



## **No Child Left Behind (NCLB) Act**

For more than 40 years, through the Elementary and Secondary Education Act (ESEA) of 1965,<sup>1</sup> the U.S. Congress has authorized federal grants to states and school districts to improve the educational opportunities for economically disadvantaged students.<sup>2</sup> The *No Child Left Behind Act of 2001* reauthorized and substantially revised the ESEA.<sup>3</sup> NCLB's revisions were based on four education reform principles:

- ❖ Stronger accountability for results;
- ❖ Greater flexibility for states and school districts in the use of federal funds;
- ❖ More choices for parents of children from disadvantaged backgrounds; and
- ❖ An emphasis on teaching methods that have been demonstrated to work.<sup>4</sup>

While NCLB's education accountability provisions are aimed at improving the achievement of all public school students, the law places particular emphasis on improving the achievement of economically disadvantaged students, students who represent major racial and ethnic groups, students with disabilities, and English language learners.<sup>5</sup> Additionally, NCLB establishes grants for improving instruction in reading<sup>6</sup> and English language acquisition<sup>7</sup> and requires states to ensure that every student is taught by a "highly qualified teacher."<sup>8</sup>

### **How does NCLB strengthen education accountability?**

NCLB requires each state to develop and implement a single, statewide accountability system.<sup>9</sup> The system must include sanctions and rewards, such as bonuses and recognition, to hold schools and school districts accountable for student achievement.<sup>10</sup> Each state must:

- ❖ Adopt challenging academic standards that apply to all public schools and students in the state for, at a minimum, mathematics, reading/language arts, and science.<sup>11</sup>

<sup>1</sup> Pub. L. No. 89-10, 79 Stat. 27 (April 11, 1965).

<sup>2</sup> See U.S. Government Accountability Office, *No Child Left Behind Act: Improvements Needed in Education's Process for Tracking States' Implementation of Key Provisions*, Report No. GAO-04-734, at 5 (Sept. 30, 2004), available at <http://www.gao.gov/new.items/d04734.pdf> [hereinafter *GAO Report on State Implementation*]

<sup>3</sup> Pub. L. No. 107-110, 115 Stat. 1425 (Jan. 8, 2002).

<sup>4</sup> See U.S. Department of Education, *Overview: Four Pillars of NCLB*, <http://www.ed.gov/nclb/overview/intro/4pillars.html> (last visited Aug. 6, 2010); U.S. Department of Education, *No Child Left Behind: A Desktop Reference 2002*, 9-11 (Sept. 2002), available at <http://www.ed.gov/admins/lead/account/nclbreference/reference.pdf> [hereinafter *NCLB Desktop Reference*].

<sup>5</sup> 20 U.S.C. s. 6311(b)(2)(C)(v); see *GAO Report on State Implementation*, *supra* note 2, at 6; *NCLB Desktop Reference*, *supra* note 4, at 9.

<sup>6</sup> 20 U.S.C. ss. 6361-6368.

<sup>7</sup> 20 U.S.C. ss. 6821-6871.

<sup>8</sup> 20 U.S.C. s. 6319(a).

<sup>9</sup> 20 U.S.C. s. 6311(b)(2)(A).

<sup>10</sup> 20 U.S.C. s. 6311(b)(2)(A)(iii).

<sup>11</sup> 20 U.S.C. s. 6311(b)(1)(A)-(C).

- ❖ Implement valid and reliable academic assessments in, at a minimum, mathematics, reading/language arts, and science.<sup>12</sup>
- ❖ Adopt annual measurable objectives for student achievement on academic assessments.<sup>13</sup>
- ❖ Demonstrate that the state and its schools and school districts are making adequate yearly progress (AYP), as measured by the performance of students on academic assessments.<sup>14</sup>
- ❖ Develop a state and school district report card which, among other things, indicates whether schools made AYP or were identified for school improvement.<sup>15</sup>
- ❖ Identify schools that fail to make AYP for two consecutive years as “schools in need of improvement” and require such schools to implement a series of intervention measures.<sup>16</sup>

NCLB currently requires states to ensure that all students are proficient in reading, mathematics, and science by the 2013-14 academic year.<sup>17</sup> Congressional reauthorization of ESEA is under way.<sup>18</sup> In March 2010, the Obama administration released its blueprint for ESEA reauthorization, which states a goal that all students be college and career ready by 2020. This blueprint and statements made by the U.S. Secretary of Education indicate that this and other goals will replace NCLB’s goal of 100 percent proficiency by the 2013-14 academic year.<sup>19</sup>

### **Does NCLB require states to adopt challenging academic standards?**

Yes. NCLB requires each state to adopt challenging academic content and student achievement standards that apply to all public schools and students in the state.<sup>20</sup> The academic content standards must:

- ❖ Define coherent and rigorous academic content in mathematics, reading or language arts, and (beginning in the 2005-06 academic year) science;<sup>21</sup>
- ❖ Specify the knowledge and skills that all students are expected to know and be able to do; and
- ❖ Encourage the teaching of advanced skills.<sup>22</sup>

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<sup>12</sup> 20 U.S.C. s. 6311(b)(3)(A).

<sup>13</sup> 20 U.S.C. s. 6311(b)(2)(G).

<sup>14</sup> 20 U.S.C. s. 6311(b)(2)(G).

<sup>15</sup> 20 U.S.C. s. 6311(h)(1)(C).

