

## **Status of Implementation of the No Child Left Behind Act of 2001**

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### **Descriptive Context**

In January of 2002, President Bush signed into law the No Child Left Behind Act (NCLB), a major revision of the Elementary and Secondary Education Act signed by President Johnson in 1965. NCLB ties federal funding of several federal programs such as Title I and Title III to states' assurances of improving student achievement for all students: for students with disabilities; for students identified as limited English proficient; for students in poverty; and for students in identified racial/ethnic groups.

The goals of NCLB are to ensure that:

- all students will be proficient in reading and mathematics;
- all students with limited English proficiency will be proficient in English;
- all students will graduate from high school;
- all students will attend schools that are safe and drug-free; and
- all students will be taught by highly qualified teachers.

In 2002, all states submitted for United States Education Department (USED) approval educational accountability plans describing means by which they would meet the first three goals.

Educational accountability is a concept that is not new to Virginia educators. In 1995, the Department of Education introduced revised Standards of Learning in English, mathematics, science, and history/social science. The Department of Education began the development of statewide tests correlated to these Standards, and they were first administered in 1998. In 2006, the Virginia Board of Education adopted revised *Regulations Establishing Standards for Accrediting Public Schools in Virginia* (SOA). These regulations continue to tie the performance of students on statewide assessments to schools' accreditation ratings, and describe measures that will be taken for schools and school divisions that fail to maintain fully-accredited schools.

Under the *No Child Left Behind Act of 2001* (NCLB or the "Act"), Virginia developed an accountability workbook describing how it would implement the accountability components required by the legislation. The Board of Education has sought and is continuing to seek waivers from certain provisions of that law, and approved waivers result in changes to the implementation of the accountability components of NCLB. The Board seeks to implement the spirit of the law and maintain the components of the school accreditation system described in the SOA.

This paper summarizes the implementation of NCLB over the past several years. Trends in students' achievement, USED interpretations of the law, and current implementation in Virginia will be discussed.

### **Description of Accountability Requirements of the No Child Left Behind Act of 2001**

The Act requires states to describe how *all* of their schools, school divisions, and the states themselves will be deemed to have made Adequate Yearly Progress (AYP) with regard to improving the academic achievement of all students and students in specific subgroups (economically disadvantaged, students with disabilities, students identified as limited English proficient, and students in each of the major racial/ethnic groups present in the state). The law and accompanying federal regulations require, in part, that states develop and implement:

- grade level content and achievement standards in reading/language arts and mathematics;
- statewide assessments correlated with these content standards in grades 3-8 and at least once in high school; and
- annual measurement of AYP for *all* schools, school divisions and the states themselves that includes student participation in assessments, student performance on those assessments, and student performance in another academic indicator.

At least 95% of all students and students in each subgroup enrolled in grades where statewide assessments are administered must participate in the statewide assessments. States must establish annual measurable objectives for student performance on academic assessments and on the other academic indicators, such that 100% of students meet all annual measurable objectives for academic assessments by the year 2014. States must use graduation rates as the other academic indicator for high schools, and must select another academic indicator for elementary and middle schools. States must determine a statistically valid number (minimum "n") below which the number of students in a subgroup will NOT be disaggregated to determine AYP.

In addition, states must:

- identify annually *all* schools and school divisions that make and do not make AYP;
- implement rewards for *all* schools making AYP for at least two consecutive years and specific types of rewards for Title I schools making AYP for at least two consecutive years;
- implement sanctions for *all* schools and school divisions that do not make AYP for two consecutive years; and
- implement specific sanctions for Title I schools and school divisions receiving Title I funds that do not make AYP for two consecutive years.

To make AYP, schools, school divisions, and states must show that at least 95% of all students and of each subgroup of students participated in statewide assessments. They must meet *one* of the three following conditions, also:

- all students and all subgroups of students meet all annual measurable objectives for statewide assessments *and* all students must meet annual measurable objectives for the other academic indicator; *or*
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- all students and all subgroups of students meet the annual measurable objectives for statewide assessments *and* all students show progress in the other academic indicator; *or*
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- student groups NOT meeting annual measurable objectives for statewide assessments have reduced failure rates of 10% from the year before in those assessments and make progress on the other academic indicator.

