

reporting on

RACE, EDUCATION &

NO CHILD LEFT BEHIND



a guide for **journalists**

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NO CHILD LEFT BEHIND (NCLB) AND ACCOUNTABILITY

NCLB requires states to intervene in underperforming schools with a series of escalating responses, including: (1) technical assistance to develop school plans; (2) providing the option to transfer to better performing schools; (3) offering supplemental services such as tutoring to low-income students; and (4) a variety of governance restructuring options including turning a school over to private management, creating a public charter, or state takeover. Meanwhile, as the law is commonly understood and as it is being implemented, states' responsibility to provide the essential elements of a quality education has received considerably less attention.

WILL NCLB INTERVENTIONS INCREASE EDUCATIONAL OPPORTUNITIES FOR STUDENTS OF COLOR?

Consequences for underperforming schools are commonly viewed as punitive—grounded in a belief that applying more political pressure on low-income schools and districts, ones with weak structures and supports, will result in meaningful educational improvement. For children of color, who are more likely to attend under-resourced and underperforming schools, these consequences can exacerbate existing racial inequities.

DOES THE LAW PROVIDE OPPORTUNITIES TO ADDRESS RACIAL DISPARITIES IN EDUCATION OUTCOMES?

It is possible within the law to shift some attention to existing inequities and to think about adequate yearly progress and school identification very differently. States can hold on to a rigorous and consistent definition of "adequate yearly progress" for all students and subgroups, while changing the meaning and consequences of finding a lack of progress. A system of responses tailored more explicitly to the nature and extent of the problem, while relying more on encouraging continuous improvement and less on stigma and fear of sanctions, could improve student performance and insure that no students languish in ineffective programs.



ACCOUNTABILITY ⁷

THE NO CHILD LEFT BEHIND ACT (NCLB) has brought new attention to the academic achievement of children of color and low-income students. NCLB is grounded in the following premises: (1) all children can learn at a high level; (2) the achievement gap between children of color and white children (as well as between rich and poor) is not acceptable; and (3) the educational system must be held accountable for closing this gap and providing all children with the education they need to achieve at high levels. The law holds states accountable by mandating that they provide students with the elements of a quality education and intervene in schools where students do not meet state achievement goals.

As the law is commonly understood, and as it is being implemented, only the second component of this accountability system—intervention in underperforming schools—is receiving any attention. States have begun to impose new federally mandated consequences on schools that fail to demonstrate student progress without insuring that all schools have the wherewithal to provide the essential elements of a quality education. Thus, the impact of the law on educational opportunities for students of color will depend largely on the criteria for and the outcomes of these interventions.

The Nuts and Bolts of Accountability: NCLB amended Title I of the Elementary and Secondary Education Act (ESEA), the largest federal education program. In 2003, Title I granted \$11.7 billion in federal funds to schools that serve low-income children, reaching a total of 12 million children, 64 percent of whom are students of color, in about 48,000 schools.⁸ It also sets out a basic

framework meant to insure that students achieve state standards for what all children should learn. Title I requires each state to develop:

- Challenging standards for what all students should know and be able to do;⁹
- A system of assessing whether every student has reached “proficiency” in those standards;¹⁰
- Report cards and other public reporting of school data and assessment results, disaggregated by race, economic disadvantage, disability, migrant status, and English proficiency;
- A system of interventions when student achievement is deemed inadequate, a provision of NCLB.

Interventions begin when individual schools, school districts, or the state as a whole fail to make “adequate yearly progress” (AYP), which is the degree of improvement required to enable all students in each school’s key subgroups—each racial and ethnic group, low-income students, students with disabilities, and students with limited English proficiency, as well as the entire student body—to reach a proficient or advanced level by the year 2014-2015.¹¹ Three stages of regulations apply to schools that fail to make AYP. A school where students as a whole or any of the subgroups fail to make AYP for two years in a

Interventions into underperforming schools are grounded in a belief that simply applying more political pressure on low-income schools and districts will result in meaningful improvements.

row will be considered “in improvement” and must develop and implement a school improvement plan, with the involvement of parents and technical assistance from the district and/or state. The district must also allow students to transfer to other public schools that are making adequate yearly progress and must provide transportation to those schools. If, after one year of being “in improvement,” the school is still not making sufficient progress, parents of low-income students remaining in the school must also be offered the option to obtain additional services—such as tutoring—from public or private providers.