<sup>16</sup> 20 U.S.C. s. 6316(b).

<sup>17</sup> 20 U.S.C. s. 6311(b)(2)(F).

<sup>18</sup> The congressional committees that oversee education issues have held several hearings on ESEA reauthorization in 2010. See U.S. House of Representatives Committee on Education and Labor, *Elementary and Secondary Education Act*, <http://edlabor.house.gov/education/esea/> (last visited Aug. 11, 2010); see U.S. Senate Committee on Health, Education, Labor, and Pensions, *Hearings*, <http://help.senate.gov/hearings/> (last visited Aug. 11, 2010).

<sup>19</sup> U.S. Department of Education, *Reauthorization of ESEA: A Blueprint for Reform*, <http://www2.ed.gov/policy/elsec/leg/blueprint/index.html> (last visited Aug. 11, 2010); U.S. Department of Education, *Reauthorization of ESEA: Speech by U.S. Secretary of Education on Sept. 24, 2009*, <http://www2.ed.gov/news/speeches/2009/09/09242009.html> (last visited Aug. 11, 2010).

<sup>20</sup> 20 U.S.C. s. 6311(b)(1)(A) and (B).

<sup>21</sup> 20 U.S.C. s. 6311(b)(1)(C).

<sup>22</sup> 20 U.S.C. s. 6311(b)(1)(D).

A state's student achievement standards must be aligned with the state's academic content standards, specify levels of achievement expected of all students, and describe three levels of student achievement (basic, proficient, and advanced).<sup>23</sup>

Florida's current NCLB state accountability plan specifies that the state has adopted the *Sunshine State Standards* as the state's academic content standards for purposes of NCLB.<sup>24</sup> The state plan also describes how the Florida Comprehensive Assessment Test (FCAT) will be used to measure student achievement of the *Sunshine State Standards*.<sup>25</sup>

In 2008, the Legislature required the State Board of Education to review the *Sunshine State Standards* and replace them with more specific, rigorous, and relevant *Next Generation Sunshine State Standards*.<sup>26</sup> In the 2010-11 academic year, the state will transition to new statewide assessments that are designed to measure the *Next Generation Sunshine State Standards*. These new statewide assessments are FCAT 2.0 and statewide standardized end-of-course (EOC) assessments in high school level Algebra I, Geometry, and Biology I.<sup>27</sup>

### **Does NCLB require states to adopt high-quality academic assessments?**

Yes. NCLB requires each state to implement high-quality annual student academic assessments in, at a minimum, mathematics, reading/language arts, and (beginning with the 2007-08 academic year) science.<sup>28</sup> The assessments must be valid, reliable, and aligned to the state's academic content and student achievement standards.<sup>29</sup> The assessments must also be the same academic assessments used to measure the achievement of all students, but the act allows reasonable accommodations for students with disabilities.<sup>30</sup> School districts may also test English language learners (ELLs)<sup>31</sup> for no more than 2 consecutive years in a language other than English, if this would likely yield more accurate and reliable information on the student's achievement.<sup>32</sup>

Florida's current NCLB state plan specifies that the FCAT is the state's academic assessment for purposes of NCLB. The FCAT measures student achievement of the *Sunshine State Standards* based upon five achievement levels. Level 5 represents the highest achievement, while Level 1

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<sup>23</sup> 20 U.S.C. s. 6311(b)(1)(D)(ii).

<sup>24</sup> Florida Department of Education, *Florida NCLB Consolidated State Application Accountability Workbook*, at 57-58 (Jan. 15, 2009), available at <http://www.ed.gov/admins/lead/account/stateplans03/flcsa.pdf> [hereinafter *NCLB State Plan*]; see ss. 1000.21(7) and 1003.41, F.S.; see also *Sunshine State Standards Fact Sheet*.

<sup>25</sup> *NCLB State Plan*, *supra* note 24, at 9-10 and 69-71; see s. 1008.22(3)(c), F.S., as amended by s. 8, ch. 2010-22, L.O.F., and s. 4, ch. 2010-48, L.O.F.

<sup>26</sup> Section 1, ch. 2008-235, L.O.F., codified at s. 1003.41, F.S.

<sup>27</sup> See *infra* text accompanying notes 35-36; see also *Statewide Assessment Program Fact Sheet*.

<sup>28</sup> 20 U.S.C. s. 6311(b)(3)(A).

<sup>29</sup> 20 U.S.C. s. 6311(b)(3)(C)(ii) and (iii).

<sup>30</sup> 20 U.S.C. s. 6311(b)(3)(C)(i) and (ix)(II); see also *FCAT Accommodations and Alternate Assessment Fact Sheet*.

<sup>31</sup> In rule 6A-6.0901, F.A.C., the Florida Department of Education has replaced the term "limited English proficient student" with "English language learner." See *English for Speakers of Other Languages (ESOL) Fact Sheet*.

