

I

D

E

A



N C L B

*The Intersection of
Access and Outcomes*

A Joint Project of the NEA and NASDSE
Providing Policy Guidance to State Leadership



Great Public Schools for Every Child

The Intersection of IDEA and NCLB

November 2004

National Education Association

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

NEA Executive Officers

Reg Weaver, President
Dennis Van Roekel, Vice President
Lilly Eskleson, Secretary-Treasurer

NEA Executive Staff

John I. Wilson, Executive Director

The National Association of State Directors of Special Education

The National Association of State Directors of Special Education (NASDSE) is a not-for-profit organization established in 1938 to promote and support education programs and related services for children and youth with disabilities in the United States and outlying areas. NASDSE accomplishes its goals by establishing and maintaining relations between those responsible for the development of statewide and federal special education programs and those responsible for general curriculum planning at the local, state, and national levels. NASDSE activities are designed to provide professional support to its members and others interested in special education.

NASDSE Board of Directors

Doug Cox, *President*
Alice Parker, *Past President*
Mike Armstrong, *President-Elect*
Jacquelyn Thompson, *Secretary-Treasurer*
Marcia Harding, *Member-at-Large*
Susan DuRant, *Member-at-Large*
Michelle Powers, *Member-at-Large*
Mabrey Whetstone, *Member-at-Large*

NASDSE Executive Staff

Bill East, *Executive Director*
Nancy Reder, *Deputy Executive Director*

Acknowledgements: Our appreciation is extended to the following individuals for their invaluable contributions: Nancy Reder, Stephanie Fanjul, Eileen Ahearn, Tina Clay, Catherine Rawson and Bronna Zlochiver.

Reproduction: No part of this document may be reproduced in any form without written permission from NEA, except by NEA affiliated associations and members and NASDSE affiliates and members. Any reproduction of the document's contents must include the usual credit line and copyright notice. Address inquiries to: NEA, Attn: Patti Ralabate, 1201 16th St., N.W., Washington, DC 20036-3290 or NASDSE, Attn: Beth Foley, 1800 Diagonal Rd., Ste. #320, Alexandria, VA 22314.

Published November 2004

Copyright © November 2004 by the National Education Association
All Rights Reserved.

ISBN: 0-8106-2023-5

Presidents' Letter

November 2004

Dear Colleagues:

Shortly after No Child Left Behind Act (NCLB) passed in December 2001, reauthorizing the Elementary and Secondary Education Act (ESEA), the National Education Association (NEA) and the National Association of State Directors of Special Education (NASDSE) formed a partnership to assist educators and state and local officials in making sense of the challenging provisions of IDEA and Title I of NCLB.

States have been working diligently to align IDEA and NCLB and educators have been stepping up to the challenge to close the achievement gap. However, NEA and NASDSE recognize that states still need guidance to make sound decisions about providing access, supporting improved outcomes, and ensuring that students with disabilities have the opportunity to reach their highest potential.

IDEA and NCLB: Intersection of Access and Outcomes is intended to inform teachers and local and state officials on how the provisions of IDEA relate to those of NCLB, how these statutes address key issues for students with disabilities, and what implications states and local districts must consider to effectively implement both federal laws. First published in May 2003 as *IDEA and ESEA: Intersection of Access and Outcomes*, this new edition has been updated to include federal regulations and policy guidance issued over the past one and one-half years by the U.S. Department of Education.

NEA and NASDSE welcome the opportunity to join forces. Now, more than ever before, it is critical to address the achievement of students with disabilities and integrally link their success with the success of every school and, ultimately, every state in the nation. Our mission is crystal clear: We must make all schools great places to learn for *every* child.

Sincerely,



Reg Weaver
President
National Education Association



Doug Cox
President
National Association of State
Directors of Special Education

IDEA and NCLB: Intersection of Access and Outcomes

Table of Contents

Introduction	1
Section I: Assessing Students with Disabilities (Title I)	5
• Statute Descriptions – NCLB and IDEA	5
• Key Issues for Students with Disabilities	5
• Assessment Timelines	5
• Section 504	6
• Reporting Requirements	6
• Participation in NCLB Assessments	6
• NCLB Assessments with Accommodations	7
• Modifications in NCLB Assessments	8
• Alternate Assessments and NCLB Guidance/Regulations	8
• Alternate Assessments	8
• Alternate Achievement Standards	8
• Out of Level Testing under NCLB	9
• Implications for States and Local Districts	9
• Guidelines for Students with Disabilities	9
• Professional Development for General and Special Educators	9
• Alternate Assessments	10
• Alternate Achievement Standards	10
Section II: Accountability and Adequate Yearly Progress (AYP) (Title I)	11
• Statute Descriptions – NCLB and IDEA	11
• Proficiency Level	11
• Baseline for Calculating AYP	11
• Minimum “N”	11
• Increasing Student Expectations	11
• Safe Harbor Provision	12
• Additional Academic Indicator	12
• Key Issues for Students with Disabilities	13
• Achievement Objectives for Students with Disabilities	13
• Dissaggregation of Test Scores	13
• Reporting of Test Scores	13
• Reporting of Alternate Assessment Scores	13
• Special Considerations for Charter Schools	13
• Implications for States and Local Districts	14

Section III: School Choice and Supplemental Services (Title I)	15
• Statute Descriptions – NCLB and IDEA	15
• Key Issues for Students with Disabilities	16
• Who’s Affected?	16
• Role of the IEP Team	16
• Who Decides?	16
• Change of Placement	16
• Intradistrict and Interdistrict Transfers	16
• Supplemental Services	17
• Implications for States and Local Districts	17
Section IV: Highly Qualified Teachers (Title I and Title II)	19
• Statute Descriptions – NCLB and IDEA	20
• Key Issues for Students with Disabilities	20
• Core Academic Subjects	20
• Pupil Services Personnel	21
• Implications for States and Local Districts	21
Section V: Paraprofessionals (Title I)	23
• Statute Descriptions – NCLB and IDEA	24
• Key Issues for Students with Disabilities	24
• Paraprofessional Qualifications	24
• Paraprofessional Duties	25
• Implications for States and Local Districts	25
Section VI: Reading First Programs (Title I and Title II)	27
• Statute Descriptions – NCLB and IDEA	27
• Key Issues for Students with Disabilities	28
• Implications for States and Local Districts	29
Resources	31
“No Child Left Behind” Act Legislation, Regulations and Policy Guidance	32
Website Resources	35
Table of Contents for NCLB and IDEA	36
Appendices	41
Appendix I: Highly Qualified Teacher Requirements	42
Appendix II: NCLB Requirements for Paraprofessionals	45

Introduction

Soon after the federal policymakers crafted what is now known as the Individuals with Disabilities Education Act (IDEA) in 1975, its impact was felt in every school district in the country. Its effect was trumped however, on January 8, 2002, as President Bush signed into law the reauthorization of the Elementary and Secondary Education Act (ESEA), known officially as the No Child Left Behind Act of 2001 (NCLB). The most sweeping reform since the law was first enacted in 1965, NCLB redefines the federal role in K-12 education and seeks to close the achievement gap between children who live in poverty and their peers.

Our Purpose

Both IDEA and NCLB have a multitude of requirements and expectations for states and school districts. The National Association of State Directors of Special Education (NASDSE) and the National Education Association (NEA) have joined together to produce *IDEA and NCLB: Intersection of Access and Outcomes* to provide guidance to state and school district leaders, and educators who will be responsible for the implementation of both laws.

This guide is intended to serve many purposes, including:

- clarifying which provisions of NCLB reference IDEA and impact the education of students with disabilities;

- raising key issues that need to be considered regarding the intersection of IDEA and NCLB;
- exploring how NCLB may affect IDEA's reauthorization.

What is the Individuals with Disabilities Education Act (IDEA)?

As a result of the passage in 1975 of *P.L. 94-142 (Education for All Handicapped Children Act)*, the original federal special education law, all children with disabilities in this country were guaranteed the right to a free and appropriate public education (FAPE) in the least restrictive environment (LRE). By the late 1990s, when Congress revisited how educational programs would be provided to students with disabilities, there was a major shift in emphasis across

the country. Research showed that, for the most part, students with disabilities performed better with access to the general education curriculum and lawmakers wanted these students to be given appropriate access.

Under the reauthorized federal special education law (**P.L. 105-17**), now known as the *Individuals with Disabilities Education Act (IDEA '97)*, educators must first consider providing services to students with disabilities within the general education environment. Second, performance standards for students with disabilities must align with the state or local standards that apply to all students.

In addition, many national leaders felt that the expectations for students with disabilities were not commensurate with those for nondisabled students. Some believed that students who were academically behind were actually held to lower standards and instructed in a “watered-down” curriculum. When Congress passed IDEA '97, lawmakers decided it was time to include students with disabilities in the standards-based reform movement. This is one of the reasons why IDEA '97 mandated that students with disabilities must have access to, participate in, and progress in the general education curriculum.

Furthermore, IDEA '97 stated that students with disabilities must be included in state- and district-wide assessments. Lawmakers wanted to measure whether or not students with disabilities were achieving at higher levels and how well they were progressing in the general education curriculum.

What is the Elementary and Secondary Education Act?

The Elementary and Secondary Education Act (ESEA) authorizes and regulates the majority of federal K–12 education programs. In 1965, Congress first passed ESEA, the core of which was Title I, designed to improve achievement among poor and

disadvantaged students. Congress must reauthorize the law every five years and funds are allocated annually through the appropriation process.

Over the years, Congress has amended and added to the original law in order to raise standards, build in accountability and provide flexibility to schools and districts in the use of federal education dollars so that they can continue to help disadvantaged children.

The most recent reauthorization of the law contains many significant changes. It is based on four basic principles:

- stronger accountability for results
- increased flexibility and local control
- expanded options for parents
- an emphasis on teaching methods that have been proven to work

What's the difference between “NCLB” and “Title I?”

NCLB has had an immediate impact because it is far more specific than past versions of the law and it deals with testing, accountability and adequate yearly progress (AYP); school choice; teacher quality; and paraeducator quality. Although Title I is the largest single program within NCLB and the best known, it is only one of many programs. What makes NCLB different from earlier reauthorizations is that it impacts all schools and teachers, not just Title I schools.

