Statewide Educational Accountability under the No Child Left Behind Act—A Report on 2005 Amendments to State Plans

A report commissioned by the CCSSO Accountability Systems and Reporting State Collaborative – SCASS
COUNCIL OF CHIEF STATE SCHOOL OFFICERS
The Council of Chief State School Officers (CCSSO) is a nonpartisan, nationwide, nonprofit organization of public officials who head departments of elementary and secondary education in the states, the District of Columbia, the Department of Defense Education Activity, and five U.S. extra-state jurisdictions. CCSSO provides leadership, advocacy, and technical assistance on major educational issues. The Council seeks member consensus on major educational issues and expresses their views to civic and professional organizations, federal agencies, Congress, and the public.

DIVISION OF STATE SERVICES AND TECHNICAL ASSISTANCE
The Division of State Services and Technical Assistance supports state education agencies in developing standards-based systems that enable all children to succeed. Initiatives of the division support improved methods for collecting, analyzing and using information for decision-making; development of assessment resources; creation of high-quality professional preparation and development programs; emphasis on instruction suited for diverse learners; and the removal of barriers to academic success.

STATE COLLABORATIVE ON ASSESSMENT AND STUDENT STANDARDS
The State Collaborate on Assessment and Student Standards (SCASS) Project was created in 1991 to encourage and assist states in working collaboratively on assessment design and development for a variety of topics and subject areas. The Division of State Services and Technical Assistance of the Council of Chief State School Officers is the organizer, facilitator, and administrator of the projects. SCASS projects accomplish a wide variety of tasks identified by each of the groups including examining the needs and issues surrounding the area(s) of focus, determining the products and goals of the project, developing assessment materials and professional development materials on assessment, summarizing current research, analyzing best practice, examining technical issues, and/or providing guidance on federal legislation.

Funding support for this paper was entirely from member states of the Accountability Systems and Reporting State Collaborative (ASR-SCASS). For information about ASR-SCASS and for 50-state Accountability Profiles, see the CCSSO website: http://www.ccsso.org/projects/Accountability_Systems/.

Council of Chief State School Officers
David P. Driscoll (Massachusetts), President
Valerie Woodruff (Delaware), President-Elect
Douglas D. Christensen (Nebraska), Vice President
G. Thomas Houlihan, Executive Director

Julia Lara, Deputy Executive Director, Division of State Services and Technical Assistance
Rolf K. Blank, Director of Education Indicators

Copies of this report may be ordered for $10.00 per copy from:

Council of Chief State School Officers
Attn: Publications
One Massachusetts Ave., NW, Suite 700
Washington, DC 20001
202-336-7016
Fax: 202-408-8072
www.ccsso.org

© 2005 Council of Chief State School Officers
All rights reserved.
Statewide Educational Accountability
Under the No Child Left Behind Act —
A Report on 2005
Amendments to State Plans

A Summary of State Requests in 2004–05 for Amendments to their Educational Accountability Systems under NCLB

William J. Erpenbach
Ellen Forte

October 2005

A report commissioned by the CCSSO Accountability Systems and Reporting State Collaborative – SCASS
Table of Contents

Executive Summary ................................................................................................................... iii

I: Introduction ................................................................................................................................. 1
   CCSSO’s 2005 Report on Amendments to State Accountability Plans ................................ 3
   The Current NCLB Context ...................................................................................................... 4
   Conflicting Evaluation Results .......................................................................................... 5
   Challenges to NCLB Related to Funding ........................................................................ 6
   Local Challenges to States’ Implementation of NCLB ..................................................... 6
   SEA Capacity Issues ........................................................................................................ 7
   Increased Flexibility: A New Path for No Child Left Behind ........................................ 8
   Renewed Interest in Growth Models .............................................................................. 9
   The Next Section ................................................................................................................ 10

II: Key Issues in States’ Amendments to NCLB Accountability Plans in 2004-05 ....................... 11
   Standards and Assessments ............................................................................................... 11
   Administration of New or Revised Assessments .......................................................... 11
   Use of New or Other Assessments in AYP Calculations ............................................. 11
   Banking of Test Results ............................................................................................... 13
   End-of-Course Assessments ........................................................................................ 14
   Adequate Yearly Progress Model .................................................................................. 15
   Adequate Yearly Progress Application ........................................................................ 15
   Accountability for Schools and Districts that Serve Few Students or
     Limited Grade Ranges ........................................................................................... 15
   Full Academic Year Definition .................................................................................... 16
   Identification for Improvement Based on Same Subgroup and Same Subject .......... 16
   Identifying School Districts for Improvement ............................................................ 18
   Adequate Yearly Progress (AYP) Indicators ................................................................ 19
   Percent Proficient ........................................................................................................ 19
   Participation Rate ......................................................................................................... 20
   Other Academic Indicators at the Elementary and Middle School Levels ............. 22
   Graduation Rate ............................................................................................................ 22
   Growth Models ............................................................................................................. 24
   Annual Measurable Objectives and Intermediate Goals .............................................. 24
   Strategies to Enhance Reliability .................................................................................... 24
   Minimum ‘n’ .................................................................................................................. 25
   Confidence Intervals ..................................................................................................... 26
   Safe Harbor .................................................................................................................... 26
   Inclusion of All Students in the Accountability System ................................................... 27
   Inclusion of Students with Disabilities ........................................................................ 28
   Accommodations .......................................................................................................... 31
   Inclusion of English Language Learners ..................................................................... 31
   Assessment of English Language Learners .................................................................. 32
   Extending the Definition of ELLs .................................................................................. 32
   Minimum Ns for ELLs ................................................................................................. 33
   AYP Consequences and Reporting .............................................................................. 33
   Timing, Degree, and Targeting of Consequences ......................................................... 33
   Reporting ....................................................................................................................... 35
   The Next Section ............................................................................................................ 35
Executive Summary

This report summarizes requests submitted by States in 2004-05 to amend their educational accountability plans under the No Child Left Behind Act of 2001 (NCLB) and the decisions of the U. S. Department of Education (ED). This is the third in a series of papers describing the development and amendment of these plans and the approval decisions made by ED.

Challenges to NCLB policies intensified somewhat during the 2004-05 school year with the filing of several lawsuits and increasingly pointed calls by national organizations for changes to the law or its interpretation by ED. ED has signaled some willingness to grant greater flexibility in the law’s implementation; many States are taking advantage of the specific allowances ED has offered, but most continue to push for changes in other areas.

The types of most commonly approved amendments to State accountability plans in 2005 were

- Identifying school districts for improvement only when AYP is not made in the same subject in each of the elementary, middle, and high school levels for two consecutive school years although ED added “or other academic indicators” to some approvals
  
  Alabama, Alaska, Indiana, Maryland, Mississippi, New Jersey, New Mexico, North Carolina, Pennsylvania, South Carolina, Virginia, and Wisconsin

- Use of end-of-course assessments at the high school level
  
  Maryland and North Carolina

- Changing the definition of “Graduation Rate”
  
  Georgia, Iowa, Nebraska, New Jersey, New Mexico, New York, South Carolina, South Dakota, Virginia, and Washington

- Averaging Participation Rates across two or three years and excluding students who miss assessments due to “medical emergencies”
  
  Alabama, Kentucky, Maryland, Michigan, Minnesota, Montana, and New Mexico

- Applying confidence intervals to AYP determinations
  
  Hawaii, Mississippi, Montana, New Mexico, and Wisconsin

- Indexing
  
  Alabama, Mississippi, New Mexico, Pennsylvania, and South Carolina

- Changing minimum “n’s” for AYP calculations
  
  Florida, Georgia, Hawaii, and Virginia

- Applying confidence intervals an other changes in safe harbor determinations
  
  Delaware, Hawaii, Indiana, Montana, Oklahoma, Pennsylvania, South Dakota, and Wisconsin
• Use of “modified” achievement standards for AYP determinations with SWDs subgroups

  Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Mexico, New York, North Dakota, North Carolina, Oklahoma, Pennsylvania, South Dakota, Tennessee, Virginia, and West Virginia

• Implementing the Secretary’s flexibility regarding the assessment of ELLs

  Georgia, Michigan, Minnesota, Montana, New Mexico, and South Dakota

Described below is the chronology of significant events related to the implementation of the NCLB Act.

### Timeline of Significant Events Related to State Accountability Plans Under NCLB

**2002**
- January—The No Child Left Behind Act of 2001 signed into law.
- July—ED issues Standards and Assessment Regulations.
- December (early)—ED issues Accountability Regulations.
- December—ED begins series of meetings with SEA Officials.
- December (late)—ED releases Accountability Workbook Templates to States.

**2003**
- January 31—Draft Accountability Workbooks Due to ED.
- January – April—Peer Reviews of State Accountability Workbooks conducted in States.
- June 23—Secretary’s Letter regarding inclusion of SWDs in AYP.
- June (late)—All State Accountability Plans tentatively approved by ED.
- July—CCSSO’s Year One paper on State Accountability Plan requests and ED approval decisions released.
- August—States begin submitting Accountability Plan amendment requests to ED; a process that would become on-going.
- December 9—ED issues Achievement of Students with the Most Significant Cognitive Disabilities Regulations.
- December 11—Secretary Paige Letter regarding additional flexibility for SWDs in State Assessment and Accountability Systems.

**2004**
- February 5—Assistant Secretary Simon Letter setting April 1 Deadline for Accountability Amendment Requests that would apply to 2003-04 AYP decisions.
- February 20—Secretary’s Letter announcing new flexibility related to ELLs.
- March 2—Secretary’s Letter announcing further flexibility related to AYP for SWDs.
- March 29—Secretary’s Letter regarding calculation of Participation Rate.
- April 1—State requests for Accountability Plan amendments due at ED.
- April 28—ED issues Standards and Assessments Peer Review Guidance for the NCLB Act Peer Reviews.
- May 1—ED response letters to States begin for 2003-04 accountability plan amendments.
- May 21—Assistant Secretary Simon Letter elaborating on flexibility for Participation Rate.
- May 21—Second Secretary Letter’s regarding calculation of Participation Rate.
- October—CCSSO’s Year Two paper on 2003-04 State Accountability Plan amendment requests and ED Approval Decisions released.
- January 27—Assistant Secretary Simon Letter setting April 1 Deadline for 2004-05 Accountability Plan Amendments.

**2005**
- February 16 – 19—ED conducts Standards and Assessments Peer Reviewer Training and first round of Standards and Assessments Peer Reviews under the NCLB Act.
- April 7—Secretary Spellings announces Raising Achievement: A New Path for No Child Left Behind Initiative.
- May 10—Secretary sets June 1 deadline for State accountability amendments and issues information related to serving SWDs with “Persistent Academic Difficulties.”
I: Introduction

For nearly four years now, states have been working to implement the expanded standards, assessment, and accountability provisions of the No Child Left Behind Act of 2001 (NCLB). The NCLB Act, the most recent reauthorization of the 1965 Elementary and Secondary Education Act (ESEA), engenders the most demanding requirements in these areas to date. The prior reauthorization, the Improving America’s Schools Act (IASA), became law in 1994.

The IASA reauthorization itself marked a major transition point in the ESEA’s evolution with its grounding in the principles of standards-based reform and emphasis on “best practices” research. Significantly, the IASA required that States implement—for all students; not just those served by Title I—academic content and student performance standards, a system of aligned assessments of student performance, and a single statewide system to hold schools and districts accountable for students’ performance. States were also required to design formal accountability systems in which they defined adequate yearly progress (AYP) requirements for schools and districts.

The NCLB Act reauthorization maintained the same basic standards and assessment philosophy as the IASA but extended the specific application of these principles. Grade-range reading and mathematics standards requirements were replaced by requirements for grade-level expectations in grades three through eight and in one grade in the 10-12 grade span. Assessment mandates were similarly broadened to include tests in every grade in the three through eight range. NCLB also introduced new requirements for grade-range science standards and at least one science assessment in each of three grade spans (3–5, 6–9, and 10–12).

Unlike the standards and assessments requirements, the NCLB accountability mandates represent a fundamental shift in ESEA philosophy. Under IASA, States had to define their own methods for evaluating whether schools and districts had made adequate yearly progress. NCLB prescribed one specific AYP methodology; although NCLB AYP can be customized State-by-State, the same fundamental rules and timelines apply universally.

In addition, the NCLB Act toughened the disaggregation mandates and the stakes associated with failure to make AYP. IASA required disaggregated reporting, but did not attach accountability stakes to the performance of each of the major ethnic groups, students with disabilities, limited English proficient students, and low income students as NCLB does. Under NCLB, schools enter into a pre-determined set of sanctions, and districts now face penalties for missing AYP.

As their first step in meeting the NCLB requirements, States submitted initial accountability plans to the U.S. Department of Education (ED) in December 2002 or January 2003. These plans were peer reviewed (see Erpenbach, Forte Fast, & Potts, 2003, for a description of this process) and approved on or before June 8, 2003. Subsequently, virtually all States have amended their educational accountability plans one or more times. Most have also modified their academic content and student achievement standards and developed additional or new assessments. Throughout this work, States have raised a unique set of

---

1 Title I of ESEA has historically addressed improving the academic achievement of disadvantaged public elementary and secondary school students.

2 As ED’s workbook decisions have unfolded, States sometimes discover that other States received approval for elements that had been denied in their cases. Examples included larger minimum “n’s” for some student subgroups, dual accountability systems, and use of confidence intervals for safe harbor reviews. A summary of these decision shifts over time is presented in Appendix B. As a result of increased awareness and CCSSO’s publication of our first paper (2003), a number of States began to submit amendment requests to ED as early as August 2003.

3 It is important to recognize that ED considers amendments proposed by States are just that—proposals. Thus, the requests from States cannot be implemented unless approved by ED. Further, the Department only responds publicly to requests that are approved. These are posted on the Department’s website. Requests that are not approved are not posted and seldom released publicly by ED nor are the reasons for such determinations.
issues that affect interpretation and implementation of the law. In 2005, the significant issues appear to be:

1. **Standards and Assessments**: ED is currently conducting Peer Reviews of State assessment systems to ensure they meet the NCLB requirements. Alignment among standards and assessments, reliability and validity aspects of technical quality, and the availability and quality of accommodations and alternate assessments for ELLs and students with disabilities (SWDs) are receiving closer attention than they did under the IASA rules. The NCLB Act prohibits ED from granting States timeline waivers to meet these requirements as was done for a number of states under IASA.\(^5\)

2. **Refining Student Data and Information Management and Reporting Systems**: New requirements under the NCLB Act related to student data and other information have required most States to design new, usually more complex, data management and reporting systems. These systems are critical to collecting required demographic data, analyzing student achievement results, computing AYP, reporting results, and reporting generally. Many States still face significant challenges in operationalizing these systems.

3. **Monitoring and Evaluation**: NCLB expanded States’ monitoring responsibilities for ensuring effective implementation of the law at the district and school levels. ED has signaled in recent State monitoring visits that it is stepping-up emphasis on SEA monitoring of LEAs, especially to ensure that districts are implementing all the consequences that must occur whenever schools are identified for improvement. Defining the nature and scope of corrective action or restructuring, capacity, and availability of data are among areas being closely examined.

4. **High School Accountability**: With the White House, the National Governors Association, the Education Commission of the States, and others leading the way, there is a high probability for intense efforts aimed at greater accountability for strengthened high school curricula and assessment.

5. **Teacher Quality**: States continue to struggle to implement the NCLB teacher quality requirements in ways that fit within their own policy contexts and demands to fill classroom positions.

6. **English Language Acquisition**: Many states are involved in the development or redevelopment of English language proficiency assessments that meet Title III mandates and also provide useful information for placement purposes.

7. **State AYP Determinations**: It is not yet clear how ED will make and report State AYP determinations, but this is receiving considerable attention this year.