All schools that do not make AYP for two consecutive years must have sanctions. States may determine the sanctions for non-Title I schools. For Title I schools, specific sanctions are described in the legislation and in federal regulations accompanying NCLB. Specifically, local school divisions must offer the lowest performing highest poverty students an opportunity to transfer to another school in the school division that has made AYP. If the school does not make AYP the next year, then the local school division must continue to offer the transfer option and also offer supplemental educational services to the lowest-performing, highest-poverty students remaining in the school. Sanctions increase over successive years for schools not making AYP.

In addition, all school divisions that do not make AYP for two consecutive years must have sanctions, and the specific sanctions are described in NCLB. Sanctions for states that do not make AYP for a specified number of years will be implemented by the US Department of Education. Sanctions increase in severity for schools, school divisions and states that continue not to make AYP.

## **The Issue in Practice in the Commonwealth**

### **Virginia's Implementation of NCLB**

Since its original implementation of the accountability components submitted in the initial *Consolidated Application Accountability Workbook*, Virginia has continued to make requests of USED for annual revisions as allowed by law.

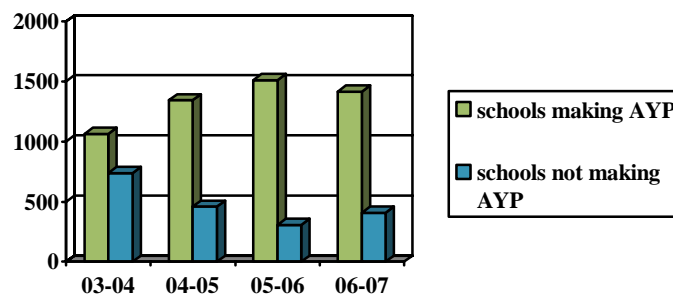
The current amended accountability workbook (revised as of July, 2006) describes how schools, school divisions, and the state will be determined to have made AYP. To make AYP for the 2006-2007 school year, at least 95% of all students and all subgroups of students must have participated in statewide assessments and met one of the following conditions during the previous school year:

- At least 69% of all students and all subgroups of students must have passed reading/language arts assessments and at least 67% of all students and all subgroups of students must have passed mathematics assessments. High schools must have had at least a 57% graduation rate or shown improvement. Elementary and middle schools must have had at least a 94% attendance rate or shown improvement OR, as predetermined by the division superintendent, have had at least a 70% pass rate in science assessments or shown improvement; OR
- Student groups not having a 69% pass rate in reading/language arts and/or a 67% pass rate in mathematics assessments must have reduced their failure rates by at least 10% from the year before and each of those groups must have met the annual measurable objective for or made progress in the other academic indicator (graduation rate, science or attendance, as described above).

Under NCLB, there must be a minimum number of students in a subgroup for their participation rate and pass rate to be disaggregated for purposed of determining AYP. In Virginia, the minimum number is 50 or one percent of the enrolled population, whichever is greater, not to exceed 200 students.

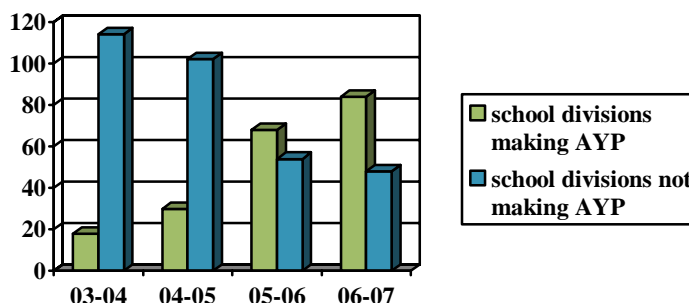
Schools and school divisions receive their AYP results prior to the opening of school each fall, as required by NCLB. The numbers of schools and school divisions making AYP over the past four years are shown in Figure 3 and in Figure 4.

**Figure 3: Comparison of Schools Making and Not Making AYP, 2003-2004 through 2006-2007**



Source: Virginia Department of Education

**Figure 4: Comparison of School Divisions Making and Not Making AYP  
2003-2004 through 2006-2007**



Source: Virginia Department of Education

Schools and divisions that do not make AYP for two consecutive years in the same content area are subject to sanctions, as required by NCLB and accompanying federal regulations. The non-Title I schools that have not made AYP for two consecutive years in the same content area are not held to the specific sanctions listed in NCLB. The Board of Education determined that these schools must develop improvement plans meeting requirements of their local school divisions. Any school divisions currently identified for improvement under NCLB because they have not made AYP in the same content area for at least two years must develop and implement improvement plans as required by the law. The Title I schools that are currently identified for improvement under NCLB because they have not made AYP in the same content area for at least two years must develop and implement improvement plans. They also must offer an opportunity for their highest-poverty, lowest-performing students to transfer to another school in the division, offer supplemental educational services to these same students, or prepare for reconstitution, depending upon the number of years for which they have been identified as needing improvement.

