ESEA ACTION GUIDES

Developed for NEA Affiliates’ Use in Implementing the Elementary & Secondary Education Act

NATIONAL EDUCATION ASSOCIATION
ESEA Coordination
1201 16th St. N.W.
Washington, DC 20036
ESEA Hotline: (866) 373 ESEA (3732)
www.nea.org
ESEA ACTION GUIDES

General/Overall bill
Testing, Assessments and Accountability
Annual Testing, Resources for Assessments, Adequate Yearly Progress
(Report Cards, Academic Improvement & Consequences for Schools And Educators),
High Priority Schools

Teacher and Paraprofessional Qualifications/Certification
Paraprofessional(s) Quality, Teacher Quality,
Alternative Routes to Certification,
Higher-Education Partnerships,
Alternative Routes to Certification

Funding Flexibility and Transferability
Supplemental Services & Academic Enrichment

Collective Bargaining/Policy-making
(will tie to IDEA)

Timelines

Other
Teacher Liability (Coverdell TPA), School Dropout Prevention,
Civil Rights Protections, Single-Sex Classes, School Prayer,
Parental Rights, Privacy Rights: Student or Teacher,
Reading First, Scientifically-Based Research

ESEA ACTION GUIDES

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ACTION GUIDES
General/Overall Bill

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Elementary Secondary Education Act

Tool Kit

Making Public Schools Great for Every Child

NATIONAL EDUCATION ASSOCIATION

1201 16th St., N.W.
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Elementary Secondary Education Act

TOOL KIT

Making Public Schools Great for Every Child
National Education Association

The National Education Association is the nation's largest professional employee organization, representing 2.7 million elementary and secondary teachers, higher education faculty, education support professionals, school administrators, retired educators, and students preparing to become teachers.

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Dear Colleagues,

As early as this school year, school staff in classrooms across the United States will see the effects of the new federal education law — the Elementary and Secondary Education Act of 2001 (ESEA). Questions about what it means and what changes are in store abound. The NEA ESEA Toolkit is designed to help NEA members work with state and local policymakers to implement the new mandates thoughtfully in ways that help, rather than hurt, student achievement, and that respect our expert knowledge as educators. As professionals working face to face with students every day, teachers and school staff must be involved in all facets of reform to ensure success.

NEA members are particularly concerned about the effects on students and schools that need extra help. In many cases, more demands are made of students and schools without providing more resources required to truly make a difference. Accountability is a two-way street, and everyone must share responsibility for meeting the goals of the new law. This toolkit provides guidance and practical tips for giving school staff a voice in implementing the new law and turning around low-performing schools.

Getting reform right requires resources and a commitment to frankly addressing the challenges and opportunities to help all our children achieve their full potential. NEA members are creative problem-solvers, strong communicators and ardent advocates for children. As those closest to the children affected by the law, we will do all we can to ensure that the new law enhances teaching and learning. This toolkit provides the support to achieve that goal.

Sincerely

Bob Chase
President
What the law says

Annual tests for all students in at least reading and math are required in grades 3–8 and once for grades 10–12 beginning in 2005–06. Between now and 2005, states must continue annual tests in at least reading and math in one of each of grades 3–5, 6–9 and 10–12. Beginning in 2007–08, states must administer science tests at least once in elementary, middle and high school.

The tests must be the same for all students, generate individual student scores and allow student achievement to be compared from year to year. The tests also must be aligned with the state's content standards and be valid measures that provide reliable information about the specific needs of students.

To confirm state test results, all states are required to participate in the National Assessment of Educational Progress (NAEP) tests in reading and math (grades 4 and 8) every other year.

Prior law only required testing Title I students in reading and math at least once at the elementary, middle and high school levels. Participation in NAEP was voluntary.

The new law requires this testing to apply to all students, including those with special needs and students who are English language learners. “Appropriate accommodations” must be made for these students. This can include alternative assessments for students with disabilities and tests written in the native language of newcomers who have not attended school in the United States for three consecutive years.

Schools, districts and states must report test results in reading and math for specified groups of students: special education, English language learners and economically disadvantaged. The law also requires test score reporting by gender and for major racial and ethnic groups.
What it means for students and schools

Thoughtfully designed and implemented tests can provide important information for educators, parents and policymakers to use to improve student and school performance. However, no single test will tell you everything you need to know. Getting the most out of a test requires understanding the scope of what a test can and cannot measure.

Many states will have to change their tests and testing systems quickly to comply with the new law. In some cases, this may reduce the quality of the tests and the information they provide. State policymakers must retain and build on testing practices that are working and learn from those that aren’t.

The tight timelines in the law may cause states to reach for off-the-shelf tests produced and marketed nationwide by three major companies. Because they are national tests, many are not adequately aligned with the content standards and curriculum in individual states. This can lead to students being tested on material unrelated to their state’s standards and not covered in the classroom.

Tests vary dramatically in quality. Tests that include a mix of open-ended, problem solving and multiple-choice questions tend to promote higher level thinking skills and provide students with varied opportunities to demonstrate what they know.

These higher-quality tests are more expensive. The federal government is covering some of the expense, but states must absorb the additional cost of administering and scoring them. Some states are finding this needed funding by eliminating tests in other subjects such as science and social studies, which are not yet covered by the new law.

Tools to Help

NEA produced a number of resources to promote high-quality testing systems by giving state policymakers specific guidance about the kinds of tests we need and why they’re needed. For more information, visit www.nea.org/testingplus.
What you can do: Policy questions to ask

Send the message early and often that high-quality tests are imperative to provide the kind of rich information needed to improve student performance. A meteorologist wouldn’t use a teaspoon to measure the air temperature. Similarly, educators need the right tools for the job. Ask state decisionmakers the following questions:

- Will your current state tests comply with the new federal law? Will the changes required enhance or reduce the quality of the tests?
- Are the tests aligned with your state’s content standards and the school’s curriculum and professional development?
- Are teachers given standard-by-standard reports on how students are doing so they can make appropriate adjustments in teaching?
- Has the state involved teachers in the development of standards and assessments?
- Is adequate professional development provided for teachers to use the tests to promote good teaching and learning?
- What are your state’s current testing policies for English language learners? Can your state implement appropriate tests in the timeline required?
- Are high-stakes tests contributing to dropout rates? Are strategies in place to prevent the higher dropout rates that often accompany high-stakes tests?
- Norm-referenced tests are designed to compare students to a norm (not a standard) and place them on a statistical curve, putting a portion of students at the bottom, top and middle no matter how well students know the material and meet content standards. What safeguards are in place to ensure that tests are valid measures on which to base sanctions?
Maryland may prove to be a model for quality testing backed by the extra resources required to help students perform at high levels. At a time when most states are cutting their education budgets, the Maryland legislature committed $1.3 billion to Maryland’s schools, with high-poverty schools receiving priority attention.

In exchange for the extra funding, schools are being held accountable for higher performance. School systems must submit a plan to the state showing how the money will be spent and how their plans will help them reach the state’s academic standards.

The tests used in Maryland provide students with multiple opportunities to demonstrate what they know through the use of portfolios. Such performance-based tests challenge students to apply what they know and to use critical thinking skills.

Unfortunately, these tests do not meet the requirements of the new law. Maryland is in the process of changing these tests to meet the requirements of individualized score reports.

In Kentucky, the state demands progress not only in reading and math but also in science, social studies, the arts and health education. Different subjects are tested in different years. Schools are accountable for improvement not only in test scores but also in student work samples and other indicators, like whether graduates go on to college. Under the new legislation, Kentucky will have to add what some of its policymakers consider needless extra tests in reading and math. To cut costs, the state may have to eliminate their broad range of tests that give parents and educators a more well-rounded view of how students are performing on many subjects. (The New York Times, December 19, 2001)
REPORT CARDS

What the law says

States and school districts receiving Title I funding (95 percent of all school districts) must provide parents and the public with annual report cards that list information about several facets of teaching and learning, including:

- student achievement scores reported by subject area, grade level, race, income level, special needs and English language learners;
- the most recent two-year test-score trend data;
- a list of schools identified for improvement, corrective action or restructuring; and,
- the number and location of “highly qualified” teachers.

States must develop a single testing, reporting and accountability system to chart progress for all schools. Currently, at least 28 states have separate accountability systems for Title I schools and other public schools.

The report cards called for in the new law represent an opportunity to give parents, educators and policymakers a more complete picture of what success looks like. Under the new law, success is based on “Adequate Yearly Progress” (AYP). AYP is a measure of how much schools, districts and states raise student achievement to ensure that all students are proficient in reading and math by 2013–14. Schools with students who are not proficient will be subject to sanctions (see Labels and Consequences, page 10).

Student achievement must be reported for all students and broken out for specific groups of students by race, gender, income level, special needs, migrant students and English language learners. All students, and students in each of these groups (except gender and migrant status), must meet annual achievement targets to make AYP. Reporting achievement results for students in each of these groups will help identify those who need the most help and target the extra resources required to close the persistent and troubling achievement gaps.

Public report cards also will tell parents whether their school has met annual achievement targets, is in need of improvement, or is subject to corrective action or reconstitution. These designations will tell them whether their child is eligible for public school choice or after-school
tutoring. Parents of children in Title I schools must be notified annually of their right to request and receive information about their own child’s teachers’ professional qualifications.

What it means for students and schools

True accountability begins with information. When thoughtfully designed and implemented, the new report cards can inform parents and the community about how schools and students are doing. The law requires that the information be presented in an easy-to-understand format. If done effectively, this could be good news for parents and educators. Data from classroom, district and statewide assessments are powerful tools for understanding strengths and weaknesses and strategies that close the achievement gap.

Currently, only four states — California, Florida, Utah and Wisconsin — report student achievement information for the groups of students specified in the law (income level, race, special needs and English language learners). Approximately 14 states make public the number of uncertified teachers in each district, and very few, if any, provide information about paraprofessional quality. The law calls for multiple measures but leaves it up to states to decide which measures to include. NEA is a strong advocate for providing multiple measures that offer a more complete picture of student and school achievement.

Based on 2001–02 student performance data, states must establish a baseline level of performance and then raise the performance threshold incrementally over 12 years. Schools achieve AYP only if they meet these annual benchmarks, which are the same for all schools and all student groups. Schools that fail to meet the AYP thresholds are subject to various actions explained under Labels and Consequences (page 10).

In computing “progress,” the point at which states start measuring is very important. The initial baseline must be the higher of two measures: the percentage of students proficient in the lowest performing subgroup of students or the overall percentage of students proficient at the school ranked at the 20th percentile. The
challenge is ensuring that the measures of progress are fair and meaningful for both low- and high-performing schools.

The new law requires absolute growth in each subgroup, but allows schools to average three years of test data to recognize changes that may be out of the school’s control, such as fluctuations in the number of students in each subgroup. Still the highly prescriptive method of measurement in the new law could result in large numbers of schools found in need of improvement, making it hard to identify the schools who need the most help.

What you can do:
Policy questions to ask

• Never before has candor and clarity in reporting been so important. How is your state ensuring that good information is not sacrificed in efforts to avoid sanctions?
• Because it takes many ingredients to make a good school, are multiple measures used to provide the most complete picture of student and school performance?
• Will report cards be presented in ways that are accessible, informative and useful for schools, teachers, parents and community members?
• What is your state’s plan for complying with AYP? Is information currently reported by ethnicity, income-level, English language learners, etc.?
• How does your state define “proficiency”? When applied to the new AYP requirements, is it realistic and useful?
• What kind of support is now in place for schools in need of improvement and corrective action?
• What safeguards are in place to ensure that tests are valid measures on which to base sanctions? Norm-referenced tests are designed to spread and sort student scores on a statistical curve, putting a portion of students at the bottom, middle and top no matter how well or poorly students know the material and meet content standards.
Tools to Help

NEA KEYS2.0 is a unique, research-based school assessment instrument with related services that helps schools identify their strengths and areas in need of improvement. The information generated from the report can supplement the required ESEA report card with data to guide school improvement planning. For more information, visit www.nea.org/schools/keys/howto.html.

While standardized tests are good at producing a score assigned to students and schools, they don’t identify specific areas that need improvement. In New York, Grow Network software evaluates the raw data of test scores and translates it into suggestions to help students improve. By analyzing both correct and incorrect answers, the software produces an assessment of a student’s skills and needs. It even helps with lesson plans for a class based on its test performance. For more information, visit www.grownetwork.com.

School Wise Press empowers parents with information about schools organized in an easy-to-use Web-based format. “Just as Consumer Reports provides independent, third-party information to consumers about the products and services they buy, so do we hope to do the same for those who are the customers of schools,” boasts their Web site (www.schoolwisepress.com).

The National Center for Research on Evaluation, Standards and Student Testing (CRESST) produced “Measuring Adequate Yearly Progress” — a resource illustrating how AYP formulas and targets can make a big difference in benchmarking progress. For more information, visit www.cse.ucla.edu/cresst/newsletters/clsp99.pdf.

NCREL Education Lab offers tools to help districts effectively gather and present data to the public at www.ncrel.org/toolbelt/.
Labels and consequences are based on Adequate Yearly Progress (AYP), which requires every school to increase test scores in every population group by a certain percentage every year to achieve 100 percent proficiency in 12 years. For the first time, the law requires that scores be reported for all students and in four groups: students in major racial/ethnic groups, income level, English language learners and special needs students. In addition, scores must be reported by gender and for migrant students, though these two groups do not count in measurement of AYP.

Those schools that do not make sufficient annual progress will be labeled in three categories (see below) and face significant consequences ranging from students being allowed to attend other public schools to total restructuring by the school district or the state.

It is important to note that while all schools in the state are subject to the testing and report card requirements, only Title I schools are subject to the sanctions described below.

Under the old law, as many as 9,500 schools have received “needs improvement” ratings for two or more years. For these schools, sanctions start in September 2002. Many districts are struggling to implement and pay for the public school choice transportation options triggered by the sanctions.

What it means for students and schools

Schools that do not make AYP for two consecutive years are designated as schools “in need of improvement.” These schools must develop a two-year improvement plan. The school must spend 10 percent of its Title I funds on improved professional development for its teachers. Parents with children in these schools may transfer their child to another public school. The district must use a portion of its Title I funds to pay transportation for students who move to another public school.
If a school fails to make AYP for three consecutive years, it continues to operate under its school improvement plan. Students also are eligible for public school choice as well as a range of supplemental services, including after-school tutoring. (Again, a portion of Title I funds will be spent on these supplemental services — a maximum of 20 percent of Title I funds can be spent on combined public school choice transportation and supplemental services.)

If a school fails to make AYP for four consecutive years, the district is designated as in “corrective action” and must implement a plan that includes options such as developing a new curriculum or replacing certain school staff. The district must continue to offer after-school tutoring or other supplemental services, and students may transfer to another public school at the district’s expense.

Restructuring occurs if a school has not met achievement goals for five consecutive years. This could include state takeover, the hiring of a private management contractor, staff restructuring or converting the school to a charter school. The district must continue to offer tutoring or other supplemental services, and students may transfer to another public school at the district’s expense.

The law requires that school districts provide research-based technical assistance to schools that fail to meet their AYP goals for two consecutive years. Technical assistance must include help in identifying and implementing professional development and instructional practices that are proven effective in boosting student achievement. States also are required to establish school support teams, onsite experts, and master teachers and principals to work in struggling schools.

An important protection for NEA members is that the law prevents any actions under school improvement, corrective action or restructuring from reducing the rights employees have under federal, state and local laws and collective bargaining agreements.

North Carolina offers a Web-based resource of intervention strategies to assist schools in identifying best programs and practices in turning around low-performing schools. The state board is required by law to identify low-performing schools and assign assistance teams to them, giving priority to those experiencing declines in student performance. Visit www.ncpublicschools.org/school_improvement/assitlegal.html.

NEA’s Schools System Capacity Department offers two programs that support school improvement. The Baldrige-based tools assist schools in setting clear goals, developing processes for meeting them and measuring their performance.

KEYS2.0, described on page 9, provides schools with data about how well they function and recommends strategies for continuous improvement. Contact NEA’s Priority Schools Initiative team at (202) 822-7364 or Katrina Thribenny at kthribenny@nea.org.

NCREL Education Lab has produced several turnaround school resources, available at www.ncrel.org/sdrs.
What you can do: Policy questions to ask

Accountability is a two-way street. If more is expected of students and schools, lawmakers have a responsibility to provide students and schools with the extra support they need to perform at higher levels. The new report cards, with more information about which kids need more help, will assist educators in spotlighting where more support is needed and hold lawmakers accountable for providing it (see the Ohio example, page 13). Following are questions you can ask school leaders and state policymakers:

- Beginning in 2002, schools in need of improvement will be required to develop a list of criteria for supplemental service providers. Is your local association involved in this? Is the association working in conjunction with the district to be a provider?

- Have the state and local school districts involved teachers and other educators in the development of their Title I accountability plans?

- Some schools that are currently in the first year of school improvement will be required to provide public school choice during the 2002-03 school year at the district’s expense. Are your schools and district prepared to handle this mandate? What options will be available to parents and students in rural areas?

- Are your state and district making the most of the mandated “improvement plan” (see the Missouri example, page 13)?

- What is being done to recognize what works in high-poverty schools and other schools facing challenges based on characteristics of the community? Is this information being used to make changes to improve student learning and adopt appropriate curriculum and instructional resources?

- Serious questions about the validity of AYP and tests as true measures of student and school performance exist (see Testing, page 2, and Report Cards, page 6). Considering these questions, what safeguards are in place to protect students and schools from being unfairly labeled and sanctioned?
Missouri requires all school districts to create a Comprehensive School Improvement Plan (CSIP). The plan must contain detailed goals, results and objectives that will guide district improvement efforts for at least five years. This allows districts to be proactive in considering school improvement rather than reactive to school failure. Teachers and school staff should be given a key role in developing such plans. They can best identify barriers and successful practices.

The Kentucky Highly Skilled Educators Program (HSE) has identified and trained more than 200 educators to help turn around low-performing schools. The cadre of trained teachers produced impressive results in troubled schools, including 100 percent school improvement between 1994 and 1996 and 91 percent school improvement between 1996 and 1998. The trained consultants are dispatched to work in troubled schools for up to three years. The downside of the program has been re-entry of the turnaround schools specialists into their previous jobs or new jobs in other districts. The turnaround team members report that their new skills are not being used when they go back to the classroom. Program managers are working to correct this frustration and the missed opportunity to capitalize on teachers’ new skills.

More than 250 parents, educators and lawmakers started a grass-roots campaign in Ohio to close the racial gap in test scores among Ohio students. The campaign, called “Close the Gap Ohio,” calls for forums at schools across the state to erase the school condition and test-score disparities in the state. All stakeholders in the coalition are taking responsibility for living up to the “No Child Left Behind” edict. Parents are talking about their responsibility to provide a good learning environment at home. Lawmakers are talking about providing extra funding for the programs that truly make a difference in student performance. Administrators are focusing schools and districts on what it takes to increase student achievement, and community activists are getting more involved in schools.
What the law says

All teachers newly hired after the first day of the 2002–03 school year must be “highly qualified” if they work in a Title I school; those in other public schools must be “highly qualified” by 2005–06. According to the law, a “highly qualified” elementary school teacher who is new to the profession has a bachelor’s degree; is fully licensed or certified by the state; and passes a test demonstrating subject knowledge and teaching skills in reading, writing, math and other areas of any basic elementary school curriculum. Certification and licensure requirement must not be waived on an emergency, temporary or provisional basis. Alternative routes to certification are allowed.

Current elementary school teachers must either meet these same requirements or demonstrate they are competent through meeting a new statewide standard of competency. Each state will develop a high, uniform method other than a test to determine whether current teachers who have not passed a test are competent.

All middle and secondary teachers newly hired after the first day of the 2002–03 school year must be “highly qualified” if they work in a Title I school; those in other public schools must be “highly qualified” by 2005–06. According to the law, a “highly qualified” middle or secondary school teacher who is new to the profession is fully licensed or certified by the state and does not have any certification or licensure requirements waived on an emergency, temporary or provisional basis. Alternative routes to certification are allowed. New middle and secondary school teachers also must demonstrate competency in each subject they teach. They can do this in one of three ways:

1) pass a state test;
2) meet the requirements of a state evaluation standard used to judge competency; or
3) complete an academic major or coursework equivalent to a major, a graduate degree or advanced certification.

Resources for Reform

No funds are specifically appropriated, but funding previously allocated for class size and professional development was combined and increased by about 30 percent.

Local Education Agencies must use between 5 percent and 10 percent of their Title I funds to help current teachers become highly qualified.

State–by-state reports on teacher quality and preparation can be found at www.title2.org/statereports/index.htm.
Current middle and secondary school teachers also must demonstrate they are competent either by meeting these criteria or by meeting a new statewide standard of competency as explained above.

What it means for students and schools

Those states currently requiring candidates to pass tests for certification will need to ensure that tests for elementary school teachers encompass subject knowledge and teaching skills in reading, writing, math and other basic elementary school curriculum.

Most states will need to address their teacher certification practices to comply with the new law. Those that have relied heavily on emergency certification, waivers or provisional licenses to circumvent full certification of all teachers can use Title II professional development funds to help teachers — new, provisional and existing — become highly qualified. Forty-seven states have teachers who are not fully certified or licensed.

Several states do not administer tests of subject-matter competency. These states will be pressed to develop and administer appropriate tests to potential new elementary, middle and secondary Title I teachers who have not completed an academic major or coursework equivalent to a major, graduate degree or advanced certification by the beginning of the 2002-03 school year.

Studies have shown that almost one-third of high school math teachers do not possess a major or a minor in math or a related discipline, and more than half of all high school history students are taught by teachers who have neither a major nor a minor in history.

Federal professional development funding also may be used for alternative recertification or licensure routes; programs for new teachers; incentives to recruit and retain highly qualified teachers; reforms of tenure systems; merit pay pilot programs; and professional development for teachers and principals.

Best Practices

To upgrade the quality of teacher preparation, NEA helped create the National Council for Accreditation of Teacher Education (NCATE) in 1954 and continues to play an active role in its work. Before NCATE grants accreditation to a college or university, a board of examiners pays a visit and evaluates the programs using NCATE’s research-based standards. About two-thirds of all graduates of teacher preparation programs now come from NCATE-accredited schools.

Several local affiliates are proactively defining quality and advocating for more and better professional development to meet the requirements in the new law. In Marion, IN, the association joined with the district to institute an evaluation system to assist teachers with professional development and bargained additional days to be designated for staff development. In Prince George’s County, MD, staff completed a self-assessment to determine their own professional development needs.
What you can do: Policy questions to ask

It will take more than a mandate to put a quality teacher in front of every class. Salaries and teaching conditions are the biggest contributors to uncertified teachers and teachers teaching out of field. State and federal policymakers must back up edicts with resources. This is a great opportunity for NEA affiliates to spotlight strategies that attract and retain high-quality teachers to comply with the goals of the new law. Every time an affiliate wins a pay raise, a class-size limit or a mentoring program, it is helping to improve teaching quality by creating good working conditions.

