

No Remedy Left Behind

Lessons from a Half-Decade of NCLB

Edited by Frederick M. Hess  
and Chester E. Finn Jr.

2007.

---

The AEI Press

*Publisher for the American Enterprise Institute*  
WASHINGTON, D. C.

# I

## NCLB in the States: Fragmented Governance, Uneven Implementation

*Paul Manna*

Many people claim that the No Child Left Behind Act of 2001 (NCLB) has revolutionized federal education policy. Whether or not the law is a true breakthrough for Washington, NCLB's prospects still rely heavily on state government actions. In fact, one could easily argue that state policy is the fuel that powers the federal NCLB engine. This overview chapter examines how all fifty states have guided implementation of NCLB's remedies for troubled schools and districts that fail to meet annual achievement goals known as adequate yearly progress (AYP).

The chapter relies on several sources, including documents and press releases from state education agency websites, federal reports, popular press coverage of NCLB, and correspondence with state education officials in eight states during October and November of 2006. The evidence shows much diversity in how states have carried out NCLB's remedies. Some appear to be doing yeoman's work with this complicated law, but many continue to struggle. That diversity suggests several challenges for federal policymakers, who, despite claims to the contrary, remain fundamentally limited in their ability to engineer major changes in American schools. The

---

The author offers many thanks to officials in eight states who offered valuable insights. He also received superb feedback on earlier drafts from Dane Linn, Jason Palmer, Frederick M. Hess, Chester E. Finn Jr., and participants at the American Enterprise Institute/Thomas B. Fordham Foundation's "Fixing Failing Schools Conference." Last, but certainly not least, Chad Aldeman provided outstanding research assistance.

overall result is perhaps not surprising, given NCLB's ambitious goals, its dynamic nature, and the fragmented intergovernmental system in which it is unfolding.

### Expectations for NCLB's Remedies

NCLB's remedies for schools and districts not making scheduled progress are a cornerstone of the law's theory of action, and they represent a key difference between the current law and its immediate predecessor, the Improving America's Schools Act of 1994 (IASA).<sup>1</sup> The idea that real consequences must ensue if schools and districts consistently fail to make AYP contrasts with more "suggestive" versions of accountability, such as using student testing to provide teachers and parents with information about school performance, but then relying on informal pressure or added support to prompt improvement. With a suggestive approach to accountability, critics argue that consequences are more ambiguous and lack the needed bite of high-stakes measures.<sup>2</sup>

Under NCLB, schools repeatedly missing AYP are subject to a cascade of remedies. These include allowing students to transfer to another public school and receive supplemental educational services, as well as reforming schools through corrective action and more major restructuring. Many people forget that the law also requires entire school districts to make AYP. Those failing to do so for two consecutive years must craft an improvement plan. After two more years of missing AYP, districts enter their own version of corrective action, which can include adopting management, organizational, or curricular reforms at the district level, or experiencing greater state involvement in the management of district operations.

Even with more high-stakes accountability for troubled schools and districts, implementing NCLB has required federal officials to balance their ambitions for greater control with efforts to persuade other government leaders to follow along. In other words, high-stakes accountability has joined, rather than replaced, the suggestive accountability regime that had dominated previous iterations of the Elementary and Secondary Education Act (ESEA).<sup>3</sup> That combination and the institutions governing NCLB suggest several reasons to expect state implementation of the law's remedies to vary.