<sup>32</sup> 20 U.S.C. s. 6311(b)(3)(C)(ix)(III) and (x).

signifies the lowest achievement.<sup>33</sup> The FCAT achievement levels correspond with required NCLB achievement levels, as follows:<sup>34</sup>

<b>NCLB</b>	<b>FCAT</b>
Above Proficient ( <i>i.e.</i> , Advanced)	Levels 4 and 5
Proficient	Level 3
Below Proficient ( <i>i.e.</i> , Basic)	Levels 1 and 2

In the 2010-11 academic year, Florida will begin the transition to FCAT 2.0 and statewide standardized EOC assessments in high school Algebra I, Geometry, and Biology I.<sup>35</sup> The Florida Department of Education will revise Florida’s NCLB state plan to reflect implementation of the new assessments and seek U.S. Department of Education approval of the revised plan subsequent to the baseline administration in spring 2011.<sup>36</sup>

**Does NCLB require states to adopt annual measurable objectives?**

Yes. NCLB requires each state to adopt annual measurable objectives for student achievement on the state’s academic assessments.<sup>37</sup> The objectives must identify a minimum percentage of students who are required to meet or exceed the “proficient” level on the state’s academic assessments.<sup>38</sup> NCLB sets the 2001-02 academic year as the starting point in which states must meet the objectives, with annual increases in the objectives through the 2013-14 academic year, at which point all students are expected to meet or exceed the state’s proficient level.<sup>39</sup> A state’s NCLB state plan must include separate annual objectives for mathematics and reading/language arts.<sup>40</sup> Florida’s state plan includes the following annual objectives:<sup>41</sup>

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<sup>33</sup> Section 1008.22(3)(c)5., F.S., *as amended by* s. 8, ch. 2010-22, L.O.F.; *NCLB State Plan, supra* note 24, at 9-10, 61-62 and 69-71; *see* rule 6A-1.09422(5)(a), F.A.C.; *see supra* text accompanying notes 26-28.

<sup>34</sup> Section 1008.22(3)(c)5., F.S., *as amended by* s. 8, ch. 2010-22, L.O.F.; *NCLB State Plan, supra* note 24, at 74-75. In 2010, the Legislature eliminated the grade 9 and grade 10 FCAT Mathematics and high school level FCAT Science examination. Instead, high school students must pass EOC examinations in Algebra I, Geometry, and Biology I. Florida’s NCLB state plan has not yet been amended to reflect these changes. Thus, the achievement levels reflected in the state plan are keyed solely to the FCAT. Section 8, ch. 2010-22, L.O.F.

<sup>35</sup> Section 1008.22(3)(c), F.S., *as amended by* s. 8, ch. 2010-22, L.O.F.; *see also* Statewide Assessment Program Fact Sheet.

<sup>36</sup> Email, Florida Department of Education, Legislative Affairs Director (Aug. 31, 2010).

<sup>37</sup> 20 U.S.C. s. 6311(b)(2)(G).

<sup>38</sup> 20 U.S.C. s. 6311(b)(2)(G)(iii).

<sup>39</sup> 20 U.S.C. s. 6311(b)(2)(E), (F) and (G)(iv).

<sup>40</sup> 20 U.S.C. s. 6311(b)(2)(G)(i).

<sup>41</sup> *NCLB State Plan, supra* note 24, at 20-22; Florida Department of Education, *School Accountability Reports*, <http://schoolgrades.fldoe.org/default.asp?report=AYP> (last visited Aug. 11, 2010).

<b>Academic Year</b>	<b>Reading Annual Objective (FCAT Levels 3, 4, or 5)</b>	<b>Total Students Proficient in Reading</b>	<b>Mathematics Annual Objective (FCAT Levels 3, 4, or 5)</b>	<b>Total Students Proficient in Mathematics</b>
2007-08	58%	60%	62%	66%
2008-09	65%	62%	68%	67%
2009-10	72%	62%	74%	68%
2010-11	79%	N/A	80%	N/A
2011-12	86%	N/A	86%	N/A
2012-13	93%	N/A	93%	N/A
2013-14	100%	N/A	100%	N/A

**What is “adequate yearly progress?”**

NCLB requires a state to demonstrate, using its academic assessments, that the state and all of its school districts and public elementary and secondary schools are meeting its annual measurable objectives, thereby showing annual increases in student achievement.<sup>42</sup> In addition, NCLB requires the state to narrow achievement gaps of the following subgroups within the state, districts, and schools:

- ❖ Economically disadvantaged students;<sup>43</sup>
- ❖ Students from major racial and ethnic groups;<sup>44</sup>
- ❖ Students with disabilities; and
- ❖ Students who are English language learners (ELLs).<sup>45</sup>

In order for the state, a school district, or a school to make AYP, it must meet the required percentage of “proficient” students listed in its annual measurable objectives in both mathematics and reading/language arts, as measured by the state’s academic assessments. AYP also requires

<sup>42</sup> 20 U.S.C. s. 6311(b)(2)(A)-(C).

<sup>43</sup> For the purposes of calculating AYP, a student is considered “economically disadvantaged” if he or she is eligible for free or reduced price lunch or is attending a USDA Provision 2 school, i.e., a school that provides meals to all students at no charge. Florida Department of Education, *2010 Guide to Calculating Adequate Yearly Progress (AYP), Technical Assistance Paper 2009-10*, at 5 (July 2010), available at <http://schoolgrades.fldoe.org/pdf/0708/2008AYPTAP.pdf> [hereinafter *AYP Guide*]; U.S. Department of Agriculture, *Provisions 1, 2, & 3 Fact Sheet*, [http://www.fns.usda.gov/cnd/Governance/prov-1-2-3/Prov1\\_2\\_3\\_FactSheet.htm](http://www.fns.usda.gov/cnd/Governance/prov-1-2-3/Prov1_2_3_FactSheet.htm) (last visited Aug. 10, 2010).