NEA affiliates also can partner with the state agency responsible for reporting the number of “highly qualified” teachers to develop accurate accounting mechanisms and a proactive plan for complying with the new law. Some questions to ask include:

• How will teachers with temporary or emergency licenses be handled?
• Is professional development in your state, district and school aligned with your curriculum, tests and state standards?
• How will your state maintain teacher quality requirements in high-turnover and shortage districts?
• Will there be alternative certification changes and/or incentives for midcareer professionals to enter the teaching profession?
• What role does the National Board for Professional Teaching Standards play in professional development?
• Does the school calendar include opportunities for high-quality professional development consistent with the law?
• Does your state exempt charter school teachers from licensing or certification?
• Under the new law, funding for class-size reduction and teacher professional development are combined. Will tight state budgets force a choice between smaller class sizes and teacher quality?
The first step in improving skills is to set meaningful standards for what constitutes high-quality teaching. To define these standards, educators can compare their work with the standards developed by the National Board for Professional Teaching Standards (on the Web at www.nbpts.org). NEA was one of the National Board's founding organizations in 1986. To date, 16,000 teachers nationwide have gained certification in one of 24 fields.

School staff working together may organize groups of peer teachers to share ideas about teaching practices and experiment with changes. Such site-based activities usually include examining a specific question about instruction and student learning. State and local affiliates can advocate for extra time to devote to these teacher-driven professional development practices.

The North Central Regional Education Laboratory has produced a number of professional development resources, available at www.ncrel.org/pd.
PARAPROFESSIONAL QUALITY

What the law says

All states receiving Title I money must develop a plan to ensure that all new paraprofessionals hired after January 8, 2002, and working in a program supported with Title I funds have met one of the following requirements:

• completed at least two years of postsecondary study;
• obtained an associate's (or higher) degree; or
• met a rigorous “standard of quality” and demonstrated through a state or local assessment knowledge of and the ability to assist in teaching reading, writing and math by passing a formal state or local academic assessment. It is up to each state to develop a “standard of quality.”

In addition, all paraprofessionals working in Title I-supported schools, regardless of hiring date, must have a high school diploma or its equivalent.

What it means for students and schools

Many states have not established any requirements for paraprofessionals and have a significant number of existing paraprofessionals who do not meet the requirements. They will need to enact new policies to ensure all Title I paraprofessionals have a high school diploma or its equivalent and meet at least one of the three requirements listed above. States also will need to begin collecting data on the qualifications of existing paraprofessionals to determine whether they are in compliance with the new law.

School districts will need to provide additional training to current paraprofessionals. They may spend Title I and Title II funds on such training.

Resources for Reform

No funds are specifically appropriated.

State-by-state allocations can be found at www.ecs.org and www.ed.gov.

Timeline

2002: All newly hired paraprofessionals must be “highly qualified.”
What you can do: Policy questions to ask

Partner with the state agency responsible for reporting the number of “highly qualified” paraprofessionals and develop accurate accounting mechanisms and a proactive plan for complying with the new law. Some questions to ask include:

• Are districts prepared to meet the challenge of assisting paraprofessionals in obtaining certification?
• Will the state or local district pay for all needed training? Will it use Title I and Title II funds for this purpose? If so, will this require cuts in other program areas?
• Will the work of paraprofessionals change in your district as a result of the new law?
• Does the school calendar include opportunities for high-quality professional development consistent with the law?
• Is professional development in your state, district and school aligned with your curriculum, tests and state standards?
Tools to Help

An NEA Delaware affiliate developed contract language to proactively address paraprofessional quality measures in the new law. The language spells out collective bargaining provisions that address the effects of the new law on staff development. The language is as follows: “The Board and the Association recognize the obligation of employees to participate in staff development programs for the improvement of employee performance. Furthermore, both the Board and the Association recognize the importance of adhering to the guidelines and requirements of the federal law enactment ‘No Child Left Behind’ act of 2001, section 1119, ‘Guidelines for teachers and paraprofessionals.’ Additionally, all requirements established in this Act shall be followed as a requirement for employment as necessary. When the impact on wages, hours or conditions of employment of any of the components of this Act become known to either party, negotiations on said impact will commence promptly upon the request of either.” (Capital Paraprofessionals Association, DSEA/NEA)
With more than 70,000 members, the North Carolina Association of Educators developed a fact sheet and survey questionnaire to inform paraeducators about the requirements of ESEA and collect information about their educational needs and views on the new law. They also are working with their state department of instruction and local education agencies to develop an assessment to determine quality and a proactive strategy for boosting certification for those who need it.

The Wisconsin Education Association Council (WEAC) has an outstanding certification program that is one of the best examples of professional development for education support professionals. WEAC is currently in discussions with the department of public instruction to use the certificate program as a framework for meeting the new law’s academic assessment requirement for paraprofessionals.

The Michigan Education Association has developed bargaining recommendations that include a sample clause for implementing the requirements for qualifications of Title I paraprofessionals. The language provides paraprofessionals with a choice of options to meet the requirements, professional development, payment of expenses incurred in meeting the requirements and transfer rights to other positions for those unable to meet the requirements.
What the law says

The new law contains two new initiatives (Reading First and Early Reading First) and two standing programs (Even Start and School Libraries) aimed at having all students reading at a proficient level by the third grade.

Reading First, which replaces the Reading Excellence Act, will provide funds to help states and districts implement comprehensive reading instruction grounded in scientifically-based research for grades K–3. These funds have been changed from a competitive grant to direct funding to the states by a poverty-based formula. The funds can be used for teacher preparation and professional development as well as program implementation.

Early Reading First is a competitive grant program that provides funds to school districts and public and private organizations, such as Head Start and family literacy programs that serve children ages 3–5. Funds may be used for early literacy programs, professional development and research-based prereading activities.

Each program in the new law emphasizes professional development and the use of “scientifically based reading research.”

Local education agencies will compete for state-awarded grants that provide funding for six years. Beginning in 2004, those programs that have significantly increased the percentage of third graders reading at proficient levels will be eligible to compete for targeted assistance grants awarded by the states. Grantees are required to determine which K–3 students are at risk for reading failure and provide professional development in the essential components of reading to K–3 teachers and special education teachers of K–3 students. The essential components include phonemic awareness (recognizing that certain letters stand for specific sounds); phonics (the ability to sound out words, based on the combination of letters); fluency (oral and written reading proficiency); vocabulary (building a rich store of words and meanings); and comprehension (an ability to read for meaning in words, paragraphs and longer pieces).
What it means for students and schools

Significant funding and attention is being given to reading and early childhood readiness for reading. This should be a prime opportunity to give children the skills and experiences they need to become excellent lifelong readers. Because reading is such a fundamental skill, the gains made in literacy will translate into gains in other subject areas like math and science. According to a recent RAND report, pre-K through third grade is the critical time frame for developing reading comprehension skills — an important indicator of a proficient reader. Unfortunately, too many programs emphasize a narrow, regimented approach that denies children the opportunity to develop reading-comprehension skills.

NEA members should push for the extra funding to be invested wisely to help teachers identify children at risk of reading failure and provide the most effective early instruction and interventions for those who need it. Such effective instruction gives children opportunities to develop phonics and comprehension skills.

States participating in Reading First must submit annual progress reports. After the third-year progress report, the federal Secretary of Education can withhold funds or take other action if significant progress in meeting the purposes of Reading First is not being made.

According to the law, “scientifically based reading research” will be the guidepost for making all funding decisions regarding literacy. Scientifically based research means research that applies rigorous, systemic and objective procedures to obtain valid knowledge. It relies on measures and observations that can be replicated and justified. It has been judged valid by a peer-reviewed journal or panel of independent experts. Some worry that “scientifically based reading research” will become code for advancing regimented, phonics-only approaches. NEA will advocate for a complete and balanced approach to teaching reading that recognizes the unique learning needs of each child.
What you can do: Policy questions to ask

State affiliates can provide decisionmakers in their state with information on a range of scientifically based reading research beyond what is reported in Preventing Reading Difficulties and the Report of the National Reading Panel Teaching Children to Read. This will be important in ensuring that a narrow body of data isn’t used to select poor quality reading programs.

Work with other reading educators to promote research and the gathering of evidence of success for promising reading programs, approaches and materials.

Help inform the public about the range of skills required to become good readers. Just as physical fitness requires good nutrition, strength, flexibility and cardiovascular activity, reading achievement requires a broad, comprehensive approach. Keep sending the message that there is no one way to teach reading that works for all students all of the time. Teachers, not materials or methods, are the critical factor in reading success. These points are supported by research.

Lobby your state to have a range of reading experts on the panel to judge local applications. Otherwise there is the potential of an unbalanced view of reading guiding decisions. Have a list of suggested experts with their qualifications. Be sure to include some teachers on your list. Ask state policymakers the following questions:

• What is your state currently doing to promote reading achievement, especially in schools with a high percentage of poverty?

• Does your state department of education use a wide range of scientific research in making decisions about what to promote in reading instruction and materials?

• Does the state’s model for using Reading First and Early Reading First funds for professional development acknowledge that effective teachers of reading have a repertoire of instructional approaches and materials that they can use strategically and flexibly to respond to the needs of individual students?
• What current or potential coalitions could become grantees under Early Reading First? Can your local affiliate join or initiate?

• Because there is not sufficient research to guide every decision about reading, how is teachers' judgment incorporated into literacy curriculum decisions? As those closest to students, teachers' insight and guidance can help develop, implement and evaluate the classroom effectiveness of programs more fully.

• Does the curriculum chosen in the district give teachers the opportunity to tailor lesson plans according to the unique learning needs of each student? For example, some students may need to focus on the letters and sound of words and how to use them to recognize words and building meaning. Others may need to pay more attention to looking for contextual cues in a sentence or paragraph to help them figure out new and difficult words.

• Is professional development consistent with curriculum used? Does it promote the use of a repertoire of tools for teaching reading that can be applied strategically and flexibly? Does it provide opportunities for teachers to try out and discuss their success with various instructional strategies?

• How are parents engaged in the reading process to reinforce new skills at home and over the summer? How are reading progress and needs communicated to parents?
Elementary Secondary Education Act

TOOL KIT

Making Public Schools Great for Every Child
Elementary & Secondary Education Act

Q & A
A Primer for UniServ Directors/ Field Staff Consultants
Elementary & Secondary Education Act

Q & A

A Primer for UniServ Directors/Field Staff Consultants
National Education Association

The National Education Association is the nation's largest professional employee organization, representing 2.7 million elementary and secondary teachers, higher education faculty, education support professionals, school administrators, retired educators, and students preparing to become teachers.

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Questions and Answers about the new Elementary and Secondary Education Act

What is the Elementary and Secondary Education Act?

The Elementary and Secondary Education Act (ESEA) authorizes and regulates the majority of federal K-12 education programs. Congress first enacted the law in 1965 to improve achievement among poor and disadvantaged students. Every five to six years, Congress must reauthorize the law; however, Congress allocates funds annually.

Over the years, Congress has amended and added to the original law in order to raise standards, build in accountability, and provide flexibility to schools and districts using federal education dollars so that they can continue to help disadvantaged children. This most recent reauthorization of the law, officially called The No Child Left Behind Act of 2001, contains many significant changes.

Leading up to and during the recent reauthorization process, there were efforts to eliminate paraeducators, require re-testing of existing teachers, steer money away from the neediest communities through block grants or permit the use of ESEA funds for private school vouchers. These proposals threatened to steer the focus of the law away from its original purpose. Because of the efforts of the National Education Association and other allies, both in and out of Congress, the bill that was passed does not include many of these onerous provisions. However, as with most legislation, the final version does reflect compromises, negotiations, and last minute agreements and NEA did not support the final version of the law.

The questions and answers that follow address many commonly voiced concerns about the changes in ESEA and what they mean for teachers, paraprofessionals, parents, and, of course, children.
I often hear people refer to this law as “Title I.”
What’s the difference?

ESEA 2001 has an immediate impact on NEA members because it is far more specific than past versions of the law and it deals with testing, accountability (AYP), and teacher and paraeducator quality. Title I is the largest single program in ESEA and the best known, but it is one of many programs. The focus of this Q & A is Title I because that is where the testing and accountability provisions appear. What makes this law different from earlier reauthorizations is that it applies to all schools and teachers not just Title I schools. The ESEA law is broken down into several sections, or “titles.” The section that contains the provisions that deal specifically with “ensuring that all children have a fair, equal and significant opportunity to obtain a high quality education and reach proficiency on challenging State academic assessments...” is Title I of the law. Title I provides for the largest amount of funding, authorizing the allocation of about $13 billion in grants for Fiscal Year 2002 to school districts around the country. Its provisions affect schools most directly so it is referred to interchangeably with “ESEA.” Other titles deal with issues such as charter schools, English acquisition, teacher quality/class size, Indian education, drug-free schools, and civil rights protections. This Q & A deals only with Title I and related provisions that have an impact on a significant number of members, including Title II of ESEA, which addresses the important area of teacher quality.

What does it mean when people talk about a Title I eligible school?

The federal government uses various complex formulas to allocate Title I funds to counties and school districts. School districts determine Title I status for individual schools based upon either the percentage of free-lunch eligible students or the percentage of students living within the school’s attendance zone who are receiving public assistance. The list of Title I eligible schools is public information that you can obtain from your State Department of Education or the individual school districts.

How much money is each school district getting under ESEA for 2002-2003?

The amount of money your school district will receive under ESEA for 2002-2003, is available on NEA’s web site at connect.nea.org/esea.

What are some of the permissible uses for these funds?

Schools and districts may use Title I funds for a variety of purposes. In addition to the mandated uses of Title I funds there are a variety of permissive uses. For example, they may use the funds to provide additional help to students performing below certain standards, provide additional after-school or summer programs, implement exemplary reading and math programs, reduce class size, hire paraprofessionals, or provide professional development. Schools and districts may not use these funds to pay for educational programs or services to which students would ordinarily be enti-
The commonly used guide for the use of Title I funds is they may “supplement, not supplant” local funds.

**What’s the difference between a Title I targeted assistance school and a school-wide program school?**

A “regular” or targeted assistance Title I school is one in which the Title I service can only be provided to those students with significant educational needs. This targeted assistance may involve one-on-one tutoring, small group instruction, after-school programs, and/or pullout programs. A Title I school-wide program may be used in a school that has a poverty enrollment greater than 40%. These schools can use the Title I funds to benefit all the students in the school. School-wide program participation may be voluntary on the part of staff, parents, and administration of the school. Funds in these programs are often used to reduce class size, introduce new reading or math programs, or provide professional development for all teachers, paraprofessionals, and other support staff.
Standards, Accountability, and Student Testing

The prior version of the ESEA law emphasized helping students eligible for Title I services meet high standards of achievement. However, in a significant change from the prior law, the new Title I law requires states to set measurable goals for student improvement on state assessments so that all students are proficient in reading and math within 12 years. States are required to test all students in grades 3–8.

How does the new Title I law hold schools and districts accountable?
The new law requires all students, not only those eligible for Title I services, to make Adequate Yearly Progress (AYP). AYP will be the measure of student improvement against which schools will be judged for purposes of meeting federal standards. A school’s failure to make AYP over a number of years will lead to a series of corrective actions that may ultimately result in restructuring, closure, or takeover of the school by the state or a private management company.

How is AYP determined?
According to Title I, each state must set measurable goals for student achievement on state tests in order to ensure that students are “proficient” (as defined by the state) in reading and math within 12 years. Using the 2001-2002 school year as the baseline set of scores, states will be required to set numerical targets (in each subject and grade) for the percentage of students who will be expected to be proficient over the next 12 years.

Which tests will be used to determine AYP?
The new law requires that there be annual reading and math assessments for all students in grades 3–8. States will select and administer their own tests and they have until the 2005-2006 school year to develop and implement these assessments. When the new tests are introduced, they will replace the current ones. The law authorizes federal funding for the development of these tests.
**Are there any other testing requirements?**

States are also required to develop science content standards by 2005-2006 and begin administering state science assessments in the 2007-2008 school year. Science assessments will be required at least once in grade 3–5, 6–8, and 10–12. Finally, states will be required to participate in the National Assessment of Educational Progress (NAEP) every other year, provided that federal funding is sufficient to cover the cost of test administration. However, the results of NAEP cannot serve as the basis for sanctioning states, school districts, schools, or students.

**What if tests already exist in these grades?**

NEA is very concerned that implementation of these testing requirements does not result in duplication of existing tests or overall excessive testing of students. ESEA states that:

- The assessments must be the same for all students
- Aligned with the state’s content standards
- Involve multiple, up-to-date measures, including measures that assess higher order thinking skills
- Be valid, reliable, consistent with nationally recognized professional and technical standards
- Produce individual student interpretive, descriptive, and diagnostic reports that allows parents, teachers, and administrators to assess the specific needs of students
- Enable itemized score analyses to be produced to the needs of each student with respect to specific test questions

States will have to decide whether their current tests fulfill these requirements.

**Who has to take these tests?**

All students must take these tests. Results of these tests will be “disaggregated” within each state by school district, school, as well as by gender, each major racial and ethnic group, disabled status, limited English proficient (LEP) status, economically disadvantaged status, and migrant status. Each subgroup must make AYP. Further, the law requires the same goal for all student sub-groups.

**Does the law require that special education students be tested as well?**

Yes. The law requires that students with disabilities, English language learners, and all others be tested; however, appropriate modifications and accommodations (consistent with IDEA) are permitted, where needed, for students with special needs.
What happens when a school does not make AYP?

The new law imposes sanctions primarily based on the basis of students’ performance on state assessments. Sanctions are grouped into three categories, which existed in concept in the prior law: school improvement, corrective action, and school restructuring. The timeline for the imposition of sanctions is as follows:

• A school that fails two years in a row (Years 1 and 2, or 2002–2003 and 2003–2004) to meet adequate yearly progress — or the numerical goal set by the state for that academic year — for all subgroups of students will be placed in school improvement status (Year 3). In the first year of school improvement, a school will be required to: prepare a two-year improvement plan; use at least 10 percent of its Title I funds for professional development; provide public school choice (if allowable by state law) with 5–15 percent of Title I funds to pay for transportation costs to implement school choice; notify parents of the school's status; receive technical assistance from the school district; and receive federal school improvement funds.

• If a school fails to meet AYP for three consecutive years, it is placed in a second year of school improvement (Year 4). Such schools will be required to continue the activities from the first year of school improvement, including public school choice, and provide supplemental services such as before and after school tutoring to low-achieving, disadvantaged students within that school. Parents will choose providers of supplemental services from a list of state-approved providers, which may include the district or outside groups, including community-based organizations or for-profit companies such as Sylvan Learning Systems. An additional 10 percent of the school district’s Title I funds may be used for either these services or transportation for public school choice.

• If a school again fails to meet AYP, it is then placed in “corrective action” (Year 5). Such schools must continue to provide public school choice and supplemental services, and do at least one of the following: implement a new curriculum, decrease local decision-making, appoint an outside expert, extend the school day or year, replace staff relevant to failure, and/or restructure internal organization.

• If a school again fails to meet AYP, it is placed in a second year of “corrective action” (Year 6). Such schools must continue to provide public school choice and supplemental services, and a plan must be prepared and arrangements made for restructuring, including at least one of the following: reopen as a charter school, replace the principal and other staff deemed relevant to failure; turn the school over to a private management company, turn the school over to the state, or other measures that constitute making major reforms.
What if a school is already designated “school improvement.”

Schools that are currently (as a result of the 1994 ESEA law) in the first year of school improvement will be deemed to be in the first year of school improvement under the new law. As a result, these schools will be required to implement public school choice in the 2002-2003 school year. Likewise, schools that are currently in their second (or more) year of school improvement will be deemed to be in the second year of school improvement. As a consequence, these schools will be required to offer supplemental services.

How will teachers and parents know how well their schools are doing?

Beginning in the 2002-2003 school year, states, and school districts must publish annual report cards in an easy-to-understand format to inform parents and the community. These report cards will provide information about student achievement on state assessments compared to other students in the state and district, graduation rates, schools that are in need of improvement, and teacher qualifications/credentials.
Teacher Quality

The ESEA law acknowledges the important role that teacher quality plays in promoting student achievement. It requires that all teachers hired and teaching in a program supported with funds under Title I be “highly qualified.” It also requires that all teachers be highly qualified in the subjects they teach by the end of the 2005-2006 school year.

What is meant by “highly qualified?”
The definition of “highly qualified” in the law requires that public elementary and secondary school teachers must have obtained full state certification, or passed the state teacher licensing examination; hold a license to teach in the state; and not had a certificate or license requirement waived on an emergency, temporary, or provisional basis.

New teachers:
Elementary teachers who are new to the profession must hold a least a bachelor’s degree and must demonstrate, by passing a rigorous state test, subject knowledge and teaching skill in reading, writing, mathematics, and other areas of the basic elementary school curriculum.

Secondary school teachers who are new to the profession must hold at least a bachelor’s degree and must demonstrate a high level of competency in each of the academic subjects they teach. This may be accomplished by either passing a rigorous state subject matter test or completing an undergraduate major in the subject, a graduate degree, or coursework equivalent to an undergraduate academic major.

Current teachers:
Elementary, middle, and secondary teachers who are not new to the profession must hold at least a bachelor’s degree and must have met the applicable standard in paragraphs one and two above. Teachers who do not meet the above qualifications may demonstrate competence in all the academic subjects in which the teacher teaches based on a high objective State standard of evaluation.

When does this requirement for highly qualified teachers go into effect?
Starting with the 2002-2003 school year, all newly hired Title I teachers must be fully qualified. In addition, the new law requires each state to develop and submit to the U.S. Secretary of Education, as part of its Title I plan, provisions to ensure that all
teachers who are teaching core subjects (e.g., English, math, science, social studies, foreign languages, art) are highly qualified by the end of the school year 2005-2006. The plan must include annual, measurable objectives towards this goal.

**What happens if the district does not make progress toward meeting the measurable objective for that year?**

Districts that fail to make progress toward meeting the measurable objectives after two consecutive years are required to develop an improvement plan and the state department of education is required to provide technical assistance. After the third year of failing to make progress, the state department and the district must agree on how the district’s funds are used, and the district must implement activities in conjunction with the State Department.

**Is there any funding to support these teacher quality requirements?**

Title II of ESEA provides grants to states, districts, colleges, and universities as well as other eligible partners to carry out one or more activities, including: reforming teacher and principal certification; providing ongoing professional development for teachers, paraprofessionals, and principals; implementing teacher recruitment and mentoring programs; and promoting teacher license and certification reciprocity among states. The law gives great flexibility in what these programs may include.

**With all this flexibility in the use of funds, is there any money for reducing class size?**

A number of the programs from the previous law, most notably the class-size reduction initiative and the Eisenhower Professional Development program, were combined under the teacher quality title. This provides an opportunity to use increased funding (more than 35 percent) to hire additional teachers to reduce class size. In addition, school districts have more flexibility to use funds to reduce class sizes in all grades, not just K–3.

**How are Title II funds allocated?**

A formula based on poverty levels and student population will determine each state’s allocation but the amount will not decrease from previous years.

**Are there any new allowable uses of Title II funds?**

Although the emphasis is on supporting and improving teacher quality, several of the new allowable activities may present significant challenges. Use of the funds for tenure reform, teacher testing, merit-based performance systems, and differential and bonus pay is specifically mentioned. However, there is no federal requirement that states and districts use funds for these programs. The law clearly states that the funds may not be used in ways that are in violation of state or local laws or collective bargaining agreements.
With all these changes is there any way to know that state and local authorities are actually following the law?

