or invalid, the student will not be considered as having participated in the assessment. Thus, the extent to which performance criteria and assessment tools sufficiently allow for individualized accommodations for children with disabilities while ensuring continued reliability and validity of results is critical. Educators must be cognizant of the extent to which state's curriculum content standards and assessment tools are sufficiently inclusive to allow and account for individualized accommodations determined by each child's IEP team without watering-down the standards or jeopardizing the credibility of the results. Many states have developed a list of approved testing accommodations for students with disabilities taking statewide assessments. Such accommodations are approved by states to ensure reliability and validity of test results. From this menu of approved accommodations, local school officials can select appropriate testing accommodations for students with disabilities on a case-by-case basis when developing student's IEPs.

At the time of this writing, it is important to note that the final regulations will likely provide some flexibility in terms of the participation of children with disabilities in NCLB's accountability system. Specifically, under the US Department of Education's proposed rule currently under consideration, the academic progress of students with severe cognitive disabilities must also participate in the accountability system but their progress may be measured against a set of alternate standards that are closely aligned to the state's general curriculum content standards for all students. Under the final regulations, a percentage of the total state and local school district student population (perhaps 1%) may participate in this particular subgroup using an alternate standard to measure progress provided that all students included in this group meet the criteria for a student with a severe cognitive disability. States and school districts may also apply for waivers to increase this percentage in a few identified cases, such as when demographics show that a significantly higher percentage of students with severe cognitive disabilities attend a particular public school or school district.

Personnel Certification/Licensure

NCLB requires states to develop a plan for ensuring that all teachers will be highly qualified by the end of the 2005-2006 school year. All newly hired teachers must meet state criteria for highly qualified beginning in the 2002-2003 school year. The requirement that teachers be highly qualified applies to all public elementary or secondary school teachers who teach a core academic subject.

The term “core academic subjects” means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. “Highly qualified” means that the teacher:

1. Has obtained full State certification as a teacher or passed the State teacher licensing examination and holds a license to teach in the State, and does not have certification or licensure requirements waived on an emergency, temporary, or provisional basis;
2. Holds a minimum of a bachelor’s degree; and
3. Has demonstrated subject area competence in each of the academic subjects in which the teacher teaches, in a manner determined by the State.

Based on discussions with U.S. Department of Education officials, the Council for Exceptional Children believes that NCLB’s implementing regulations hold the same requirements for special education teachers. That is, all special education teachers teaching at least one of the core subject areas (i.e., English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography) must hold dual certification in special education and the core subject area(s) they teach.

Due to the significance and complexity of this issue CEC has joined with a broad range of other leading national education associations seeking additional clarification on the new personnel certification requirements from the US Department of Education. At the time of this writing it seems likely that the US Department of Education will soon provide additional guidance in this regard. CEC will continue to work with other national education associations to help clarify the intent of the policy as well as secure increased funds and technical assistance necessary to implement these new provisions of the law.

An Overview of the Regulatory and Guidance Processes

With any new law, a standard process is followed for the development of the implementing regulations. Certain titles will have regulations that will be proposed, with an opportunity for the public to provide comments. These notices of proposed rulemaking (NPRM) are published in the *Federal Register*. With a few exceptions, federal agencies are then required to publish final regulations in the *Federal Register* 30 days before they take effect.

Key Policy Letters and Policy Guidance

Although states were required to begin implementing the changes made under NCLB immediately after the law was passed on January 8, the Education Department was not planning on issuing formal regulations for NCLB until late summer or early fall. However, school administrators immediately began requesting guidance from the Department on various aspects of the act. Over the course of the following months, Secretary Paige issued a variety of key policy letters and policy guidance to clarify the act’s requirements.

