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COMMENTS ON HOUSE NCLB HOUSE DISCUSSION DRAFT, 8/28/07

These comments are divided into two major parts. The first part is organized around the Committee's "Summary of Discussion Draft," and highlights some of our major comments on each of the topics identified in the summary. The second part is organized around *some* of our major comments about other provisions (mostly in current law and not necessarily addressed by changes made by the discussion draft).

NB re references to page and line numbers: In some places, we list page and line numbers using a notation system in which "[21/5-9]" means page 21, lines 5-9.

I. TOPICS IDENTIFIED IN THE SUMMARY OF DISCUSSION DRAFT

Title I, Part A - Disadvantaged Children Meet High Academic Standards

Graduation Promise Fund [Sec. 1006]

1. Overall, we think that the provisions could do more to explicitly address and accomplish the things identified in the Summary of this program – e.g., re "improved curriculum, personalization of the school environment, staff collaboration and professional development, and individualized student supports," etc., some of which are not particularly evident in the program requirements.
 - a. Consistent with the widely recognized need for secondary students to be steeped in rigor, relevance, and relationships, this programmatic focus should in particular include a focus on
 - i. Programs that pervasively engage students in education that have the three aspects of authentic teaching and learning extensively recognized in the research as being directly associated with dramatic gains in achievement and closing of achievement gaps – namely (1) students engaging in disciplined inquiry to (2) create new knowledge about (3) real-world matters.
 - ii. The corresponding hallmark of career-technology education that can accomplish these ends and is at the center of the Perkins Act – namely providing students with strong understanding and experience in all aspects of an industry.
 - iii. Systematic student involvement in the decisions that shape the schools' educational program.
2. LEA subgrant applications, (f)(4)(B) [13/14 - 14/2] – The provisions here do very little to identify core things that must be addressed in an application, even recognizing the value of giving States some discretion over the application requirements. Either consider additional key items critical to a high-quality program, or at least provide for the Secretary to issue additional requirements and guidance concerning the application.
3. In the lead paragraph (i) on local uses of funds – "A local educational agency receiving funds under this section shall use the funds to—," delete "use the funds to". [18/3-5] This will establish the provisions of this subsection as things the LEA receiving the funds must do, not simply spend some undefined portion money on, without any assurance about the extent to which the things listed here will actually occur for the students involved. At the same time, by shifting the focus away from which funds the LEA spent on each

of these things (some of which it may be accomplishing with other funds), it actually gives the LEA more flexibility.

4. In (i)(1), we support the requirement to take into account the quality of the section 1116 school improvement and assistance plan in allocating funds. [18/12-14]
5. In (i)(3), concerning middle school identification of students not likely to graduate from high school with regular diplomas [19/1-14], we believe that a set of safeguards and adoption of best practices need to be put in place to ensure that this identification does not lead to stigmatization, self-fulfilling prophecies, lowering of academic expectations, and invasions of privacy. The law should include standards and other requirements for the treatment of this information and rigorous outside oversight to ensure that those requirements are met and that such unintended outcomes are not occurring. *These safeguards should also accompany any other portions of the Act that call for similar “at-risk” identification of students.*
6. In (i)(5), on local uses of funds to provide middle school students with intensive supports, consider changing “may include” to “shall include” the elements listed in (A)-(E). [19/15 - 20/14] This is a good list for ensuring relevant assistance to struggling learners and would be responsive to concerns about “what do you expect – look who we have to teach.”
7. Other wording changes:
 - a. Purposes. In (a)(1) of Sec. 1006, concerning the education and skills necessary to compete in a global economy, change “compete” to “thrive” in that economy.[8/19] [And do so in any other provisions (not in the draft bill yet) that may contain similar language.] “Thrive” is both broader and deeper than “compete.” Further, it will more readily generate a consensus of support, removing the baggage and concerns that, at least for some, are generated by the notion of shaping public education heavily around the need to “compete.”
 - b. Reserve. In (d), creating reserve for non-profit entity to develop and implement or replicate effective models, change “an eligible non-profit entity” to “eligible non-profit entities.” [11/1]. This technical amendment seems needed for consistency with what we assume to be the intent of the provision to fund more than one – the rest of the provision provides “to enable such entities. . . .”
 - c. LEA subgrant applications. In (f)(4)(B)(ii), change “nonprofit businesses” to “nonprofit organizations”. [13/24]
 - d. (f)(7) – Permitting use of funds to support eligible schools regardless of whether they otherwise receive funds under this section. [14/24 - 15/8] We support this allowable use of funds in order to serve all eligible schools. A technical amendment may be needed clarifying the "except that" clause providing that in receiving such funds the school and LEA are subject to the requirements of 1116 – does this mean that in receiving such funds, the LEA and school become subject to 1116 even if they would not otherwise be, or does it mean that it only applies to LEAs and schools that are, under the terms of sec. 1116, subject to the provisions of that section? (The former is probably preferable.)

College and Work-Ready Standards and Assessments [Sec. 1111A]

1. Provisions should be added to address the full and informed involvement of teachers, parents, and students (not just in the peer review of the standards and assessments, but in the process of developing them), a transparent and deliberative process with multiple opportunities for input at every stage, and processes for ensuring that the standards are being effectively disseminated and understood. Also included, both in the development and in the peer review process, should be persons from advocacy and civil rights organizations.
2. The standards and assessments should focus on the key qualities of authentic achievement that extensive research has demonstrated result in dramatic achievement gains and closing of achievement gaps – namely, (a) use of disciplined inquiry to (b) create new knowledge in addressing (c) real-world matters. These

explicit qualities could be added to the assessment qualities articulated in (b)(3) [116/9-14], but they should also be incorporated into the standards themselves as well.

3. “Work-ready” standards, to the extent that they may be applicable to career-technical education programs, should address the need, consistent with Perkins requirements, for students to develop strong understanding of all aspects of an industry (e.g., planning, finance, management, labor and community issues, principles of technology)
4. Multiple measures in (b)(3) [116/9 - 117/3]. We support subparagraph (B), stating that the requirement cannot be met through multiple opportunities to take the same or substantially similar tests or through tests designed to copy, practice for, or predict performance on the state assessment. However, we are concerned about subparagraph (A) because we also do not believe that the multiple measures requirement can be met simply by a mix of short and extended constructed response items. We believe it requires multiple methods for demonstrating proficiency of the same skills or standards. [See the next topic – multiple indicators/assessments (under section 1111) for further discussion.]

Multiple Indicators/Assessments [Sec. 1111(b)(2)(E) and (c)]

1. We have strong concerns about the approach here. First, in comparison with current law, it lends itself to conflating multiple measures of achievement of the knowledge and skills in the state standards with indicators of other things. This distinction is relatively clear in current law (with the primary problem being the failure to implement the requirement to provide the former in a meaningful way). And this distinction is very important. The entire premise of standards-based reform is that all students should learn the knowledge and skills we agree that they should learn. And the premise of No Child Left Behind is that no child should be left behind – i.e., that whenever a child (or group of children) is not on an adequate road to mastering those skills and knowledge, effective attention must be paid. Allowing indicators of other things to substitute for being on an expeditious path to proficiency for some students does leave those students behind, and this happens even within the limits set by the discussion draft, whereby improvement on these indicators is permitted to substitute for some portion of students’ proficiency on the standards. So the system of counterbalancing multiple *indicators* is flawed.
2. At the same time, the problems with implementation of the current requirement for using multiple measures of achievement under section 1111 are not adequately addressed and in some ways are compounded. This is echoed in the summary, which says that the draft “Allows states to use more than a single test for accountability purposes” and that under the draft States “can” use multiple assessments. This is unfortunately consistent with the perception that the current law bars multiple measures, when in fact it does not merely “allow” them, it *requires* them. The perpetuation of this misperception about the requirement is then compounded by the failure to define multiple measures adequately, in order to ensure that students are provided with multiple ways of demonstrating their proficiency in relation to the standards. In this regard, it is worth noting that efforts to get the Department of Education to define multiple measures more meaningfully and rigorously through regulation were frustrated by the views of State education officials (participating in negotiated rulemaking) who *wanted* to be able to continue to rely on a single standardized test – further demonstrating the unfortunate irony of the widely held notion that the law is preventing states from using multiple measures.
3. So, on the one hand, the use of other indicators as a partial substitute for valid demonstration of mastery in relation to some of the standards that all students are expected to reach is too broad, and on the other hand the focus on multiple measures is too limited.
4. In regard to multiple indicators of different things, the pressure to allow one such thing to substitute for another is largely the product of a bigger problem – the view of AYP, and the consequences for not attaining it, as a single, monolithic, and stigmatizing/punitive thing, based on a theory of change that relies, as the main stimulus for improving, on the desire not to be identified as in need of improvement. From that point of view, the addition of other indicator which can only result in additional identification as not making AYP but cannot compensate for the absence of AYP on the core indicators of proficiency on the

standards, of course feels onerous – hence the desire to substitute, with the result that there will no longer be a requirement to pay effective attention when certain students are not on the path to achieving what we have said they should.

If, instead, we move away from this monolithic and stigmatizing framework to a more nuanced, non-punitive, continuous improvement framework, we no longer have this dilemma. We can have multiple indicators to which we are paying attention – without saying that we’ll ignore certain students’ lack of proficiency in one critical subject because they or their cohort have stayed in school or achieved proficiency in other subjects – because we don’t get put in a monolithic category and instead both work on and get assistance on those areas where we need to improve our program, based upon a common understanding, particularly when we dramatically raise the expectations for what all our children should achieve, that of course virtually all schools and systems will need to improve in various ways. The fact that some schools have more students with more challenges and who start with bigger gaps is reason for more high-quality attention and resources, not for punishment. (And it is the failure of the school, district, or state to take required steps – both up front in the core educational program that’s provided and subsequently in response to gaps in achievement that is a trigger of non-compliance, not the outcomes. Those steps are what the law “requires,” not AYP. This is the lens through which we look at the provisions of 1116, i.e., the consequences of students not making adequate progress in some area – discussed under “School Improvement and Assistance and School Redesign” below.

5. *Proficiency in other subjects.* The additional indicators that involve assessing proficiency in subjects other than those required by Title I are somewhat distinct from indicators of, for example, graduation or college enrollment. There are already provisions in the current law and regulations for ensuring that Title I students be taught in other subjects on the same basis as other students and that, if the state has standards in subjects other than those required by the law, they must be used. But those provisions need strengthening in the face of concerns about other important areas of knowledge and skills being slighted. Nevertheless, it should not be through allowing proficiency in one subject to substitute for another (any more than it would be appropriate to allow math proficiency to substitute for reading proficiency). Instead, the combination of strengthening those other provisions, more clearly delineating a non-punitive, non-unitary approach to responding to various indicators, and statutorily strengthening the hand of parents and educators who want to ensure that their children are broadly educated is the path.
6. *Graduation rates.* We are very supportive of the efforts in this bill to address graduation and preparation for post-secondary life. For the reasons discussed above, we cannot support a trade-off for some students between graduation and the skills and knowledge we want for all children. So, as with the other indicators, we support the use of this as a separate indicator, but again within a clearly non-punitive, continuous improvement approach to problems in one or another indicator. At the same time, we unhesitatingly recognize that students who drop out are also not making adequate progress toward proficiency and thus we would support an approach under which AYP on the achievement proficiency indicators is defined in terms of what proportion of the cohort has demonstrated proficiency. Under this approach, students who have dropped out would be counted as not having demonstrated proficiency (except for any students who may have demonstrated the relevant proficiency on the assessments prior to dropping out).
7. *Retention in grade as an indicator.* While retention in grade is partially embedded in the bill’s approach to graduation rates at the high school level (more or less depending on whether four-year or five-year rates are used), it is not addressed independently and thus is not addressed in elementary and middle schools. It should be. Parallel to what we suggest regarding graduation rates, our proposed approach to doing so would in part focus on defining the proportion of students’ cohort that have demonstrated proficiency – clearly students who have not demonstrated proficiency on the the fifth grade assessments because they got left behind and haven’t reached the fifth grade with their cohort have not been making adequate progress and should be counted as such.

Growth Models [Section 1111(b)(2)(F)]

1. We are supportive of the principles behind the growth models, so long as the functional basis remains effective attention whenever any students are not on an expeditious path to attaining proficiency (along with the other criteria), so that students are not, on the basis of “gains,” left behind in relation to the skills and knowledge we want all children to achieve. In fact, by being able to focus on whether individual students are on a path to that end, rather than simply the proportion who are already proficient, it may serve that goal better. It does, however, need to build in very thorough ongoing oversight, as well as effective attention to the pitfalls (for example regarding comparable assessments) that can arise.
2. There appears, though, to be a problem in the wording of the lead criterion, in paragraph (F)(i), providing “an expectation that all students in each group . . . will, by the end of the 2013–2014 school year, meet or exceed, or be on trajectory to meet or exceed within 3 years, the State’s proficient level.” [42/20 - 43/5] The wording, by indicating that the 3-year trajectory comes into play at the end of 2013-2014, seems to improperly combine two important but distinct notions, thereby allowing an effective date of 2016-2017 as the end point for determining whether a student is on a trajectory to proficiency. Instead, the growth model should maintain the same end point target, while at the same time allows for the use, along the way, of growth trajectories (3 years in this case) for determining annually how many students are making adequate progress toward becoming proficient.