First, even with added accountability measures compared to previous ESEAs, fundamentally NCLB is organized around a series of grant programs, most notably in Title I, that can be challenging for federal overseers to manage. Money is supposed to entice states and localities to adopt goals that federal officials are unable to accomplish without substantial help. In many policy areas, not just education, grant recipients often use that fact to gain leverage by extracting concessions from grant providers as they push their own agendas.<sup>4</sup>

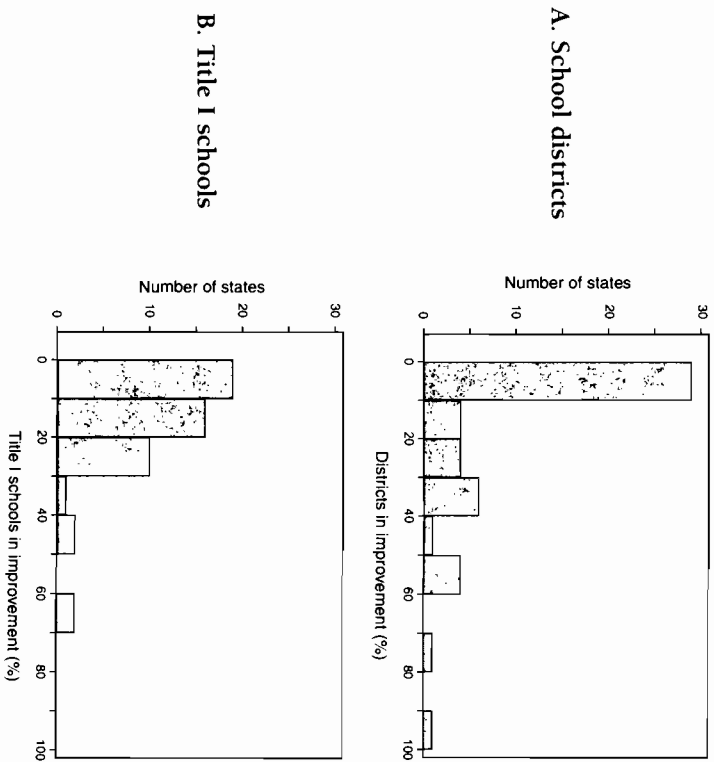
Second, NCLB creates a long delegation chain that places states in a difficult middle-management position. State leaders are agents of federal principals in Washington, charged with implementing a complicated law, but they are also principals over their own agents—local school districts and schools—who must simultaneously carry out federal and state education policy. States will differ in how they manage these arrangements, which can alter how NCLB's remedies unfold in practice.<sup>5</sup>

Third, in saying that NCLB relies heavily on the "states," one should remember that state governments are not unitary actors. While their education departments are the primary agents overseeing federal education policy, they operate within complicated policy networks. Governors, legislatures, courts, and state boards of education all can influence the state-level policy infrastructure that supports NCLB. With so many cooks in the kitchen, and different formal and informal arrangements connecting them, some states will likely be more successful than others at managing the coordination problems, political disagreements, and transaction costs associated with implementing NCLB's remedies.<sup>6</sup>

These three reasons suggest that the impact of NCLB's remedies will vary across states. Figure 1-1 provides an initial glimpse at that variability, which this chapter examines.<sup>7</sup> Part A of the figure shows the distribution of school districts that have consistently failed to make AYP by number of states. The spike at the left side of part A shows that over half the states have a very small percentage of their districts in improvement status. In fact, eleven of those states have no districts in improvement. A relatively small number of states have over half of their districts in improvement, which makes them subject to NCLB's district-level remedies.

Part B shows the distribution of Title I schools in improvement status, again by number of states. Singling out schools that receive Title I money is

FIGURE 1-1  
SCHOOL DISTRICTS AND TITLE I SCHOOLS IN IMPROVEMENT  
BY NUMBER OF STATES, 2004-5



SOURCE: Adapted from U.S. Department of Education, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, *National Assessment of Title I Interim Report: Volume I: Implementation of Title I*, by Stephanie Stullich, Elizabeth Eisner, Joseph McCarty, and Collette Roney (Washington, D.C.: Government Printing Office, 2006), exhibits 31 and 33.

