

**H.R. 1, The No Child Left Behind Act of 2001**

**FREQUENTLY ASKED QUESTIONS  
HANDBOOK**



**Rep. John Boehner (R-OH), Chairman  
Committee on Education & the Workforce**

# Frequently Asked Questions

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# Frequently Asked Questions

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## Frequently Asked Questions

### H.R. 1, The No Child Left Behind Act of 2001 (NCLBA)

#### *Title I - Improving The Academic Achievement Of The Disadvantaged*

##### **Part A - Improving Basic Programs Operated By Local Educational Agencies**

###### *How have the Title I-A formulas for allocating funds to states, local school districts, and schools been changed?*

As under previous law, 4 different formulas are authorized for the allocation of ESEA Title I-A funds to states and local school districts: Basic, Concentration, Targeted, and Education Finance Incentive Grants. Once funds reach local school districts, the amounts under the 4 formulas are combined and used jointly for local Title I programs.

In the allocation of Title I-A funds, the No Child Left Behind Act (NCLBA) provides that an amount equal to the FY 2001 appropriation will be allocated under the Basic and Concentration Grant formulas, and any increases are to be allocated under either an updated version of the Targeted Grant formula, or a substantially modified version of the Education Finance Incentive Grant (EFIG) formula. A hold harmless rate of 85 - 95 percent of previous year grants (the higher a local educational agency's (LEA) child poverty rate, the higher the hold harmless percentage), previously applicable only to Basic and Targeted Grants, will now apply to each of the 4 allocation formulas. State minimum grants are increased from up to 0.25 percent of total grants under previous law to up to 0.35 percent, but only with respect to appropriated funds above the FY 2001 level.

###### *In what ways will Title I funds be better targeted on high poverty districts and schools than in the past?*

Appropriations legislation has been adopted for FY 2002, which is consistent with the NCLBA provisions described above. A total of \$10.35 billion is provided for Title I-A grants for FY2002, an 18 percent increase over the FY 2001 level. All funds above the FY 2001 level are to be allocated under either the Targeted Grant (56 percent of funds above FY 2001) or the Education Finance Incentive Grant formula (44 percent of funds above FY 2001). Further, in contrast to appropriations acts of the last several years, no extraordinary hold harmless provisions will be applied to the FY 2002 grants.

Both the Targeted Grant and the revised EFIG formulas allocate substantially higher shares of Title I-A funds to the highest poverty local school districts than do the previously funded Basic and Concentration Grant formulas. This, combined with the reduction of hold harmless rates, will allow Title I-A funds to be significantly better

targeted than in the past on local school districts with current and growing concentrations of pupils from low-income families.

***How many states now meet the requirements for standards-based assessments in reading and math at 3 grade levels, which were adopted in the 1994 amendments to Title I?***

Currently, the standards-based assessments in reading and math at 3 grade levels, as required for states participating in Title I-A under the 1994 amendments, have been fully approved for 16 states. A large majority of the remaining states (30) are substantially, but not yet fully, in compliance with the 1994 requirements, and have requested or obtained waivers of the scheduled deadline in order to complete the development and implementation of these assessments. The Department of Education has determined that the assessment programs of the remaining 4 states, plus the District of Columbia and Puerto Rico, are sufficiently far from meeting the 1994 requirements that compliance agreements have been proposed in these cases. (See attachment – Status of Review of State Assessment Systems Under ESEA Title I, Part A, as of 2-15-02)

***How long will the remaining states be given to meet these requirements?***

The No Child Left Behind Act (NCLBA) provides that no additional waivers of the deadlines for meeting these “1994 requirements” may be given to states after 90 days following enactment.

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

Under H.R. 1, a state’s definition of AYP must apply specifically to disadvantaged students, as well as to the overall student population. This expectation will serve to hold schools and districts accountable for improving the performance of disadvantaged students and to help educators, parents, and others discern whether achievement gaps are closing.

States must define AYP so that all students are expected to improve and that in 12 years all students will achieve at the state defined “proficient” level on state reading and math academic assessments.

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

To avoid “over-identification” of schools as failing when students in a school are making significant academic progress, a “safe harbor” is allowed if students in the subgroups make a 10 percent reduction in the number of students not proficient. For example, if

students in a particular subgroup are 30 percent proficient and achieve a 7 percent increase in the number of proficient students (which is a 10 percent reduction in the percentage (70 percent) of students not proficient), then they would be deemed to have made adequate yearly progress and would not be identified as failing. This provision has the added advantage of requiring larger gains for the subgroups farthest from proficiency while allowing for smaller gains for those closer to proficiency, where gains are harder to achieve.

***What are “school improvement,” “corrective action,” and “restructuring”?***

Schools that have not made state defined adequate yearly progress for two consecutive school years will be identified by the district as needing school improvement before the beginning of the next school year. Immediately after identification, these schools will receive technical assistance to improve performance. These schools will develop a two-year plan to turn around the school, and will give all students in the school the option to transfer to another public school serviced by the district that is not a failing school. These schools would also be eligible to receive federal funds for school improvement activities.

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

If the school fails to make adequate yearly progress for four consecutive years, the district must implement certain corrective actions to improve the school, such as replacing certain staff or fully implementing a new curriculum, as well as continuing to offer public school choice and provide supplemental services.

If a school fails to make adequate yearly progress for five consecutive years, it would be identified for restructuring and would have to develop a plan and make the necessary arrangements to implement significant alternative governance actions, state takeover, the hiring of a private management contractor, converting to a charter school, or significant staff restructuring. Public school choice and supplemental services continue to be required.

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

Corrective actions and restructuring measures are no longer required for school improvement schools once they make adequate yearly progress for two consecutive years. As a corollary, schools would no longer be identified for school improvement if such progress has occurred.

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

If a failing school meets AYP for one year, it remains in the same category it is in at the time. For example, if a school in corrective action meets AYP, it stays in corrective action. If this school were to then fail to meet AYP the following year, it would then move into the next category, restructuring. If, however, this school were to meet AYP in the following year, it would no longer be identified as failing.

***Is assistance provided to schools and districts that are deemed to be chronically underachieving?***

H.R. 1 increases the current 0.5 percent set-aside of a state's total Title I allocation for school improvement activities to 2 percent for FY 2002 - 2003, increasing to 4 percent for FY 2004 - 2007. In addition, the Act retains the separate authority for school improvement activities and authorizes it at \$500 million in FY 2002 and such sums as may be necessary in FY 2003 through FY 2007. These funds will augment state and local efforts to provide technical assistance and improve schools identified as needing improvement. Technical assistance provided with these funds must be based on scientifically based research.

***How many schools will have to offer public school choice and supplemental services options next school year (2002 - 03)?***

Schools and school districts already identified as failing under the terms of the 1994 Elementary and Secondary Education Act (ESEA) will be required to offer public school choice for those students in schools identified for school improvement and supplemental services for those students in schools requiring corrective action. According to data from 30 states and Puerto Rico (13 states either don't have the data available yet or do not have a system that can provide the data; seven states and the District of Columbia have not provided information to the Department of Education), students in approximately 6,700 schools will be eligible to exercise public school choice in the 2002 - 2003 school year, while students at almost 3,000 schools will be eligible to receive supplemental services in 2002 - 2003. (See attachment – No Child Left Behind: Expanding Parental Choice in Education)

***Which schools will have to offer public school choice and supplemental services and where are they located?***

At present, this data is not available. Under the 1994 ESEA, states were not required to provide the names or locations of schools identified as failing. The No Child Left Behind Act, however, included a requirement that the states provide the name and location of schools the states identify as failing, including the reason for the failure.

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

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

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

Yes. LEAs must provide, or pay for, transportation required for a student to exercise public school choice under school improvement, corrective action, restructuring or interdistrict choice offered as part of corrective action for a LEA.

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

LEAs must provide transportation for public school choice, and must use up to 5 percent of their Title I, Part A funds for transportation costs. Also, the school district must use an additional 10 percent of their Title I, Part A funds for public school choice transportation costs or for supplemental services. Districts may also use funds from the Innovative Programs Block Grant to pay for public school choice transportation costs.

***Which pupils in chronically underachieving schools will be eligible for public school choice?***

All children attending schools identified for school improvement, corrective action, or restructuring are eligible to exercise public school choice, but LEAs must give priority to low-income students if it is not possible to serve all students. “Low-income” is determined according to the same criteria the LEA uses to make Part A of Title I allocations to schools.

***What are “supplemental services”?***

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

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

***What students are eligible to receive supplemental services?***

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

***What must LEAs do to provide supplemental services?***

LEAs that are required to provide supplemental services must (1) annually notify parents of the availability of those services, including the identity and qualifications of approved providers and a description of the services they provide; (2) help parents select a provider, if such help is requested; and (3) enter into an agreement with a provider for each student that includes goals and a timetable for improving the student’s achievement, regular progress reports, a provision for termination if the provider fails to meet the goals, timetables, and payment terms. LEAs also must carry out any SEA responsibilities that the SEA is prohibited from carrying out under state law.

***What must SEAs do to provide supplemental services?***

SEAs must (1) promote maximum participation by providers; (2) develop and apply objective criteria for approving providers based on a demonstrated record of effectiveness in helping students meet state academic content and student achievement standards; (3) maintain a list of approved providers arranged by school district; (4) monitor the quality and effectiveness of providers and withdraw approval from providers that fail to meet state criteria for two consecutive years; and (5) annually notify potential providers of the opportunity to provide services and the procedures for obtaining SEA approval.