NCLB is divided into 10 sections, or “titles.” The section that contains the provisions dealing specifically with “ensuring that all children have a fair, equal and significant opportunity to obtain a high quality education and reach proficiency on challenging state academic assessments...” is *Title I* of the statute.

Title I provides for the largest amount of funding,

authorizing the allocation of 18.5 billion dollars for Fiscal Year 2004 to school districts around the country. Other titles deal with issues such as teacher quality, charter schools, English acquisition, Indian education, safe and drug-free schools, parental choice and civil rights protections.

What are the NCLB issues of major concern to special education?

The five issues that present major concern to special educators are:

- assessments
- accountability (including adequate yearly progress)
- sanctions or interventions (including school choice, supplemental services, technical assistance and school improvement activities)
- teacher quality
- paraeducator quality

What's Ahead?

As this document is being prepared, Congress is addressing the reauthorization of IDEA. We anticipate that the implementation of NCLB will directly affect the decisions lawmakers make with respect to amendments to IDEA. This guide is intended to provide direction to state and local leaders as they strive to implement both NCLB and IDEA. At this writing, we recognize that the U.S. Department of Education (the Department) continues to issue policy guidance on selected sections of NCLB. Recognizing that policy guidance is subject to change, we have made some assumptions with guidance from the Department. Throughout this guide, the links to pertinent federal regulations and policy guidance are embedded in the appropriate sections. Also, the Resources section at the end of the guide includes links to all of the relevant federal regulations and policy guidance.

Section I: Assessing Students with Disabilities (Title I)

Although NCLB's far-reaching assessment provisions do not fully take effect until the 2006-07 school year, many states, districts, and schools have been working to implement them since the law was enacted in January 2002. This has been viewed as an evolutionary process. It should be noted that while IDEA required the inclusion of students with disabilities in assessments prior to NCLB, some states and districts are still scrambling to meet the new student assessment requirements. NCLB's provisions related to students with disabilities not only reference IDEA, but they also establish a precedent that will likely influence IDEA's reauthorization.

Statute Descriptions

The amount of student testing required by NCLB is unprecedented. Federal law has never before required testing this extensive: In 2005-06, every student—including students with disabilities—must be assessed in reading/language arts and mathematics every year in grades 3-8, and at least once in grades 9-10. In addition, beginning in 2007-08, all students must be assessed in science at least once in grades 3-5, 6-9, and 10-12.

Furthermore, NCLB requires states to use accommodations and alternate assessments as required by IDEA and, as needed, to ensure that students with disabilities participate fully in NCLB testing.

Key Issues for Students with Disabilities

Policymakers and educators who must implement NCLB should be conversant with the following issues related to the participation of students with disabilities in NCLB-required annual testing.

Assessment Timelines

Students with disabilities must participate in NCLB-required annual assessments in reading/language arts and mathematics: a) with appropriate accommodations or alternate assessments, as needed; and b) in the grade in which the students are enrolled. Students with disabilities also must participate in NCLB-required science assessments beginning in 2007-08.

NCLB says	IDEA says
Annual assessments in all grades tested must be administered with appropriate accommodations, guidelines and alternate assessments for all students covered by IDEA. Sec. 1111 (b)(3)(C)	Students with disabilities must be included in all state and local and assessments using appropriate accommodations or through alternate assessments. Sec. 612 (a)(17)

Section 504 of the Rehabilitation Act of 1973

All students on 504 plans also must receive assessment accommodations or alternate assessments needed to participate in NCLB’s assessments. It should be noted, however, that students on 504 plans are not considered a separate subgroup, nor are they referred to in legislation, regulation, or policy guidance as part of the students with disabilities subgroup.

Reporting Requirements

NCLB directs states to set annual achievement objectives for all students, including students with disabilities. As part of the law’s **Adequate Yearly Progress (AYP)** provisions, the objectives must establish annual performance targets for all students, including students with disabilities. By 2013-14, all students in a state – including students with disabilities – are expected to be proficient in reading and math as defined in each state’s plan. (See “Alternate Assessment and NCLB Guidance/Regulations” on page 8 for further clarification.)

Local and state agencies must report assessment results specifically for students with disabilities beginning in 2005-06. Such reporting, however, is only required if the number of students is large enough to be statistically reliable and ensure that individual students cannot be identified. Each state must determine the minimum number of students required in a subgroup for reporting and accounta-

bility purposes in their state plans. This is referred to as the “N” size. The “N” size varies considerably from state to state.

Participation in NCLB Assessments

Prior to 1997, many students with disabilities were often excluded from state-wide assessments. Although IDEA ’97 required that students with disabilities be included in state and local assessment systems, not all states complied. IDEA ’97 also required states to develop, by July 2000, alternate assessments for students who cannot be appropriately assessed using the regular assessments. Many states were slow to comply because of the inherent difficulties encountered in designing multiple alternate assessments.

Individualized Education Program (IEP) teams will determine how students with disabilities will participate in NCLB-required assessments. Students with disabilities may take: (1) regular grade-level assessments, (2) regular assessments with accommodations, (3) alternate assessments based on grade-level achievement standards, or (4) alternate assessments based on alternate achievement standards.

Many students with disabilities will participate in NCLB assessments with accommodations. Some will participate without accommodations, and a small percentage will require alternate assessments or alternate assessments based on alternate achievement standards.

Year	NCLB’s Assessment Requirements for Students with Disabilities
2005-06	Students with disabilities must participate in annual assessments in reading/language arts and mathematics in grades 3-8, and once in grades 9-12, with appropriate accommodations or alternate assessments, as needed, and in the grade level in which they are enrolled.
2007-08	Students with disabilities must participate in science assessments in the grade level in which they are enrolled (once in grades 3-5, 6-9, and 10-12) with appropriate accommodations or alternate assessments, as needed. Science assessments are not included in AYP calculations.

NCLB Assessments with Accommodations

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

Accommodations change how the testing environment is structured, how the test is presented, and/or how the student responds to test questions. States determine which accommodations are approved for their state assessments. Each student's IEP team then determines the appropriate accommodations for that student.

Accommodations used in assessing students should be the same accommodations that are used in instruction and consistent with the student's IEP. But the accommodations should not alter what the test measures or interfere with the ability to compare test results from students with disabilities with other students' test results. Accommodations should produce scores comparable to scores from regular assessments. If the accommodations invalidate the test score by changing what the test measures, the scores cannot be included for AYP purposes and the student would be reported as "not tested."

Some accommodations are likely to be more appropriate for NCLB assessments than others. Likewise, some states have approved lists of accommodations that may or may not include the following:

- **Environment or Setting** (e.g., administering the test in a separate, quieter room or in a study carrel to reduce distractions; securing the answer booklet to the desk)
- **Scheduling** (e.g., administering the test at specific times of the day or over several days; administering subtests or sections of

the test in a different order; allowing the student to take rest breaks during testing)

- **Presentation** (e.g., providing more time to take the test; allowing the use of large print or sign language; reading the test items aloud to the student; allowing the student to use a template to reduce the visible print on the page; providing prompts or cues that focus the student's attention)
- **Response Mode** (e.g., enlarging the bubble answer sheet; using a scribe to record the student's test answers)

Some state guidelines that pre-date NCLB list "standard" and "non-standard" accommodations. Standard accommodations do not make changes that significantly affect the validity of the test scores while non-standard accommodations alter the test or the testing situation to such an extent that the scores are not considered valid in comparison with the test scores of students who take the test without accommodations. States, working in conjunction with test developers, determine which accommodations are considered standard and which are non-standard. In order to ensure that tests provide a valid score under NCLB, states may limit, or perhaps eliminate, the use of non-standard accommodations.

Students with moderate to severe disabilities, sensory deficits (e.g., deafness, blindness) or more than one disability (e.g., deaf-blind) may need substantial accommodations to participate in NCLB-required assessments. For these students, some states may allow:

- **Adapted equipment** (e.g., a computerized device as a response mode, adaptive computer keyboards)
- **Adapted format** (e.g., Braille, fewer items per page for easier reading; modifying the response format from fill-in-the-blank to multiple choice items)

Modifications in NCLB Assessments

IDEA '97 regulations refer to the use of assessment “modifications.” Some states refer to modifications as “non-standard” accommodations. Modifications, which include reducing the number of test questions or simplifying the content of a test, alter what a test is measuring. While modifications have been allowed for state assessments in the past, NCLB essentially discourages their use because the scores may not count. The goal is to have every student produce a valid score.

Alternate Assessments and NCLB Guidance/Regulations

NCLB uses the term “alternative assessments.” In this section, however, we will use the term “alternate assessments” since this is the terminology used in IDEA and in NCLB regulations. Alternate assessments under NCLB may be based on either grade level standards or alternate achievement standards. This was clarified by the final regulations issued by the Department in December 2003 (<http://www.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html>).

Alternate Assessments

If the student’s IEP team determines that the student is unable to participate in the standard assessments, even with accommodations, then the student must take an alternate assessment. In these cases, the IEP team must: a) document why the standard assessment is not appropriate for a student and b) describe how the student will be assessed using an approved alternate assessment.

Alternate assessments based on grade-level standards must evaluate progress toward the state standards in the same content areas as the NCLB-required assessments (i.e., reading, math, and science). Alternate assessments used by states in the past include:

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

Alternate Achievement Standards

Guidance from the Department for assessing students with disabilities has changed several times. In the final regulation issued in December 2003 (<http://www.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html>), the Department indicated that alternate assessments based on alternate achievement standards could be used only for those students with the most significant cognitive disabilities. Each state must define which students are included under “the most significant cognitive disabilities.” States are now permitted to include proficiency scores of students with significant cognitive disabilities on alternate assessments based on non-grade level or alternate achievement standards.

Typically, students who participate in alternate assessments based on alternate achievement standards meet two criteria. First, the students’ cognitive abilities and adaptive behaviors prevent them from attaining grade level proficiency in the general education curriculum, even with accommodations. Second, the course of study that the students pursue is primarily functional and life-skill oriented. The final regulations do not define a student with the most significant disabilities and that this paragraph is purely illustrative.

Students who do not meet the definition of a student with “the most significant cognitive disability” are not eligible for alternate assessments based on alternate achievement standards. Some of these students may not be appropriate candidates for regular assessments either, even with accommodations. Sometimes these students are referred to as “gap kids.” While a number of states have effectively addressed the assessment needs of these students, other states are still struggling.