Policy Letters

- ❖ ***Major Highlights of the Act.*** On February 7th, Secretary Paige issued a letter to school superintendents describing some of the major highlights of the act's requirements.
- ❖ ***Key Provisions and Early Deadlines.*** On February 15th, Secretary Paige issued a "Dear Colleague" letter to school superintendents and state education chiefs highlighting key provisions of NCLB and listing early deadline dates for implementation. "These provisions relate to standards, assessments, and systems to measure the progress of States, school districts, and schools in educating all children to be proficient in math, reading/language arts, and science," the Secretary explained. "They also relate to accountability when a school or district is failing to raise the achievement of its students and the rights of parents to redress that failure for their own children."
- ❖ ***Plans for Providing Guidance.*** On June 6th, Secretary Paige issued a "Dear Colleague" letter to school superintendents and state education chiefs outlining the Department's plans for providing guidance on the major issues under the new law, so that schools can begin to make the changes required by NCLB.
- ❖ ***Public School Choice, Supplemental Education Services, and Collective Bargaining Provisions.*** On June 14th, Secretary Paige issued a "Dear Colleague" letter to school superintendents and state education chiefs outlining preliminary guidance on three aspects of the law: the public school choice, supplemental education services, and collective bargaining provisions. These three programs must be implemented during the upcoming 2002-2003 school year. Because of this approaching deadline, Paige said his guidance was intended "to give initial direction" to school officials as they proceed this summer to carry out the measure.

1. ***Public School Choice.*** "The new choice requirements must be implemented beginning this fall," Paige said. In general, for any Title I elementary or secondary school identified for school improvement, the school district must provide all students enrolled in the school with the option to transfer to another public school in the district. "As you continue your planning, I strongly encourage you to provide several choice options for parents," the secretary said. "Parents should be provided a reasonable amount of time to consider their options, be given concise but detailed information on the performance and overall quality of the receiving schools, and be provided an opportunity to visit potential schools of choice." He said school districts should begin planning now, if they have not already, to make choice available for students in any school that was in school improvement status as of Jan. 7, 2002. If a student exercises the option to transfer to another public school, the school district has certain obligations to provide or pay for with federal funds the student's transportation to the new school. Schools will have flexibility in the use of their federal funds to pay for transportation costs.

2. ***Supplemental Education Services.*** For Title I schools in the second year of school improvement, the district must arrange for the provision of supplemental education services for eligible students enrolled in the schools, such as private

tutoring, after-school services, and summer school programs. Parents must be notified about the availability of supplemental services. And, states must provide a list of organizations that are on a roster of "preferred providers" and their record of success. Service providers can include public schools, faith-based operations, distance learning services, for-profit and non-profit concerns.

3. ***Collective Bargaining Agreements.*** The act "does not operate to invalidate employee protections that exist under current law and collective bargaining and similar labor agreements. However, it does not exempt state education agencies, local education agencies and schools from compliance with Title I based on prospective collective bargaining or similar agreement or prospective collective bargaining or similar agreements or changes in state or local law."

- ❖ ***Adequate Yearly Progress.*** On July 24th the Secretary issued a letter that provided guidance on the Adequate Yearly Progress (AYP) requirements under the new law. "AYP should be used to target the unique needs of schools to improve student achievement," Secretary Paige explained. "It does not necessitate a "one size fits all" response without regard to how well a school is doing overall. However, any Title I school in which any group of students fails to meet the AYP goal must be identified as in need of improvement, and all such schools that are identified are subject to the timeline for improvement required under Section 1116. Regardless of the degree to which a school is not making AYP, an LEA must take actions to address the needs of the school and improve achievement, provide public school choice for all students in any school that is identified for improvement, and provide supplemental education services for eligible students in schools that continue to not make AYP, as required under Section 1116."
- ❖ ***National Assessment of Educational Progress (NAEP).*** On September 16th, the Secretary issued a letter to the governor of Alabama, providing an update on the Education Department's National Assessment of Educational Progress (NAEP). NAEP is now entering its ninth State cycle marking the first biennial NAEP reading and mathematics assessments in grades 4 and 8 under the No Child Left Behind Act of 2001 (NCLB). Under this Act, States applying for Title I funds must include in their applications an assurance that they will comply with all requirements of the Act, including participation in NAEP. By submitting a consolidated State application for ESEA formula grant funds, a State has agreed to participate in the biennial reading and mathematics assessments, to ensure that districts selected for the NAEP samples participate in all phases of the assessments, and to have the State results published.
- ❖ ***Lowering Standards.*** On October 22nd, the Secretary sent a letter to Chief State School Officers praising the progress states have made in implementing NCLB, and expressing his concern over any attempts to lower the bar of expectations for schools and students.
- ❖ ***Foreign Teachers.*** On March 24th, 2003, the Secretary sent a letter to Chief State School Officers and others regarding the "highly qualified teachers" requirement under NCLB and international teacher exchange programs.