Finally, it is certain that new NCLB issues will arise during the year, especially with turnover in several key positions at ED\(^6\). Whether there will be additional flexibility in areas of greatest concern to States, such as growth accountability measures, remains to be seen. Clearly, as Olson (2005, July 13, p. 1) has reported, States have submitted more requests to amend their educational accountability systems this year than last year, perhaps in response to Secretary Spellings’ April 7, 2005, pledge for a more “common sense”

---


\(^5\) Although this paper focuses on States’ accountability plans, States’ standards and assessments systems are inextricably linked to the viability of their accountability systems. For this reason and because of the prohibition against timeline waivers, we must emphasize here the importance of thorough preparation for the Peer Reviews. The review criteria are available at http://www.ed.gov/policy/elsec/guid/ saapguidance.doc. To gain approval, States must provide detailed evidence of their compliance with each criterion described in this guidance. Most States will spend considerable time preparing their response narrative and evidence packages. States with Technical Assistance Committees (TACs) will undoubtedly consult the committee before submitting their narrative and evidence packages for review.

\(^6\) Readers are also directed to “Taking Root” by Lynn Olson (Education Week, 2004, December 8, pp. S1-S10).
CCSSO's 2005 Report on Amendments to State Accountability Plans

This is the third in a series of reports related to educational accountability systems developed by States pursuant to requirements of NCLB. In the first report (Erpenbach, Forte Fast, and Potts, 2003), the authors identified central issues arising from an examination of workbooks describing each State's educational accountability system and submitted for Peer Reviews conducted by ED and subsequent approval decisions made by the Department. The central issues reflected areas where States faced difficult implementation challenges or chose to “push the envelope” in the development of their accountability systems.

In the second report (Forte Fast & Erpenbach, 2004), we summarized the major issues presented by States in requests to amend their accountability plans between August 2003 and June 2004. Forty-seven States elected to amend their plans during this time based, in large measure, on their knowledge of the “success” of other States in arguing for changes. Also, ED issued additional “flexibility” guidance in 2004, particularly with respect to Students with Disabilities and Limited English Proficient Students. The predominant changes in 2004 were found in these areas:

1. **Standards and Assessments**: One-fourth of States submitted amendment requests related to their standards and assessments, including the following:
   - Changing the test or grade level that yields scores used in AYP analyses;
   - “Banking” of test results for use in AYP determinations;
   - Using out-of-level tests or other alternate assessments; and
   - Adjusting student academic achievement scores for defining “proficient.”

2. **AYP Model**: Almost all States that submitted amendments requested at least one change to their AYP model. These requests can be categorized as follows:
   - AYP application rules including requiring two years of missing targets in the same subject areas for identifying schools and districts for improvement, retroactive application of amendments, and determining AYP on the basis of students eligible to be served or served under Title I;
   - AYP indicators including the use of rounding-up rules and calculating percent proficient on required assessments on the basis of students enrolled FAY and tested, student participation rate in assessments, and basing AYP for other academic indicators such as the graduation rate on progress toward a target rather than meeting or exceeding the target;
   - State targets and schedules for AYP including establishment of annual measurable objectives and intermediate goals; and
   - Strategies to enhance the reliability of AYP results that included establishing larger minimum ‘n’ sizes for some student subgroups proficiency and participation rate determinations, using confidence intervals in all AYP calculations, and variations in safe harbor calculations.

3. **Inclusion of All Students in Accountability**: Almost all States requested amendments to take advantage of the flexibility issued by ED from mid-2003 to early 2004 regarding the following:
   - Limited English Proficient (LEP) students' assessment and inclusion in accountability systems (Paige, 2004, February 20); and

---

7 CCSSO maintains a website for State Accountability Profiles at http://www.ccsso.org/projects/Accountability_Systems/. All three papers in the series were supported by ASR-SCASS state collaborative project managed by CCSSO.
4. **AYP Consequences and Reporting**: A small number of States requested amendments in this area, such as the following:

- Timing of consequences for schools such as providing supplemental educational services before offering school choice;
- Implementing State rewards and recognition; and
- Organizing for reporting, including integration with State reports.

5. **Requests Consistently Not Approved**: ED was consistent in not approving several categories of requested changes from States. ED responses regarding the items on the following list were consistent. These items can be considered "non-negotiable" types of requests, as they have been consistently denied:

- Using out-of-level testing results in AYP calculations, except when such practice is consistent with the 1 percent cap requirements;
- Limiting identification of schools as in need of improvement to those schools that miss AYP for two consecutive years in the same content area and student subgroup;
- Applying retroactively any 2003-04 amendments to years prior to the 2003-04 school year;
- Exempting schools from the obligation to test students with significant medical-emergencies via a blanket policy (decisions must be made on a case-by-case basis); and
- Switching the order of the prescribed school choice and supplemental educational services sanctions—school choice must be offered in the first year of identification. Further, school choice cannot be limited to “non-proficient” students.8

In this third report, we examine additional educational accountability system amendments sought by States since June 2004 as well as ED’s responses to those requests.9 This paper follows the format used in the first two papers, which is reflected in the summary points above and includes a conclusions section in which we present “surprise” or unanticipated decisions from ED.

As with the previous two reports, we have based the analysis primarily on information provided voluntarily by States to the Council of Chief State School Officers (CCSSO). States submitted various types of information to support this work, including copies of the request documents, emails, phone conversations, and copies of ED’s decision letters issued to them. In most cases, response letters from ED were retrieved from that agency’s website (http://www.ed.gov). In order to protect States’ privacy, consistent with our two earlier papers, all requests for accountability plan amendments have been kept “state-blind” unless the information has already been made public by the State, ED, or the news media.

**The Current NCLB Context**

The summaries and analyses that follow are best considered in light of the striking escalation in public and political attention to NCLB this past year. In summer 2004, the Washington-based Center on Education Policy sponsored a meeting at which critics of the NCLB Act addressed what were called the law’s unrealistic expectations for schools10. A month later, three national educational associations announced that they would sponsor public forums in the fall to stimulate discussions about the NCLB Act. The New York City-based National Academy of Education sponsored the forums together with Kappa Delta Pi and the National Society for the Study of Education (Viadero, 2005) A Washington, DC, nonprofit group, Communities for Quality Education, has established a website (www.nclbrebellion.org) to track States’ efforts to change the law. In August, 58 organizations issued a paper outlining 14 changes they would recommend when the NCLB Act comes up for re-authorization11. Robert Linn (2005), one of the country’s most well-respected experts on education assessment and accountability issues, also commented that “NCLB has the potential to make substantial contributions to the achievement of

---

8 In a recent “surprise” decision reported in the subsection, **Timing, Degree, and Targeting of Consequences**, four school districts in Virginia will be permitted, on a trial basis, to switch the order of sanctions beginning in 2005-06.
9 Nina de las Alas, CCSSO associate, assisted with the collection of information from states.
11 See [Joint organizational statement on No Child Left Behind (NCLB) Act](http://www.fairtest.org).
students who have lagged behind and been ignored in the past,” (p. 8) and offers three specific suggestions for improving the law.

The number of articles about the law appearing in major newspapers across the country has also increased greatly over the past year. Several State legislatures are considering or have already passed bills challenging one aspect of the law or another. On August 22, 2005, Connecticut filed a lawsuit against ED, charging that the NCLB assessment requirements represent an unfunded mandate. In addition, an increasing number of State education agencies (SEAs), school districts, and others are challenging ED more frequently on its interpretation of various parts of the law. In some cases, school districts are even challenging SEAs on how they are implementing the law. At the same time, conflicting results are emerging from several studies of the law’s impact on student achievement.

Conflicting Evaluation Results

In September 2004, The Civil Rights Project at Harvard University released the findings of their survey of teachers’ opinions of the NCLB Act, part of a five-year study of implementation of the law in 11 urban school districts and six States. Among the study's findings:

- Teachers did not believe that schools identified as not making AYP would cause them to improve. They viewed school choice negatively but felt more positive about supplemental educational services, which target assistance from outside service providers to low-performing students.
- Many teachers in schools identified for improvement indicated that they planned to transfer out of them within five years. Teachers also felt that labeling schools as “in need of improvement” could make things worse resulting in a shortage of those who would make a long-term commitment to teach in these schools.
- Teachers indicated that the law’s accountability requirements are inappropriately influencing instructional and curricular practices. Important areas of the curriculum are being ignored as areas covered by state assessments are being emphasized to a greater degree.
- Teachers noted that the law was counterproductive in some ways to school reform efforts that had been underway prior to its enactment. They observed that schools in high-poverty areas and especially the low-performing schools in these areas are constantly changing their instruction and curriculum rather than giving programs necessary time for implementation.

About this same time, Education Week released its own analysis of the 2003-04 State assessment results concluding that schools were making progress on the NCLB Act’s goals (Olson, 2004). According to the analysis, “In general, the percent of schools that met their targets either held steady or increased compared with the previous school year—sometimes substantially [p. 1].” However, the analysis also noted that “in the past year, the U. S. Department of Education has relaxed a number of rules on how AYP is calculated and approved numerous amendments to the state accountability plans required under the law. Those modifications appear to have undercut the grim predictions [of large numbers of schools identified for improvement], at least temporarily [p. 24].” James Ysseldyke, a professor at the University of Minnesota and a national expert on the education of students with disabilities, believes that studies and surveys conducted in several States show that data “are more good news than bad news.” Ysseldyke offered his comments at the 2005 Council for Exceptional Children's annual conference and also observed that “NCLB needs tweaking, but it isn’t as bad as the media paints it to be” (Samuels, 2005, April 20, p. 12).

The Southern Regional Education Board (SREB) published a report earlier this year (Diaz & Lord, 2005) on the issues facing its 16 member States in accountability plan implementation and in improving student achievement in all groups. SREB analyzed data from the 2002-03 and 2003-04 school years to address two questions: (1) “Is the number of students who are meeting or exceeding your state standards increasing?” and (2) “Are students from all groups being brought to your state standards?” The results of these analyses were summarized as follows.

---

The answers to these questions for SREB states include both good news and disappointment. The percentages of students in SREB states who met or exceeded standards on state assessments of reading and mathematics achievement increased last year—when the scores of all students were combined. Lower-performing groups of students improved, and achievement gaps narrowed. However, substantial gaps in performance remain among racial/ethnic and income groups and among students with disabilities, those with limited English proficiency and others. High school graduation rates have not improved (p. 2).

More recently, Olson (2005, September 7, p. 1) reported on Education Week’s analysis of 2004-05 AYP results for 33 States. Reporting a “mixed picture” in terms of the number of schools that made AYP in comparison to last year, Olson commented, the “mixed national picture may have as much to do with how each state calculates progress, based on agreements worked out with the federal government, as on overall test-score trends.” According to the paper’s analysis, 14 States “saw gains in both the proportion of students scoring proficient or better on state tests and the percent of schools making AYP; 11 saw their proficiency rates rise, while the proportion of schools making AYP fell; one state had the reverse pattern; and four saw declines in both categories” (Olson, 2005, September 7, p. 26).

Challenges to NCLB Related to Funding

Education Week also cited other recent challenges to the law during the spring of 2005, which often focus on section 9527 of the law: (a) “Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school’s curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act” (Hendrie, 2005, pp. 1, 22).

- House Bill 59 was introduced in Vermont which would prohibit the State from instituting additional testing, imposing consequences on schools missing AYP targets, and complying with the law’s “highly qualified” teachers requirements (Olson, 2005, February 2, p. 29).
- In Colorado, Senate Bill 50 would authorize school districts to ignore the NCLB Act and ask local citizens to replace any federal funds that might be lost as a result (Olson, 2005, February 2, p. 29).
- In early March, Connecticut submitted a request to Secretary Spellings “to waive the law’s requirement that students be tested in grades 3-8 and once in high school.” (Hoff, 2005, March 9, p. 23) That request was later denied, but Connecticut subsequently filed a lawsuit against ED regarding this issue.
- In March 2005, Minnesota’s Senate Finance Committee signed off on a bill that would ask Congress to amend the NCLB Act to permit “value-added” accountability systems and modify how LEAs are identified for improvement. Without these changes, the bill provides for the State to opt out of the Act (at a cost of some $244 million annually). In May, a joint legislative council in Maine approved a measure permitting the State’s attorney general to sue ED because of inadequate funding under the NCLB Act (Education Week, May 18, 2005, p. 18).
- In April 2005, the National Education Association (NEA) and ten of its affiliate school districts submitted a suit to ED charging that NCLB was “being implemented illegally because billions of dollars worth of federal under-funding has forced states to use their own money to carry out its mandates” (Keller & Sack, 2005, pp. 1, 18).

Local Challenges to States’ Implementation of NCLB

Even school districts (referred to as “local educational agencies” under the Act) have become involved in challenging both SEAs and ED on various aspects of the law’s implementation and administration. In other cases, districts have simply “opted-out” of Title I participation. For example:

- The Chicago Public Schools were told by ED in January 2005 to stop providing tutoring under the NCLB Act but the district refused. Regulations promulgated by ED prohibit school districts
from providing these services if they have not met the State’s AYP requirements. The State had asked ED to permit the Chicago Public Schools to continue as a supplemental educational services provider (Gewertz, 2005, January 5, p. 1). On September 1, 2005, Secretary Spellings reversed this position when she announced that ED will allow the school district to provide tutoring. Further, ED announced that negotiations were underway with nine other large urban districts that would to continue to offer their own tutoring programs even though they may have been identified for improvement (Gewertz, 2005, September 7).

- In February 2005, Texas Commissioner of Education Shirley Neeley, granted a number of appeals from districts and schools that had met State rules for assessing special education students. The Commissioner’s decision reduced the number of schools and districts identified for improvement by determining that larger numbers and percentages of SWDs taking alternate assessments scored at a proficient level\(^\text{14}\) (Hoff, 2005, March 9, p. 1).

- The National Conference of State Legislatures “issued a report saying the law championed by President Bush unfairly usurps state policies.” (Hoff, 2005, March 9, p. 23). Further, this report charges that the NCLB Act has “had the effect of curtailing additional state innovations and undermining many that had occurred during the past three decades [p. 2].” The organization cited numerous changes that should be made in the law’s implementation and called on the Secretary of Education to use her “broad discretion to waive requirements of the law [p. 2]” under section 9401 of Title IX (February 28, 2005).

- The school board of the Coachella Valley Unified School District in California announced in March 2005 its intention to “sue the state over its law on the assessment of English-language learners on the state tests.” The school board wants tests available in the students’ languages. It was noted that “California requires English-language learners to take the state’s tests only in English, while the federal No Child Left Behind Act permits such students to take their state’s tests in their native languages for at least three years after they’ve arrived in U. S. schools” (Zehr, 2005, March 16, p. 4.). On June 1, ten more school districts sued Governor Arnold Schwarzenegger and State education officials on the same basis (Asimov, 2005, June 2, pp. B1, B7).

- The Utah legislature was considering a bill that would let its laws “trump” the NCLB Act. The legislature passed that bill on April 19 permitting the State’s accountability system as the primary means of determining school and district performance. How this will impact the State’s continued eligibility for federal education funds remains to be seen (Sack, 2005, April 27, p. 22).

- In September 2004, Zehr (p. 6) noted that districts foregoing Title I funds included Suffolk, VA (13,000 students), Orland Park, Illinois’ Consolidated High School District 230 ($115,000 for three high schools), three school districts in Connecticut, and three in Vermont. Illinois’ Evanston Township High School District 230 (3,100 students and $111,000) was considering giving up the funds as well.

SEA Capacity Issues

NCLB passed at a time when many SEAs were experiencing substantial budget cuts, which often resulted in hiring freezes. This meant that increased demands on SEAs for the expansion of standards and assessment systems, provision of technical assistance, monitoring, and data collection occurred just as many SEAs were losing human capacity. A report by the Government Accounting Office in October 2004 highlighted this issue, noting, “States are falling behind in efforts to carry out the main K-12 law championed by President Bush, and the Department of Education isn’t doing enough to help them catch up...” (Hoff, 2004). This report specifically described the challenges States face as they attempt to collect required data that must be used to make high stakes decisions about schools and districts.