Performance Index [Sec. 1111(b)(2)(G)]

1. We are very concerned about this option and are not ready to support it at this time. Even with the weighting for students at or below proficient [paragraph (vi)], it appears that some students moving to basic can substitute for enough students becoming proficient. There is the provision in paragraph (iv) for maintaining as a target the expectation that all students attain proficiency by 2013-14, but we do not see how that effectively gets operationalized in this approach.
2. We are also unclear about why this option is needed, given the growth model option, which seems a better way of looking at the incremental progress of students toward proficiency and which does not, at least in concept, have the trade-off problem noted in the paragraph above.

N size and Confidence Intervals

1. We appreciate the draft’s efforts to rein in both these mechanisms – both through setting numerical ceilings and by barring the use of confidence intervals in growth models and use of additional indicators.
2. Nevertheless, even with the limits set here, there will still be large numbers of students not counted by student group, and we believe that the concepts supporting that exclusion are misplaced.
 - a. These statistical concepts appear to have become unmoored from their meanings and from the context in which they are being used – i.e., applied without providing meaningful answers to the question of “statistically significant for what purpose?” or “confident of what?” In other contexts, the concepts are used to draw inferences from a sample representative group about a larger population – e.g., in conducting studies on a sample or doing political polling, taking into account the size of the sample, the results are significant as applied to a wider population at the .05 level, or we have confidence that the real value for the wider population is within a range of plus or minus 7% of the sample results. In other words, from the fact that x% of our sample had a certain characteristics, here are the conclusions that can meaningfully be drawn, with some level of certainty, about the population as a whole.
 - b. In the context of the framework in Title I, this use of statistical significance and confidence intervals seems out of place. The relevant inquiry is what portion of the students in a group within the school are proficient, and under Title I we assess the proficiency of *all* such students, rather than a sample – so the traditional use of statistical significance or confidence intervals seem out of place. Even reducing the threshold “n” size down to the low end does not resolve the problem and continues to abandon in practice the notion that no child should be left behind. An “n” size says,

for example, that even if a school is doing *nothing* meaningful to address the particular needs of one group of students (for example ELL students or students with disabilities), there is no need to pay attention if the number of students in that group is small enough.¹

- c. Alternatively, it might be argued that small subgroup populations don't allow accurate judgments to be made with great confidence about trends in a school's performance. The fact that the rate of proficiency for fifth graders from a particular group rose or fell 15% in a single year doesn't mean much if that change is the result of one student more or less becoming proficient. But that trend is not the operative inference for Title I purposes. Instead, the question is what portion of the students assessed are proficient, so that we can see where more attention is needed and children are not left behind.
- d. Finally, it might be argued that these confidence intervals and thresholds for statistical significance are needed because even in making judgments about the population actually assessed the data from a single test is not completely valid or reliable -- i.e., they are needed to address the standard measure of error inherent in the particular test, particularly where a cut score is necessarily used to draw a bright line between proficient and not proficient. But first, it is not at all clear that the large and widely varying "n" thresholds have been carefully derived on that basis. Second, and most importantly, to the extent that the problem purportedly being addressed is unsound reliance on a single measure of proficiency, the answer lies primarily in implementing the largely ignored provision of the Act requiring multiple measures of proficiency, rather than disregarding the data. (See ____ below.)²
- e. Exacerbating this problem is the fact that while the law allows states to average three years of data, which helps build a larger "n" of data points and also avoids relying on a single cohort of students, states are under no obligation to do so. So rather than pooling the available data in order to make more meaningful judgments, they are permitted to throw the data out by saying the "n" for any one year is too small.
- f. Even if confidence intervals were appropriate in this context, it is necessary to look at the choice to use the *bottom* of the confidence interval as the threshold. That reflects a judgment that what is important is avoiding a false negative -- i.e., wrongly deciding that the group is not performing well enough when in fact they might be (putting aside, the earlier jump in logic -- based on the percentage assessed who were proficient, what's the larger group of students who might have a higher rate of proficiency? Why would you not want to make the exact opposite judgment, that in the interests of leaving no child behind, what is most important is not ignoring a group who, based on the results, may in fact not be performing well enough, and so use the *top* of the confidence interval as the threshold?

¹This problem is further exacerbated by allowing schools to ignore groups based not only on their absolute size but on their percentage of the overall school or district population. That is clearly a form of abandonment, and the only rationale -- that we don't want to label a school as failing overall based on outcomes for one relatively small sector -- should properly fade away once we instead abandon the notion that AYP is a bright-line on/off measure for grading and labeling a school.

² Further, how many of the states saying that they are using these approaches in order to avoid making unsound judgments about aggregate scores are at the same time turning around and making judgments about individual scores for high-stakes purposes of graduation and promotion, etc.? The standard measure of error for an individual score is vastly greater than for aggregate data (at the same time that professional testing standards are clear that a greater degree of validity and reliability, not a lesser degree, is needed when making high-stakes individual decisions).

- g. As this last issue suggests, the various problems identified here would be much easier to sort out and address if we were clearer on the purpose for making AYP determinations and how they are to be used. The more we can clarify that the purpose, in practice not just theory, is to identify where students are not on track to becoming proficient, in order to provide the necessary attention, additional resources, and changes in approach – rather than to label and punish schools – the easier it will be to rein in approaches under which students either do not get counted or are incorrectly deemed to be making sufficient progress.
3. Additionally, so long as the N-size provision is maintained, we believe that the optional use of data averaging in determining AYP should become mandatory. Agencies should not have the option to say they have too few data points to reliably report at the same time that they are choosing not to include additional available data points.
 4. Finally, if our overall position here is rejected, we would then be concerned about the specifics of setting the limits at 30 students and 95% confidence – in terms of the numbers of students excluded, the rationales for setting these particular thresholds, particularly since there are states with significantly lower limits.

English Language Learners

1. Regarding the requirement to develop native language assessments in languages that are shared by at least 10% of the ELLs in 1111(b)(6)(C), while generally supportive of this provision along with the rest of paragraph (6), we are concerned about avoiding the implication that no efforts to do so need be made for populations under 10%. This could be addressed with appropriate cross-references to other provisions that make it clear that they would apply to those populations – including the obligation to make every effort to do so [in (b)(6)] and the obligation to assess, to the extent practicable, in the language and form most likely to yield accurate data on what such students know and can do in content areas. In any event, the relationship among these provisions should be clarified in a way that is complementary and maximizes accurate assessment of those content area knowledge and skills.
 - a. Consistent with that concern, we also suggest, in (b)(3)(xi)(VI), changing “to the extent practicable” to “to the greatest extent practicable.” [70/9]. Unfortunately, the term “to the extent practicable” has too often been mistakenly interpreted to mean it’s entirely voluntary.
2. Query re 1111(b)(2)(Q)(ii) – inclusion of recently arrived ELLs in math and science assessments. [54/7-10]. How does this interact with the other provisions applicable to assessment of ELLs, in subsection (b)(3), including the provisions in paragraph (xi) as well as the more general requirements for valid and appropriate assessment, along with (b)(6)-(10) for assessing ELLS? We would presume, and strongly support, that those other provisions apply to these assessments. But we do not presume that everyone will understand that. A cross-reference re consistent with the provisions of (b)(3), including paragraph (xi), and (b)(6)-(10) should be included, lest significant numbers of such students are simply assessed without benefit of the safeguards there, such as reasonable accommodations, to enhance the accuracy of the assessments.
3. [TBD]

Students with Disabilities

1. **Positive Aspects:**
 - a. The draft maintains the goal of achieving proficiency for specified student subgroups by the end of the 2013-2014 school year. (pp. 42-43)

- b. The draft increases the role of graduation rates by establishing a graduation promise fund (p. 8) and by indicating that such rates for each student subgroup should be a factor in determining AYP. (p. 31)
- c. The draft maintains the requirement of disaggregation of data for specified subgroups (p. 30) and adds that the number of students in each group cannot exceed 30 (with the possibility that the number can go up to 40, if justified). (p. 53)
- d. The draft includes a new requirement that each state have an accommodations policy in place. (p. 68)
- e. The draft includes language requiring minimization of construct-irrelevant factors (such as bias, physical, sensory, learning, or cognitive disabilities, or language barriers) that may interfere with the accuracy of the assessment, and thus, the validity of the inference being made based on the assessment. (p. 65)
- f. The draft includes a new provision requiring SEAs to develop, in consultation with experts and stakeholders, a comprehensive plan to address implementation of universal design for learning. (p. 93)
- g. The draft includes a new requirement that LEA report cards must provide information on suspension and expulsion rates disaggregated by student subgroups, including racial and ethnic minorities and students with disabilities -groups disproportionately affected by disciplinary exclusion. (p. 106)
- h. The draft includes a new provision specifying that school improvement and assistance plans include an analysis of interventions, including school-wide positive behavior intervention supports and tiered instructional interventions. (pp. 177-178)

2. **Proposed Deletions/Modifications:**

- a. Strike: SEC. 1111 (b)(1)(H); SEC. 1111 (b)(2)(R)(1)(i) - (ix); SEC. 1111(b)(3) (E)(ii)(I)-(VI).

The draft proposes to codify the two percent (2%) policy currently in regulation of allowing students whose disability precludes them from achieving grade-level proficiency to be assessed against modified academic achievement standards. The draft further goes beyond current regulation by allowing for unjustified exceptions to the 2% (p. 26). CLE opposes codification of the two percent policy and as it is drafted, the proposal to allow for increases beyond current 2% cap. Provisions referencing modified standards ought to be deleted.

Rationale: There is no reliable data to show that 2% -3% of all students assessed (as much as 30% of students with disabilities) have disabilities that preclude them from achieving grade-level proficiency. Consequently the proposal to allow LEAs to codify the 2% rule and then to allow a process for increasing the use of modified academic achievement scores beyond the 2% cap, and potentially more than 3% of all students assessed, cannot be justified. The DRAFT inaccurately states that current regulation allows SEAs to request an increase beyond the total of 3 percent of all students assessed (§200.13(c)(4). As stated: "A State may not request from the Secretary an exception permitting it to exceed the caps on proficient and advanced scores based on alternate or modified academic achievement standards under paragraph (c)(2) of this section."

Allowing IEP Teams to choose arbitrarily the students whom the team is reasonably certain are unable to achieve grade-level proficiency opens the system to abuse in violation of Section 504. Inevitably most of these students will not be taught the same skills and bodies of knowledge expected for all students, at the levels expected for all

students. Moreover, the use of such standards sets up the conditions for turning NCLB on its head. For all other students, the core structure of NCLB creates a presumption that students' not achieving proficient or advanced performance in relation to the full range of state standards indicates that the quality of their instruction needs to be improved in order to get them to proficient or advanced performance in relation to the full range of state standards. For the students at issue here, that presumption becomes non-operative.

- b. Strike: SEC. 1111 (b)(2)(C); SEC. 1111 (b)(2)(R)(iii).

CLE recommends the deletion of the provision allowing students who were previously identified as having a disability to be considered part of AYP determinations for students with disabilities for a period of three years from the time the student stopped receiving special education services. (p. 30).

Rationale: Unlike English language learners whose acquisition of language is expected to evolve over a period of 2-5 years and whose success generally results in their removal from the ELL cohort, there is no corollary for students with disabilities. Although current regulations allow schools to include students who were previously identified as having a disability for a period of two years as part of AYP determinations for students, that compromise was based on the more rigid configuration of AYP also under current law. Furthermore, current regulations prohibit States from including scores of students previously eligible for special education in reporting any other information under §1111(h) of the Act, 34 C.F.R. §200.20(f)(iii)(C). This safeguard is critical, for otherwise, including students previously eligible for special education under IDEA whether for 2 or for 3 years in additional indicators authorized for determining AYP by the proposed draft will distort the performance of students with disabilities and undermine the accountability system.

- c. ADD: SEC. 1111 (b)(2)(E)(i).

CLE recommends adding reduction in grade retention to the list of multiple indicators that can be used to determine AYP. (p. 32).

Rationale: A reduction in retention rates, which is included in the current version of the law, is associated with a decrease in drop out rates. Students with disabilities are disproportionately represented among students who are retained in grade. Because the draft has a new focus on increasing graduation rates and decreasing drop out rates, reduction in retention rates should also be included as an indicator of AYP.

- d. ADD: SEC. 1111(b)(3)(D)(xi).

CLE recommends a clarification that in order to ensure that all students with disabilities participate in assessments, States must establish an alternate assessment aligned with grade-level academic content and achievement standards in addition to an alternate assessments aligned with alternate academic achievement standards for those limited number of students with the most significant cognitive disabilities. (p. 68).

Rationale: In order to serve different populations of students with disabilities, States must develop alternate assessments described above in addition to ensuring that students with disabilities can participate in the regular assessments with appropriate accommodations. Failure to ensure that all students with disabilities are able to participate in the State' accountability system through state assessments violates section 504. Students with disabilities who are unable to take the regular assessment, even with accommodations, being constructively denied the opportunity to demonstrate what they know and can do based on regular grade level standards. These students do not fall

within the definition of those covered by the 1% rule; nor is there a basis for assuming that they must therefore be assessed based on modified achievement standards because they are unable to learn to grade level standards.