There is no limit on the number of students with the most significant cognitive disabilities who can take alternate assessments based on alternate achievement standards; however, the number of proficient or advanced scores that are counted toward meeting AYP may not exceed 1 percent of all students in the district for the grades tested. This amounts to approximately 9 percent of all students with disabilities within the district. This 1 percent cap only applies to districts and states – not schools. See further discussion of the “1 percent rule” in Section II.

Earlier proposed regulations eliminated the use of instructional level, e.g., out-of-level tests, for students with disabilities for the purposes of AYP, and capped the inclusion in AYP of proficient scores of students with disabilities who took alternate assessments based on alternate achievement standards to 0.5 percent of all students. In a subsequent proposed regulation in March 2003, that cap was increased to 1 percent of all students. Unlike the final regulation, none of the previous Department policies clarified the meanings of alternate assessments, alternate assessments based upon alternate achievement standards, or instructional level/out of level testing.

Out-of-Level Testing Under NCLB

Instructional level testing or out-of-level testing is only allowed as an alternate assessment based on alternate achievement standards. As discussed above, states may use alternate assessments based on alter-

nate achievement standards for students with “the most significant cognitive disabilities.” The scores of these out-of-level assessments must be included in the 1% category. Since out-of-level tests are considered alternate assessments based on alternate achievement standards, they must be aligned to the content of the grade level in which the student is enrolled.

Implications for States and Local Districts

Meeting NCLB’s assessment provisions as they apply to all students – and students with disabilities – will challenge many states. Most states and local school districts have limited fiscal resources due to the current economic downturn and less personnel in state and local departments of education to implement the law. The law’s implications for states and districts include the following:

Guidelines for Students with Disabilities

States and districts need to:

- develop guidelines about the participation of students with disabilities in state assessments, if such guidelines are not in place;
- define the types of accommodations permitted for NCLB-required testing, if an approved list does not exist.

Professional Development for General and Special Educators

States and districts need to:

- provide professional development to make IEP team members aware of which assessment accommodations are allowed;
- provide general and special education personnel with training in how to appropriately use assessment accommodations so that test results for students with disabilities are not invalidated;

- ensure that all IEP team members, including parents, understand that students who take alternate assessments based on alternate achievement standards may not qualify for regular diplomas.

Alternate Assessments

States and districts need to:

- develop the alternate assessments NCLB requires, if they have not been developed previously;
- develop alternate assessments that do not put an unreasonable workload on schools and school staff;
- lessen workload burdens by revising proposed and/or approved alternate assessments, or adopting additional alternate assessments as options that are less labor-intensive to administer;
- recognize that the demands of high-stakes assessments may create unintended consequences for some students who have never been exposed to such anxiety-producing tasks;

- recognize that students who do not meet the definition of a student with a “the most significant cognitive disability” and are also not appropriate candidates for regular assessments, even with accommodations (“gap kids”), may require alternate assessments based on grade level standards;
- consider developing NCLB-assessments that are appropriate for “gap kids” based on grade level content achievement standards.

Alternate Achievement Standards

States and districts need to:

- devise and use a process for developing and validating alternate achievement standards in accordance with NCLB regulations;
- include general and special educators among the stakeholders who participate in standards development and validation.

Section II: Accountability and Adequate Yearly Progress (AYP) (Title I)

The provisions of NCLB that have caused the most controversy AND will most significantly affect schools and students with disabilities are the requirements related to accountability and “adequate yearly progress” (AYP). All states met the January 31, 2003, the deadline for submitting their proposed plans for AYP to the U.S. Department of Education (the Department). All of the state plans have been approved, some have been revised, and now the challenge for the states is to effectively implement those plans. Changes in assessment programs and support services at the school level are needed and will likely impact every school and nearly every school employee.

Statute Descriptions

In order to calculate AYP, states must disaggregate data by four student subgroups: economically disadvantaged, limited English proficiency (LEP), students with disabilities and students from major racial and ethnic groups. All student subgroups are expected to meet the same annual performance goals as all other students. At least 95 percent of students in each subgroup must take the assessments. A policy letter issued on May 19, 2004, by the Department clarifies the options for calculating participation rates. To review the policy document in its entirety see <http://www.ed.gov/policy/elsec/guid/stateletters/prates.html>.

NCLB defines specific AYP components that all states must address in their state plans. These are:

- **Proficiency Level** – Each state must set proficiency levels, which are the test scores that measure adequate performance on statewide tests in reading and math in grades 3 through 8 and at least once in high school. Science must be included by the 2007-08 school year.
- **Baseline for Calculating AYP** – Each state must set two starting points (i.e., one in reading and one in math). These are determined by selecting either the percentage of students in the lowest-achieving subgroup who score at the proficient levels, or the percentage of students who score at the 20th percentile on the reading and math assessments.
- **Minimum “N”** – States have set a minimum size for student subgroups for reporting purposes. Each state has determined a number that (1) would yield reliable data that can be compared from year to year; (2) is small enough to ensure that large numbers of students and schools are not excluded from accountability, and (3) ensures that individual students cannot be identified.
- **Increasing Student Expectations** – The percentage of students scoring at the profi-

cient level must improve incrementally (per the State plan) until 2013-2014 when ALL students are expected to be proficient.

- **Safe Harbor Provision** – Even if the subgroups fail to meet state-wide proficiency targets in reading and math, schools can make AYP if the percentage of students below proficiency in the subgroup decrease’s by at least 10 percent and that subgroup makes progress on the “additional academic indicator.” The safe harbor provision only applies to school level reporting.

- **Additional Academic Indicator** – Graduation rate is considered the “additional academic indicator” for secondary public schools. Most states set promotion or attendance rates as the “additional academic indicator” for elementary school students.

When schools meet these expectations, they are said to have met their AYP goals. Schools and districts that do not meet AYP are subject to sanctions or interventions that may include school choice, supplemental services, technical assistance and school

NCLB says	IDEA says
<p>State Plans and AYP</p> <p>The State (SEA) shall submit a plan that demonstrates that the state has adopted challenging academic content standards and challenging student academic achievement standards that apply to all schools and all children attending public schools in the state.</p> <p>Sec. 1111 (a)(2) (B)</p> <p>Academic Assessment and LEA and School Improvement</p> <p>The school district (LEA) shall use any academic assessments or any other academic indicators described in the plan to review annually the progress of each school to determine whether the school is making AYP as defined in Sec. 1111.</p> <p>Sec. 1116 (a)(1)(B)</p>	<p>There are no corresponding sections in IDEA regarding Adequate Yearly Progress (AYP) for students with disabilities.</p>
Policy Guidance	
<p>March 2, 2004 – Letter to Chief State School Officers Regarding Inclusion of Students with Disabilities in State Accountability Systems http://www.ed.gov/admins/lead/account/csso030204.html</p> <p>February 20, 2004 – Letter to Chief State School Officers on “No Child Left Behind” providing new guidance on addition flexibility concerning limited English proficient students</p> <p>http://www.ed.gov/news/pressreleases/2004/02/02192004.html</p> <p>http://www.ed.gov/policy/gen/guid/secletter/040220.html</p>	

improvement activities. States elect whether to apply sanctions to all schools or only those schools receiving Title I funds (see Section III for further discussion on sanctions).

Key Issues for Students with Disabilities

Achievement Objectives for Students with Disabilities

NCLB directs states to set annual achievement objectives for students with disabilities. As part of the law's AYP provisions, the objectives must establish annual performance targets for all students—and these targets must extend to students with disabilities. By 2013-14, all students—including students with disabilities—are expected to be proficient (as defined by each state) in reading and math.

Disaggregation of Test Scores

Scores on NCLB-required assessments must be disaggregated by specific subgroups, including students with disabilities at the school, district and state levels. However, disaggregation is not required when the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. This is referred to as the minimum “N” size. Some states chose to have a different “N” size for the students with disabilities and the limited English proficient subgroups. Some states choose to set a different “N” sizes for reporting and accountability purposes.

Reporting of Test Scores

The scores of students with disabilities on NCLB-required assessments must be included in the data used to determine if schools, districts, and states meet AYP targets. The law requires states to assess all students with disabilities, and it also requires them to

report test results for at least 95 percent of students with disabilities for calculating AYP. The remaining five percent allows for instances such as student absences. When determining the percentage of students taking an assessment, states do not have to include a student who misses the assessment as a result of a significant medical emergency. States are responsible for determining what constitutes a significant medical emergency. The state or school is prohibited from systematically excluding the scores of the lowest performing students or the lowest achieving subgroup.

Under new policy issued on March 29, 2004, (<http://www.ed.gov/news/pressreleases/2004/03/03292004.html>), a state may use data from the previous one or two years to average the participation rate for a school and/or subgroup. If this two- or three-year average meets or exceeds 95 percent, the school will meet this AYP requirement.

Reporting of Alternate Assessment Scores

If students with disabilities are assessed with alternate assessments based on alternate achievement standards, a district may only use (or “count”) the proficient or advanced scores of students that make up a total of no more than 1 percent of the overall student population in the grades tested. This represents about 9 percent of all students with disabilities. This 1 percent cap only applies to districts and states – not schools. States must determine how districts will distribute excess non-proficient scores to schools for school level AYP calculations.

Special Considerations for Charter Schools

Since charter schools are public entities authorized by state law, they are required to follow all federal laws, including NCLB, even if they receive waivers for some or all state or district requirements. Charter schools not designated or identified as LEAs

have to meet the highly qualified teacher standard under NCLB. Charter schools designated or identified as LEAs are held accountable under the provisions of NCLB in the same manner as any LEA. They must follow the state's approved accountability plan.

Implications for States and Local Districts

States and districts need to:

- establish annual achievement objectives and performance targets for students with disabilities according to the state's content and achievement standards and any alternate achievement standards that apply to specific groups of students with disabilities;
- include all students with disabilities in NCLB-required assessments and report and include for accountability purposes, test results for at least 95 percent of students when determining if a school, district, or the state has met its adequate yearly progress targets;
- make any changes that might be needed in delivering services to students with disabilities to ensure that they, like other students in the state, make adequate yearly progress toward meeting the state's definition of proficient performance in reading/language arts and mathematics by 2013-14. Science scores are reported but not counted for accountability purposes.

must be provided in the first school year that the school is identified for school improvement. This provision took effect in the fall of the 2002 school year. When a school is identified as a school in need of improvement, the district must provide a list of eligible schools that have not been identified as: (1) in need of improvement, (2) in corrective action, (3) restructuring, or (4) persistently dangerous.