According to the Secretary, NCLB requires that teachers be highly qualified, as defined in section 9101(23) of ESEA, which helps to ensure that all teachers of core academic subjects, whether they are recruited and hired from within the United States or from another country, have the content knowledge and teaching skills needed to enable all students to succeed. Under the statute, the term "core academic subjects" means English, reading, or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. These requirements apply currently to teachers hired after the beginning of the 2002-2003 school year who teach in a Title I program, and will apply to all teachers of core academic subjects by the end of the 2005-2006 school year.

The Secretary's letter explains how school districts may continue to hire and employ visiting teachers from other countries while being consistent with the statutory requirements that define a highly qualified teacher.

For the full text of these policy letters, go to: <http://www.ed.gov/news/letters.jsp>

Policy Guidance

- ❖ ***Even Start.*** On February 1st, the Education Department issued draft guidance on the William F. Goodling Even Start Family Literacy Programs. This guidance reflects the changes that were made to this program under the "LIFT Act of 2000" and NCLB. Even Start is an education program for the nation's low-income families that is designed to improve the academic achievement of young children and their parents, especially in the area of reading.
- ❖ ***Ed Tech.*** On March 11th, the Education Department issued draft guidance on the Enhancing Education Through Technology (Ed Tech) Program. NCLB established this program, which consolidates the current Technology Literacy Challenge Fund (TLCF) Program and the Technology Innovative Challenge Grant Program into a single State formula grant program (ESEA Title II, Part D, Subpart 1). The primary goal of the Ed Tech program is to improve student academic achievement through the use of technology in schools.
- ❖ ***Reading First.*** On April 1st, the Education Department issued guidance on the Reading First Program. The purpose of this program is to ensure that all of the nation's children learn to read well by the end of third grade.
- ❖ ***21st Century Community Learning Centers.*** On May 9th, the Education Department issued draft guidance on these centers, which provide academic enrichment opportunities for children, particularly students who attend high-poverty and low-performing schools, to meet state and local student standards in core academic subjects, to offer students a broad array of enrichment activities that can complement their regular academic programs, and to offer literacy and other educational services to the families of participating children. The 21st Century Community Learning Centers Program is authorized under Title IV, Part B, of the Elementary and Secondary Education Act, as amended by NCLB.

- ❖ ***High Quality Teachers.*** On June 10th, the Education Department issued draft guidance on Title II, Part A of NCLB, which concerns the preparation, training, and retention of high-quality teachers and principals, as well as requires states to develop plans with annual measurable objectives that will ensure that all teachers teaching in core academic subjects are highly qualified by the end of the 2005-2006 school year.

- ❖ ***Early Reading First.*** On June 11th, the Education Department issued guidance for this Program, which is authorized under Title I of ESEA, as amended by NCLB. The overall purpose of the Early Reading First Program is to prepare preschool age children to enter kindergarten with the language, cognitive, and early reading skills necessary for reading success, thereby preventing later reading difficulties. This Program's goal is to transform early childhood programs into centers of excellence that provide a high-quality education to preschool age children, especially those children from low-income families.

- ❖ ***Unsafe School Choice Option Provisions.*** On July 23rd, the Secretary issued draft guidance on the Unsafe School Choice Provisions under the NCLB law. The Unsafe School Choice Option (USCO) [section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001] requires that each state education agency (SEA), as a condition of receiving ESEA funds, has to develop a policy to identify "persistently dangerous public schools," and "identify types of offenses that are considered to be violent criminal offenses." Students who attend such identified schools or who are victims of such offenses now have a new federal right to transfer to another public school within the LEA (including a public charter school) that has not been identified as unsafe. While not required, ED says students who have this transfer right should be allowed to transfer to a safe school that is also making AYP.

Local education agencies (LEAs) are not required to pay for these transportation costs.

In addition to providing this safe school transfer option, LEAs with identified persistently dangerous schools must also take "corrective action."

Each State must certify to ED that it is in compliance on an annual basis and submit the numbers of schools identified. States were supposed to have submitted their initial certification of compliance as part of their ESEA consolidated application. If a State has not yet fully complied with these provisions, it must submit a statement to ED by 8/15/02 that specifies what steps it still has to take to be in compliance and certify it will do so by 7/1/2003. Required transfer of students must start no later than the 2003-04 school year.

According to Secretary Paige, this guidance highlights some important aspects of USCO, and provides guidance on some provisions that may be useful in administering these requirements. States may rely on this guidance in administering these requirements. U.S. Department of Education officials, including the Inspector General, will consider State recipients that follow approaches contained in this guidance to be in compliance with the applicable Federal requirements that govern this program.