- e. Strike SEC. 1111(b)(3)(D) (xi)(V).

Rationale: This provision, which, as drafted, refers to both valid (i.e., standard) and non-standard accommodations, should be deleted. It is inconsistent with SEC. 1111(b)(3) (D)(xi)(IV)(dd). The latter specifies that, for non-standard accommodations, evidence must be presented to prove that the accommodation invalidates the targeted skill being assessed.

- f. Modify: SEC. 1111(b)(3)(D)(xi)(II).

Rationale: The use of the word "reasonable" in reference to "adaptations" is incorrect. The phrase "reasonable adaptations and accommodations" should be replaced with the phrase "adaptations and reasonable accommodations."

- g. Strike: SEC. 1124(c)(2)(B).

CLE recommends the deletion of the provision stating that graduation rates not be required to be disaggregated when the number of students in the subcategory is insufficient to yield statistically reliable information (p. 324).

Rationale: Disaggregation of all student subgroups regardless of the number ("n" size) should be required. The number of students in a subcategory would have no impact on statistical reliability because the data being reported is based on whether or not the student has obtained a regular high school diploma.

- h. Strike: SEC. 1124(c)(4)(D).

Rationale: CLE urges deletion of the provision allowing for "alternative expected completion times for alternative educational settings" and defining "alternative education settings" as "a secondary school or secondary educational program that is designed - (i) for a student who has dropped out of school or is one or more years behind the expected accumulation of credits or courses toward on-time graduation." This provision will encourage use of such "settings" as a major loophole to compliance and accountability. There is a reasonable expectation that this exemption will encourage increased and inappropriate use of disciplinary exclusion, involuntary transfers, and segregation of students with disabilities. (p. 327).

Report Cards

1. We are pleased with the addition of disaggregated suspension and expulsion data, parent and community involvement opportunities, and resource indicators. Consider also:
 - a. Making the state-level versions of these mandatory, as they are at the local level.
 - b. Adding data on involuntary student transfers.
 - c. Including information on use of the Parent Information and Resource Centers in the parent opportunities information.

2. In 1111(h)(1)(C)(i) and (iii) [and (2)(D)], we do not believe that the exception for using disaggregated data to determine AYP should necessarily be determinative of whether it should be included in the report card. There is a need to distinguish between the issues of publishing personally identifiable data, participation, and insufficient data to yield statistically reliable information.

3. In 1111(h)(3), the annual report to the Secretary, we are pleased with the inclusion of data on students with disabilities who have taken alternate assessments based on grade-level achievement standards, along with the data on other forms of alternative assessment.

Other Elements of the State Plan

Comparing State Standards

Local Educational Agency Plans

1. *Identifying and assisting students at risk of dropping out.* 1112(b)(1)(A)(v) [120/13-14]. As with similar provisions discussed under the Graduation Promise Fund above, we believe that a set of safeguards and adoption of best practices need to be put in place to ensure that this identification does not lead to stigmatization, self-fulfilling prophecies, lowering of academic expectations, and invasions of privacy. The law should include standards and other requirements for the treatment of this information and rigorous outside oversight to ensure that those requirements are met and that such unintended outcomes are not occurring. *These safeguards should also accompany any other portions of the Act that call for similar “at-risk” identification of students.*
2. *Additional academic assessments.* 1112((b)(1)(A). On page 119, line 7, delete “if any.” It would be unrealistic to think that the various, ongoing purposes for which these assessments are used could be met through the state assessments alone.
3. *Early childhood education team.* 1112(b)(1)(G). We support these new requirements.
 - a. On page 123, line 5, after “channels of communication” insert “among central office staff, school staff, and parents”.

School Improvement and Assistance [Sec. 1116]

[Note – our comments here need to be read in conjunction with our comments on AYP determinations under “Multiple Indicators/Assessments” above.]

- I. The draft makes many improvements in this section and takes some steps toward the revised vision of non-blameful, continuous improvement that we support. A further, more dramatic and decisive set of steps is needed, however, in order to actually shift the shared understanding of the meaning and consequences of needing to improve, in a way that leads to more productive responses to the identification of gaps and needs and at the same time allows us to hold on to, and indeed further advance a rigorous notion of adequate student progress that avoids compromises that allow some children to be left behind.
- II. While we do not pretend to have the final answer on the full details of the best language for that shift, the basic elements should include:
 - A. An obligation for all schools to respond whenever any group of students is not making adequate progress in regard to any identified indicator, with a plan for improvement that:

1. Is grounded in the program plan that all schools³ are obligated (under section 1114 [and 1115]) to develop and implement as a condition of receiving Title I funds, by revisiting the quality and adequacy of the required components of that plan (e.g., for providing accelerated and enriched curriculum, effective instructional methods, timely and effective assistance for any student experiencing difficulty mastering any standards, high quality ongoing professional development, etc.), the extent and quality of implementation of those steps, the comprehensive needs assessment of each of the program components that was carried out⁴ (and any need to for additional assessment of any of the components), and identifying needed changes in the plan for implementing any of those components, including additional, concrete steps for adequate, ongoing monitoring of the implementation – with particular attention to their impact on the students and area(s) identified for improvement.

- (1) This revision of program plan should be jointly developed with the parents of the school, through the process identified in the school's parent involvement policy, as is required by section 1118(c)(3) for the development of the schoolwide program plan (and the improvement planning should also identify and implement any changes needed in that joint development process in order to make it more effective).

[This focus on the program plan required for all schools has the benefits of: going to the heart of the core program elements that are central to whether the school is providing a high-quality education that enables students to attain proficiency; furthering the overall coherence of program planning, implementation, and improvement; and advancing the understanding that identifying and responding constructively to gaps, weaknesses, and problems is an accepted part of continuous planning and improvement for all schools, not a stigmatizing badge of blame.]

2. Includes, as one component of the improvement plan, an assistance plan that identifies the specific kinds of assistance that the school needs to effectively implement the improvements, any local resources within the school or community that can help meet those assistance needs, and the specific assistance that will be obtained from or through the local educational agency, the state, or other outside resources;
 3. Ongoing review of the implementation of the improvement plan, and annual determination of its effectiveness in a way that combines analysis of improvements in achievement with assessment of the quality and adequacy of implementation of the program components;
- B. Reinforcement of obligations of the LEA and SEA (either in this section and/or in sections 1111 and 1112) to monitor and ensure that schools effectively implement these improvement requirements, to ensure that schools have the capacity for this improvement planning and implementation, and to provide or secure the outside assistance identified as needed in the improvement plans;
1. The LEA and SEA must ensure that the response to the need for improvement – both in terms of the steps in the improvement plan and in the resources and assistance to be

³Currently, this plan is only explicitly required for schoolwide program schools under section 1114, but we believe that section 1115 needs to be amended to also include plan language.

⁴Under section 1114(b)(1)(A) . See also 34 C.F.R. Sec. 200.26(a) regarding the requirements for this needs assessment.

supplied by the LEA and/or SEA – are commensurate with, and sufficient to meet, the level of need.

- C. In addition, with a more constructive, nuanced, and less punitive system, there should still be a role in certain instances for forced interventions that are not necessarily viewed as purely supportive by the staff of the school, but that type of intervention should not be triggered by lack of AYP alone.

1. Instead, the trigger should be based on some analysis that combines a look at the data with a look at the school's response – including how the school has fulfilled its responsibilities both for development and implementation of core program plans and components under section 1114 (and 1118) and improvement plans under section 1116⁵ – and concludes that, without such interventions (e.g. of the types currently in school restructuring), the kinds of changes necessary to produce the level of programmatic change needed to achieve the desired outcomes are unlikely, to the detriment of children.
 - a) On the one hand, this means that the decision to move from the more consensual, continuous improvement planning and implementation process to the more top-down intervention process will not be triggered automatically even in schools that have multiple groups of students not meeting AMOs, provided that the schools is demonstrating its commitment and ability to effectively implement the required program components and improvement processes;
 - b) On the other hand, the fact that a school AYP is not being met for only one or two groups of students or only in a single area would not prevent the imposition of such interventions (albeit tailored to the specific gaps) if they persist and the criteria above for concluding that such interventions are needed have been met .

[Thus, in both these respects, we are proposing criteria for distinguishing between two levels of intervention that are stated differently from the way the discussion draft distinguishes “priority schools” from “high-priority schools.” This revision would further reduce the sense that schools are being “sanctioned” or “punished” because of their demographics, while also ensuring that schools are not let off the hook when they fail to adequately address the needs of one subgroup of students. Note, however, that the criteria here for imposing top-down interventions are not inconsistent with using the pervasiveness of the lack of AYP, in and of itself, to recognize schools as high-need, requiring higher levels of resources, assistance, and attention. Indeed, ensuring that the resources and assistance are keyed to the extent of student need is essential to making the continuous improvement process work. (See above.)]

2. To the extent that the application of criteria for this type of intervention and the state system for imposing them would leave SEAs with a fair amount of discretion,⁶ there should be (a) a negotiated process for USED approval of a detailed state plan for how and when such interventions would be instituted, (b) opportunity for real, ongoing involvement by advocates for students and parents (including public interest organizations) in the development, review, and approval of such plans, and (c) a monitoring process for ensuring that continued failure to provide students with sufficiently high-quality, effective education and assistance is not tolerated by the system.

⁵Keeping in mind that failure to fulfill the planning and implementation requirements of section 1114 and 1118 or the program improvement requirements of section 1116 is a compliance issue, unlike AYP itself.

⁶It is, however, worth noting that the current law is already somewhat more nuanced and discretionary in this regard than is often acknowledged – for instance the inclusion of hiring a consultant as one option for corrective action.

[To the degree that the continuous improvement process that our approach would focus on is implemented, resulting in greater attention to and better implementation of the core program requirements and improvement processes that in turn will improve the quality of education, the extent to which these imposed interventions are needed will be reduced, reinforcing the sense of the shift to a predominantly non-punitive model.]

- D. Parallel provisions for continuous LEA improvement, including similarly revisiting the jointly developed LEA program plans under section 1112 in response to any gap in adequate progress; inclusion and implementation of an assistance plan; reinforcement of SEA obligations to monitor and ensure effective LEA implementation of the improvement requirements, to ensure LEA capacity to do so, and to provide or secure the outside assistance needed to implement improvements; and a system for identifying and addressing persistent LEA problems.

[This overall continuous improvement approach should be sufficient to effectively end the stand-off between complaints that the accountability provisions unfairly target schools based on failures in meeting a single AMO and concerns that the attempts to address those complaints by loosening the AYP criteria allow certain students to be left behind.]

- III. Once the above is incorporated as the basic framework for this section, many of the provisions in the discussion draft can then be fit into the proper position within it. Some however – such as the criteria for distinguishing types of schools, discussed above – would need to be modified or replaced. (And some others may be duplicative.)
- IV. Supplemental services and public school choice. We support the provisions in current law and do not view them as inconsistent with the continuous improvement, non-punitive system we propose.
 - A. While these options are not about improving the school, they are also not intended as “punitive” – they flow from a commitment not to let kids languish, without options, during the often lengthy period while school improvements are being designed and fully implemented.
 - B. From that perspective, we continue to support them (while fixing the well-documented barriers to making them work more effectively, such as timely parent information, faulty interpretation of civil rights requirements, etc.) – particularly in the context of a system in which wealthier families can afford housing in more desirable school districts and attendance zones and tutoring when their children are having difficulties. (Indeed, those school advocates among us who rightly point out both that improving schools is often a lengthy process and that larger inequalities in our society shape educational outcomes should be particularly sensitive to the unacceptability of leaving disadvantaged children in schools that are not yet capable of delivering high-quality education to them, without the remedial options available to those who are better off.)
 - C. From that same perspective, we also believe that USED’s original position on school capacity not being allowed to defeat the choice option deserves, in reconceptualized form, praise rather than ridicule. It is not a matter of failing to recognize capacity and overcrowding as a problem. Rather it is a matter of saying that districts (with state assistance) should deal with capacity and overcrowding resulting from this initiative in the same manner that it does when those problems are caused by other factors – without presuming that the students seeking to attend as a result of Title I are any less entitled to a chance to attend the higher achieving school (i.e., are any less members of the attendance zone) than the students who, typically by virtue of greater income, are fortunate to live within the existing school boundaries.⁷ From that perspective, the principle should be recognized as an extension of our most basic equity values that lay behind the very

⁷Thus, the provision of the draft stating that the option need not be provided if it would place the school in excess of capacity limits in law or regulation [200/16-24] needs to be modified – not to require that the school shall nevertheless exceed capacity but to require that the student entitled to transfer be placed on an equal footing with other students in the attendance zone in deciding how to stay within capacity.

much unfinished agenda, post *Brown v. Board of Education*, of equal educational opportunity and desegregation.

- D. From that perspective, we would not limit supplemental service and transfer options to students in “high priority schools.” For other schools, these options remain appropriate at the least for those students not on an expeditious path to proficiency. (And given the way we would distinguish between the two categories of schools in need of improvement, we certainly would not limit it to the second category of schools we articulate above, since that distinction is for other purposes, not for determining the students’ level of need for additional assistance and other options).

- V. [Remainder of section still in progress.]