NOTES: The tallest bar in part A reads that twenty-nine states have fewer than 10 percent of all school districts in improvement status. The second tallest bar in part B reads that sixteen states have at least 10 but less than 20 percent of Title I schools in improvement. The Title I schools are subject to NCLB's cascade of remedies. See figure 1-3 for a breakdown of the remedies currently being implemented in these schools.

important because even though all schools are rated for AYP, NCLB's remedies only apply to those that receive Title I funds. The variability in Part B shows that most states have relatively small percentages of their Title I schools in improvement status, as evidenced by the clustering between 0 and 20 percent. Only a few have larger percentages, as revealed by the two small bars in the 40 and 60 percent range.

Part of the variation across states is no doubt related to actual school quality. However, one could safely attribute much of it to how state policy defines what it means for a school or a district to make AYP. Variability in these state definitions—the fuel for the NCLB engine—in turn produces variability in how many districts and schools must implement NCLB's cascade of remedies.

### Choice and Supplemental Educational Services

In theory, NCLB school choice and supplemental educational services can empower parents and students, providing students who are attending struggling schools with opportunities to improve their academic fortunes. Simultaneously, both mechanisms offer a form of “exit,” through which parents’ choices can put pressure on struggling schools to change.<sup>8</sup> Thus, these two remedies can serve not only the individual students who use them, but also those who remain in schools that respond to the parents’ signals. States perform important functions that can help the choice and supplemental educational services remedies succeed.

**Timely Notification of AYP Results.** State testing and accountability systems determine whether schools have made AYP and, therefore, whether they must offer NCLB school choice or supplemental educational services. Because most students take state tests in the spring, states must process the results swiftly and accurately and then calculate AYP results. It is hard to overemphasize how crucial this timing is to the proper functioning of NCLB’s remedies, especially those that depend upon parents making choices for their children. Without timely notification, it is virtually impossible to expect smooth local implementation.

Technically speaking, NCLB requires school districts, not states, to notify parents if their children can exercise choice or use supplemental educational services. Before that can happen, though, states must administer tests, score them, compute AYP results, offer schools and districts time to appeal the calculations—which NCLB requires—and make any needed revisions. All these steps take time. Ultimately, then, states are responsible for ensuring that these remedies work by offering timely notice to districts, schools, and parents.<sup>9</sup>

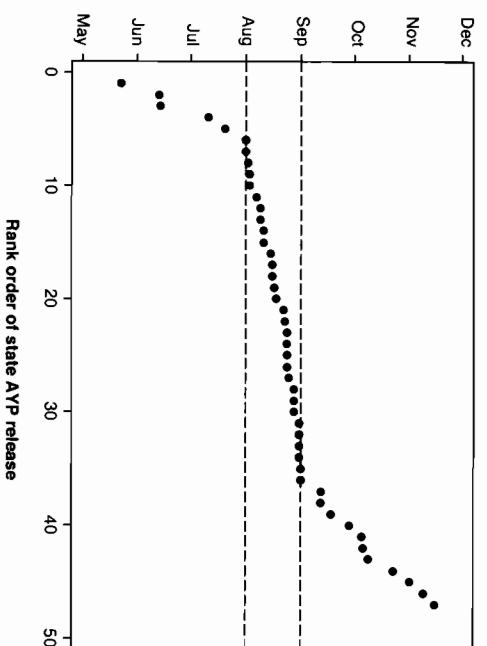
Recent research suggests that state and local officials disagree about whether the timeliness of AYP notifications is a problem. In a study of NCLB for the 2004–5 school year, the Center on Education Policy found that “identifying schools for improvement prior to the start of the school year” was a top challenge mentioned by local districts in implementing NCLB’s public school choice remedy. In contrast, when querying state officials, the center’s researchers uncovered an interesting disconnection, given that “only a handful of states mentioned the timing of state AYP determinations as a challenge to choice.”<sup>10</sup>

More than four years since NCLB became law, the evidence shows that states still struggle to determine AYP results in a timely manner. Figure 1-2 illustrates these difficulties by plotting the date on which each state made publicly available its final AYP determinations, based on performance from the 2005–6 school year. Notably, three states do not appear because, as of November 30, 2006, they still had not calculated final AYP results for all their schools. Of the remaining forty-seven, twenty-five produced these results in August. Others released them in September (ten states), October (four), or November (three). Only five states—North Dakota, Wisconsin, Florida, Georgia, and Hawaii—announced their final results before the end of July.