In 2003-2004 Virginia did not make AYP because of student participation rates and performance on statewide assessment in several areas. In 2004-2005, Virginia narrowly missed making AYP by attaining 28 of 29 required AYP annual measurable objectives. However, Virginia has met all established benchmarks and made AYP for the last two years.

As required under NCLB, the stakes will continually be raised for making AYP. Therefore, to make AYP in the 2007-2008 school year (based on 2006-2007 results) schools, school divisions, and the state must not only meet the 95% participation rate and other academic indicator requirements, but they must have a 73% pass rate in reading/language arts and a 71% pass rate in mathematics.

## **Differing Perspectives**

### **Allowable Modifications to Accountability Models**

By analyzing USED communications to states, Forte Fast and Erpenbach (2004) report states' modifications to their original plans. These are categorized and discussed below:

**AYP Models.** NCLB describes the components of Adequate Yearly Progress. AYP is determined by percent of students participating in assessments, student performance on those assessments, and student performance in another academic indicator.

Since the passage of the law, USED has issued several communications re-interpreting the accountability components of NCLB. Final federal regulations addressing the accountability components were issued in December of 2002. The Secretary of Education and staff have also issued general letters of non-regulatory guidance and personal letters to various states' chief education officers. Consequently,

while NCLB provides fairly strict parameters for using student achievement when making AYP determinations, there are variations among states in defining data that will be used to determine student achievement and in exactly how student achievement calculations are made. For example, states may use liberal rounding rules and confidence intervals when calculating participation and performance. Some states use a student performance improvement index model, awarding “points” for various degrees of improvement in student achievement. (Forte Fast and Erpenbach, 2004).

In 2006, Secretary of Education Margaret Spellings announced an opportunity for states to request the use of a “growth model” to determine AYP. States applying for this opportunity must show proof of meeting rigorous accountability standards. To date, Tennessee, North Carolina and Delaware have received full approval from USED to pilot accountability models that are based on longitudinal cohort and/or individual student data, showing increased student performance from one year to the next. Arkansas and Florida have submitted requests to use similar models, and these have been conditionally approved, pending USED’s approval of each state’s statewide assessments to be used for accountability purposes (“*Secretary Spellings Approves ...*,” 2006).

All states must use graduation rates as the other academic indicator for high schools, and USED regulations clearly describe how that indicator is to be calculated. States have great latitude in selecting the other academic indicator for elementary and middle schools. Most states use student attendance, and some use student performance on norm-referenced or criterion-referenced assessments that are used statewide. A few states allow school divisions to select the other academic indicator from a limited list (Forte Fast and Erpenbach, 2004).

In Virginia, student performance on statewide assessments continues to be measured by pass rates on Standards of Learning (SOL) tests, alternate assessments, and Board-approved substitute tests. In 2005, Virginia received approval to raise annual measurable objectives for pass rates by equal increments through 2014. Annual measurable objectives for 2007-2008 (based upon 2006-2007 assessments) are 73% pass rate for reading/language arts and 71% pass rate in mathematics (Virginia Department of Education, 2005).

Virginia is seeking approval from USED to raise the graduation rate benchmark from 57% to 61% for the next two years. Virginia is also seeking approval from USED to allow superintendents to choose from the following the other academic indicator for each elementary school and middle school in their school divisions:

- Attendance rate (94% ADA benchmark)
- Student pass rate on science assessments (70% pass rate benchmark)
- Student pass rate on writing assessments (70% pass rate benchmark)
- Student pass rates on history/social sciences assessments (70% pass rate benchmark) (“*Board of Education Agenda Item...*,” 2007).

**Assessments.** Under specific circumstances, states have been allowed to add tests to their statewide assessment programs to address unique needs of students with disabilities and students identified as limited English proficient. States have been allowed to “bank” proficient test scores of students who take statewide assessments earlier than the “official” administration of the test (Forte Fast and Erpenbach, 2004, p.4).