School Support, Recognition of Success, and Bringing Success to Scale

- VI. We support the approaches set out in this section.
- VII. The school program plans in section 1114(b) should be a central focus of the school support system in subsection (a) here, because i) those plans must describe how the school will implement each of the key required program components in section 1114, components that are critical elements of providing a high-quality education that enables all children to reach high standards (e.g., accelerated and enriched curriculum, effective instructional methods, timely and effective assistance to individual students whenever they are experiencing difficulty mastering any of the standards, high-quality ongoing professional development, etc.); ii) must be based on a comprehensive needs assessment of the entire school that must include an assessment of each of the required program components (not just an assessment of student data);⁸ and iii) must be jointly developed with the parents of the school in a manner set out in the school’s parent involvement policy (which in turn must be jointly developed with and approved by the parents of the school. Moreover, section 1114 also provides that this plan is to be developed in consultation with the LEA and its school support team or other technical assistance provider under section 1117. Further, the schoolwide reform strategies in the plan must be consistent with, and designed to implement, the state and local improvement plans, if any. Thus, this schoolwide program plan should be at the core of the support system – in providing technical assistance in developing it, and then, as part of the improvement efforts under section 1117.

Parental Involvement [Primarily Sec. 1118]

Qualifications for Teachers and Paraprofessionals

Participation of Children Enrolled in Private Schools

Closes Comparability Loophole

Longitudinal Data Systems

⁸This is currently clarified in the regulations, but should be clarified in the language of section 1114 itself. 34 C.F.R. Sec. 200.26 requires [in [(a)(1)(ii)] that the comprehensive needs assessment “[a]ssesses the needs of the school relative to each of the components of the schoolwide program under Sec. 200.28.” It also provides [in (a)(3) that “The school must document how it conducted the needs assessment, the results it obtained, and the conclusions it drew from those results.”

Graduation Rates

[Title I, Part B – Student Reading and Literacy Skills Improvement Grants]

Pilot Program to Include Locally Developed Measures

Title I, Part C – Migrant Education

**Title I, Part D – Prevention and Intervention Programs for Children and Youth Who Are Neglected,
Delinquent, or At-Risk**

Title I, Part E – National Assessment of Title I

Title I, Part F – Comprehensive School Reform

Title I, Part G – Advanced Placement

Title I, Part H – School Dropout Prevention

Title I, Part I, Core Curriculum Development

Title I, Part J, Expanded Learning Time Demonstration Program

II. OTHER TOPICS

[TBD]

COMMENTS ON HOUSE NCLB HOUSE DISCUSSION DRAFT, 8/28/07

[CONTINUED]

School Improvement and Assistance [Sec. 1116]

[Note – our comments here need to be read in conjunction with our comments on AYP determinations under “Multiple Indicators/Assessments” above. There is a close relationship between (a) our calling for a quite stringent approach to AYP that ensures effective attention whenever any children are veering from the path to proficient and advanced levels and (b) revising this section to ensure that this need to respond is cast within a non-punitive, continuous improvement structure that does not rely on labeling schools (in contrast to (a) needing to loosen the functional definitions of AYP in order to (b) avoid unfairly punishing or labeling schools that are not]

The purpose and meaning of identifying gaps in adequate progress must be made crystal clear – and that depends most of all how findings of lack of adequate progress are treated under section 1116. If it means identifying schools that are not up to snuff, there inevitably remains enormous pressure not only to find loopholes, and to engage in strategies for demonstrating progress that are not always in children’s long-term educational interest (such as narrowing instruction), but also to reduce the level of expected progress to something that’s viewed as more “realistic.” That too is not in children’s best interest, because it means deeming them as making adequate progress even when not on a path that will actual enable them to be fully proficient. Thus, we believe it is important to articulate a different meaning for gaps in progress, and then to make sure it is clearly maintained, with no muddying, throughout the Act. To do so, we propose a continuous improvement model that recognizes gaps in one area or another within most any school as the norm and which does not create a separate block of schools simply on the basis of such gaps (while reserving a school identification process for a narrower set of schools, using criteria that are not solely triggered by student outcomes alone. Doing so will then allow us (with what we believe will also be a higher degree of consensus and support) to hold onto, and indeed strengthen, a rigorous definition of adequate progress that requires attention whenever any child is not on an expeditious path to proficiency, thereby fulfilling the Act’s promise to leave no child behind.

1. The draft makes many improvements in this section and takes some steps toward the revised vision of non-blameful, continuous improvement that we support. A further, more dramatic and decisive set of steps is needed, however, in order to actually shift the shared understanding of the meaning and consequences of needing to improve, in a way that leads to more productive responses to the identification of gaps and needs and at the same time allows us to hold on to, and indeed further advance a rigorous notion of adequate student progress that avoids compromises that allow some children to be left behind.
2. *Overall Framework.* While we do not pretend to have the final answer on the full details of the best language for that shift, the basic elements should include:
 - a. An obligation for all schools to respond whenever any group of students is not making adequate progress in regard to any identified indicator, with a plan for improvement that:
 - i. Is grounded in the program plan that all schools¹ are obligated (under section 1114 [and 1115]) to develop and implement as a condition of receiving Title I funds – by revisiting the quality and adequacy of the required components of that plan (e.g., for providing accelerated and enriched curriculum, effective instructional methods, timely and effective assistance for any student experiencing difficulty mastering any standards, high quality ongoing professional development, etc.), the extent and quality of implementation of those steps, the comprehensive needs assessment of each of the program components that was carried out² (and any need to for additional assessment of any of the components),

¹Currently, this plan is only explicitly required for schoolwide program schools under section 1114, but we believe that section 1115 needs to be amended to also include plan language.

²Under section 1114(b)(1)(A). See also 34 C.F.R. Sec. 200.26(a) regarding the requirements for this needs assessment.

and identifying needed changes in the plan for implementing any of those components, including additional, concrete steps for adequate, ongoing monitoring of the implementation – with particular attention to their impact on the students and area(s) identified for improvement.

- (a) This revision of the program plan should be jointly developed with the parents of the school, through the process identified in the school’s parent involvement policy, as is required by section 1118(c)(3) for the development of the schoolwide program plan (and the improvement planning should also identify and implement any changes needed in that joint development process in order to make it more effective).

[This focus on the program plan required for all schools has the benefits of: going to the heart of the core program elements that are central to whether the school is providing a high-quality education that enables students to attain proficiency; furthering the overall coherence of program planning, implementation, and improvement; and advancing the understanding that identifying and responding constructively to gaps, weaknesses, and problems is an accepted part of continuous planning and improvement for all schools, not a stigmatizing badge of blame.]

- ii. Includes, as one component of the improvement plan, an assistance plan that identifies the specific kinds of assistance that the school needs to effectively implement the improvements, any local resources within the school or community that can help meet those assistance needs, and the specific assistance that will be obtained from or through the local educational agency, the state, or other outside resources;
 - iii. Ongoing review of the implementation of the improvement plan, and annual determination of its effectiveness in a way that combines analysis of improvements in achievement with assessment of the quality and adequacy of implementation of the program components;
- b. Reinforcement of obligations of the LEA and SEA (either in this section and/or in sections 1111 and 1112) to monitor and ensure that schools effectively implement these improvement requirements, to ensure that schools have the capacity for this improvement planning and implementation, and to provide or secure the outside assistance identified as needed in the improvement plans;
- i. The LEA and SEA must ensure that the response to the need for improvement – both in terms of the steps in the improvement plan and in the resources and assistance to be supplied by the LEA and/or SEA – are commensurate with, and sufficient to meet, the level of need.
- c. In addition, with a more constructive, nuanced, and less punitive system, there should still be a role in certain instances for forced interventions that are not necessarily viewed as purely supportive by the staff of the school, but that type of intervention should not be triggered by lack of AYP alone.
- i. Instead, the trigger should be based on some analysis that combines a look at the data with a look at the school’s response – including how the school has fulfilled its responsibilities both for development and implementation of core program plans and

components under section 1114 (and 1118) and improvement plans under section 1116³ – and concludes that, without such interventions (e.g. of the types currently in school restructuring), the kinds of changes necessary to produce the level of programmatic change needed to achieve the desired outcomes are unlikely, to the detriment of children.

- (1) On the one hand, this means that the decision to move from the more consensual, continuous improvement planning and implementation process to the more top-down intervention process will not be triggered automatically even in schools that have multiple groups of students not meeting AMOs, provided that the schools is demonstrating its commitment and ability to effectively implement the required program components and improvement processes;
- (2) On the other hand, the fact that a school AYP is not being met for only one or two groups of students or only in a single area would not prevent the imposition of such interventions (albeit tailored to the specific gaps) if they persist and the criteria above for concluding that such interventions are needed have been met .

[Thus, in both these respects, we are proposing criteria for distinguishing between two levels of intervention that are stated differently from the way the discussion draft distinguishes “priority schools” from “high-priority schools.” This revision would further reduce the sense that schools are being “sanctioned” or “punished” because of their demographics, while also ensuring that schools are not let off the hook when they fail to adequately address the needs of one subgroup of students. Note, however, that the criteria here for imposing top-down interventions are not inconsistent with using the pervasiveness of the lack of AYP, in and of itself, to recognize schools as high-need, requiring higher levels of resources, assistance, and attention. Indeed, ensuring that the resources and assistance are keyed to the extent of student need is essential to making the continuous improvement process work. (See above.)]

- ii. To the extent that the application of criteria for this type of intervention and the state system for imposing them would leave SEAs with a fair amount of discretion,⁴ there should be (a) a negotiated process for USED approval of a detailed state plan for how and when such interventions would be instituted, (b) opportunity for real, ongoing involvement by advocates for students and parents (including public interest organizations) in the development, review, and approval of such plans, and (c) a monitoring process for ensuring that continued failure to provide students with sufficiently high-quality, effective education and assistance is not tolerated by the system.

[To the degree that the continuous improvement process that our approach would focus on is implemented, resulting in greater attention to and better implementation of the core program requirements and improvement processes that in turn will improve the quality of education, the extent to which these imposed interventions are needed will be reduced, reinforcing the sense of the shift to a predominantly non-punitive model.]

- d. Parallel provisions for continuous LEA improvement, including similarly revisiting the jointly developed LEA program plans under section 1112 in response to any gap in adequate progress; inclusion and implementation of an assistance plan; reinforcement of SEA obligations to monitor

³Keeping in mind that failure to fulfill the planning and implementation requirements of section 1114 and 1118 or the program improvement requirements of section 1116 *is* a compliance issue, unlike AYP itself.

⁴It is, however, worth noting that the current law is already somewhat more nuanced and discretionary in this regard than is often acknowledged – for instance the inclusion of hiring a consultant as one option for corrective action.

and ensure effective LEA implementation of the improvement requirements, to ensure LEA capacity to do so, and to provide or secure the outside assistance needed to implement improvements; and a system for identifying and addressing persistent LEA problems.

[This overall continuous improvement approach should be sufficient to effectively end the stand-off between complaints that the accountability provisions unfairly target schools based on failures in meeting a single AMO and concerns that the attempts to address those complaints by loosening the AYP criteria allow certain students to be left behind.]

3. Once the above is incorporated as the basic framework for this section, many of the provisions in the discussion draft can then be fit into the proper position within it. Some however – such as the criteria for distinguishing types of schools, discussed above – would need to be modified or replaced. (And some others may be duplicative.)
4. *Supplemental services⁵ and public school choice.* We support the provisions in current law and do not view them as inconsistent with the continuous improvement, non-punitive system we propose.
 - a. While these options are not about improving the school,⁶ they are also not intended as “punitive” – they flow from a commitment not to let kids languish, without options, during the often lengthy period while school improvements are being designed and fully implemented.
 - b. From that perspective, we continue to support them (while fixing the well-documented barriers to making them work more effectively, such as timely parent information, faulty interpretation of civil rights requirements, etc.) – particularly in the context of a system in which wealthier families can afford housing in more desirable school districts and attendance zones and tutoring when their children are having difficulties. (Indeed, those school advocates among us who rightly point out both that improving schools is often a lengthy process and that larger inequalities in our society shape educational outcomes should be particularly sensitive to the unacceptability of leaving disadvantaged children in schools that are not yet capable of delivering high-quality education to them, without the remedial options available to those who are better off.)
 - c. From that same perspective, we also believe that USED’s original position on school capacity not being allowed to defeat the choice option deserves, in reconceptualized form, praise rather than ridicule. It is not a matter of failing to recognize capacity and overcrowding as a problem. Rather it is a matter of saying that districts (with state assistance) should deal with capacity and overcrowding resulting from this initiative in the same manner that it does when those problems are caused by other factors – without presuming that the students seeking to attend as a result of Title I are any less entitled to a chance to attend the higher achieving school (i.e., are any less members of the attendance zone) than the students who, typically by virtue of greater income, are fortunate to live within the existing school boundaries. From that perspective, the principle should be recognized as an extension of our most basic equity values that lay behind the very much unfinished agenda, post *Brown v. Board of Education*, of equal educational opportunity and desegregation.
 - i. Thus, we oppose, in its current form, draft subsection (d)(2)(B)(iii)(II)(bb) [200/16-24], which states that the option need not be provided if it would place the school in excess of capacity limits in law or regulation. It needs to be modified – not to require that the school shall nevertheless exceed capacity but to require that the student entitled to transfer be placed on an equal footing with other students in the attendance zone for that school in deciding how to stay within capacity. This could be done by amending paragraph (d)(9), dealing with treating transferring students in the same manner as others,

⁵Further details regarding the supplemental services provisions are treated in a subsequent section.