Paige noted that the Education Department intends to develop regulations concerning implementation of USCO “in the near future,” but, in the meantime, states may rely on this guidance.

- ❖ ***Comprehensive School Reform.*** On August 1st, the Education Department issued guidance on this Program, which is designed to improve student achievement by supporting the implementation of comprehensive school reforms based on scientifically based research and effective practices so that all children, especially those in low-performing, high poverty schools, can meet challenging state content and academic achievement standards.
- ❖ ***Supplemental Educational Services.*** On August 6th, the Education Department issued draft guidance under Title I, Section 1116(e) of ESEA, as amended by NCLB, regarding supplemental educational services. These services are defined as additional academic instruction designed to increase the academic achievement of students in low-performing schools. These services may include academic assistance such as tutoring, remediation and other educational interventions, provided that such approaches are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the State’s academic content standards. Supplemental educational services must be provided outside of the regular school day. Supplemental educational services must be high quality, research-based, and specifically designed to increase student academic achievement [Section 1116(e)(12)(C)].
- ❖ ***State Grants for Innovative Programs.*** On August 28th, the Education Department issued guidance on Title V, Part A of ESEA, as amended by NCLB, regarding state grants for innovative programs. The statutory purposes of the state grants are:
 1. To support local education reform efforts that are consistent with and support statewide education reform efforts.
 2. To implement promising educational reform programs and school improvement programs based on scientifically based research.
 3. To provide a continuing source of innovation and educational improvement, including support for programs to provide library services and instructional and media materials.
 4. To meet the educational needs of all students, including at-risk youth.
 5. To develop and implement education programs to improve school, student, and teacher performance, including professional development activities and class size reduction programs.
- ❖ ***Community Service Grant Program.*** On September 20th, the Education Department issued draft nonregulatory guidance on the Safe and Drug-Free Schools and Communities Act’s Community Service Grant Program. This program falls under Subpart 2 of title IV of ESEA, as amended by NCLB. The purpose of the Community Service Grant program is to enable States to implement and coordinate programs under which students expelled or suspended from school are required to perform community service. The goal of this program is to provide suspended and expelled students with meaningful activities to occupy their time during their absence from regular school; to help them avoid negative behavior; and to teach them the value of service to others and their communities. In Fiscal Year

2002, the U.S. Department of Education (ED) will allocate \$50 million among the States for the new Community Service Grant program.

- ❖ ***Paraprofessionals.*** On November 15th, the Education Department issued draft non-regulatory guidance under Title I, Part A of ESEA, as amended by NCLB, regarding new requirements for paraprofessionals. According to the guidance, all Title I paraprofessionals must have a secondary school diploma or its recognized equivalent. This includes paraprofessionals who serve as translators or who conduct parental involvement activities.

Additionally, Title I paraprofessionals whose duties include instructional support and who were hired after January 8, 2002, must have (1) completed two years of study at an institution of higher education; (2) obtained an associate's (or higher) degree; or (3) met a rigorous standard of quality and be able to demonstrate, through a formal State or local academic assessment, knowledge of and the ability to assist in instructing reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness) [section 1119(c) and (d)].

Paraprofessionals hired on or before January 8, 2002 and working in a program supported with Title I funds must meet these requirements by January 8, 2006.

For the full text of the policy guidance documents listed above, go to:

<http://www.ed.gov/topics/topicsTier2.jsp?&top=Policy&subtop=Policy+guidance&subtop2=Elementary+%26+secondary+education&type=>

- ❖ ***School Choice.*** On December 4th, the Education Department issued guidance on the choice provisions of the No Child Left Behind Act of 2001 (NCLB) – provisions that give options to parents of children who attend schools needing improvement. While school districts implement required plans to turn such schools around, students attending schools that need improvement must be given the opportunity to transfer to a better-performing public school in the school district.

The guidance provides general information and answers questions about how to implement the choice provisions, who is eligible to take advantage of the new options, how, when and what to tell parents about their choice options, and what types of schools should be involved. In addition, issues concerning special education, desegregation plans, general funding and transportation funding are covered.

To access the guidance, go to: <http://www.ed.gov/offices/OESE/SASA/schoolchoiceguid.doc>

- ❖ ***Supplemental Educational Services.*** On December 12th, the Education Department issued draft non-regulatory guidance on supplemental educational services under the No Child Left Behind Act of 2001. These services refer to additional academic instruction designed to increase the academic achievement of students in low-performing schools. These services may include academic assistance such as tutoring, remediation, and other educational interventions, provided that such approaches are consistent with the content and instruction used by the local educational agency (LEA) and are aligned with the State's academic content standards.