States have offered different reasons for these delays.<sup>11</sup> Some delays involved errors from contractors hired to score and compile test results. Others occurred because states were in the midst of transitions to new testing systems. Recognizing the importance of producing timely results, some states have been reporting provisional AYP determinations to specific schools likely not to make progress. However, these provisional assessments can change, causing problems for local school personnel who must inform parents about their children’s eligibility for NCLB school choice or supplemental educational services.

**Implementing NCLB School Choice.** Most federal guidance for implementing NCLB school choice targets local school districts, not states. That is because districts have perhaps the most demanding responsibilities for this remedy, and thus, in practice, states work at arm’s length on this provision. The primary state role, as noted in the previous section, is to provide timely information on schools identified as needing improvement so districts can inform parents of their options.

FIGURE 1-2  
FINAL STATE AYP DETERMINATIONS, 2006



SOURCE: Author’s calculations based on information in various state educational agency press releases and newspaper stories.

NOTE: Each data point represents an individual state. The vertical axis specifies the date by which each state released its final AYP results. The horizontal axis orders the states from the earliest to the latest release of final AYP results for schools and districts. There are three states missing from the figure because, as of November 30, 2006, final AYP results were not available from their websites. Illinois and Montana had not released any AYP results, and New York had results available only for high schools.

Many states have developed “tool kits” of documents, answers to frequently asked questions, and other guidance to help local districts carry out the law. Often these kits include model letters that states have crafted and local districts can adapt to inform eligible parents about NCLB school choice. These letters are worth considering because they represent a concrete way in which states help implement this otherwise locally dominated NCLB remedy.

The actual letters that districts produce have created controversy in some places where critics have claimed, they are confusing, or even discourage parents from exercising this option. Poor letters can at least partially explain the relatively low student participation in NCLB school choice, these critics say. Some states have been proactive in this regard. One official from Delaware told me that the state actually monitors the letters local districts send to parents. Still, it is worth considering whether potential problems may begin in language that states themselves suggest to local districts.<sup>12</sup>

## EXCERPTS FROM MODEL SCHOOL CHOICE PARENTAL NOTIFICATION LETTERS

TABLE 1-1

Opening paragraph	Words preceding sentence with choice option
<b>West Virginia.</b> West Virginia's public schools have been working hard to improve the performance of our students in reading, writing, and mathematics. On state tests, most students are scoring well and are achieving mastery in these core subjects. Our schools have shown that they can and will rise to high standards.	92

<b>Delaware.</b> Your child's school has been designated under the <i>No Child Left Behind Act of 2001</i> (NCLB) as a Title I School Improvement School. This designation alone does not indicate a failing school, but provides for a focus on areas of school improvement by principals, teachers, and parents. Identified schools become eligible for additional support from the school division and state as they work together to improve teaching and learning especially in the areas of reading and mathematics. Under the federal NCLB legislation, when a Title I school is identified as in need of improvement, parents have the option to: 1. Remain at the school and participate in the school improvement process; or 2. Seek enrollment in one of the designated schools below.	112
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

<b>Washington.</b> As part of the "No Child Left Behind Act (NCLB) of 2002" school districts are required to notify parents/guardians when schools that their children attend have not made Adequate Yearly Progress (AYP) for two consecutive years. AYP is the level of proficiency that schools must achieve on an annual basis. It is determined by a matrix of "cells" that include the percentages of participation, as well as proficiency of students in reading and math along with unexcused absences and graduation rates for secondary students. Those percentages are calculated across categories that include student ethnicity and socioeconomic status. Districts are also required to inform you of options that you have as a result of your child's school not making AYP.	163
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