⁶Consistent with our rejection of viewing the desire to avoid negative consequences as the primary theory of change in the law, we do not argue for these parent options as a motivator for schools to improve, but rather simply as a matter of helping to do right by children who deserve a high-quality education in the here and now.

to address the capacity question

- d. From that perspective, contrary to the draft, we would not limit the requirement to provide supplemental service and transfer options to students in “high priority schools.”⁷ For other schools, these options remain appropriate at the least for those students not on an expeditious path to proficiency.
 - e. *Transfer across district lines.* The draft needs more attention in this area. The draft eliminates the requirement, in current law section 1116(b)(11), for an LEA to seek cooperative agreements with other LEAs if all of its own schools to which a child may transfer are identified for improvement. The draft instead, at (k)(9)(C)(vi) [248/15 - 249/2], places inter-district transfer on the list of six options, from which the state must choose at least one, to be used when an LEA continues not to make AYP for two years after identification as needing improvement. It is clear that the law’s effort to provide a meaningful transfer option will not work in many cases without including inter-district transfers. The draft is inadequate to the task and, in some significant ways, puts that option even further out of reach – by eliminating altogether the LEA obligation to at least seek a cooperative agreement with another district, by limiting the provision for inter-district transfer only to children whose LEA (not just their school) has been determined to still not making AYP two years after being identified for improvement, and even then making it totally optional with the SEA as to whether anything at all need be done to attempt to make the transfer option a reality in such cases.
 - i. Current law, at least to the extent that it addresses the issue, at least tries to make that inter-district option a reality in any situation where the family has a right of transfer and the right cannot be fulfilled within the district. That should continue to be the starting point, to which additional provisions are needed so that the efforts required by the LEA have a better chance of success.
 - ii. This should include, for example, (a) SEA obligations (again fully coterminous with the right of transfer) to identify in its plan the extent of the need for interdistrict transfer options in order to fully implement the parent choice provisions, the barriers to fully providing that option, and the specific steps it is taking to eliminate those barriers, including as necessary both assistance and incentives to LEAs and (under the state’s authority to regulate LEAs⁸) changes in state policy needed to produce successful cooperative agreements, and (b) federal technical assistance and funding needed to assist states in these efforts.
5. *Local Review* (a) [170 - 172]
- a. We continue to support the provision in (a)(1)(B) [171/8-24] that additional indicators may result in identifying additional schools needing improvement but may not reduce them. This flows logically from our overall continuous improvement approach – if other indicators are determined to be significant, tailored attention should be paid if there is not adequate progress on them, but adequate progress on those additional indicators should not result in lack of attention when adequate progress is not made on any of the original indicators. (This is different from the matter of how to validly integrate multiple measures of the same indicator. Thus, we note that, while the provision states that the LEA may use additional assessments or indicators, the bar to reducing the number of schools subject to improvement applies only to the use of the “indicators.” We support this distinction, but only so long as other provisions of the Act ensure that other assessments of the core indicators are integrated into a valid and reliable determination of the relevant proficiencies. See _____.)

⁷Subsection (d)(2)(A)(iii) and (iv) [197/9-24] and (d)(2)(B)(iii) [200/10-].

⁸LEAs are creations of the state, established to carry out the state law obligation to provide, in a typical formulation, a thorough and efficient education to children throughout the state.

- b. We support the change in (a)(1)(C) [172/1-7] to require posting of the results of the annual review on the LEA website
 - c. While we continue to support the provision in (a)(1)(D) [172/8-11] for the LEA to review the effectiveness of the schools' activities with respect to parent involvement and professional development, we do *not* support the draft's deletion of the phrase “, and other activities assisted under this part.” That language helps ensure that the LEA review includes a look at the school's development and implementation of the academic program components (in 1114 and 1115) and of the school's plan for carrying them out. (That attention is connected to what we see as a core element of our proposed framework, above, for the school improvement process.) Indeed, we would support making that more explicit.
 - d. We support the change in (a)(2) [172/12-19] to specifying that the State assessment results are available *no less than 30 days* before the beginning of the next school year.
6. *Parents' (and student's) role in school improvement* [(b)(2), 173/9 - 174/7]
- a. We support the consultation provisions in (b)(2) for developing the improvement plan, including the provision for involving secondary school students, and the provision for ensuring that the parents include those of students in groups that did not make AYP. However, the provision for parents [paragraph (C)] should be amended to add, “consistent with the agency's parent involvement policy under section 1118(a)(2)(A).” This link needs to be made because that portion of section 1118 requires that the LEA parent involvement policy (which is jointly developed with and approved by the parents) spell out *how* the LEA will involve in the school review and improvement process in section 1116.
7. *Identification of schools for improvement* [(d)(1), 193/17-194/2]
- a. In light of our overall continuous improvement framework for an overall norm of identifying needs for improvement without labeling schools – and the identification of particular student needs, strategies for addressing them, and assistance in doing so all tailored to the nature and level of the issue – we do *not* support the new limitation in this section to instances where the two years of lack of adequate progress is in the same subgroup and subject area. (Also remembering that even a single year's determination can, and should, be based on averaging three years of data.)
8. *School improvement and assistance measures*
- a. Active learning and rigor (d)(2)(B)(i) [198/11 - 199/20]
 - i. We strongly support the focus on active learning, rigor, and individual engagement and attention evident in these provisions. That focus goes to the heart of effective teaching and learning.
 - ii. Certain of the terms need some additional language if they are to be understood and effectuated – in particular “actively engage all students in learning” [198/15-16 and 199/9-10] and “rigor”⁹ [198/19]. To do so, we would rely heavily on the formulation that comes out of a massive body of well-regarded research about the qualities of teaching that produces dramatic gains in achievement and closes achievement (consistent with the “evidenced-based” requirement of (B)(1) and that combines the foci on active learning and rigor – namely, *teaching and learning that (a) engages students in*

⁹All too often, “rigorous” is treated solely as meaning sufficiently difficult or challenging and is addressed solely by trying to accelerate the curriculum to get to upper grade courses and subject matter sooner. While those aspects are by no means insignificant, they do not begin to convey the critical meaning of intellectual rigor as a quality of the teaching and learning.

*disciplined inquiry to (b) create new knowledge about (c) real-world matters.*¹⁰ That should be at the core of paragraphs (I) through (IV).¹¹

- iii. The first “such as” in paragraph (I) [on page 198, line 12] should be changed – implementing pedagogies that actively engage all students in learning should be included as part of improving curriculum and instruction, not treated as only an example.¹²
- iv. While we have no problem with the examples listed in (II), we do not think that the provision is adequate as a means of ensuring adequate “rigor” for all students. First, ensuring that these options are available within the school does not ensure that all students will be participating in them, particularly the students not making adequate progress, so an understanding of rigor is needed that is not limited to participation in one of these specialized programs. Second, see footnote ___ above, concerning the problematic tendency in schools to think of rigor only in terms of degree of difficulty and acceleration but not in terms of intellectual rigor associated with disciplined inquiry.
- v. Paragraph (III) [199/4-7] on creating contextual learning opportunities aligned with work readiness should, in addition to be connected with the formulation above (concerning disciplined inquiry to create new knowledge into real-world matters), it should cross-reference the requirements in the Perkins Act for career-technical education to provide strong understanding and experience in all aspects of an industry.¹³
- vi. Paragraph (IV) [199/8-20] seems to have a mismatch between “individualized student supports that actively engage students in the learning process” and the “such as” examples that follow – mentoring, tutoring, counseling, programs to meet unique needs of students with disabilities and English language learners, etc. While these are examples of vehicles for providing individualized supports, they are not in themselves examples of actively engaging students in the learning process, but the way the sentence reads (together with often limited understanding of how to promote active student engagement in rigorous learning) will result in many schools thinking that simply providing mentoring, etc., will meet the requirements of this provision. Either (1) restructure the paragraph to more clearly indicate that it calls for providing individualized supports (through the various vehicles mentioned) in ways that promote and support actively engaging the students in the learning process or (2) (better yet,) restructure the “such as” to focus on examples of doing so that capture this active engagement.
- vii. The draft is too limited in making the provisions of (B)(i), with their focus on active

¹⁰Fred Newmann, *et al.* Not only has the research shown that these qualities are the hallmarks of teaching and learning that produces these dramatic gains (including gains on traditional tests), it was derived from the qualities associated with the real-world work of high-achieving adults. It is also consistent with the growing body of research on how the brain develops and how even the youngest children develop new knowledge and skills. National Academy of Sciences, *How People Learn*. Also, the terms can be rearranged to call for engaging students in (a) creating new knowledge through (b) disciplined inquiry into (c) real-world matters. In either case, the notion of disciplined inquiry connotes both rigorous use of the tools of inquiry developed in various academic disciplines (e.g., established methods of scientific or mathematical proof, literary or historical analysis, etc.) and disciplined use of those tools of inquiry to weigh evidence, analyze, discuss, critique one’s own and each other’s findings and assumptions.

¹¹Linking together disciplined inquiry, creation of knowledge, and real-world engagement is central to, and integrates, active learning, intellectual rigor, and contextual learning in a way that fosters real academic achievement and intellectual development. [For example, “contextual” learning – such as through career and technical education (and traditional vocational education before it) – has typically always been “real-world” but without simultaneously involving disciplined inquiry through creation of new knowledge, it isn’t sufficient.]

¹²While this could be accomplished by changing “such as” to “including”, there may be some problem with the current sentence structure – “improving curriculum and instruction by activities, such as” (with no subsequent comma.

¹³See comment ___ above.

learning, rigor, and individual support, essential only for high-priority schools, when in fact they are central to the high-quality teaching and learning necessary to ensure that all students achieve.

- (1) First, (d)(2)(A)(iii) and (iv) [197/9-24], while ensuring this focus in high-priority schools, makes it only optional in priority schools. It is essential in both.¹⁴
- (2) Second, this focus (strengthened with the research-based formulation proposed here) should be integrated into the basic program provisions (in sections 1114 and 1115) as well. Building them into the school's curriculum and instruction at the front end is central to ensuring the kind of quality teaching and learning that enables students to achieve in the first place, without waiting for them to fall behind.

viii. Complement the focus on student engagement in active learning with provisions to engage students in the analysis and improvement of their own educational program and achievement. While to some extent this is addressed elsewhere in provisions for student involvement in the design of the overall improvement plan [see _____], here the substance of the improvement measures in that plan should include effective provisions for the ongoing involvement of students in the improvement activities. This should be at both the school level (e.g., on ongoing school improvement teams, program assessment, etc.) but also in providing information and perspectives relevant to what is or is not working and what is needed to better foster their own learning. At that level, moreover, engaging students as part of the improvement activities need not and should not be limited to secondary schools.

b. Personalization – (d)(2)(B)(vii) [203 - 204]

i. We support the inclusion of this provision for secondary schools, and the examples are well formulated.

ii. As the lead paragraph indicates, these personalization efforts are linked to the student engagement and to providing the individual attention and supports needed for achievement, addressed in paragraph (B)(ii) above. As such, we would make the same recommendation as there about expanding its application:

- (1) to all schools in need of improvement, not just High Priority schools;
- (2) to the front-end program planning and implementation provisions of sections 1114 and 1115.

9. *Supplemental Educational Services* [(g), 212/24 - 225/25]

¹⁴As discussed, for other reasons we also oppose the limitation of parent options for transfer and supplemental service [in (B)(iii)] to only high-priority schools. See _____. Given that it is at least arguably hard to see how a school can improve or function well without the effective use of formative assessments [under (B)(ii)], the distinction between then requiring the use of the measures in (i)-(iii) only for high-priority schools while allowing priority schools to pick and choose becomes quite questionable. We understand the need to provide schools (together with parents) with flexibility to shape and tailor their improvement plans to their particular needs. We believe that the overall framework for continuous improvement planning outlined at the beginning of this section does so; we think that the distinction in the schools for which these three aspects – and which we believe to be basic for the reasons above – is itself too arbitrary. (Of course, to the extent that the program review we discuss above reveals that any of these fundamentals of good curriculum, instruction, and formative assessment are already in place as a result of the initial planning under section 1114 or 1115, there will be no need to include modifications of those aspects in the improvement plan.)