There is already a mechanism on the books to help ensure compliance with ESEA. It's called the “Committee of Practitioners.” Each state department of education is required to have such a committee. Membership consists of teachers, paraprofessionals, parents, administrators, and others involved with Title I schools and students. The majority of members must be from districts around the state. The main job of this committee is to review the development and implementation of state Title I plans. It also can be a very strong watchdog group to prevent any misuse or misapplication of the law while advocating for students and teachers in some of our neediest schools and districts.
Paraeducators

Overall, this new Title I authorization emphasizes high standards and accountability for paraeducators, as well as teachers and students. Paraeducators play a central role in many Title I programs. Working alongside teachers, they often help provide the extra academic support that students need to meet the new high standards of achievement. Prior to enactment of this law, Title I-funded paraeducators were required to have a high school diploma and there were no limits on their duties. The new law contains some significant changes involving the paraeducators’ qualifications and duties. Just as with teachers, the law lists new educational requirements in order to continue as or become a Title I paraeducator. In addition, the new law specifically lists the duties that paraeducators may perform.

How do you know if a paraeducator is a Title I paraeducator?
Many programs that receive Title I funds use part of their allocation to hire paraeducators. There is no difference in pay, just in the source of funds. If you are not sure whether or not a paraeducator is being paid through Title I funds, the paraeducator’s school principal should be able to tell you. If this is the case then the paraprofessional will have to meet all the requirements in the new law.

What if a paraeducator is not a Title I paraeducator?
These changes will still have a significant effect if a paraeducator has to move into a Title I program or if the district uses Title I funds to pay the paraeducator’s salary. In general, however, the requirements in Title I usually become a standard; in other words, it would be wise for paraeducators to meet the Title I requirements within the next few years if they don’t already.

What are some of the changes regarding qualifications for currently employed Title I paraeducators?
Current Title I paraeducators:
Paraeducators who are currently working in a program that receives Title I funds, have four years (by January 2006) to meet one of the following conditions:

• Complete two years of post secondary education

• Be a high school graduate who can demonstrate on a “formal state or local academic assessment” “the skills necessary to assist in the classroom instruction of reading, writing, and mathematics
Are all Title I paraeducators subject to these new requirements?
The only exemption from these new requirements is for Title I paraeducators who provide only translation or parental involvement assistance. All others must meet the new standard.

Are there any changes in the law for newly hired Title I paraeducators?
Yes, under the new law paraeducators in Title I programs hired after January 8, 2002 will have to meet a new set of standards. In order to become a paraeducator in a program that receives Title I funds, a newly hired paraeducator must meet one of the following conditions:

• Complete two years of post secondary education
• Be a high school graduate who can demonstrate on a “formal state or local academic assessment” the skills necessary to assist in the classroom instruction of reading, writing, and mathematics

Is there any help that a Title I paraeducator can get to meet these requirements?
The law allows districts to use Title I funds to support ongoing professional development for paraeducators to assist them in satisfying the requirements. The law also allows the use of funds for programs to recruit “highly qualified” paraeducators into teacher certification programs.

What if a paraeducator is not in a Title I program, how does this affect him/her?
If a paraeducator does not already meet the Title I requirements for paraeducators then it may be wise to do so. In the future it may be a possibility that the district will need to change the source of funding for a paraeducator position to Title I. In that case, the paraeducator would need to meet the new requirements. Similarly, many districts may only want to hire new paraeducators in any area who meet Title I qualifications to ensure the greatest flexibility in assigning and retaining paraeducators.

What are some of the duties that a Title I paraeducator may perform?
The new law specifically lists the allowable duties of paraeducators and prohibits requiring paraeducators to provide any instructional services unless under the direct supervision of a teacher. Allowable duties are:

• One-on-one tutoring
• Assisting with classroom management
• Providing assistance in a computer laboratory
• Conducting parental involvement activities
• Providing support in a library or media center
• Acting as a translator

Paraeducators may assume limited duties that are assigned to similar personnel not working in a Title I funded program, including duties that do not benefit Title I students. However, the amount of time spent on such duties must reflect the same proportion of total work time as similar personnel at the same school.

**Are there any other changes for paraeducators in the law?**

Another major part of the law that may affect paraeducators is related to the Title II requirements of teacher quality. According to this section of the law, if the school district fails to make AYP for three consecutive years in increasing the percentage of highly qualified teachers, as defined in the law, then the state must prohibit the use of funds to pay for hiring new paraeducators. Nevertheless, the state may allow funding for paraeducators to fill vacancies, or to add staff due to increased student enrollment. This should not affect currently employed paraeducators.
For additional information contact:

**NEA’s information on ESEA:**
www.nea.org/esea/
connect.nea.org/esea

**U.S. Department of Education ESEA Site:**
www.ed.gov/nclb

**Title I funding by each LEA:**

**Title I funding by each LEA for the four programs covered by transferability:**

**Education Commission of the States (ECS):**
www.ecs.org/ecs/ESEA2001

**Assessment of Title I progress and challenges since the 1994 Reauthorization:**
www.ed.gov/offices/OUS/PES/ed fordisadvantaged.html

**ECS issues site on standards:**
www.esc.org/html/issue.asap?issueid=113

**Achieve Inc.:**
www.achieve.org

**State reports and policies on teacher quality and preparation in Title II state reports 2001:**
www.title2.org/statereports/index.htm

**Roles for paraprofessionals in effective schools (U.S. Department of Education, 1997):**
www.ed.gov/pubs/Paraprofessionals/index/html

**Teacher assistants (Occupational Outlook Handbook, U.S. Department of Labor):**
www.bls.gov/oco/ocos153.htm
Elementary & Secondary Education Act

Q & A

A Primer for UniServ Directors/Field Staff Consultants
Getting Ready for ESEA Testing: Anticipating Final Federal Regulations

By August 2002, the U.S. Department of Education (ED) is expected to issue federal (binding) regulations that interpret the standards and assessment provisions of the Elementary and Secondary Education Act (ESEA). Draft regulations provide information on requirements that states may have to meet and suggest actions NEA affiliates can take now to get ready for the final regulations.

The new ESEA requires states to test all students in grades 3-8 (and once in grades 9-12) in reading and math, beginning in 2005-06. By 2007-08, states must administer science assessments, once in grades 3-5, 6-9, and 9-12. Prior law only required testing of Title I students in reading and math at least once in elementary, middle, and high school.

Take Action Now to Prepare for Final Federal Regulations

Now is the time to prepare for the final federal regulations! Start by asking key questions about your state's current assessment system to see if it meets the federal requirements that are expected to be in place by the end of summer 2002. Pose these questions to the appropriate entity in your state, such as the state department of education, the state board, key legislative committees, and/or the media.

Alignment with State Standards

1. Do current state assessments measure all the state's content standards? All the knowledge and skills in the standards? In each grade level and each subject area in which they are administered?

2. If not…
   a. Does the state provide information on which content standards are measured by the assessments?
   b. Is it because the standards are too vague (or too numerous) to make a determination? Or is it because test items measure only part of what the standards ask for?
   c. Do teachers and other educators know which standards, skills, and knowledge are assessed and which are not?
3. What process was used to determine if the assessments are aligned with state standards? Who participated in the alignment process?

4. If the state currently uses national (or norm-referenced) tests, does it augment them with items that are aligned with state standards? How many test items are included for each standard? How were the items selected?

The Quality of State Assessments

6. Is each assessment only used for the purpose(s) for which it is designed? Or are assessments used for other purposes?

7. Are assessments that are used to judge educational quality at school, district, and/or state levels designed specifically for this purpose?

8. Do test items on current assessments measure higher-order thinking skills? How many items? In which subjects?

Students’ Access to State Assessments

9. Are the assessments valid for each student population tested?

10. Are all students included in the assessments, with appropriate accommodations (or alternative assessments) as needed?

11. How are cut scores or performance levels on current assessments set? Who is involved in setting cut scores or determining the performance levels?

Reporting State Assessment Results

12. Are results from current state assessments reported for each content standard?

13. Are results reported for individual students?

14. Are results reported at the state, district, and school levels as required by ESEA by gender, race, ethnicity, migrant status, English proficiency, disability, and socioeconomic status? Are test results for these groups of students compared with results for all test takers?

What the Draft Federal Regulations Say

According to ED’s draft regulations, a state could meet ESEA’s yearly testing provisions in five different ways by using:

1. “Criterion-referenced assessments” that are aligned with the state’s content and performance standards.

2. “Assessments that yield national norms” if they “are augmented with additional items that address fully and accurately the depth and breadth of the state’s content standards” and “test results are reported in terms of the state’s content standards.”
3. A combination of norm- and criterion-referenced tests.
4. A combination of state and local assessments.
5. Local assessments exclusively, if they meet the same criteria ESEA requires state assessments to meet.

Most states will need to fill in grade-level gaps in their current assessment systems by exercising one of these options.

More specifically, states will have to create or purchase more than 200 new tests over the next few years to meet ESEA’s annual testing provisions. Most will have to more than double the number of tests they now administer if they hope to be in compliance with ESEA.²

Some states may choose to fill grade-level gaps in their testing systems by exercising Option 1. While it promises to produce tests that are linked to state standards, creating customized state tests is expensive and time consuming.

Option 2, which allows states to augment off-the-shelf, widely available national, or norm-referenced, tests, is far less expensive than the first option, but it poses measurement and instructional challenges (see page 4).

Currently, five states (Iowa, New Mexico, Tennessee, West Virginia, and Wisconsin) and the District of Columbia use norm-referenced tests exclusively in their testing programs.

No state relies exclusively on local assessments (Option 5). Only two (Maine and Nebraska) combine state and local assessments (Option 4).

Many States Are Not Ready for ESEA Annual Testing

According to the U.S. General Accounting Office, most states are not well positioned to meet ESEA’s annual testing provisions.³

Only 16 states currently have grade-by-grade tests of any kind (national or state-specific) in reading and math: Alabama, Arizona, California, Delaware, Florida, Georgia, Louisiana, Maryland, Mississippi, New Mexico, North Carolina, South Carolina, Tennessee, Texas, Utah, and West Virginia.

Of these, only nine have tests in reading and math (grades 3-8) that are nominally aligned with their standards: California, Delaware, Florida, Georgia, Mississippi, North Carolina, South Carolina, Texas, and Utah.

The remaining seven states administer annual reading and math tests in grades 3-8 that include norm-referenced tests at some grade levels: Alabama, Arizona, Louisiana, Maryland, New Mexico, Tennessee, and West Virginia.\(^4\)

In addition, Education Week\(^5\) reports that a majority of states still have not fully met the standards and assessment requirements of the 1994 ESEA even though the formal deadlines have passed.


ED has granted timeline waivers, which range from one to three years, to 28 states and Puerto Rico.\(^6\)

Finally, ED has required four states and the District of Columbia to enter into compliance agreements, because they are especially far behind in meeting the 1994 ESEA requirements.\(^7\)

**ESEA Says All Tests Must Meet These Criteria**

As many states work to meet the assessment requirements in the 1994 version of ESEA, they also will need to meet the 2001 requirements. Under the new law, the yearly assessments states administer must:

1. Be the same for all children (with appropriate accommodations as needed).
2. Be valid and accessible for all students, including students with limited English proficiency and students with disabilities.
3. Be aligned with state content and performance standards, and provide information about students’ performance on the standards.
4. Allow achievement comparisons year to year.
5. Be used only for purposes for which they are valid and reliable.
6. Be consistent with nationally recognized professional and technical standards.
7. Involve multiple up-to-date measures, including measures of higher-order thinking skills and understanding.
8. Objectively measure academic achievement, knowledge, and skills without evaluating or assessing family beliefs and attitudes.
9. Produce individual student interpretive, descriptive, and diagnostic reports of student performance that are provided to parents, teachers, and principals in an understandable and uniform format.
10. Produce itemized score analyses for districts and schools so that teachers and others can address specific academic needs.

11. Report test results in each state, district, and school by gender, race, ethnicity, migrant status, English proficiency, disability, and socioeconomic status. Results for these groups of students must be compared with those of all test takers.


13. In addition, if a state uses a combination of tests (i.e., norm- and criterion-referenced or state and local), it must provide evidence that the assessment system is “rational and coherent.” That is, the assessments must align with state content and performance standards, determine adequate yearly progress of districts and schools, and provide information on students’ progress in meeting content standards “in order to inform instruction.”

States May Opt for National Tests for ESEA

Some states may decide to fill in grade-level gaps in their testing systems by exercising the first option in the draft federal regulations — “augment” off-the-shelf national, or norm-referred, tests with items that are tied to state standards.

This is less costly than developing new state-specific, standards-based tests. And norm-referenced tests are widely available. Many assessment experts, however, express concern when norm-referenced tests, like the Stanford 9 or the Terra Nova, are used to judge educational quality or effectiveness. Because they are national tests, they do not align sufficiently with the standards in particular states.

In addition, norm-referenced tests are not designed for this purpose. Instead, they are designed to highlight differences among students, to provide information on how students perform relative to other test takers, and rank students from high to low achievers.8

If a student scored at the 80th percentile on a norm-referenced test, they did better than 80 percent of students who took the test. It does not mean that they mastered 80 percent of the content specified in a state’s grade 3 reading standards (or standards in other grades or subjects). The score says nothing about how well they performed in absolute terms.

National tests are simply not constructed to provide standards-based achievement information. This is the case even if test scores are reported in terms of state standards. And if the tests are augmented with additional items that test developers link to state standards, as the draft regulations suggest, the items will still perform like national test items.

State Tests Will Drive “AYP”

Annual student assessments will play a primary role in determining whether schools and districts make “adequate yearly progress” (AYP) in meeting the ambitious goal of having all students performing at the “proficient” level or above in reading and math by 2013-14.

The consequences for schools that fail to make AYP are progressively severe. After two years, for example, the law requires districts to offer public school choice to students. After several years, districts are required to replace the principal and teaching staff, reopen the school as a charter school, or turn the school over to a private management firm or the state to run.
Expert Guidance on ESEA Testing: An NEA-Endorsed Commission’s Advice

In the near future, most states will decide how they will meet the annual testing requirements in the Elementary and Secondary Education Act (ESEA). An NEA-endorsed panel of experts in assessment and instruction offers considerable guidance on how states can meet these requirements, and provide teachers and other educators with assessment information they need for instructional decision making.

For the first time, ESEA requires states to test all students each year in grades 3-8 and at least once in grades 9-12 in math and reading. The tests must be in place by the 2005-06 school year. In addition, states must administer science tests at least once in grades 3-5, 6-9, and 10-12 by 2007-08.

State assessments will be the primary source of information used to determine if schools, districts, and states make “adequate yearly progress” toward having all students performing at the “proficient” level or above by the 2013-2014 school year.

Take Action Now and Share NEA-Endorsed Expert Advice

If states follow the nine requirements developed by the NEA-endorsed expert panel, they will develop a new — and improved — generation of state tests in response to ESEA. Discuss the nine requirements with the appropriate policymaking entity in your state, such as the state department of education, state board of education, key legislative committee, and/or the media.

The nine requirements call for states to:

1. Prioritize content standards
2. Clearly describe content standards
3. Report test results standard by standard
4. Provide optional classroom assessments
5. Monitor curricular breadth
6. Provide appropriate assessments
7. Allow three years for test development
8. Provide professional development
9. Evaluate the effects of state tests
A panel of nationally recognized experts in assessment and instruction, the Commission on Instructionally Supportive Assessment, developed the requirements.¹

NEA and four national associations representing district and school administrators convened the Commission in anticipation of ESEA’s passage.²

Commission Provides Guidance on Key ESEA Provisions

If states meet the Commission’s nine requirements, they will be in a better position to accomplish the following tasks that are specified in ESEA:

1. Align required annual assessments with state academic content standards
2. Provide individual, and itemized, reports of students’ performance on required annual assessments so parents and educators can address students’ specific needs
3. Provide additional information about students’ progress in meeting state standards
4. Ensure that all students have access to appropriate assessments via adaptations, accommodations, and alternatives
5. Meet technical standards related to quality test development
6. Provide professional development for principals and teachers
7. Meet federal reporting requirements

Requirements Help States Align Assessments and Standards

The Commission’s first three requirements are designed to strengthen the link between state standards and state tests, which is a central feature of ESEA.

According to draft ESEA regulations published by the U.S. Department of Education (ED) in March 2002, state content standards must:

- Specify what all students are expected to know and be able to do
- Contain rigorous and coherent content
- Encourage the teaching of advanced skills

States can select or develop the annual assessments ESEA requires, but the tests must be aligned with state content and performance standards, and they must allow students’ performance to be compared year to year.

In addition, the assessments must produce individual reports of student performance and provide analyses of students’ strengths and weaknesses in particular skill areas.

¹ Members of the Commission: Eva L. Baker, UCLA; David C. Berliner, Arizona State University; Carol Camp Yeakey, University of Virginia; James W. Pellegrino, University of Illinois at Chicago; W. James Popham, UCLA; Rachel F. Quenemoen, University of Minnesota; Flora V. Rodriguez-Brown, University of Illinois at Chicago; Paul D. Sandifer (Ret.), South Carolina Department of Education; Stephen G. Sireci, University of Massachusetts, Amherst; and Martha L. Thurlow, University of Minnesota.

² The five convening associations were the American Association of School Administrators, National Association of Elementary School Principals, National Association of Secondary School Principals, National Education Association, and National Middle School Association.
The Commission recognized that ESEA provides an opportunity to address some weaknesses in state standards and state assessment systems. For example, teachers in many states cannot adequately address within the amount of time available for instruction the large number of content standards that are measured by state tests. In addition, state tests often do not adequately assess all of the content standards, and frequently center on standards that are easiest to assess. As troubling, state tests rarely provide educators with the kind of information they need to improve instruction.

Therefore, in its first requirements, Requirement 1, the Commission calls for states to set priorities among standards and focus their state tests on a small number of standards that represent the most important or enduring knowledge and skills that students need to learn. If states take this step, they will be in a better position to explain that their standards are rigorous and coherent, as ESEA is likely to demand once federal regulations are finalized in summer 2002.

In Requirement 2, the Commission urges states to provide educators and test developers with brief, user-friendly descriptions of the knowledge and skills that students must demonstrate to meet each standard. In this way, teachers will know what they are being asked to teach, and they will have confidence that the state test is linked to key standards. If states implement this Commission requirement, they can more easily meet ESEA’s requirement to foster the teaching of advanced skills.

In Requirement 3, the Commission asks states to provide teachers, other educators, parents, and students with information on how well students are meeting each standard. Results on state tests should be reported standard by standard, the Commission says. How else, it asks, will anyone know if students are attaining the standards? Such standard-by-standard reporting goes hand in glove with ESEA’s requirement to provide individual reports of students’ performance, strengths, and skills.

### Table 1

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<thead>
<tr>
<th>Commission Requirements</th>
<th>ESEA Requirements</th>
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<td>Annual testing</td>
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However, if states revamp their testing programs by implementing these three requirements, there is a danger that the curriculum might be narrowed to focus exclusively on the standards assessed by state tests.

Therefore, in Requirement 5, the Commission calls for states to monitor the breadth and depth of the curriculum. And in Requirement 4, it urges states to create optional classroom tests aligned with the remaining content standards. Teachers could choose to use these assessments — or not.

In addition, the Commission calls on states to provide rigorous professional development for teachers in interpreting and using information from state tests, and, as important, in developing their own assessments related to standards that are not assessed on state tests (Requirement 8).

**Requirements Help States Meet Other Key ESEA Provisions**

The remaining Commission requirements focus on ensuring that all students have access to ESEA-required assessments, and the assessments meet quality standards advanced by measurement experts.

The law requires that assessments are:

- The same for all children (with appropriate accommodations as needed)
- Valid and accessible for all students, including students with disabilities and students with limited English proficiency
- Used only for purposes for which they are valid and reliable
- Consistent with nationally recognized professional and technical standards

The Commission urges states to develop guidelines for school districts to ensure that all students take part in the annual assessments required by the law. This includes students who need assessments with accommodations or alternate assessments that are aligned with state content standards (Requirement 6).

In addition, in Requirement 7, the Commission advises that the tests that ESEA requires takes a minimum of three years to develop, especially if the tests need to meet professional and technical standards.

**Access Commission’s Advice in Print and Online**

The Commission’s guidance for states as they implement ESEA is contained in two reports. Both are available in print from NEA’s Student Achievement Department at (202) 822-7350 or online at www.nea.org:
1. A state's content standards must be prioritized to support effective instruction and assessment.

2. A state's high-priority content standards must be clearly and thoroughly described so that the knowledge and skills students need to demonstrate competence are evident.

3. The results of a state's assessment of high-priority content standards should be reported standard by standard for each student, school, and district.

4. A state must provide educators with optional classroom assessment procedures that can measure students' progress in attaining content standards not assessed by state tests.

5. A state must monitor the breadth of the curriculum to ensure that instructional attention is given to all content standards and subject areas, including those that are not assessed by state tests.

6. A state must ensure that all students have the opportunity to demonstrate their achievement of state standards; consequently, it must provide well-designed assessments appropriate for a broad range of students, with accommodations and alternate methods of assessment available for students who need them.

7. A state must generally allow test developers a minimum of three years to produce statewide tests that satisfy the Standards for Educational and Psychological Testing and similar test-quality guidelines.

8. A state must ensure that educators receive professional development focused on how to optimize children's learning based on the results of instructionally supportive assessments.

9. A state should secure evidence that supports the ongoing improvement of its assessments to ensure those assessments are (a) appropriate for the accountability purposes for which they are used, (b) appropriate for determining whether students have attained state standards, (c) appropriate for enhancing instruction, and (d) not the cause of negative consequences.

### Table 2
**Nine Requirements for Developing New State Tests**

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For the first time, the Elementary and Secondary Education Act (ESEA) is requiring all states to participate in National Assessment of Educational Progress (NAEP). If Congress appropriates sufficient funds, beginning in 2002-03 states must participate in NAEP reading and mathematics assessments at grades 4 and 8 every two years. Until now, state participation in NAEP has been voluntary. This is a new role for NAEP and for states as they implement ESEA.

While ESEA is not specific about what will be done with NAEP results, it suggests that NAEP will be used as an independent (third party) measure of a state’s progress in raising academic achievement. More specifically, the U.S. Department of Education (ED) is expected to use NAEP to confirm state test results in reading and math.1

Key Questions to Ask Now About Your State’s Participation in NAEP

In 2000, the most recent year in which NAEP math assessments were administered, 40 states participated in the 4th grade math assessment and 39 states participated in the NAEP grade 8 math assessment. More than 35 states also participated in the 4th and 8th grade NAEP reading assessments when they were last administered.

Therefore, chances are that your state has participated in NAEP. The questions listed below are designed to help you gather basic information about states’ participation in NAEP in preparation for states’ required participation under ESEA.

The information to answer the questions should be readily available from state department of education staff or the department’s web site.

1. Has your state participated voluntarily in NAEP reading and math assessments? If not, why not, and how might prior non-participation affect required participation under ESEA?

2. If your state has participated in NAEP, how have students performed on the reading and mathematics assessments?

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3. How does NAEP performance compare with students' performance on state assessments? How does the state department of education explain similarities and differences in performance?

If your state does not perform as well on NAEP as it does on its own tests, you can obtain the NAEP frameworks for reading and mathematics at www.nagb.org. The frameworks specify what students should know and be able to do in reading and math at grades 4, 8, and 12. These skills and knowledge in the NAEP frameworks may be different from the skills and knowledge in your state standards and, by extension, in state assessments.