<b>Iowa.</b> Many of you are aware of the federal No Child Left Behind (NCLB) Act, which requires schools to assess students annually and to meet student achievement goals. If a school does not meet those assessment and achievement goals (termed "adequate yearly progress" or AYP) for two consecutive years, and if the school receives federal Title I funds, then it is placed on a federal "Schools in Need of Assistance (SINA)" list and subjected to federal sanctions. Schools or districts are cited if they a) don't meet 95 percent participation rate for	172
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

(continued on next page)

(Table 1-1 continued from previous page)

Opening paragraph	Words preceding sentence with choice option
assessments, b) don't meet student achievement goals, or c) don't meet attendance rate for elementary and middle schools or graduation rate for high school.	
<b>Connecticut.</b> Our school is committed to providing all students with an excellent education. (SCHOOL NAME) has strong, dedicated teachers, who want to help your child succeed.	270

SOURCES: West Virginia Department of Education, "Parent Letter for School Choice," <http://wvde.state.wv.us/title/documents/ParentLetterforSchoolChoice06.doc>; State of Delaware Department of Education, "Parent Notification: Public School Choice, Sample 1," <http://www.doe.k12.de.us/SchoolImprovement/Choice/choicesampleletters.doc>; Washington Office of Superintendent of Public Instruction, "Schools Identified for School Improvement—Step 1—Public School Choice 2005," <http://www.k12.wa.us/EF/AModels/parentschoolchoiceletter05-06.doc>; Iowa Department of Education, "Notice of AYP Sample Letter B," under NCLB Reporting Requirements, AYP Notifications Under NCLB, Communication Guidelines for Local Districts to Use with Parents, <http://www.iowa.gov/educate/content/blogcategory/497/921/>; and Connecticut State Department of Education, "Sample Letter of Parent/Guardian Notification of Public School Choice for Elementary and Middle Schools Identified as 'In Need of Improvement—Year 1,'" [http://www.csde.state.ct.us/public/cedat/nclb/sip/resources/sip\\_guide/templates/parent\\_letter\\_Elem\\_Midd\\_year1.doc](http://www.csde.state.ct.us/public/cedat/nclb/sip/resources/sip_guide/templates/parent_letter_Elem_Midd_year1.doc) (all accessed June 13, 2007).

Excerpts from five state model letters appear in table 1-1. These letters were downloaded from state education agency websites in October 2006 and were chosen to provide examples (not a random sample) of states with different geographic and population characteristics. Table 1-1 presents the opening paragraph of each state's letter. It also indicates the number of words parents must read before seeing the sentence that explicitly states their child qualifies for NCLB school choice. Without examining the actual letters that parents receive, one cannot know for sure if local districts are actually using these templates when they develop their letters. Some local letters may be better, others worse, than the state models.

These examples suggest that many state templates do not lead with perhaps the most important piece of information—namely, that parents can exercise NCLB school choice. Connecticut's and West Virginia's letters may be most striking in this regard. Both open with several lines that emphasize strong performance in the public schools generally (West Virginia's letter) or in the particular school the child attends that is missing

AYP (Connecticut's letter). Other letters open by generally discussing NCLB, and explaining how AYP works. The sometimes complicated language demonstrates the difficulty some states have experienced in accurately describing the law in lay terms.

Some letters also take longer than others to mention NCLB school choice explicitly. Even though West Virginia's letter opens with a generally positive statement about the state's public schools, it is the swiftest at alerting parents to this option. A parent needs to read only 92 words, the rough equivalent of a four- or five-sentence paragraph, before learning about NCLB school choice. Connecticut's template takes the longest to mention NCLB's choice remedy: parents learn of it after reading 270 words.

Other state actions also can affect how NCLB's choice remedy plays out. In particular, implementation can chafe against other state laws or priorities. Sometimes, though not always, federal law affirms that state priorities can take precedence. That variability in NCLB itself has created confusion for states and local districts.