- a. *Choice of providers for English language learners and students with disabilities.* [(g)(4)(B), 216/14-18]. The language requires the SEA to demonstrate that it has made “all reasonable efforts” to ensure these students have access to “a choice” of providers. This language is a positive advance, but needs to be strengthened further. If anything, these students need an even wider range of choices than others because, in addition to needing a provider who can address their particular language- or disability-related needs, these students have the same range of learning styles, needs, interests, and strengths as any other students. One of the most common forms of discrimination is the failure to fully recognize that, instead reducing a student to his/her disability or limited English proficiency. We understand the challenge in finding a wide range of providers in those terms who can also meet the child’s particular language- or disability-related needs, but that challenge doesn’t reduce the child’s needs. In those terms, we support the reference to “all” reasonable efforts, but the standard of “a choice” – which can be met by having two (neither of whom, in many cases, will be a good fit) pales in comparison to the “wide range of choices” to be provided other students in (4)(B) [216/23-24]. At a minimum, both equity and educational efficacy require every effort to provide a comparable “wide range of choices.”
 - b. *Providers meeting civil rights requirements.* [(g)(5)(C), 219/20-21] While this provision requiring the provider to agree to “Meet all applicable . . . civil rights laws” might appear at first blush to be clear enough, experience with USED’s rule-making under the 2001 law has indicated otherwise, with the Department maintaining that civil rights laws such as Title VI and Section 504 are typically not “applicable” to private providers who do not receive other federal funds. We and many others believe that such an interpretation is clearly erroneous, but even if it were not (or presuming the issue is ambiguous), Congress clearly can make such laws applicable by explicitly requiring, as a condition of participating as providers in the program, that they agree to do so. Additional language is needed to remove any room for ambiguity, explicitly stating that the agreement provides that these civil rights laws become applicable to such providers by virtue of carrying out this public education agency function and receiving funds.
 - c. *Waivers.* [(g)(10), 222/18-223/17]. This provision permits SEAs to grant LEA requests for waivers if none of the providers on the state approved list make services available within a reasonable distance of the LEA and the LEA provides evidence that it is not able to provide the services. We are concerned that in practice it will undermine both LEA and SEA obligations in securing adequate providers – far easier to grant a waiver than to work to secure them.
 - d. *Subject areas.* At least to the extent that science and other core subject areas are used as additional indicators of progress, there should be some provision for supplemental services for students who need it in those subjects. (Arguably, the trigger should go beyond that to include students not on a path to proficiency in core subjects that the state has determined all students should master – since that is a more accurate measure of the students’ need, regardless of whether it is used to determine AYP.) Since quantitative and language arts skills can be brought to other subjects, it is also worth exploring whether there may be a way to encourage supplemental services that combine standards-relevant subject matter content with building language arts and math skills.
10. *School Redesign – Subsections (h) [226 - 230]*
- a. *Overall.* Our overall comments on this subsection are embodied in our discussion of the framework for section 1116, in items 1. and 2. above. Beyond that, we have a few additional specific comments.
 - b. *Parent involvement in the redesign.* Subsection (h)(1)(D) [226/20-23] requires the LEA to establish a process by which local stakeholders are provided adequate opportunity to participate in the development of a plan for implementation of the design. For parents, though, this needs to be done in a manner consistent with the provisions for the LEA’s parent involvement policy, under section 1118(a)(2), that must be jointly developed with and approved by the parents, and that must

describe how parents will be involved in the school review and improvement process under 1116. Thus, the process the LEA's process for stakeholder participation under this paragraph, as it applies to parents, cannot be unilaterally established by the LEA but must be developed with the parents as required under section 1118. But without appropriate cross-referencing, those parent involvement provisions will often be ignored.

- c. *Trigger for, and elements of, High-Priority redesign.* [(h)(1)-(3), 226/3 - 228/4]. As indicated in our overall framework, we would not trigger imposed changes, such as change of governance, leadership, or staff, based solely on lack of AYP, without first examining how the school has fulfilled its responsibilities both for development and implementation of core program plans and components under section 1114 (and 1118) and improvement plans under section 1116 and concluding that, without such interventions, the programmatic changes needed to achieve the desired outcomes are unlikely.¹⁵ Paragraphs (3)(A), (B), and (C) certainly involve that level of change in governance, staff, or administration, and thus the trigger for them in our view needs to be reconciled with the framework we describe, for determining both the failure to adequately carry out required programmatic obligations and the appropriateness of these particular forms of change as the means for addressing the problems. [The last redesign option for the LEA in paragraph (3), namely, (D), requiring the school to enter into a contract with a nonprofit entity with demonstrated expertise and effectiveness in whole school reform, does not appear to require the same magnitude of change in governance, staff, or administration (unlike paragraph (C), where the contracted intermediary must be given the authority to administer the school), but the anticipated range of relationships and roles for this nonprofit entity, and what the actual redesign will include, is not described.]
- d. *Limiting the number of schools designated for High-Priority Redesign.* [(h)(6), 229/22 - 230/7]. We question the appropriateness of allowing the LEA to limit the number of schools designated to the lesser of 10% or 50 schools, independent of the determined need for redesign (and subject to our overall comments about the criteria for both the trigger and the determination of the specific intervention needs). For example, no matter how great the need in 2 or more schools, an LEA with as many as 19 schools could, at its sole discretion, limit the designation to only 1 school. We note, however, that there is a paragraph (7), titled "Special Rule for High Priority Design Schools Exceeding 10 Percent Cap," but for which the text has not yet been drafted, so perhaps the Committee has similar concerns.
- e. *Status of a High Priority School After Redesign* [(h)(8), 229/10-16]. The appropriateness of this provision, treating a "redesigned" school as a new school for purposes of section 1116, depends on the extent to which the change elements selected in paragraph (3), discussed above, actually make it a new school in substance. It is not clear that option (3)(D) above, contracting with a non-profit with expertise in whole-school reform, necessarily creates in substance a new school (and perhaps to a lesser extent, questions could be raised about the others, such as *any* change in leadership or staff), so we believe that this provision needs further thought in conjunction with any changes or refinements in paragraph (3) itself.

11. *State Review and LEA Improvement* [(k), 231-

Many of our comments here parallel our comments above on school improvement.

- a. *Identification* [(k)(3), 232/4-11]. We do not support the addition of the limitation on identification for improvement only if the lack of adequate yearly progress over two years is for the same group in the same subject matter. See comment to section (d)(1) above.
- b. *Consultation* (k)(7)(B) [234/13 - 235/6]. Parallel to our comments on consultation on the school improvement plan above [in (b)(2), 173/9 - 174/7],

¹⁵And as indicated, on the other hand, we would not, in the face of that determination, withhold such interventions simply because the problems were only harming selected subgroups.

- i. We support the language ensuring that the parents include those of students in groups that did not make AYP [(k)(7)(B)(ii), 234/18-20]; but the paragraph should be amended to add, “consistent with the agency’s parent involvement policy under section 1118(a)(2)(A).” This link needs to be made because that portion of section 1118 requires that the LEA parent involvement policy (which is jointly developed with and approved by the parents) spell out *how* the LEA will involve in the school review and improvement process in section 1116.
 - ii. The consultation provisions for school improvement, in (b)(2) above, include secondary school students, but they are not included here. They should be included in LEA improvement as well.
- c. *Content of plan* [(k)(7)(C), 235/7 - 243/2]
- i. We support the inclusion, in paragraph (ii)(III) [236/8-23], of analysis of the core instructional practices at the schools that have caused the achievement differences. It should include, however, a connection to the needs analysis and school program plans that are focused on those practices under section 1114 [and 1115] – see discussion of our overall improvement framework for highlighting and tying these together.
 - ii. There should be parallel provisions for analyzing and improving various LEA functions – including standards development, elaboration, and/or dissemination; curriculum development; instructional staff recruitment, selection, allocation, retention, evaluation, and professional development; rule- and policy-making processes; school program evaluation; monitoring and enforcement; systems for addressing special needs; student assessment; etc. – in terms of the extent to which those functions foster or frustrate the school-level provision of the elements of quality education (under sections 1114, 1115, and 1118) that in turn affect student achievement.
 - iii. We support the focus in paragraph (ii)(VIII) on analyzing the current strategies for parent and community involvement in the schools. [241/1-9.]
 - (1) As with other provisions on parent involvement in section 1116, there should be specific cross-referencing to the applicable provisions of section 1118.
 - (2) This should also be extended to analysis of student involvement.
- d. *SEA Responsibility* [(k)(9), 246/8 - 250/5]
- i. We support the technical assistance provision in paragraph (B) [247/1-6] for addressing any problems in implementing the *parent involvement and professional development* activities in sections 1118 and 1119.
 - ii. *Required measures* [(k)(9)(C), 247/7 - 249/2]. Regarding the provisions for deferring program funds, reducing administrative funds, instituting a state curriculum, and replacing LEA personnel, establishing alternative governance and supervision, or appointing a receiver or trustee – here based on continued lack of AYP alone – see our comments concerning rethinking the overall improvement and intervention framework (in 2. above) and on the High Priority Redesign provisions.
 - iii. *Student transfer* [(k)(9)(C)(vi). This provision is specifically addressed in our comments on student transfer above, at _____.
- e. *State system of LEA improvement and assistance* [(k)(11), 250/13-19] [TBD]

Parental Involvement [Primarily Sec. 1118,]

The core of the parent involvement provisions of the Act is, we believe, quite strong. The main problem is the widespread failure to understand and implement them. So while we propose some language to clarify certain provisions, our main concern is with strengthening district, state, and federal responsibilities to make sure that the school-level provisions are carried out as they should be.

1. *Planning the joint development of the parent involvement policy.* The discussion draft amends Sec. 1118(a)(2) [269/19-24] to provide that the LEA “shall develop jointly with, agree on with, and distribute to, parents of participating children a written parent involvement policy, *with parents having a role in the planning process.*” The first part of this provision, and its counterpart in the school-level subsection, are structurally the most important provisions of the entire parent involvement section, since they structure *how* all the other parent involvement provisions are to be implemented – in accordance with a policy that is jointly developed with, and approved by, the parents. The discussion draft’s addition, it appears, speaks to a critical but unaddressed question – who at the front end designs the process by which the parents and the LEA (or school) jointly develop the policy and by which the parents approve it? – and to ensure that the “who” includes parents. We believe, however, that the language needs to be clarified and strengthened in order to work properly.
 - a. First, we believe it will not be clear to many that this is what it is addressing. It could instead be seriously misinterpreted either as somehow explicating what joint development and approval means (i.e., it’s joint and approved if the parents have “a role”) or as saying who should be involved in joint development and approval (i.e., it only need be those who had a role in planning it).
 - b. Second, even when correctly interpreted – to mean that parents must be involved in figuring out how joint development, approval, and dissemination will occur – it needs to be strengthened. Otherwise, “a role” could permit a principal to come up on his/her own with a very weak process for developing and approving the policy and then run it by a handful of parents (who may not understand what is required, may not feel in a position to provide more than limited “advice,” and may in any event be disregarded).
 - c. Thus, on lines 23-24, we recommend replacing “, with parents having a role in the planning process” with the following sentence: “The process for jointly developing the policy shall be planned by the LEA in partnership with parents, including any existing parent leadership and other interested parents representing the full diversity of parents, in a manner sufficient to ensure that the planning participants fully understand the task, the law, and other background information and are able to agree on a process that will result in fully joint development of, fully informed approval of, and effective distribution to all parents of, the policy.”
 - d. Finally, the same issue needs to be addressed for the school-level parent involvement policy in (b)(1) [273]. That parallel provision lacks the same draft language to ensure that parents participate in planning the process by which the policy will be jointly developed. It should be added there [at line 18], with the amendment suggested in the paragraph above.
2. *Parent, student, and public involvement at the state level.* [Section 1111.]
 - a. The issue of parent involvement in key Title I decisions at the state level has typically received very little attention in past reauthorizations. More attention to it would help boost the effectiveness of, and support for, those decisions, including the decisions incorporated into the state plan. On the related, but separate issue of public hearings on the state plan (and one should not be reduced to the other), hearings have not always been satisfactory – in terms of, for example, too little time, with too little advance information, and too little real consideration of comments, often over issues which then (for lack of adequate consideration) continue to bedevil the implementation of the program).

- b. On state-level parent involvement, there has been a general requirement that the State plan be developed “in consultation with” a range of parties (LEAs, teachers principals, etc.), including parents. The draft adds students to this provision, a change which we strongly support. [Sec. 1111(a)(1)(A), 21/21.] Just as requirements for “consultation” at the local level, without more (the formulation in the 1981 law, necessarily expanded in 1994), were not adequate to secure the benefits of real parent involvement, they are not adequate at the state level. Thus, we propose provisions for the state to develop procedures for parent and secondary student involvement in significant state-level program decisions, developed with parents, students, and organizations representing them, and addressing certain key dimensions of effective involvement. Here is a draft of suggested language:

“For any state desiring to receive a grant under this part, activities carried out by the State education agency shall be planned, implemented, and evaluated with full and informed involvement of parents and secondary school students. The State shall develop, disseminate, and implement procedures to ensure such involvement. Such procedures shall:

- i. Be developed in full partnership with a broad range of parents, secondary school students, and organizations representing parents and students, including students with disabilities and English language learners;
- ii. Be published in draft form, with adequate notice, dissemination, and opportunity for comments, which shall be reviewed and considered through the process described in paragraph i. before final approval;
- iii. Apply to program activities, policies, and other decisions by the State education agency which significantly affect children served under this program and their parents, including but not limited to the State plan under this section, improvement and assistance activities under sections 1116 and 1117, and teacher and paraprofessional qualifications under section 1119;
- iv. Provide access to these opportunities for involvement to all parents of students eligible for or participating in programs under this part and all secondary students eligible for or participating in such programs;
- v. Address in terms specific and comprehensive enough to ensure their effectiveness,---
 - (1) the nature and scope of the participation in decision-making;
 - (2) representation in numbers sufficient to play a meaningful role in decisions;
 - (3) parent and student selection of their own representatives;
 - (4) opportunities for ongoing communication by those representatives with the parents and students they represent;
 - (5) full inclusion of students, and their parents, have disabilities or are English language learners;
 - (6) decision-making methods that ensure that the programs have the active and informed support of, and reflect the needs articulated by, such parents and students;
 - (7) provision of all information and assistance needed to be effective participants;
- vi. Be included in the State plan under this section¹⁶, except that such procedures shall be developed in advance of the remainder of such plan and shall be followed in developing the other components of the plan;
- vii. Include provisions for annual review, with full involvement of parents, students, and organizations representing them, of the effectiveness of these procedures, which shall then be used as appropriate to amend and improve the procedures, through a process consistent with paragraph i.”