Issues Related to Using NAEP To Confirm State Test Results

Using NAEP — a national assessment that is not closely aligned with any state’s educational goals — to confirm assessment results reported by all states raises a number of challenges.

First, states vary in how much their assessments in reading and math overlap with NAEP assessments. For some states, there may be almost complete overlap — that is, the “assessment domains” in NAEP virtually match the domains in their state assessments. For other states, there may be very little overlap.

This means that NAEP and a particular state test may or may not assess similar content, skills, and knowledge. NAEP scores may be higher than state test results in states where there is more overlap. Or they may be lower than state test results because the NAEP and state assessments have little content in common. Unfortunately, there are no studies of the amount of overlap between the “assessment domains” for NAEP and state assessments.

Second, NAEP reports results by achievement levels: basic, proficient, and advanced. These achievement levels may or may not correspond to those used in state assessment programs. NAEP achievement levels are widely acknowledged as high.

Third, while NAEP will be used to confirm state test results, NAEP assessments will not be high-stakes tests for students. That is, there are no direct consequences associated with students’ performance on NAEP. This contrasts with many state assessments, which attach stakes to an individual student’s performance. Will students “do their best” on NAEP assessments if there are no stakes attached to them? And if students do not take the NAEP assessments seriously, is it valid for NAEP to serve as a check on state assessment results?

Fourth, NAEP is administered in the spring. Some states administer their assessments in the fall. In these states, results on NAEP will reflect almost a year of student growth when compared with state assessments.2

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States Will Participate in “State NAEP” Under ESEA

There are two NAEP programs — National NAEP and State NAEP. ESEA requires states to participate in State NAEP. The assessments given in the states are exactly the same as those given nationally except fewer subjects are assessed by State NAEP. The state-level assessments follow NAEP subject area frameworks that define what students should know and be able to do in reading, math, and two other subject areas assessed by State NAEP — science and writing.

ESEA requires states receiving Title I funding to participate in State NAEP in reading and math at grades 4 and 8 every two years. State participation in other State NAEP subjects — science and writing — remains voluntary.

Like the national assessment, State NAEP does not provide individual scores for the students or schools assessed. Instead, NAEP reports results for populations of students (e.g., fourth-graders) and for key student subgroups (e.g., male students, Hispanic students).

State NAEP is relatively new. In 1988, Congress passed legislation authorizing a voluntary trial State NAEP. In 1996 the state component became a permanent part of NAEP, but state participation remained voluntary until the passage of ESEA.

States that have voluntarily participated in State NAEP have selected a representative sample of students who take the NAEP assessments. A full classroom of students is the sampling unit. State department of education staff and a national cadre of testing staff have administered the assessments.

NAEP reading and math assessments are approximately 30 to 60 questions long. Items on the test are usually spiraled, that is, no individual student takes the complete test and might not receive the same set of items that another student receives. Statewide, sufficient numbers of students take all forms of the test so that state profiles can be established.

Details of exactly how NAEP will be administered and used in ESEA should be available from ED by summer 2002. However, the law says that:

• The federal government will pay for the administration of these State NAEP assessments

• There will be no rewards or sanctions for states, school districts, or schools based on State NAEP results
NAEP Has “High” Achievement Levels

NAEP results are reported for the nation and states in two ways: scale scores and achievement levels. The scales used in each subject area are developed specifically for that subject, so scale score and achievement level results cannot be compared across subjects.

Scale scores summarize students’ overall level of performance on NAEP assessments. In reading and math, scale scores are typically expressed on a scale of 0 to 500 (reading and mathematics).

NAEP achievement levels serve as benchmarks for reporting the total percentage of students, or the percentage of students in a particular subgroup, that meet or exceed expectations of what they should know and be able to do. There are three NAEP achievement levels: basic, proficient, and advanced.

As the definitions below indicate, NAEP achievement levels are “high.” That is, students who score at the “proficient” level on NAEP assessments have met or exceeded a level of performance that might be considered by many as more than merely proficient.

- **Basic** denotes partial mastery of prerequisite knowledge and skills that are fundamental for proficient work at each grade.
- **Proficient** represents solid academic performance for each grade assessed. Students at this level have demonstrated competency over challenging subject matter, including subject-matter knowledge, application of such knowledge to real-world situations, and analytical skills appropriate to the subject matter.
- **Advanced** signifies superior performance.

NAEP Has Been the “Nation’s Report Card” Since 1969

The “Nation’s Report Card,” as NAEP is often called, is the only national and continuing assessment of what the nation’s students know and can do in various academic subjects.

Since 1969, NAEP has assessed samples of students in elementary and secondary public and private schools.

Detailed information on NAEP assessments is available from two sources: the National Center for Education Statistics (NCES) and the National Assessment Governing Board (NAGB). NAEP is a congressionally mandated project of NCES. It is
governed by NAGB, an independent board consisting of a wide range of individuals, including classroom teachers representing the grade levels assessed by NAEP (4th, 8th, and 12th grades).

**Resources**

National Center for Education Statistics  
(202) 502-7300  
www.nces.ed.gov/nationsreportcard/sitemap.asp

The National Assessment Governing Board  
(202) 357-6938  
www.nagb.org

This Action Guide was written by Glen Cutlip and Marcella Dianda, NEA Student Achievement Department. May 2002.
The Elementary and Secondary Education Act (ESEA) requires states to assess all students annually in reading and math, including students with disabilities. This ESEA provision reinforces the 1997 Individuals with Disabilities Education Act (IDEA) which requires states and districts to include students with disabilities in all large-scale assessments. States and school districts will need to address a range of issues as they seek to meet the goals of both laws to include students with disabilities in annual assessments. Some issues — and questions — need to be at the top of states’ and districts’ “to do” list.

Beginning in 2005-06, students with disabilities must participate in ESEA-required annual assessments in reading and math: a) with appropriate accommodations, or alternate assessments, as needed; and b) in the grade in which the students are enrolled. In addition, the law requires local and state agencies to report test results specifically for students with disabilities.

Key Questions About Testing Students with Disabilities

1. Does your state have guidelines for how students with disabilities will participate in ESEA-required annual assessments?

2. If your state doesn’t have guidelines, are they under development? Who is involved in their development?

3. How do state guidelines about assessment accommodations or modifications apply to students with disabilities under ESEA?

4. Are Association members on IEP teams aware of which accommodations are permitted for students with disabilities?

5. Is professional development available for IEP team members about how to meet ESEA’s assessment requirements for students with disabilities?

6. Does the state have an approved alternate assessment for students who can not participate in the ESEA-required assessments, even with accommodations?
7. What are the implications of the alternate assessment for members' workload?

8. How is your state interpreting out-of-level testing for ESEA-required assessments?

9. What percentage of students with disabilities currently participate in statewide assessments?

10. Does the state currently report, or make public, the scores that students with disabilities attain on statewide tests?

What ESEA Says about Testing Students with Disabilities

ESEA requires states to meet IDEA's requirements related to testing students with disabilities. That is, ESEA reading, math and science assessments must be administered “with accommodations, guidelines, and alternate assessments [that are] provided in the same manner as those provided under the Individuals with Disabilities Education Act (IDEA).”

As in IDEA, IEP teams will determine how students with disabilities will participate in ESEA-required assessments. The teams have the responsibility and authority to determine whether a student takes annual ESEA reading, math, and science assessments with accommodations, with modifications, or whether an alternate assessment is required.

States must provide one or more alternate assessments for each student with disabilities as defined under section 602(3) of IDEA whom the IEP team determines cannot participate in ESEA assessments, even with accommodations or modifications. Alternate assessments have to be in place for the 2007-08 school year. However, because of IDEA, these are already in place in most states.

ESEA assessment provisions for students with disabilities also apply to students on 504 accommodation plans (i.e., Section 504 of the Rehabilitation Act of 1973).

In addition, ESEA directs states to set annual achievement objectives for students with disabilities. Part of the law's AYP provisions, the objectives must establish annual performance targets for all students – and these targets must extend to students with disabilities. By 2013-14, 100 percent of students in a state – including students with disabilities – are expected to be proficient in reading and math (as defined by each state).

Students' scores on ESEA-required assessments will be used to determine if schools, districts, and states meet annual yearly progress targets. And while the law admonishes states to assess all students with disabilities, it requires them to report test results for at least 95 percent of students with disabilities when judging Adequate Yearly Progress (AYP).
What States Will Need to Do to Respond to ESEA

As a practical matter, states will need to do the following to meet ESEA's provisions related to testing students with disabilities:

- Develop guidelines about the participation of students with disabilities in state assessments, if such guidelines are not in place.
- Define the types of accommodations or modifications permitted for ESEA-required testing, if an approved list does not exist.
- Develop the alternate assessments ESEA requires, if they have not been developed previously.
- Provide professional development to make IEP team members aware of which assessment accommodations or modifications are allowed.
- Provide general and special education personnel with training in how to appropriately use assessment accommodations so that test results for students with disabilities are not invalidated.

Accommodations Under ESEA

Most students with disabilities will participate in ESEA assessments with accommodations. Some will participate without accommodations, and a small percentage will require modifications or alternate assessments.

Accommodations enable a student to have equal access to participation in the assessments. Without accommodations, the assessment may not accurately measure what the student knows and is able to do. In other words, test scores would reflect a student's disability rather than his/her knowledge and skills.

Accommodations change how the testing environment is structured, how the test is presented, and/or how the student responds to test items.

Any accommodation used in assessing students should be the same accommodations that are used in instruction so that students are familiar with them. But the accommodations should not alter what the test measures or interfere with the ability to compare test results from students with disabilities to other students' test results. Accommodations should produce scores that are comparable to scores from regular assessments.

Some adaptations are likely to be more appropriate for ESEA assessments than others. Commonly used adaptations include the following:

- **Environment or Setting** (e.g., administer the test in a separate, quieter room or in a study carrel to reduce distractions; secure the answer booklet to the desk)
• **Scheduling** (e.g., administer the test at specific times of the day or over several days; administer subtests or sections of the test in a different order; allow the student to take rest breaks during testing)

• **Presentation** (e.g., provide more time to take the test; allow the use of Braille text, large print, or sign language; read the test items aloud to the student; allow the student to use a template to reduce the visible print on the page; provide prompts or cues that focus the student’s attention)

• **Response Mode** (e.g., enlarge the bubble answer sheet; use a scribe to record the student’s test answers)

Some state guidelines list “standard” and “non-standard” accommodations. Standard accommodations do not make changes that significantly affect the validity of the test scores.

In contrast, non-standard accommodations alter the test or the testing situation to such an extent that the scores are not considered valid in comparison to the test scores of students who take the test without accommodations.

**Modifications Under ESEA**

Non-standard accommodations are actually modifications. Modifications, which include reducing the number of test items or simplifying the content of a test, tend to alter what a test is measuring. As a result, they are rarely allowed for state and district assessments, and they will be less common than accommodations under ESEA.

Still students with moderate to severe disabilities, sensory deficits (e.g., deafness, blindness) or more than one disability (e.g., deaf-blind) may need modifications to participate in ESEA-required assessments. Each student’s IEP team decides which modifications are appropriate.

Any modifications that are used for assessment should be the same as those used in instruction. Like accommodations, modifications should be provided on a systematic basis so that the student is familiar with them during the assessments.

Modifications that have been permitted on state tests include the following:

• **Adapted equipment** (e.g., a computerized device as a response mode, adaptive computer keyboards)

• **Adapted format** (e.g., Braille, large print, or fewer items per page for easier reading; modifying the response format from fill-in-the-blank to multiple choice items)
Alternate Assessments and ESEA

Accommodations, and to a lesser extent modifications, in assessments will be appropriate for most students with disabilities. But alternate assessments will be needed for a small number of students with disabilities whose needs cannot be addressed any other way.

A student with disabilities may participate in the alternate assessment in place of all or only part of the ESEA-required assessments. The student’s IEP team must determine that the student is unable to participate in the standard assessments, even with accommodations.

In these cases, the IEP team must: a) document why the standard assessment is not appropriate for a student, and b) describe how the student will be assessed using an approved alternate assessment.

Typically, students who participate in alternate assessments meet two criteria.

First, the students’ cognitive ability and adaptive behavior prevent them from completing the general education curriculum, even with modifications. Second, the course of study that the students pursue is primarily functional and life-skill oriented.

Alternate assessments must address progress toward the state standards in the same content areas as the ESEA-required assessments (i.e., reading, math, and science).

Alternate assessments may include:

- Teacher observation checklists
- Parent interviews about progress outside of school
- Performance assessments of specific tasks or activities
- Performance on commercially developed assessment instruments reported in terms of state content standards
- Student portfolios that document performance of tasks or activities
- State assessments specifically designed for students who are unable to participate in the typical state assessments

Out-of-Level Testing and ESEA

Some states approved out-of-level testing for students with disabilities prior to the passage of ESEA. However, ESEA says that assessments for students with disabilities must “measure the academic achievement of the student relative to the state's academic content and achievement standards for the grade level in which the student is enrolled.”
A strict interpretation of the law means that out-of-level testing will no longer be acceptable for ESEA-related assessments. Affiliates are well-advised to investigate state-specific interpretation of out-of-level testing and ensure that IEP team members are aware of these interpretations.

Educator Workload and Alternate Annual Assessments

Most alternate assessments were developed and approved prior to the passage of ESEA. However, they typically were not annual assessments. Instead, they were designed for teachers to administer to individual students once every few years.

ESEA's requirement for annual alternate assessments could significantly increase the workload for educators who are responsible for their administration.

State affiliates should investigate the workload requirements of the approved alternate assessments to ensure that ESEA requirements have not placed an unreasonable workload on specific members.

If the annual administration of the alternate assessment creates an unreasonable workload, affiliates could:

- Work with the state to lessen teacher workload by revising the approved alternate assessment
- Encourage the state to adopt additional alternate assessments as options that are less labor-intensive to administer

References


This ESEA Action Guide was written by Patti Ralabate and Marcela Dianda, NEA Student Achievement Department. June 2002.
ESEA and Adequate Yearly Progress: Monitoring States’ Initial Activities

The Adequate Yearly Progress (AYP) provisions are among the more complex requirements of the Elementary and Secondary Education Act (ESEA). As early as next month, the U.S. Department of Education is expected to issue regulations that interpret ESEA’s AYP provisions. In the meantime, each state is now preparing its consolidated application for ESEA state grants to the Department. Fortunately, the application timeline provides an opportunity to work with states as they set up the apparatus they need to meet ESEA’s AYP provisions.

ESEA requires states to establish baselines or starting points they will use to measure their progress over the next 12 years in meeting a key ESEA requirement: That all students are performing at a “proficient” level or above, on state reading and math assessments by 2013-14.

In addition, states must determine how they will define “proficient” student performance in reading and math; decide on indicators of student performance they will include in their definitions of AYP; and set interim AYP targets that establish minimal levels of increased student performance from 2002-03 through 2013-14.

Questions to Ask Now About States’ AYP-Related Activities

1. How does your state currently define AYP? Does the definition meet ESEA requirements?
2. How will the state establish the baselines it will use to determine if schools and districts make AYP in reading and math, as ESEA requires?
3. How will the state establish intermediate AYP targets that schools and districts must meet in reading and math between now and 2013-14?
4. How will the state define a “proficient” level of performance for students in reading and math for ESEA? Who will be involved in defining proficiency?
5. What additional academic indicators — such as attendance rates or achievement on local assessments — is the state considering as part of its definition of AYP? Are these the best indicators?
6. Does the state plan on exercising the option of averaging students’ test scores over two or three years to determine if schools and districts make AYP?

Key AYP Activities in States Start Now but Continue into 2003

On June 12, each state must submit its consolidated application for ESEA state grants to the U.S. Department of Education. But on that date, states are only required to indicate that they will identify performance targets and submit baseline data for the targets. They do not have to actually identify the targets or provide the baseline data until months later.

The next set of AYP-related information from states is due on January 31, 2003. At that time, states must describe how they calculated their starting points or baselines for AYP, provide the state’s definition of AYP, and indicate the minimum number of students in ESEA-specified student subgroups that will yield statistically reliable information about students’ performance.

The U.S. Department has set May 1, 2003 as the deadline by which states must submit their annual performance targets and their baseline AYP data.

This timeline provides an opportunity to work with state departments of education staff over the next several months as they take these important steps to meet ESEA’s AYP requirements.

Each State Will Develop Its Own Definition of AYP

States must use students’ performance on annual assessments in reading and math as the “primary” measures of AYP. But the law also directs states to include at least one other indicator of academic performance when they assess AYP. States are now identifying those additional academic indicators.

The law requires states to use graduation rates for secondary students, but states can choose additional academic indicators at the secondary level, and they have complete discretion about the academic indicator(s) they choose for elementary students.

Possible additional indicators the law mentions are achievement on additional state or locally-administered measures, decreases in grade-by-grade retention rates, attendance rates, and changes in the percentage of students completing gifted and talented, advanced placement, and college preparatory courses.
The law also says that any additional academic indicators that states include in their state AYP definitions cannot reduce the number of schools or districts that are identified as not meeting AYP. In other words, these additional indicators buttress students' test scores on state assessments. Assessment results are the primary measure for determining AYP.

States Must Set Baselines for Measuring AYP

The law directs states to establish baselines for measuring AYP in reading and math in one of two ways using student performance data from the 2001-02 school year.

First, states can base their starting points for assessing AYP on the percentage of students in the lowest-achieving subgroup of the student population who are performing at the proficient level in reading and math. The subgroups listed in the law are economically disadvantaged students, students in major racial and ethnic groups, students with disabilities, and limited-english proficient students.

A state that chooses this first option would examine the performance of students in these groups in 2001-02. It might, for example, identify economically disadvantaged students as the lowest-performing subgroup, and determine that 20 percent of economically disadvantaged students are performing at the proficient level in reading.

This 20 percent figure would become the baseline for measuring the AYP of all students in reading in the state. Between the 2003-04 and the 2013-14 school years, the state would need to ensure that 100 percent of all students, and all students in the subgroups mentioned in the law, are performing at the proficient level. The difference between 100 percent and 20 percent is the distance the state needs to go.

Alternatively, states can establish their starting points for measuring AYP in reading and math by using school performance data.

States that choose this option will rank their schools based on reading and math results for 2001-02, and identify schools that are at the 20th percentile. They will set baselines for calculating AYP in reading and math through 2014, based on the percentage of students in these schools who meet or exceed the state-defined proficient level.

For example, if 25 percent of the students in schools that are at the 20th percentile are performing at the proficient level in reading, the baseline for measuring AYP, in reading would be set at 25 percent. Between 2002-03 and 2013-14, the state must ensure that 100 percent of students are performing at the proficient level. The difference between 100 percent and 75 percent is the distance the state needs to go.
ESEA directs states to choose as their baselines for measuring AYP, the option that provides the higher starting point. So, if a state determined that 20 percent of economically disadvantaged students, but 25 percent of students in the schools at the 20th percentile, were performing at the proficient level in reading, it must set its baseline in reading at 25 percent.

States Must Set AYP Targets

ESEA requires states to continually increase students' performance between 2002-03 and 2013-14. To raise the bar over time, states must specify the minimum percentage of students (and subgroups of students) who, each year, must meet or exceed the proficient level of performance in reading and math. States also must raise the bar in "equal increments" over the 12 years. ESEA requires the first increase within two years (in 2004-05). Each following increase must occur within three years, which means that the bar must be raised at least five times over the 12 years.²

In the example that follows, the baselines for measuring AYP are 40 percent in reading and 25 percent in math. In reading, the bar is raised 5 percent per year over the 12 years. In math, the bar is raised 15 percent in five, two-to-three-year increments.

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<th>AYP Reading Targets</th>
<th>AYP Math Targets</th>
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</table>

States Can Use Averages in Determining AYP

ESEA permits states to determine if schools are making AYP by averaging students' scores on reading and math assessments from a current school year with test scores from one or two preceding years. And until states implement ESEA-required assessments in these subjects in 2005-06, states can use the reading and math tests required by the 1994 ESEA. States also have the option of averaging "data across grades" to determine if the school has made AYP.

Averaging students' performance over a two- or three-year period is designed to mitigate fluctuations in schools' annual test scores, which can vary widely from year to year due to factors beyond schools' control. They vary,
for example, because of differences in the abilities and attitudes of groups of students being tested each year.

Experts say the problem is particularly acute at the elementary level where schools are smaller. “The average elementary school contains only 68 students per grade. With a sample this small, having five particularly bright students (or a few students with undiagnosed learning disabilities) in any year can lead to large fluctuations in a school’s test scores from one year to another.”

The second source of annual fluctuations in schools’ test scores is variation in one-time factors that lead to temporary fluctuations in test performance. Some of these, such as a severe flu season, are unrelated to the school’s educational practices, but they can elevate or depress test scores.

States’ Initial Activities Lay the Foundation for Future Sanctions

ESEA requires schools, districts, and states to make AYP, and it specifies a series of increasingly negative consequences, especially for schools, if they fail to do so.

For schools to make AYP in any given year, each student subgroup must perform at or above the bar, wherever it is set. The consequences for schools that fail to do so are outlined below.

But there is an exception. If a particular student subgroup in a school fails to make AYP for one year, the school will be excused if:

a) The percentage of students in the group who failed to reach proficiency decreased by 10 percent

b) Students in the subgroup showed progress on at least one additional indicator of academic performance (e.g., increased high school graduation rate)

If a school fails to make AYP for two consecutive years, it enters the first year of School Improvement, and must:

- Notify parents and prepare a two-year improvement plan
- Use at least 10 percent of Title I funds for professional development
- Provide public school choice for students, if not prohibited by state law
- Use 5–15 percent of Title I funds for transportation
- Receive federal School Improvement funds and technical assistance from the school district

If a school fails to make AYP for three consecutive years, it enters the second year of School Improvement, and must:

- Continue activities from Year 1 School Improvement
• Provide supplemental services (e.g., tutoring)

• Use 5–15 percent of Title I funds for supplemental services or 20 percent combined for public school choice and supplemental services)

If a school fails to make AYP for four consecutive years, it enters the first year of Corrective Action, and must:

• Continue to provide public school choice and supplemental services, and notify parents about the school's status

• The local school district must implement at least one of the following:
  • Replace staff relevant to the failure
  • Implement a new curriculum
  • Decrease local decision-making
  • Extend the school year or day
  • Appoint an outside expert
  • Restructure internal organization

If a school fails to make AYP for five consecutive years, it enters the second year of Corrective Action, and must:

• Continue to provide public school choice and supplemental services

• Prepare a plan and make arrangements for restructuring

If a school fails to make AYP for six consecutive years, the local school district must implement at least one of the following:

• Reopen the school as a public charter school

• Replace all (or most) of the school staff (which may include the principal) who are relevant to the failure to

• Enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness

• Turn school operations over to the state

• Undertake other major restructuring that makes major reforms
ACTION GUIDES

Teacher and Paraprofessional Qualifications/Certification
Duties of Paraprofessionals

ESEA says that paraprofessionals may perform these duties:

- Tutoring outside normal class time
- Assisting with classroom management
- Assisting in a computer laboratory, library, or media center
- Translating
- Providing instruction under the direct supervision of a teacher
- Conducting parental involvement activities

Title I paraprofessionals may perform certain functions outside those listed above for the benefit of all students, such as lunchroom, playground, or study hall monitoring. However, the portion of the time they spend on these general duties may not exceed that of a non-Title I paraprofessional at the same school.