<sup>44</sup> Florida’s NCLB state plan defines the state’s major racial and ethnic groups for purposes of NCLB accountability as White, Black, Hispanic, Asian, and American Indian. *NCLB State Plan*, *supra* note 24, at 30-32, 99-100, and 104.

<sup>45</sup> 20 U.S.C. s. 6311(b)(2)(C)(v)(II).

that the minimum percentage of students must be met for each subgroup. NCLB, however, includes a “safe harbor” provision that allows a state to make AYP if the number of students in a subgroup that fail to achieve the minimum percentage is reduced by 10 percent from the previous year and at least 95 percent of students in the subgroup take the academic assessments.<sup>46</sup>

<b>Number and Percentage of Florida Public Schools Making AYP<sup>47</sup></b>										
<b>Year</b>	<b>Elementary</b>		<b>Middle School</b>		<b>High School</b>		<b>Combination<sup>48</sup></b>		<b>Total</b>	
2005-06 <sup>49</sup>	683	40%	108	20%	33	8%	92	18%	916	28%
2006-07 <sup>50</sup>	886	50%	100	18%	30	7%	72	16%	1,088	34%
2007-08 <sup>51</sup>	611	34%	76	13%	35	8%	70	15%	792	24%
2008-09 <sup>52</sup>	648	35%	58	10%	25	5%	54	11%	785	23%
2009-10 <sup>53</sup>	320	17%	52	9%	25	5%	59	11%	456	13%

**What information is included in annual report cards?**

NCLB requires states and school district to publish annual report cards include the following data:

- ❖ Assessment results by proficiency level, disaggregated by subgroup.<sup>54</sup>
- ❖ Assessment results compared to state annual objectives, disaggregated by subgroup.

<sup>46</sup> 20 U.S.C. s. 6311(b)(2)(I); *AYP Guide, supra* note 43, at 2-3.

<sup>47</sup> Email, Florida Department of Education, Legislative Affairs Director (Aug. 31, 2010). AYP data for the 2009-10 academic year reflects the number of schools that made AYP in each classification *before* appeals. *Id.*

<sup>48</sup> Combination schools include schools which serve students in more than one grade grouping. Email, Florida Department of Education, Legislative Affairs Director (Aug. 31, 2010).

<sup>49</sup> In the 2005-06 academic year, the total number of schools in each classification which received AYP ratings was: 1,702 elementary schools; 541 middle schools; 433 high schools; and 522 combination schools. Email, Florida Department of Education, Legislative Affairs Director (Aug. 31, 2010).

<sup>50</sup> In the 2006-07 academic year, the total number of schools in each classification which received AYP ratings was: 1,766 elementary schools; 569 middle schools; 449 high schools; and 458 combination schools. Email, Florida Department of Education, Legislative Affairs Director (Aug. 31, 2010).

<sup>51</sup> In the 2007-08 academic year, the total number of schools in each classification which received AYP ratings was: 1,804 elementary schools; 573 middle schools; 452 high schools; and 475 combination schools. Email, Florida Department of Education, Legislative Affairs Director (Aug. 31, 2010).

<sup>52</sup> In the 2008-09 academic year, the total number of schools in each classification which received AYP ratings was: 1,826 elementary schools; 587 middle schools; 462 high schools; and 479 combination schools. Email, Florida Department of Education, Legislative Affairs Director (Aug. 31, 2010).

<sup>53</sup> In the 2009-10 academic year, the total number of schools in each classification received AYP ratings: 1,835 elementary schools; 581 middle schools; 490 high schools; and 517 combination schools. Email, Florida Department of Education, Legislative Affairs Director (Aug. 31, 2010).

<sup>54</sup> For purposes of annual report cards, information must be disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged. 20 U.S.C. 6311(h)(1)(C).

- ❖ The percentage of students not tested, disaggregated by subgroup.
- ❖ The most recent two-year trend in each subject, for each grade level.
- ❖ High school graduation rates.<sup>55</sup>
- ❖ Progress of school districts in making AYP, including schools designated as in need of improvement.
- ❖ Information on teacher qualifications.<sup>56</sup>
- ❖ National Assessment of Educational Progress (NAEP) results in reading and mathematics.
- ❖ Participation rates for science assessments, disaggregated by NCLB subgroup.
- ❖ Other academic indicators selected by the state.<sup>57</sup>

Florida's NCLB State Plan specifies that annual report cards also include student enrollment information, disaggregated by subgroup; high school dropout rates for grades 9-12, disaggregated by race and gender; the number and percentage of teachers and staff who are new to each school; and the results of kindergarten readiness screenings.<sup>58</sup>

### ***What is a school in need of improvement?***

NCLB requires a school district to identify each district school that receives federal Title I, Part A funds<sup>59</sup> which fails to make AYP for two consecutive years. Identified schools are known as “schools in need of improvement” (SINI).<sup>60</sup> NCLB provides for a series of interventions which gradually increase in intensity with each year a school is identified as a SINI, as follows:

- ❖ ***School Improvement Plans and Public Transfer Option.*** Upon initial identification as a SINI, a school must develop a two-year school improvement plan, in consultation with parents, school staff, the school district, and outside experts.<sup>61</sup> The plan must be approved by the school district and the district or state educational agency must provide technical

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<sup>55</sup> Beginning with report cards for the 2010-11 academic year, states must use the “four-year adjusted cohort graduation rate.” 34 C.F.R. 200.19(b)(4)(ii). The graduation rate is calculated by dividing the number of students who graduate in four years with a regular high school diploma by the number of students who entered high school four years earlier (adjusting for transfers in and out, émigrés, and deceased students). Students who earn a regular high school diploma at the end of their fourth year, before the end of their fourth year, and, if a state chooses, during a summer session immediately following their fourth year are included in the calculation of the number of students who graduate in four years. 34 C.F.R. 200.19(b)(1)(iii). A regular high school diploma, for purposes of the calculation, does not include a General Educational Development (GED) credential, a certificate of attendance, or any other alternative award. 34 C.F.R. 200.19(b)(1)(iv).