Schools that fail to meet their targets after two years “in improvement” are subject to “corrective action,” which includes a revised improvement plan, continued technical assistance, and continued parental options for transfer and supplemental services. Corrective action also requires at least one of the following interventions:

- Replacement of school staff
- Full implementation of a new curriculum, with appropriate professional development
- Significant decrease in the school’s management authority
- Appointment of an outside expert to advise the school on its progress
- Extension of the school year or school day
- A restructured internal organization

Finally, schools that are still behind after one full year of “corrective action” are subject to “restructuring.” In this stage, the district must reopen the school as a public charter school, replace all or most of the school staff (which may include the principal), contract with a private management company to operate the school, turn the school’s operation over to the state, or engage in any other fundamental restructuring of governance. Districts as a whole are subject to parallel accountability and intervention provisions.

Consequences for Children of Color: These interventions into underperforming schools are commonly viewed as punitive—grounded in a belief that simply applying more political pressure on low-income schools and districts, ones with weak structures and supports, will result in meaningful improvements. Not surprisingly, these interventions have serious implications for under-resourced schools where students of color are concentrated. Understanding these implications will require a closer look at each of the interventions.

School Improvement Plans

Schools that are “in improvement” or in the “corrective action” stage must develop school improvement plans. Developing improvement plans should provide an opportunity to address specific problem areas and to engage parents more intensely with the school. Increased parent involvement has been shown to directly increase student achievement for all students,¹² and especially for African American children.¹³ However, school plans have often been seen as merely a bureaucratic mandate fulfilled by administrators and rarely become a meaningful collaborative process involving students, parents, teachers, and other community members. Too often, parents don’t feel welcome in their children’s schools, and this perception grows when parents’ racial, cultural, linguistic, or class backgrounds differ from school staff.¹⁴ If the development of school improvement plans excludes parents of color, students of color are likely to continue to be left behind.

Technical Assistance and Resources

It is also important to consider the resources and technical assistance that states provide to schools and districts identified as needing improvement or corrective action. Since the 1994 version of Title I, schools identified as underperforming have often not received meaningful and effective help despite district and state obligations to provide it.¹⁵ In fact, many schools identified as underperforming have not received any help at all. Under NCLB, many more schools will fall into this category. Yet technical assistance, provided by consultants and other education professionals, may be needed to illuminate some of the significant adjustments that schools need to make to meet Title I proficiency standards. Many of these schools will need major changes in instruction, teacher quality, and resources for stu-

The capacity and political will for diminishing public school inequities are in question considering that many states are reducing public education spending due to severe budget deficits.

dents. To the extent that technical assistance exposes resource inequities—such as the fact that students of color are 1.7 times more likely than white students to be in overcrowded schools¹⁶—it remains the responsibility of states to create the educational conditions that will improve student achievement in underperforming and under-resourced schools. Considering that many states are reducing public education spending due to severe budget deficits, the capacity and political will for diminishing public school inequities are in question.

Transfer Options and Supplemental Services

The options to transfer to a “better” performing school or to receive supplemental services outside of regular school hours are based on the premise that students should not languish in inadequate programs. Significant questions remain, however, about the effectiveness of these options. Students of color and low-income students are often concentrated in overcrowded urban districts, where neighboring schools have little room to accept transfer students. In districts with few other schools that are making adequate progress or schools that present barriers such as restrictive admissions requirements, children with the greatest need may not benefit at all. Meanwhile, access to supplemental services and transfer options will depend upon families getting enough information and assistance to select, negotiate, and monitor those services.¹⁷ For students with limited English proficiency and students with

disabilities, this requires additional resources and attention. Department of Education guidelines have significant potential for civil rights violations—both by allowing religiously affiliated service providers to exclude some students and by indicating that districts and states may provide some students with a constricted range of transfer and supplemental service choices.