To access the non-regulatory guidance, go to:

<http://www.ed.gov/offices/OESE/SASA/suppsvcsguid.pdf>

- ❖ ***Highly Qualified Teachers.*** On December 20th, the Education Department issued an updated version of the guidance on standards for highly qualified teachers to help states and schools comply with the new provisions of the No Child Left Behind Act. The original guidance document was released in June of this year. The new teacher quality provisions require educators in core academic areas to be licensed by the state, hold a bachelor's degree, and demonstrate competence in their subject area. The highly qualified teacher requirements took effect in Title I schools for all teachers of core academic subjects hired after the first day of the 2002-2003 school year. All other teachers in core academic areas have until the end of the 2005-2006 school year to comply with the new requirements. One significant addition in the guidance update is a clarification of the requirements for teachers who are entering the classroom through alternative routes. Another is the impact of the new law on middle school teachers. To meet the highly qualified requirements, middle school teachers must demonstrate competence in all of the academic areas in which they teach.

The guidance document is available at www.ed.gov/offices/OESE/SIP/TitleIIguidance2002.doc.

- ❖ ***Safe and Drug-Free Schools and Communities Act.*** On January 2nd, 2003, the Education Department issued non-regulatory draft guidance for state and local implementation of programs under Title IV, Part A, Subpart 1 of the Safe and Drug-Free Schools and Communities Act. The Safe and Drug-Free Schools and Communities Act (SDFSCA) is a critical part of President Bush's national effort to ensure academic success for all students. Effective July 1, 2002, the SDFSCA State Grants (Subpart 1) program authorizes a variety of activities designed to prevent school violence and youth drug use, and to help schools and communities create safe, disciplined, and drug-free environments that support student academic achievement. One of the significant changes in the SDFSCA is a requirement that State and local prevention programs and activities meet the Principles of Effectiveness. Under the reauthorized SDFSCA, the Principles of Effectiveness include a requirement that funds be used to support only programs grounded in scientifically based research.

For more information about the draft guidance, go to:

http://www.ed.gov/offices/OSDFS/sdfscguidance_12_02.doc

- ❖ ***Constitutionally Protected Prayer.*** On February 7th, 2003, the Education Department issued guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools. The purpose of this guidance is to provide State educational agencies (SEAs), local educational agencies (LEAs) and the public with information on this important topic. The guidance also sets forth and explains the responsibilities of SEAs and LEAs with respect to this aspect of the NCLB Act. Most significantly, as a condition of receiving funds under the Elementary and Secondary Education Act (ESEA), an LEA must certify in writing to its SEA that it has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools as set forth in this guidance. In other words, the guidance clarifies the rights of students to pray in public schools.

For more information about the guidance, go to:

http://www.ed.gov/inits/religionandschools/prayer_guidance.html

Or, to read the letter from Secretary Rod Paige on the guidance, go to:

http://www.ed.gov/inits/religionandschools/letter_030207.html

- ❖ ***School Lunch Programs.*** On February 21st, 2003, the Education and Agriculture Departments issued a joint letter providing guidance on the implementation of the new requirements under Title I of the NCLB by schools that operate school lunch programs under Provisions 2 and 3 of the National School Lunch Program.

To read the letter, go to: <http://www.ed.gov/offices/OESE/SASA/22003.html>

- ❖ ***21st Century Community Learning Centers Program.*** On February 26th, 2003, the Education Department issued non-regulatory guidance on the 21st Century Community Learning Centers program. The 21st Century Community Learning Centers program is authorized under Title IV, Part B, of the Elementary and Secondary Education Act, as amended by the *No Child Left Behind Act of 2001*. The purpose of this important program is to create *community learning centers* that provide academic enrichment opportunities for children, particularly students who attend high-poverty and low-performing schools, to meet State and local student standards in core academic subjects, to offer students a broad array of enrichment activities that can complement their regular academic programs, and to offer literacy and other educational services to the families of participating children.

The Non-Regulatory Guidance can help the State Educational Agencies to develop selection criteria to ensure that local programs are of the highest possible quality and are appropriately tailored to address the needs of students and their families. In particular, States and local communities must identify and implement programs for which there is evidence, based on rigorous research and evaluation, that they can effectively help children to succeed in school.