\(^{14}\) In a separate matter, ED announced on April 22 that it was withholding $444,000—or 4%—of Texas’s funds for the administration of the NCLB Act because the State failed to meet the deadline for alerting eligible parents to the school choice provisions of the law. Other States that ED has penalized recently are Georgia (loss of 25%, or $783,000, in administrative funds) for failure to align its high school test with State content standards and Minnesota (10%, or $112,000) for using attendance data rather than test scores to make AYP determinations. (Hoff, 2005, October 13, pp. 27, 31). The District of Columbia was also fined $120,000 earlier this year for “failing to give exams tied to specific district academic standards” (Gehringer, 2006, January 12, p. 6).
More recently, Sack (2005, May 11) reported on the challenges facing many SEAs as they try to meet the myriad responsibilities set forth for them under the NCLB Act. One State staffer commented, “This lack of capacity—not a lack of will—on the part of most states is the single most important impediment to achieving the gains of No Child Left Behind [p. 1].” Sack further noted, “Those agencies [SEAs] have realigned duties to comply with the law, sometimes at the expense of other state priorities. And while employees have taken on larger workloads, those increased burdens have driven away some much-needed, well-qualified people who can find better pay and benefits in the private sector [and in school districts]” (p.1). Sack found that California had experienced an SEA staff reduction of 200 (from 1,400), Michigan a reduction of nearly three-fourths down to 300 today, and Indiana a reduction of about 140 (to 260). In general, it is estimated by those Sack interviewed that SEAs have seen an average staff reduction in the area of 50% over the past decade (p. 25).

Increased Flexibility: A New Path for No Child Left Behind

Although she had hinted in her confirmation hearings and in a meeting with the Council of Great City Schools (Samuels & Davis, 2005, March 23) that flexibility would be a hallmark of her administration, newly appointed Education Secretary Margaret Spellings still surprised many with her announcement of a “new approach to implementing flexibility” in ED’s administration of the NCLB Act (Spellings, 2005, April 7 press release). The Secretary said, “States will have additional alternatives and flexibility if they can show they are raising student achievement and closing the achievement gap” and called on States to “think of this new policy as an equation: the principles of the law, such as annual testing and reporting of subgroup data, plus student achievement and a narrowing of the achievement gap, plus overall sound State education policies, equals a new common sense approach to implementation of No Child Left Behind.” Spellings’ “New Path” includes four key principles:

- Ensuring students are learning
- Making the school system accountable
- Ensuring information is accessible and parents have options
- Improving teacher quality

Spellings described several factors that ED might consider in granting additional flexibility (provided the above principles are met), including:

- Compliance with the NCLB Act and its predecessor, the IASA
- Graduation and dropout rates
- Fiscal management
- High school reform initiatives
- Data infrastructure capabilities and State capacity to improve achievement
- State academic standards
- Availability of alternate teaching certificate programs
- School improvement processes that integrate approaches to serve the needs of all students including those receiving special education and who are limited English proficient

In addition to assuring additional grant-based funding to support the improvement of assessments, instruction, and research on accountability for SWDs, the Secretary “announced that the first example of this ‘workable, sensible approach’ would be to allow the use of modified assessments for their students with significant cognitive disabilities who need more time and instruction to make substantial progress toward grade-level achievement” (Spellings, 2005, April 7 press release). New rules were to be drafted regarding separate standards for SWDs with “persistent academic disabilities.”

Spellings further stated that ED would convene “a working group to find appropriate ways that growth models—ways to capture individual student progress from year to year—might be used to measure

---

15 For additional information, see related announcements at [www.ed.gov](http://www.ed.gov).
16 In mid-2004, ED denied six of seven requests from the Council for more flexibility in the administration of the NCLB Act (Simering, 2004).
academic achievement” (Spellings, 2005, p. 4). Spellings concluded by saying that she would work with States that can successfully argue and support, with student achievement data, waivers of certain NCLB Act regulations.

On May 10, Secretary Spellings (Spellings, 2005, May 10) published a “Dear Chief” letter in which she explained the process for States to request approval of additional flexibility, announced “interim flexibility” for making AYP determinations for SWDs based on 2004-05 assessments, and established June 1 as the deadline for submitting additional accountability plan amendments to address this issue. The most notable component of this letter addressed the additional flexibility that would be available to States with respect to serving “another group of students with disabilities who can make significant progress but may not reach grade-level achievement standards within the same time frame as other students.” The Department has indicated that it will issue, later this year, a notice of proposed rulemaking regarding modified achievement standards (in addition to alternate standards) and the development of assessments based on those standards that are aligned with grade-level content standards.

Renewed Interest in Growth Models

Prior to NCLB, some States (e.g., Kentucky, Tennessee) were using growth models as part of their accountability systems. Under NCLB, States were forced to limit the use of these models to the safe harbor component of their AYP models and ED appeared unwilling to shift its position on this matter.

Recently, however, a number of States have become interested in considering the use of growth models. Typically, these States are interested in recognizing the performance of a cohort of students over time rather than performance across cohorts (e.g., “Did this year’s fourth graders improve in reading achievement over last year’s fourth graders?”). In June 2004, 16 chief state school officers wrote to Secretary Paige requesting the flexibility to use value-added or other growth measures in their accountability systems to satisfy the NCLB Act requirements as well. Olson (2004, November 17) noted that 11 States were currently “working to incorporate such models into their state accountability systems” (p. 14).

In October 2004, there were three national conferences on the topic of growth models (Olson, 2004, November 17, p.1), and a fourth in November 2004 sponsored by CCSSO’s ASR State Collaborative. In addition, The Center on Education Policy (CEP) included the subject in a September 2004 national forum on ideas to improve the NCLB Act’s accountability provisions as did the American Enterprise Institute (AEI) in a meeting for the same purpose held at the same time. Other interested groups, associations, and research centers have continued to sponsor related conferences and seminars. The increasing public interest may pay off for interested states given Secretary Spellings’ April 7, 2005, announcement (see preceding subsection) with respect to appointing a working group to “find appropriate ways that growth models—ways to capture individual student progress from year to year—might be used to measure academic achievement” (Spellings, 2005, April 7). This group includes “a mix of researchers, state and local officials, nonprofit organizations, and interest groups” (Olson, 2005, July 13). ED’s responses to States that have requested permission to use growth models in lieu of percent proficient appear to be on hold until ED concludes its meetings with working groups.

---

17 Fourteen persons were invited to a June 22, 2005, meeting, the first of a series of meetings that ED plans to sponsor regarding the use of growth models under the NCLB Act.


21 A clause in the NCLB Act that has seemed to have no purpose and received little attention may, in fact, provide the basis for ED’s eventual approval of value added or growth measures. Specifically, section 1111(b)(3)(B) provides that, “Each State educational agency may incorporate the data from assessments under this paragraph into a State-developed longitudinal data system that links student test scores, length of enrollment, and graduation records over time.”
**The Next Section**

In Section II, we report on educational accountability workbook amendments States requested during 2004-05.

This report should be interpreted in light of two important caveats. First, this paper addresses publicly available State requests for accountability amendments. Some States may have requested amendments without making these requests public; thus, it is possible that a number of requests have been made that could not be captured here.

Second, neither CCSSO nor the authors necessarily endorse any of the educational accountability strategies embedded in the amendments described in this paper. The purpose of this paper is to describe amendment proposals, not to judge any State’s intent in making specific proposals or whether these proposals are appropriate or technically sound. Neither is this paper intended to serve as an evaluation of ED’s responses or failure to respond as may be the case. No recommendation of sound, appropriate, or effective practice is implied or should be inferred.
II: Key Issues in States’ Amendments to NCLB Accountability Plans in 2004-05

In this section, we summarize the accountability plan amendments that States requested since summer 2004 and, to the extent they have been announced, ED’s decisions and rationales with respect to these requests. In cases where States have pending requests, but for which ED has not responded publicly in writing, we are using a “state-blind” approach to protect States’ interests in any on-going negotiations with ED. In these cases, we simply use a number in lieu of the State’s name (e.g., [State20]). These numbers are unique to the issue, not to the State; the same State is likely to have several numbers in this system. The on-line version of this paper will be updated with actual State names when it becomes appropriate to do so.

This section is organized into the following major categories:

- Standards and Assessments
- Adequate Yearly Progress Model
- Inclusion of All Students in Accountability
- Consequences and Reporting

**Standards and Assessments**

Every state has had to modify its assessment system in some way to meet NCLB requirements. States do not always submit amendments related to these changes, but all States must submit evidence for the federal review of their standards and assessment systems during 2005-06. Among those States that did submit amendment requests, the categories of concern included the introduction of new or revised assessments, the use of new or revised assessments in AYP calculations, banking of test scores, and the use of end-of-course tests.

**Administration of New or Revised Assessments**

**Connecticut** has administered statewide standards-based assessments in grades 4, 6, and 8 since 1985 and in grade 10 since 1995. Citing this long history, high scores on the National Assessment of Education Progress (NAEP), and the estimated $8 million price tag of testing in the additional required grades, **Connecticut** requested a waiver that would permit the use of a “formative” testing program in grades 3, 5, and 7 in lieu of additional statewide testing in these grades. The State indicated it would “investigate and determine how to incorporate the results into AYP and ‘in need of improvement’ determinations currently applied to grades 4, 6, 8, and 10.” This request was denied and Connecticut subsequently filed a lawsuit in the U. S. District Court in Hartford on August 22, 2005.

Other States are implementing entirely new assessments. **New Mexico** implemented a new Standards Based Assessment in grades 3–9 and moved its grade 11 assessments from fall to spring in the 2004-05 school year. As a result, the State recalibrated the starting points, AMOs, and IGs for reading/language arts and mathematics (approved September 1, 2005). **Tennessee** requested permission to shift from the use of nationally-standardized assessments yielding norm-referenced scores to new tests yielding only criterion-referenced scores for grades 3–8 in reading, language arts, mathematics, science, and social studies. This request was approved (June 27, 2005) and became effective with the spring 2005 test administration. **Wyoming** requested permission to administer new assessments in reading, writing, and mathematics (Proficiency Assessments for Wyoming) in grades 3–8 and high school beginning in April 2006; this request was also approved (June 29, 2005).

**Use of New or Other Assessments in AYP Calculations**

At least four States—**Connecticut, Alaska, [State1], and Washington**—have requested amendments regarding the use of data from new assessments in AYP calculations. Three of these requests are
relatively straightforward. For the past few years, Connecticut has calculated AYP for its districts by averaging its fall-administered elementary and middle assessment results with results from the previous school year's spring-administered high school assessments. Beginning in the 2005-06 school year, the administration window for the elementary and middle school assessments will shift from fall to spring. Using the prior rules, the 2005-06 AYP calculations would be based on results from spring 2006 tests and results from the spring 2005 high school tests would never be used at all. To avoid this, Connecticut requested and received approval to average the 2005 and 2006 assessment results for 2005-06 district level AYP judgments.

Alaska received approval (August 22, 2005) for new standards-based assessments that were administered in spring 2005 in grades 3 through 9 and a new grade 10 examination to be administered in spring 2006. The State will set new trajectories to meet the 2013-14 targets for all students to be proficient. AYP determinations for 2004-05 will be based on a combination of “old” and “new” assessments. The results of new standards-based tests will be used in grades 3 through 9. In grade 10, results will be based on old assessments that will be updated in 2006. For safe harbor, Alaska will make comparisons from “new” to “old assessments given the previous year.

[State1] added literacy and mathematics assessments in grades 3, 5, and 7 (tests in grade 3, 5, and 7 were already in place) during the 2004-05 school year and must establish cut scores for these tests. Since standard-setting could not occur until summer 2005, the State asked ED for approval to delay 2005 AYP determinations for elementary and middle schools. Schools in improvement status in 2004-05 will be advised to continue in that status for the first semester of 2005-06. Once data are available for the new tests, AYP will be calculated and, as necessary, sanctions will be required not later than the beginning of the second semester of the 2005-06 school year. The data from all literacy and mathematics tests in the 3–8 grade span will be used under the regular timeline subsequently.

The other request in this area reflects a different perspective on the use of new assessment data. As States have moved closer to implementing assessments at additional grades in the 3 through 8 grade span, some have begun to question whether and how States must or may use the results of these new or additional assessments beginning in 2005-06 in the determination of AYP under the NCLB Act. Prior to this, most States appear to have assumed that the results of new assessments developed for administration at the additional grades must be used in school, district, and State AYP calculations beginning in 2005-06. Thus, most States have been engaged in the necessary related planning. However, recently a few States have taken a closer look at the NCLB Act and attendant Regulations coming to the conclusion that this assumption may be incorrect. If so, the next questions are, “What is the alternative?” and “What are the consequences of exercising this alternative?”

The applicable legal provisions are found in:

- Section 1111(b)(2)(J)(ii) of the Act: “Until the assessments described in paragraph (3) are administered in such a manner and time to allow for the implementation of the uniform procedure for averaging data described in clause (i), the State may use the academic assessments that were required under paragraph (3) as that paragraph was in effect on the day preceding the date of enactment of the No Child Left Behind Act….“ Thus, a State would have only to continue using, for AYP determinations, solely assessment results from one grade in each of the 3 to 5 and 6 to 9 spans as required under the Improving America's Schools Act of 1994 (IASA).
- Section 200.20(d)(1)(ii) of the Regulations: “(B) Report data resulting from the assessment under section 200.5(a)(2)” and “(iii) A State that averages data across years must determine AYP on the basis of the assessments under section 200.5(a)(2) as soon as it has data from two or three years to average. Until that time, the State may use data from the reading/language arts and mathematics assessments required under section 200.5(a)(1) to determine adequate yearly progress.”

22 Under section 1111(b)(3)(C)(vi), beginning in 2005-06, States must annually “measure the achievement of each student...in each of the grades 3 through 8 in, at a minimum, mathematics and reading or language arts….“ Previously, the assessments have been required to be administered at least once annually in the grade spans 3–5 and 6–9 in addition to once in the 10–12 grade span.
Given these statutory and regulatory provisions, it seems that States introducing new (additional) assessments in grades 3 through 8 in the 2005-06 school year have two options with respect to using the results in AYP determinations:

1. Use the results right away in making AYP determinations following the applicable NCLB Act requirements and their approved educational accountability systems.
2. Do not use the results in AYP determinations for newly tested grades in 2005-06. In order to exercise this option, the State would have to affirm in its accountability system that it follows the uniform averaging provisions of Section 1111(b)(2)(J) in making AYP determinations. Under this option, the first year that assessment results for newly tested grades would have to be incorporated in AYP decisions would be in conjunction with those made in 2006-07 if the State averages data over two years or 2007-08 if the State averages data over three years. States exercising this option will still be required to “report” the new/additional scores annually. However, exactly how these are to be reported is unclear at this time.

Using this logic, Washington was approved (September 1, 2005) to not include assessment results in grades 3, 5, 6, and 8 in AYP determinations until 2006-07, the second year that the assessments will be administered in those grades. The results will, however, be reported to students and included in the information on all school, District, and State report cards. Washington was also approved to use the results of writing in combination with reading assessments to determine language arts proficiency in grades 4, 7, and 10. The State had argued that its “writing assessment is a sophisticated, stand-alone test that examines another dimension of language arts.”

Before deciding on which of the two options above to follow with respect to AYP determinations beginning in 2005-06, States may want to weigh carefully a number of impacting variables (recognizing that how any given impact is viewed will be solely in the eyes of the beholder). Arguments for and against each option include the impact of:

- Making AYP decisions across grade levels given school building grade level configurations. Current law requires AYP decisions based on student performance at only two grades in the 3–8 span but potentially changes in 2005-06 to six grades in the 3–8 span. Since all States appear to make AYP decisions based on all grades in a building, the implications for a K–6 or K–8 building are quite different from that of a K–3 building.
- Increased likelihood of meeting minimum ‘n’ requirements for student sub-groups.
- Meeting the 95% participation rate requirement.
- Meeting the State’s Other Academic Indicator at this level.
- The impact on validity and reliability of AYP decisions by having more or less student achievement data to include.
- Using student data across more grades that are based on “status” measures versus “growth” measures and the extent to which scores are vertically linked.
- Student data management systems.
- Making safe harbor determinations.

**Banking of Test Results**

ED previously approved several requests to “bank” test results that will be used in AYP analyses when students have two or more opportunities to take these tests. As we noted last year, “The version of this practice that…is acceptable to ED involves the designation of a single test administration as the ‘official’ point at which students are expected to have acquired the knowledge and skills specified in the standards on which the test is based” (p. 4). Thus, if a student takes the test before the official point and achieves a “passing” or proficient score, the score is “banked” and the student does not have to participate in future administrations of the test.

New Jersey is the latest State to receive approval (August 25, 2005) to adopt this practice in connection with the administration of its High School Proficiency Assessment. The official administration date will be
spring of grade 12 with other opportunities to test occurring in fall and spring of grade 11 and fall of grade 12.