Paraprofessionals who conduct parental involvement activities or translate are exempt from the requirement to be highly qualified.

State and local regulations may also affect duties that paraprofessionals may perform. Make sure your local has a copy of relevant provisions.

What is in the law?

Who?

All paraprofessionals who work in programs funded by Title I are affected. Paraprofessionals are generally those education support professionals who work with students in an instructional role.

When?

The new law became official January 8, 2002. Paraprofessionals hired after that date must meet these requirements immediately. Paraprofessionals hired before that date must prove that they are highly qualified by 2006. New requirements concerning the duties of paraprofessionals went into effect when the act became law.

What qualifications?

All Title I paraprofessionals must have a high school diploma or the equivalent and prove that they are highly qualified. There are three ways that paraprofessionals may prove they are highly qualified:

1. Complete an associate degree
2. Complete two years of college
3. Demonstrate knowledge of reading, writing, math, and the ability to assist in instructing these subjects. This demonstration must be through a state or local academic assessment, which does not necessarily mean a pencil and paper test.

Local school districts may use federal funds to help paraprofessionals meet the new requirements of the federal law.

For local leaders

Understanding how ESEA affects paraprofessionals

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Local school districts may use federal funds to help paraprofessionals meet the new requirements of the federal law.
The National Education Association (NEA) and its state affiliates want to make sure that your members are informed and their rights are protected. The Elementary and Secondary Education Act (ESEA), a federal law, contains several provisions which affect paraprofessional job security and duties. This law is also known as The No Child Left Behind Act. NEA created this brochure to help you assist paraprofessionals as they collect the data they may need as ESEA is implemented in your state and school district. It contains information about what the law provides, how it affects paraprofessionals, steps to take now, and where to find more information.

ESEA and Your Local: Steps to Take Now

The National Education Association (NEA) and your state association encourage you as a local association leader to:

• Use ESEA as an opportunity to provide services to members and to encourage others to join the association.
• Survey current paraprofessionals to assess their professional development needs.
• Bargain or advocate for local policies that provide paraprofessionals with financial and time resources to meet the law's requirements.
• Provide paraprofessionals with information about the law.
• Assess which paraprofessionals are covered by the provisions of ESEA.
• Assist paraprofessionals with finding out when they were officially hired.
• Encourage paraprofessionals to collect documentation of their education, including high school diploma or GED certificate and transcripts for any college courses taken.
• Assist paraprofessionals with submitting documentation to the school district, encouraging them to keep copies. Your local may also want to keep copies in case of layoffs or transfers.
• Work with local colleges to make available to members low-cost courses to help paraprofessionals meet ESEA requirements.
• Encourage state and local officials to take a broad view of assessment of paraprofessionals, to include portfolios, evaluation, work experience, etc.
• Organize efforts to elect lawmakers who support positive changes in ESEA and involve members in those efforts.

What is my Association doing?
As the U.S. Congress was considering ESEA, the National Education Association strongly represented its members' interests. Through NEA’s advocacy some important changes, including options for paraprofessionals — not just one mandated way — were won to meet the new regulations. The Association is assisting members through bargaining and providing information and workshops. In addition, the Association is working with school and state officials to make sure implementation of ESEA is fair and equitable.

Where can I get more information?

• www.nea.org (website of the National Education Association)
• www.sel.org (NEA’s member portal website)
• Your state and local association websites — you can find links to state websites on the NEA website.
• Your local association leaders and UniServ staff.
• www.ed.gov/nclb (website of the U.S. Department of Education)
• www.learningfirst.org
• Website of your state department of education.
• www.ecs.org (website of The Education Commission of the States)
• www.nea.org/esea (website of the National Education Association)
• School sites
• Member portal sites for members
• Field offices
• School administrators
• Union representatives

www.nea.org
The law affects paraprofessionals in two ways:

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All Title I paraprofessionals must have a high school diploma or the equivalent and prove that they are highly qualified. There are three ways that paraprofessionals may prove they are highly qualified:

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2. Complete two years of college OR
3. Demonstrate knowledge of reading, writing, and math and the ability to assist in instructing these subjects. This demonstration must be through a state or local academic assessment, which does not necessarily mean a pencil and paper test.

Local school districts may use federal funds to help paraprofessionals meet the new requirements of the federal law.

B. Duties of Paraprofessionals

ESEA says that paraprofessionals may perform these duties:

1. Tutoring outside normal class time
2. Assisting with classroom management
3. Assisting in a computer lab/library/media center
4. Translating
5. Providing instruction under the direct supervision of a teacher
6. Conducting parental involvement activities

Title I paraprofessionals may perform certain functions outside those listed above for the benefit of all students, such as lunchroom playground or study hall monitoring. However, the portion of the time they spend on these general duties may not exceed that of a non-Title I paraprofessional at the same school.

Local and state regulations may also affect what duties paraprofessionals may perform. Check with your local association to see if these regulations further limit what paraprofessionals may do.

Paraprofessionals who conduct parental involvement activities or translate are exempt from the requirement to be highly qualified.

The new law became official January 8, 2002. Paraprofessionals hired after that date must meet these requirements immediately. Paraprofessionals hired before that date must prove that they are highly qualified (see below) by 2006. New requirements concerning the duties of paraprofessionals went into effect when the act became law.

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The Elementary and Secondary Education Act (ESEA), a federal law, contains several provisions which affect paraprofessionals’ job security and duties. This law is also known as The No Child Left Behind Act. The National Education Association (NEA) and its state affiliates want to make sure that all educators are informed about how ESEA affects paraprofessionals in your school.

All paraprofessionals who work in programs funded by Title I are affected. Paraprofessionals are generally those education support professionals who work with students in an instructional role.

ESEA and Paraprofessionals: Steps you can take now

The National Education Association (NEA) and your state association encourage you to:

- Make sure the paraprofessional(s) working in your classroom is covered by ESEA.
- Determine whether the paraprofessional(s) in your classroom was officially hired before or after January 8, 2002.
- Encourage your paraprofessional(s) to meet ESEA criteria to maximize their employment opportunities.
- Advocate for the school system to assist paraprofessionals in achieving highly qualified status.
- Assist paraprofessionals in finding time and accessing the funding available through ESEA for their professional development.
- Ensure that your paraprofessional(s) is performing duties consistent with ESEA.
- Provide paraprofessional(s) with information about the law.
- Encourage your paraprofessional(s) to collect documentation of their education, including high school diploma or GED certificate and transcripts for any college courses taken.
- Assist your paraprofessional(s) with submitting documentation to the school district, encouraging them to keep copies. Your local may also want to keep copies in case of layoffs or transfers.
- Encourage state and local officials to take a broad view of assessment of paraprofessionals, to include portfolios, evaluation, work experiences, etc.
- Organize efforts to elect lawmakers who support positive changes in ESEA and involve members in those efforts.

What is my Association doing?

As the U.S. Congress was considering ESEA, the National Education Association strongly represented its members’ interests. Through NEA’s advocacy some important changes, including options for paraprofessionals — not just one mandated way — were won to meet the new regulations. The Association is assisting members through bargaining and providing information and workshops. In addition, the Association is working with school and state officials to make sure implementation of ESEA is fair and equitable.

ESP Quality
1201 16th St., N.W.
Washington, DC 20036
(202) 822-7131
www.nea.org
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Who?
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For ESPs
Paraprofessionals and ESEA
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NEA created this brochure to help you start collecting the data you may need as ESEA is implemented in your state and school district. Inside you will find information about what the law provides, how it affects you, steps you should take now, documents you should collect, and where you can find more information.

**ESEA and You: Steps To Take Now**

The National Education Association (NEA) and your state association encourage you to:

- Check with your school district to see if you work in a program funded by Title I. If your school has a school-wide Title I program and you work in an instructional capacity, you are probably included under ESEA. If your school receives targeted assistance, you are included only if your position is funded by Title I.
- Meet ESEA’s qualifications requirements even if you do not currently work in a Title I program. This will greatly increase your flexibility and job security.
- Determine whether you were officially hired before or after January 8, 2002.
- Collect documentation of your education, including your high school diploma or GED certificate and transcripts for any college courses you have taken.
- Document your conference and workshop attendance as this may help you attain highly qualified status.
- Submit your documentation to your school district. Make sure you keep copies for yourself.
- If you do not currently meet the requirements to be highly qualified, find out what assessment your state or school district has decided to use.
- If you choose to meet the requirements by taking additional college courses, contact local colleges to find out about their programs that may help you become highly qualified.
- Ask your local association what financial assistance your school district provides to employees getting additional education.
- Contact your local association to find out how you can help elect lawmakers who will support positive changes in ESEA.

**Where can I get more information?**

- www.nea.org/esea (website of the National Education Association)
- o wl.org (NEA’s member portal website)
- Your state and local association websites. You can find links to state websites on the NEA website.
- Your local association leaders and UniServ staff.
- www.ed.gov/nclb (website of the U.S. Department of Education)
- www.learningfirst.org
- Website of your state department of education.
- www.ecs.org (website of the Education Commission of the States)
Understanding How ESEA Affects Paraprofessionals

Duties of Paraprofessionals

ESEA says that paraprofessionals may perform these duties:
- Tutoring outside normal class time
- Assisting with classroom management
- Assisting in a computer laboratory, library, or media center
- Translating
- Providing instruction under the direct supervision of a teacher
- Conducting parental involvement activities

Title I paraprofessionals may perform certain functions outside those listed above for the benefit of all students, such as lunchroom, playground or study hall monitoring. However, the portion of the time they spend on these general duties may not exceed that of a non-Title I paraprofessional at the same school.

What’s in the law?

All paraprofessionals who work in programs funded by Title I are affected. Paraprofessionals are generally those education support professionals who work with students in an instructional role.

Who?

The new law became official January 8, 2002. Paraprofessionals hired after that date must meet these requirements immediately. Paraprofessionals hired before that date must prove that they are highly qualified (see below) by 2006. New requirements concerning the duties of paraprofessionals went into effect when the act became law.

When?

Paraprofessionals who conduct parental involvement activities or translate are exempt from the requirement to be highly qualified.

State and local regulations may further limit duties that paraprofessionals may perform.

What?

Qualifications

All Title I paraprofessionals must have a high school diploma or the equivalent and prove that they are highly qualified. There are three ways that paraprofessionals may prove they are highly qualified:

1. Complete an associate degree
2. Complete two years of college
3. Demonstrate knowledge of reading, writing, and math and the ability to assist in instructing these subjects. This demonstration must be through a state or local academic assessment, which does not necessarily mean a pencil and paper test.

Local school districts may use federal funds to help paraprofessionals meet the new requirements of the federal law.

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The Elementary and Secondary Education Act (ESEA), a federal law, contains several provisions which affect paraprofessionals' qualifications and duties. This law is also known as The No Child Left Behind Act. The National Education Association (NEA) and its state affiliates want to make sure that all educators are informed about this new law.

This brochure includes information about what the law provides, to how it affects paraprofessionals in your school, steps you should take now, and where you can find more information.

**ESEA and Paraprofessionals: Steps you can take now**

The National Education Association (NEA) and your state association encourage you to:

- Make sure all paraprofessionals in your school know if they are working in a position covered by ESEA.
- Determine whether the paraprofessionals in your school were officially hired before or after January 8, 2002.
- Survey paraprofessionals to find out whether they are currently “highly qualified” as defined in ESEA.
- Provide conference and workshop opportunities that will assist paraprofessionals in achieving highly qualified status.
- Consider bargaining or advocating for local policies that provide paraprofessionals with financial aid and time resources to meet the law’s requirements.
- Advocate for the school system to assist paraprofessionals in achieving highly qualified status.
- Provide opportunities for paraprofessionals to find out how they can help elect lawmakers who support positive changes in ESEA.
- Contact the local education association to find out how you can help elect lawmakers who support positive changes in ESEA.
- Ensure that paraprofessionals are performing duties consistent with ESEA.

**What is NEA doing?**

As the U.S. Congress was considering ESEA, the National Education Association strongly represented the interests of public schools. The Association is assisting members through bargaining and providing information and workshops. In addition, the Association is working with school and state officials to make sure implementation of ESEA is fair and equitable.

**Where can I get more information?**

- [www.nea.org/esea](http://www.nea.org/esea) (website of the National Education Association)
- [owt.org](http://owt.org) (NEA’s member portal website)
- Your state and local association websites. You can find links to state websites on the NEA website.
- Your local association leaders and UniServ staff.
- [www.learningfirst.org](http://www.learningfirst.org)
- Websites of your state department of education.
- [www.escc.org](http://www.escc.org) (website of the Education Commission of the States)
ESEA and Teacher Qualifications

ESEA recognizes the important role that the classroom teacher and teacher quality plays in promoting student achievement. It requires that all teachers (including those from alternative routes) be “highly qualified” in the subjects they teach by the end of the 2005-06 school year.

To meet the “highly qualified” definition:

**All teachers** must:
- Be fully licensed or certified by the state, and
- Not have had any certification or licensure requirements waived on an emergency, temporary, or provisional basis

**New elementary teachers** must:
- Have at least a bachelor’s degree, and
- Pass a state test demonstrating subject knowledge and teaching skills in reading, writing, mathematics, and other areas of any basic elementary school curriculum

**New middle or secondary teachers** must:
- Have at least a bachelor’s degree, and
- Demonstrate competency in each of the academic subjects taught, or
- Complete an academic major or coursework equivalent to a major, or a graduate degree in each of the academic areas in which the teacher teaches, or
- Advanced certification

**Existing elementary, middle, and secondary teachers** must:
- Have at least a bachelor’s degree, and
- Meet the requirements for new teachers described above, or
- Demonstrate competency in all subjects taught. (A uniform state evaluation standard is to be used to judge competency.)
  - The evaluation standard must provide objective information about the teacher’s knowledge in the subject taught and can consider, but not use as a primary criterion, time spent teaching the subject.
• The evaluation standard must be applied uniformly to all teachers in the same subject and grade level throughout the state.

ESEA also requires states to publish an annual report disclosing the professional qualifications of teachers, the percent working with emergency or provisional credentials, and the percent of classes in the state not taught by "highly qualified" teachers.

**Key implementation deadlines**

By the 2002-03 school year:
• Any new teachers hired and working in a program supported by Title I funds must meet requirements of a "highly qualified" teacher.
• States and districts must begin reporting their progress toward ensuring all teachers are "highly qualified."

By the end of the 2005-06 school year:
• All teachers in core academic subjects must be "highly qualified." (Core academic subjects include all subjects except PE, computer science, and vocational.)

**NEA Activities**

Over the past several months, the NEA Teacher Quality Department has attempted to identify members who serve on boards of teaching (professional standards boards) and advisory boards, in order to establish better communications and training. NEA will:
• Assist states in reviewing their current requirements for teacher licensure
• Develop sound alternative routes to licensure or certification
• Provide support for affiliates to strengthen the role of its members who serve on autonomous or advisory boards

**Status of the States**

For individual state reports and policies on teacher quality and preparation, see Title II State Reports 2001, www.title2.org/statereports/index.htm.

According to Title II reports, nearly 300,000 teachers nationally are on waivers or are on substandard credentials.

Only Iowa, Nevada, Ohio, and the District of Columbia indicate that they have no teachers on waivers and that all teachers are fully certified. This does not, however, include teachers teaching “out of field.”
Currently for elementary teachers

- All states require a bachelor's degree
- Only 30 states and the District of Columbia require teachers to have passed a test demonstrating basic skills in reading, writing, and math prior to receiving a teaching certificate. Indiana tests reading and writing only
- Only 21 states require teachers to have passed a “knowledge of teaching” exam
- For all grade levels, only 12 states require a subject-area major rather than a major in education

Currently for middle and secondary teachers

- All states require a bachelor's degree
- Middle or high school level teachers in 31 states and the District of Columbia must also pass a subject-area test
- Seven states and the District of Columbia require a major for middle school or junior high level, and five require either a major or a minor
- For high school or general secondary level certificates, 20 states and the District of Columbia require a major in the subject area taught

Taken from Manual on the Preparation and Certification of Educational Personnel (2001), NASDTEC.

Recommendations to Affiliates

1. Identify the agency that is responsible for reporting the number of “highly qualified” teachers in your state
2. Partner with that agency to determine the answers to the following questions:
   - How many teachers in your state are “highly qualified” as defined by the law?
   - How many teachers in your state are teaching under emergency certificates or other waivers?
   - Does your state have an accurate system to track these data?
   - How will your state ensure that all teachers meet the definition for “highly qualified” by 2005-06?
   - Does your state’s certification/licensing procedures guarantee strong subject-matter competence?
   - How will your state ensure that teachers entering the classroom through alternative routes to certification meet the new requirements?
Resources

NEA ESEA www.nea.org/esea
connect.nea.org/esea

American Federation of Teachers www.aft.org

Education Commission of the States www.ecs.org

Learning First Alliance www.learningfirst.org

U.S. Dept. of Education ESEA site www.ed.gov/nclb

For further information on this topic, please contact Tim Dedman at tdedman@nea.org
May 2002
ESEA and Higher Education Partnerships

Title II

The ESEA reauthorization requires that 2.5 percent of all Title II funds be given to the state agency responsible for higher education for the purpose of providing sub-grants to partnerships to carry out the following.

Professional development activities in core academic subjects should ensure that:

- Teachers, principals, and paraprofessionals have subject matter knowledge, including using technology to enhance student learning
- Principals have instructional leadership skills that will help them work effectively with teachers to help students master core academic subjects

Develop and provide assistance to local districts, teachers, paraprofessionals, or principals for sustained high-quality professional development activities that:

- Ensure that individuals are able to use the state academic content standards, student academic standards, and state assessments, to improve instructional practices and improve student academic achievement
- May include intensive programs designed to prepare "trainers" to return to schools and deliver instruction related to the professional development of others
- May include activities of partnerships among locals, schools, and one or more institutions of higher education for the purpose of improving teaching and learning in low performing schools

Math/Science

Eligible partnerships must include, at a minimum, an engineering, mathematics, or science department of an institution of higher education and must be in a high-need school district.

Permitted activities include:

- Providing professional development for mathematics and science teachers
- Promoting strong teaching skills for mathematics and science teachers
- Providing mathematics and science summer workshops
• Recruiting mathematics, engineering, and science majors into teaching
• Designing or redesigning more rigorous mathematics and science curricula
• Establishing distance learning programs for teachers
• Developing programs to bring mathematics and science teachers into contact with working scientists, mathematicians, and engineers
• Providing programs for exemplary mathematics and science teachers in K – 8 classrooms
• Establishing programs to encourage young women and underrepresented individuals to pursue mathematics and science careers

NEA Activities

The NEA Teacher Quality Department has been working with the Oklahoma Education Association, Oklahoma State University, Oklahoma Department of Education, Oklahoma Commission on Teacher Preparation, and the Oklahoma State Regents for Higher Education to develop a model partnership program that will provide intensive training and certification opportunities for:

• Current teachers needing deeper content knowledge
• Current teachers desiring to obtain certification in a new area
• Career changers desiring to enter teaching from another field

While the activities of this group are still in the preliminary stages, the opportunities for other states to use the Oklahoma model will enhance the likelihood of receiving partnership money under the act.

Recommendations to Affiliates

• Identify potential partners, including but not limited to a local/state affiliate, a local school district, a higher education agency, or a higher education institution
• Identify the professional development needs within your state, including how many teachers and Title I paraprofessionals may use professional development routes to obtain “highly qualified” status
• Develop a joint grant proposal and submit it to the appropriate agency in your state.
### Resources

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For further information on this topic, please contact Tim Dedman at tdedman@nea.org.
Teacher Quality Update: ESEA and National Board Certification

National Board Certification — the teaching profession’s highest distinction — is affected by ESEA in several ways. First, National Board Certification (NBC) is one of the ways that new and experienced teachers can demonstrate that they meet the law’s definition of “highly qualified.” Second, ESEA creates new federal grants to subsidize and support NBC, and third, states and districts can use ESEA funds to support National Board candidates and activities.

ESEA and NBC

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NBC and “Highly Qualified”

In order to meet the ESEA definition of “highly qualified” by 2006, all teachers must:
• be fully licensed or certified by the state, and
• not have had any certification or licensure requirements waived on an emergency, temporary or provisional basis.

Middle or secondary teachers who are new to the profession must also meet requirements listed below. Note: National Board Certification satisfies requirements specified in the fourth bullet.
• have at least a bachelor’s degree, and
• demonstrate competency in each of the academic subjects taught, or
• complete an academic major or coursework equivalent to a major, or a graduate degree in each of the academic areas in which the teacher teaches, or
• advanced certification.

Similarly, NBC can satisfy requirements facing current elementary, middle and secondary teachers (see second bullet), who must:
• have at least a bachelor’s degree, and
• meet the requirements for new teachers described above [author’s note--this includes advanced certification], or
• demonstrate competency in all subjects taught. (A uniform state evaluation standard is to be used to judge competency.)

NBC and ESEA Funds

Title II of ESEA provides many funding possibilities for states, districts, and other organizations to advance National Board Certification. Final regulations may provide more specific guidance for uses of ESEA funds, but the following appear to be provisions in the law through which federal funds can be used for NBC:

• Title II, Part A, Teacher and Principal Training and Recruiting
• Title II, Part A, Subpart 5: National Activities (explained below)
• Title II, Part B, Mathematics and Science Partnerships
• Title VI, Part A, Subpart 2, Transferability of Funds
• Title VI, Part A, Subpart 2, State and Local Flexibility Demonstration Act

Details about the possible uses of funds under these ESEA provisions can be found at the NBPTS web site: www.nbpts.org/gr/action_alert1.html

NBC and “National Activities of Demonstrated Effectiveness”

ESEA’s Title II, Sec. 2151 authorizes the U.S. Secretary of Education to fund certain national activities of “demonstrated effectiveness,” such as National Board Certification. Unfortunately, the law also names the National Council on Teacher Quality (NCTQ), an organization of conservative education policy analysts and former state superintendents that plans its own advanced certification process based on a paper-and-pencil test and on candidates’ student test scores. NCTQ created the American Board for Certification of Teaching Excellence (ABCTE) to administer these tests.

While Title II authorizes the Secretary of Education to make grants to state or local education agencies as well as to certification organizations (such as NBPTS or ABCTE), it is unclear how ABCTE will ever demonstrate the effectiveness of a process based on a single test and on student standardized test scores.

NEA Activities

NEA’s strong support for National Board Certification is based on the positive impact on teaching and student learning reported by NEA members who complete the process, and the role that NBC plays in strengthening the teaching profession.
NEA’s Teacher Quality Department coordinates a national program that supports the National Board activities of state and local affiliates and advances NBC through national and state policymaking bodies. The Teacher Quality program includes: support to NEA members of the NBPTS board, publications and materials, workshops and training sessions, grants to affiliates, and the coordination of the Candidate Support Consortium, a strategy group comprised of over 25 state associations. Clearly, Association National Board programs will become increasingly important as NEA affiliates partner with districts and states to prepare for ESEA implementation.