- c. While states typically hold at least one public hearing on their state plan, the Act makes no reference to them.¹⁷ They often occur in a manner that is inadequate in the task – for example,

¹⁶Assuming that this provision is included in section 1111.

¹⁷They needed to be treated separately from parent involvement, because they are both broader (in allowing others, beyond parents and school staff, to comment) and narrower (in providing only for comment on the plan, as

with little notice and sometimes as little as a single day's opportunity to review the draft plan before commenting. To be meaningful, language on this issue should provide for comment during at least two stages – early on, when there is still some considerable openness in approaches to developing the plan, and after a draft has been formulated, when there is something concrete for reactions; and should ensure adequate opportunity for comment in terms of the adequacy of the dissemination of notice, access to relevant information, sufficient time to review that information and prepare comment, and adequate opportunity (in person or in writing) to present the comments. We suggest the following draft language [added to Section 1111(a), p. 21-22]:

“() The State board shall conduct public hearings in the State, after appropriate notice sufficient to reach and inform all segments of the public and interested organizations and groups, for the purpose of affording all such parties an opportunity to present their views and make recommendations regarding the State plan at the hearings and through written submissions. A summary of such recommendations and the State board's response shall be included with the State plan. Such hearings shall be held both for purposes of initial input into the plan prior to drafting and for purposes of reviewing and commenting on a draft plan. Notice shall include notice of, and facilitate access to, relevant documents, including (in the case of initial input) program assessments and evaluations, student assessment data, and other documents that may be used in drafting the plan and (in the case of commenting on a draft plan) the draft, and shall provide sufficient time for review of such documents before the hearing.”

3. *Strengthening the LEA role in making the school-level parent involvement provisions work.* Probably the biggest gap that still remains at the LEA level is making sure the LEA has an effective, focused strategy for ensuring understanding, capacity, and compliance regarding the school-level requirements in each school. Few schools have the kind of parent involvement policies in place that the law envisions – jointly developed with and approved by the parents and spelling out in real terms how the parents and school will jointly develop the school plan under section 1114 for providing the requirements of a high-quality education – because few LEAs provide the kind of accurate information, useful assistance, and thorough monitoring to facilitate this.¹⁸ Without that kind of LEA focus, schools generally don't even understand these key requirements, let alone implement them, non-compliance becomes the unwitting norm rather than the exception, and parents who try to make the provisions work at their own school find themselves in a very unsupportive context. This could take the form of a requirement, in section (a)(2) to describe:

“a comprehensive and detailed strategy for ensuring that each participating school and its parents are effectively developing and implementing each of the requirements of the school parental policy under subsection (b) and have the capacity needed to effectively do so, with particular attention to full and adequate implementation of the requirements for:

“(i) joint development with, and approval by, the parents of the school of the school's parent involvement policy, under paragraph (b)(1);”

“(ii) joint development of the school's program plan under section 1114(b)(2) [and section 1115(),¹⁹ as required by paragraph (c)(3);

“(iii) those other provisions of subsections (c)-(e) that help build the parents' capacity to function effectively as full and informed partners in the joint development and approval roles identified by paragraphs (i) and (ii) as well as in the other parent involvement roles identified in this section.”

4. *The draft's other additions to the LEA parent involvement policy.* [(a)(2)(B)-(M) 270/8 - 272/17]

opposed to ongoing, deeper involvement).

¹⁸And in turn, too few States provide the same kind of support to ensure LEAs do this, and too little is done by USED at the top of the chain. Both these levels are addressed elsewhere.

¹⁹Assuming that, as we recommend, section 1115 is amended to require a jointly developed program plan parallel to the one in section 1114.

- a. (a)(2)(L) – “[E]stablish how the [LEA] educational agency will receive and process comments from parents and parent groups on their school’s parent involvement policy.” This is a useful addition, consistent with our overall concern on getting the LEA more focused on proper development and implementation of the school level processes for developing and implementing the schools’ parent involvement policy. We suggest two changes, however:
- i. First, we have some concern that the language may inadvertently reinforce the erroneous notion that in the end the school develops the parent involvement policy and parents are then free to comment to the LEA if they don’t like it, undercutting the core provision in subsection (b)(1) for the school’s parent involvement policy to be jointly developed with and approved by the parents of the school.²⁰ One approach to avoiding that misinterpretation, while highlighting the key provisions, would be to add at the end of the provision [272/18] “, including comments about the adequacy of the process for joint development and approval of the policy under paragraph (b)(1) and its effectiveness in structuring the joint development of a fully adequate school plan under section 1114 [and 1115²¹]”.
 - ii. Change “receive and process” to “seek, receive, and process” – so that the LEA affirmatively solicits parent comments.
- b. (a)(2)(M), “detail how each school plans to increase community involvement, including both in-school and out-of-school activities.” [272/15-17]. We are not sure what the draft envisions being submitted for this paragraph. It might end up being, at best, a summary of what’s in the individual school parent involvement policies. The provision should probably be clarified, including its intended relationship to what the school and parents jointly develop and agree upon under subsection (b), which requires the school’s parent involvement policy to describe the means for carrying out the various school level parent involvement responsibilities under subsections (c)-(f).
- c. *Sentence structure for new paragraphs (a)(2)(J)-(M).* [272/1-17] The sentence structure for these new paragraphs is somewhat confusing in relation to the lead-in paragraph (2), which requires the plan to “describe how the agency will” do the things in the subparagraph. As written here, that means in each of these paragraphs, the policy will describe how the LEA will describe (or “detail”) something, as opposed to how it will do something. To the extent that this reflects a recognition by the Committee that some detail is necessary (and often lacking) in the descriptions included in the policy, we recommend instead that the overall lead paragraph 2 should be amended to read “describe in detail”, with changes as necessary to the beginning of (J)-(M).
5. (a)(3)(B) *Reservation of funds for parent involvement.* [273/3-7] While this provision of current law properly provides for parent involvement in decisions regarding how the parent involvement funds are allotted for parent involvement activities, that provision needs to be strengthened, by connecting it to the overall planning decisions about LEA and school-level parent involvement under subsections (a) and (b). This could be done by:
- a. After “involved” [in line 5] inserting “, consistent with the parent involvement policies under paragraphs (a)(2) and (b)(1),”;
 - b. Adding to (a)(2) [page 272, after line 17] a new paragraph: “(N) how parents will be fully involved in decisions about how to allot funds reserved under paragraph (3) for the activities described in this paragraph” [i.e., paragraph (a)(2)] – to address LEA-level activities; and
 - c. In paragraph (b)(1), after “subsections (c) through (f)” [page 273, line 18] inserting “, including how funds will be allotted for carrying out those requirements” – to address school-level activities.

²⁰We have a similar concern about the potential for inadvertent misinterpretation of the current law provision for parents to comment to the SEA if they are not satisfied with the LEA’s section 1112 plan. Section 1118(b)(4) [274/10-15], discussed below.

²¹Assuming that, as we recommend, section 1115 is amended to require a jointly developed program plan parallel to the one in section 1114.

6. *(b)(3) and (c)(3) Use of existing parent involvement policy and processes.* [274 and 275] There are two provisions in existing law allowing the use of existing policies and processes that have troubling implications, are confusing and unnecessary, and should be deleted.
- a. First, paragraph (b)(3) allows the LEA to use, with amendments if necessary, an existing “school local educational agencywide parental involvement policy that applies to all parents” as the school level policy required by subsection (b). This could be read (erroneously or not) to permit the LEA to usurp what is properly a school-level decision. It cannot, as such, be squared with the requirement in (b)(1) that the school parent involvement policy be developed jointly with and approved by the parents of the school. Assuming that, to the contrary, that requirement continues to have vitality, then the school and parents would be free in any event to use portions of such an existing policy if they deem it appropriate in meeting the requirements of (b)-(f). The inclusion of this paragraph is unnecessary for that purpose (raising even more pointedly what its purpose is, if not short-circuiting the process otherwise required). And indeed we would discourage its presence even for purposes of highlighting the possibility of this borrowing, because we believe it feeds a tendency to go through a pro forma process in developing a policy through a process that is truly participatory, thoughtful, and effective in meeting the particular needs of the school. Thus, paragraph (b)(3) should be deleted.
 - b. Second, paragraph (c)(3), the key provision requiring parent involvement in the planning, review, and improvement of programs, including the parent involvement policy and joint development of the schoolwide program plan under section 1114, allows the school to use an existing parent involvement process “if such process includes an adequate representation of parents of participating children.” Similarly to the provision above, the ability to use an existing process so long as it meets, and is adopted consistently with, the provisions of section 1118 already exists without such an “except” clause. So the purpose of adding it is unclear and raises the possibility that it allows the school to rely on that process without meeting all those requirements, including the requirement that the shape of this process must be determined through joint development and parent approval of the parent involvement policy under (c)(1). If this exception remains, it should be clarified by adding at the end of the provision [275/16] “and meets all the requirements of this section”
7. *(b)(4) Parent comments on unsatisfactory LEA program plan.* [274/10-15]. This provision of existing law requires the LEA to submit to the SEA any comments on the section 1112 LEA program plan if it is not satisfactory to the parents of participating children. While parent perspective on the adequacy of the LEA program plan is a very important focus, we have a concern here, similar to that expressed concerning (a)(2)(L), that it may implicitly undercut the requirement that the LEA’s program plan should have been jointly developed with the parents, through a process jointly developed with and approved by the parents as part of the LEA parent involvement policy (rather than just the subject of parent comments). As with (a)(2)(L) we suggest that the best way to reduce that concern is to insert at the end of the provision [274/15] “, including comments about the adequacy of the process under paragraph (a)(2)(A) for jointly developing the plan with parents.”
- a. In addition, this paragraph should be moved. It’s about parent comment on the LEA program plan, but it appears in the section on the school-level parent involvement policy. So it would seem to fit better somewhere in section (a), which deals with LEA-level involvement.
8. *(c)(5) Parent comments on unsatisfactory schoolwide program plan.* [276/5-9]. This provision of existing law requires the school to submit any comments on the 1114(b)(2) schoolwide program plan to the LEA if it is not satisfactory to the parents of participating children. While parent perspective on the adequacy of the schoolwide program plan is a very important focus, we have a concern here, similar to that expressed concerning (a)(2)(L) and (b)(4) that it may implicitly undercut the requirement that the schoolwide program plan should have been jointly developed with the parents, through a process jointly developed with and approved by the parents as part of the school’s parent involvement policy (rather than just the subject of parent comments). As with those two other provisions, we suggest that the best way to reduce

that concern may be to insert at the end of the provision [275/9] “, including comments about the process under paragraph (c)(3) for jointly developing the schoolwide program plan.” [Combine the 3 provisions]

9. (e)(5) “*Multiple communication tools*” [279]. We support the significant addition to this provision for sending parent information through multiple communication tools, such as the internet and several others, to reach out to parents and inform them about their rights and responsibilities under the Act. It is a useful updating. 520-742-6000.
10. (f) *Accessibility* – “*to the extent practicable*” [281/7-16]
 - a. In this sentence, the words “to the extent practicable” appear twice. Delete the first “to the extent practicable” (modifying the requirement to provide full opportunities for participation of various groups of parents) [line 9]. The second “to the extent practicable” in the same sentence (modifying the sub-duty to provide information in a language such parents understand [line 15]) should be sufficient, and is consistent with the same modifier throughout the Act’s other references to understandable language.
 - b. Separately, and more generally, it would also be useful to change or clarify this second “to the extent practicable” here and throughout the Act. In the field, it is often viewed as making the provision optional – allowing these requirements to be ignored for the past 13 years (including the requirements to assess ELLs in the language most likely to yield accurate information, even for states with significant resources and large numbers of Spanish-language-origin students and parents); there should be a more rigorous standard, of having to do it if there's a way it can reasonably be done. This is actually more consistent with the real meaning of the word “practicable,” going all the way back to James Madison (I believe – I have it, check) in the Federalist Papers. One approach to reversing this dilution would be to change all the references to say “to the greatest extent practicable.”
11. (h) *SEA review of LEA parent involvement policies and practices* [282/3-6]. This provision of current law, which requires the SEA to review the LEA’s parent involvement policies and practices to determine if they meet the requirements of section 1118, should be strengthened, by:
 - a. After “policies and practices” [282/6], insert language such as “, including the practices used for parents to jointly develop and agree upon the parent involvement policies under subsections (a)(2) and (b)(1),”. This will help focus a portion of the review on a key part of the parent involvement structure. It dovetails with the new draft language concerning (a)(2), discussed above.
 - b. At the end of the provision [282/6], add a new sentence: “In conducting such review, the State educational agency shall consult with local parents with relevant information about the policies and practices.”
12. *Literacy training for parents* [multiple places]. There are a variety of places where there are references to parent involvement under section 1118, where “family literacy” or “parent literacy” is cited as the sole example. For example:
 - a. Section 1114(b)(1)(F) [156/13-15] requires schoolwide programs to have “strategies to increase parental involvement in accordance with section 1118, such as family literacy services.”
 - b. Section 1115(c)(1)(G) [167/15-18] requires targeted assistance schools to “provide strategies to increase parental involvement in accordance with section 1118, such as Even Start and other family literacy services.”
 - c. See also Section 1118(a)(3) [272/23, reservation of funds for parent involvement], (e)(2) [278/18-19, parent materials and training].