ED approved (June 29, 2005) Wyoming’s request to use results from early testing opportunities beginning in January 2006-07. Schools will be able to bank results and allow students who miss the passing score to retest in April. In addition, high school students can test twice in grades 9 and 10 and once in grade 11 prior to the official administration in April of grade 11.

Washington (approved September 1, 2005) will allow students to take certain assessments before they are required and does not want to discourage schools or districts from permitting this option or to penalize them if a student is not proficient in an early attempt. Therefore, the State will not count as a first attempt an early attempt of an assessment unless they are found to be proficient. Students scoring proficient on an early attempt will have their results counted in the year they are expected to take the test the first time.

ED approved (August 19, 2005) Virginia’s request to use passing scores on an “expedited” Standards of Learning (SOL) test at grade 8 and the high school level for AYP purposes. The SOL tests are end-of-course assessments required for graduation; expedited tests are re-tests afforded to students who either miss the scheduled administration of a test or take the tests but score below the passing score within a specified margin. The State had also asked to include re-tested students who initially failed due to exceptional and mitigating circumstances. The State argued that schools should receive credit for students who re-test and pass in the same year, especially when the results may have been impacted by external factors.

End-of-Course Assessments
At the high school level, a number of States have opted to use end-of-course (EOC) tests; generally, these tests cover content such as English I for reading or language arts and Algebra I for mathematics. It must be noted, however, that tests at the high school level must be aligned with standards that apply to all students; use of an algebra test for AYP purposes may be problematic if the State’s academic content standards for high school mathematics include geometry. ED generally grants approval for these requests under the following conditions:

- The EOC tests are for a high school course that all students are required to take to graduate from high school and all students are required to take the EOC tests. (States do not have to require students to pass these assessments in order to graduate.)
- The EOC tests measure the depth and breadth of the content that the State expects all high school students to know and be able to do by the time they graduate.
- The State has documented how it will bank and use scores from early administrations when used for AYP percent proficient and participation rate calculations.

In March 2005, North Carolina received approval to begin using the results from its EOC tests in English I, grade 10 writing, and Algebra I in AYP calculations. As usual with its approval of these requests, ED is requiring North Carolina to re-set the related starting points, AMOs, and IGs.

Alaska informed ED in December 2004 that it intends to implement a revised High School Graduation Qualifying Examination that will incorporate grade 10 tests for AYP purposes (approved August 22, 2005). Maryland received approval (July 5, 2005) to replace its Reading 10 Maryland School Assessment with an English EOC assessment at grade 10; a course students must pass for high school graduation.

---

23 Information regarding States’ use of EOC tests can be found under Statewide Assessment Systems at http://www.ccsso.org/projects/Accountability_Systems/State_Profiles/.
Adequate Yearly Progress Model

The requests summarized in this section relate to how AYP is calculated and applied. We first describe amendments related to the application of AYP to school and districts and then the amendments to AYP indicators. The final three summaries relate to annual measurable outcomes and intermediate goals, States’ strategies for enhancing the reliability of their AYP decisions, and safe harbor calculations.

As a general practice, every State makes AYP decisions based on the progress of all students in a school and district. However, section 1116(b)(1)(D) of Title I permits AYP calculations for schools operating Targeted Assistance Programs to be based solely on the progress of those students served, or eligible to be served, in the program. Last year, North Carolina became the first State to amend its accountability plan to permit this as an option for LEAs. Later in the year, ED approved a similar request for California (October 1). In California, schools opting for this method must notify the State by the beginning of school year that they will be doing so. In North Carolina, districts may not change a school’s status from schoolwide to Targeted Assistance after the school year begins.

Adequate Yearly Progress Application

Accountability for Schools and Districts that Serve Few Students or Limited Grade Ranges

Calculating AYP for small schools and districts warrants special consideration because high stakes are associated with scores based on relatively small numbers of students. States are required to make annual AYP decisions for all schools and districts, regardless of their size, and have taken a variety of approaches meant to enhance the reliability of these decisions.

Michigan received approval (January 6, 2005) to use “a confidence interval around its annual measurable objectives to calculate AYP for very small schools.” On March 3, 2005, Montana received approval to apply (for 2003-04 only) its rural small school/small subgroup confirmatory review process, which involves consideration of data sets derived from multiple years to make AYP determinations, whenever the minimum ‘n’ is not met (the State uses 30 for the all students group and 40 for other student groups). In late March 2005, following ED’s response letter and assertion that it would work with the State to “find an acceptable approach for making AYP determinations for the 2004-05 school year and beyond, Montana asked to apply this tiered process to all AYP calculations. The State used an extensive grass-roots process to design the system and included detailed rationale and supporting data with its request for ED approval.

Nebraska was approved (August 11, 2005) to remove its provision in which data are accumulated over three years “to ensure that small schools and districts are accountable for all students.” Schools or districts that serve fewer than 30 students will be held to the provisions of other State accountability policies. In Nebraska, more than one-half of the LEAs are elementary only, with most having enrollments under 100. The average enrollment in these districts is 30 students; thus, they do not meet the minimum ‘n’ requirements in tested grades even when data are rolled up over a three-year period. The State’s legislature passed a bill last year that would consolidate and reduce the number of LEAs from about 480 to 230. However, local school districts appear to have been successful in forcing a statewide referendum on the matter.

Oregon, which was approved (May 16, 2005) to make AYP decisions for school districts based on student performance at three grade spans, will make accountability determinations by combining all grade spans for districts that comprise a single school and do not meet the minimum ‘n’ of 42 test scores over two years. California (October 1, 2004) amended its AYP determinations for schools with fewer than 100 students to be based on current year data only instead of aggregating across two or three years.

[State3] has applied an alternate AYP method (which was not described in the amendment request) for schools that do not meet minimum n requirements in at least one-third of the assessed grades, and has requested approval to expand the alternate method to schools where the minimum ‘n’ is not met in one or more assessed grades. This request was accompanied by a request to increase the minimum group size
from 30 to 60. In addition, [State3] has asked to aggregate scores across years within grades across years; previously, this state aggregated data for multiple years across all grades.

**Hawaii** received approval (July 25, 2005) to use four options in making AYP determinations for schools that do not include grade levels assessed under the statewide testing program. These schools can choose to use results from school-selected assessments of mathematics and reading; results for students in the first tested grade in the next school that their students attend; results for students in the last tested grade in the previous school that their students attended; or results from State selected assessments of mathematics and reading proficiency. The changes are intended to give greater flexibility to these schools instead of relying solely on back-mapping or forward-mapping strategies.

**Full Academic Year Definition**
The calculation of percent proficient on State assessments is based on the performance of students enrolled for a full academic year (FAY). States are required to define what constitutes enrollment for a FAY. In defining FAY, ED has generally given States considerable latitude provided that the definition does not go beyond the equivalent of what typically constitutes a school year (e.g., 180 to 190 days in which a school might be in session). For States with year-round schools defining FAY can be especially challenging. In **Hawaii**, for example, FAY is defined as continuous enrollment through two consecutive spring testing windows (the current year and the previous year), but cannot extend beyond 365 calendar days.

A few States have found it necessary to modify the FAY definitions they adopted in 2003. This year, **Alabama** (June 23), **Illinois** (September 15), and **New Mexico** (January 4) received approval to change their FAY definitions. **Alabama** changed its definition to enrollment from October 1 to the testing window. **New Mexico** changed its definition from enrolled in the school district on the 40th day of school to enrolled from test cycle to test cycle. **Illinois**, which has a number of year-around schools will change from “the last school day in September” to May 1 of the preceding school year “through the next year’s state assessment.”

[State5] proposes to amend its FAY definition to include parts of two instructional years. If approved, “only students who were enrolled in the same school district during the current and previous year’s testing window would have their scores included in the district’s proficiency calculation.” Students enrolled in schools within districts but who move from one school to another in the same district would have their test results included in the second school’s AYP determinations.

**Identification for Improvement Based on Same Subgroup and Same Subject**
As reported in our other two papers on State accountability plans, ED has consistently rejected proposals to limit identifications for improvement to cases where the same student group misses the same AYP indicator twice in two consecutive years (misses in the same “cell” two years in a row). Both the law and regulations are silent on this matter; the only published rationale we have found was included in ED’s response letter to **West Virginia** (December 31, 2003): “This identification [same cell two consecutive years] procedure is not consistent with the statute or regulations,” although no legal basis was cited in support of this statement.

**Hawaii** was one of the States that originally proposed to use the “same cell” approach. The State noted that “while undocumented in regulations or non-regulatory guidance, a bar to invoking ‘same subgroup’ is apparently a policy decision by the U. S. Secretary of Education. The Hawaii Department of Education respectfully suggests that eliminating ‘same subgroup’ weakens the consequential validity of the NCLB accountability design, its perceived fairness and will present serious and potentially unfeasible challenges to providing sufficient support and assistance to the large number of under-performing schools.”

Using similar rationales, States ([State8], [State9], [State10], [State11], and [State12]) continue to request permission to use the same cell strategy. [State9]’s request reflects the arguments other States have offered:
After working with these schools [those identified for improvement based on missing AYP for any subgroup in the same subject for two consecutive years] for a number of years, [SEA in State9]'s experience has shown that it is difficult for schools to develop meaningful school improvement plans when they face a moving target. Schools identified for improvement due to a different subgroup each year have a difficult time determining whether the problem is due to an anomaly, is a function of the definition, or whether it is truly a problem that can be traced to academic achievement and their program. A moving target, such as one in schools identified by a different subgroup each year, leads to a sporadic and inconsistent implementation of school improvement efforts. Applying sanctions only to schools consistently failing to make AYP for the same subgroup and subject will ensure that school improvement efforts are focused on schools with systemic issues of academic underperformance. This lends a great deal of credibility to the formal school improvement identification process and removes the convenient excuse that the identification was a function of the definition.

[State10] further notes that "our understanding is the same subject rule was approved in part because the challenges raised in promoting student achievement in reading and math were properly understood as different pedagogical challenges. We believe that the same educational rationale often applies to the challenges associated with improving subgroup performance and closing achievement gaps."

[State6] would like to limit identification of schools and districts for improvement as follows: "if a school or district is meeting adequate yearly progress (AYP) in all categories and subgroups except special education, that school/district should not be identified as needing improvement under NCLB. Rather, the school/district must allow the strategic interventions associated with missing AYP to fall to the special education program and providers (e.g., choice, supplemental educational services, curriculum changes, professional development). If the school/district does not achieve AYP for special education students within two years (or additional subgroups within the school also fail to make AYP), the NCLB strategic interventions will apply to the whole school/district." In making this request, [State6] argued that, "By definition, students classified as IEP are placed in these programs because an evaluation process has determined that they will be unable to reach 100% proficiency without modifications and accommodations. We also are concerned that NCLB may undermine the authority of IDEA and IEP teams by requiring special education students to take regular state assessments even if the IEP team determines the student is incapable of performing at this level." The State concluded, "Schools [and districts] with large enrollments of IEP students are penalized simply for having students that begin below grade level, which was not the intention of NCLB."

Similarly, [State17] proposed to identify schools and districts (through 2005-06) "when all tested grades do not make AYP in the same subject and subgroup for two years in a row. Beginning in 2006-07, districts and schools will be identified for improvement...when a majority of tested grades do not make AYP in the same subject and subgroup two years in a row."

[State17] also indicated that it will not identify schools and districts for improvement or apply the next step of sanctions based only on the proficiency results of SWDs and ELLs. The State argued that:

Students are usually placed in these groups because they are not proficient...and...the mobility that occurs in these programs makes it difficult for the group to achieve substantial improvement. Test scores for these groups are also susceptible to larger variations from day to day than those of students in other subgroups, so AYP results for these subgroups are more subject to Type I errors. In addition, some schools and districts have higher concentrations of SWDs and/or ELLs because of special programs and/or the ability to best serve these populations, and this policy would avoid creating a disincentive for such programs where they are educationally beneficial. Finally, the scores of SWDs and ELLs are included in at least 2 to 3 additional subgroups, ensuring they are included in accountability determinations.
Identifying School Districts for Improvement

As noted in our last paper (Forte Fast & Erpenbach, 2004, p. 9), ED approved a new approach to how school districts or LEAs could be identified for improvement. In this approach, sometimes referred to as the Tennessee model because the State was among the first to advance it, districts are identified for improvement only if they miss an AYP target for two consecutive years in the same subject across all grade spans (e.g., reading 3–5, 6–9, and 10–12). Over the intervening year, many other States requested and received approval to incorporate this approach into their accountability plans. In more recent approvals of this amendment, ED has added “missing AYP in the additional indicators across all grade spans” to some response letters but not all.

This year, several more States have requested permission to use the Tennessee model for district identification, including Alabama (approved June 23); Alaska (approved August 22), [State13], Illinois, (approved September 15), Indiana (approved May 9), Maryland (approved July 5), [State14], Mississippi (approved June 29), [State15], New Jersey, (approved August 25), [State16], New Mexico (approved September 1), Pennsylvania (approved August 11), South Carolina (approved August 8), Virginia (approved August 19), [State17], and Wisconsin (approved January 6). In making these requests, two States did so with interesting variations:

- In Illinois, there are 103 high school only districts (11.6%) and 381 K – 8 districts (42.9%). The State will treat the high school only districts based on the same criteria used for school AYP determinations. When a school district has two grades (3–5 and 6–8), AYP targets would have to be missed in each grade span in the same content area for two consecutive years in order for the district to be identified for improvement.
- Virginia added “same cell” to the criteria for identifying districts—basing AYP on the same subject, same group, and all grade spans for two consecutive years. ED did not appear to approve the same group criterion.

North Carolina received approval (June 29, 2005) to expand from two grade spans (3–8 and high school) to three grade spans (3–5, 6–8, and high school) the basis for determining school district AYP. New Jersey will give technical assistance priority to LEAs most in need of that support using a “triage approach.” The State will use two additional criteria— 50% or more of the schools within a district have not met AYP and less than 90% of the measured AYP indicators in all schools across the district have been met.

California had permitted districts missing AYP targets to change their AYP status if their low-income students met a prescribed performance target on State assessments. Although NCLB permits the use of additional indicators in AYP calculations, these indicators cannot be used in a compensatory manner to avoid identification. Thus, although ED will not permit California to calculate AYP for school districts in this manner, it did approve its use of the “Tennessee model.” With the compromise, the number of districts identified for improvement in the State increased from 14 to 184 last year (Davis & Sack, 2005, p. 6).

Arizona is awaiting ED’s approval to apply the “Tennessee model” logic to school-level AYP decisions. Under the State’s proposed change, in order for a school to not meet AYP, it would have to miss an AMO in the same subject and same grade for two years in a row; fail to meet the 95% test participation rate for students in the same subject and same grade for two years in a row; or fail to meet the OAI for two years in a row. The State currently makes AYP determinations at the grade level. A school that misses an AYP target in any grade in all of the bands 3–5 and 6–9, and/or high school is identified for improvement. For example, a 6–8 school could miss a target in the same subject in grade 6 one year and in grade 8 the next year and be identified for improvement. A K–8 school would have to miss in both of the spans 3–5 and 6–8 to be identified for improvement.

ED approved Florida’s request to add a new designation, “Provisional AYP,” for its schools not making AYP targets which are graded A and B under the State’s A+ Plan. The State grants the “Provisional” designation to these top performing schools for up to three years as they work to meet their AMOs.
Schools receiving the “Provisional AYP” designation are not exempted from the sanctions imposed under the NCLB Act.

[State19] will determine AYP status based on separate results of each grade tested, although averaging results across grades will be permitted.

**Adequate Yearly Progress (AYP) Indicators**

AYP indicators are the statistics States use in their AYP models. States are required to use percents proficient for reading or language arts and mathematics (or an approved proxy; see also the discussion of growth models in the introduction section of this paper); participation rates for reading or language arts and mathematics; and at least one other academic indicator, which must include the graduation rate at the high school level.