When Title I schools have not made adequate yearly progress for three consecutive years, parents must be offered a list of approved supplemental educational service providers. These schools would already be in their second year of improvement and presumably making public school choice available as described above. The list of approved providers of supplemental services must be identified by the state and may include providers who are unable to provide accommodations.

Key Issues for Students with Disabilities

Who's affected?

States are required to have a system of sanctions and rewards for all schools in the state. While all public schools are required to make AYP, NCLB sanctions and interventions only apply to schools receiving Title I funds. In school-wide programs, as well as targeted assistance programs, all students in the school, not just those receiving Title I services, are eligible to transfer under the school choice provisions. It follows that only students with disabilities who attend Title I schools, will be eligible for school choice or supplemental service options.

Role of the IEP Team

Under IDEA, the IEP team has the responsibility to determine an appropriate placement in the least restrictive environment for the student. If the school is designated in need of improvement, then NCLB

allows parents to choose another school that has not been identified as a school in need of improvement.

Who Decides?

If their child is eligible for public school choice, parents identify their preference for which school their child will attend from the list of schools provided by the school district. It should be noted that school districts must offer more than one choice. Students with disabilities do not have to be offered their choice of the same schools as those offered to nondisabled students. The school district must ensure that students with disabilities receive a free appropriate public education (FAPE) when they enroll in their school of choice. In offering choice to a student with disabilities, school districts may match the abilities and needs of the student to the list of possible schools, keeping in mind that the schools must provide FAPE to the student. A charter school may be one of the options considered.

Change of Placement

The receiving school is not required to convene the IEP team to review or revise the student's current IEP. The receiving school has the option to reconvene the IEP team to develop a new IEP. If the school adopts the student's existing IEP, none of the "change of placement" procedures apply. Therefore, the parent's due process protections would not come into play. However, if a new IEP is developed that changes the goals, objectives or services provided, the school must comply with the "change of placement" requirements of IDEA. The "change of placement" provisions require parent notification and permission.

Intradistrict and Interdistrict Transfers

A school district (LEA) may not use lack of capacity to deny students the option to transfer. And, if all public schools within the school district (LEA) are identified as in need of improvement, the LEA

should establish, where practical, a cooperative agreement for transfers with other LEAs in the area. In rural or isolated areas where there are literally no school choice options, the LEA may offer supplemental educational services.

The school district may use Title I funds, as well as other allowable federal, state, local and private resources, to pay for choice-related transportation expenses. When a previously identified school is no longer in need of improvement, the student may remain at the school to which he or she has transferred, but Title I funds will no longer be used to pay for transportation.

Supplemental Services

Supplemental educational services are defined as extra academic assistance for eligible children. Students from low-income families who are attending Title I schools in their second year of improvement, corrective action or restructuring are eligible to receive these services. The parents may choose any approved provider from the list that they feel will best meet their child's needs in the school district area or within a reasonable distance of that area. A school must continue offering supplemental services to its eligible students until the school is no longer in need of improvement. These services must be provided outside of the regular school day.

Eligibility for supplemental services is not dependent on whether the student is part of a subgroup that caused the school to be identified as a school in need of improvement or whether the student is in a grade that takes the statewide assessments required by NCLB. Priority goes to the lowest-achieving eligible students. In this situation, the LEA should use objective criteria to determine the lowest-achieving students. For example, a school may focus services on the lowest-achieving eligible students in the subject area that caused the school to be identified as a school in need of improvement.

Even though students with disabilities are receiving special education services, they are still eligible for supplemental services if they meet the other eligibility criteria. In the case of a student with disabilities, these services must be consistent with the student's IEP but are not part of the IEP. If a student with an IEP receives supplemental services, the supplemental services are paid for by Title I funds, not special education funds.

Implications for States and Local Districts

States and districts will need to:

- create additional capacity or provide choices of other schools when choice options are limited;
- keep in mind the needs of students with disabilities as they establish cooperative agreements with other school districts in the area for transfer options;
- develop a flexible funding approach under Title I in order to honor requests for choice options and supplemental services for students with disabilities;
- recognize that while there may not be the same choice options, there are also no special circumstances for school choice or supplemental services for students with disabilities, except that FAPE must be provided in the least restrictive environment for that student;
- familiarize themselves with state provisions regarding transfer of students with IEPs from one district to another (particularly timeline requirements);
- determine who is responsible for ensuring that the IEP information is transmitted to the supplemental service provider and for monitoring the student's progress in the supplemental program.

Section IV: Highly Qualified Teachers (Title I and Title II)

NCLB places major emphasis on teacher quality as a critical aspect in improving student achievement. There are two sections of NCLB that relate to teacher quality. Title I of

NCLB defines the criteria for a “highly qualified” teacher, as described below. Title II of NCLB focuses on preparing, training and recruiting highly qualified teachers and principals.

NCLB says	IDEA says
<p>NCLB defines “highly qualified” as any public school teacher who has a bachelor’s degree, holds full state certification (including certification obtained through alternative routes to certification) and demonstrates subject matter competency through passing a subject matter test or fulfilling the HOU SSE – High objective uniform state standards of evaluation. (For complete language please refer to the statute.)</p> <p>Sec. 9101(23) Highly Qualified</p> <p>The term “pupil services personnel” refers to school counselors, school social workers, school psychologists, and other qualified professional personnel involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services.</p> <p>Sec. 9101(36) Pupil Services Personnel</p>	<p>IDEA uses the term “qualified personnel” which means personnel who have met state-approved or state-recognized certification, licensing, registration, or other comparable requirements in the area in which the individuals are providing special education or related services.</p> <p>Furthermore, IDEA defines the “highest requirements in the state applicable to a specific profession or discipline” as the highest entry-level academic degree needed for any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.</p> <p>Sec. 612(a)(15) Personnel Standards Sec. 602(22) Related Services</p>
Policy Guidance	
<p>March 15, 2004 – Flexibility for Highly Qualified Teachers http://www.ed.gov/nclb/methods/teachers/hqtflexibility.html</p> <p>January 16, 2004 – Improving Teacher Quality, Non-regulatory Guidance (Revised) http://www.ed.gov/programs/teacherqual/guidance.doc</p>	

Statute Descriptions

Title I of NCLB mandates that all teachers of core academic subjects hired after the first day of the 2002-03 school year and teaching in a program supported by Title I funds must be highly qualified. States are required to develop plans with annual measurable objectives that will ensure that all teachers who teach in core academic subjects are highly qualified by the end of the 2005-06 school year. The legislation defines the following areas as core academic subjects: English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts (defined by individual states), history and geography [Section 9101(11)].

Key Issues for Students with Disabilities

Core Academic Subjects

Special education is not specifically identified in NCLB as a core academic subject area and the requirements for special education teachers to be “highly qualified” are not mentioned in NCLB or the regulations issued to date. Many special education teachers however, either teach or support instruction in one or more core academic areas outlined in the federal legislation.

It should be noted that both NCLB statute and regulations reference teachers as “all” teachers. Congressional lawmakers are seeking to address this issue during the reauthorization of IDEA. In the absence of definitive language that includes or excludes special education teachers, much confusion has permeated school communities from the state level to local school buildings. Both NEA and NASDSE have argued that a special educator should be considered highly qualified if licensed or certified by the state as a special education teacher.

Guidance issued in March of 2004 states: “The high-

ly qualified teacher requirements apply only to teachers providing direct instruction in core academic subjects. Special educators who do not directly instruct students in core academic subjects or who provide only consultation to highly qualified teachers in adapting curricula, using behavioral supports and interventions or selecting appropriate accommodations, do not need to demonstrate subject-matter competency in those subjects.”

The following considerations may be helpful in determining if special education teachers meet the highly qualified definition:

- A special education teacher who is the sole provider of instruction for a student in one or more academic subjects (e.g., in a self-contained special education classroom or in a specialized school) will need to meet NCLB’s “highly qualified” definition by 2005-2006.
- A special education teacher who provides direct instruction in one or more core academic subjects in a collaborative, co-teaching, team teaching, or resource situation will need to meet NCLB’s “highly qualified” definition.
- If a special education teacher is only providing consultation to another teacher then that special education teacher does not need to meet NCLB’s highly qualified definition.
- One option that currently exists in NCLB is referred as the “HOUSSE” standard. This provision – high, objective, uniform, state standard of evaluation – is a way for veteran educators to demonstrate competency. Most states have determined their HOUSSE standards, which must include “multiple objective measures of teacher competency.”

The chart in Appendix I helps to explain how special education teachers may or may not meet the “highly qualified” criteria described above.

Pupil Services Personnel

While pupil services personnel are not mentioned in NCLB's requirements regarding "highly qualified" teachers, the definition of "pupil services personnel" is included in Title II Improving Teacher Quality State Grants. Title I funds may be used for professional development, recruitment and retention activities to enhance the quality of services provided by pupil services personnel.

Implications for States and Local Districts

States and districts need to:

- support state programs that help teachers get the financial and academic assistance they need to earn required credentials;
- urge school districts and states to pay for programs that will help their teachers meet the new requirements, if needed;
- work in collaboration with institutes of higher education to ensure that teacher

preparation programs are designed to prepare general education teachers to work with students with disabilities who may be included in general education classrooms;

- work in partnership with institutes of higher education to ensure that special educators are prepared to teach one or more core academic subjects;
- utilize the Interstate New Teacher Assessment and Support Consortium (INTASC) Model Standards for Licensing General and Special Education Teachers of Students with Disabilities available from the Council of Chief State School Officers (www.ccsso.org) in any revisions of teacher preparation programs or state licensing programs;
- monitor IDEA reauthorization language referring to professional qualifications for special education teachers.