***Who will be the providers of supplemental services?***

H.R. 1 defines a provider as a financially sound non-profit or for-profit entity or LEA with a “demonstrated record of effectiveness” in increasing student academic achievement that is capable of providing supplemental educational services consistent with the instructional program of the LEA and the state’s academic standards. In addition, providers must give parents and the LEA with information on the progress of the children served; ensure that instruction is consistent with state and local standards, including state student academic achievement standards; and meet applicable health, safety, and civil rights laws.

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

The per-child amount available for eligible children is capped at the lesser of (1) the LEA’s per-child Title I, Part A allocation, or (2) the actual cost of the services. LEAs must use 5 percent of their Title I, Part A funds to pay for supplemental educational

services. Also, the school district must use an additional 10 percent of their Title I, Part A funds for public school choice transportation costs or for supplemental services. School districts may also use funds from Part A of Title V (Innovative Programs Block Grant) to help pay for supplemental educational services.

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

H.R. 1 requires SEAs to promote maximum participation by providers to ensure parents have as many choices as possible. In addition, LEAs may also serve as providers. H.R. 1 includes report language to encourage SEAs to actively consider the inclusion of distance learning providers. Finally, a SEA may waive, at a LEA's request, all or some of the requirements of supplemental services if the SEA determines that there are no providers in the area served by the LEA or within a "reasonable distance" of the LEA, and if the LEA is not able to provide the services.

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

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

***Must LEAs spend any non-federal funds on public school choice or supplemental services?***

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

***Will chronically underachieving public schools lose funds if pupils exercise public school choice or supplemental services options?***

LEAs may not reduce the allocation of a school identified for corrective action or restructuring by more than 15 percent to make funds available for choice transportation costs or supplemental services.

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

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

***Do any of the accountability or assessment requirements apply to private, home, or charter schools?***

Nothing in the NCLBA affects a home school or permits any federal control over any aspect of a home school, whether that home school is treated as a home school or a private school under state law. Students who are home schooled are not required to take any assessment referenced in the NCLBA.

The accountability and assessment provisions in H.R. 1 are required to be overseen for charter schools in accordance with state charter school law. As public schools, charter schools are subject to the same accountability and assessment requirements of the NCLBA, but state authorized chartering agencies, as established by state law, are responsible for ensuring charter schools are meeting the requirements and being held accountable.

Nothing in H.R. 1 affects a private school or permits any federal control over any aspect of a private school, unless the private school receives federal funds under the NCLBA. Similarly, students at private schools are not required to take any assessment referenced in the NCLBA, unless the private schools receive federal funds under the NCLBA.

***When will states have to begin participating in the National Assessment of Educational Progress (NAEP)?***

The NCLBA requires, beginning with the 2002 - 2003 school year, biennial state participation in NAEP reading and math assessments for 4<sup>th</sup> and 8<sup>th</sup> grade students, so long as the Department of Education pays the costs of administering those assessments.

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

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

***When will states have to begin administering reading and math tests to all pupils in grades 3 - 8?***

States will have until the 2005 - 2006 school year to develop and implement these assessments.

***What will happen if states fail to meet these deadlines?***

The Secretary of Education is required to withhold 25 percent of state administration funds from states that have failed to meet the 1994 deadlines (or any deadlines contained in waivers or compliance agreements) for putting in place standards, assessments, and a system for measuring AYP. The NCLBA also permits the Secretary to withhold state administration funds (the amount is unspecified) from states that fail to meet the new requirements in the NCLBA.

***What federal grants will be available to help meet these costs?***

States will receive funds to develop the annual 3 - 8 state assessments, or if a state has developed those assessments and standards, to administer the assessments, or to carry out other activities related to ensuring accountability for results in the state's schools and LEAs, or improving the quality of state assessments. In addition, states may enter into partnerships with other states to develop assessments, although such partnerships are not required.

\$490 million is authorized for states to develop and administer these assessments. From this amount, each state will receive \$3,000,000, with the remaining funds allocated among the states based on their number of public school students in grades 3 – 8.

An appropriations “trigger” is included to ensure sufficient federal funds are available to the states to enable them to comply with the 3 - 8 assessment requirement. A state may defer the commencement or suspend the administration of the annual 3 - 8 assessments for one year for each year that the appropriated funds do not reach the set amount. However, a state must continue to develop the 3 - 8 assessments even if the appropriation is below the set amount and the state must continue to comply with current law by administering academic assessments in reading and math in one grade in each grade span of 3 - 5, 6 - 9, and 10 - 12. The trigger amounts are: \$370 million for FY 2002; \$380 million for FY 2003; \$390 million for FY 2004; and \$400 million for FY 2005 - 2007.

***Are there any other requirements for standards and/or assessments?***

States must develop science standards by the 2005 - 2006 school year and implement science assessments by the 2007 - 2008 school year in one grade in each grade span of 3 - 5, 6 - 9, and 10 - 12. No history standards or assessments are required.

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

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

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

and how its students performed on the state assessment compared to the school district and state as a whole.

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

***How could these report cards be disseminated?***

These report cards must be disseminated widely through public means, which could include posting on the Internet, distribution to the media, or distribution through public agencies.

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

H.R. 1 requires LEAs to ensure that teachers' aides hired with Title I, Part A funds or working in local programs supported with Title I, Part A funds after enactment of H.R. 1 have: (1) completed at least 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 established at the local level, which includes an assessment of math, reading and writing. LEAs must also ensure that teachers' aides hired with Title I, Part A funds or working in local programs supported with Title I, Part A funds (under previous law) meet these requirements no later than 4 years after enactment.

***Are there any rewards for schools or teachers that do well?***

The NCLBA authorizes state academic achievement awards to schools that close achievement gaps or exceed AYP requirements. States may use federal funds to financially award teachers in schools that receive academic achievement awards. In addition, states may designate schools that make the greatest achievement gains as "Distinguished Schools." States may reserve up to 5 percent of Title I, Part A funding increases for academic achievement awards, which must be primarily targeted toward high-poverty schools.

***What is the purpose of schoolwide programs?***

The purpose of schoolwide programs is to allow a school to use resources effectively and efficiently to undertake comprehensive reform of the entire educational program in the school to assist all children, particularly the lowest achieving children, to meet the high state academic achievement standards.

***What is the minimum poverty threshold required for implementing schoolwide programs under the reauthorized ESEA?***

The minimum poverty threshold required for implementing schoolwide programs under the reauthorized ESEA is 40 percent. A LEA can consolidate and use funds under Part A of Title I, together with other federal, state, and local funds, in order to upgrade the entire

educational program of a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children enrolled in the school are from low-income families.

***What are the general requirements governing schoolwide plans?***

In consultation with its local educational agency (LEA) and its school support team or other technical assistance provider under Title I, an eligible school that desires to operate a schoolwide program must develop a comprehensive plan for reforming the total instructional program in the school that-

- Describes how the school will implement the components of a schoolwide program as described in Part A of Title I;
- Describes how the school will use resources under Part A of Title I and from other sources to implement those components; and
- Includes a list of state educational agency and LEA programs and other applicable federal programs that will be consolidated in the schoolwide program.

***Must a school account separately for funds from different federal programs that are consolidated in a schoolwide program?***

No. A school that consolidates and uses funds from different federal programs to support a schoolwide program is not required to maintain separate fiscal accounting records, by program, that identify how those funds were spent, as long as the school can demonstrate that the schoolwide program as a whole addresses the intent and purposes of each program whose funds were consolidated.

**Part B - Student Reading Skills Improvement Grants**

***What's the current situation - how well are America's children reading?***

Educators, parents, and other interested parties have long acknowledged the general deterioration of our students' overall reading achievement. Approximately 40 percent of students across the nation cannot read at a basic level. Almost 70 percent of low-income fourth grade students cannot read at a basic level. In other words, these children struggle with foundational reading skills like summarizing and understanding a story. Almost half the students living in urban areas cannot read at a basic level. Average-performing students have made no progress over the last 10 years, and the lowest-performing readers have become less successful over this same time period.

***What's the key to helping children become successful readers?***

Research has consistently identified the critical skills that young students need to become good readers. Teachers across different states and districts have demonstrated that sound, scientifically based reading instruction can and does work with all children. The critical missing piece lies in helping able teachers benefit from the relevant research in each and

every classroom. Real, nationwide progress can be made when we bring together proven methods with significant new federal resources to make sure that every child becomes a successful reader, and that each child moves forward well-prepared for a rich and rewarding academic experience.

***Why is it so important for children to read better, so early in school?***

Research shows that children who read well in the early grades are far more successful in later years, which only confirms our own intuition. Young, capable readers can take greater advantage of school opportunities and develop invaluable confidence in their own abilities. Reading success leads directly to success in other subjects such as social studies, math, and science. In the long term, students who cannot read well are much more likely to drop out of school and be limited to lower-paying jobs throughout their lifetimes. Reading is undeniably the foundation for success in society.

***What is being done to help children learn to read well by third grade?***

Improving the reading skills of children is a top national and state priority. The President, the First Lady, the Secretary of Education, governors, business leaders, elected officials, citizens, community organizations, parents, and teachers are deeply committed to doing whatever it takes to ensure that every child can read. Researchers and educators have come to a constructive consensus about reading instruction and the critical skills children must learn to be successful readers. Particularly at this point in history, science has provided tremendous insight into exactly how children learn to read, and related research has identified the most essential components of reading instruction.

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

Reading First is a bold new national initiative, squarely aimed at helping every child in every state become a successful reader. For this purpose, up to nearly \$6 billion will be distributed among the 50 states, the District of Columbia, Puerto Rico, and outlying areas over the next several years. These funds are specifically dedicated to helping states and local school districts establish high-quality, comprehensive reading instruction for all children in kindergarten through third grade.