Status of the States

NEA’s state and local affiliates lead the nation in support of teachers who pursue NBC, and many affiliates are recognized as teachers’ best sources of candidate support. For selected profiles of affiliate activity, visit: www.nea.org/issues/certification/nbc.2001.pdf

NBPTS regularly reports on actions by state governments and school districts that support NBC. See: www.nbpts.org/state_local/index.html

Recommendations to Affiliates

1. Alert all NEA members who are National Board Certified to the law’s definition of “highly qualified” and how NBCT status satisfies its requirements.
2. Connect with your state education agency, with local affiliates, and with school districts to share information about the funding opportunities for NBC within the ESEA law.
3. Advise supporters of National Board Certification in your district and state that ESEA funds should support advanced teacher certification offered by the National Board for Professional Teaching Standards — not ABCTE — since National Board Certification is the process developed and embraced by the teaching profession.

Resources

NEA ESEA website: www.nea.org/esea; connect.nea.org/esea
NEA NBC web page: www.nea.org/issues/certification
U.S. Dept. of Education ESEA site: www.ed.gov/nclb
National Board for Professional Teaching Standards web site: www.nbpts.org

For further information on this topic, please contact Susan Carmon at: scarmon@nea.org
MOBILIZE

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ACTION GUIDES

FUNDING FLEXIBILITY AND TRANSFERABILITY

2002

NATIONAL EDUCATION ASSOCIATION

www.nea.org
For the first time in their long history, Title I funds can now be used to help parents in failing schools obtain supplemental services for their children. The Elementary and Secondary Education Act (ESEA), which includes Title I, requires schools that do not make “adequate yearly progress” (AYP) for three consecutive years to provide supplemental educational services to low-achieving, economically disadvantaged students. But beginning in 2002-03, parents with children in as many as 3,000 schools already identified as failing under the 1994 ESEA will have access to supplemental services. One of the services mentioned in the law is tutoring. Research indicates that one-on-one tutoring can be a particularly effective intervention — when it meets certain criteria.

This Action Guide presents research-based components of effective tutoring programs. Many states are now developing criteria for identifying approved supplemental service providers, including organizations, agencies, and companies that will provide tutoring services in reading and math, the two subjects emphasized in ESEA. All providers should offer tutoring programs that have these research-based components.

Many Will Be Eligible To Provide Tutoring Services

The law suggests that a wide range of groups and agencies could be eligible to provide tutoring and other supplemental services.

ESEA defines “provider” as a non-profit or for-profit organization, or local education agency, such as a school or school district.

Childcare centers that provide school-age care, companies that market tutoring and after-school programs, and private organizations could be eligible providers.

What ESEA Says About Tutoring

ESEA defines supplemental services as “tutoring” and “other supplemental academic enrichment services” that are:
• In addition to instruction provided during the school day
• High quality, research-based, and specifically designed to increase students’ academic achievement on ESEA-required assessments (in reading and math) and attain proficiency in meeting state achievement standards

In addition to tutoring, states could offer parents before- and after-school services or summer school programs.

**Research-Based Components of Effective Tutoring Programs**

Researchers have identified the following components of effective tutoring programs. The research focuses on tutoring programs in reading, but has broader application.

The components apply, with varying degrees, to tutoring programs that employ paid tutors or volunteer tutors. Programs that school districts, schools, and for-profit companies offer will likely employ paid tutors who are either teachers or specially trained adults. Programs that community-based, or church-affiliated organizations offer may rely on volunteer tutors.

We believe it is far better to use paid, certified teachers, or paid, specially-trained paraprofessionals as tutors. They have the necessary knowledge base; they are more reliable than volunteer tutors; and they often are better able than volunteers to coordinate tutoring with classroom instruction.

Researchers have found that tutoring programs are most effective when:

1. Tutors are either certified teachers, or specially trained paraprofessionals, or volunteers who are supervised by a certified teacher.
2. Tutors receive ongoing training and feedback.
3. Tutoring sessions are structured and contain basic subject-related elements.
4. Tutoring is intensive and consistent.
5. Tutors use quality materials with students.
6. Each student’s progress is assessed regularly.
7. Tutoring is coordinated with regular classroom instruction.
8. Volunteer tutors are given incentives so they make a long-term commitment to tutoring.
9. After-school tutoring programs are coordinated by an individual at the school.
**Tutors are either certified teachers, or specially trained paraprofessionals or volunteers who are supervised by a certified teacher.**

Some nationally known tutoring programs use certified teachers to tutor students during the school day. For example, Reading Recovery uses highly-trained, certified reading teachers. Success for All, which is more than a tutoring program, includes a tutoring component that uses certified reading teachers, other certified teachers who are trained as reading tutors, and trained paraprofessionals to tutor students during the school day.

In contrast, most after-school tutoring programs do not use certified teachers or trained paraprofessionals as tutors. Instead, their tutors are volunteers who have varying levels of expertise, education, and experience.

If a tutoring program uses volunteer tutors, a certified teacher should supervise them. In addition to supervising tutors on a daily basis, the certified teacher assesses the student’s skills, develops lesson plans for the tutors to implement, observes the volunteers, and provides them with feedback and support as they work with students.

Researchers who have studied reading tutoring programs explain the important role of these certified-teacher supervisors. Unlike the volunteers, subject-matter specialists have the knowledge to diagnose students’ problems and determine what concepts and skills need to be addressed. The specialist then uses the information from the assessment to develop a detailed diagnosis and tutoring plan.

**Tutors receive ongoing training and feedback.**

Studies show that effective tutoring programs train tutors in key aspects of the subject area in which they provide tutoring. As important, these programs teach tutors how to help students learn to read, to do math, etc. It is not sufficient, for example, for tutors to be competent readers themselves; they must know what is involved in learning to read and in teaching students to read.

The most effective training is labor-intensive and requires qualified staff. Ideally, teachers who are subject-matter experts should provide tutors with initial training, observe them while they are tutoring to provide feedback, and continue to train tutors over time.

In addition, tutors need opportunities to share their own ideas and experiences with other volunteers and with a certified subject-matter expert. In this way, tutors learn from their experiences, from each other, and from the reading, math, or other subject-matter specialist who is there to support them.
Tutoring sessions are structured and contain basic subject-related elements.

Studies of successful reading tutoring programs find that while the programs differ in how they teach reading, all lessons include four basic elements.

First, students reread a familiar story or other, easy connected text. This provides an opportunity to practice fluency in reading, work on word recognition, and improve comprehension.

Second, students engage in word analysis activities in which they attend to the letters in words, hear and record sounds in words, and link sound sequences to letter sequences. Done in isolation, and in the context of reading text, students practice words they know, and learn new words and their meaning.

Third, students write in each tutoring session so they can see the relationship between reading and print.

Fourth, students read a new story, such as one that has recently been introduced in class or one that is appropriate to their current reading level. Reading a new story allows students to practice reading familiar and unfamiliar words, to build vocabulary, and to work in comprehension.

These four elements provide a consistent structure to the reading tutorials and ensure that students receive instruction that will, indeed, help them.

Tutoring sessions in math or other subjects also need to be structured so they enable students to strengthen existing skills, fill in gaps in their skill base, and acquire new skills so they can keep up with their peers during regular classroom instruction.

Tutoring is intensive and consistent.

Studies of tutoring in reading indicate that students should receive tutoring services for a minimum of 1.5 to 2 hours per week. Programs such as Reading Recovery and Success for All tutor students five days a week for 20 to 30 minutes, respectively, during the school day. Some successful after-school tutoring programs tutor students for an hour after school, four times a week.

But most after-school programs that use volunteer tutors often schedule fewer tutoring sessions per week. The more time the student has to work on skills, the better. Other programs offer tutoring to small groups of students, rather than to one student. Tutoring is most effective if it is one-on-one. When adults work with two or three students, they are providing small group instruction.
Consistency is also important in tutoring. Researchers say that a student should be tutored by the same tutor every week. This allows the student and tutor to build a relationship. The tutor develops an understanding of the student, and the student begins to trust the tutor and is less likely to be afraid to admit that she does not understand something.

Studies indicate that tutors’ ability to measure the students’ progress, to know what skills need to be addressed, and to understand students specific needs are enhanced when tutors work consistently with the same students.

**Tutors use quality materials with students.**

Quality materials are key to the success of a tutoring program, but studies have shown that they are frequently neglected, usually because of cost. Tutors need books, paper, pencils, markers, and materials students can manipulate and work with, such as letter and number blocks, word blocks, counters and tiles, letter strips, journals, etc.

The materials used in tutoring should not be borrowed from classroom materials. Nor should tutors be expected to provide the materials themselves. Instead, the materials used for tutoring need to be purchased for, or be incorporated into, the tutoring program.

**Each student's progress is assessed regularly.**

Ongoing assessment plays a critical role in tutoring. It provides information to modify and tailor lessons for individual students. Studies show that periodic assessments should focus on the skills and concepts that are presented in the tutoring sessions, and assessments should be linked to tutor training. The more tutors know about how their tutees are progressing, the better they are able to provide students with appropriate lessons and helpful feedback.

**Tutoring is coordinated with regular classroom instruction.**

Tutoring should be closely aligned with what the student is learning in regular classroom instruction.

First, it is more effective for tutors (and less confusing for students) to use the same method of instruction that is used in the classroom.

Second, it is easier and more effective if tutors use materials that are the same or similar to those used in regular classroom instruction. If the tutor works with the same stories or the same math problems that were presented in class, the student has repeated opportunities to work on these materials. As the student masters material in tutoring session, she is more likely to perform better in class.
Coordinating tutoring and classroom instruction does not mean that tutoring should mirror what is done in the classroom. Instead, tutors offer opportunities for additional practice on concepts and skills presented in the classroom, present new strategies, and provide explanations that support, reinforce, and build on what students are learning in class.

**Volunteer tutors are given incentives so they make a long-term commitment to tutoring.**

Tutoring programs that use volunteer tutors need to provide incentives for ensuring that the volunteers attend tutoring sessions frequently and consistently. Some successful programs pay volunteer tutors a small stipend; others pay a stipend, and provide lunch or transportation; and still others release tutors from their full-time jobs for tutoring. In addition, volunteer tutors need to be recognized and appreciated if they are expected to make long-term commitments to a tutoring program, through award programs, celebrations, and the like.

**After-school tutoring programs are coordinated by an individual at the school site.**

Studies also show that an on-site program coordinator is essential to the success for after-school tutoring programs. This person is on-site and is responsible for implementing the program, including scheduling tutoring sessions, assuring that tutors meet with students, making sure tutors have the materials they need, recruiting and retaining tutors, and coordinating ongoing training activities for the tutors. Often the coordinator is a certified teacher who can provide this training.

**ESEA Lists Criteria for Tutoring Programs**

The law says that providers of tutoring and other supplemental services must:

1. Have a demonstrated record of effectiveness in increasing students’ academic achievement

2. Provide parents, the school, and/or district with information on children’s progress in a format and, in a language that parents understand

3. Ensure that the services they provide are consistent with the local instructional program and aligned with state standards

4. Provide instruction and content that are secular, neutral, and non-ideological
Parents Will Choose Tutoring and Other Services

Parents request tutoring and other supplemental services for their children, and they select a service provider from a list of state-approved providers.

School districts are required to: provide parents with information on the availability of supplemental services; identify approved providers within the district and in neighboring districts; and provide a brief description of the services, qualifications, and demonstrated effectiveness of each provider.

Districts also must notify parents if their children are eligible for supplemental services. These services are available for low-income students who attend schools designated for school improvement for the second consecutive year, as well as students who attend schools designated for corrective action or restructuring.

In addition, districts are required to assist parents in selecting a provider from the approved list if parents ask for such assistance. And once parents select a provider, the district must work with the parents and the provider to develop achievement goals for the student, determine how the student's progress will be assessed, and create a timetable for improving achievement.

The plan also must describe how the parents and student’s teachers will be updated regularly on the student’s progress, and provide for the termination of the agreement if the provider fails to meet the goals and the timetable.

Resources


Elementary and Secondary Education Act Public Law 107-110

FUNDING AND FLEXIBILITY

March 21, 2002
Prepared by NEA Government Relations

FUNDING: HOW MUCH?

ESLA PROGRAMS
CHANGE FROM PREVIOUS YEAR'S FUNDING
(In billions)

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FUNDING: HOW MUCH?

TITLE I
CHANGE FROM PREVIOUS YEAR'S FUNDING
(In billions)

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See your State packets for:
- How much each State gets in FY 01, FY 02, and projected Bush FY 03 for all ED formula programs and college student aid programs.
- How much each LEA is projected to receive in Title I for FY 02.
- How much each LEA is projected to receive in Teacher Quality Education Technology, Safe and Drug-Free, and Innovative Programs in FY 02.

HOW ARE FUNDS DISTRIBUTED?

TITLE I

Allocated by formula to LEAs by Federal government. Based on number of children in poverty and State's average per pupil expenditure.

Small State minimum of 0.25% and 0.35% of funds above FY 01 level.

The larger the number of children and the greater the proportion of children in poverty, the larger the grant.

LEAs distribute funds to schools.

95% of LEAs and 50% of schools (47,000) get Title I.

65% of students served are in K-6.
HOW ARE FUNDS DISTRIBUTED?
TITLE II TEACHER QUALITY

- Formula grants from federal government to States.
- Each State receives at least its combined FY 01 amount for Eisenhower and Class Size Reduction.
- Additional funds distributed 65% based on poverty and 35% based on population (small state minimum of 0.5%).
- States distribute 95% of funds to LEAs by formula.
- Each LEA gets at least its combined FY 01 amount for Eisenhower and Class Size Reduction.
- Remaining funds distributed 80% poverty and 20% population.

March 21, 2002

TITLE II TEACHER QUALITY

- $2.85 billion available for wide variety of uses
- LEAs can use funds for professional development, mentoring, para training, merit pay, class size reduction, retention, principal training, and many others.
- LEAs must conduct a needs assessment that involves its teachers.

March 21, 2002

FEDERAL FUNDS MUST BE ON TOP

- Maintenance of effort:
  - LEAs may not receive ESEA funds if the combined State and local spending for public education was less than 90% of the amount spent in the 2nd previous year.
- Supplement Not Supplant:
  - SEA and LEA must use federal funds only to supplement the funds that would otherwise have been spent on that purpose. Federal funds cannot be used to replace state or local funds.

March 21, 2002
### HOW DO STATES AND LOCALS APPLY?

1. States must submit an application for funds under all programs to Secretary of Education.
2. May use a consolidated application or plan that covers most programs.
4. LEAs must apply or submit plans to SEA to receive funds.
5. SEAs and LEAs must provide for public comment on the plan or application before its submission.

### WAIVERS

1. Secretary has broad authority to grant waivers to SEAs or LEAs for almost all requirements of ESEA
2. Waivers cannot be granted for civil rights, funding formulas, parental involvement, maintenance of effort and supplement not supplant
3. Waiver request must show how waiver will improve academic achievement of students
4. SEA or LEA must provide notice and opportunity to comment in waiver request.
5. Under Ed-Flex, 10 States have authority to grant local waivers: CO, DE, KS, MA, MD, NC, OR, PA, TX, and VT

### WAIVERS

1. Assistant Secretary for Elementary and Secondary Education Susan Neuman:
   - "States know we mean business. We are not going to be waiver-happy." (3/8/02)
   - "It's called tough love...We are here to enforce the law." (3/13/02)
2. Undersecretary Eugene Hickok:
   - "No one wants to do it [withhold federal funds], but I can assure you that should we have to, we are prepared to." (3/13/02)
TRANSFERABILITY AND FLEXIBILITY

ED has posted information at:
http://www.ed.gov/offices/OESE/esea/flexibility_waivers.html

3 major new provisions:
- Transferability
- State and Local Flexibility Demonstrations
- Rural Education Initiatives

TRANSFERABILITY

Every LEA given authority to transfer up to 50% of formula funds among Teacher Quality, Education Technology, Safe and Drug-free Schools, and Innovative programs. In addition funds can be transferred into Title I.

If the LEA is in need of improvement, then it can only transfer 30% of funds and only into Title I.

LEAs in corrective action cannot transfer funds.
LEA making a transfer must modify its local plan or application, notify its SEA at least 30 days in advance, and submit the modified plan to SEA within 30 days of transfer.
**TRANSFERABILITY**

- Every State given authority to transfer up to 50% of State-level funds among Teacher Quality, Education Technology, Safe and Drug-free Schools, after school, and Innovative programs, or into Title I.
- SEA making a transfer must modify its State plan or application, notify the Secretary at least 30 days in advance, and submit the modified plan to ED within 30 days of transfer.

**STATE FLEXIBILITY**

- Up to 7 States will get authority to consolidate into a block grant State level funds from Title I (administrative funds only), Reading, Teacher Quality, Technology, Safe and Drug-Free, after school, and Innovative Program funds. Combined funds may be used for ANY ESEA purpose.
- Approved States will receive five-year Flex authority.

**STATE FLEXIBILITY**

- Approved States will also control LEA Innovative Program funds.
- States must consult with and involve parents, teachers, LEA reps, and other educators in development of State Flex plan.
- If State or LEA fails to make AYP for 2 consecutive years, Secretary must terminate agreement.
STATE FLEXIBILITY

- Each State must partner with 4-10 LEAs which will be given consolidation authority over Teacher Quality, Technology, Safe and Drug-Free, and Innovative programs.
- At least half of the LEAs must have poverty rate of at least 20%.
- These LEAs will be able to consolidate funds any use for any ESEA purpose consistent with State Flex plan.

LOCAL FLEXIBILITY

- Up to an additional 80 LEAs in other States will also be granted consolidation authority over the above four programs.
- No more than three LEAs per State may be approved for five year Flex authority.
- Can use consolidated funds for any ESEA purpose.
- LEA must consult with and involve parents and educators in the Local Flex plan.

RURAL EDUCATION INITIATIVES

- Alternative use of Funds:
  - Rural LEAs with fewer than 600 students are eligible.
  - Eligible LEAs can combine funds from Teacher Quality, Education Technology, Safe and Drug-Free, and Innovative Programs.
  - Funds can be used for Title I, Teacher Quality, Education Technology, English Language Acquisition, Safe and Drug-Free, after school, and Innovative Programs.
RURAL EDUCATION INITIATIVES

- LEA simply notifies SEA of its intent to use authority.
- After three years in program if State determines LEA has not made AYP may only use combined funds for Title I school improvement.
- Same AYP requirements apply to participation in the rural school grant programs.

March 21, 2002

RURAL EDUCATION INITIATIVES

- Small, Rural School Grant program:
  - Formula grants to small rural LEAs to carry out activities under Title I, Teacher Quality, Education Technology, English Language Acquisition, Safe and Drug-Free, after school, and Innovative programs.
  - LEA will receive grant from $20,000 - $60,000 minus funds it receives from Teacher Quality, Education Technology, Safe and Drug-Free, and Innovative programs.
  - SEA must submit attendance data to ED by 3/1.

March 21, 2002

RURAL EDUCATION INITIATIVES

- Rural and Low-Income School Program:
  - Formula grants to SEAs, which award grants to LEAs. Funds distributed to States based on population of eligible LEAs.
  - States distribute funds to LEAs either by formula or competitive basis.
  - Eligible LEAs must have at least 20% of students in poverty, be in a rural area, and not be eligible to receive a grant under the Small Rural School Grant program.
  - Funds may be used for: Teacher recruitment, retention and professional development; education technology; parental involvement; safe and drug-free schools; Title I; or English Language Acquisition.

March 21, 2002
RURAL EDUCATION INITIATIVES:
RESOURCES

\( \text{y HR 1 FY 02 Authorization} = \$300\text{ million (split between 2 programs)} \)
\( \text{y FY 02 funding} = \$163\text{ million (split between 2 programs)} \)
\( \text{y Bush Budget FY 03} = \$0 \)

QUESTIONS

\( \text{z What is the impact of increased ESEA funds on State and local budgets? What is the net impact after any State or local budget cuts?} \)
\( \text{z Who are the key decision-makers in the State for all the State plans and applications?} \)
\( \text{z How will State and local affiliates monitor and influence SEA and LEA Title I plans?} \)
\( \text{z How will local affiliates monitor and influence their LEA Title II needs assessments, plans and applications?} \)

QUESTIONS

\( \text{z How will the consolidation of CSR and Eisenhower affect State or local class size reduction efforts?} \)
\( \text{z How will State and local affiliates monitor and influence SEA and LEA consolidated plans and applications?} \)
\( \text{z How will State and local Affiliates monitor SEA and LEA waiver requests? Will affiliates support or oppose such requests?} \)
\( \text{z How will State and local affiliates monitor and influence State and local transferability decisions?} \)
QUESTIONS

1. How will State and local affiliates monitor and influence SEA and LEA Flex authority applications? Will affiliates support or oppose such request?
2. What might be the impact of the rural flexibility provisions? How can locals influence those decisions?
3. How will affiliates utilize any of these authorities to engage members in educational decision-making?
4. How can affiliates use their efforts to influence these issues to shape their state and local strategies and messages?
ACTION GUIDES

Collective Bargaining/
Policy-making

MOBILIZE ORGANIZE

esea 2002

MAXIMIZE

COLLECTIVE BARGAINING/
POLICY-MAKING

NATIONAL EDUCATION ASSOCIATION
www.nea.org
Issues for Local Policy Development & Collective Bargaining

A Quick Look
On January 8, 2002, after Congress backed the measure with bipartisan support, the reauthorized Elementary and Secondary Education Act (ESEA) was signed into law. Under the new law, states must develop academic standards for students in reading, math, and science, and test students on their progress in these areas annually. The law includes many new provisions that will have a dramatic impact on the work of teachers and educational support professionals. The NEA urges its members to work quickly and creatively to become more aware of these provisions and the mandates that apply to them.

One of our most important venues of influence is through collective bargaining, or in states in which collective bargaining is prohibited, in policymaking. This guide highlights some of the most vital areas for members’ involvement. The Association stands ready to assist its members in any way possible. For more information, contact:

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Sandy Younce (NEA)
Pat Turner (OEA)
Norma Kacen (NEA)
Daryl Sinkfield (VEA)
Dick Gale (CTA)
SEA includes provisions mandating the use of high-stakes testing as the primary mechanism for school and school employee accountability. NEA supports good educational accountability systems using multiple measures to determine progress. Standardized tests should be only one component of accountability. Such tests place undue pressure on teachers and students, and should not be the sole indicator of how well teachers are doing their jobs. The purpose of testing is to diagnose educational needs in a school, not to evaluate an individual teacher's performance. Test scores should be used to guide instruction—not to label or punish students, teachers, or schools. Bargainers and advocates will want to address the Association’s role in developing local policies in:

1. Determining what information will be included in school report cards and how that information is publicly disclosed.

2. Working with the districts on the testing issues, including the use of outside consultants and staff. Sound test guidelines and approaches are spelled out in the Association publication NEA and Testing.

3. Spelling out policies and procedures for administration of student tests. Local associations may wish to specify who will administer tests, and ensure that if teachers and paraeducators administer the tests, they will be properly trained and compensated, with appropriate protections against penalties for errors in test administration.