Section V: Paraprofessionals (Title I)

NCLB not only defines the qualifications of teachers, it also defines the qualifications of paraprofessionals. It is important to note that these provisions only apply to those paraprofessionals who have instructional duties and are working in programs or schools that receive Title I

funds. All paraprofessionals, however, should be aware of how NCLB’s requirements may impact their future employment options. Individuals who work in food services, cafeteria or playground supervision, personal care services, non-instructional computer assistance and similar positions are not considered

NCLB says	IDEA says
<p>Each school or school district receiving Title I funds must ensure that all paraprofessionals hired after January 8, 2002 have the following:</p> <ul style="list-style-type: none"> • completed at least two years of study at an institution of higher education; • obtained an associate’s (or higher) degree; or • met a rigorous standard of quality and can demonstrate by a formal state or local academic assessment – <ul style="list-style-type: none"> • knowledge of and the ability to assist in instructing reading, writing, and mathematics; or • knowledge of and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate <p>Existing paraprofessionals. Each school receiving Title I funds must ensure that all paraprofessionals hired before January 8, 2002 and working in a program supported with Title I funds meet the above requirements not later than 2006.</p> <p>Sec. 1119 (c) New Paraprofessionals</p>	<p>A state may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulations, or written policy, to assist in the provision of special education and related services to children with disabilities.</p> <p>Sec. 612 (a)(15) Personnel Standards</p>

Policy Guidance

March 1, 2004 – Title I Paraprofessionals, Non-regulatory Guidance
<http://www.ed.gov/policy/elsec/guid/paraguidance.doc>

paraprofessionals under Title I, Part A. IDEA allows paraprofessionals to assist in providing special education and related services to students with disabilities. It encourages states to provide appropriate training and supervision, but the federal statute has left the implementation of this provision to the states. NCLB, on the other hand, has ratcheted up both the paraprofessional qualifications and responsibilities.

Statute Descriptions

NCLB requires that each state receiving Title I funds develop a plan to ensure that all new paraprofessionals hired after January 8, 2002, and working in a program supported with Title I funds, have met one of the requirements outlined below. In reality, many states placed these responsibilities on the local school districts.

Key Issues for Students with Disabilities

Paraprofessional Qualifications

NCLB defines new qualifications for all paraprofessionals who work in programs or schools that receive Title I funds. A minimum criterion is that all such paraprofessionals must have a high school diploma or equivalent. By 2006, all paraprofessionals hired prior to January 8, 2002, must meet the additional qualifications listed in the chart on page 23. They will need to complete at least two years of college study or be able to demonstrate competencies on a state or local assessment. The Department issued guidance that clarifies “two years of study,” stating that it means the equivalent of “two years of full time study” as defined by the state.

NCLB requires that Title I funded paraprofessionals demonstrate that they have the appropriate knowledge and ability to assist in instructing students and are competent in required instructional techniques

and academic content areas as determined by an “assessment.” States and local districts have the flexibility to determine the content and format of any assessment of paraprofessionals. NCLB does not require a paper and pencil test; however, there must be evidence that the assessment is valid and reliable. Also, the assessment results must be documented, i.e., there must be a record of the assessment and the individual’s performance on it. The assessment is expected to evaluate paraprofessional candidates at a level equivalent to the second year of college, since having skills at the level of the second year of college is the intent of the law.

It is critical to note that the new NCLB paraprofessional qualifications apply to ALL paraprofessionals with instructional duties who are employed in a school that receives school-wide Title I program funds, without regard to whether the individual position is funded with federal, state, or local funds. In a **school-wide program**, Title I funds support all teachers and paraprofessionals. If the school receives funds as a Title I **targeted assistance school**, however, the requirements apply to only those whose positions are funded by Title I funds.

These paraprofessional requirements do NOT apply to individuals working in early childhood programs that are physically located in a Title I school but are not part of the school-wide program and are not funded with Title I funds—such as a Head Start program. NCLB requirements do apply, however, to paraprofessionals with instructional duties when their positions are funded by Title I funds or if they are working in a school-wide Title I program.

A paraprofessional who provides services to students placed in a private school (e.g., a student with a disability who is either parentally placed or placed by the school district in a private school) must be under the direct supervision of a public school teacher and is held to NCLB requirements.

Paraprofessional Duties

NCLB identifies the following duties for paraprofessionals: (1) provide one-on-one tutoring if such tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher; (2) assist with classroom management, such as organizing instructional and other materials; (3) provide instructional assistance in a computer laboratory; (4) conduct parental involvement activities; (5) provide support in a library or media center; (6) act as a translator; or (7) provide instructional support services under the direct supervision of a teacher.

If an individual working with special education students does NOT provide instructional support (such as a person who solely provides personal care services), the individual is NOT subject to the NCLB requirements. Since special education paraprofessionals often provide personal care services in addition to instructional support, the Department clarified that if individuals have any instructional support duties, they DO need to meet the new requirements.

If a person is performing non-instructional duties and then becomes an instructional paraprofessional, that person would be considered “an existing employee” of the school district and would need to meet the highly qualified standard or demonstrate competency by January 2006.

It is important to underscore that a paraprofessional may not provide any instruction unless working under the direct supervision of a teacher. NCLB also stipulates that a paraprofessional may assume limited duties beyond classroom instruction so long as the amount of time spent on such duties is the same proportion of total work time as that of similar personnel at the same school.

Implications for States and Local Districts

States and districts need to:

- consider establishing a policy to allow qualified paraprofessionals reciprocity between schools and among districts within the state;
- inform all paraprofessionals that their level of education and their instructional ability as measured by the assessment will affect their future employment options, even if the NCLB requirements do not apply to their current position;
- be flexible in determining the content and format of any assessment of paraprofessionals (for example, an appropriate assessment might be a written test, or it could consist of a combination of a written test on content in reading, writing, and math and a demonstration of competence assessed through observations);
- ensure that the content of the assessment reflects both the state academic standards and skills expected for a child at a given school level (elementary, middle, or high school), as well as the ability of the paraprofessional to assist in instructing students;
- offer professional development activities for paraprofessionals using any of these allowable funding sources: Title I Professional Development; Title II Teacher Quality State Grants; Schools in Need of Improvement funds; Title III Limited English Proficiency; Title V Innovative Programs; and Title VII Indian Education Programs;
- review local collective bargaining agreements to ensure that NCLB sections related to supervision and paraprofessional duties are not in conflict with contract provisions.

See Appendix II for a graphic representation of requirements for paraprofessionals.

Section VI: Reading First Programs (Title I and Title II)

Educators, parents and state leaders recognize that far too many children have limited reading skill and this critical issue must be addressed. NCLB has a primary focus on improving students' reading and language art skills. The National Assessment of Educational Progress (NAEP) indicates that approximately 40 percent of students cannot read at a basic level.

Poor reading skills are a nationwide concern that affects special education because reading difficulties are often a manifestation of various disabilities. Some national policymakers believe that many children are found eligible for special education services due to their lack of reading skills.

Special education teachers, as well as general education teachers, must share the responsibility for improving reading skills of all students; therefore, it is essential for educators to participate in nationwide initiatives to improve reading instruction, intervention and achievement.

Statute Descriptions

Authorized under Title I as a new national effort to improve reading skills for students in Kindergarten through grade 3, Reading First is a formula grant program that:

- has a strong emphasis on classroom instruction supported by scientifically-based or evidence-based reading research;
- provides every state the opportunity to receive federal funds for reading initiatives.

There are five essential components of reading instruction identified in NCLB:

- Phonemic Awareness—the ability to focus on and manipulate the smallest units of sound in spoken language;
- Phonics—the relationship between the letters of written language and the sounds of spoken language;
- Vocabulary Development—the stored information about the meaning and pronunciation of words;
- Reading Fluency—the ability to read accurately, quickly and with expression;
- Reading Comprehension—the ability to understand or gain meaning from text.

States must apply for Reading First funds, which are awarded for a six-year period. States are required to award 80 percent of their Reading First funds to school districts on a competitive basis with priority given to those districts with 15 percent or at least 6,500 students living below the poverty level. States are permitted to use up to 20 percent for state level activities, including professional development and teacher preparation programs.

States must form a Reading Leadership Team to coordinate and assist with the oversight and evaluation of the state's Reading First program. The team must include policymakers (i.e., governor, chief state school officer, chair of the state legislature's education committee), a parent, a teacher or instructional

staff member, a family literacy service provider, directors of federal and state programs with a strong reading component, and representatives from a school district eligible to receive a Reading First grant. The team may also include representatives from institutions of higher education, school districts, professional development service providers, and school or public libraries offering literacy programs.

Key Issues for Students with Disabilities

Professional development programs funded through Reading First must focus on the essential components of reading instruction for K-3 teachers and K-12 special education teachers, pre-service courses for future K-3 teachers, and/or improving state licensure and certification standards. The presumed

intent of expanding professional development to include K-12 special education teachers is to improve the ability of all special educators to teach reading and language arts.

The Reading First program must be evaluated by an independent external organization that specifically examines, among other factors, the impact of the Reading First program on students' referral to, and eligibility for, special education services.

Reading First requires the use of valid and reliable screening, diagnostic, progress monitoring and classroom-based reading assessments. This requirement impacts the types of reading assessments that special educators use, particularly for those students who are included in general education classrooms.

NCLB says	IDEA says
<p>NCLB defines Reading First as assistance to state and local educational agencies in establishing reading programs for students in Kindergarten through grade 3 using scientifically based reading research, to ensure that every student can read at grade level or above not later than the end of grade 3. This assistance is described as professional development and other support to help teachers, including special education teachers, to:</p> <ul style="list-style-type: none"> • identify specific reading barriers facing their students so that teachers have tools to effectively help their students learn to read; • select or administer screening, diagnostic, and classroom-based instructional reading assessments; • select or develop effective instructional materials, programs, learning systems, and strategies to implement methods that have been proven to prevent or remediate reading failure within a state. <p>An additional purpose is to strengthen coordination among schools, early literacy programs, and family literacy programs to help improve reading achievement for all children.</p> <p>Sec. 1201(B)(1)</p>	<p>There are no corresponding sections in IDEA.</p>

Among the required uses of the Reading First funds is providing instruction to any child in Kindergarten through grade 3 who is:

- at risk of being referred to special education due to reading difficulties;
- not identified as a child with a disability after having been evaluated under IDEA; or
- being served under IDEA primarily as a child identified with a specific learning disability that is related to reading deficiencies in the essential components of reading skills mentioned above.