<sup>56</sup> This information includes the percentage of teachers who are teaching with emergency or provisional credentials and the percentage of classes in the state not taught by highly qualified teachers, in the aggregate and disaggregated by high poverty versus low poverty schools. 20 U.S.C. s. 6311(h)(1)(C)(viii).

<sup>57</sup> 20 U.S.C. s. 6311(h)(1)(C) and (e); see *NCLB State Plan*, *supra* note 24, at 12 and 53-55; s. 1008.34(5), F.S.; Florida Department of Education, *School Accountability Reports*, <http://schoolgrades.fldoe.org/> (last visited Aug. 6, 2010).

<sup>58</sup> *NCLB State Plan*, *supra* note 24, at 54.

<sup>59</sup> Title I, Part A grants provide financial assistance to school districts and schools with high numbers or high percentages of poor children to help ensure that all children meet challenging state academic standards. Federal funds are currently allocated based primarily on census poverty estimates and the cost of education in each state, as measured by each state's expenditure per elementary and secondary student. U.S. Department of Education, *Guide to U.S. Department of Education Programs 2009*, at 59-61 (Aug. 2009), available at <http://www.ed.gov/programs/gtep/gtep.pdf> [hereinafter *Guide to Education Programs*].

<sup>60</sup> 20 U.S.C. s. 6316(b)(1)(A); 34 C.F.R. s. 200.32(a).

<sup>61</sup> 20 U.S.C. s. 6316(b)(1) and (3); 34 C.F.R. s. 200.41(a).

assistance to aid the SINI in implementing the plan.<sup>62</sup> Additionally, the district must allow a student attending the SINI to transfer to another public school, which may include a public charter school, no later than the beginning of the next school year.<sup>63</sup> In providing the transfer option, school districts must give first priority to the lowest achieving students from low-income families.<sup>64</sup>

- ❖ **Supplemental Educational Services.** If a SINI fails to make AYP for a third consecutive year, the school district must use a portion of its Title I, Part A funds to provide “supplemental educational services” (SES) for students attending the school who are from low-income families.<sup>65</sup> SES include tutoring, after-school services, summer school, and other supplemental academic enrichment services, offered by state-approved public or private service providers.<sup>66</sup>
- ❖ **Corrective Actions.** If a SINI fails to make AYP for four consecutive years, NCLB requires the school district to take at least one of the following corrective actions— replace school staff who are relevant to the school’s failure to make AYP, institute and implement a new curriculum, decrease management authority at the school level, appoint an outside expert advisor for the school, extend the school year or school day, or restructure the school’s organization.<sup>67</sup>
- ❖ **Restructuring.** If a SINI under corrective action fails to make AYP for a fifth consecutive year, the school district must continue to provide the public school transfer option and SES for students who attend the school and prepare a plan to restructure the school’s governance structure.<sup>68</sup> The following year, the district must implement at least one of the following restructuring options— reopen the SINI as a public charter school; replace most of the school staff; contract with a private entity to operate the school; turn the school’s operation over to the state, if allowed under state law and agreed to by the state; or other major restructuring of the school’s governance or staffing.<sup>69</sup>

In March 2008, the U.S. Secretary of Education announced a nationwide pilot project, known as “differentiated accountability.” The program was open to up to 10 states. Florida is one of nine states approved for participation in the pilot project.<sup>70</sup> Participating states are granted flexibility

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<sup>62</sup> 20 U.S.C. s. 6316(b)(3)(A) and (4); 34 C.F.R. s. 200.40(a). Technical assistance must be provided on various topics such as analyzing assessment data to adjust instruction to meet student needs; identifying and implementing research-based professional development and instructional strategies and methods; and budget analysis and resource allocation. 20 U.S.C. s. 6316(b)(4)(B); 34 C.F.R. s. 200.40(b)-(d).

<sup>63</sup> 20 U.S.C. s. 6316(b)(1)(E)(i); see ss. 1001.42(20) and 1002.38(3), F.S.; see also Opportunity Scholarships Fact Sheet.

<sup>64</sup> 20 U.S.C. s. 6316(b)(1)(E)(ii). School districts must notify parents of an eligible student of the option to transfer the student to another public school not identified for improvement and provide details about the available options as far in advance as possible, but no later than 14 days before the start of the school year. 34 C.F.R. s. 200.37(a) and (b).

<sup>65</sup> 20 U.S.C. s. 6316(b)(5)(B) and (e)(1), (6) and (12)(a); see s. 1008.331, F.S.

<sup>66</sup> 20 U.S.C. s. 6316(e)(12)(C).