**Percent Proficient**

Unlike the trend during the 2003-04 school year, a number of States have requested changes to the indicator used to reflect student achievement. A few of these requests were similar to those that were seen last year. For example, in January 2005 Wisconsin received approval to use only students who are tested and enrolled for a full academic year in the denominator to calculate student achievement in reading and mathematics. [State20], raising a concern that has been argued without success by other States, is proposing to place students who receive multiple special services in only one special services group for AYP determinations. The State points out that schools and districts having large numbers of students who qualify in multiple categories (e.g., special education, ELL, and economically disadvantaged) ends up over-identifying these schools and districts for improvement. This proposal is similar to Delaware’s original plan (which was denied) to apportion results for students across the multiple groups for which they qualify.

Hawaii received approval (July 25, 2005) to use “the standard error of the proportion to determine whether the proportion of students who are ‘proficient’ (i.e., who ‘meet’ or ‘exceed’ the State’s academic achievement standards) in math and reading is significantly lower than the proportion of students who should be ‘proficient’ in math and reading.” The State says that the standard error of the proportion is limited to not more than five percentage points and applied only if a subgroup at a school or district level is deemed not to have met the AMO for reading or mathematics.

**Percent Proficient—Using Indices**

A number of requests reflect a growing interest in using an index in lieu of the percent proficient statistics. States have generally been permitted to use an index as long as reading or language arts and mathematics are calculated separately and the index is not weighted such that performance at higher levels (e.g., proportion of students scoring in the advanced achievement level) compensates for lower performance (e.g., proportion of students scoring in the below basic achievement level).

Some States will use indices that more heavily weight performance at higher achievement levels than performance at lower achievement levels; others use indices to adjust for differing numbers of students in the grades within a school.

New Mexico’s request (approved January 4, 2005) is an example of the former model. This State will use a model that weights performance above the lowest achievement levels but does not give extra weight to those scoring above proficient. In combination with this index, New Mexico requires schools to increase the percent of students scoring proficient in order to make AYP.

Mississippi’s index (approved June 29, 2005) weights the proportion of students scoring in the proficient or advanced achievement levels by 1.0, the proportion of students scoring in the basic achievement level by 0.5, and the proportion of students scoring in the minimal achievement level by zero. [State21] has requested permission to use a similar weighted index. Pennsylvania received approval (August 11, 2005) to use the Pennsylvania Performance Index to evaluate school and district AYP whenever targets are not met through status or safe harbor reviews. The model recognizes changes across the full range of
student academic achievement there but does not allocate extra points for students scoring at the advanced proficient level.

**South Carolina** (August 8, 2005) will “use a statewide proficiency index to calculate AYP” for both status and safe harbor determinations in addition to the standard AYP calculations required under the law. The index is used in two ways:

1. A statewide index value is calculated to determine if a subgroup is making sufficient progress to lead to 100% proficiency by 2014.
2. Index values will be determined for each subgroup to see if that level of improvement is sufficient to lead the group to 100% proficiency by 2014.

To establish baseline indices, scores of proficient or advanced in 2003-04 were weighted 100; basic scores 75; below basic 2 scores 50; and below basic 1 scores 25. Values were then summed and divided by the total number of scores. When all students score at the proficient level or above, the index will equal 100. To set the statewide index value, the State identified schools at the 20th percentile based on enrollment and calculated the performance indices. To set the subgroup values, the State will determine subgroup indices and subtract those from 100 and divide by the number of years to 2014. Values will be recalculated annually.

As an example of the latter type of index, **Alabama** (approved June 23, 2005) adopted a model from **Mississippi** and will use a proficiency index that combines results from grades 3 through 8 and 11 when they are within a school. The State will calculate separate proficiency indices for the 3 through 5, 6 through 8, and high school grade ranges for LEA AYP calculations. The State has set separate reading and mathematics starting points for each grade and explains the calculation of its school-level index with the following example for a hypothetical school serving grades 4 and 5 (separate indices are calculated for each student group):

1. Grade 4 AMO for reading = 49% proficient
   Grade 4 students (n = 20) actual percent proficient = 54%
   Difference between actual percent proficient and AMO = +5%

2. Grade 5 AMO for reading = 35% proficient
   Grade 5 students (n = 30) actual percent proficient = 20%
   Difference between actual percent proficient and AMO = -15%

3. Calculate proportional weights for each grade = number in grade ÷ total number in the student group:
   grade 4 weight = 20/50 = .4
   grade 5 weight = 30/50 = .6

4. Multiply the differences between actual percent proficient and the AMO by the grade weights to determine the overall index:
   School-level reading proficiency index = .4(+5%) + .6(-15%) = (2%) + (-9%) = -7%

A proficiency index of zero or higher indicates that the AMO has been met by the subgroup. If the index is negative, the State applies a 99% confidence interval to determine if the index is significantly below the target.

**Participation Rate**

In spring 2004, Education Secretary Paige issued two letters (Paige, March 29, and Paige, May 19) announcing that States could average data across two or three years when calculating participation rates for any group that failed to meet the 95% threshold in the most recent year. Several States then modified their accountability plans to include this proviso. Additional States making this change since last year are **Alabama** (June 23, 2005), **Kentucky** (August 15, 2005), **Maryland** (July 5, 2005), **Michigan** (January 6,
2005), Minnesota (December 27, 2004), Montana (March 3, 2005), and New Mexico (January 4, 2005)—which also included approval to increase the minimum 'n' for participation rate to 40 in that State. (Twenty-five is used for other subgroup determinations.) [State22]'s request to average participation rate data is pending ED approval. California also received approval in late 2004 (October 1) to conduct multi-year averaging in participation rate determinations.

On August 9, 2005, ED advised Colorado that it could not award a “zero score” for students who do not participate in State assessments rather than exclude these students from the participation rate. The state had indicated that it was unfair to penalize schools and districts twice for ELLs who are not able to take the assessments in English (once in the participation rate and again in the percent proficient). Restating a position it has consistently held original 2003 reviews, ED commented, "It is not sufficient for the State to automatically assign a 'not proficient' score (in the absence of actual test data) in lieu of identifying that student as not participating. There is flexibility with regard to 'recently arrived' ELLs who are in their first year of enrollment in U. S. schools." Further, "any student for whom the State does not have an achievement result must be counted as not participating in the statewide assessment system and counted in the denominator for the calculation of participation rate."

[State23] would like to provide different consequences for schools that fail to make AYP on the basis of participation only. The State did not elaborate on what the different consequences might be. [State24] wants to count as “participating” SWDs who take assessments with adaptations, arguing, “while we recognize the students’ scores will be counted as ‘not proficient,’ we believe it to be a matter of fairness that the time and effort taken by the individual students and their aides to take the tests should be acknowledged by inclusion in the participation rate.”

Washington received approval (September 1, 2005) to use “traditional rounding rules” when making safe harbor determinations and calculating participation and graduation rates.

Participation Rate—Medical Emergencies
As we reported in our second paper, ED provided additional flexibility in 2004 concerning students who miss State assessments due to medical emergencies. States were permitted to exclude these students in participation rate calculations. The flexibility letter (Paige, March 29, 2004) did not mention medically fragile students unable to participate in these assessments and few, if any, States appear to have considered the circumstances faced by this group of students to constitute a “significant medical emergency.” The flexibility letter was followed by another from Assistant Secretary Simon (May 19, 2004) in which the flexibility was repeated with respect to students with “significant medical emergencies” and included an example of a student recovering from an automobile accident.

However, in late 2004, it became clear that a number of States determined they had greater flexibility than originally believed with respect to what constitutes a “medical emergency.” The Secretary’s original letter provided that, “States do not have to include a student with a significant medical emergency in the participation rate calculation. States desiring to use this flexibility are responsible for determining what constitutes a significant medical emergency.” States appear to have found that the best approach is to simply add a statement to the effect that, “The State plans to utilize the flexibility afforded in the Secretary’s letter of March 29, 2004, with respect to not including in the calculation of Participation Rates those students not tested due to a medical emergency.” Thus, if a State wishes to include medically fragile students in its definition of students not tested due to a medical emergency, it may be best to avoid stating this explicitly.

Montana’s request to include this change in its accountability plan was approved on March 3, 2005, as was Maryland’s (July 5, 2005) and New Jersey’s (August 25, 2005). Kentucky implemented the policy earlier in the year.
Other Academic Indicators at the Elementary and Middle School Levels

Last year, only a few States requested changes related to their other academic indicators (OAIs) at the elementary and middle school levels. The most commonly requested change allowed progress toward a specific target instead of meeting or exceeding the target.

**North Dakota** received approval (August 10, 2005) to apply a one-year lag to its K–8 OAI (attendance) for the 2003-04 and 2004-05 school years because the State has changed from a spring to fall testing and will begin using prior year's data for attendance rate determinations. ED indicated that, “No schools or districts will be held in double jeopardy. If they miss the attendance target in 2003-04, they will not be considered as missing AYP in 2004-05 because doing so would put them in school improvement based on one year’s data.”

This year, **New Mexico** has been approved to use only one OAI (attendance) at the elementary and middle school levels (although it has always used only attendance, having never implemented its original plan to use multiple OAIs). [State26] will continue to use three indicators at the elementary and middle school levels but has requested approval to change the third indicator.

[State27] would like to lower its attendance rate target for elementary and middle schools from 94 percent to 91 percent. The State pointed out that attendance rates at the middle school level are lower and show much more variation than at the elementary school level. The State will continue to require that the target be met or that schools make at least a one percentage point improvement over the previous year.

**Kentucky**, which had earlier received approval to use “the prior year accountability index” (attendance and retention in the elementary grades and attendance and drop-out rate in the middle grades) as the OAI at the elementary and middle school levels received approval (August 15, 2005) to replace that measure. The State will now use the Commonwealth Accountability Testing System (CATS) “biennial classification and the CATS mid-point classification, whichever is the most currently available classification.” According to the State, CATS is the entire assessment and accountability system and includes seven content areas plus other non-academic indicators. CATS accountability determinations occur only in even-numbered years. Because of this, the State also uses CATS midpoint classifications in odd years, so appears to satisfy NCLB requirements for annual accountability determinations).

[State28], citing section 1111(b)(2)(I)(i) [the safe harbor provisions] and arguing that the law requires AYP decisions to be based primarily on participation rates and student achievement, would like to use its OAIs only in connection with safe harbor reviews. [State29] proposed to discontinue use of OAIs entirely.

**Graduation Rate**

Most amendment requests related to graduation rate relate to the production of disaggregated rates, the inclusion of SWDs who take additional years to graduate as specified in their IEPs, the averaging of rates across two or three years, and changing from a requirement for schools and districts to meet or exceed an annual target to making progress toward that target.

Although States have some latitude in how these rates are calculated, they must be able to produce disaggregated results for reporting and safe harbor purposes. Many States were initially unable to disaggregate their graduation data because they had traditionally collected these data as summary indicators at the school and district level. These States have been allowed to use proxy indicators while they scale-up collection of the student-level data necessary for disaggregation.

As noted in the preceding subsection, **North Dakota** received approval (August 10, 2005) to apply a one-year lag in its OAIs as the State changes its testing window from spring to fall. The lag for graduation rate calculations will be applied to the 2004-05 and 2005-06 school years.
[State30] has requested an extension from 2006 to 2010 as the date when it will report disaggregated graduation rates, since the state’s student data collection system is new and student-level graduation data are not yet available.

Last year, five States—Delaware, Kansas, Kentucky, Tennessee, and Washington—received approval to modify their definition of graduation rate to count as graduates SWDs who take longer than four years to complete high school consistent with a timeframe provided for in their IEPs. This year, Iowa (August 11, 2005), Nebraska (July 8, 2005), New Mexico (September 1), and South Carolina (August 8, 2005) were approved to include in their definition of “graduate” those SWDs whose IEPs call for longer than four years to complete high school and earn a standard diploma and who do graduate in this extended time frame. In addition, Nebraska became one of the first to receive approval to extend graduation for English language learners (ELLs) who are enrolled in an ESL or bilingual education program that provides services designed to allow a fifth year in order to receive a regular diploma. Inclusion of ELLs will be on a case-by-case basis determined by the district.

Virginia was approved (August 19, 2005) to modify its graduation rate to what it calls a "stratified" graduation rate. This statistic includes both SWDs and ELLs who take more than the standard number of years to complete high school in the numerator. SWDs will be included when additional time is required to receive a high school diploma consistent with the student’s IEP team determinations. ELLs will be included when additional time is indicated by the student’s school-based ELL team which will determine what constitutes "standard number of years" for these students.

Georgia (approved July 1, 2005) will change its graduation rate calculations beginning in 2005-06 to permit schools and districts to "count, on a case-by-case basis (with documentation), ELL students [as graduates] if these students graduate with a regular diploma within five years and a summer."

New Jersey was approved “on a case-by-case basis, to allow up to 6 years” in its calculation of graduate rate for “all students with disabilities if a regular diploma and additional time are specified in their IEP, limited English proficient students that entered the country in high school, and students who have experienced extended periods of approved medical leave.” The State argued that it has “identified students acquiring knowledge, but due to circumstance to no fault of their own, need an additional year to graduate.”

New York has 20 high schools in which students attend for five years and upon completion receive both a high school diploma and an associate’s degree. ED approved (July 28, 2005) the State’s request to calculate a five-year graduation rate for these schools and use that rate for AYP purposes.

South Dakota received approval (August 5, 2005) to reduce its graduation AYP target from 90% to 80%, which “is based on four years of data for the ‘all student’ group and is set one standard deviation below the State average.”

Washington was approved (September 1, 2005) to make several changes in how graduation rate is calculated and used in AYP:

- calculate for AYP purposes a graduation rate that takes into account students who take more than four years to complete graduation requirements. Both graduation rates will be reported—one based on “standard number of years” and one based on “extended number of years”—but the extended rate will be used for AYP purposes
- allow ELLs and migrant students more than four years to graduate when determined on an individual basis that more time is needed
- change the graduation target from 66% or a one point annual increase to annual increases of one point from 2006 through 2009 followed by three point increases from 2010 until reaching 85 percent in 2014
- use “traditional rounding rules” (the State does not use confidence intervals around graduation rates)
• report and use for accountability purposes dropout rates for high schools that do not serve grade 12

Growth Models
As reported in *Education Week* (Olson, 2005, May 25), Florida was the first State to request approval for a growth model approach to AYP determinations under the new flexibility announced by Education Secretary Spellings on April 7. The State “proposed using a measure of individual student improvement under the law’s ‘safe harbor’ provision that would permit schools to make adequate progress as long as there were more students who maintained or moved up to proficiency in the current school year than in the prior school year [p. 19].”

[State40] has proposed to use an “individual growth model” as an alternate means for AYP determinations for its schools and districts. The State did not describe any particular model that would be used for this purpose, but simply stated that, “if a subgroup has not met the measurable objectives or safe harbor provisions, but has demonstrated significant growth, the subgroup would still make AYP. Looking at progress over time within a particular group of students rather than looking at a snapshot of students at a single point provides better information with which to make decisions about the instructional process.”

Annual Measurable Objectives and Intermediate Goals
In their original accountability plans, States were required to describe the trajectory of annual measurable outcomes (AMOs) and intermediate goals (IGs) that would lead from their baseline percent proficient to 100% proficient by the 2013-14 school year. The IGs are increases in the performance targets and can occur every year (so they are the same as the AMOs), every other year, or every third year. Most States initially chose patterns of annual increases or increases every third year, but a number later adopted the “back-loaded” model that Ohio originated. This model uses increases every third year in the beginning but accelerates the rate of increase to every year at the end.

In early May 2005, Florida received approval to change the pattern of its IGs from larger increases once every three years to smaller annual increases. The result is that the State’s targets for 2004-05 will be 37% proficient in reading instead of 48%, and 44% in mathematics instead of 53%. Although this approval received much media attention at the time, it is really not surprising given that the overall timeline for reaching 100% proficient did not change and the annual increases are of equal size. Virginia was approved to make the same change (August 19, 2005) without fanfare.

Missouri was approved (December 27, 2004) to use “ten intermediate goals that increase in equal increments for determining adequate yearly progress.” Included in this was changing the State’s 2004-05 targets from 38.8% to 26.6% in communication arts and from 31.3% to 17.5% in mathematics “to limit the negative consequences for schools across the state.”