To read the guidance, go to: <http://www.ed.gov/offices/OESE/21stccle/21stccleguidance2003.doc>

- ❖ ***Standards and Assessments.*** On March 10th, 2003, the Education Department issued non-regulatory draft guidance on the standards and assessments provisions under the No Child Left Behind Act of 2001. Concerning students with disabilities, the draft guidance notes that a State's assessment system must be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities, students covered under Section 504, and students with limited English proficiency. All the phases of assessment development, including test conceptualization, test construction, test tryout, test item analysis, and test revision, should take into account the wide range of various student populations in the State. The IEP team or placement team determines how individual students participate in assessment programs, not whether they participate. The IEP team or placement team determines that an individual student should take the regular assessment with or without accommodations or that the student should take the alternate assessment. The only students with

disabilities who are exempted from participation in State and district-wide assessment programs are students with disabilities convicted as adults under State law and incarcerated in adult prisons (34 CFR 300.311(b)(1)). Inclusion in assessments provides valuable information that benefits students by indicating individual progress against standards and in evaluating educational programs.

Specifically, the department is proposing the following:

- To permit states to define alternate achievement standards for students with the most significant cognitive disabilities. Such students will also take an alternate assessment. These alternate achievement standards must be aligned with the state's academic content standards and reflect professional judgment of the highest learning standards possible for those students.
- To allow states to use alternate achievement standards for students with the most significant cognitive disabilities to calculate adequate yearly progress (AYP), as long as the percentage of those students at the school district and state level, separately, does not exceed 1.0 percent of all students assessed.
- If a school district or state can document that the incidence of students with such disabilities exceeds 1.0 percent, the district could be permitted to request an exception from the state, or the state could request an exception from the secretary to exceed the 1.0 percent limitation.
- To define, for the Title I program, the term "students with the most significant cognitive disabilities" as students whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean.

The proposed regulations also clarify that the achievement of students with less significant disabilities will be measured against a state's grade-level achievement standards for accountability purposes.

This Standards and Assessment Guidance is written to assist States, districts, and schools in understanding and implementing *The No Child Left Behind Act* in the area of standards and assessments. This guidance document is one of three documents the Department is preparing on standards and assessments. In addition to this document, the Department will soon be releasing a Technical Addendum for Standards and Assessments and a Peer Reviewer Manual for Standards and Assessments. The Technical Addendum will contain more detailed and technical discussion on many of the topics covered in this guidance document and is written primarily for State and district assessment and accountability directors. The Peer Reviewer Manual for Standards and Assessments will provide States additional details on the types of evidence and documentation that peers will review to make recommendations to the Department for the approval of State assessment systems.

To read the entire guidance, go to: <http://www.ed.gov/offices/OESE/saa/standassguidance03.doc>

- ❖ **Charter Schools.** On March 24th, the U.S. Department of Education issued draft non-regulatory guidance on the impact of the new Title I requirements on charter schools. Charter schools are public schools of choice that are freed from many of the traditional rules and regulations governing other public schools in exchange for greater accountability.

The guidance provides general information on how No Child Left Behind (NCLB) impacts charter schools, including details on accountability requirements; public school choice; supplemental educational services; and teacher and paraprofessional qualifications. The department also will soon issue new guidance on the Public Charter Schools Grant Program.

Some of the questions the guidance answers are how the new law defines a highly qualified charter school teacher; whether charter schools are required to make adequate yearly progress like other public schools; and if parents must be notified if a charter school is identified as in need of improvement.

Charter schools operate with a contract, or charter, from a public agency, according to individual state charter laws. They are created by groups of parents, teachers, school administrators or others who want to provide educational alternatives, and are free of cost to parents and open to all students, but exempted from most statutory and regulatory requirements in exchange for performance-based accountability. They must meet standards set forth in their charters for students and the school as a whole, or else the chartering agency can close the school.

To access the guidance, go to <http://www.ed.gov/offices/OII/choice/charterguidance03.doc> or <http://www.ed.gov/offices/OII/choice/charterguidance03.pdf>.

- ❖ ***Early Reading First.*** On March 27th, the Education Department issued non-regulatory program guidance for the Early Reading First Program under subpart B, part B, title I of the No Child Left Behind Act.