As mentioned earlier, Virginia’s statewide assessment system includes all forms of SOL assessments correlated to grade-level/course standards; alternate assessments for certain students with disabilities; and Board-approved substitute tests, such as Advanced Placement exams and certain technical and career education licensure or certification exams. In 2006, Virginia received approval from USED to include in AYP calculations those students who passed statewide assessments that were retaken and needed to meet graduation requirements (Virginia Department of Education, 2006).

In Virginia, certain students identified as Limited English Proficient (LEP) have been administered the Stanford English Language Proficiency Test (SELP) in lieu of the reading/language arts assessments.

After USED review of SELP, USED determined that it was not correlated with reading/language arts standards and could no longer be used (H. Johnson, personal communication, June 28, 2006). Virginia asked to be given until the 2007-2008 school year to develop an alternate to the SELP program and to the current form of SOL assessments to best assess the reading/language arts skill for specified LEP students. This request has been denied (R. Simon, personal communication, January 31, 2007).

**Inclusion of Students.** States may identify a different minimum number of students below which student performance data need not be disaggregated for determining AYP. This number may differ at the school level and at the division level. In Virginia, the original minimum number was 50. Virginia received approval from USED to use 50 or one percent of the student population (not to exceed 200), whichever is greater (Virginia Department of Education, 2005).

Students with disabilities and students identified as limited English proficient may be considered still in these subgroups for up to two years after “release” from the respective program. States may exclude from the participation rate students with emergency health conditions who are unable to be tested and, in those states having such provisions, students whose parents opt them out of the statewide assessment program (Forte Fast and Erpenbach, 2004). Virginia employs these options.

USED allows states to exclude from participation in certain assessments students identified as LEP who have been in the country for less than 12 months. Virginia seeks to have this extended to 24 months (*Board of Education...*, 2007).

**Improvement Status and Accompanying Sanctions.** States have been allowed to identify for improvement/sanctions only those schools and school divisions that do not make AYP in the same content area for two consecutive years. USED has not approved any requests to consider performance of subgroups when identifying schools, school divisions and states for sanctions (Forte Fast and Erpenbach, 2004). Title I schools must offer public school choice the first year they are identified for improvement and add supplemental educational services the second year they are in improvement.

In 2005, Virginia received approval to make two modifications regarding sanctions. School divisions in Virginia are identified for improvement only if they have not met the criteria for student performance in the same content area in each of elementary, middle, and high school levels for two consecutive years. In addition, Virginia received approval to pilot a program with four school divisions, allowing superintendents in these divisions to offer public school choice or supplemental educational services in Title I schools during their first year of identification for improvement (Virginia Department of Education, 2005). Virginia is seeking permission from USED to expand this option to all school divisions (*Board of Education...*, 2007).

## **Issues Under Congressional Consideration for Reauthorization of NCLB**

NCLB is scheduled for reauthorization during the current congressional session. Proposed bills from both the House and Senate include amending AYP model requirements; changing requirements for assessments and for including students in those assessments; revising means by which schools and school divisions are identified for improvement status; and providing flexibility in sanctions for schools and school divisions in improvement status. Proposed changes are described below.

**AYP Models.** Currently, NCLB and USED regulations strictly define components of AYP models that states must use. Bills introduced in the House and Senate allow states more flexibility in constructing student achievement models by which AYP will be determined. Proposed legislation would allow states to use a “value-added model,” following progress of students over time and giving “credit” for students who move from one proficiency level to another (S. 348). Another proposal would allow AYP to be achieved even if a subgroup of students did not meet benchmarks, provided that (i) the same subgroup met the benchmarks the previous year and (ii) the subgroup represents less than 10% of the total tested student population (H.R. 648).

**Assessments.** Currently, NCLB and USED regulations require all approved assessments to correlate to grade level standards. Bills introduced in the House and Senate increase the types of assessments allowable. More students with disabilities would have access to alternate types of assessment that are not correlated with grade-level content standards, as determined by the IEP team (S. 348). Students identified as LEP would be able to show proficiency for up to three years by using any test that requires “specific gains” to show progress and that is validated for that purpose (H.R. 648). States would be allowed to count any assessment “retake” for determining AYP, and would be required to count the “retake” only if the student scores at the proficiency level or higher (H.R. 648).