***What's different about Reading First?***

Reading First, unlike previous national reading programs, is a classroom-focused nationwide effort designed to help each and every student become a successful reader. Every state will be eligible to apply, and the most needy schools and districts will receive the funds and other support they will need to succeed. It differs from earlier initiatives by establishing clear, specific expectations for what can and should happen for all students. Reading First specifies that teachers' classroom instructional decisions must be informed by scientifically based reading research. Through Reading First funds, grants will be available for state and local programs in which students are systematically and explicitly taught five key early reading skills: Phonemic awareness - the ability to hear, identify, and play with individual sounds - or phonemes - in spoken words. Phonics - the

relationship between the letters of written language and the sounds of spoken language. Fluency - the capacity to read text accurately and quickly. Vocabulary - the words students must know to communicate effectively. Comprehension - the ability to understand and gain meaning from what has been read.

### ***How will Reading First help classroom teachers?***

Reading First appropriately concentrates attention on the classroom. After all, during the average school day, students spend most of their time in classrooms. Classroom instructional time should reflect the most accurate and up-to-date knowledge about the science of teaching children how to read. For that reason, Reading First provides funds to states and local districts to help classroom teachers improve the reading instruction they deliver to all of their children. States will ensure that primary grade teachers deliver reading instruction that is informed by scientifically based reading research. For those teachers in schools and districts with the greatest need, Reading First funds may be used to organize additional professional development, purchase or develop high-quality instructional materials, or administer assessments or diagnostic instruments. The common goal is to make sure that teachers have all the necessary tools to provide coherent, skills-based reading instruction for all of their children.

### ***How will Reading First work in the immediate term?***

Every state has the potential to receive significant funding very soon to improve reading achievement. Awards for Reading First will follow a straightforward, two-step process. First, each state can apply for Reading First money on the basis of how many low-income children live within the state. States with approved applications will use their funds to organize a professional development program for all kindergarten through third grade teachers, as well as in a variety of other ways, as outlined by states in their proposals. States will also provide ongoing, focused technical assistance to local schools for improving reading instruction. The bulk of these funds, however, will go to districts and schools to meet students' instructional needs. Once funds reach the local district, the Reading First monies are flexible and can be used for assessments to diagnose problems and monitor progress, professional development, reading materials, and ongoing support to improve the delivery of effective reading instruction.

### ***What are the short and medium-term expectations of Reading First?***

Students are expected to become proficient readers. Teachers are expected to deliver consistent and coherent, skills-based reading instruction. District and state leaders are expected to provide educators with ongoing, high-quality support that makes a difference in the classroom. Reading First contributes to these high expectations by steadfastly supporting high-quality local and state reading initiatives with the funds needed to make real improvements.

### *How will we know if Reading First is working?*

Reading First will be working when every child in our country becomes a successful and proficient reader, irrespective of economic circumstances or family background. Further, these efforts work when every child can read and understand a mathematics problem, social studies textbook, or science experiment because of a firm reading foundation established in early elementary years through well-delivered, good instruction. These efforts work when every child is ready for unlimited success and achievement in the later grades because every child learned to read in the early grades.

## ***Title II - Preparing, Training, And Recruiting High Quality Teachers And Principals***

### **Part A - Teacher And Principal Training And Recruiting Fund**

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

To be highly qualified, a **public elementary or secondary school teacher** must meet the following requirements:

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

### **Part D - Enhancing Education Through Technology**

***Under NCLBA, which elementary and secondary technology education programs were consolidated and which were not?***

Under NCLBA, the Technology Literacy Challenge Fund, Local Innovation Challenge Grants, and National Technology Leadership Activities were consolidated into a state-based technology grant program in order to send more money directly to schools. Community Technology Centers, Star Schools, and Ready To Teach were made allowable uses of funds under the Fund for the Improvement of Education and Regional Consortia was consolidated under the new Multiyear Contract and Grants program. The Preparing Tomorrow's Teachers to Use Technology program, which was re-designated to the Higher Education Act, and Ready To Learn Television were not consolidated and remain separate programs.

***Title III - Language Instruction For Limited English Proficient And Immigrant Students***

***If the appropriation for Title III falls below \$650 million does the consolidated formula grant program return to a competitive grant program?***

Yes. Title III contains an appropriation "trigger" after which the formula grant program is followed. When actual appropriations for Bilingual Education and the Emergency Immigrant Education programs combined are \$650 million or more, then those programs are consolidated into a formula grant program. When actual appropriations are \$649 million or less then the old competitive grant program is followed.

\$665 million was appropriated for FY 2002 for Language Acquisition grants.

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

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

Title III reforms do not directly end bilingual education. It only changes the focus of existing programs to emphasize teaching English to LEP students so that they may be mainstreamed into regular classroom settings, not tailored for LEP instruction, as soon as possible.

***What is the formula used for determining an allocation to states for language acquisition grants under the consolidated formula grant program?***

Funds will be provided to states on a formula based 80 percent on the number of LEP children in the state and 20 percent on the number of immigrant children and youth in the state. Such data will be determined the first two years by using information provided by the U.S. Census. After such time, data will be used from the American Community

Survey available from the Department of Commerce or the number of students being assessed for English proficiency in a state, whichever the Secretary of Education determines to be the most accurate.

***What happens to current competitive grant recipients when the formula grant program is in effect?***

Recipients who obtained grants under the old competitive grant program prior to the enactment of the formula grant program may continue to use the grants as originally intended until the completion of the grant period. After such time, the recipient would have to re-apply under the formula grant program.

***Do parents of LEP students have any options under the Title III reforms?***

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

***Are there any testing requirements under the Title III reforms?***

Yes. Title III requires children who have attended school in the United States for at least three consecutive years and who participate in a language instruction program to be tested in English for reading and language arts. Waivers may be granted for an additional two years on a case-by-case individual basis for LEP students who show need.

***How are grant recipients held accountable for teaching LEP students English under the Title III reforms?***

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

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

## ***Title IV - 21<sup>st</sup> Century Schools***

### **Part A - Safe And Drug-Free Schools And Communities**

#### ***Can Drug Abuse Resistance Education (DARE) programs be funded with Safe and Drug-Free Schools and Communities funds?***

Yes, schools can use funds for the DARE program if it can demonstrate that it meets the Principles of Effectiveness.

#### ***What are the Principles of Effectiveness?***

The Safe and Drug-Free Schools and Communities Act requires that any program or activity funded under the Act meet the “Principles of Effectiveness.” The Principles of Effectiveness require that the program or activity:

- Be based upon an assessment of objective data about community needs for the activities;
- Be based upon performance measures established by the LEA;
- Be based upon “scientifically based research” that provides evidence that the program or activity will be effective (there is a waiver for innovative programs with a likelihood of success);
- Be periodically evaluated with the results used to improve the program or activity;
- Be based on an analysis of risk factors and protective factors; and
- Include consultation with parents.

#### ***Does the Act require schools to establish student discipline codes?***

The Act requires schools to establish policies that promote appropriate behavior and that address the obligations of students, teachers, and administrators necessary to support a learning environment. The policies should establish standards for student conduct that clearly allow the classroom teacher to maintain control of the classroom in order for all students to learn.

#### ***Can Community-Based Organizations participate in programs funded under this Act?***

Yes. Community-based organizations and other public entities and private organizations that provide safety and drug abuse programs can contribute to the development of applications for funds and these organizations may receive grants under the governors’ funds.

#### ***Can schools use funds under the Act to support hate crime prevention activities***

Schools may fund hate crime prevention activities that meet the Principles of Effectiveness requirements.

***What happens to students attending persistently dangerous schools and who determines when a school is persistently dangerous?***

ESEA requires that states receiving any ESEA funds establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary and secondary school, as determined by the state in consultation with a representative sample of LEAs, or who becomes a victim of a violent criminal offense, as determined by state law, while in or on the grounds of a public elementary or secondary school that the student attends, be allowed to attend a safe public elementary or secondary school within the LEA, including a public charter school. (This provision appears in the Fund for the Improvement of Education.)

**Part B - 21<sup>st</sup> Century Community Learning Centers**

***How do states receive and distribute funds under the Act?***

States receive funds through a formula based upon Title I, Part A, subpart 2. States distribute funds through competitive grants to eligible local entities.

***What entities may receive 21<sup>st</sup> Century funds from the states? And, can Community-Based Organizations receive funds under the Act?***

The program allows the SEAs to award grants to eligible entities, including LEAs, community-based organizations, other public or private entities, and consortia of two or more such agencies, organizations, or entities.

***What types of activities may be funded under the 21<sup>st</sup> Century program?***

The 21<sup>st</sup> Century program focuses on academic enrichment activities that help children meet state academic achievement standards. It allows parents of children being served by the center to receive literacy services.

These activities must meet the Principles of Effectiveness described under the Safe and Drug-Free Schools program.

***Title V - Promoting Informed Parental Choice And Innovative Programs***

***Does NCLBA provide for the facility financing of charter schools?***

Yes. NCLBA includes two measures that provide for the facility financing of charter schools. The first measure provides facility-financing assistance to states and localities that support charter schools by allowing the Secretary to award matching incentive grants to those states that provide charter schools with per-pupil expenditure funds. The second measure extends the Charter School Facility Financing Demonstration Project from the FY 2001 Omnibus Appropriations bill for an additional two years. The Charter School Facility Financing Demonstration Project encourages the development of innovative

approaches to credit enhancement and leverages private capital for charter schools to use for infrastructure needs.

***Was either one of these charter school facility financing measures funded in fiscal year 2002?***

No. Although NCLBA provided \$300 million for the Public Charter Schools program for FY 2002 and such sums as may be necessary for each fiscal year through FY 2007, it requires the Secretary to reserve the first \$200 million appropriated for the traditional Public Charter School program. The next \$100 million appropriated above \$200 million is reserved for the new per-pupil aid incentive grants and any amount appropriated above \$300 million would be equally divided between the traditional Public Charter School program and the per-pupil aid incentive grants. Since the Public Charter School program was only appropriated \$200 million in FY 2002 and no money was appropriated for the Charter School Facility Financing Demonstration Project, zero funds will or can be spent on charter school facility financing in FY 2002. However, this does not preclude the funding of charter school facility financing in future years.