Several states have been granted permission this year to revise their trajectories when they adopt assessments in new grades. Montana (March 3), New Mexico (January 4), and South Dakota (August 5) will all recalibrate AMOs and IGs due to the introduction of new or redeveloped assessments. In every case, these revisions must still lead to 100% proficient in reading or language arts and mathematics by 2013-14. Alabama (approved June 23, 2005) set new a trajectory for reading at grades 3, 5, and 7 and a new trajectory in mathematics at grades 3, 5, 7, and 8. The State had previously set a trajectory in reading for grades 4, 6, 8, and 11 and in mathematics for grades 4, 6, and 11. Nevada received approval late last year (October 6) to update its intermediate goals “as a result of introducing new assessments at the elementary level.”

Strategies to Enhance Reliability
As we described last year, States use a variety of strategies meant to enhance the reliability of their AYP decisions; generally, States’ primary concern is to reduce the likelihood that schools and districts will be misidentified as needing improvement when they do not. Most States specify a minimum number of students required for AYP calculations and many also use confidence intervals around one or more of the
AYP indicators. Some States combine data across two or more years to help reduce the impact of year-to-year difference in student samples on AYP decisions.

With regard to this last point, Kentucky (August 15, 2005) will “use a rolling average when calculating AMOs for reading and mathematics.” According to the approval, “if a school does not meet an AMO on the current year aggregated average of the performance of elementary, middle, or high school students, the aggregated average may be computed on the most recent two or three years of student performance data in reading and/or mathematics.”

Minimum ‘n’
Like last year, several States have requested approval for changes to their minimum “n’s” for AYP determinations. The minimum ‘n’ is the fewest number of students for which AYP will be calculated according to the State’s general AYP rules. If the total number of students in a school is below the minimum ‘n’, the State must use another method for determining AYP. AYP does not have to be calculated for groups within a school (e.g., students with disabilities) that do not meet the minimum ‘n’. Some states use different minimum “n’s” for different groups and for each of the AYP indicators.

[State32] proposed to increase the minimum ‘n’ for participation rate from 30 to 60. This State argued that its current minimum of 30 is below the national average of 40 and that a minimum of 60 means that schools will miss the 95% target when only 5 students are not tested. Hawaii will increase its minimum ‘n’ for all AYP indicators from 30 to 40 students (approved July 25, 2005).

Several States have shifted to proportional minimum ‘n’ models. Georgia received approval (July 1, 2005) to use a minimum ‘n’ for student groups “that is directly proportional to the overall student population. Group size for proficiency in reading or language arts and math is 40 students or 10 percent, whichever is greater (with 75 student cap).” Illinois was approved (September 15, 2005) to use a subgroup size of 45 with a 95% confidence interval. The State had originally requested permission to use a model similar to Georgia’s, but with three different applications. For participation rates, the minimum ‘n’ would be either 50 or 15% of enrollment in the tested grades, whichever is greater. For percent proficient, the minimum ‘n’ would be either 50 or 15% of valid test scores, whichever is greater. Finally, the minimum ‘n’ (for both participation and percent proficient) for limited English proficient students and students with disabilities, the minimum ‘n’ would be 60 or 15% of enrollment across the tested grades, whichever is greater.

[State34] proposed increasing its minimum ‘n’ from 30 to 40 for the all students group and from 40 to 50 for the other groups. The State, drawing on the model approved for Texas and California last year, also proposed that the minimum ‘n’ would be increased to 70 for groups where 50 students does not constitute 15% of the enrollment in the grade(s) tested. Similarly, Florida received approval in May of 2005 to change its minimum ‘n’ for group determinations from 30 to either 100 or 15% of the students in the tested grades, whichever is greater. The State will still report data for subgroups of at least 30 on school report cards. The State argued that its schools are more likely to miss at least one AYP target if they are large and serve diverse student populations. Florida officials estimate that had the change been in effect the previous school year, the number of schools making AYP would have more than doubled from 331 to 788 (there are approximately 3,382 public schools in Florida).

[State35] would like to use a district minimum ‘n’ for limited English proficient students and students of either 40 students or 15% of all tested students, whichever is greatest. The State reports having 260 districts (of 501 districts) where one or both of these subgroups are greater than 40 but less than 15% of all students tested. Virginia’s proposal to change its minimum ‘n’ for percent proficient in reading and mathematics to either 50 students or one percent of a school or district’s total enrollment, whichever is greater, was approved by ED (August 19, 2005). However, ED capped the 1% at 200 students.
Confidence Intervals

Some States included the use of confidence intervals (CIs) around their percent proficient indicators in their original accountability workbooks. Many more states sought approval in the past couple of years to increase the size of these CIs from 95% to 99% and to apply them to all AYP indicators. ED approved most of these requests but limited CIs applied to safe harbor indices to 75%.

This year, more states have been approved to use CIs around the percent proficient indicator. Mississippi (approved June 22, 2005) will now use a 99% CI rather than a 95% CI; New Mexico and Wisconsin will also use 99% CIs. Montana will use a 95% CI as will Hawaii.

As noted earlier, Illinois was approved to use a 95% CI in making AYP determinations. The State had also wanted to retain the use of a “3% error of measurement rate” (instead of using a CI) in schools and districts with student groups with more than 740 members. The State argued that, “we propose using a 95% confidence interval because any subgroup with less than 740 students will have more than a 3% measurement error rate. That is, any subgroup larger than 740 students will use a 3% error measurement rate rather than the 95% confidence interval. Based on additional analysis, 134 districts [of 891 in the State] have at least one subgroup which is larger than 740.”

Safe Harbor

The NCLB legislation does not mention the term, “safe harbor,” per se, but it is an apt description of provisions found under section 1111(b)(2)(I)(i) of the law. As it has been applied traditionally, a school or district can invoke safe harbor if a student group misses the percent proficient target, but makes the other targets and reduces the percent of students scoring below the proficient achievement level by at least 10% from the previous year.

A “surprise” approval last year allowed the use of CIs in safe harbor determinations. Although two states (Louisiana and Utah) had initially received approval to apply a 99% CI for safe harbor, ED limited the use of CIs for safe harbor reviews to 75% for other States and did not provide a written rationale at the time despite the request of several States to do so. Before granting the 75% CI approvals, ED required States to provide impact data regarding the number of elementary, middle, and high schools that used safe harbor and, of these, how many met AYP with the application of CIs and how many still missed AYP.

Among the States to receive approval this year to use a 75% CI in making safe harbor determinations were Delaware (May 9 and June 30), Indiana (May 9), Montana (March 3), Oklahoma (July 5), Pennsylvania (August 11), South Dakota (August 5), and Wisconsin (January 6). In its response letter to Pennsylvania, ED repeated the comment included in its response to Louisiana; “We have received sufficient information from States to conclude that the use of a 75% confidence interval for ‘safe harbor’ considerations is a viable means of determining AYP.”

This year, several more States requested amendments related to safe harbor for which decisions are pending.

[State] proposed the use of a longer period of time to determine AYP when using a safe harbor test. The State argued, “A 19% reduction over a 2-year period and a 27% reduction over a 3-year period is the equivalent to an average of 10% reduction per year. Since annual fluctuations occur due to changes in cohorts, it is appropriate to look at a longer trend when determining improvement levels.” Hawaii used the same rationale for its request (approved July 25, 2005) to calculate safe harbor by considering cumulative expectations for improvement over one, two, and three years. In this approach, a school or subgroup makes AYP if it meets participation rate, the additional academic indicator, and the number of students

---

24 CIs are statistical estimates of the range in which a school’s or a district’s “true” AYP score might fall given the score it actually obtained. For further information about confidence intervals, see Hill and DePascale (2003); Jaeger and Tucker (1998); Linn, Baker, and Betebenner (2002); and Marion, et al. (2002).

25 Louisiana’s approval permitted the CI to be used only in conjunction with the State’s growth measure; an additional accountability measure that also identifies schools for improvement when they do not make their growth targets. Utah did not provide the impact data required to finalize approval at this level.
who are not proficient decreases by 10% over one year, by 19% over two years, or by 27% over three years. **Hawaii** argued that there is no statute or rule expressly prohibiting the averaging of data in this manner nor are there statutes or rules regarding how data must be averaged. Therefore, the State further argued, neither should be interpreted to create related prohibitions or requirements.

[State37] also indicated that it intends to use 7% (instead of 10%) as the required reduction for SWDs and ELLs. In [State37], the average reduction in the percent of tested students not proficient in reading and mathematics is less than 1%, and 7% is the approximate percentile reduction achieved by the school at the 67th percentile. As State officials note, programs that served limited English proficient students and students with disabilities “have higher performers exit the program and are replaced by new students, who tend to be lower performers. This mobility makes it difficult for these programs to achieve the same level of improvement as other groups.” The State intends to round-up the percent reduction to the next whole number in safe harbor calculations because it does not use confidence intervals in these calculations.

[State37] also will not use the other academic indicators for any AYP determinations arguing that State law already requires public reporting of the information as well as school and district accountability for attaining the goals. [State38] proposes to use the other academic indicators only when conducting safe harbor reviews arguing that AYP decisions under the law “shall be based primarily on participation rates and student achievement on reading and mathematics assessments.”

[State39] wants to replace its current safe harbor measures with “individual student improvement (learning gains) to proficiency.” In this approach, the state would determine whether there were more students maintaining or moving to proficiency in the current year than in the prior year. “For example, School ‘A’ in 2003 had 100 students of which 40 were proficient and 20 moved up to proficient (60% of the students were proficient or moved to proficient in 2003). To make Safe Harbor in 2004, more than 60% of the students in School ‘A’ would have to maintain or move to proficiency.” No mention is made of what the minimum increase would have to be from one year to the next or whether averaging over two or three years would be permitted.

In **North Dakota**, schools and districts that miss their other academic indicator target can invoke safe harbor for that indicator (approved August 10, 2005). For example, if a student group misses the percent proficient target as well as the other academic indicator target, the State will determine whether a 10% reduction occurred in the percent missing the other academic indicator target over the previous year (e.g., 10% reduction in absenteeism). If the 10% reduction occurred, then the State will move to a safe harbor test for percent proficient for that student group. **North Dakota** employs uniform averaging in determining whether its OAIs have been met but does not use statistical tests in safe harbor determinations.

**Inclusion of All Students in the Accountability System**

States have struggled to develop fair and appropriate strategies for meaningfully representing students with disabilities (SWDs) and English Language Learners (ELLs) in their standards, assessment, and accountability systems. Nearly all have requested one or more amendments to this aspect of their accountability plans.

Last year, many States took advantage of the “additional flexibility” regarding the inclusion of students with special needs that ED offered through a series of letters in the spring of 2004. This year, States are again taking advantage of ED’s offerings of flexibility. In April 2005, Secretary Spellings announced new options regarding the inclusion of some students with disabilities who consistently work below their grade level and many States have applied for permission to use these options. ED also appears to be willing to grant a bit more flexibility in the inclusion of ELLs, but is doing so without a formal announcement. Amendment requests related to these and other inclusion issues are described below.
Inclusion of Students with Disabilities

Almost all recent amendment requests that pertain to the inclusion of SWDs relate to the 1% flexibility options ED offered in 2003-04 and the 2% flexibility options ED announced in May 2005. These options are described below.

In 2003 and 2004, ED (Paige, 2003, June 7; Paige, 2003, December 11; Paige, 2004, March 4) announced several new options for States' inclusion of SWDs in their accountability systems. In what became known as the “1% option,” States were permitted to develop an alternate assessment based on “alternate student achievement standards” for those SWDs with the “most significant cognitive disabilities.” The alternate standards must be based on the State’s academic content standards. All eligible students can participate in the alternate assessment and there is no federal cap on the number or proportion scoring in the proficient or above levels. All students scoring at or above proficient can count as such for district AYP purposes at the school level. However, the number of students who can count as having scored at the proficient or above level for AYP purposes is capped at 1% of all students in the grades assessed. At least ten States had received approval for the “1% option” by mid-2004 and more later in the year. This year, ED has approved additional requests from Michigan (January 6), Montana (March 3), and New Mexico (January 4).

ED recently approved (August 8, 2005) South Carolina’s request to “select at random” which student scores to report as non-proficient based on alternate student academic achievement standards when the number of scores at the proficient level exceed 1% at the school district level. In South Dakota (approved July 25, 2005), school districts with fewer than 200 students (105 or 62% of the State’s 169 LEAs) will “be able to count up to two proficient scores—based on alternate achievement standards—when calculating AYP.” This option was approved for one year subject to “a successful peer review” of the State’s regular and alternate assessment system. South Dakota will also be able grant exceptions to the 1% cap that might be needed by other districts if LEAs “with 200 or fewer students in the tested grades in fact have less than 1.0 percent overall of students with the most significant cognitive disabilities scoring proficient on STARRS [the State assessment system]. . . ."

On the other hand, ED did not approve Ohio’s request to “use proficient and advanced scores from alternate assessments in AYP decisions subject to a cap of 1.4 percent for the 2004-05 school year.” The State was, however, permitted to continue use of a 1.3 percent cap approved in 2004. ED indicated that the request did not appear warranted on the basis of the evidence submitted. The Department did leave the “door open” for re-submittal of the request if the State finds “that more than 1.3 percent of students actually achieve proficiency on the alternate assessment. . . ."

[State42] requested approval for an additional 2% exception to the 1% cap on proficient for alternate assessments administered to students with the most significant cognitive disabilities through the 2005-06 school year. The State provided extensive documentation supporting its assertion that [State42] schools enroll a higher proportion of students with significant disabilities than neighboring States, [State42] argued that it has much higher per pupil expenditures in special education than neighboring States or the nation, and has a unique indexing system that includes partially proficient students which increases the number of students whose proficiency is counted on alternate assessments.

[State43] plans to simply increase the percentage of SWDs considered proficient via an alternate standard to 3% beginning in 2005-06. The State’s position is that this avoids penalizing a school or district that gets all its students assessed via an alternate standard to be proficient.

As noted above, Secretary of Education Spellings announced plans in April 2005 for additional flexibility related to the inclusion of SWDs (Spellings, 2005, April 7 speech) in AYP determinations. Under these new options, States can develop “modified achievement standards” for students with “persistent academic difficulties,” but not more than 2% of all students in the grades assessed can be considered

26Although this student population was initially described in this manner, ED no longer uses the description to characterize the target group.
proficient on the basis of the modified achievement standards. The 2% allowance is in addition to the 1% who can be considered proficient on the basis of alternate achievement standards.

In guidance issued on May 10, 2005, ED offered three options for taking advantage of this new flexibility (Spellings, 2005, May 10). Interested States that can meet the criteria noted below can apply the “2% alternate” to 2004-05 AYP calculations. Only States that use the same minimum ‘n’ for their SWDs student group as for their overall group size are eligible to use the 2% options, although ED did not provide a rationale for this requirement. In making AYP determinations using one of the 2% options, a State also may not apply statistical tests and must agree to develop modified achievement standards.

- **Option One**—States that do not have and do not wish to develop modified achievement standards (which must be based on grade level content expectation) may, for 2004-05 AYP calculations only, add a number equivalent to 2% of all students assessed to the percent of SWDs scoring at or above the proficient level. To qualify for this option, a State must describe how it will take six prescribed steps to build appropriate assessment tools for the target group of students. This is a short-term option that anticipates the issuance of regulations governing the use of modified achievement standards.

- **Option Two**—States that have administered a high quality modified assessment statewide for two years or more prior to 2004-05 can use the results from this assessment for AYP purposes. Such assessments must be aligned with modified achievement standards as described above.

- **Option Three**—A State may offer another alternative for ED to consider.

It is important to note that a State approved to use one of the three 2% options can first evaluate every school’s AYP performance using its “regular” approach (even if that involves the application of CIs or other statistical tests) as long as they use a minimum ‘n’ for the SWDs group that is equal to that of the overall group size. For any school that misses AYP under the regular rules, the State would then apply its approved 2% option to determine whether a school that had missed an AYP target only because of the SWDs group had indeed demonstrated AYP for 2004-05 (but could not apply a statistical test to that determination).

States and researchers we talked with seemed to be in agreement that a high minimum ‘n’ and the use of confidence intervals will be more effective in minimizing the number of schools—especially those with small enrollments of SWDs—identified on the basis of the group’s results alone. Nevertheless, many States appear to have chosen to add the “2% rule” in spite of the prohibition against using a higher minimum ‘n’ for the students with disabilities group, the prohibition regarding the use of CIs or other statistical treatments in the 2% determinations, and with the understanding that there may eventually be additional costs associated with developing modified achievement standards and additional assessments. Representatives from several such States noted in conversations on this subject that they requested the flexibility in case it could help even a small number of schools.