Implications for States and Local Districts

States and districts need to:

- collaborate to define a workable data collection and analysis system used for the special education referral process to ascertain accurate information about the number of students who are referred, evaluated, identified or not identified as needing special education services;
- become familiar with strategies for improving reading skills, such as Response to Intervention (RtI) programs;

- ensure that the state's Reading Leadership Team includes special educators who are knowledgeable about reading instruction in both the general education and special education settings;
- review the types of reading assessment devices used in general and special education programs in districts that receive Reading First funds to ensure that they meet the validity and reliability requirements;
- design and provide professional development programs focused upon the teaching of reading for K-12 special educators;
- inform teachers about those reading programs and strategies that have been developed using scientifically-based or evidence-based research;
- consider achieving a clear mechanism to determine what funding source is used to provide reading instruction to eligible students with learning disabilities whose primary difficulty is in the area of reading.

Resources

“No Child Left Behind Act”

Legislation, Regulations and Policy Guidance

www.ed.gov

Statute

January 8, 2002 – No Child Left Behind signed into law, (P.L. 107-110) <http://www.ed.gov/policy/elsec/leg/esea02/107-110.pdf>

Regulations

December 9, 2003 – Final regulations for the inclusion of students with the most significant cognitive disabilities in Title I assessments <http://www.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html>

December 2, 2002 – Title I, Improving the Academic Achievement of the Disadvantaged (not including standards and assessments), Final Rule <http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html>

July 5, 2002 – Final regulations on Title I, Improving the Academic Achievement of the Disadvantaged <http://www.ed.gov/legislation/FedRegister/finrule/2002-3/070502a.html>

May 6, 2002 – Title I, Improving the Academic Achievement of the Disadvantaged; Notice of Proposed Rulemaking <http://www.ed.gov/legislation/FedRegister/proprule/2002-2/050602a.html>

Policy Guidance

July, 2004 – Charter School Program Non-Regulatory Guidance <http://www.ed.gov/policy/elsec/guid/cspguidance03.doc>

April 29, 2004 – Standards and Assessments Peer Review Guidance: Information and Examples for Meeting Requirements of the No Child Left Behind Act of 2001 <http://www.ed.gov/policy/elsec/guid/saaprguidance.pdf>

April 29, 2004 – Parental Involvement, Title I, Part A <http://www.ed.gov/programs/titleiparta/parentinvguid.doc>

March 29, 2004 – Participation Rates <http://www.ed.gov/news/pressreleases/2004/03/03292004.html>

March 15, 2004 – Flexibility for Highly Qualified Teachers <http://www.ed.gov/nclb/methods/teachers/hqtflexibility.html>

March 4, 2004 – Serving Preschool Children Under Title I, Non-regulatory Guidance <http://www.ed.gov/policy/elsec/guid/preschoolguidance.doc>

March 1, 2004 – Title I Paraprofessionals, Non-Regulatory Guidance <http://www.ed.gov/policy/elsec/guid/paraguidance.doc>

February 19, 2004 – English Language Learners
<http://www.ed.gov/news/pressreleases/2004/02/02192004.html>

February 6, 2004 – Public School Choice, Non-regulatory Guidance – draft <http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc>

January 16, 2004 – Improving Teacher Quality, Non-regulatory Guidance (revised) <http://www.ed.gov/programs/teacherqual/guidance.doc>

January 2004 – Safe and Drug-Free Schools and Communities State Grants – draft <http://www.ed.gov/programs/dvpformula/guidance.doc>

October 23, 2003 – Education of Migratory Children, Non-regulatory Guidance <http://www.ed.gov/programs/mep/mepguidance2003.doc>

October 17, 2003 – Title I Services to Private School Children, Non-Regulatory Guidance <http://www.ed.gov/programs/titleiparta/psguidance.doc>

September 12, 2003 – Report Cards, Non-regulatory Guidance <http://www.ed.gov/programs/titleiparta/reportcardsguidance.doc>

August 22, 2003 – Supplemental Educational Services, Non-Regulatory Guidance <http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc>

March 24, 2003 – Impact of New Title I Requirements on Charter Schools, Non-regulatory Guidance - draft <http://www.ed.gov/policy/elsec/guid/charterguidance03.doc>

Policy Letters

March 2, 2004 – Letter to Chief State School Officers Regarding Inclusion of Students with Disabilities in State Accountability Systems <http://www.ed.gov/admins/lead/account/css030204.html>

February 20, 2004 – Letter to Chief State School Officers on “No Child Left Behind” providing new guidance on addition flexibility concerning limited English proficient students <http://www.ed.gov/policy/gen/guid/secletter/040220.html>

August 28, 2003 – Letter to Chief State School Officers regarding implementation of Title I choice and supplemental educational services provisions of “No Child Left Behind” <http://www.ed.gov/policy/elsec/guid/secletter/030828.html>

July 28, 2003 – Letter to Chief State School Officer regarding the Teacher Assistance Corps and efforts to share ideas about improvements in teacher quality <http://www.ed.gov/policy/elsec/guid/secletter/030728.html>

June 27, 2003 – Letter to Chief State School Officers regarding State accountability plans under the “No Child Left Behind Act” and inclusion of students with disabilities <http://www.ed.gov/policy/spced/guid/secletter/030627.html>

March 24, 2003 – Letter to Chief State School Officers and others regarding the “highly qualified” teachers requirements the “No Child Left Behind Act” <http://www.ed.gov/policy/spced/guid/secletter/030627.html>

October 22, 2002 – Letter to Chief State School Officers regarding implementation of the “No Child Left Behind Act” and the importance of identifying schools in need of improvement to ensure that every child learns <http://www.ed.gov/policy/elsec/guid/secletter/021022.html>

July 24, 2002 – Dear Colleague Letter to education officials regarding implementation of “No Child Left Behind” and accountability, and providing guidance on adequate yearly progress <http://www.ed.gov/policy/elsec/guid/secletter/020724.html>

June 14, 2002 – Dear Colleague Letter to education officials regarding implementation of “No Child Left Behind” and providing guidance on public school choice, supplemental education services, and collective bargaining agreements <http://www.ed.gov/policy/elsec/guid/secletter/020614.html>

June 6, 2002 – Dear Colleague Letter to education officials regarding implementation of “No Child Left Behind” and plans for providing guidance <http://www.ed.gov/policy/elsec/guid/secletter/020606.html>

Website Resources

National Education Association (NEA) “The New ESEA”

www.nea.org/esea

National Association of State Directors of Special Education (NASDSE) “Implementing the No Child Left Behind Act: What it Means for IDEA”

www.nasdse.org

The IDEA Partnership Project at NASDSE

www.ideainfo.org

The National Center for Special Education Personnel and Related Service Providers (Personnel Center) at NASDSE

www.nasdse.org/Personnel%20Center%20Introduction.pdf

U.S. Department of Education: “A Desktop Reference 2002”

www.ed.gov/admins/lead/account/nclbreference/reference.pdf

The President’s Commission on Excellence in Special Education (PCESE) Report

www.ed.gov/inits/commissionsboards/whspecial-education/reports/index.html

Education Commission of the States: “No State Left Behind: The Challenges and Opportunities of ESEA 2001”

www.ecs.org/ecsmain.asp?page=/html/Special/ESEA_main.htm

National Governors Association (NGA) “No Child Left Behind” Center for Best Practices

www.nga.org/center/topics/1,1188,C_CENTER_ISSUE^D_3308,00.html

National Conference of State Legislatures

www.ncsl.org/programs/educ/NoChild.htm

Council of Chief State School Officers (CCSSO) “CCSSO Responds to No Child Left Behind”

www.ccsso.org/Federal_Programs/nclb/index.cfm

Council for Exceptional Children

www.cec.sped.org/pp

Table of Contents for NCLB and IDEA

The Elementary and Secondary Education Act as amended by the “No Child Left Behind Act of 2001” P.L. 107-110

Title I – Improving The Academic Achievement Of The Disadvantaged

Improving Basic Programs Operated by Local Educational Agencies (I-A)

Reading First (I-B-1)

Early Reading First (I-B-2)

William F. Goodling Even Start Family Literacy Program (I-B-3)

Improving Literacy through School Libraries (I-B-4)

Education of Migratory Children (I-C)

Prevention and Intervention Programs for Children and Youth Who are Neglected, Delinquent, or At-Risk (I-D)

National Assessment of Title I, Title 1 Evaluation and Demonstrations (I-E-1501-1503)

Close-Up Fellowship (I-E-1504)

Comprehensive School Reform (I-F)

Advanced Placement (I-G)

School Dropout Prevention (I-H)

General Provisions (I-I)

Title II—Preparing, Training, And Recruiting High Quality Teachers And Principals

Teacher and Principal Training and Recruiting Fund, Grants to States (II-A)

School Leadership (II-A-5-2151(B))

Advanced Certification/Credentialing (II-A-5-2151(C))

Early Childhood Educator Professional Development (II-A-5-2151(E))

Mathematics and Science Partnerships (II-B)

Troops-to-Teachers (II-C-1-A)

Transitions to Teaching (II-C-1-B)

National Writing Project (II-C-2)

Civic Education (II-C-3)

Teaching of Traditional American History (II-C-4)

Teacher Liability Protection (II-C-5)

Enhancing Education Through Technology (II-D-1&2)

Ready-to-Learn Television (II-D-3)

Title III—Language Instruction For Limited English Proficient And Immigrant Students

Language Instruction for Limited English Proficient and Immigrant Students (III)

Title IV—21st Century Schools

Safe and Drug-Free Schools and Communities (IV-A)

Gun-Free Requirements (IV-A-3)

21st Century Community Learning Centers (IV-B)

Environmental Tobacco Smoke (IV-C)

Title V—Promoting Informed Parental Choice And Innovative Programs

Innovative Programs (V-A)

Public Charter School (V-B-1)

Credit Enhancement Initiatives to Assist Charter School Facility Acquisition, Construction, and Renovation (V-B-2)

Voluntary Public School Choice (V-B-3)

Magnet Schools Assistance (V-C)

Elementary and Secondary School Counseling (V-D-2)

Partnerships in Character Education (V-D-3)

Smaller Learning Communities (V-D-4)

Reading Is Fundamental-Inexpensive Book Distribution (V-D-5)

Gifted and Talented Students (V-D-6)

Star Schools (V-D-7)

Ready to Teach (V-D-8)

Foreign Language Assistance (V-D-9)

Physical Education (V-D-10)