<sup>67</sup> 20 U.S.C. s. 6316(b)(7)(C)(iv); 34 C.F.R. 200.42(b).

<sup>68</sup> 20 U.S.C. s. 6316(b)(8)(A).

<sup>69</sup> 20 U.S.C. s. 6316(b)(8)(B).

<sup>70</sup> U.S. Department of Education, Press Release, *U.S. Education Secretary Margaret Spellings Announces Approval of Three Additional States to Use Differentiated Accountability Under NCLB* (Jan. 8, 2009), available at

to vary the intensity and types of interventions for SINIs.<sup>71</sup> To do so, states must establish a nuanced accountability system that distinguishes between schools in need of dramatic intervention and those that require less intensive interventions to make AYP and annual measurable objectives.<sup>72</sup> In 2009, the Legislature revised Florida's school accountability system to comport with the goals and objectives of the differentiated accountability pilot project.<sup>73</sup>

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

SES are research-based tutoring, after-school, summer school, and other supplemental academic enrichment services designed to increase student achievement and proficiency as measured by statewide assessments and academic achievement standards.<sup>74</sup> Only students from low-income families are eligible for SES.<sup>75</sup> A school district must offer SES to each eligible student who attends a school that has been identified for improvement for a second consecutive year and must continue to provide SES until the school makes AYP.<sup>76</sup>

School districts must notify parents of eligible students of the availability of SES and assist parents in choosing a provider from a state-approved list of providers. Each district and SES provider must enter into an agreement that includes, among other things, specific student goals, a timetable for improving each student's achievement, and procedures for informing a student's parents and teachers of the student's progress.<sup>77</sup>

State educational agencies (SEA) must, among other things, promote maximum participation by SES providers to increase parental choice, approve both public and private SES providers, maintain a statewide list of approved SES providers, and monitor SES provider performance.<sup>78</sup> NCLB sets forth various criteria for approving SES providers, including:

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<http://www2.ed.gov/news/pressreleases/2009/01/01082009b.html>. Florida was one of 17 states that submitted proposals to the U.S. Department of Education to participate in the differentiated accountability pilot project. U.S. Department of Education, *Differentiated Accountability: Targeting Resources to Schools with the Greatest Need* (May 2008), available at <http://www.ed.gov/nclb/accountability/differentiated/factsheet02.pdf>. In August 2008, the U.S. Secretary of Education approved Florida's proposal for the differentiated accountability pilot project. Letter from Assistant Secretary, U.S. Department of Education, to Florida Commissioner of Education (Aug. 1, 2008), available at <http://www.ed.gov/admins/lead/account/differentiatedaccountability/fldr.pdf> (conditional federal approval of Florida's differentiated accountability proposal).

<sup>71</sup> U.S. Department of Education, Press Release, *U.S. Secretary of Education Margaret Spellings Announces No child Left Behind "Differentiated Accountability" Pilot* (March 18, 2008), available at <http://www2.ed.gov/news/pressreleases/2008/03/03182008.html>.

<sup>72</sup> U.S. Department of Education, *Differentiated Accountability: A More Nuanced System to Better Target Resources* (March 2008), available at <http://www.ed.gov/nclb/accountability/differentiated/factsheet.pdf>.

<sup>73</sup> Chapter 2009-144, L.O.F.; s. 1008.33, F.S. Florida's education accountability system differentiates SINIs based upon such factors as school grade, years of poor performance, and student proficiency levels and any increases in the number of students who are not proficient in reading and math. Section 1008.33(4), F.S.; rule 6A-1.099811, F.A.C.; see Differentiated Accountability Fact Sheet.

<sup>74</sup> 20 U.S.C. s. 6316(e)(12); 34 C.F.R. s. 200.45(a).

<sup>75</sup> 20 U.S.C. s. 6316(e)(12)(A); 34 C.F.R. s. 200.45(b)(1).

<sup>76</sup> 20 U.S.C. s. 6316(b)(5) and (e)(1); 34 C.F.R. s. 200.45(a)-(c).

<sup>77</sup> 20 U.S.C. s. 6316(e)(2)-(3).

<sup>78</sup> 20 U.S.C. s. 6316(e)(4).

- ❖ Whether the provider’s instructional methods and content are aligned with state academic content and student academic achievement standards, and are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children;
- ❖ Whether the provider has been removed from any state’s approved provider list;
- ❖ Whether parent recommendations or results from parent surveys, if available, attest to the success of the provider’s instructional program in increasing student achievement; and
- ❖ Whether evaluation results, if any, demonstrate that the provider’s instructional program has improved student achievement.<sup>79</sup>

In monitoring SES provider performance, a state must examine, at a minimum, evidence that the provider’s instructional program:

- ❖ Is consistent with the instruction provided and content used by the district and the state;
- ❖ Addresses students’ individual needs;
- ❖ Has contributed to increasing students’ academic proficiency; and
- ❖ Is aligned with state academic content and student achievement standards.<sup>80</sup>

### ***Are school districts required to participate in the National Assessment of Educational Progress?***

Yes. NCLB requires school districts to participate in the biennial National Assessment of Educational Progress (NAEP) assessment in reading and mathematics for students in grades 4 and 8.<sup>81</sup> The NAEP uses a sampling procedure that randomly selects students who attend schools selected to be representative of schools nationally. When collecting national assessment data, approximately 6,000 to 20,000 students per grade are assessed for each subject. When state-specific data is collected, 3,000 students in approximately 100 schools are typically selected to take the NAEP in each state for each grade and subject.<sup>82</sup>

### ***How does NCLB enhance parental choice?***

As previously discussed, NCLB requires a school district to allow a student attending a SINI to transfer to another public school, which may include a public charter school, no later than the beginning of the next school year.<sup>83</sup> Additionally, NCLB requires states to adopt and implement a statewide policy requiring that a student who attends a persistently dangerous public school, or who becomes a victim of a violent criminal offense while on school grounds, be permitted to transfer to a safe public school in the district, including a public charter school.<sup>84</sup> In the case of

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<sup>79</sup> 34 C.F.R. s. 200.47(b).