Olson reported (2005, September 21, p. 25) that the additional flexibility helped at least four States in reducing the number of schools identified for improvement after applying the “2% option,” but did not indicate whether the number of identified schools would have been any different if the States had instead used a higher minimum ‘n’ and/or a confidence interval. The results do suggest, however, that the temporary 2% proxy option may, for the most part, work best in schools with larger special education populations:

- **In California**, of 699 schools with a special education population, only about 25% would have made the AYP targets without the 2% option; with the option applied, 39% made the reading target and 40% the mathematics target.
- **In Florida**, 150 additional schools made AYP with option applied.
- **In Virginia**, 54 additional schools made AYP with the option applied.
- **In Georgia**, 65 of the 146 schools that did not initially make the AYP targets made AYP with the 2% option applied.
More than forty States applied to take advantage of one of these options within a few weeks of the Secretary’s announcement. The following States were subsequently approved to use Option One (the “proxy method”): Georgia (July 1), Idaho (June 24), Illinois (September 15), Indiana (July 1), Iowa (August 11), Louisiana (August 5), Maine (September 15), Mississippi (June 29), New Mexico (September 1), New York (July 28), North Carolina (June 29), North Dakota (August 10), Oklahoma (July 5), Pennsylvania (August 11), South Dakota (August 5), Tennessee (June 27), Virginia (August 19), and West Virginia (June 22).

ED denied Utah’s (July 25, 2005) request to use the 2% interim flexibility option because the participation rate of SWDs in State assessments was less than 95% in the language arts assessments in grades 3 through 8 and 10 and the mathematics assessments in grades 3 through 8. The State is also negotiating with ED an unresolved situation related to IDEA grants; this poses another barrier to approval of the 2% interim flexibility. ED indicated that Alaska was not eligible for Option One flexibility unless the State changed its differentiated minimum ‘n’ for the SWDs group (40). Alaska had argued to keep the differentiated minimum ‘n’ because it produced more reliable AYP decisions. The State noted that while increasing the other students group from 20 to 40 would have also produced more reliable decisions, it would have also excluded too many schools from these determinations.

Iowa originally proposed to follow Option Three to make AYP determinations under the 2% option. The State requested approval to implement an “interim modified achievement standard for those SWDs closest to but not yet attaining the ‘cut score’.” In order to determine which specific additional 2% of SWDs would be considered proficient, the State determined that SWDs taking reading and mathematics assessments in 2004-05 represented 13.3% of all students assessed. It then ranked the performance of all SWDs statewide using scale scores (from high to low) in reading and mathematics at grades 4, 8, and 11. Then State officials counted up from the lowest score to the point where the cumulative percent of SWDs proficient less 2% was represented (the technique was repeated independently for each assessment at each grade level). For example, in grade 4 reading, 35% of SWDs statewide were proficient. The “interim modified achievement standard” for 4th grade reading would then be the scale score equivalent resulting from the point at which 33% of the 4th graders scored proficient. This becomes the “cut-point” at which 70% (the proficiency target) or more of which a student group must score proficient or better to meet the AYP target. In its preliminary calculations, Iowa found that 33 school buildings and one school district (there is no 2% allowance for LEAs) were identified as not making AYP solely on the basis of the SWDs group. That number would have been reduced to 10 schools using the State’s proposed “interim modified achievement standard.” The State did not propose to use a proxy in its modified achievement standard approach to AYP calculations. ED did approve the State for use of Option One but not for Option Three and did not provide a written rationale for denying the proposal.

[State41], following Option One, would “allow Individualized Educational Program (IEP) teams to make determinations about appropriate [assessments] for special education students whose instructional level is one to three years below grade level. IEP teams will make determinations based on state guidelines. Students who make gains on statewide assessments equivalent to or in excess of one grade level will have their scores counted towards making AYP.” In making this request, the State argues that, “Permitting students with disabilities who are being instructed one to three years below grade level to be administered tests that measure the content they are learning meets the NCLB requirement to measure the academic achievement of students relative to state academic content and achievement standards while recognizing the individualized nature and pacing of the instruction received by special education students.”

[State44] would like to return to its former “practice of testing special education students at their instructional level when their planning and placement teams determine that this is most appropriate.” The State would use assistive technology and modifications of existing assessments but would be limited to up to 2% of the SWDs who have persistent academic deficiencies (modified achievement standards would be established). The proposal parallels closely parameters outlined by Secretary Spellings in her May 10 communiqué to States regarding the assessment of this group of students, and the State has requested a review by ED to determine its eligibility for Interim Policy Option One.
Maryland (approved July 5, 2005) is taking Option Three by allowing schools and districts to appeal an AYP determination if they did not make AYP solely on the basis of the SWDs group performance. In these instances, school IEP teams will review the IEPs of individual students to affirm the identity of those students who may have received proficient scores on a modified assessment if one had been available. The State will cap student eligibility at 2% of those students in the calculation of AYP results. Colorado received approval (August 9, 2005) to permit schools or districts not making AYP in 2004-05 solely because of the performance of SWDs to appeal that determination if the subgroup met 2003-04 AYP targets.

Massachusetts (approved August 5, 2005) will also take Option Three. This State will "use certain criteria to determine which students may realistically be assessed with a modified achievement standard" subject to the 2% limit. ED’s approval further indicated that, “Once AYP decisions are made, any schools or districts that did not make AYP solely on the basis of its SWD group will have those students’ scores for the SWD subgroup changed from not proficient to proficient. The AYP decisions will then be recalculated.”

Finally, while ED has communicated to States (Paige, 2004, February 20) that they could continue to include "formerly served" ELLs in subgroup AYP determinations for an extended period, the Department has not communicated similar information to States regarding "formerly served" SWDs. We pointed out in last year’s paper (p. 21) that we believe States can opt to modify their definitions of SWDs to include those no longer directly served as long as their IEPs call for monitoring of progress. Few States appear to have sought to include this in their accountability plans. [State45] did include this request in their 2005 amendments but would permit schools and districts that make the SWDs subgroup minimum ‘n’ because of the inclusion of monitored students to appeal that inclusion. [State51] wants to include SWDs that are no longer directly served for one additional year beginning in 2005-06 after the State develops its monitoring procedures for these students. [State46] will allow test scores of SWDs who exited this status in the prior two years to be included in the subgroup for AYP purposes on appeal (a similar policy is already in place in for ELLs).

Accommodations
We did not report in last year’s paper on requests to modify or expand accommodations provided to students taking State assessments nor has this subject covered to any extent elsewhere in this paper. Accommodations that can be provided to eligible students are appropriately addressed in ED’s separate Peer Reviews of States’ academic standards and assessment systems.

However, it is important to be aware that allowance of an accommodation can potentially affect students’ academic achievement results and is, therefore, relevant to this discussion of accountability issues. One such accommodation is allowing portions of a reading test to be read aloud to a student during testing. This is a decision that ED seems to have left to States as being responsible for defining the construct that is tested and for further deciding what accommodations might invalidate the results.

With regard to students with disabilities, according to information compiled by the National Center for Educational Outcomes (Clapper, et al., 2005), at least three States (Massachusetts, Missouri, and Vermont), allow the “read-aloud” accommodation with no restrictions. Maryland, which has very unique and detailed related policies, permits the read aloud accommodation in many circumstances at grade 5 and above. Several States, including Delaware, New York, North Dakota, Rhode Island, and South Carolina, permit the read aloud accommodation but with implications for scoring. In the few other States permitting the read aloud accommodation for SWDs, the most common restriction is not reading comprehension items.

Inclusion of English Language Learners
As we reported last year (Forte Fast & Erpenbach, 2004), a number of States amended their plans to take advantage of the additional flexibility ED offered (Paige, 2004, February 20) for the inclusion of ELLs in AYP decisions. This flexibility allowed States to: a) exempt ELLs from the reading or language arts assessments during their first year of enrollment in U. S. schools, b) to exclude reading or language arts
and mathematics scores for these same students from AYP calculations that year, c) to count these same students as participants in the academic assessments if they take the English language proficiency assessments that year, and, d) to extend the definition of ELL to include students who had exited ESL or bilingual education programs within the previous two years. ED approved the use of larger minimum “n’s” for ELLs starting in 2003.

This year, States’ amendment requests that pertain to the inclusion of ELLs fall into three categories: changes to alternate assessments, extending the definition of ELLs to include students who have exited an ESL or bilingual education program, and increasing the minimum ‘n’ for this student group.

Assessment of English Language Learners
States are required to assess annually both the English language proficiency and the academic knowledge and skills of ELLs. States are not required to offer alternate academic assessments for ELLs, but must offer appropriate accommodations if these students are to participate in the regular assessments. The results of the English language proficiency (ELP) assessments may contribute to the decision about how an ELL will be included in the assessment (i.e., by taking the regular assessment with or without accommodations or by taking an aligned alternate assessment), but the results from the academic assessments of reading or language arts and mathematics are to be used for AYP purposes.

In 2003-04, ED began allowing States to exempt from statewide reading or language arts tests those ELLs who had been enrolled in a U. S. school for less than one school year and were not yet proficient in English. These students can be counted as participating in the academic assessment if they take the ELP test that year. Some States would like to extend this exemption and use ELP test results in lieu of results from academic reading or language arts tests in AYP calculations.

[State47] is conducting a study to determine alignment between the reading section of its academic reading or language arts test and the reading section of its ELP tests. If the two are adequately aligned, the State will request approval to use results from the ELP test in lieu of results from the academic reading test when calculating participation and percent proficient for ELLs. ELP scores would continue to be used in this way for a maximum of three years or until the student scores proficient, whichever comes earlier. The State hopes to implement the change in its AYP determinations for 2005-06.

[State48] would like to use results from the reading component of its ELP test and from the plain language forms of its statewide mathematics assessments as the academic measures for ELLs during their first one to three years of school enrollment in the United States. ELLs in grades 3–8 who score in Level 1 or 2 will take the statewide standards-based academic assessments in English/reading and mathematics or, for up to three consecutive years, State-approved assessments linked to the standards-based assessments.

[State49] provides a portfolio assessment as an alternate assessment for some ELLs and would like to allow students to continue using this alternate assessment for more than three years if necessary “as determined by strategies designed by the local school district.” Districts would have to demonstrate by multiple measures that each student continues to lack sufficient English proficiency to be successful in the State’s assessment system.

Extending the Definition of ELLs
Although ED has consistently allowed States to extend their definition of ELLs for AYP purposes to include students who exited ESL or bilingual education programs within the previous two years, NCLB provisions in section 9101(25) provide so broad a definition of the term, “limited English proficient,” that it would seem possible for States to include formerly served ELLs in group AYP decisions for a much longer period of time than two years.

In 2004, California and South Carolina were allowed to include formerly served ELLs in this AYP group for up to two years beyond their exit from ESL or bilingual education programs. This year, Georgia (July 1, 2005), Michigan (January 6, 2005), Montana (March 3, 2005), New Mexico (January 4, 2005), and [State47] is conducting a study to determine alignment between the reading section of its academic reading or language arts test and the reading section of its ELP tests. If the two are adequately aligned, the State will request approval to use results from the ELP test in lieu of results from the academic reading test when calculating participation and percent proficient for ELLs. ELP scores would continue to be used in this way for a maximum of three years or until the student scores proficient, whichever comes earlier. The State hopes to implement the change in its AYP determinations for 2005-06. [State48] would like to use results from the reading component of its ELP test and from the plain language forms of its statewide mathematics assessments as the academic measures for ELLs during their first one to three years of school enrollment in the United States. ELLs in grades 3–8 who score in Level 1 or 2 will take the statewide standards-based academic assessments in English/reading and mathematics or, for up to three consecutive years, State-approved assessments linked to the standards-based assessments. [State49] provides a portfolio assessment as an alternate assessment for some ELLs and would like to allow students to continue using this alternate assessment for more than three years if necessary “as determined by strategies designed by the local school district.” Districts would have to demonstrate by multiple measures that each student continues to lack sufficient English proficiency to be successful in the State’s assessment system. Extending the Definition of ELLs Although ED has consistently allowed States to extend their definition of ELLs for AYP purposes to include students who exited ESL or bilingual education programs within the previous two years, NCLB provisions in section 9101(25) provide so broad a definition of the term, “limited English proficient,” that it would seem possible for States to include formerly served ELLs in group AYP decisions for a much longer period of time than two years. In 2004, California and South Carolina were allowed to include formerly served ELLs in this AYP group for up to two years beyond their exit from ESL or bilingual education programs. This year, Georgia (July 1, 2005), Michigan (January 6, 2005), Montana (March 3, 2005), New Mexico (January 4, 2005), and
South Dakota (August 5, 2005) received approval to do the same and also to adopt the additional flexibility pertaining to the assessment of newly arrived ELLs. States awaiting approval to adopt this additional flexibility include [State50] and [State51] (where the formerly served ELLs would remain in subgroup AYP calculations for three years).

[State52] has indicated that it will exempt ELLs from taking any assessment given entirely in English during their first three years of enrollment in U.S. schools or until they demonstrate at least intermediate proficiency in English, whichever comes first. ELLs in their first three years would be able to take statewide tests in English, but they would not be counted toward the minimum ‘n’ and their scores will not be included in AYP calculations. All of the State’s assessments are given entirely in English; students may not use language dictionaries and no part of their tests may be read aloud (except for qualifying SWDs) or translated. The mathematics test is composed entirely of word problems in English.

Connecticut, which offers assessments only in English, was also denied permission to delay testing ELLs in reading, mathematics, and science until they have been in the State’s schools for three years. The State argued that this is a more reasonable time in that testing ELLs in English during their first year in the United States directly contradicts research evidence.

South Dakota revised its definition of ELLs to be those students “who attain a proficient achievement level for two consecutive years on the overall composite score of the English language proficiency assessment.”

On a related note, in early 2005, ED denied California’s request for a waiver of the Title III reading and writing assessment requirements for ELLs in kindergarten and first grade. The State already tests these students in listening and speaking. Similarly, [State53] has indicated that it will not require kindergarten and first grade ELLs to take the reading and writing component of the English Language Proficiency assessment. Instead, they will be tested only on listening and speaking skills.

Minimum Ns for ELLs
ED approved (December 27, 2004) Minnesota’s request to use a minimum ‘n’ of 40 for the ELL student group just as it does for the SWDs student group. Minnesota uses 20 as its minimum ‘n’ for all other student groups.

AYP Consequences and Reporting
In this final category of amendments, we summarize requests related to the timing, degree, and targeting of consequences and State’s reporting practices.

Timing, Degree, and Targeting of Consequences
Under the NCLB rules, schools in their first year of improvement must offer public school choice (choice); in their second year, they must provide supplemental educational services (SES). A number of states (e.g., West Virginia) have requested permission to switch the order of these two sanctions, arguing that it makes more sense to offer students additional support before offering them the choice to switch to another school. In addition, this order delays support to students because choice is not a viable option in many areas and it is usually not possible to notify parents of the choice option until well after they have finalized plans for the coming school year. Until very recently, ED denied every one of these requests, although it did allow States to offer both choice and SES in the first year of improvement status. ED was also consistent in denying requests to offer choice only to students in the group(s) missing AYP.

It appears that these previously unwavering positions may be shifting. Virginia asked to reverse the order of sanctions during the first two years of identification for improvement, using the same argument that other States had used previously (“A more effective intervention strategy for the first year of improvement is offering eligible students supplemental educational services while planning for choice implementation”). ED decided to permit four school districts in Virginia to provide SES in lieu of choice in the first year of
identification for improvement (Helderman, 2005, August 27). This decision is likely to trigger a new wave of similar requests from across the country.

In her August 25, 2005 response letter to Virginia, Secretary Spellings provided both a rationale for “reversing the statutory order” set forth under the NCLB Act and four conditions for the approval. According to the Secretary, “in order to increase the number of students receiving services, as well as the quality of services provided to students, the U. S. Department of Education is beginning several SES pilot programs in a select number of school districts across the country. Pilot programs will fulfill two key priorities: they will ensure that more students are receiving SES, and they will ensure better information on how programs are improving the academic achievement of students receiving the services.” The Secretary then summarized the approval conditions as follows:

- More students must participate in SES and public school choice.
- Virginia must provide information on the academic achievement of students receiving SES.
- Virginia must ensure parent access to SES providers.
- Virginia must participate in a data exchange project with the Department.