Community Technology Centers (V-D-11)

Educational, Cultural, Apprenticeship, and Exchange Programs for Alaska Natives, Native Hawaiians, and Their Historical Whaling and Trading Partners in Massachusetts (V-D-12)

Arts in Education (V-D-15)

Parental Assistance Information Centers (V-D-16)

Women's Educational Equity (V-D-21)

Title VI—Flexibility And Accountability

Improving Academic Achievement, Accountability, Grants for State Assessments and Enhanced Assessments (VI-A-1)

Funding Transferability for State and Local Educational Agencies (VI-A-2)

State Flexibility Authority (“State-Flex”) (VI-A-3-A)

Local Flexibility Demonstration (“Local-Flex”) (VI-A-3-B)

Rural Education Initiative Small, Rural School Achievement (VI-B-1)

Rural Education Initiative Rural and Low-Income Schools (VI-B-2)

General Provisions, National Assessment of Education Progress (VI-C-411)

Title VII—Indian, Native Hawaiian, And Alaska Native Education

Indian Education (VII-A)

Native Hawaiian Education (VII-B)

Alaska Native Education (VII-C)

Title VIII—Impact Aid Program

Impact Aid (VIII)

Title IX—General Provisions

General Provisions (IX)

Unsafe School Choice Option (IX-E-2-9532)

Title X—Repeals, Redesignations, And Amendments To Other Statutes

MCKINNEY-VENTO HOMELESS EDUCATION ASSISTANCE IMPROVEMENTS, (X, PART C)

The Individuals with Disabilities Education Act, P.L. 105-17

Part A—General Provisions

- Sec. 601. Short title; table of contents; findings; purposes.
- Sec. 602. Definitions.
- Sec. 603. Office of Special Education Programs.
- Sec. 604. Abrogation of State sovereign immunity.
- Sec. 605. Acquisition of equipment; construction or alteration of facilities.
- Sec. 606. Employment of individuals with disabilities.
- Sec. 607. Requirements for prescribing regulations.

Part B—Assistance for Education of All Children with Disabilities

- Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
- Sec. 612. State eligibility.
- Sec. 613. Local educational agency eligibility.
- Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.
- Sec. 615. Procedural safeguards.
- Sec. 616. Withholding and judicial review.
- Sec. 617. Administration.
- Sec. 618. Program information.
- Sec. 619. Preschool grants.

Part C—Infants and Toddlers with Disabilities

- Sec. 631. Findings and policy.
- Sec. 632. Definitions.
- Sec. 633. General authority.
- Sec. 634. Eligibility.
- Sec. 635. Requirements for statewide system.
- Sec. 636. Individualized family service plan.
- Sec. 637. State application and assurances.
- Sec. 638. Uses of funds.

- Sec. 639. Procedural safeguards.
- Sec. 640. Payor of last resort.
- Sec. 641. State Interagency Coordinating Council.
- Sec. 642. Federal administration.
- Sec. 643. Allocation of funds.
- Sec. 644. Federal Interagency Coordinating Council.
- Sec. 645. Authorization of appropriations.

Part D—National Activities to Improve Education of Children with Disabilities

Subpart 1—State Program Improvement Grants for Children with Disabilities

- Sec. 651. Findings and purpose.
- Sec. 652. Eligibility and collaborative process.
- Sec. 653. Applications.
- Sec. 654. Use of funds.
- Sec. 655. Minimum State grant amounts.
- Sec. 656. Authorization of appropriations.

Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information

- Sec. 661. Administrative provisions.
- Chapter 1—Improving Early Intervention, Educational, and Transitional Services and Results for Children with Disabilities through Coordinated Research and Personnel Preparation

- Sec. 671. Findings and purpose.
- Sec. 672. Research and innovation to improve services and results for children with disabilities.
- Sec. 673. Personnel preparation to improve services and results for children with disabilities.
- Sec. 674. Studies and evaluations.
- Chapter 2—Improving Early Intervention, Educational, and Transitional Services

and Results for Children with
Disabilities through Coordinated
Technical Assistance, Support, and
Dissemination of Information

- Sec. 681. Findings and purposes.
- Sec. 682. Parent training and information centers.
- Sec. 683. Community parent resource centers.

- Sec. 684. Technical assistance for parent training and information centers.
- Sec. 685. Coordinated technical assistance and dissemination.
- Sec. 686. Authorization of appropriations.
- Sec. 687. Technology development, demonstration, and utilization, and media services.

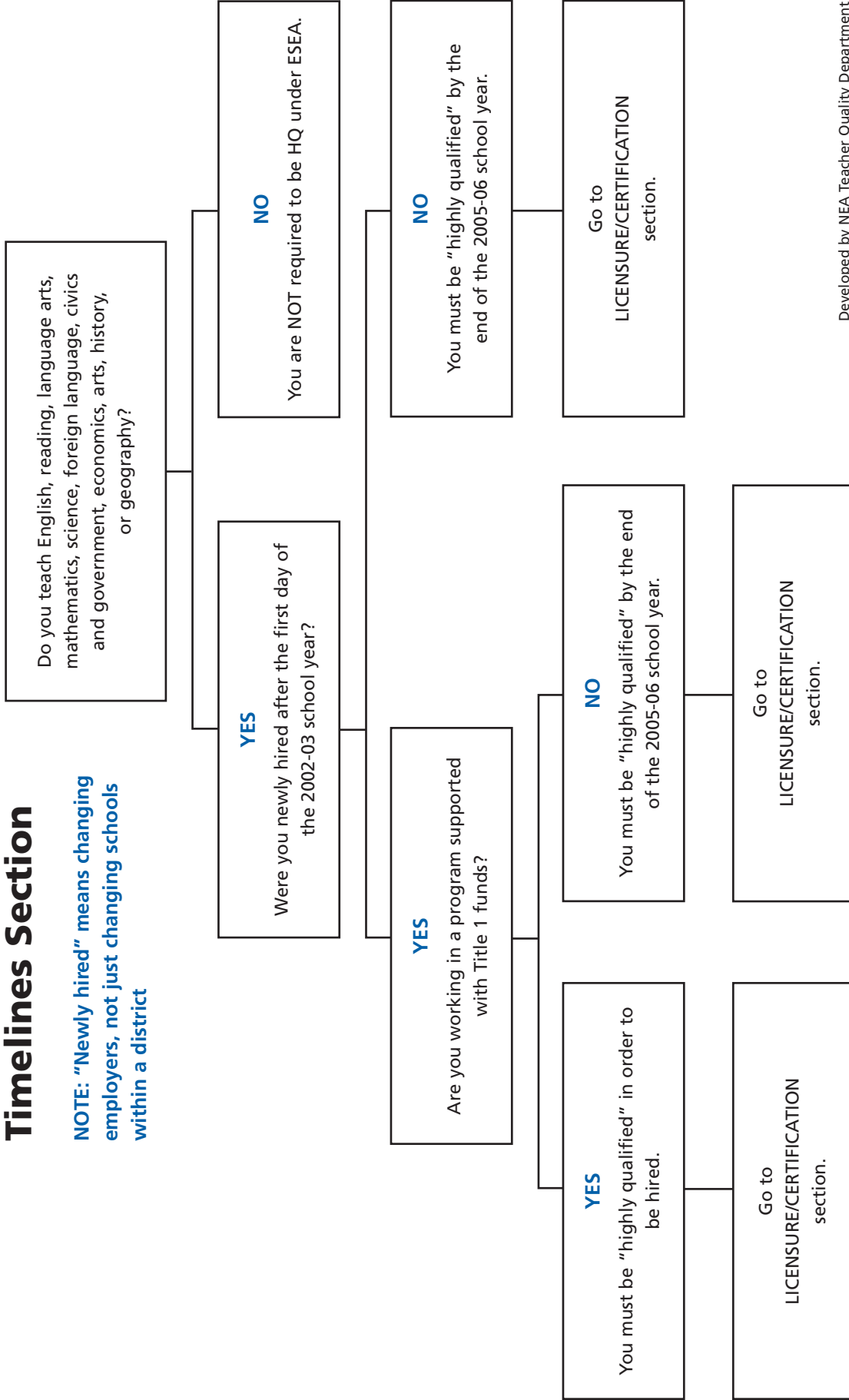
Appendix I
Highly Qualified Teacher Requirements
and
Appendix II
NCLB Requirements for Paraprofessionals

"Highly Qualified" Teacher (as of December 1, 2002)