***Title VI – Flexibility And Accountability***

**State Flexibility**

***What is the State Flexibility Authority program?***

The State Flexibility Authority program (State-Flex) is a new program that authorizes the Secretary to grant flexibility authority to up to seven eligible state educational agencies (SEAs). With this authority, an SEA may (1) consolidate and use certain federal funds reserved for state administration and state-level activities for any educational purpose authorized under the ESEA; (2) specify how local educational agencies (LEAs) in the state use Innovative Program funds; and (3) enter into performance agreements with four to ten LEAs in the state, permitting those LEAs to consolidate certain federal funds and to use those funds for any ESEA purpose consistent with the SEA's State-Flex plan.

“State-Flex” is different than “Ed-Flex,” which is a separate program that authorizes the Secretary to delegate waiver authority to eligible SEAs.

***How will the Secretary determine which states will be awarded State-Flex authority?***

The Secretary will grant State-Flex authority to eligible SEAs on a competitive basis using a peer review process. The Department will announce the proposed selection process and criteria in the near future.

***What conditions must an SEA meet in order to be eligible for State-Flex?***

To be considered for State-Flex, an SEA must submit an application that, among other things-

- Includes a five-year plan describing how the SEA would consolidate and use funds from programs included in the scope of the grant of authority in order to make adequate yearly progress and advance the educational priorities of the state and the LEAs with which the SEA enters into performance agreements;
- Demonstrates that the authority offers substantial promise of assisting the SEA in making adequate yearly progress, and of aligning state and local reforms and assisting LEAs with which the SEA enters into performance agreements in making adequate yearly progress;
- Includes the proposed performance agreements that the SEA would enter into with between four and ten LEAs (at least half of which are “high-poverty LEAs”). Each proposed LEA performance agreement would contain plans for the LEAs to consolidate and use Federal funds for activities that are aligned with the SEA’s plan in order to assist the LEAs in making adequate yearly progress, improving student achievement, and narrowing achievement gaps; and
- Demonstrates that the SEA has consulted with and involved parents, teachers, LEA representatives, and other educators in the development of the terms of the grant of authority.

***What funds may an SEA consolidate under State-Flex?***

An SEA that receives State-Flex authority may consolidate funds for state-level activities and state administration under the following provisions, and use those funds for any authorized ESEA purpose:

- Part A of Title I - State administration only (Education for the Disadvantaged)
- Subparts 1 and 2 of Part B of Title I (Reading First and Even Start)
- Subpart 1 of Part A of Title II (Teachers)
- Subpart 1 of Part D of Title II (Technology)
- Subpart 1 of Part A of Title IV (Safe and Drug Free Schools)
- Part B of Title IV (21<sup>st</sup> Century Community Learning Centers)
- Part A of Title V - State administration, state activity and local activity funds (Innovative Programs Block Grant). If the SEA includes the local activity funds, it must ensure 85 percent of pre-FY 2002 funds are sent locally and 100 percent of funds above the FY 2002 funds are sent locally.

### ***What funds may LEAs consolidate under State-Flex?***

The four to ten LEAs that enter into performance agreements with their SEA in a State-Flex state may consolidate and use funds awarded to them *on a formula basis* under any of the following programs for any ESEA purpose:

- Subpart 2 of Part A of Title II (Teachers)
- Subpart 1 of Part D of Title II (Technology)
- Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Subpart 1 of Part A of Title V (Innovative Programs)

(NOTE: These funds are *not* limited to administrative funds, but apply to *all* funds awarded to the applicable LEAs on a formula basis under the listed programs.)

### ***What control does a State-Flex state have with respect to funds awarded under Part A of Title V?***

A State-Flex state may specify how all LEAs in the state (not just those with performance agreements) will use funds allocated under Part A of Title V (Innovative Programs), but must comply with the normal requirements in Part A of Title V for allocating those funds.

### ***How do the LEA performance agreements under State-Flex compare to the Local-Flex agreements available to LEAs in non-State-Flex states?***

The LEA performance agreements in State-Flex states are between the SEA and the LEA, not between the Secretary and the LEA. Ten LEAs may enter into performance agreements in each State-Flex state (for a total of not more than 70 performance agreements in the seven State-Flex states). This contrasts with the agreements authorized under the Local Flexibility Demonstration Program (“Local-Flex”). Local-Flex agreements are between the Secretary and the LEA. Under the Local-Flex program, the Secretary is authorized to enter into a total of 80 Local-Flex agreements with LEAs in states that do not have State-Flex authority.

## **Local Flexibility Demonstration Program (Local-flex)**

### ***What is the Local Flexibility Demonstration Program?***

The Local Flexibility Demonstration Program (Local-Flex) is a new flexibility program that authorizes the Secretary to enter into local flexibility demonstration agreements with a total of up to 80 local educational agencies (LEAs) in states that do not have State-Flex authority. Consistent with the purposes of the program, Local-Flex LEAs may consolidate and use certain Federal funds for any educational purpose authorized under the ESEA. Unlike the LEA performance agreements under State-Flex (which are between SEAs and LEAs), the flexibility agreements under Local-Flex are directly between the Secretary and LEAs.

***How will the Secretary determine which LEAs will be given the opportunity to enter into Local-Flex agreements?***

The Secretary will enter into Local-Flex agreements with LEAs on a competitive basis using a peer review process. The Department will announce the proposed selection criteria and process in the near future. The Secretary will coordinate the Local-Flex competition with the State-Flex competition.

***What conditions must an LEA meet in order to be considered for Local-Flex?***

To be considered for Local-Flex, an LEA must, among other things-

- Submit a proposed Local-Flex agreement that includes a five-year plan describing how the LEA would consolidate and use funds from programs included in the scope of the agreement to meet the state's definition of adequate yearly progress, to advance the educational priorities of the LEA, to meet the general purposes of the included programs, to improve student achievement, and to narrow achievement gaps;
- Demonstrate that it has consulted with and involved parents and other educators in the development of the proposed Local-Flex agreement; and
- Be located in a state for which the Secretary has not granted State-Flex status.

***What requirements govern the number of Local-Flex agreements that the Secretary may ratify?***

As noted previously, the Secretary may enter into up to 80 Local-Flex agreements, all of which must be with LEAs in non-State-Flex states. There may be no more than three Local-Flex agreements per state, and the Secretary will ensure equitable distribution among urban and rural LEAs.

***What funds may an LEA consolidate under Local-Flex?***

Like LEAs that have entered into performance agreements in State-Flex states, Local-Flex LEAs may consolidate and use funds received *on a formula basis* under any of the following programs and, consistent with the purposes of the Local-Flex program, use those funds for any educational purpose permitted under the ESEA:

- Subpart 2 of Part A of Title II (Teachers)
- Subpart 1 of Part D of Title II (Technology)
- Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Subpart 1 of Part A of Title V (Innovative Programs)

(NOTE: These funds are *not* limited to administrative funds, but apply to *all* funds awarded on a formula basis to Local-Flex LEAs under the listed programs.)

## Transferability

### *What is transferability?*

Transferability is a new ESEA flexibility authority that allows states and local educational agencies (LEAs) to transfer a portion of the funds they receive under certain federal programs to other programs that most effectively address their unique needs and to allocations for certain activities under Title I.

### *What funds may a state transfer?*

A state may transfer up to 50 percent of the non-administrative funds allotted to it to carry out state-level activities under each of the following provisions to one or more of its allotments under any of the other provisions listed below:

- Part A of Title II (Teachers)
- Part D of Title II (Technology)
- Part A of Title IV (Safe and Drug-Free Schools)
- Part B of Title IV (21<sup>st</sup> Century Community Learning Centers)
- Part A of Title V (Innovative Programs Block Grant)

Subject to the 50 percent limitation, a state may also transfer funds allotted to it under the provisions listed above to its allotment under Part A of Title I to carry out state-level activities under Part A of Title I. A state may not transfer funds allocated under part A of Title I to any other program.

### *What funds may an LEA transfer?*

There are separate transferability provisions applicable to LEAs generally, to LEAs identified for improvement, and to LEAs identified for corrective action.

#### *(a) LEA Transfers*

An LEA (except an LEA identified for improvement or subject to corrective action under Title I) may transfer up to 50 percent of the funds allocated to it *by formula* under each of the following provisions to its allocation under any of the other provisions:

- Part A of Title II (Teachers)
- Part D of Title II (Technology)
- Part A of Title IV (Safe and Drug Free Schools)
- Part A of Title V (Innovative Programs Block Grant)

With the exception noted above, and subject to the 50 percent limitation, an LEA may also transfer funds allocated by formula under the provisions noted above to

its allocation under Part A of Title I. An LEA may not transfer funds allocated under Part A of Title I to any other program.

***(b) Transfers by LEAs identified for improvement***

An LEA identified for improvement under Title I may transfer not more than 30 percent of the funds allocated to it by formula under any of the provisions listed in paragraph (a) above to its allocation for school improvement under Title I or to any other allocation listed above if the transferred funds are used only for LEA improvement activities. The LEA may not transfer funds allocated under Part A of Title I to any other program.

***(c) No transfers by LEAs identified for corrective action***

An LEA identified for corrective action is prohibited from transferring funds under the transferability authority.

***What requirements govern any funds that are transferred?***

The transferred funds are subject to the requirements of the programs to which they are transferred.

