

## Introduction: No Child Left Behind Testing and Sanctions Provisions

No Child Left Behind (NCLB), the 2001 reauthorization of the federal Elementary and Secondary Education Act (ESEA), includes requirements for state-level testing, mandates for schools and districts to demonstrate “adequate yearly progress” (AYP), and sanctions to be imposed for failure to make AYP. The provisions are in Title I, the section of the law intended to improve education for “disadvantaged” children.

### Testing

Under NCLB, each state is required to immediately adopt content and performance standards in both reading and math, with assessments based on these standards. Science requirements will be added later this decade. Standards and tests must establish three levels of academic performance — advanced, proficient, and basic.

Currently, states must assess every student in reading and math at least once in grades 3-5, 6-9 and 10-12. By the 2005-06 academic year, states must assess each child every year in grades 3-8 and once in grades 10-12 in math and reading. By 2007-08, states must add an annual science assessment in the three grade spans.

NCLB permits state assessment systems that are a mix of state-mandated exams and local assessments, but almost every state is relying solely on state tests. While tests are supposed to be based on state-approved standards, U.S. Department of Education regulations allow the use of commercial norm-referenced tests, which may not be standards-based.

The law requires all assessments to be valid and reliable for the purposes for which they are used and “involve multiple, up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills.” The assessments also must “produce individual student interpretive, descriptive, and diagnostic reports...that allow parents, teachers and principals to understand and address the specific needs of students.”

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Testing accommodations and alternative assessments must be available for students with disabilities. Limited English proficient students are to be assessed “where possible” in “language and form most likely to yield accurate data” on student achievement, until they reach proficiency in English; and to be assessed annually for English proficiency if not yet proficient.

### Accountability and “Adequate Yearly Progress” (AYP)

States must have a “single statewide accountability system” to ensure that districts and schools make “adequate yearly progress” (AYP). The accountability process began with data from the 2001-02 school year, except for schools that were already under improvement or correction status. Within 12 years (by 2014), all students are supposed to attain the proficient level on the state assessments in reading and math. “All students” is defined to exclude those with severe special needs and those who have not been in U.S. schools for three years and who have limited English proficient status.

A school or district can fail to make AYP if a sufficient percentage of all its students or its students in a defined group – low-income, limited English proficient, racial/ethnic minority (African American, Hispanic, Asian, Native American Indian), or students with disabilities – do not reach the proficient level in either math or reading, or if it does not test 95 percent of its students in any category. To be separately counted as a group, there must be enough students to measure reliably. States have set those minimum “cell” levels as low as five students, but most are around 30 (see Chart I-1 at the end of Chapter I).

States determine their starting points based on formulas in the law. The gap between the percentage of students who are at the starting point and 100 percent proficient must be closed by an average of 1/12 per year. For example, if the state’s starting point is 40 percent, then the number of students at the proficient level must increase by an average of 5 percentage points per year.

A state can use multiyear averages to set AYP goals. If it does, the first proficiency target must be in two years, and subsequent targets must be set at intervals of no more than three years. States can start with a slow rate of increase and speed up toward the end; some states

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expect to make about half their required progress in the last few years leading up to 2014. States also can apply more complex formulas to define rates of progress.

Some schools will start out with a smaller percentage of proficient students than the overall state starting point. Those schools must catch up and make AYP. However, there is a “safe harbor” provision in the law. Schools that don’t make AYP but reduce the percentage of students not reaching proficient by at least 10 percent can avoid sanctions under this provision.

## Sanctions

While all schools in a state must report test results, only schools receiving NCLB Title I funds are subject to sanctions. (Nationally, 95 percent of school districts and 50 percent of schools get Title I funds.) Districts will “identify for school improvement” any school receiving federal Title I funds that fails for two consecutive years to make AYP, and states will similarly identify districts. An identified school (or district) must craft an improvement plan listing “specific, measurable objectives” for ensuring all students in each group make AYP.

Students at schools so identified will be eligible to transfer to another public school in the district that is not “in need of improvement” (INOI). This can be another school with similar scores that does not receive Title I money.

If a school does not make AYP after one year under its improvement plan, the district must make tutoring available. This can include parent choice among district-approved private companies or public schools that are not INOI. Districts are required to spend up to 20 percent of their Title I funds for transportation or tutoring programs.

If after the second year of the improvement plan the school or district is not making AYP, it will be identified for “corrective action.” The identified school or district must implement options from a list specified in the law. If after one full year of corrective action a school or district still does not make AYP, it must undergo “restructuring.”

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At the school level, “restructuring” is to include at least one of the following changes in governance:

- Reopen the school as a “public charter school”
- Replace “all or most of the school staff”
- Enter into a contract “with an entity, such as a private management company...to operate the school”
- Turn “the operation of the school over to the state” or
- “Any other major restructuring of the school’s governance arrangement that makes fundamental reform.”

States are to apply a similar list of sanctions to failing districts.

If a school (or district) identified for improvement, corrective action, or restructuring makes AYP for two consecutive school years, requirements for improvement are suspended.

## References

NCLB law, regulations, guidance and promotional materials are online at <http://www.ed.gov/policy/landing.jhtml?src=ln>.

FairTest fact sheets, articles and links to reports on NCLB are at <http://www.fairtest.org/nattest/bushtest.html>.