The focus on helping students transfer may also have an impact on the resources of a school and school district. Schools that lose students to the transfer option will typically no longer receive the state and local money attached to those students' enrollment. Meanwhile, districts must use Title I money to pay for the transportation costs of students who choose to transfer, and for supplemental services for students below a certain income threshold. The financial impact will depend on how many students choose these options, but will to a greater or lesser extent diminish resources for the school's core academic program.

Restructuring and For-Profit Management

The third “restructuring” stage includes options for intervention that allow schools to be turned over to private management. Limited experiments with for-profit managers of public schools have mixed results in terms of their ability to improve student performance and to insure adequate resources for a quality education.¹⁸ Questions of discrimination also arise. For example, Edison Schools, Inc., the nation's largest for-profit manager of public schools, has been accused of purposefully excluding students of color.¹⁹ The U.S. Department of Education's interpretation of NCLB also opens the doors for privatization of mandatory supplemental services, without guaranteeing that these providers are accountable to the same civil rights laws that

There are grave implications for students of color who may be denied access to private schools and remain trapped in public schools that have even fewer resources.

govern public schools. In particular, under the Department's interpretation, religiously affiliated providers would be exempt from civil rights obligations. Meanwhile, it is possible that voucher advocates will make the failure of NCLB to improve public education highly visible, further shifting the focus from public schools to private options. This shift has potentially grave implications for students of color, who may be denied access to private schools and remain trapped in public schools that have even fewer resources. On the other hand, parents have not rushed to use the transfer option, even to public schools with a documented record of higher achievement, which may

weaken the case for vouchers.²⁰ All these issues must be watched closely as the law approaches full implementation.

Unanticipated Consequences

Another reality of the NCLB accountability system is that some schools, districts, and states seek out short-term but counterproductive escape hatches—such as lowering the definition of “proficient,” not counting certain children in determining school performance, or substituting test preparation for deeper mastery of the standards.²¹ “Teaching to the test” is a particular hazard in under-resourced schools, where more students are in jeopardy of failure. Meanwhile, students of color may be more vulnerable to being “pushed out” through grade retention, tracking into alternative programs, or discipline policies, all of which have negative consequences for educational attainment and life outcomes. When schools, districts, and states respond with such short-term strategies, the quality of education for many students of color and low-income students suffers.

Rethinking Progress and Accountability: The common understanding of these consequences—and thus the way they are likely to be implemented—are punitive and stigmatizing, and have the potential to exacerbate existing racial inequities in public schools. But it is also possible within the law to shift some attention to preexisting inequities and to think about adequate yearly progress and school identification very differently. States can hold on to a rigorous and consistent definition of “adequate yearly progress” for all students and subgroups, while changing the meaning and consequences of finding a lack of progress. A system of responses tailored more explicitly to the nature and extent of the problem, while relying more on encouraging continuous improvement and less on stigma and fear of sanctions, could improve student performance and insure that NCLB attains its stated goals.

The problem is not with the Act’s focus on student progress but rather with how the system responds when gaps in such progress are identified.

Such a system of accountability would monitor students on their path toward mastery of challenging standards. When students are not on such a path, effective intervention is necessary. This is true regardless of whether the lack of progress is found in a single student, a single subject area, a population subgroup, or an entire school. From this vantage point, the problem is not with the Act’s focus on student progress but rather with how the system responds when gaps in such progress are identified. Rather than labeling some schools “good”

and some “bad,” the system must acknowledge that in varying degrees virtually every school needs to do some things differently if all its students are to become able to meet higher standards. Schools must work to become successful learning communities that take responsibility for themselves and the achievement of their students, identify weaknesses, respond with well-designed improvements, and then provide further supports if those interventions are not successful.

The ability of schools to reach this standard depends first on having the skills, resources, and dedication to provide the essential elements of a quality education. Some key provisions of pre-NCLB regulations address the baseline of what schools need to provide so that all students can achieve at high levels. These mandates can be the basis for effectively challenging the punitive aspects of NCLB. Since 1994, Title I has required schools to provide students with

- An accelerated, enriched curriculum aligned with the standards.
- Effective instruction from highly qualified teachers, who are receiving intensive, ongoing, high-quality staff development.
- Timely, effective assistance whenever an individual student is experiencing difficulty mastering any of the standards.