***What steps must a state take in transferring funds?***

A state that makes a transfer of funds must modify its state plan or application to account for the transfer, notify the Secretary of the transfer at least 30 days before the effective date of the transfer, and submit a copy of the modification to the Secretary within 30 days of the transfer. If the transfer involves funds from a program that provides for equitable participation of students and staff in private schools, the state educational agency must conduct consultations as required by the ESEA.

***What steps must an LEA take in transferring funds?***

An LEA that makes a transfer of funds must modify its local plan or application to account for the transfer, notify its SEA of the transfer at least 30 days before the effective date of the transfer, and submit a copy of the modification to the SEA within 30 days of the transfer. If the transfer involves funds from a program that provides for equitable participation of students and staff in private schools, the LEA must conduct consultations as required by the ESEA.

**Education Flexibility Partnership Act (“Ed-Flex”)**

***What is Ed-Flex?***

Ed-Flex is a program that authorizes the Secretary to delegate to state educational agencies (SEAs) with strong accountability safeguards the authority to waive requirements of certain state-administered formula grant programs. Once delegated Ed-

Flex authority, an SEA may waive requirements that, in particular instances, may impede the ability of local educational agencies (LEAs) or schools in carrying out educational reforms and in raising the achievement levels of all students.

Ed-Flex was first enacted as a demonstration program in 1994, and initially authorized the Secretary to give Ed-Flex authority to six states. In 1996, revisions to the Ed-Flex legislation authorized the Secretary to delegate Ed-Flex status to six additional states. The Education Flexibility Partnership Act of 1999, which remains in effect, provides any state that meets the Ed-Flex eligibility requirements an opportunity to participate in Ed-Flex. Currently, ten states have Ed-Flex waiver authority under the 1999 Ed-Flex legislation (CO, DE, KS, MA, MD, NC, OR, PA, TX, and VT).

***What changes did the No Child Left Behind Act of 2001 make to the Ed-Flex legislation?***

The No Child Left Behind Act updated the list of programs that are subject to Ed-Flex waiver authority. As revised, the Ed-Flex legislation permits Ed-Flex states to waive requirements of the following state-administered formula grant programs:

- Part A of Title I (other than sections 1111 and 1116) (Improving the Academic Achievement of Disadvantaged Children)
- Subpart 3 of Part B of Title I (Even Start Family Literacy Programs) (NOTE: Ed-Flex states may *not* waive requirements of the new Reading First or Early Reading First Programs (subparts 1 and 2 of Part B of Title 1))
- Part C of Title I (Education of Migratory Children)
- Part D of Title I (Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk)
- Part F of Title I (Comprehensive School Reform)
- Subparts 2 and 3 of Part A of Title II (Teacher and Principal Training and Recruiting)
- Subpart 1 of Part D of Title II (Enhancing Education through Technology)
- Subpart 4 of Part B of Title III (Emergency Immigrant Education, if this program is funded)
- Subpart 1 of Part A of Title IV (Safe and Drug-Free Schools and Communities)
- Part A of Title V (Innovative Programs)
- The Carl D. Perkins Vocational and Technical Education Act

***What are the basic conditions that a state must meet to be eligible to participate in the Ed-Flex program?***

To be eligible to participate in Ed-Flex, a state must-

- Have developed and implemented the standards and assessments required under Title I;
- Hold districts and schools accountable for meeting the educational goals described in their local waiver applications and for engaging in technical assistance and corrective

actions consistent with Title I for districts and schools that do not make adequate yearly progress; and

- Waive state statutory or regulatory requirements relating to education while holding districts and schools that are affected by the waivers accountable for the performance of students.
- The No Child Left Behind Act did not change the Ed-Flex eligibility provisions that link Ed-Flex eligibility to compliance with Title I assessment and accountability requirements. However, substantial changes have been made to the Title I requirements. The Department is preparing supplemental Ed-Flex guidance that will address the impact of the new Title I requirements on an SEA's eligibility for Ed-Flex.

## **ESEA Secretarial Waivers**

### ***Does the ESEA authorize the Secretary to grant waivers of ESEA requirements?***

Yes. ESEA authorizes the Secretary to waive ESEA requirements applicable to state educational agencies (SEAs), local educational agencies (LEAs), Indian tribes, or schools, subject to the limitations and criteria in the legislation.

### ***What programs are covered by the Secretary's waiver authority?***

The waiver authority applies to any ESEA program that provides funds to SEAs, LEAs, Indian tribes, or schools, except Impact Aid programs under Title VIII.

### ***What information must be included in a waiver request?***

Each request for a waiver must-

- Identify the federal programs affected by the waiver;
- Describe which federal requirements are to be waived and how the waiver will increase the quality of instruction for students and improve the academic achievement of students;
- Describe, for each year, specific, measurable educational goals, in accordance with Title I, for the SEA (if applicable) and each LEA, Indian tribe, or school that would be affected by the waiver and the methods to be used to measure annually progress for meeting those goals and outcomes; and
- Explain how the waiver will assist the SEA (if applicable) and each affected LEA, Indian tribe, or school in reaching those goals.

### ***Are there certain requirements that the Secretary may not waive?***

Yes. The waiver limitations are the same as those in the previous waiver legislation, with the addition of a new restriction (similar to that applicable to Ed-Flex states) that

precludes the Secretary from waiving requirements relating to the selection of a school attendance area under Title I, except that the Secretary may grant a waiver to allow a school attendance area or school to participate in activities under Part A of Title I if the percentage of children from low-income families in that school attendance area or school is within 10 percentage points of the percentage of children from low-income families in the lowest eligible Title I school attendance area or school.

***For what period of time may a waiver be granted?***

The Secretary is authorized to grant a waiver for a period of up to 4 years. The period may be extended if the Secretary determines that the waiver has been effective in enabling the recipient to carry out the activities for which the waiver was requested, the waiver has contributed to improved student achievement, and the extension is in the public interest.

**“Schoolwide” Programs** (see Title I, Part A – page 22)

***Title IX - General Provisions***

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

Nothing in the NCLBA affects a home school or permits any federal control over any aspect of a home school, whether that home school is treated as a home school or a private school under state law. Students who are home schooled are not required to take any assessment referenced in the NCLBA. Home schools may participate in NCLBA programs and services, however.

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

By September 1, 2002, the Secretary of Education shall provide to state educational agencies, local educational agencies, and the public (and revise every two years thereafter) guidance on constitutionally protected prayer in public elementary schools and secondary schools. The guidance will be reviewed by the Office of Legal Counsel of the Department of Justice for verification that it represents the current state of the law concerning constitutionally protected prayer in public elementary schools and secondary schools.

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

been made to the state educational agency that the local educational agencies are not in compliance.

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

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

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

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

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

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

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

Each local educational agency receiving assistance under NCLBA shall provide, on a request made by military recruiters, access to secondary school student names, addresses, and telephone listings. However, a secondary school student or the parent of the student may request that the student's name, address, and telephone listing not be released without prior written parental consent. The local educational agency shall notify parents of this option to make a request and shall comply with any request.

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

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

***What is the “Unsafe School Choice Option” in the NCLBA?***

States receiving any funds under the Act must establish and implement a statewide policy requiring that a student-

(1) who attends a persistently dangerous public elementary and secondary school, as determined by the state in consultation with a representative sample of local educational agencies, or

(2) who becomes a victim of a violent criminal offence, as determined by state law, while in or on the grounds of a public elementary or secondary school that the student attends-

be allowed to attend a safe public elementary or secondary school within the local educational agency, including a public charter school.

States must certify in writing to the Secretary that they are in compliance with this provision as a condition of receiving funds under NCLBA.

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

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

***How does Scientifically Based Research (SBR) apply to other federal education programs?***

Research in other disciplines such as math, comprehensive school reform, and safe and drug-free schools is not as robust as in the area of reading instruction. Additional research is being conducted, using the principles of SBR, to add to the knowledge base of information in these and other areas of education practice.

### ***Are there levels of Scientifically Based Research?***

Yes. The "gold standard" for any research is when all the principles noted in the definition are applied. However, "quasi-experimental" studies, sometimes called "descriptive" studies can be useful in identifying promising lines of inquiry, or providing a more complete and robust picture of what works in education practice, especially in the classroom. It is ideal to have valid, well-documented findings that have been identified as a result of careful, unbiased data collection and analysis. That is not always possible due to lack of funds, or time to investigate. However, when instructional methods for school children are involved, it is important to make sure that as much validated evidence as possible is available to justify the application of such methods or materials in the classroom.

### ***Title X - Repeals, Redesignations, And Amendments To Other Statutes***

#### ***What are the new requirements in the amendments to the General Education Provisions Act concerning student privacy, parental access to information, and the administration of physical examinations to minors?***

NCLBA amends the General Education Provisions Act by adding new provisions requiring the development of local policies concerning student privacy, parental access to information, and the administration of physical examinations to minors. Local educational agencies receiving funds under any applicable program shall develop and adopt policies, in consultation with parents, regarding:

- The right of a parent of a student to inspect, upon request, surveys created by third parties before they are administered or distributed by a school to a student;
- Arrangements to protect student privacy in the event of the distribution of a survey to a student containing one or more of the eight types of information listed above;
- The right of a parent to inspect upon request any instructional materials (not including tests) used as part of the educational curriculum of a student;
- The administration of physical examinations or screenings that a school or local education agency may administer to a student;
- The collection, disclosure, or use of personal information (names, phone numbers, addresses, and social security numbers) collected from students for the purpose of marketing or for selling (several exceptions are created related to the collection, disclosure, and use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services); and
- The right of a parent to inspect upon request any instrument used in the collection of such personal information from students.