4. Determining how teachers are assessed under the new requirements.

5. Developing local policies governing public disclosure of data on teacher qualifications mandated in the law.

6. Detailing members’ protections from punitive sanctions.
SEA places great emphasis on improving teacher quality. For instance, the new law puts collective bargainers and local policy advocates squarely in the middle of efforts to improve professional development opportunities. But the details of how these teacher quality improvements are assessed and implemented raise many bargaining issues. Among them are how teachers:

1. Shape the professional development plan design, implementation, and resource allocation, with the Association taking greater control of training opportunities and establishing clearly spelled-out rules for the linkage of professional development to salary enhancement.
2. Influence local policies governing teacher evaluations, including peer review and over-reliance on student test scores to rate teachers.
3. Influence local policies governing public disclosure and other actions regarding data on teacher qualifications.
4. Play a meaningful role in establishing district responses if and when goals for higher qualified teachers are not met.
5. Influence local policies in determining teacher assignments and transfers.
6. Play a substantive role in the development of mentoring programs for new and returning teachers.
7. Address compensation issues related to hiring bonuses, incentives, and “highly qualified” designations.
8. Ensure the establishment of protections for substitute teachers in the bargaining unit.
9. Influence the use of funds allocated for teacher recruitment and retention efforts.
10. Influence local policies regarding assigning teaching assignments to teach subjects not in their primary area of expertise.
11. Influence local policies on transfers, reassignments, layoffs, and maintenance of bumping rights as ESEA-related policies are put in place.
Paraeducator Quality

The duties, benefits, and compensation for paraeducators are not clearly spelled out in the ESEA, despite the increased requirements for incoming paraeducators. NEA and local associations should commit to ensuring sound local practices and helping paraeducators already in the system to meet educational requirements, as well as recruiting paraeducators that have met them or are in the process of attaining them, with special attention given to language requirements, Title I restrictions, and clear communication of requirements to and with ESPs.

ESEA requires the state departments of education to decide how assessments of paraeducators will be made. In collective bargaining agreements and policymaking, locals should press school districts to:

1. Explicitly define paraeducator.
2. Shape professional development plans, implementation of the plans, and allocation of resources, with the Association assuming a substantive role in training opportunities.
3. Play a key role in establishing and clearly spelling out rules for the linkage of professional development to salary enhancement.
4. Recognize any associate's degree, technical school certification, or in-service training to qualify as postsecondary education.
5. Work with the Association in developing a process to quantify training and qualifications and work with the Association to determine what credentials existing support professionals have already attained.
6. Address the full range of working conditions, including job demands and duties, benefits, and compensation.
7. Subsidize or reimburse appropriate and meaningful on-site training.
8. Explicitly define "direct supervision of teachers" in instances in which rules specify that paraeducator activities must be conducted under teacher supervision.
9. Develop pay schedules for paraeducators who may function as substitute teachers.
Other Concerns

ESEA raises many important new issues for associations to lobby local school districts or bargain new agreements. Members should advocate for:

- Reopening collective bargaining or local policy agreements in order to bring the agreements fully in line with, and responsive to, ESEA’s provisions.
- Codifying the definition and scope of the bargaining unit. For example, determining if outside agencies, such as community-based organizations that provide supplemental services required under ESEA, are covered under collective bargaining agreements.
- Use of members to provide certification training for those providing supplemental services.
- Establishing clear dispute settlement procedures.
- Assuring that all new programs and products are scientifically based.
- Codifying how schools will be involved in school choice programs and the provision of support services when the schools are deemed to have failed to meet Adequate Yearly Progress (AYP) goals.
- Guarding against the establishment of a two-tier system that creates a super-salaried strata of elite teachers and paraeducators.
- Codifying payment guidelines for the provision of supplemental services by members, in many cases by establishing a daily rate of pay.

In working to increase support for the Association and its goals, Association members should also bear in mind that:

- Associations can sponsor summit meetings of teachers and parents to explain provisions in ESEA.
- Associations can create mechanisms for having input into two-year school improvement plans.
- Members may work with districts to develop criteria for providers of supplemental services.
- ESEA provides a platform for increased parental involvement in schools.
- NEA locals can take the lead in developing academies for professional development for teachers and paraeducators.
- The Teacher Protection Act does not eliminate the need for liability insurance.
Bargaining Recommendations for Issues Raised By ESEA

Making Public Schools Great for Every Child
National Education Association

The National Education Association is the nation's largest professional employee organization, representing 2.7 million elementary and secondary teachers, higher education faculty, education support professionals, school administrators, retired educators, and students preparing to become teachers.

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Bob Chase, President
Reg Weaver, Vice President
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Elementary & Secondary Education Act (ESEA)

ESEA: also known as:
Elementary & Secondary Education Act
No Child Left Behind Act of 2001,
Public Law 107-110 – Jan. 8, 2002,
20 USC 6301 et seq.

SEC. 1116
(d) CONSTRUCTION._ Nothing in this section [20 USC 6316] shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers. (Emphasis added) 20 USC 6316 (d)
1. **Employee protection:**
   Suggested contract language:
   
   Without the agreement of the Association, the Employer shall take no action to comply with ESEA, as amended, 20 USC 6301 et seq., that has an adverse impact on any bargaining unit member.

2. **Schools proposed to be identified as failing to make adequate yearly progress:**
   Suggested contract language:
   
   **Schools proposed to be identified as failing to make adequate yearly progress:** Before identifying an elementary school or a secondary school for school improvement under 20 USC 6316 (b) paragraphs (1) or (5), or for corrective action under paragraph (7), or for restructuring under paragraph (8), the Employer shall provide the Association with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based. If the Association believes that the proposed identification is in error for statistical or other substantive reasons, the Association may provide supporting evidence to the Employer, which shall consider that evidence before making a final determination.

3. **School improvement plans and committee(s):**
   Suggested Contract Language:
   
   **Article _____ School Improvement Plans and the School Improvement Plan (SIP) Committee(s)**

   **Negotiator's Note:** Prior to bargaining school improvement issues, review your collective bargaining agreement to avoid conflict with existing rights and obligations embodied in provisions covering such things as curriculum committees, labor-management committees, professional development committees, negotiations procedures, etc.
3.1. School improvement plans

No School Improvement Plan (SIP) provision shall alter, modify, violate, or supersede except as mutually agreed in writing by the Employer and the Association, this agreement, or any other formal or informal understanding, condition or practice established between the parties. The foregoing shall apply to any School Improvement Plan the Employer intends to implement.

3.2. Scope

No SIP Committee or School Improvement Plan shall address the issues of wages, hours, terms, and other conditions of employment or matters established in statute, such as the Public Employment Relations Act, the Michigan Teacher Tenure Act, etc.

No SIP Committee shall engage in collective bargaining or have the authority to address employment matters.

3.3. Employee protection

Any participation in a SIP Committee shall be voluntary. The participation or lack of participation of an individual bargaining unit member or group of bargaining unit members in a SIP Committee shall not be noted or considered in the Employer’s employment decisions, including but not limited to evaluation, assignment, extra duty assignment, conference attendance, promotion, discipline, or discharge of any bargaining unit member.

3.4. Program evaluation

After implementation of a SIP Committee, the Employer and the Association will periodically evaluate the work and operation of the Committee.

3.5. School improvement plan committees

School Improvement Plan Committee(s) shall be established to deal with the provisions of ESEA, as amended, 20 USC 6301 et seq. The composition of the District’s SIP Committee and any building’s SIP Committee shall be subject to the following provisions:

a. The majority of each SIP Committee shall be employees selected by the respective bargaining agent of each bargaining unit within the District. The total number of bargaining unit employees on the SIP Committee shall be allocated among the bargaining units according to the relative size of each bargaining unit.

b. For building-level SIP Committees the Association may choose one contract specialist (as one of the representatives of the bargaining unit) who may or may not be a member of the building staff.
c. The administrator members and the bargaining unit members of the SIP Committee will mutually agree to the other individuals to be members of the Committee (i.e., parents, students, and others in the school community).

3.6. Compensation

Employees participating in SIP Committee activities, including training and scheduled Committee meetings, will be compensated on a per diem basis for all time involved. If SIP Committee meetings or activities are scheduled during an employee’s regular work day, the employee shall be released from duties without loss of time or pay.

3.7. Bargaining

Every School Improvement Plan recommended by the SIP Committee shall be immediately submitted to the bargaining representatives of the parties. Upon the demand of either party, the parties shall meet and negotiate the School Improvement Plan. No School Improvement Plan shall be implemented without the mutual agreement of the parties.

**Negotiator’s Note:** ESEA, aka the No Child Left Behind Act of 2001, 20 USC 6301 et seq., mandates school improvement plans for any school building that fails to make “adequate yearly progress” for two consecutive years. The possible remedies, some mandated, some suggested, some multiple choice options, (see 20 USC 6316) include:

1. School choice (within the district, students may choose the building to attend)
2. High-quality professional development
3. Adopt policies and practices concerning the school’s core academic subjects
4. Establish specific annual, measurable objectives for student progress
5. Specify technical assistance to be provided to the school building
6. Identify strategies to promote effective parental involvement
7. Incorporate before-school, after-school, and summer activities
8. Incorporate a teacher mentoring program
9. Make supplemental educational services available to the school building (including after school tutoring)
10. “Replace the school staff who are relevant to the failure”
11. “Institute and fully implement a new curriculum”
12. “Significantly decrease management authority at the school level”
13. Appoint an outside expert to advise the school
14. Extend the school year or school day
15. Restructure the internal organizational structure of the school
16. And the end of the road: Pick one of the following:
   (i) Reopening the school as a public charter school
   (ii) Replacing all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress
   (iii) Entering into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school
   (iv) Turning the operation of the school over to the State educational agency if permitted under State law and agreed to by the State
   (v) Any other major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance

To the extent possible, the Association should bargain the content of the school improvement plans that otherwise may include some of the more horrific provisions listed immediately above. All of the above provisions appear in Section 1116 (20 USC 6316) of ESEA and therefore cannot supersede any provision of a collective bargaining agreement as provided by 20 USC 6316 (d).

This document was prepared before the U.S. Department of Education regulations for the implementation of Section 1116 (20 USC 6316) were announced. If possible, review these regulations (due July 8, 2002) before finalizing any bargaining proposals. (www.ed.gov)

4. Tests and curriculum:
(see Article 121 of the MEA Prototype Contract Language.)

**Article 121 in part:**

**Article 121**

Curriculum Development and Implementation

121.1 **Joint Instructional Council**  A Joint Instructional Council is hereby established. The Council shall be composed of _____ bargaining unit members, selected by the Association, and an equal number of representatives selected by the Administration. Bargaining unit members who serve on the Council shall be compensated in accor-
dance with the rate provided in Appendix _____ or shall be provided released time. All expenses pertaining to the staff and clerical assistance needed by the Council shall be provided by the Employer.

121.2 **Council Responsibilities**  The Joint Instructional Council shall initiate and establish policies affecting the design, development, and implementation of all District instructional programs. In conjunction with its recognized responsibilities for professional development and in-service training, the Council’s responsibilities shall include:

1. Developing and maintaining a comprehensive District-wide curriculum
2. Developing procedures and criteria for the continuous evaluation of all District instructional programs
3. Conducting an annual review and update of the District’s plan and policies for testing and assessment of academic achievement and pupil performance;
4. Researching, reviewing, and issuing recommendations regarding any proposed change or revision in instructional programs or curricula in the District
5. Promulgating appropriate policies relating to all District instructional programs and curricula
6. Establishing, altering, or otherwise modifying District curriculum as determined herein
7. Approving, rejecting, or modifying all recommendation(s) of the Textbook Committee

The Council will review and approve all changes in existing or proposed instructional programs or curricula prior to implementation.

5. **Transfers:**

(see Article 110 of the MEA Prototype Contract Language)

**Article 110 in part:**

110.3  **Transfers**

A. **Definition of “Transfer”**  A “transfer” shall be defined as either a voluntary or involuntary change in (1) a bargaining unit member’s position or assignment to another position or assignment within the bargaining unit; (2) in building assignment; (3) in grade level(s) included in an assignment in DK-6; (4) in subject area(s) included in an assignment; (5) in a non-classroom assignment, such as librarian, guidance counselor, itinerant personnel, etc.; or (6) in
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Special Education assignment, such as learning disability, emotionally impaired, etc. Transfers to vacancies shall be governed by the language above pertaining to vacancies. Other transfers will be governed by this section.

B. Voluntary Transfers  A request for a transfer may be made at any time in writing to the Personnel Office, with a copy submitted to the Association. The request shall specify the school, grade, subject/position sought. Requests for a transfer by bargaining unit members wishing to switch positions shall be granted. Subject to certification, a request for voluntary transfer shall be granted unless the granting of same is inconsistent with the language pertaining to the filling of vacancies. Receipt of the request for transfer shall be acknowledged by the Employer within five working days. No bargaining unit member shall be discriminated against because of a request for transfer.

C. Involuntary Transfers  Involuntary transfers may be effected only for reasonable and just cause. Thirty days notice of the intention to transfer specifying the reasons for same and the specific position to be transferred to shall be provided to the affected bargaining unit member and the Association. Cause for involuntary transfer includes only cause involving the individual's performance or as part of a necessary reduction of force, as determined pursuant to this agreement to maintain the most senior staff possible District-wide consistent with the requirements of this agreement. The specifics of the use of involuntary transfers as part of staff reduction shall be set forth in the Layoff and Recall Article of this agreement.

No bargaining unit member shall be involuntarily transferred in order to implement a school improvement plan developed pursuant to ESEA 20 USC 6301 et seq. (emphasis added)

6. **Layoff and recall:**
   Suggested contract language:
   
   **School choice:** No employee shall be laid off in whole or in part or reduced in hours or pay as a result of the implementation of a “public school choice” option provided by ESEA, 20 USC 6301 et seq.

7. **Assignment:**
   Suggested contract language:
   
   **Assignment:** A teacher involuntarily assigned to teach an elementary grade level outside their certification or assigned to teach one or more classes in a
subject area in which the teacher does not have a major shall not be adversely impacted by said assignment. Said teacher shall be granted the first vacancy they apply for provided they are certified for the vacancy and for secondary positions, and also hold a major in the subject areas included in the assignment. This paragraph shall not supersede the vacancy, transfer, layoff or recall provisions of the agreement.

8. **Employee evaluation:**
(see Article 103 of the MEA Prototype Contract Language for teacher language.)

Suggested contract language:

The parties agree that parents, students, or other District employees will not be used to evaluate bargaining unit members. No test scores or test results of any kind will be used to evaluate bargaining unit members.

9. **Class size:**
(see Article 136, Class Size, in the MEA Prototype Contract Language.)

Suggested contract language:

The Employer shall apply for all available money under ESEA, 20 USC 6301 et seq., for reducing class sizes and shall use said money exclusively to lower class sizes below the maximum allowed under this agreement.

10. **Reimbursement of certificate costs:**

Suggested contract language:

**Reimbursement for Costs of Certificates:** The Employer shall reimburse each employee for all costs and/or fees assessed for the application, addition, renewal, and/or reinstatement of any teaching certificate, permit, authorization, endorsement, and/or approval issued by the Michigan Department of Education, the Intermediate School District, or other authorizing agency.

11. **Tuition reimbursement:**

Suggested contract language:

**Tuition Reimbursement:** The Employer shall reimburse each employee for all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four weeks after the employee submits proof of satisfactory completion of the course(s) and a receipt for the costs.
12. Qualifications of Title I paraprofessionals:

Negotiator’s Note:

20 USC 6319 (c) through (f) of ESEA, states:

(c) NEW PARAPROFESSIONALS —

(1) IN GENERAL — Each local educational agency receiving assistance under this part [Title I, Sec. 1111-1127] shall ensure that all paraprofessionals hired after the date of enactment of ESEA [1-98-02] and working in a program supported with funds under this part shall have —

(A) completed at least two years of study at an institution of higher education;

(B) obtained an associate’s (or higher) degree; or

(C) met a rigorous standard of quality and can demonstrate, through a formal State or local academic assessment:

(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(ii) knowledge of, and the ability to assist in instructing, reading readiness, as appropriate.

(2) CLARIFICATION — The receipt of a secondary school diploma (or its recognized equivalent) shall be necessary but not sufficient to satisfy the requirements of paragraph (1)(C).

(d) EXISTING PARAPROFESSIONALS — Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired before the date of enactment of ESEA [1-8-02], and working in a program supported with funds under this part shall, not later than 4 years after the date of enactment [4 years after 1-8-02], satisfy the requirements of subsection (c).

(e) EXCEPTIONS FOR TRANSLATION AND PARENTAL INVOLVEMENT ACTIVITIES — Subsections (c) and (d) shall not apply to a paraprofessional:

(1) who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in programs under this part by acting as a translator; or

(2) whose duties consist solely of conducting parental involvement activities consistent with section 1118.

(f) GENERAL REQUIREMENTS FOR ALL PARAPROFESSIONALS — Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals working in a program supported with funds under this part, regardless of the paraprofessionals’ hiring date, have earned a secondary school diploma or its recognized equivalent.
Bargaining Recommendations for Issues Raised By ESEA

Suggested contract language:

A. Paraprofessionals hired on or before January 8, 2002 and required by ESEA, 20 USC 6301 et seq., to meet the requirements of 20 USC 6319 (c) by January 8, 2006 shall:

1. Obtain a secondary school diploma or its recognized equivalent by January 8, 2006; and

2. Be allowed to elect which of the four options below he/she will select in order to satisfy requirements of 20 USC 6319 (c):
   a. Completion of at least two years of study at an institution of higher education; or
   b. Obtain an associate's (or higher) degree; or
   c. As defined by the Michigan State Department of Education, meet a rigorous standard of quality and demonstrate, through a formal State academic assessment:
      (i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
      (ii) knowledge of, and the ability to assist in instructing, reading readiness, as appropriate, or
   d. As defined by the mutual agreement of the Association and the Employer, meet a rigorous standard of quality and demonstrate, through a formal academic assessment:
      (i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
      (ii) knowledge of, and the ability to assist in instructing, reading readiness, as appropriate.

B. The Employer shall pay all expenses incurred after January 8, 2002 for each employee required to meet the requirements of 20 USC 6319 (c), including all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four weeks after the employee submits proof of satisfactory completion of the course(s) and a receipt for the costs.

C. Paraprofessionals hired on or before January 8, 2002 and required by ESEA to meet the requirements of 20 USC 6319 (c) shall be provided professional development training by January 1, 2003 regarding ESEA and the requirements of 20 USC 6319 (c). For those paraprofessionals electing
to meet the requirements of 20 USC 6319 (c) by a formal academic assessment, training shall be provided to assist in the satisfactory completion of the assessment. All training shall be during work hours and paid at the bargaining unit member’s regular hourly rate.

D. An employee subject to the requirements of 20 USC 6319 (c) who is unable to meet the requirements by the deadline established by law shall be transferred to another bargaining unit position of equal pay and hours as soon as such a vacancy occurs; provided he/she does not otherwise apply for and receive a vacancy, and further provided that said transfer shall not supersede the vacancy, transfer, layoff, or recall provisions of the agreement.
It goes without saying...

Issues raised by ESEA that will be driven by the local reaction or that should already be in your labor agreement:

1. **Just cause protection**: (see Article 6 of the MEA Prototype Contract Language.)

2. **Mentoring program**: (see Article 132 of the MEA Prototype Contract Language.)

3. **Training**: If any training is needed to implement and administer the expanded student testing required by ESEA, language should be bargained to provide the training during paid work time.

4. **Professional development**: Every contract should detail the number of days of Professional Development, the Association’s role in shaping the quality and content of the training and the compensation for attending professional development days or activities.

5. **School calendar**: Every contract must have a school calendar that specifies the exact calendar days designated as student attendance days and other required work days. The contract should have a clear definition of the per diem pay for each required work day.

6. **Work day**: Every contract must have the length of each work day defined, including student attendance days.

7. **Funding**: Consider bargaining provisions requiring the employer to seek available funding under ESEA and bargain provisions controlling the expenditure of the money.

8. **Bus drivers**: Make sure that any busing of students as a result of school choice is provided by the District’s bus driver bargaining unit.

9. **Duties of paraprofessionals**: You may want to use the language in ESEA to limit the duties of paraprofessionals. (see Section 1119 (g) i.e. 20 USC 6319 (g).)

10. **Supplemental services**: You may want to bargain the “who”, “what”, and “when” and pay for any supplemental services the school district offers to students as a part of a school improvement plan to improve student test scores.
Bargaining Recommendations for Issues Raised By ESEA

Making Public Schools Great for Every Child
ESEA Timeline

January 8, 2002

- The No Child Left Behind Act is enacted into law as Public Law 107-110.
- All paraprofessionals hired after this date working in Title I funded programs must meet the new paraprofessional requirements. All paraprofessionals have four (4) years to meet the same requirements.

School Year 2001-2002

- 3/1/02: Deadline for states to submit to the Department of Education average daily attendance data for LEAs to determine eligibility for the two new rural schools initiative.
- 5/29/02: Deadline for submission of Reading First applications in order to receive funding by July 1, 2002
- 7/8/02: Deadline for issuance of regulations for Sec. 1111 (State Title I plans) and Sec. 1116 (School Improvement)

School Year 2002-2003

- States must establish initial proficiency threshold for determining whether schools meet Adequate Yearly Progress (AYP). The initial threshold must be at a minimum the higher of the percent of students proficient in the statewide lowest achieving subgroup or the local school at the 20th percentile in the state.
- States must administer language proficiency tests to all limited-English proficient students.
- Each SEA (State Education Association) will disseminate annually a state report card.
- LEAs (Local Education Associations) will collect appropriate data for each school in the LEA for the report card.
- States shall annually disseminate the info in the LEA and school report cards to all schools and parents of students that attend those schools.
- Each state shall report annually to the Secretary and make the report available within the state.
- The state shall ensure that schools and LEAs that have been identified for
improvement will provide public school choice and supplemental educational services.

- All teachers hired for the first day of the 2002-2003 school year who are working in a program supported by Title I, Part A shall be “highly qualified.” Teachers that were hired prior to this year are required to be “highly qualified” by the 2005-2006 school year.

- States must use two (2) percent of Title I, Part A funds for school improvement.

- LEAs receiving Title I, Part A funds, must spend between five and ten (5-10) percent of such funds to ensure that teachers become highly qualified by the end of 2005-2006 school year.

School Year 2003-2004

- Beginning with this year State level hold harmless for Migrant Education funds begins. In addition, beginning with FY 03, all new Migrant Education funds will be based on actual counts of migratory children. States will receiving funding based on a formula that is composed eighty (80) percent on the number of Limited-English- Proficient children in the state.

- 2004 Targeted Assistance Grants for section 1204 become available.

- States must continue to use two (2) percent of their Title I, Part A funds for school improvement.

- LEAs receiving Title I, Part A funds must continue to spend between five and ten (5-10) percent of such funds to ensure that teachers become highly qualified by the end of the 2005-2006 school year.

School Year 2004-2005

- 12/21/04: Majority of individuals providing academic instruction in Even Start program must meet eligibility criteria (either an AA, BA or graduate degree in a field related to early childhood education, elementary/secondary education, or adult education, and meet any applicable state requirements).

- First year of Targeted Assistance grants under Reading first program.

- States must use four (4) percent of their Title I, Part A funds for school improvement.

- LEAs receiving Title I, Part A funds must spend five (5) percent of such funds to ensure that teachers become “highly qualified” by the end of the 2005-2006 school year.