According to the Department, the overall purpose of the Early Reading First Program is to prepare preschool age children to enter kindergarten with the language, cognitive, and early reading skills necessary for reading success, thereby preventing later reading difficulties. Early Reading First will transform early childhood programs into centers of excellence that provide a high-quality education to preschool age children, especially those children from low-income families.

Early Reading First enables preschool programs to do what scientifically based research shows is the most effective way to reach this goal. Classroom environments will be rich in age-appropriate print, from sources such as books, labeling, and posting the alphabet and children's work in pre-writing. Teachers will deliver intentional and explicit, contextualized, and scaffolded instruction and conduct progress monitoring to determine which skills children are learning. Programs will provide intensive and ongoing professional development that includes mentoring and coaching in the classroom. These are just a few examples of how Early Reading First is designed to make a dramatic improvement in the ways we teach our preschool age children and prepare them for future school success.

The specific purposes of the Early Reading First program are as follows:

- To support local efforts to enhance the early language, literacy, and early reading development of preschool age children, particularly those from low-income families, through strategies and professional development that are based on scientifically based reading research.
- To provide preschool age children with cognitive learning opportunities in high-quality language and literature-rich environments so that they can attain the fundamental knowledge and skills necessary for optimal reading development in kindergarten and beyond.
- To demonstrate language and literacy activities based on scientifically based reading research that supports the age-appropriate development of --
 - *oral language* (vocabulary development, expressive language, and listening comprehension);
 - *phonological awareness* (rhyming, blending, segmenting)
 - *print awareness*; and
 - *alphabet knowledge* (letter recognition).
- To use screening assessments to effectively identify preschool age children who may be at risk for reading failure.

To read the non-regulatory guidance, go to:

<http://www.ed.gov/offices/OESE/earlyreading/erfguidance.doc>

- ❖ ***Homeless Students.*** On March 28th the U.S. Department of Education released preliminary guidance to help states and school districts ensure that every homeless child or youth receives the same educational opportunities, including public preschool education, as other children.

Reauthorized under the No Child Left Behind Act of 2001, the Education for Homeless Children and Youths program addresses the problems that homeless children face in school, such as low enrollment, poor attendance and academic failure.

The guidance outlines new mandates for this program, including-

- School districts or schools cannot segregate homeless children in a separate school program within a school, based on homelessness alone.
- Schools must immediately enroll homeless students even if the students are unable to produce the records normally required of non-homeless students for enrollment.
- States and their school districts must ensure that homeless children are provided transportation--at the request of parents or guardians--to and from the school they attended prior to becoming homeless.
- School districts must designate a local liaison for homeless children and youths.

To review the guidance, go to: www.ed.gov/offices/OESE/SASA/hmlsprogresp.html

Regulations – Final and Proposed

Final Regulations for Title I, Accountability, Parental Options, Teacher Quality

On November 26th, the Secretary of Education issued final regulations implementing Title I of the NCLB. After reviewing over 700 comments on the NPRM (which was released August 6th – see below), the Secretary made numerous changes to the following areas under the law: (1) State Accountability Systems; (2) Adequate Yearly Progress; (3) Schoolwide Programs; (4) LEA and School Improvement; (5) Qualifications of Teachers and Paraprofessionals; (6) Participation of Eligible Children in Private Schools; (7) Allocations to LEAs; and (8) Fiscal Requirements.

The final regulations offer additional help on numerous topics including:

- How states can improve their accountability systems to comply with the law and measure the progress of every school and every group of children;
- How states should implement “supplemental service” provisions to ensure every disadvantaged child gets extra help outside schools that are working to improve;
- How states can improve their teaching corps and classroom achievement with the help of highly qualified teachers;
- And how states can get the federal funds to open up more public schools to parents with children in danger of being left behind.

For the full text of the final regulations, plus a Fact Sheet and summary of the final regulations, go to: <http://www.ed.gov/offices/OESE/SASA/cepprogresp.html#reg>

Final Regulations on Standards and Assessment Requirements

On July 5th, the Department issued final regulations outlining the requirements states must fulfill under Title I of the NCLB, “Improving the Academic Achievement of the Disadvantaged.” These regulations became effective on August 5th. (Note: the NPRM for these requirements was issued on May 6th.) To review the final regulations, go to:

<http://www.ed.gov/legislation/FedRegister/finrule/2002-3/070502a.html>

Proposed Regulations for Title I

On August 6th, the Secretary of Education issued a notice of proposed rulemaking (NPRM) to amend the regulations governing the programs administered under Title I, Subparts A, B, C, and D and E of the Elementary and Secondary Education Act of 1965, as amended (ESEA). These proposed regulations are needed to implement recent changes to Title I of the ESEA made by the NCLB.