NCLBA requires a local educational agency to provide for reasonable notice of the adoption of such policies directly to parents of students enrolled in schools served by that agency at least annually at the beginning of the school year. The local educational agency must also offer an opportunity for a parent to opt his or her child out of participation in

certain activities involving (1) the collection, disclosure, or use of personal information collected from students; (2) certain surveys containing one or more of the eight items listed above, and (3) any non-emergency, invasive physical examination or screening that is required as a condition of attendance, is administered by the school and scheduled by the school in advance, and is not necessary to protect the immediate health and safety of the student, or of other students.

The educational agency's policies regarding student privacy, parental access to information, and the administration of physical examinations to minors shall not be construed to preempt applicable provisions of state law that require parental notification and do not apply to any physical examination or screening that is permitted or required by an applicable state law, including physical examinations or screenings that are permitted without parental notification.

### ***H.R. 1 Funding***

#### ***What is the total NCLBA (ESEA) funding amount for fiscal year 2002?***

The total funding amount for NCLBA (ESEA) activities in FY 2002 is approximately \$21.9 billion - an increase of \$3.3 billion above last year's level of \$18.6 billion. The total FY 2002 authorization level for NCLBA was \$26.3 billion. President Bush's FY 2003 budget request provides approximately \$22 billion for NCLBA activities.

## *Glossary of Terms*

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

Under H.R. 1, a state's definition of AYP must apply specifically to disadvantaged students, as well as to the overall student population. This expectation will serve to hold schools and districts accountable for improving the performance of disadvantaged students and to help educators, parents, and others discern whether achievement gaps are closing.

States must define AYP so that all students are expected to improve and that in 12 years all students will achieve at the state defined "proficient" level on state reading and math academic assessments.

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

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

### ***What is Ed-Flex?***

Ed-Flex is a program that authorizes the Secretary to delegate to state educational agencies (SEAs) with strong accountability safeguards the authority to waive requirements of certain state-administered formula grant programs. Once delegated Ed-Flex authority, an SEA may waive requirements that, in particular instances, may impede the ability of local educational agencies (LEAs) or schools in carrying out educational reforms and in raising the achievement levels of all students.

Ed-Flex was first enacted as a demonstration program in 1994, and initially authorized the Secretary to give Ed-Flex authority to six states. In 1996, revisions to the Ed-Flex legislation authorized the Secretary to delegate Ed-Flex status to six additional states. The Education Flexibility Partnership Act of 1999, which remains in effect, provides any state that meets the Ed-Flex eligibility requirements an opportunity to participate in Ed-Flex. Currently, ten states have Ed-Flex waiver authority under the 1999 Ed-Flex legislation (CO, DE, KS, MA, MD, NC, OR, PA, TX, and VT).

### ***What is the Elementary and Secondary Education Act, or ESEA?***

ESEA is the federal Elementary and Secondary Education Act, which was enacted in 1965 and is the principal federal law affecting K-12 education today. ESEA focuses on children from high-poverty communities and students at risk of educational failure. The Act authorizes several well-known federal education programs including Title I, Safe and Drug Free Schools, Bilingual Education, and Impact Aid.

### ***What are flexibility partnerships?***

H.R. 1 allows states and local school districts participating in state and local flexibility demonstration projects to coordinate their efforts through state-local flexibility partnerships to ensure that federal education funds are used most effectively to meet the unique needs of their students. Each participating state could work with up to 10 participating local school districts. Both the state and the participating school districts within that state would have new flexibility to jointly address their students' needs.

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

To be highly qualified, a **public elementary or secondary school teacher** must meet the following requirements:

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

***What is a local educational agency, or LEA?***

A LEA is a local educational agency, which means a public board of education or other public authority within a State for administrative control of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State. Generally speaking, a local school district is considered a LEA.

***What is the National Assessment of Educational Progress, or NAEP?***

NAEP, known as "the nation's report card," is administered by the National Center for Education Statistics (NCES) of the U.S. Department of Education, although the policy decision-making for the tests rest with the National Assessment Governing Board (NAGB). Since 1969, NAEP tests have been conducted periodically in reading, math, science, writing, history, and geography. The NAEP trend assessment provides comparable data over time on the achievement of 9, 13, and 17 year olds across the nation. The NAEP main assessment measures educational attainment of 4th, 8th and 12th grade students across the nation.

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

Reading First is a bold new national initiative, squarely aimed at helping every child in every state become a successful reader. For this purpose, up to nearly \$6 billion will be distributed among the 50 states, the District of Columbia, Puerto Rico, and outlying areas over the next several years. These funds are specifically dedicated to helping states and local school districts establish high-quality, comprehensive reading instruction for all children in kindergarten through third grade.

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

Schools that have not made state defined adequate yearly progress for two consecutive school years will be identified by the district as needing school improvement before the beginning of the next school year. Immediately after identification, these schools will receive technical assistance to improve performance. These schools will develop a two-year plan to turn around the school, and will give all students in the school the option to transfer to another public school serviced by the district that is not a failing school. These schools would also be eligible to receive federal funds for school improvement activities.

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

If the school fails to make adequate yearly progress for four consecutive years, the district must implement certain corrective actions to improve the school, such as replacing certain staff or fully implementing a new curriculum, as well as continuing to offer public school choice and provide supplemental services.

If a school fails to make adequate yearly progress for five consecutive years, it would be identified for restructuring and would have to develop a plan and make the necessary arrangements to implement significant alternative governance actions, state takeover, the hiring of a private management contractor, converting to a charter school, or significant staff restructuring. Public school choice and supplemental services continue to be required.

### ***What are schoolwide programs?***

The purpose of schoolwide programs is to allow a school to use resources effectively and efficiently to undertake comprehensive reform of the entire educational program in the school to assist all children, particularly the lowest achieving children, to meet the high state academic achievement standards.

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

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

### ***What is a state educational agency, or SEA?***

A SEA is a State educational agency, which is the agency primarily responsible for the State supervision of public elementary and secondary schools.

### ***What are supplemental services?***

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

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

***What is transferability?***

Transferability is a new ESEA flexibility authority that allows states and local educational agencies (LEAs) to transfer a portion of the funds that they receive under certain Federal programs to other programs that most effectively address their unique needs and to certain activities under Title I.

## *Attachments*

<b>STATUS OF REVIEW OF STATE ASSESSMENT SYSTEMS UNDER ESEA TITLE I, PART A, AS OF 2-15-02</b>					
STATE	ASSESSMENTS FULLY APPROVED	ED FLEX APPLICATION ALSO APPROVED	CONDITIONAL APPROVAL GRANTED	TIMELINE WAIVER PROPOSED OR GRANTED	COMPLIANCE AGREEMENT ORDERED
ALABAMA					X
ALASKA				X	
ARIZONA				X	
ARKANSAS				X	
CALIFORNIA				X	
COLORADO	X	X			
CONNECTICUT				X	
DELAWARE	X	X			
DISTRICT OF COLUMBIA					X
FLORIDA				X	
GEORGIA				X	
HAWAII				X	
IDAHO					X
ILLINOIS				X	
INDIANA	X				
IOWA				X	
KANSAS	X	X			
KENTUCKY			X	X	
LOUISIANA	X				
MAINE				X	
MARYLAND	X				
MASSACHUSETTS	X	X			
MICHIGAN				X	
MINNESOTA				X	
MISSISSIPPI				X	
MISSOURI	X				
MONTANA					X
NEBRASKA				X	
NEVADA				X	
NEW HAMPSHIRE				X	
NEW JERSEY				X	
NEW MEXICO				X	
NEW YORK				X	
NORTH CAROLINA	X	X			
NORTH DAKOTA				X	
OHIO				X	
OKLAHOMA				X	
OREGON	X	X			

STATUS OF REVIEW OF STATE ASSESSMENT SYSTEMS UNDER ESEA TITLE I, PART A, AS OF 2-15-02					
STATE	ASSESSMENTS FULLY APPROVED	ED FLEX APPLICATION ALSO APPROVED	CONDITIONAL APPROVAL GRANTED	TIMELINE WAIVER PROPOSED OR GRANTED	COMPLIANCE AGREEMENT ORDERED
PENNSYLVANIA	X	X			
PUERTO RICO					X
RHODE ISLAND	X				
SOUTH CAROLINA				X	
SOUTH DAKOTA				X	
TENNESSEE				X	
TEXAS	X	X			
UTAH				X	
VERMONT	X	X			
VIRGINIA	X				
WASHINGTON				X	
WEST VIRGINIA					X
WISCONSIN				X	
WYOMING	X				
TOTAL	16	9	1	30	6

- **Full approval** will be granted if a State meets all statutory requirements.
- **Conditional approval** will be granted if a State meets nearly all of the requirements and can clearly demonstrate how it will meet any remaining requirements by its 2000-2001 test administration. For example, Kentucky received conditional approval because it met the Title I requirements with two exceptions: fully including LEP students in the State assessment system and disaggregating student achievement results for LEP students. Interim Commissioner Kevin Noland has assured me that Kentucky will be able to make the necessary changes within the timeline, and I greatly appreciate his leadership on this issue.
- **A timeline waiver** of the for meeting the final assessment requirements may be granted in certain specific circumstances following the review of a State's submission of evidence. The Department will not, however, waive the requirements themselves. This will apply to States that will not be able to finalize their systems by the 2000-2001 test administration but have made significant progress. For example, there are several States that have completed the development and implementation of assessments for the elementary and middle grade spans but will not complete the phase-in of their high school assessments until after the 2001 deadline. If a State is granted a waiver, it must report its progress in implementing the remaining provisions on a regular, timely basis until it comes into compliance with the requirements of the law.
- Other States may be required to enter into **compliance agreements** with the Department of Education in order to remain eligible for full Title I funding; though I hope this will be infrequent. Compliance agreements will require public hearings, written findings of non-compliance, and publication of the terms of the agreement in the *Federal Register*. States that enter into compliance agreements and subsequently fail to fulfill their responsibilities under them are subject to withholding of Title I funds. States that have received timeline waivers may be required to enter into compliance agreements if they fail to make progress against the milestones set out in their timeline waivers.