Parent and community involvement should play a central role in guaranteeing that these provisions are being met. Since 1994, the law has required schools to work with parents to develop an educational program,²² mandating that

- The school’s educational plan—spelling out *how* it will provide the required elements of a quality and effective curriculum, instruction, staffing, staff development, and individual assistance—must be developed *jointly* with the parents of the school and be based on a comprehensive needs assessment. This assessment should provide an opportunity for parents, teachers, and administrators to identify critical resource inequities that challenge many overcrowded and underperforming schools where students of color are concentrated.
- A parent involvement policy that is *jointly developed with and agreed upon* by the parents of the school must spell out how parents will be involved in developing the program plan for providing these quality elements. This agreed-upon policy must also detail how parents will receive accessible information, training, and other assistance needed to understand the law, monitor their children’s performance, and participate effectively.

The state shares responsibility for insuring local compliance with these Title I provisions on program quality and parent involvement. Moreover, Title I law requires the state's plan to spell out *how* it will help each district and school develop the capacity to comply with these quality provisions—enriched curriculum, qualified teachers and teacher training, and individualized assistance.²³ Yet despite these requirements of the law, and the primary role of states in funding and administering public education, the political will to provide the necessary resources for schools to put these elements into effect is still missing.

As any frustrated parent, good school administrator, or education advocate knows, meaningful parental involvement doesn't happen with the wave of a magic wand. Successful engagement of parents often requires separate, dedicated staff supported by adequate resources, skills, and knowledge of the community. To be successful, this process must overcome barriers of culture, language, and discrimination that often alienate parents of color from the school community. Supporters of NCLB often assume that data provided to parents and the public through report cards and other means will itself stimulate schools to improve and empower parents and the public to push for improvement.

NCLB provisions should be matched with the obligations that states, districts, and schools have under Title VI of the Civil Rights Act of 1964 to identify sources of racial disparities.

But achievement data is insufficient without the ability to analyze the quality of the school's educational inputs (curriculum, teacher quality, facilities and materials, intervention services, etc.) and understand how they could be improved. While the school improvement plan required of schools that are "in improvement" is supposed to be based on a needs assessment, it's likely that this assessment may incorporate little beyond test results. Youth, parents, and communities will be better equipped to effectively organize and hold schools, districts, and states accountable to Title I provisions if they have access to other information, such as data from the U.S. Office for Civil Rights Elementary and Secondary school survey forms. These surveys provide information on indicators such as special education, ability grouping, magnet schools or programs, and data on corporal punishment, suspension, high school diplomas, and certificates of attendance or completion. Similarly, the NCLB provisions should be matched with the obligations that states, districts, and schools have under Title VI of the Civil Rights Act of 1964 to identify sources of racial disparities in educational achievements and to take effective steps to eliminate those disparities.

The full implementation of the Title I school-level provisions on program quality and parental involvement would go a long way towards guaranteeing a high-quality education for students of color and low-income students. Yet, few parents know about these provisions, which also remain poorly understood by many schools. To help leverage Title I provisions, three important needs related to inequities in power and resources must be addressed:

- State, federal, and district agencies must provide parents and students with adequate information, training, governance information, and advocacy assistance.
- A system of independent monitoring and enforcement of the process and implementation requirements should be in place.
- Schools and parents must articulate and demand the resources necessary for implementing the essential elements of a quality education.