We by no means wish to downplay the significance of family literacy, as an end in itself and in facilitating

parents' ability to then become involved. But though it may help pave the way for parent involvement, it is not in itself indicative of the kinds of involvement called for under section 1118. In fact, we believe that Section 1118(e)(7) has it right in permitting the use of Title I funds to "provide *necessary* literacy training . . . if the local educational agency has exhausted all other reasonably available sources of funding for such training" [280/1-4, emphasis added] – i.e., Title I should not be viewed as the primary funding source for family literacy training, given all the other parent involvement tasks that must be accomplished. This useful provision thus further highlights the extent to which using family literacy programs as the key exemplar of parent involvement activities under Title I is misleading, posing another, if relatively small, barrier to understanding the parent involvement requirements of the Act. We therefore suggest deleting these references where family literacy is cited as the sole or leading "such as" example of parent involvement.

13. *Student involvement* - [tbd]
14. *New grant program to facilitate parent involvement* [tbd]
15. *PIRCS* [tbd]

Qualifications for Teachers and Paraprofessionals

[We address here the provisions on teacher qualification that appear in Title I. Additional commentary will be found in our comments to other parts of the Act – Title II and the definitions in Title IX. As noted below, we do address here the obviously important interactions between the provisions in Title I and the Title IX definition of “highly qualified teachers” under section 9101(23).]

1. *Capturing the skills and knowledge teachers need.* Our biggest concern in this area is that the definition of “highly qualified” – focused on whether the teacher is certified in the subject s/he is teaching, etc. – while getting at issues of significance, nevertheless generally does not begin to capture the nature and range of skills and knowledge that actually make a teacher well qualified (let alone highly qualified) to enable all the students s/he is teaching to reach proficient and advanced levels of mastery. Indeed it is fair to say that most students who are not being taught well enough to attain those levels are taught by teachers who are certified and meet the Act’s definition of highly qualified. While state pre-service programs and certification processes are a work in progress, and there may come a day when being certified in field actually does uniformly assure those necessary skills and knowledge,²² that progress is slow and uneven, and that day is a long way off. In the meantime, the Act’s provisions on teacher qualifications need to recognize that reality and to focus on those qualities in other ways.
 - a. While there are a variety of possible approaches to changing the definition in section 9101(23) – both by changing the label (since the term “highly” qualified has always been a misnomer, even under the most generous interpretation of the defined components) and by seeking to inject more of the actual teaching qualities needed into the definition – our focus here is on the provisions in Title I, Part A, and the need for provisions that push and assist states, districts, schools, and communities to work together to ensure that all students have teachers with the qualities, skills, and knowledge necessary to enable them to achieve at those high levels.
 - b. Structurally, there are different ways to approach the Title I, Part A provisions in these terms, depending upon what if anything happens to the definition:
 - i. If both the definition and the definitional label of “highly qualified” remain relatively unchanged in section 9101(23), continue to use the term for those provisions of Title I where something relatively quantifiable (e.g., for reporting purposes) is necessary, but replace or supplement the reference with other language in those Title I provisions where other, more qualitative language regarding teacher qualities, skills, and knowledge would be meaningful (for example, in the school-level planning provisions of section 1114);
 - ii. If the definition remains relatively unchanged, but the term is changed – for example to “qualified” or “in-field” or “credentialed in-field” – then selectively change the references in Title I, by changing the language to match the new, more realistic term in those provisions of Title I for which that less ambitious (but, as with current law, less than fully adequate) measure is appropriate (again, for example, those provisions, such as ones requiring reporting, that depend upon easily quantifiable data), while leaving in place the term “highly qualified” in other places (which would then not link to the definition), supplemented by more qualitative language in those places where it would be meaningful (e.g., again in school-level planning requirements);
 - iii. If the definition of “highly qualified” were entirely revamped to fully incorporate the necessary skills and knowledge, then it would not be necessary to change any of the

²²Certification by the National Board of Professional Teaching Standards is an example of a certification process that at least arguably makes a serious effort to get at the skills and knowledge that would make a teacher highly qualified to enable all his/her students to attain proficient and advanced levels of mastery. While there are certainly active debates about how well it actually does so, it is a process that has been intensively structured around that aim, and the debates themselves indicate the kind of rigorous and lively deliberation and critique that should go into developing a system that would accomplish that aim. -35-

provisions in Title I that refer to that term.

- c. In any of these cases, the aim in revising Title I needs to be to allow, require, and enable states, districts, and school communities to focus on those qualities that are not currently satisfied by being certified in field. There are a few places in current or draft provisions of Title I where the language begins to move in this direction by adding some language beyond highly qualified – for example provisions for LEAs and high-need schools to pursue and retain “high quality, highly qualified teachers” [Sec. 1112(b)(1)(R) and 1114(b)(1)(E), 126/1-5 and 156/9-12]; or, more pointedly, requiring school and LEA assistance and improvement plans to look at whether students who are not proficient are assigned to “teachers who are highly-qualified and who are best equipped to help them attain proficiency” [Sec. 1116(b)(3)(B)(i) and (k)(7)(C)(ii)(I), 176/14-25 and 237/12-25]. But these phrases will not, by themselves and in the face of the other provisions, be sufficient to systematically shift attention beyond the question of certification.
- d. At the top of the list for places where this qualitative focus is needed is the schoolwide planning under Section 1114, where there needs to be serious deliberation about the extent to which every teacher are well qualified in terms of having the full range of skills and knowledge needed to enable all the children in his/her class to attain proficient and advanced levels of mastery, and how to close any gaps in those skills and knowledge. Under the current requirement, in section 1114(b)(1)(C), requiring instruction by “highly qualified teacher,” and requiring the plan to describe how it will be provided [155/24-25]. The necessary deliberation is brought to an abrupt halt, before even considering what those skills and knowledge are, by the conversation-stopper of pointing to the certificate on the wall.
 - i. Thus (and, again, absent a major change in the definition of “highly qualified”), the provision needs to be changed by either replacing or supplementing “highly qualified” with language along the lines of all teachers “have the full range of knowledge and skills needed to enable each child in their classroom to reach proficient and advanced levels of mastery of the standards addressed by their courses”.²³
- e. Similar language should be added or substituted in other Title I provisions currently referring to highly qualified teachers, including:
 - i. Targeted Assistance Schools - Sec. 1115(c)(1)(E) [167/3-4];²⁴
 - ii. The state plan, Sec. 1111(b)(11)(C) [86/5-18]²⁵
 - iii. The LEA plan –
 - (1) Sec. 1112(b)(1)(R) [126/1-5];²⁶ amd
 - (2) Sec. 1112(c)(1)(M) [130/14-20];²⁷
 - iv. Fund allocation – Sec. 113(c)(4) [148 - 149/6]²⁸

²³If this is supplementary language that leaves the “highly qualified” provision in place, then the new language could read “and have the full . . .”. If it replaced the “highly qualified” provision, then it could read something like “are well qualified, in terms of having the full . . .”

²⁴This is the targeted assistance requirement for instruction by highly qualified teachers, parallel to the schoolwide program provision above.

²⁵Current provision provides for specific steps the SEA will take to ensure that Title I schools provide instruction by highly qualified instructional staff as required by 1114(b)(1)(C) and 1115(c)(1)(E), including steps SEA will take to ensure that poor and minority children are not taught at higher rates than others by inexperienced, unqualified, or out-of-field teachers, and the measures to evaluate and report progress with respect to those steps.

²⁶Current provision provides for actions LEA will pursue to get “high quality, highly qualified teachers” to take positions in, and remain in, Title I schools.

²⁷Current provision provides for professional development, recruitment programs, or other effective strategies, so that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of field, or inexperienced teachers;

²⁸Current provision allows for LEA reservation of Title II and subpart 2 funds to provide incentives and reward to teachers in schools identified for improvement. ~~96~~redesign for purposes of attracting and retaining

- v. Schoolwide plans, Sec. 1114(b)(1)(E) [156/9-12];²⁹
- vi. Improvement and assistance plans for:
 - (1) Schools, Sec. 1116(b)(3)(B)(i) [176/14-25];³⁰
 - (2) LEAs, Sec. 1116(k)(7)(C)(ii)(I) [237/12-25];³¹
- vii. Recognition awards – 1117(b)(2)(C);³²
- viii. LEA requirement regarding qualifications of teachers – Sec. 1119(a)(1) [282/11-15];³³
- ix. State plan provisions for ensuring compliance with the teacher qualifications requirement – Sec. 1119(a)(2) and (a)(2)(A) and (C) [282/16-22, 282/23 - 283/2, and 283/8-10]³⁴
- x. Local plan – Sec. 1119(a)(3) [283/15-21].³⁵

2. *Section 1111(h)(5)(A) – Parents’ right to know the qualifications of their children’s teachers* [109-110]

Current law requires the LEA to notify the parents that they may request, and the LEA will provide on request, the cited information on their teachers’ professional qualifications. However, parents should receive this information as a matter of course, *without having to ask for it*. [This could be accomplished either by sending the information (rather than the notice) directly or by notifying parents of the information being posted on a publicly available web site.] Lay people commonly find it very uncomfortable to ask professionals individually to document their credentials. This is likely to be even truer (a) among the most economically disadvantaged parents and (b) in those schools where the need for this information is particularly acute because of poor student performance and where parental fears about standing out by making such a request may also be particularly acute.

- a. Thus, on page 109, line 21, replace “notify” with “provide”; delete the text beginning with “that the” on page 109, line 23, through “manner),” on page 110 line 1; and before “information” on page 110 line 1, insert “, in a timely manner, with”.

3. *Equal access for poor and minority students to high-quality teachers* [TBD]

Both the state plan, Sec. 1111(b)(11)(C) [86/5-18] and the LEA plan, Sec. 1112(c)(1)(M) [130/14-20] require strategies to ensure that that low-income students and minority students are not taught at higher rates than other students by unqualified, out-of field, or inexperienced teachers. In both provisions, we propose two changes:

“qualified and effective teachers”.

²⁹Current provision provides for actions to attract and retain “high quality highly qualified teachers” to high need schools. As with the similar SEA provision above, language of the kind suggested should be added to give some meaning to “high quality.”

³⁰Noted above – review and analysis of current teacher assignments that include a review of “out-of-field teaching” and data from the LEA’s needs assessment under section 2222 to determine whether students who are not proficient are “assigned to teachers who are highly-qualified and who are best equipped to help them attain proficiency” and how changes to teacher assignments could address the causes for the school not making AYP. This language in the draft goes the furthest beyond the current “highly qualified” language. It could perhaps be improved the suggested language above – for example, after “equipped” by inserting “in terms of the full ,”. [See below for other suggestions for this provision.]

³¹Contains parallel language to that for the school improvement and assistance plans, above.

³²Current provision requires awardees to have made significant improvement on other meaningful data such as graduation rates and increased recruitment and placement of “high quality” teachers and principals.

³³LEA shall ensure that all teachers hired and teaching in a program supported with Title I funds are “highly qualified.”

³⁴State plan must include a plan to ensure its compliance with requirement that all teachers in core academic subjects be “highly qualified;” demonstrate how each LEA and school will ensure it; and meet the requirements of 1111(b)(11)(C) regarding equitable distribution of “high quality teachers.

³⁵Provision parallel to (a)(2) for all teachers within the district.

- a. As written, the law should apply to unequal distribution of teachers *within* schools as well as between schools. This is commonly not understood, however, and thus should be made explicit. This could be done by changing “other students” to “other students in their schools or to students in other schools.” (Also, it would help to add in 1112(c)(1)(M) other examples of strategies, since most of the ones here are designed only for dealing with unequal distribution across schools.
 - b. Note overall comment about getting beyond the HQT definition. The language here does that somewhat – by referring to “unqualified, out-of-field, or inexperienced” teachers. It should be changed further, however, along the lines discussed above. If not, a minimum we suggest changing “unqualified” to “less qualified”.
4. 1114(b)(1)(E) – *Strategies to attract and retain “high quality highly qualified teachers” to high need schools*

The draft adds “, to the extent that school officials have authority over teacher recruitment and hiring.” This provision, at least in current form, should be deleted. First, the main clause includes strategies to *retain* such teachers, which isn’t dependent on recruitment and hiring. Second, even the “attract” part isn’t totally dependent on formal authority over recruitment and hiring; without needing the new clause, the school’s strategies or actions for attracting such teachers will of course need to take into account the extent of authority, but should never be entirely absent.