Source: U.S. Department of Education



*No Child  
Left Behind:*

Expanding Parental  
Choice in Education

Prepared by the Republican Staff of the  
U.S. House Committee on Education & the Workforce  
John Boehner, Chairman

## **Executive Summary**

One of the key components of President Bush's education plan is expanding parental choice -- giving parents the ability to make choices to ensure that their children receive the best education possible. The testing provisions in the President's plan will empower parents with data about the performance of their children's schools and the education their children are receiving. But parents also must be able to do something with that data -- particularly when a child is trapped in a failing or dangerous school that refuses to change.

The conference report to H.R. 1 provides new options to parents and represents a significant breakthrough on the road to equal educational opportunity in America. Under the agreement, Title I funds will, for the first time ever, help parents with children in failing schools obtain supplemental educational services -- including tutoring, after-school services, and summer school programs. Private, church-related, and religiously affiliated providers will be among those eligible to provide supplemental services to disadvantaged students.

Parents with children in schools and school districts already identified as failing under the terms of the 1994 Elementary and Secondary Education Act (ESEA) authorization will have immediate access to supplemental services. This will address concerns about possible delays to helping children trapped in chronically failing schools.

A new analysis suggests that students at nearly 3,000 underachieving public schools nationwide will be eligible for new options under the supplemental services provision during the

first school year following enactment of the bill (2002-03). Moreover, it suggests that students at 6,729 schools will be eligible for immediate public school choice.

*“Given that Title I portability has never previously done well in Congress, this is a significant step forward.”*

**-- School choice advocate Clint Bolick of the Institute for Justice, commenting on the supplemental educational services provision in the House-passed H.R. 1.**

## **New Report Shows How Conference Agreement Expands Parental Choice**

Based on responses from 30 states and Puerto Rico, a new analysis shows the following key findings (13 states either don't have the data available yet or do not have a system approved to provide this data; seven states and the District of Columbia did not respond to the survey):

### **Children in Nearly 3,000 Schools Become Immediately Eligible for Supplementary Services**

The conference agreement allows Title I funds to be used for supplemental educational services – including tutoring, after-school services, and summer school programs – for children in failing schools. Based on this new analysis, students in 2,858 schools around the country will be immediately eligible for supplementary services. Private, church-related, and religiously affiliated providers will be among those eligible to provide supplemental services to disadvantaged students. For the first time ever, federal Title I funds will be permitted to flow to private, faith-based educational providers.

For example, under the conference agreement, students at 812 schools in the state of California will become eligible for supplementary educational services. Moreover, children in 422 schools in Massachusetts, 352 schools in Missouri, 226 schools in Arizona, 209 schools in

Wisconsin, and 183 schools in Pennsylvania will also become immediately eligible for tutoring, after-school services, or other programs to supplement their regular education.

### **More than 6,700 Schools Become Eligible for Immediate Public School Choice**

Under the conference agreement, parents with children in failing schools will also be given public school choice, including the right to choose a better-performing charter school, as soon as a school is identified as failing. In addition, a student who is a victim of a crime, or attends a public school designated by the state as unsafe, will be permitted to transfer to a safe public school. Such students will be given this option in federal law for the first time ever. Based on this new analysis, students in 6,729 schools will be eligible for immediate public school choice.

For example, under the conference agreement, students at 1,295 schools in the state of California will become eligible for immediate public school choice. Moreover, children in 971 schools in Georgia, 674 schools in Massachusetts, 597 schools in Missouri, 464 schools in Puerto Rico, 330 schools in Tennessee, 287 schools in Pennsylvania, 207 schools in Arkansas, 190 schools in Louisiana, and 147 schools in Colorado will also become immediately to transfer to a better-performing public school of their choice.

### **State and Local Choice Programs Pave Way for Federal Efforts to Expand Parental Options**

States and localities have been the leaders around the country in establishing choice programs that promote parental involvement. Currently, two localities -- the cities of Milwaukee

and Cleveland -- have choice programs involving private (including religiously affiliated) schools for a limited number of pupils from low-income families.

In addition to these two local programs, in 1999 Florida lawmakers adopted the “A+ Plan for Education,” which established a rigorous accountability system and authorized choice scholarships to parents to pay either private school tuition or the costs of enrolling in another public school one if their child’s public school is identified as failing. The most recent grade reports on Florida schools highlights significant improvements in the state between 1999 and 2000, especially in lower grades, showing that rigorous accountability measures can be a strong incentive for schools to improve.

In addition, Florida is implementing a separate scholarship program for students with disabilities, under which pupils with disabilities may receive a voucher to attend a public or private school of their family’s choice. The amount of the scholarship depends on the nature of the student’s disability. Initiated in 1999-2000, this option was made available previously only to students who were not meeting the goals established in their individualized educational program; approximately 1,000 students participated in 2000-2001. However, it is now open to all disabled students who attend Florida public schools, and according to *Education Daily*, approximately 3,800 students are participating in the 2001-2002 school year (*Education Daily*, September 10, 2001).

Finally, there are also *privately funded* programs that provide scholarships for students to attend private schools. For example, the state of Arizona provides tax credits for contributions to organizations that provide scholarships to students to meet the costs of private school attendance.

## **Current Federal Choice Programs**

The tax relief package that President Bush signed into law earlier this year lets parents invest up to \$2,000 a year in education savings accounts (ESAs), allowing tax-free withdrawals for both college tuition *and* elementary and secondary education. ESAs allow parents to save money for items such as computers, tutors, and books -- without paying taxes on interest that the accounts earn. This marks the *first time* the federal government will provide funding for students in private K-12 schools and it offers parents a significant new choice in deciding what's best for their children's education.

In a limited fashion, the federal government currently supports school choice efforts in other areas. For example, the *Public Charter Schools* program provides federal assistance for charter school start-up costs. Charter schools are a relatively new kind of public school that is free from many of the complex regulations that often constrain school success. In exchange, there are strict measures in place to hold charter schools accountable for student results. Currently, 37 states, the District of Columbia, and Puerto Rico have charter school laws. The program requires that all students in the community served by a charter school be given an equal opportunity to attend.

In addition, a current example of supplemental services choice exists in the *Tutorial Assistance Grant* (TAG) provisions of the *Reading Excellence Act* (REA). Under the REA, participating states generally must make at least one TAG award, using up to 15 percent of their REA funds. Local educational agencies receiving these grants must offer parents of participating pupils a choice among multiple service providers.

### **Summary Of Conference Report Agreement Provisions on Supplemental Services and Public School Choice**

- Under the conference agreement, Title I funds will, for the first time ever, be used to allow parents with children in failing schools to obtain supplemental educational services – including tutoring, after-school services, and summer school programs.
  
- Private, church-related and religiously affiliated providers will be among those eligible to provide supplemental services to disadvantaged students. For the first time ever, federal Title I funds will be permitted to flow to private, faith-based educational providers.
  
- Schools and school districts already identified as failing under the terms of the 1994 Elementary and Secondary Education Act authorization will be immediately subject to the corrective actions provided under the bill. This will address concerns about possible extended delays in helping children who have been in failing schools for years. An analysis suggests students at more than 3,000 underachieving public schools nationwide will be eligible for new options under the supplemental services provision during the first school year following enactment of the bill (2002-03).

- Parents with children in failing schools will also be given public school choice, including the right to choose a better-performing charter school, as soon as a school is identified as failing.
  
- In addition, a student who is a victim of a crime, or attends a public school designated by the state as unsafe, will be permitted to transfer to a safe public school. Such students will be given this option in federal law for the first time ever.
  
- Twenty percent of Title I funds at the local school district level must be used for public school choice and supplemental services.
  
- If a state already pays for public school choice, the state will be permitted to use its public school choice funds to help children obtain additional supplemental services.
  
- Conferees have already ratified provisions for Indian Education programs within the Bureau of Indian Affairs that will allow parents to choose which BIA-funded school their children will attend.

“The No Child Left Behind program passed through the House will expand public school choice and charter school options for parents, and will make it possible for children in failing schools to receive supplemental services (such as remedial education) from private providers and private schools.”

**-- Children First America, one of the nation’s top school choice organizations, in a June statement hailing House passage of H.R. 1.**

## **Conclusion**

The conference report to H.R. 1 provides new options to parents and represents a significant breakthrough on the road to equal educational opportunity in America. The bipartisan agreement means new choices for millions of low-income parents in disadvantaged communities where children are routinely denied the opportunity to receive a quality education. It helps give low-income parents some of the options that more affluent parents already have when their child's public schools do not teach and do not change.

These changes represent a significant departure from the status quo and will empower low-income parents with new options and new choices. They represent an important step toward equal educational opportunity in America -- but not by any means the final step. Congress has laid the groundwork for future reforms that go even further for parents and children.