Conclusion: NCLB could fall short of its intended purpose or even make some matters worse in a number of very troubling ways, some of which are already realities. When a law is passed with the stated intent of benefiting underprivileged groups, the same political or economic inequalities that disadvantage them in the first place typically make them least able to influence the way the law is implemented to insure that it benefits them. While the law is far from perfect, the path to averting or combating most of these negative possibilities is found in the words of the law itself. If the nation's leaders are serious about leaving no child behind, then they must redirect the focus of accountability to one that proactively addresses the systemic issues of racial disparities and resource inequities that plague the nation's public schools. ●

REPORTER QUESTIONS ON ACCOUNTABILITY

1. During any stage of action (improvement, corrective, or restructuring), what is being done to address capacity limitations or resource inequities that a school or district may face?
2. Do schools create and implement clear and effective plans, as required by Title I, for how they will provide the high-quality curriculum, instruction, and individual assistance students need to attain proficiency on high standards? What are states doing to assist and monitor schools' efforts to meet those obligations?
3. Are low-income parents and parents of color empowered and engaged in these planning processes at the level required in the law—as real, informed partners in jointly developing the programs for providing high-quality education?

7. A lengthier piece on this issue of accountability in Title I is available from the Center for Law and Education at <http://www.cleweb.org/>.
8. Office of the Under Secretary, Planning and Evaluation Service. (1999). *Promising results, continuing challenges: The final report of the National Assessment of Title I*. Washington, DC: U.S. Department of Education.
9. States already have standards for reading/language arts and math, based on requirements of the 1994 law; they must add standards for science by 2005–2006.
10. For discussion, please see the chapter on testing.
11. States may average up to three years of achievement results to minimize the effect of statistical aberrations that may occur in a single year of data, particularly in individual schools.
12. Sixty-six separate studies all concluded that student achievement is directly related to the duration and intensity of parent involvement. *Connecting families to schools: Why parent and community engagement improves school and student performance*. New York: National Center for Schools and Communities, Fordham University.
13. *Ibid.*
14. *Ibid.*
15. Office of the Under Secretary, Planning and Evaluation Service. (2001, January). *High standards for all students: A report from the National Assessment of Title I on Progress and Challenges Since the 1994 Reauthorization*, p. 27. Retrieved from <http://www.ed.gov/offices/OUS/PES/finalNATlreport.pdf>.
16. National Center for Education Statistics, (2001, May 31). *The condition of education (NCES 2001072)*, Washington, D.C.: U.S. Department of Education.
17. In New York City, for example, the school system maintained that notices of availability of services were sent, while parents asserted they never received them and described other problems in accessing and evaluating tutoring options. Goodnough, A. (2002, November) *Reporting on Race, Education, & NCLB* | 78
- 15). Free tutoring fails to draw many students. *New York Times*. Retrieved from <http://www.nytimes.com>.
18. While the data and interpretation are mixed, research on student achievement at schools run by Edison Schools, Inc., the nation's largest for-profit manager of public schools, has not demonstrated consistent improvement beyond the levels of other schools with similar demographic characteristics. The company has also suffered financial woes, which may jeopardize the long-term stability of schools that they operate. Howard, N.F. & Van Meter, N. (2003). *Update on school achievement for Edison Schools, Inc.* Washington, DC: American Federation of Teachers.
19. President of the San Francisco Board of Education Jill Wynn said that students at Edison Schools, Inc. had been "cancelled"—either they did not apply or had been taken out—and most of those students were African American. U.S. education provider racist. (2001, July 4). *BBC News Online*.
20. See Schemo, D.J. (2002, August 28). Few exercise new right to leave failing schools. *New York Times*. Retrieved from <http://www.nytimes.com/>; Center on Education Policy (2003, January). *From the capitol to the classroom: State and federal efforts to implement the No Child Left Behind Act*, p. 64. For more on limited slots, see also Banchemo, S. & Martinez, M. (2002, August 28). Federal school reform stumbles: Confusion reigns over choice plan. *Chicago Tribune*. Retrieved from <http://www.chicagotribune.com>.
21. These reactions and responses are also aggravated by the heavy reliance in many states (encouraged by both the rhetoric and the regulations of the federal government) on a single, norm-referenced test (or a nominally "criterion-referenced" one that is derived from norm-referenced testing) to make decisions about whether students are proficient. This is in apparent disregard of NCLB's requirements that the decision be based on multiple measures of achievement and produce valid and reliable information about students' proficiencies in the knowledge and skills identified in the state's standards. See the chapter on testing.
22. Parallel provisions for planning and parental involvement exist at the district level as well.
23. See the chapter on teacher quality.