<sup>80</sup> 34 C.F.R. s. 200.47(c).

<sup>81</sup> 20 U.S.C. ss. 6311(c)(2) and 9622; 34 C.F.R. s. 200.11(a) and (b); see National Center for Education Statistics, U.S. Department of Education, *National Assessment of Educational Progress: The Nation’s Report Card*, <http://nces.ed.gov/nationsreportcard> (last visited Aug. 6, 2010).

<sup>82</sup> National Center for Education Statistics, U.S. Department of Education, *An Introduction to NAEP: National Assessment of Educational Progress*, at 9 (2010), available at <http://nces.ed.gov/nationsreportcard/pdf/parents/2010468.pdf>.

<sup>83</sup> See *supra* notes 63-64 and accompanying text.

<sup>84</sup> 20 U.S.C. s. 7912.

SES, parents of eligible students are solely responsible for choosing the student's SES provider.<sup>85</sup>

### ***How does NCLB expand flexibility for states and school districts?***

NCLB provides states and school districts with expanded flexibility in how they may use federal education funds. States and school districts may transfer up to 50 percent of the non-administrative funding they receive under specified state grant programs to Title I or to the Teacher and Principal Training and Recruitment<sup>86</sup> and Enhancing Education through Technology<sup>87</sup> state grant programs.<sup>88</sup>

State flexibility authority (State-Flex) is a program that authorizes the U.S. Secretary of Education to grant flexibility authority to up to seven eligible states.<sup>89</sup> With this authority, a state may consolidate and use certain federal funds reserved for state administration and state-level activities for any educational purpose authorized under NCLB. States may also enter into performance agreements with four to 10 school districts in the state, thereby permitting those districts to consolidate certain federal funds to be used for any NCLB purpose consistent with the state's State-Flex plan.<sup>90</sup>

### ***How does NCLB promote teaching methods for reading which are proven to work?***

NCLB provides for the award of Reading First State Grants. The grant program provides assistance to states and school districts for establishing scientifically based reading programs for students enrolled in kindergarten through grade 3. Funds support increased professional development to ensure that all teachers have the skills they need to teach these programs

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<sup>85</sup> See *supra* text accompanying note 77.

<sup>86</sup> 20 U.S.C. s. 6613(a)(3).

<sup>87</sup> 20 U.S.C. s. 6762(a)(1).

<sup>88</sup> 20 U.S.C. ss. 7305-7305b; U.S. Department of Education, *Summary of Principal Flexibility Provisions in the Elementary and Secondary Education Act*, at 6-8 (Jan. 14, 2002), available at <http://www.ed.gov/nclb/freedom/local/flexibility/summary.pdf> [hereinafter *NCLB Flexibility Provisions*]. NCLB also specifies that transferability is applicable to state grants awarded for Safe and Drug Free Schools and Communities and Innovative Programs. *Id.*; see 20 U.S.C. ss. 7112 and 7211a(b). The U.S. Congress discontinued funding for Safe and Drug-Free Schools and Communities state grants beginning in FY 2010. See Executive Office of the President, Office of Management and Budget, *Terminations, Reductions, and Savings, Budget of the U.S. Government Fiscal Year 2010*, at 59 (2009), available at <http://www.gpoaccess.gov/usbudget/fy10/pdf/trs.pdf>. State grants for Innovative Programs have not been funded since FY 2007. U.S. Department of Education, *Innovative Programs, Funding Status*, <http://www2.ed.gov/programs/innovative/funding.html> (last visited Aug. 31, 2010) [hereinafter *Funding Status*].

<sup>89</sup> 20 U.S.C. s. 7315(a). Florida was the first state to receive State-Flex authority from the U.S. Secretary of Education. See Letter from Acting Assistant Secretary, Office of Elementary and Secondary Education, U.S. Department of Education to Commissioner of Education, Florida Department of Education, <http://www.ed.gov/policy/elsec/guid/stateletters/sffl.html> (last visited Aug. 6, 2010).