## Expanding Parental Choice in Education

Title I survey of 50 States, Puerto Rico and District of Columbia

States	Number of Schools with Students Eligible for Supplementary Services	Number of Schools with Students Eligible for Public School Choice	Notes
Alaska	11	13	
Alabama	41	64	
Arkansas	0	207	
Arizona	226	346	
California	812	1295	
Colorado	9	156	
Connecticut	0	28	In second year of new system started during last school year
District of Columbia			Did Not Respond
Delaware			Results will be ready Spring 2002
Florida	0	0	
Georgia	0	971	
Hawaii	0	89	
Iowa	0	25	
Idaho			Did Not Respond
Illinois			Did Not Respond
Indiana	144	194	
Kansas			Results will be available December 1, 2001
Kentucky			KY identifies schools on biennial basis-next identification in fall 2002
Louisiana	0	190	LA identifies schools on biennial basis-this is second year of cycle
Massachusetts	422	674	
Maryland	74	113	
Maine			Results available January 2002
Michigan			Information not yet available for release
Minnesota			Did Not Respond
Missouri	352	597	** Complete numbers not yet available
Mississippi	51	121	Number of schools in corrective action schools not yet identified
Montana			Did Not Respond
North Carolina	10	23	
North Dakota	25	25	
Nebraska			Results expected December 2001
New Hampshire			Results expected available mid-November 2001
New Jersey			Results expected available January 2002
New Mexico	37	70	
Nevada	14	34	
New York			Results expected available April 2002
Ohio			Results expected available November 2001
Oklahoma	3	38	
Oregon			Results expected available January 2002
Pennsylvania	183	287	
Puerto Rico	210	464	
Rhode Island			Results expected available November 2001
South Carolina			Did Not Respond
South Dakota	1	10	
Tennessee	0	330	
Texas		77	77 total schools, state does not have breakdown yet
Utah	3	20	
Virginia			Did Not Respond
Vermont			Results available after 2001-02 school year
Washington	21	59	
Wisconsin	209	209	
West Virginia			Results expected December 2001
Wyoming			Results expected December 2001
<b>TOTAL</b>	<b>2,858</b>	<b>6,729</b>	

Source: Education Department. Survey based on responses from 30 states and Puerto Rico

(13 states either don't have the data available yet or do not have a system approved to provide this data; seven states and the District of Columbia did not respond to the survey)

## *Miscellaneous Materials*

## **Frequently Asked Questions**

### **The Individuals with Disabilities Education Act (IDEA)**

#### ***What is the Individuals with Disabilities Education Act (IDEA)?***

The Individuals with Disabilities Education Act (IDEA) provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE). The statute also contains detailed due process provisions to ensure the provision of FAPE. Originally enacted in 1975, the act responded to increased awareness of the need to educate children with disabilities and to judicial decisions requiring that states provide an education for children with disabilities if they provided an education for children without disabilities.

IDEA has been amended several times, most recently and most comprehensively by the 1997 IDEA reauthorization, P.L. 105-17, the Individuals with Disabilities Education Act Amendments of 1997. P.L. 105-17 placed many former regulatory requirements into the statute in order to make the requirements of IDEA more accessible and also added substantive changes. Among the key features of the 1997 IDEA reauthorization are expanded procedures for the discipline of disabled students, new state and substate allocation formulas, and emphasis on educational results.

Part A of IDEA contains the general provisions, including the purposes of the Act and definitions. Part B, the most frequently discussed Part of the act, contains provisions relating to the education of school aged and preschool children and includes the funding formula, provisions relating to evaluations, eligibility determinations, individual education programs (IEPs) and educational placements. It also contains detailed requirements for procedural safeguards as well as withholding of funds and judicial review. It is Part B's procedural safeguards that are sometimes referred to as IDEA's discipline provisions although they cover situations besides discipline. Part C concerns infants and toddlers with disabilities, while Part D contains the requirements for various national activities designed to improve the education of children with disabilities.

#### ***Why Wasn't Special Education Funding Addressed in H.R.1?***

During the H.R.1 conference, the Committee on Education and Workforce's Republican Conferees supported full funding for Part B of IDEA, but opposed making the program mandatory. The Senate Conferees wanted to make special education a fully funded mandatory entitlement prior to the IDEA authorization effort getting underway this year. The Committee's Republican Conferees argued that significant increases in special education funding should be tied to reforms made during the reauthorization process that would begin in 2002 in order to improve the quality of education that special education students receive. As a result of a stalemate between the House and Senate, funding provisions for special education (as well as

discipline provisions affecting disabled students) were not included as part of the No Child Left Behind Act of 2001.

### ***What IDEA Provisions Need to Be Reauthorized?***

The authorizations for Parts C and D of the IDEA, concerning infants and toddlers with disabilities, as well as specific national activities to improve the education of children with disabilities, expire at the end of FY 2002. The Committee will begin the reauthorization process this year and plans a comprehensive reauthorization effort that will focus not only on Parts C and D, but also on Part A (general provisions) and Part B (assistance for education of all children with disabilities), which are permanently authorized but are where the “nuts and bolts” of the federal program are located.

### ***What’s Wrong with Making IDEA a Mandatory Entitlement?***

- **Making IDEA a mandatory spending program will make it very difficult to enact much-needed reforms to its current structure and provide oversight of the program.** Mandatory spending is funding for entitlement programs and certain nonentitlements that Congress controls by defining eligibility and permanent rules rather than through appropriations. Once a program is mandatory, any changes to the program must be scored. If these changes cost money, then an offset must be found to pay for the changes. Offsets are typically difficult to find. It is also Congress’ and the Committee’s responsibility to provide oversight of the program Congress has created. Part of that oversight is to ensure that funds are spent as intended and are actually going to services for students. Making IDEA mandatory will hinder such oversight obligations.
- **Providing schools with a huge *guaranteed* funding stream will have unintended consequences.** For instance, additional funds will allow schools to identify even more children for special education services, when all those students may need is additional appropriate instruction. In 1997, Congress reformed IDEA to prevent schools from over-identifying students for services by changing the funding formula and by requiring that students only in need of additional reading, math, and English language instruction not be identified for special education. Regardless, guaranteed additional and substantial funds can create quite an incentive to identify students for services, regardless of need.

### ***How Has Spending for IDEA Part B Increased Since the Republicans Won Control of the House?***

The Committee on Education and the Workforce supports the promises the federal government made to states and school districts 26 years ago. When Congress passed IDEA in 1975, we committed to pay 40 percent of the average per pupil expenditure to offset the excess cost of educating a disabled child; when we talk about reaching full funding, we mean reaching this 40 percent federal commitment level.

Since taking control of Congress, Republicans have increased spending for IDEA Part B, Grants to States, which funds direct services to students, by **224 percent** and have increased the federal

government contribution of funding from 7.3 percent of the average per pupil expenditure in FY 1996 to approximately **16.5 percent** in FY 2002. Under Republican leadership, Congress has made steady progress toward finally reaching the 40 percent level promised in 1975.

### ***What Does the President's Budget Include for Special Education?***

President Bush's budget proposal includes an increase in funding for IDEA of \$1 billion, for a total \$9.7 billion request, the highest level of federal support ever provided for children with disabilities. The Grants to States program would receive \$8.5 billion, a 13.3 percent increase over the FY 2002 level. By devoting a significant amount of federal funds to IDEA, local schools will have greater discretion over how to spend local education funds, including how to fund school construction, teacher hiring, professional development, and the many other needs facing most local school districts.

### ***Who is involved in the Mandatory/Full Funding Debate?***

The Budget Committee will work over the next few months to determine whether and how funding for Part B, Grants to States should be changed in this year's budget resolution. Several Members plan to redouble their efforts to make Part B a mandatory entitlement in order to "fully fund" the program (meaning that the funding level meets Congress's 1975 federal commitment to fund Part B at 40 percent of the national average per pupil expenditure).

The Administration strongly opposes making Part B mandatory. The Administration is committed to increasing the federal share and has proposed a \$1 billion increase in discretionary funding for FY 2003 in the President's budget.

During the H.R.1 conference, the Committee on Education and Workforce's Republican Conferees supported full funding for Part B of IDEA, but opposed making the program mandatory. The Conferees argued that significant increases in special education funding should be tied to reforms made during the reauthorization process in order to improve the quality of education that special education students receive.

### ***What Is Meant by "Reforming" IDEA?"***

Although the IDEA has provided access to America's classrooms for students formerly not served by the public education system, there are many issues within the federal special education law that desperately need improvement. It is a program in need of reform, one that should focus on achievement, effectiveness, and accountability, in addition to access. Earlier this year, the President signed into law the No Child Left Behind Act of 2001, which made far-reaching changes to the federal approach to K-12 education in this country. Reauthorization of IDEA provides another opportunity for Congress to ensure that no children are left behind by improving the education of disabled students.

The Committee supports full funding of IDEA Part B, Grants to States, and believes funding increases should be linked to fundamental reform. The Committee does not support making IDEA Part B, Grants to States, a mandatory funding program, however, as doing so does not

guarantee improved services for students with special needs and virtually removes the ability to provide necessary oversight of the program. The Committee remains committed to helping students achieve and to finding a long-term funding solution that has the best interests of children with special education needs at heart.

***What Issues Will Congress Likely Examine This Year As It Prepares For IDEA Reauthorization?***

The House Committee on Education and Workforce will be scheduling hearings on IDEA reform between April and July, both in Washington, D.C., and elsewhere around the country. Among the first issues to be explored will be how special education is financed at the federal, state and local levels, including a focus on the rising cost of special education.

Other issues that the Committee is likely to discuss during these hearings or during the reauthorization process include the following:

- Promote Early Intervention. Permit IDEA funds to be used for activities that reduce initial identification for IDEA services and the future need for services.
- Prevent Over Identification. Eliminate incentives to over identify minority students.
- Ensure School Safety. Treat disabled students who have weapons or drugs at school or who commit aggravated assaults at school in the same manner as non-disabled students.
- Reform Funding Formula. Target funds towards the neediest children.
- Reform Accountability Provisions. Be consistent with the No Child Left Behind Act, including making IDEA standards- and achievement-based.
- Reduce Paperwork. Provide procedural requirement relief.
- Simplify, Simplify. Improve compliance monitoring at Department of Education.
- Reduce Litigation. Require mediation as the first step in all due process disputes.
- Promote Choice. Provide for a special education voucher pilot program.