States that already offer choice as part of their State or local provisions offer a slightly different rationale for switching the order of the SES and choice sanctions; there is no evidence to date that their arguments will prevail, however. One such state, [State54], has offered students and their parents “the choice to enroll in any district throughout the state with approval from the resident and non-resident districts” since 1986; about 2% of students exercise this option annually. Since choice is already offered, [State54] argues that schools should have the option of offering supplemental educational services first when initially identified for improvement.

With regard to offering school choice and supplemental educational services only to students in the groups not making AYP,27 [State55] notes that the groups not making AYP are the ones “that need to be given the option to move to another school and get extra help.” Utah also wanted to target services only to “non-proficient” students and ED denied that request.

Using a related rationale about the need to target support resources, [State56] indicated it would “identify students and schools who are most in need by distinguishing between schools failing to make AYP for the entire student body and schools that achieve AYP for the entire student body but fail to meet it for a particular subgroup.” In that case, the State plans to apply choice and supplemental educational services to the subgroup and individual students not making AYP.

In a relatively creative request, [State57], which would also like to target services to groups not making AYP, requested approval to apply the following strategies without elaboration:

- Switch the order in which the sanctions are applied.
- Permit districts to offer parents of eligible students enrolled in schools identified for improvement a menu of five public school choice and supplemental educational services options.
- Offer a broad range of criteria for the annual report of progress by schools identified for improvement.

North Carolina (approved June 29, 2005) will permit LEAs to appeal an “in need of improvement” determination to the State’s Title I Committee of Practitioners. LEAs will have two weeks to appeal and the State Superintendent will make the final determination for LEAs.

27 It appears that some States believe that supplemental educational services must be given on a priority basis to low-income students. This is not correct. Section 1116(b)(10)(C) provides that services shall be provided to the lowest-achieving (emphasis added) students whenever funds are insufficient to provide services to each student whose parents request the services.
Finally, [State58] would like to institute a one-year lag between reporting the results and implementing any “supports/consequences” for schools and district identified for improvement. The State observes that it takes time for changes and reforms to take place in schools and districts. It also takes time to build capacity to achieve change and reform. [State58] already distributes assessment results by mid-June annually and AYP appeals are completed by August. However, the State notes that this timeline does not afford the time necessary to provide tutoring or summer school to eligible students and that accelerating the reporting timeline would add significant costs to the process.

**Reporting**

Very few States requested amendments related to reporting this year, perhaps because ED has never wavered in requiring States to publish AYP results prior to the beginning of the school year. This may change for next year, however, as South Carolina received approval (August 8, 2005) to release preliminary information to schools and districts by August 15 in order to begin informing parents of choice and SES options on August 20. The State will release final AYP results on September 30, two weeks later than originally planned. Schools and districts that were identified for improvement preliminarily, but not in the final decisions, will be required to honor any school choice or supplemental educational services options that had been selected between August 20 and September 30.

Alabama will produce report cards in the five most prevalent languages in the State (June 23, 2005).

**The Next Section**

In Section III, we present a set of observations and conclusions regarding the 2004-05 accountability amendment requests and ED’s responses to those requests. Unanticipated approvals are highlighted.
III: Observations and Conclusions

In our two previous reviews of State accountability workbook plan submissions and related ED decisions (Erpenbach, Forte Fast, & Potts, 2003; Forte Fast & Erpenbach, 2004), we summarized States’ accountability plan components that ED consistently rejected as well as approvals that were somewhat surprising to those who have followed the entire decision process. We summarize elements that fall into these categories below.

With regard to the third category, and as we described last year, it is important to note that it is not unusual for ED to respond publicly and in writing only to some of a State’s requests.28 In numerous off-the-record conversations, representatives from several States have described situations where ED responds in writing to some requests and provides only oral statements regarding others. These “oral only” responses tend to be denials and may not be accompanied by rationales.

Given the interpretive caveats noted last year and in Section I of this paper, no overall summary indicating the number of States requesting specific amendments is provided here. Readers are encouraged to consider States’ contexts when interpreting specific amendment requests. The purpose of this paper is to present information regarding amendments sought by States to their NCLB accountability systems and ED’s responses to those requests (to the extent they are known). Readers need to determine for themselves the efficacy of individual requests and the degree to which an underlying strategy may be technically sound, feasible, and defensible.

Requests Consistently Not Approved

In 2003-04, ED consistently rejected several categories of amendments that States requested. However, the only amendment that was rejected consistently in 2004-05 was limiting identification for improvement to schools and districts that missed AYP in the same subject and group for two consecutive years.

Unanticipated Approvals

Last year, the “Dear Colleague” letters that then Secretary Paige sent to chief state school officers and some newly released guidance documents prompted large numbers of amendment requests and led to some interesting approval decisions. The new flexibility for the inclusion of ELLs, for example, was similar to requests some States had made in their original accountability plans but which had been consistently denied, thus making its appearance in guidance rather unexpected. Significant unanticipated approvals this year included

- The 2% options for the inclusion of some students with disabilities in the assessment and accountability systems using “modified” achievement standards
- Approval to switch the order of the choice and supplemental educational services sanctions for some school districts in Virginia on a “pilot” basis
- Approval for Chicago Public Schools to offer supplemental educational services even though it is itself in improvement status
- Allowance of additional time for ELLs to graduate (up to a total of 6 years of high school) on a case-by-case basis
- Approval to average up to three years of data in making safe harbor determinations
- Approval to use an “extended number of years” that take into account all students taking more than four years to graduate for calculating AYP
- Allowance of even larger minimum “n’s” for student group determinations, including more approvals of proportional minimums that involve fairly large upper limits

28 Olson (2005) described a growing public concern about ED’s “failure to make states’ proposed changes public.” And, while States have continued to seek written responses, “advocacy organizations…are concerned that states are trying to water down their accountability plans without public scrutiny” (Olson, 2005, July 13, p. 20).
**Next Steps**

Like last year, the majority of States submitting accountability plan amendments this year appear to have opted for those areas where ED has consistently granted approvals or offered specific flexibility. However, at least five States submitted large numbers of requests, many of which were new and rather innovative. Each of these States has indicated in follow-up conversations that it was taking seriously Secretary Spellings earlier announcement (Spellings, 2005, April 7) of a “new approach to implementing flexibility” and simply decided, in one case, to “go for it.” The fate of some of these requests is still unknown.

Looking forward, it is all but certain that ED will offer additional flexibility in the upcoming year. Many States are hoping that the “same subject, same group” pillar of denial will finally fall. In the long run, however, the accumulation of amendments and “flexibility” may result in educational accountability systems that lack any real connection to the achievement goals they were supposed to realize. As those who have long been committed to these goals and have the expertise to understand the intersection of policy and psychometrics warn, “some features of the NCLB accountability system…need to be modified if the praiseworthy goals of NCLB are going to be achieved” (Linn, 2005, p. 8).
References and Other Resource Materials


U.S. Department of Education. (2002). *Final regulations, Title I—Improving the academic achievement of the Disadvantaged; Final rule* [regarding educational accountability systems and the calculation of adequate yearly progress], Federal Register, pp. 71710-71771, codified at 34 CFR Part 200.

U.S. Department of Education. (2003). *Final regulations, Title I—Improving the academic achievement of the disadvantaged; Final rule* [regarding the achievement of students with the most significant cognitive disabilities], Federal Register, pp. 68698-68708, codified at 34 CFR Part 200.


### Appendix A

**Acronyms Used In This Paper**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMOs</td>
<td>Annual Measurable Objectives</td>
</tr>
<tr>
<td>AYP</td>
<td>Adequate Yearly Progress</td>
</tr>
<tr>
<td>CIs</td>
<td>Confidence Intervals</td>
</tr>
<tr>
<td>CCSSO</td>
<td>Council of Chief State School Officers</td>
</tr>
<tr>
<td>ED</td>
<td>United States Department of Education</td>
</tr>
<tr>
<td>ELL</td>
<td>English Language Learner</td>
</tr>
<tr>
<td>EOC</td>
<td>End-of-Course Test</td>
</tr>
<tr>
<td>ESEA</td>
<td>Elementary and Secondary Education Act of 1965</td>
</tr>
<tr>
<td>ESL</td>
<td>English as a Second Language</td>
</tr>
<tr>
<td>FAY</td>
<td>Full Academic Year</td>
</tr>
<tr>
<td>IASA</td>
<td>Improving America’s Schools Act of 1994</td>
</tr>
<tr>
<td>IDEA</td>
<td>Individuals with Disabilities Education Act</td>
</tr>
<tr>
<td>IEP</td>
<td>Individualized Education Program</td>
</tr>
<tr>
<td>IGs</td>
<td>Intermediate Goals</td>
</tr>
<tr>
<td>LEAs</td>
<td>Local Educational Agencies</td>
</tr>
<tr>
<td>LEP</td>
<td>Limited English Proficient</td>
</tr>
<tr>
<td>NCLB</td>
<td>No Child Left Behind Act of 2001</td>
</tr>
<tr>
<td>OAs</td>
<td>Other Academic Indicators</td>
</tr>
<tr>
<td>SWDs</td>
<td>Students with Disabilities</td>
</tr>
</tbody>
</table>
## Appendix B

### State Educational Accountability Workbook Decisions by the U.S. Department of Education That Changed between 2002 and 2005

<table>
<thead>
<tr>
<th>Topic</th>
<th>Original Decision</th>
<th>Final Decision and Year Changed</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Dual accountability systems</td>
<td>Permitted only when a school could not achieve a high performance level if it was identified for improvement.</td>
<td>States can have dual systems that recognize schools regardless of their AYP outcomes (2003).</td>
<td>ED approved use of the term, “Provisional AYP,” by a State as a category for schools ranking at the top of its accountability system but not making AYP under NCLB.</td>
</tr>
<tr>
<td>2. Out-of-level testing</td>
<td>Not permitted.</td>
<td>Permitted as an alternate assessment aligned to alternate standards and subject to 1% cap for SWDs reported at the proficient or higher level (2004).</td>
<td>Modified in Regulations adopted on December 9, 2003 (<a href="https://www.federalregister.gov">Federal Register</a>). See Paige (2004, March 2) policy letter on SWDs.</td>
</tr>
<tr>
<td>3. Alternate assessments for SWDs</td>
<td>Permitted but must be based on the State’s academic content and student academic achievement standards.</td>
<td>Alternate assessments based on alternate achievement standards permitted, but not more than 1% of total student population can be counted as proficient in relation to the alternate standards (2004).</td>
<td>Modified in regulations adopted on December 9, 2003 (<a href="https://www.federalregister.gov">Federal Register</a>). See Paige (2004, March 2) policy letter on SWDs. Announced by Secretary Spellings in April 2005 with guidelines issued May 10, 2005.</td>
</tr>
<tr>
<td>4. Use of first test score for AYP when students have multiple opportunities to take an assessment</td>
<td>First test score counts for AYP determinations.</td>
<td>States may “bank” results when students afforded multiple opportunities to test provided an “official” point has been designated at which they are expected to have attained the tested standards (2003).</td>
<td>ED stated in comments with Regulations adopted on December 9, 2003 (<a href="https://www.federalregister.gov">Federal Register</a>) that States have more flexibility toward this end than originally understood.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td><strong>Identification for improvement</strong></td>
<td>School or district missing any AYP target two consecutive years is identified for improvement. School or district must miss any target in the same subject or the same other academic indicator in two consecutive years to be identified for improvement (2004).</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td><strong>AYP decisions for school districts</strong></td>
<td>Districts required to “roll up” data across schools for AYP determinations. Districts may examine AYP outcomes by grade spans (elementary, middle, and high school) and then be identified for improvement only when the same content area target is missed in all spans for two consecutive years (2004).</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td><strong>Participation Rate</strong></td>
<td>Based on all students enrolled during a State’s annual test window. States may average participation rates over a three-year period (2004). See Paige (2004, March 29) policy letter on participation rates.</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td><strong>Full academic year extending beyond one calendar year for SWDs</strong></td>
<td>Not permitted. Full academic year for SWDs may extend beyond one year when IEP indicates that longer period is needed to collect achievement information (2004).</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td><strong>Graduation rate covering more than four years</strong></td>
<td>Students taking more than four years to graduate could not be counted as graduates in calculating graduation rates. SWDs who take more than four years to graduate, consistent with their IEPs may be counted as graduates (2004). ELLs who take up to six years to graduate, consistent with a local plan, may be counted as graduates (2005). In 2005, ED also approved, for AYP determinations, the use of an “extended number of years” graduation rate that includes ALL students who take more than four years to graduate.</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td><strong>Calculating percent proficient</strong></td>
<td>Use number of students enrolled full academic year for the denominator. Use number of students enrolled for a full academic year and tested for the denominator (2004).</td>
<td></td>
</tr>
<tr>
<td>13. Larger minimum &quot;n's&quot; for school districts</td>
<td>Not permitted.</td>
<td>Models approved permitting the use of a minimum 'n' which increases proportionally as the size of the district increases—subject to caps (2003).</td>
<td></td>
</tr>
<tr>
<td>14. Uniform averaging</td>
<td>Uniform averaging required.</td>
<td>States now permitted to apply &quot;non-uniform&quot; averaging such that schools and districts may use the scores from only current school year or average across up to three years, whichever benefits the school or district more (2003).</td>
<td></td>
</tr>
<tr>
<td>15. Use of statistical tests for participation and graduation rates</td>
<td>Not permitted for “count” elements.</td>
<td>Permitted (2004). States have been allowed to apply confidence intervals (CIs) to AYP calculations in general. But when requests for CIs have been specifically around &quot;count&quot; items, they have been denied previously.</td>
<td></td>
</tr>
<tr>
<td>16. Rounding up in AYP decisions</td>
<td>Unclear.</td>
<td>Some States permitted to round up when calculating AYP elements (2004).</td>
<td>ED’s 2005 approvals appear to have been limited to the use of “traditional rounding rules.”</td>
</tr>
<tr>
<td>17. Use of growth models as accountability measures</td>
<td>Not permitted.</td>
<td>ED Secretary has signaled willingness to consider such models (Spellings, 2005, April 7).</td>
<td>ED is convening discussion groups to examine options.</td>
</tr>
<tr>
<td>18. Use of statistical tests in safe harbor reviews</td>
<td>Not permitted.</td>
<td>Use of a 75% confidence interval allowed (2004).</td>
<td></td>
</tr>
<tr>
<td>19. Safe harbor reviews for small schools in percent proficient determinations</td>
<td>Unclear.</td>
<td>A State may conduct a review of current year and prior year performance even when its minimum ‘n’ requirements are not met (2004).</td>
<td></td>
</tr>
<tr>
<td>20. Averaging for up to three years for safe harbor determinations in percent proficient determinations</td>
<td>Not permitted.</td>
<td>Permitted (2005). Percent not proficient would have to decline by 10% over one year, 19% over two years, and 27% over three years.</td>
<td></td>
</tr>
</tbody>
</table>
21. Safe harbor reviews in other academic indicator determinations

22. Including scores for “exited” ELLs in subgroup AYP outcomes
   Not permitted. | Permitted to the extent that monitoring services are required in student’s IEP (2003).

23. Use of scores for ELLs in AYP
   Required. | Permitted for up to two years after student no longer meets the definition of LEP under section 9101(25) consistent with the Secretary’s policy letter (2004). See Paige (2004, February 20) policy letter on ELLs.

24. Use of scores for ELLs in AYP
   Required. | Scores may be excluded from percent proficient calculations during an ELL’s first year of enrollment in U.S. schools. If the student takes the English Language Proficiency test that year (as required), the student may be counted as a participant in the assessments (2004). See Paige (2004, February 20) policy letter on ELLs.

25. Reverse order of public school choice and provision of supplemental educational services when a school is identified for improvement

26. Permit LEAs identified for improvement to be supplemental educational services providers

---

20 A State that would like to amend its plan based on these decisions would be required to submit a request for amendment to ED; that is, States cannot simply amend their plans without approval even if other States have been approved to make the same amendment.