<sup>90</sup> *NCLB Flexibility Provisions*, *supra* note 88, at 1; 20 U.S.C. ss. 7315-7315c. State-Flex also enables states to specify how school districts in the state may use funds provided for Innovative Programs. 20 U.S.C. ss. 7211a(b) and 7315-7315c. However, state grants for Innovative Programs have not been funded since FY 2007. *Funding Status*, *supra* note 88.

effectively. The program also supports the use of screening and diagnostic tools and classroom-based instructional reading assessments to measure how well students are reading and to monitor their progress. The program awards grants to the states, and school districts apply to the state for subgrants. Funds are allocated among the states according to the proportion of children ages five to 17 who reside in state and who are from families with incomes below the poverty line.<sup>91</sup>

<b>Reading First State Grants Funding<sup>92</sup></b>	
2002-03	\$47,156,800
2003-04	\$50,073,069
2004-05	\$55,307,766
2005-06	\$57,102,830
2006-07	\$59,658,043
2007-08	\$52,510,792
2008-09	\$20,135,397
2009-10	0

### **How does NCLB promote English proficiency?**

NCLB establishes the English Language Acquisition State Grants program to assist states in improving the education of English language learners (ELLs). The program provides enhanced instructional opportunities for immigrant children that is designed to help them learn English and meet challenging state academic standards. Funds are distributed to states based on a formula that takes into account the number of ELLs and immigrant students in each state.<sup>93</sup>

Each state must submit a plan to the U.S. Department of Education which describes the state's process for awarding subgrants to school districts; how the state will establish standards and objectives for raising the level of English proficiency which are aligned with state standards; and how the state will hold districts and schools accountable for meeting all of the state's annual measurable objectives and making AYP for ELLs.<sup>94</sup> School districts must use funds from the subgrants in order to provide:

- ❖ High-quality language instruction programs based on scientifically based research that has demonstrated the effectiveness of the programs in increasing English proficiency and student achievement; and

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<sup>91</sup> *Guide to Education Programs, supra* note 59, at 171-172; 20 U.S.C. ss. 6361-6368; *see also* Reading Fact Sheet.

<sup>92</sup> Email, Florida Department of Education, Legislative Affairs Director (Aug. 31, 2010).

<sup>93</sup> *Guide to Education Programs, supra* note 59, at 63-64; 20 U.S.C. ss. 6821-6871.

<sup>94</sup> 20 U.S.C. s. 6823(b).

- ❖ High-quality professional development for classroom teachers, principals, administrators, and other school or community-based organizational personnel in order to improve the instruction and assessment of ELLs.<sup>95</sup>

Additionally, the reading/language arts and mathematics proficiency of ELLs is a required consideration in determining whether schools and school district’s make AYP. Thus, schools and districts are held accountable for the progress that ELLs make toward the state’s annual measurable objectives.<sup>96</sup>

<b>English Language Acquisition Grant Funding</b>	
2002-03	\$25,124,291
2003-04	\$31,206,229
2004-05	\$36,272,809
2005-06	\$38,999,401
2006-07	\$42,709,671
2007-08	\$40,859,272
2008-09	\$42,604,719
2009-10	\$43,805,341
2010-11	\$44,368,036

### **How does NCLB strengthen teacher quality?**

NCLB requires each state’s NCLB state plan to provide for an annual increase in the percentage of “highly qualified teachers” in core academic subjects at each school district and school.<sup>97</sup> NCLB requires a teacher to meet the following standards in order to be a “highly qualified teacher”:

- ❖ **All Teachers.** Hold full state certification, which may include alternative certification, or pass a state licensing examination and have a license to teach in the state.<sup>98</sup>

<sup>95</sup> 20 U.S.C. s. 6825; see also English for Speakers of Other Languages (ESOL) Fact Sheet.

<sup>96</sup> See *supra* text accompanying notes 42-46; U.S. Department of Education, *New No Child Left Behind Regulations: Flexibility and Accountability for Limited English Proficient Students* (Sept. 11, 2006), available at <http://www.ed.gov/admins/lead/account/lepfactsheet.pdf>.

<sup>97</sup> 20 U.S.C. s. 6319(a)(2)(A). Core academic subjects include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. 20 U.S.C. s. 7801(11).

<sup>98</sup> 20 U.S.C. s. 7801(23)(A); see Teacher Certification Fact Sheet and Alternative Teacher Certification Fact Sheet.

- ❖ **New Elementary School Teachers.** Hold a bachelor's or higher degree and pass a rigorous state examination that tests a teacher's subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum.<sup>99</sup>
- ❖ **New Middle or High School Teachers.** Hold a bachelor's or higher degree and demonstrate a high level of competency in each of the academic subjects taught by passing a rigorous state examination in each subject or completing, in each subject, an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.<sup>100</sup>
- ❖ **Experienced Teachers.** Hold a bachelor's or higher degree, meet the previously discussed requirements for new teachers, and demonstrate competence in each academic subject taught based on a uniform state evaluation. The evaluation must provide objective information about the teacher's attainment of core content knowledge in the subjects taught and teaching skills appropriate for the grade level taught. The evaluation must also be aligned to the state's academic content standards and student achievement standards.<sup>101</sup>

### **Where can I get additional information?**

#### **Florida Department of Education**

Division of Public Schools  
(850) 245-0509  
<http://www.fldoe.org/NCLB>

#### **United States Department of Education**

Office of Elementary and Secondary Education  
(202) 401-0113  
<http://www.ed.gov/nclb>

#### **Florida House of Representatives**

Education Committee  
(850) 488-7451  
<http://www.myfloridahouse.gov>

#### **Florida House of Representatives**

Appropriations Committee  
(850) 488-6204  
<http://www.myfloridahouse.gov>

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<sup>99</sup> 20 U.S.C. s. 7801(23)(B)(i). The examination may be a certification or licensing examination. *Id.*

<sup>100</sup> 20 U.S.C. s. 7801(23)(B)(ii). The examination may be a certification or licensing examination. *Id.*

<sup>101</sup> 20 U.S.C. s. 7801(23)(C).