Word File: <http://www.ed.gov/offices/OESE/SASA/nprmtitleifinal.doc>

PDF File: <http://www.ed.gov/offices/OESE/SASA/nprmtitleifinal.pdf>

Comments are due by September 5, 2002. CEC is reviewing the NPRM and will be sending its comments to the Department.

Announcements from the Department of Education

Identifying Failing Schools Under School Choice

U.S. Secretary of Education Rod Paige on July 1 announced that students in an estimated 8,600 schools nationwide, according to state reports, will have the option to choose and attend a higher-performing school in their school district if the school they currently attend has failed to meet state academic standards for two consecutive years.

The new options are available to parents of students in Title I-funded schools, and were established under the No Child Left Behind Act of 2001, which was signed into law by President Bush on January 8, 2002. The new educational options must be provided at the start of the 2002-2003 school year.

“This is a new day in education and opportunity for the nation’s neediest children,” Paige said. “For the first time, school districts must tell, and parents will know, which schools are not making sufficient academic progress. Parents will now have new options to give their child a quality education. And new requirements for reporting on student and group progress will shine a light on achievement gaps that may have been masked in the past.”

The data covers schools in which students have not made adequate yearly progress (AYP). AYP is a state’s annual measure of school progress toward achieving state academic content standards.

Under the 1994 Elementary and Secondary Education Act, the precursor to the No Child Left Behind Act, each state was responsible for developing state content standards, assessments and definitions of AYP. In each state, schools that failed to make state-defined AYP for two or more years were identified as in need of school improvement. States reported the numbers to the U.S. Department of Education this spring. Because of differences in the ways each state defines school progress, state comparisons are not valid.

Under NCLB, the data on school progress will be more meaningful. Unlike the 1994 law, there are consequences for schools that fail to improve and educational options for students who attend schools that are not improving under NCLB:

- States must have one accountability system for all students including academic standards, assessments and proficiency levels.
- All schools will be expected to reach 100 percent proficiency by the end of the 2013-14 school year.
- State test results must be broken out by major racial and ethnic groups, disadvantaged students, students with disabilities and limited English proficient students. Each group must show improvement.
- Information on student progress and school success must be shared annually with parents.

School districts are required to help cover the costs of transportation for students who exercise their choice option. To assist parents in obtaining supplemental services, states will prepare a list of approved service providers that can provide after-school, before-school, summer school or weekend help in reading and math. Providers are to provide high-quality, research-based instruction in line with state standards, and services can come from school districts, non-profit and for-profit organizations, faith-based groups and charity organizations.

Also, to help prepare states and districts to implement the new provisions, Paige recently hosted state and local education officials for a conference about the supplemental services requirements during which he shared a letter to states that included preliminary guidance, available at <http://www.ed.gov/PressReleases/06-2002/06142002.html>

States and most high-poverty districts are receiving significant increases in Title I funding to help support activities to improve school, Paige said. State Title I allocations can be viewed at <http://www.ed.gov/offices/OUS/Budget03/03StateTables/index.html>

Desktop Reference Outlines Changes to ESEA

The Department of Education has published a new reference guide to NCLB entitled “*No Child Left Behind: A Desktop Reference*.” The 181-page guide outlines what is new under the No Child Left Behind Act of 2001 for each program supported under the Elementary and Secondary Act (ESEA) of 1965 and other statutes. It also describes how the NCLB Act's four guiding principles (accountability, flexibility and local control, parental choice, and what works) are brought to bear on many of these programs. The intent is to provide a substantive overview of policy changes and emphases for state and district officials. Programs for which no funding was requested in fiscal years 2002 and 2003 are not included. The guide is available in both PDF and Word formats.

No Child Left Behind: A Desktop Reference:
<http://www.ed.gov/offices/OESE/reference.pdf>

<http://www.ed.gov/offices/OESE/reference.doc>

CEC's No Child Left Behind Act of 2001 – Implications for Special Education Policy and Practice

CEC has done an analysis of Title I and Title II of the No Child Left Behind Act of 2001 and its implications for special education policy and practice. To view this document, please go to: <http://www.cec.sped.org/pp/NCLBside-by-side.pdf> .