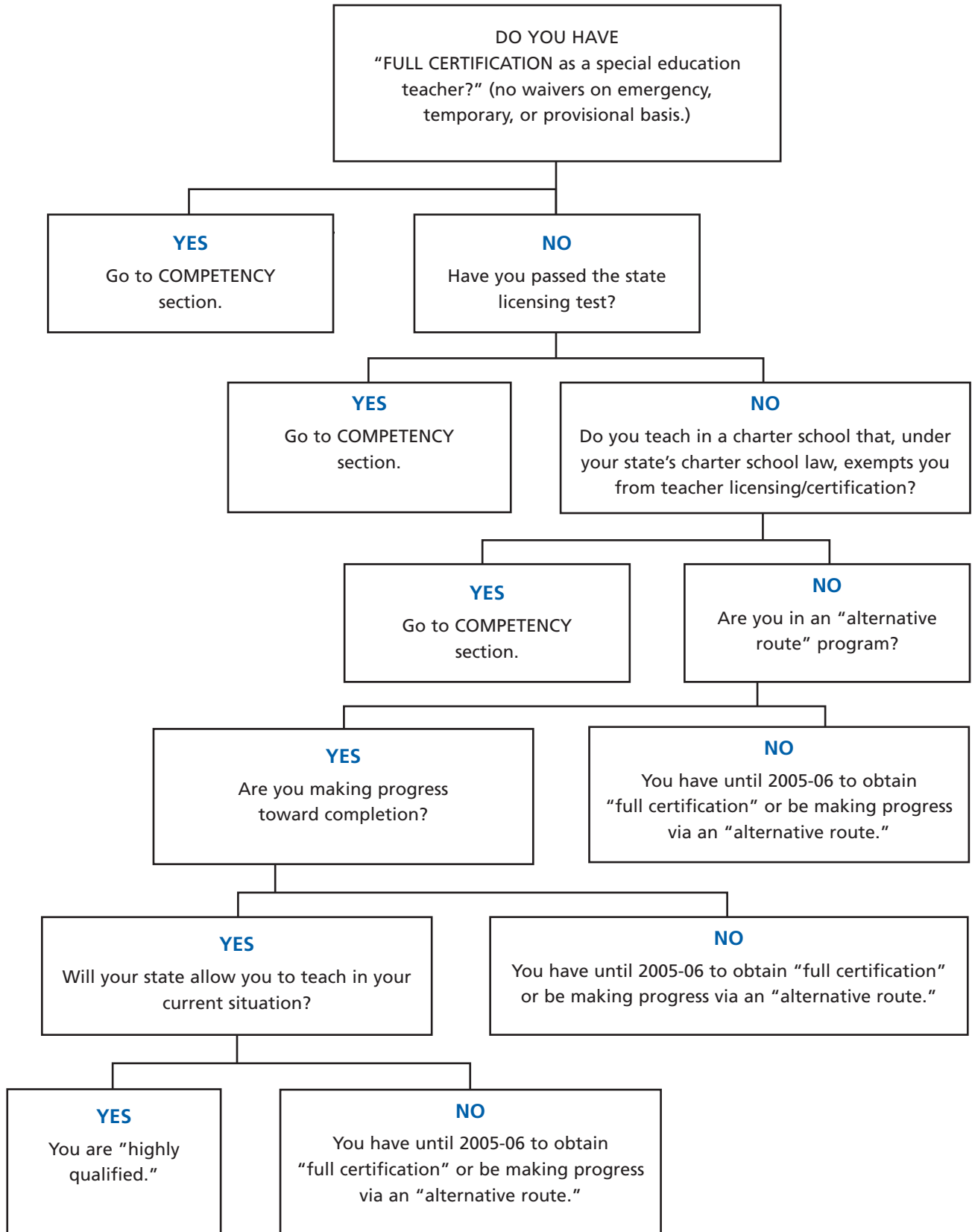
Follow the Chart(s) until you reach: You are "highly qualified."

Timelines Section

NOTE: "Newly hired" means changing employers, not just changing schools within a district

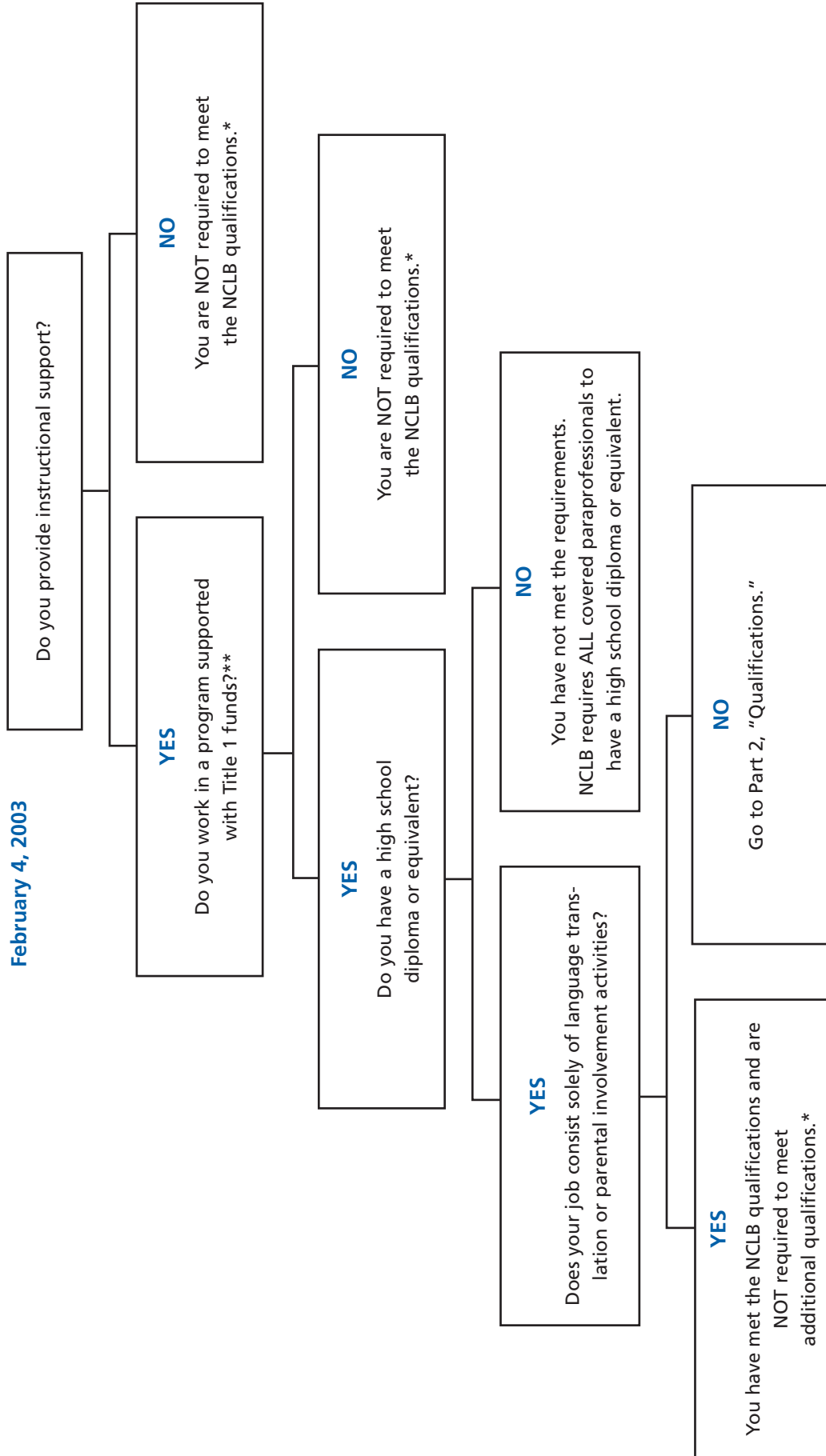


Licensure/Certification Section



NCLB Requirements for Paraprofessionals: Part 1: Coverage

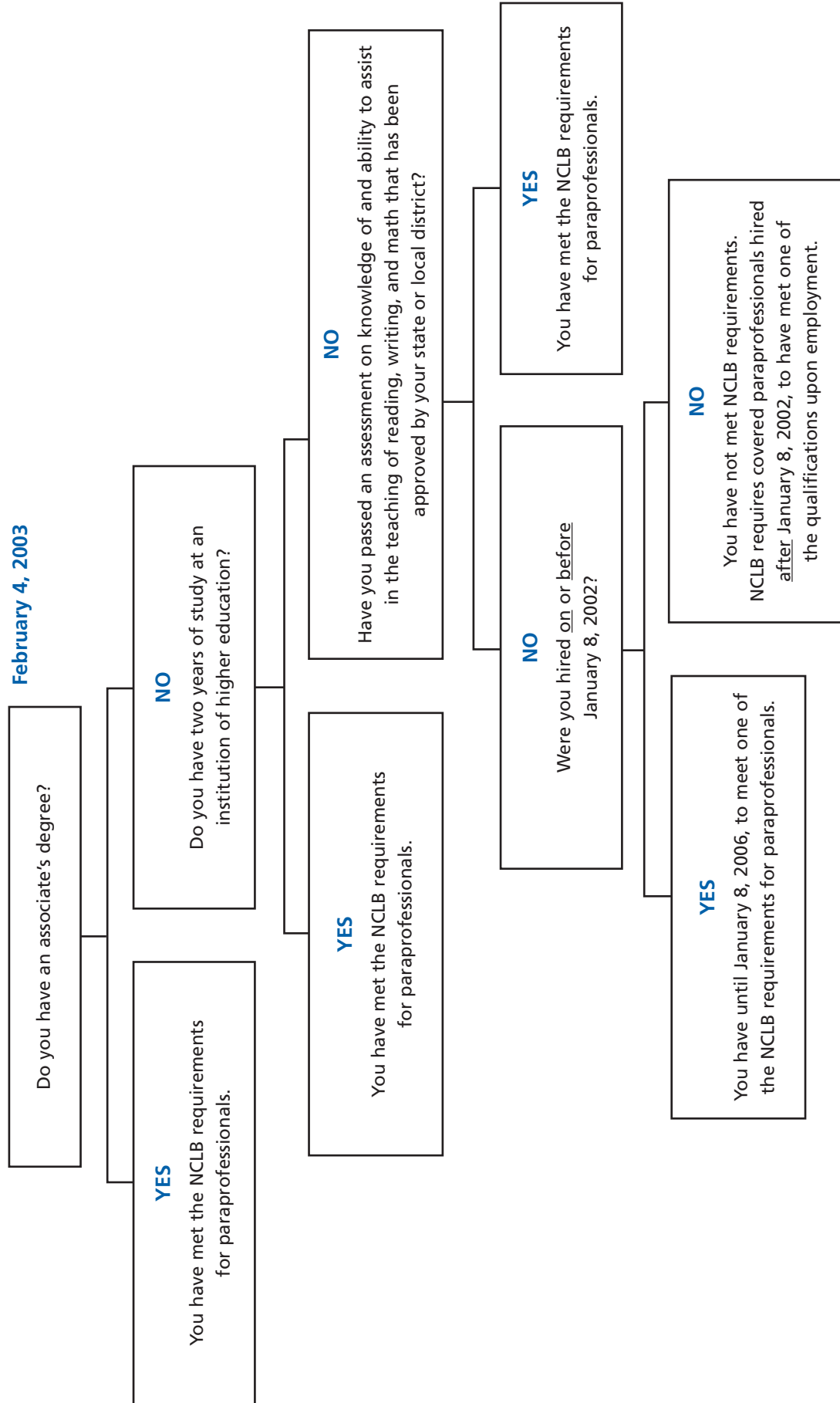
February 4, 2003



* Check to see if your state or local school district has imposed additional requirements.

** This includes all paraprofessionals in schools receiving schoolwide Title 1 assistance and paraprofessionals whose positions are funded by Title 1, Part A in schools receiving targeted aid.

NCLB Requirements for Paraprofessionals: Part 2: Qualifications





Great Public Schools for Every Child

Student Achievement Department
1201 16th St., N.W. | Washington, DC 20036-3290
Phone: 202.822.7896