- LEAs that in the judgement of the SEA have failed for two consecutive years to make progress toward the goal of all teachers being highly qualified by the end of the 2005-2006 school year must develop an improvement plan that will enable the LEA to meet the goal. SEA provides technical assistance.
January 8, 2006

- All paraprofessionals hired prior to January 8, 2002 working in Title I programs must meet the paraprofessional requirements by this date.

School Year 2005-2006

- By the beginning of this school year states must develop science standards.
- States must continue to use four (4) percent of their Title I, Part A funds for school improvement.
- LEAs receiving Title I, Part A funds must continue to spend five (5) percent of such funds on professional development activities to ensure that teachers who are not highly qualified become highly qualified by the end of the 2005-2006 school year.
- The states shall adopt challenging Academic Achievement Standards, Academic Content Standards, Other Subjects.
- States have developed assessments for reading/language arts and math in grades 3rd - 8th and in one between 10th and 12th grades.
- Teachers teaching core academic subjects are “highly qualified” by the end of this year.
- Every SEA has to set up a reporting system for compliance with the mandates for highly qualified teachers in core subjects.

School Year 2006-2007

- States must continue to use four (4) percent of their Title I, Part A funds for school improvement.

School Year 2007-2008

- Assess Science in one grade between 3rd – 5th, 6th – 8th and 10th – 12th.
- States must continue to use four (4) percent of their Title I, Part A funds for school improvement.

School Year 2013-2014

- Twelve (12) year goal to have all students proficient in reading/language arts, math and science.
Adequate Yearly Progress (AYP) Timeline

School Year 2002-2003

• Beginning in this year States must establish initial proficiency threshold for determining whether schools meet Adequate Yearly Progress (AYP). The initial threshold must be at a minimum the higher percent of students proficient in the statewide lowest achieving subgroup or the school at the 20th percentile in the state.

• Beginning in this year states and LEAs must annually report on progress toward having all teachers “highly qualified” by the end of the 2005-2006 school year. LEAs submit reports to their SEA, and SEAs submit their reports to the Secretary.

• Beginning in this year the Secretary must annually publicly report on the progress of the states and LEAs on having all teachers highly qualified by the end of the 2005-2006 school year.

• Schools previously identified as in the first year of school improvement under the previous ESEA must begin mandatory public school choice program. LEAs with any such schools must spend a minimum of five (5) percent of their Title I allocation on transportation for such choice. LEAs may spend up to an additional ten (10) percent of their Title I funds. As part of two-year School Improvement plan, LEAs must spend at least ten (10) percent of their Title I, Part A funds on professional development.

• Schools previously identified as in the second year of school improvement or corrective action under previous ESEA law will be required to provide public school choice and supplemental educational services. LEAs with any such schools must spend a minimum of five (5) percent of their Title I allocation on supplemental services. LEAs may spend up to an additional ten (10) percent of their Title I funds on supplemental services (with an overall limit of twenty (20) percent combined for public school choice transportation and supplemental services). As part of a two-year School Improvement plan, LEAs must spend at least ten (10) percent of their Title I, Part A funds on professional development.
School Year 2004-2005

- States must establish the first incremental increase in proficiency threshold for determining whether schools meet Adequate Yearly Progress (AYP). These intermediate levels must increase in equal increments to reach the goal of all students being proficient by the end of the 2013-2014 school year.

- Schools that had not been in school improvement or corrective action under previous ESEA, and which have failed to make Adequate Yearly Progress (AYP) for 2002-2003 and 2003-2004 school years, go into Year One of School Improvement, and must provide public school choice. As part of two-year School Improvement plan, LEA must spend at least ten (10) percent of its Title I, Part A funds on professional development.

School Year 2005-2006

- Beginning in this school year schools identified as in need of improvement in 2004-2005 school year, and which failed AYP for that year enter Year Two of School Improvement, and must continue public school choice and start providing supplemental education services. As part of Year Two of School Improvement Plan, LEA must spend at least ten (10) percent of Title I, Part A funds on professional development.

- Beginning in this school year the secretary must submit an annual report to Congress with a list of each state that has not made AYP under Title I and has not met its objectives under Title I and has not met its objectives under Title III, based on the reviews that started the previous year.

- For LEAs that in the judgement of the SEA have failed for three consecutive years to make progress toward the goal of all teachers being highly qualified by the end of the 2005-2006 school year and have also failed AYP under Title I for three consecutive years, the SEA will develop in conjunction with the LEA professional develop strategies that the LEA must use. In addition the SEA shall prohibit the LEA from using Title I, Part A funds to fund any para-professionals hired after such determination has been made. Also, the SEA in conjunction with the LEA to enable teachers to choose their own professional development activities.

School Year 2006-2007

- At the beginning of this year schools, which were in year two of school improvement in 2005-2006 school year, and still failed AYP, become subject to corrective actions. They must continue to provide public school choice and supplemental educational services, and also are subject to at least one corrective action by LEA.
School Year 2007-2008

- At the beginning of this year states must establish the second incremental increase in proficiency threshold for determining whether schools meet Adequate Yearly Progress (AYP). These intermediate levels must increase in equal increments sufficient to reach the goal of all students being proficient by the end of the 2013-2014 school year.

- At the beginning of this year schools which were in first year of corrective action in 2006-2007 school year, and which still failed AYP in that year, must continue public school choice and supplemental services, and develop a plan for major restructuring.

School Year 2008-2009

- At the beginning of this year schools that were in year two of corrective action and still failed AYP in 2007-2008 school year are restructured.

School Year 2010-2011

- At the beginning of this year states must establish the third incremental increase in proficiency threshold for determining whether schools meet Adequate Yearly Progress (AYP). These intermediate levels must increase in equal increments sufficient to reach the goal of all students being proficient by the end of the 2013-2014 school year.

School Year 2013-2014

- At the beginning of this year states must establish the final incremental increase in proficiency threshold for determining whether schools meet Adequate Yearly Progress (AYP).
The Truth About the Teacher Protection Act Q&A

Making Public Schools Great for Every Child
The reauthorization of the Elementary and Secondary Education Act (ESEA) — signed into law by President Bush on January 8, 2002 — includes a section called the “Paul D. Coverdell Teacher Protection Act of 2001.” The Teacher Protection Act (TPA), however, is really a misnomer because it does not protect teachers from much of anything. The TPA purports to protect teachers and other school employees from lawsuits filed by students and their parents for injuries allegedly caused by employees while attempting to discipline students or maintain order in the classroom or the school.

Some politicians have claimed that this new law means that school employees no longer need to have liability insurance, one of the benefits of NEA membership. That is not true. In fact, the statute is so narrowly drawn and rife with exceptions that — in practical terms — it affords school employees almost no real protection from lawsuits. Equally important, it provides no funding to help school employees pay for defending against even meritorious lawsuits. The questions and answers that follow are intended to clear up any such misconceptions and to more fully explain what protections from liability the TPA does and does not provide.

Q. What does the Teacher Protection Act actually say?

Answer. The TPA says that K-12 school employees are immune from liability for injuring a student, but only if the injury occurs while the employee is engaged in "efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school."
Q. Does the TPA protect me from other kinds of lawsuits that students or their parents might file against me?

A. No. The TPA is limited only to the narrow category of cases in which the student’s injury occurs while the employee is attempting to discipline a student or to maintain order in the classroom or school. Importantly, the TPA offers no protection from the run-of-the-mill cases in which employees are sued for negligence or for injuries their students suffer outside of the disciplinary context. However, the NEA Educators Employment Liability (EEL) Program, which is automatically provided as part of NEA membership, does cover those kinds of lawsuits, including attorneys’ fees and civil damages up to a $1,000,000 limit* in most cases.

Q. Can you give some examples of the kinds of lawsuits not covered by the TPA?

A. The TPA does not provide school employees with immunity or any other kind of protection from a wide range of potential legal actions, including lawsuits in which a student sues a teacher or school employee because the student is:
  - Hurt in a playground accident
  - Injured during a chemistry lab experiment
  - Beaten up by other students
  - Injured in shop class
  - Assaulted on a field trip
  - Sexually harassed by his/her peers

The NEA EEL Program, however, would cover these types of lawsuits.

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*A few NEA state associations have opted to provide coverage for losses exceeding $1,000,000. You should check with your local or state association for more complete information specific to your state.

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Q. But if the student is injured while I am attempting to discipline him/her or to maintain classroom control — such as breaking up a fight — then under the TPA I can’t be sued and I don’t need a lawyer, right?

A. No, not really. Nothing in the TPA prohibits students and/or their parents from filing lawsuits against you. Even if a court ultimately decides that you are entitled to immunity under the TPA, you still would need to have a lawyer who will have to file an “Answer” to the lawsuit and a Motion to Dismiss that asserts immunity under the TPA. The TPA, of course, provides no money to reimburse school employees for defending against even meritless lawsuits.

Q. But if the student is injured while I am attempting to discipline him/her or to maintain classroom control — such as breaking up a fight — and the student sues me, then under the TPA I am immune and can’t be held liable for damages, right?

A. No, not really. The TPA contains an important exception: The employee cannot claim immunity under TPA if the employee, in injuring the student, violated any “federal, state, or local law” or any “civil rights law.” Significantly, in the vast majority of cases in which students have sued employees for injuries arising out of disciplinary actions or altercations with the employees (such as breaking up a fight, pushing, shoving, etc.), the students claimed that the employees violated federal law, specifically, their federal constitutional rights.

Simplistically put, the courts have ruled that a school employee can use “reasonable force” in dealing with disruptive or violent students. But if the student can show that the employee used
“excessive force,” then a court can rule that the employee violated the student’s constitutional rights and award money damages for whatever injuries the student suffered. Thus, in cases of this sort — and there are plenty of them — an employee would have no immunity under TPA. In sum, the TPA does not afford school employees immunity, even for disciplining students or maintaining classroom control, if the injured student alleges and the court or jury finds that the employee used “excessive force.”

Q. Will the TPA protect me if I discipline a student by administering corporal punishment?
A. Not necessarily. Even if your state or local school district allows corporal punishment, the TPA will neither protect you from a lawsuit nor afford you immunity from damages if the student alleges and the court or jury finds that you used “excessive force” in administering the corporal punishment.

Q. Will the TPA protect me from criminal charges that might be brought against me for administering corporal punishment?
A. No. Occasionally parents or students will press criminal charges against school employees for administering corporal punishment. The TPA does not provide any protection from criminal charges. The NEA EBL Program, however, will reimburse NEA members up to $35,000 for attorneys’ fees incurred in defending against such criminal charges.

Q. The new law is called the “Teacher” Protection Act; does it cover only teachers?
A. No. The term “teacher” is defined to include school board members, administrators, principals, teachers, any educational professional who works in a school (such as a counselor), and any “non-professional employee” who, as part of his/her job or in an emergency, is called upon to “maintain discipline” or “ensure safety” (such as a security guard, bus driver, crossing guard, etc.).
The reauthorization of the Elementary and Secondary Education Act, also known as the “No Child Left Behind Act of 2001,” was enacted as PL 107-110 and is posted on the Web at http://www.ed.gov/legislation/ESEA02/.

1. Liability Protection for Teachers (§§ 2361 et seq.)

- Sections 2361 et seq. of ESEA is known as the “Paul D. Coverdell Teacher Protection Act of 2001” (TPA)
- The TPA provides that K-12 “teachers” are immune from liability for injuring a student, but only if the injury occurs while the “teacher” is engaged in “efforts to control, discipline, expel, or suspend a student or maintain order or control in the classroom or school”
- The term “teacher” is defined to include teachers, administrators, school board members, educational professionals, and any other school employee whose job includes, in part, maintaining discipline or student safety
- The TPA offers no protection from the run-of-the-mill cases in which employees are sued for negligence or for injuries students may suffer outside of the disciplinary context, such as playground, shop, or chemistry lab accidents. These sorts of lawsuits are covered by NEA’s Educators Employment Liability (EEL) Program
- Even in the context of injuries occurring in the course of discipline or maintaining classroom control, the TPA includes two exceptions that render the legislation virtually meaningless:
  — The TPA does not apply if the employee — in injuring the student — violated any “federal, state, or local laws” or any “civil rights law.” But in most cases, however, in order to state a cause of action, the student must allege that the defendant violated some “federal, state, or local law” or breached a “duty of care” found in a statute or common law, thus rendering the TPA inapplicable
  — By way of example, where students sue school employees for injuries resulting from physical altercations or excessive discipline, they typically assert a...
claim for violation of their substantive due process rights under the Fourteenth Amendment.1 In such a case, the TPA would not apply because the employee has been accused of violating “federal law.”

— Similarly, where students challenge the fairness of a disciplinary proceeding, they typically will assert a claim for violation of their procedural due process rights under the Fourteenth Amendment.2 Because such a claim asserts a violation of “federal law,” the TPA would not apply.

— The TPA also does not apply where the injury was caused by “willful misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.” This exception likely would also preclude application of the TPA to these sorts of state law “battery” claims and similar intentional torts as well.

• The TPA also does not provide any immunity from criminal prosecution for administering corporal punishment. The EEL Program will reimburse NEA members up to $35,000 for attorneys’ fees incurred in defending against such criminal charges.

2. Teacher Quality (§§ 2123 and 2113)

• Title II of ESEA provides money for “preparing, training, and recruiting high quality teachers and principals.”

• Section 2123 allows local school districts to use Title II funds for financial incentives to recruit teachers (a) for academic areas where there is a shortage of teachers, and (b) for schools in which there is a shortage of highly qualified teachers. These financial incentives can include: “signing bonuses,” “differential pay,” and “scholarships.”

• Other provisions of § 2123 allow school districts to use Title II money for professional development, teacher mentoring (i.e., peer assistance), and financial incentives to retain teachers who have demonstrated success in helping low-achieving students.

• Title II money can also be used by school districts for “tenure reform,” “merit pay programs,” and “testing of elementary school and secondary school teachers in the academic subjects that the teachers teach.”

• Section 2113 allows state educational agencies to use Title II money for some of the same activities, including: “reforming tenure systems” and “implementing teacher testing for subject matter knowledge,” as well as establishing or improving “alternative routes” to teacher certification.

\[1\] See, e.g., P.R. v. Koch, 96 F.3d 1298, 1302-04 (9th Cir. 1996) (discussing various federal circuit court cases recognizing a cause of action under the Fourteenth Amendment for school employee’s use of excessive force); Johnson v. Newburgh Enlarged School District, 239 F.3d 246 (2d Cir. 2001) (student stated constitutional claim for gym teacher’s use of excessive force in violation of student’s substantive due process rights).

3. Drug Use and Violence Prevention
(§ 4115)

- Under section 4115, local school districts can use Title IV money to implement programs to reduce and prevent illegal drug use and violence, including: education, conflict resolution, and counseling programs; "metal detectors, electronic locks, surveillance cameras," school uniforms, and — "consistent with the Fourth Amendment" — student drug testing and searches of student lockers for illegal drugs and weapons

- Title IV money can also be used to conduct national criminal records checks of "each local educational agency employee, regardless of when hired, and prospective employees" (emphasis supplied)

4. Parental Rights
(§ 1061 and §§ 4151-53)

- Section 1061 gives parents the right to inspect "any instructional material used as part of the educational curriculum for the student," including printed, audiovisual, and electronic materials (such as materials accessible through the Internet). Academic tests and academic assessments are excluded

- Gives parents the right to prior review of any student survey that asks questions relating to political affiliations or beliefs, mental problems, sex attitudes or behavior, illegal or antisocial behavior, critical appraisals of family members, religious beliefs of the student or parent, and income

- Gives parents the right to prior notice that their child will be subjected to an "invasive physical examination" (exposure of private body parts)

- Gives parents the right to have their child opt out of any covered survey or invasive physical examination

- Requires school districts to provide parents with "direct" annual notice of these review and opt out rights, including the "specific or approximate dates" on which the surveys or examinations will occur

- Section 4151 allows school districts to use federal funds for the implementation of education programs geared to prevent illegal drug use and violence

- Such education programs should include information to prevent sexual harassment and "victimization associated with prejudice and intolerance," as well as to foster "respect for the rights of others"

- Section 4153, however, requires school districts to "make reasonable efforts to inform parents ... of the content of such programs" and gives parents the right to have their child opt out of any such program or activity "funded under this part"
5. Single-Sex Schools and Classes (§ 5131(a)(23),cc)

- Section 5131(a)(23) allows the use of Title V funds for "innovative" education programs, including "programs to provide same-gender schools and classrooms (consistent with applicable law)."
- Title IX regulations currently ban single-sex classes but allow single-sex schools, so long as "comparable" opportunities are offered to persons of the opposite sex. (34 C.F.R. Parts 106.35 and 106.34)
- Section 5131(c) requires the U.S. Department of Education (ED) to issue guidelines regarding the legality of single-sex schools and classes. That guidance was issued on May 8, 2002, and is posted on the Web at www.ed.gov/offices/OCR/t9-guidelines-ss.html.
- On the same day, ED announced that it is considering amending the Title IX regulations "to provide more flexibility for educators to establish single-sex classes and schools at the elementary and secondary levels." The notice is posted on the Web at www.ed.gov/offices/OCR/t9-noi-ss.html. Public comments are due July 8, 2002.

6. School Prayer (§ 9524)

- Section 9524 requires ED to publish by September 1, 2002, a guide that provides legal advice to school districts and the public on what constitutes "constitutionally protected prayer" in public elementary and secondary schools.
- The legal guidance has to be reviewed by the Department of Justice and revised every two years.
- As a condition for receiving ESEA money, every local school district must certify annually and in writing to the state educational agency (SEA) that the district has no policy that denies its students the right to engage in "constitutionally protected prayer" as defined by ED's legal guidance.
- The SEA must notify ED if any school district has failed to provide the certification or if any person has complained that a school district has violated this provision. ED then has the power to "enforce" the requirement.

7. Boy Scouts (§ 9525)

- Known as the "Boy Scouts of America Equal Access Act," section 9525 provides that, if a school district allows outside youth or community groups to meet on school premises or in school facilities before or after school hours, then the dis-
trict must allow Boy Scout groups to meet on school premises before or after school hours

- The law does not require any public school or agency to “sponsor” a Boy Scout group
- ED’s Office for Civil Rights (OCR) has already sent a letter to every superintendent in the country warning schools to comply with the new requirement. The letter is posted on the Web at www.ed.gov/offices/OCR/boyscouts_letter.html

8. Sex and Condoms (§ 9526)

- Section 9526 prohibits local education agencies (LEAs) and state education agencies (SEAs) from using any ESEA funds to develop materials or courses of instruction designed to “promote or encourage sexual activity, whether homosexual or heterosexual,” or to distribute “contraceptives” in school

9. Unsafe Schools (§ 9532)

- Section 9532 requires each state to implement a state-wide policy entitling any student who attends a “persistently dangerous” public school or who is the victim of a “violent criminal offense” on school grounds the right to transfer to a “safe” school within the LEA

10. Access for Armed Services Recruiters (§ 9528)

- Section 9528 requires LEAs to provide military recruiters access to secondary students’ names, addresses, and telephone numbers, unless the parent/student has opted out. LEAs must notify parents of this right

11. Evolution v. Creationism

- ESEA does not require SEAs or LEAs to authorize the teaching of creationism
- Two Ohio Congressmen have erroneously advised the Ohio State Board of Education that ESEA provides that “public school students are entitled to learn ... differing scientific views” regarding evolution. Language in the original bill that would have required that was removed prior to enactment
12. Employee Rights Under State Law and Collective Bargaining Agreements (§ 1116(d))

• Section 1116(d) provides that:
  — Nothing in [Title I of ESEA] shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

• This provision appears to limit the authority of LEAs under Title I to respond to failing schools by disciplining, transferring, or terminating school staff if such actions conflict with employee rights under state or federal law or collective bargaining agreements. These limitations could include the authority to “replace the school staff,” “extend the school year or school day,” “reopen the school as a public charter school,” or unilaterally impose other forms of remedial action identified in § 1116.
The new law contains two new initiatives (Reading First and Early Reading First) and two standing programs (Even Start and School Libraries) aimed at having all students reading at a proficient level by the third grade. The first round of proposals from states for Reading First funds was due May 29, 2002 in order to receive funds by July 1, 2002.

Reading First, which replaces the Reading Excellence Act, will provide funds to help states and districts implement comprehensive reading instruction grounded in scientifically-based research for grades K-3. These funds have been changed from a competitive grant to direct funding to the states by a poverty-based formula. The funds can be used for teacher preparation and professional development as well as for program implementation. Local education agencies will compete for state-awarded grants to be given for six years. Priority will be given to LEAs that have at least 15 percent of students or at least 6,500 students from families with incomes below the census poverty line. The program is administered by the Secretary of Education based on recommendations developed by a federal review panel.

Beginning in 2004, those programs that have shown to have significantly increased the percentage of 3rd grade students reading at proficient levels will be eligible to compete for targeted assistance grants awarded by the states. Grantees are required to determine which K – 3 students are at risk for reading failure and provide professional development in the essential components of reading to K-3 teachers and special education teachers of K – 3. The essential components include phonemic awareness, phonics, fluency, vocabulary, and comprehension. Definitions of these areas are found below.

Early Reading First is a competitive grant program providing funds to school districts and public and private organizations, such as Head Start and family literacy programs that serve children ages 3 – 5. Funds may be used for early literacy programs, professional development, and research-based pre-reading activities. Programs can address age-appropriate activities for learning to read reading such as knowing letters and their sounds and “cognitive learning activities in high-quality language and literature environments.”
Each program emphasizes professional development and the use of “scientifically-based reading research.”

Questions to Ask about Your State’s Use of Reading First and Early Reading First Funds

- What is your state currently doing to promote reading achievement, especially in schools with a high percent of poverty?

- Does your state department of education use a wide range of scientific research in making decisions about what to promote in reading instruction and materials?

- Does the state’s model for using Reading First and early Reading First funds for professional development acknowledge that effective teachers of reading have a repertoire of instructional approaches and materials that they can use strategically and flexibly to respond to the needs of individual students?

- What current or potential coalitions could become grantees under Early Reading First?

Take Action Now

Provide state policy makers and decisionmakers with information on a range of scientifically-based reading research beyond what is reported in Preventing Reading Difficulties and the Report of the National Reading Panel Teaching Children to Read.

Promote research and the gathering of evidence of success for promising reading programs, approaches, and materials.

Keep sending the message that there is no one way to teach reading that works for all students, all of the time, and teachers rather than materials or methods are the critical factor in reading success. These points are supported by research.

Lobby your state to have a range of reading experts on the expert panel to judge local applications. Otherwise there is the potential of an unbalanced view of reading guiding decisions. Have a list of suggested experts with their qualifications. Be sure to include some teachers on your list.

Some Important Definitions Found in Section 1208 of the Legislation:

Reading — The term “reading” means a complex system of deriving meaning from print that requires all of the following:
(A) The skills and knowledge to understand how phonemes, or speech sounds, are connected to print
(B) The ability to decode unfamiliar words
(C) The ability to read fluently
(D) Sufficient background knowledge and vocabulary to foster reading comprehension
(E) The development of appropriate active strategies to construct meaning from print
(F) The development and maintenance of a motivation to read

Scientifically-based Reading Research — this type of research:
(A) Applies rigorous, systematic, and objective procedures to reading development, reading instruction, and reading difficulties
(B) Includes research that:
   (i) employs systematic, empirical methods that draw on observation or experiment
   (ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn
   (iii) relies on measurement or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations
   (iv) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review