**Inclusion of Students.** Currently, NCLB requires that 95% of all students and students in each subgroup participate in statewide assessment. Bills introduced in the House and Senate allow states more flexibility in determining which students are included in the tested population. The required participation rate could be as low as 90%. Students exempted from the participation rate calculation could include those who are absent for medical reasons or for reasons beyond their control, those whose parents object to their participation in testing, and those students who exhibit “chronic non-attendance,” as defined by the state (H.R. 648).

Under the current NCLB model, students falling into more than one subgroup count in each subgroup. For example, a student with a disability who is from poverty counts as a student with a disability *and* as a student in poverty. Under proposed legislation, students who fall into more than one subgroup would count fractionally in each (S. 348, H.R. 648).

NCLB and USED require students identified as LEP to participate in assessments. Under proposed legislation, students identified as LEP and in their first year of schooling in the states could participate in assessments, but their inclusion in AYP would only occur if they performed at the identified proficiency level or higher (S. 348, H.S. 648).

**Improvement Status and Accompanying Sanctions.** Currently, NCLB states that schools, school divisions and states not making AYP for two consecutive years must be identified for improvement. USED regulations have interpreted this to mean two consecutive years in the same content area. NCLB requires Title I schools in their first year of improvement to offer public school choice and in their second year of improvement to add the offering of supplemental educational services. In both instances, these options are to be offered to the highest poverty, lowest performing students first.

Bills introduced in the House and Senate allow states more flexibility in identifying schools and school divisions for improvement status and in the sanctions required. Proposed legislation would allow states to identify for improvement schools and school divisions not making AYP because of low student performance in the same content area for the same subgroup for two consecutive years (S. 348, H.S. 648). These same bills would allow the option of reversing the offering of public school choice and supplemental educational services, and they would require that these options be offered to the lowest performing subgroup of students first (S. 348, H.S. 648).

## **Related Issues**

### **Assessment of Students Identified as Limited English Proficient (LEP)**

As noted earlier, USED will no longer allow Virginia to use the SELP test to assess, for AYP purposes, the reading/language arts proficiency of students identified as LEP. At the time this paper was prepared, the two school boards of Fairfax County Public Schools and Harrisonburg City Public Schools took official action to challenge this ruling by resolving to continue to use the assessment instead of the presumable required grade-level SOL test. USED has warned Virginia of its responsibility to ensure that all school divisions comply with NCLB (Glod, 2007).

## Content Standards

The goals of NCLB were designed to provide opportunities for all students to improve their academic achievement, and the intent of the law is to hold schools, school divisions, and states accountable for doing so. USED has allowed increasing flexibility for states' implementation of the AYP components of the law. For this reason, it is impractical and invalid to compare student performance from state to state. Because of the countless variations in AYP models used nationally, one cannot determine which states' schools are of higher quality.

Much discussion, formal and informal, is occurring among USED staff and among lawmakers regarding the inability to make state-to-state comparisons. Educators and lawmakers recognize the vast differences in the rigor of states' standards and assessments. Recognizing the inefficiency of the "patchwork" of standards and assessments to provide any useful data about student performance across states, some have begun talk of establishing national standards ("*Lawmakers prepare ...*", 2007).

Both Senator Kennedy (D-MA) and Senator Dodd (D-CONN) have proposed legislation to encourage state to raise their standards to a "consistent level." While education Secretary Spellings opposes required national standards, she has indicated she would consider support for voluntary national standards. Educators express concern that national standards could become outdated quickly, and the bureaucratic process for updating them would be cumbersome ("*Lawmakers prepare...*", 2007).

## CEPI Summary

Data seem to indicate that student achievement in Virginia is improving, as evidenced by the increasing numbers of schools and school divisions making AYP. It must be noted that over the four-year period, pass rates for meeting annual measurable objectives have increased, and the AYP model itself has been modified.

Over the past five years, modifications have been made by all states in implementing NCLB. Some of these modifications, approved by USED, are now reflected in proposed legislation designed to amend NCLB. Examples are: using a "value-added" or "growth model" to show improved student achievement; using the added indicator of student subgroup performance to determine improvement status of schools and divisions failing to make AYP; and allowing the flexibility to reverse sanctions for schools identified in improvement.

Finding appropriate measures of student performance for students with disabilities and for students identified as LEP continue to be areas of discussion and disagreement. Proposed legislation amending NCLB may lay these issues to rest or fuel further discussion.

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