Florida's Polk County School District provides an example of how state and federal law can collide to complicate implementation of NCLB school choice. In 2002, Florida's voters enacted a constitutional amendment to limit class sizes across the state. Four years later, in August 2006, Polk County was required to offer NCLB school choice to approximately 34,000 students who attended twenty-nine schools not making AYP. Even though barely 2 percent of those students requested transfers, it was enough to throw the district out of compliance with the state's class-size amendment.<sup>13</sup> Federal guidance for NCLB's school choice remedy is explicit about which state laws can alter the implementation of choice. It says:

The only type of State law that can limit or exempt an LEA [local education agency] from implementing the Title I public school choice requirements is a law that specifically prohibits public school choice through restrictions on public school assignments or the transfer of students from one public school to another. Other laws, such as those that mandate specific student-teacher ratios, may make providing choice options more difficult, but may not be used to prohibit parental choices.<sup>14</sup>

Whether Florida's *constitutional* provision should be considered different from a state law is unclear. The school district's lawyer, Wes Bridges, noted that, as a practical matter, the district would have to obey one policy and disobey the other. "We have to make a choice, which spanking hurts worse," he said.<sup>15</sup>

Beyond that difficulty lies a further challenge. Like many states, Florida maintains its own accountability system, separate from NCLB, to rate school progress. In Polk County, twelve of the twenty-nine schools required to offer NCLB school choice also scored an "A" or "B" using Florida's accountability metric. That can complicate matters for districts attempting to inform parents about district progress and parents' options under NCLB.<sup>16</sup> It would likely confuse parents to receive a notice that their child's school rated an "A" by the state's measure, but learn through a different mailing that their child can transfer because the school did not make AYP.

**Implementing Supplemental Educational Services.** Unlike NCLB's school choice remedy, which places most responsibility on local districts, states must complete many specific tasks to support supplemental educational services. In general, federal guidance says that the state education agency (SEA) "must identify providers, maintain a list of providers, and monitor services." In developing a state-approved provider list, the guidance explains, state departments of education should ensure that parents have as many choices as possible. States also must remove providers from their lists who for two consecutive years cannot show evidence of increasing student academic proficiency.<sup>17</sup>

For this remedy, states have also developed model letters districts can use to inform eligible families about supplemental educational services. Table 1-2 presents excerpts from a convenient sample of these letters. Interestingly, unlike the excerpts from table 1-1 regarding NCLB school choice, these letters tend to be much more direct. Massachusetts's model letter is the most direct of all. Its opening paragraph simply states: "Your child may be eligible for tutoring that takes place outside of regular school hours, at no cost to you." What makes that line particularly clear, and perhaps slightly more effective than New Jersey's also quite direct opening, is that the lead paragraph is a single sentence that stands alone. It also uses the common word "tutoring" rather than the law's technical term, "supplemental

TABLE 1-2  
EXCERPTS FROM MODEL SUPPLEMENTAL EDUCATIONAL SERVICES  
PARENTAL NOTIFICATION LETTERS

Opening paragraph of letter	Words preceding sentence mentioning services option
-----------------------------	-----------------------------------------------------

**Massachusetts.** Your child may be eligible for tutoring that takes place outside of regular school hours, at no cost to you. 0

**New Jersey.** This letter is to notify you that, if your child is eligible for free or reduced lunch, he/she is eligible for free supplemental educational services this academic year. These services will be provided before school, after school, and/or during the summer. The services will be in addition to the regular instruction that your student receives during the school year. 0

**Colorado.** Welcome back to [school name]! In January 2002, a new federal education law was passed called No Child Left Behind. The law requires that schools in their 2nd year of school improvement or on corrective action offer tutoring to students in need. [School name] is in its 2nd year of school improvement. This letter is to inform you that your child may be eligible for free tutoring services. Listed below are important facts about the tutoring services: 52

**Delaware.** The highest priority for the [INSERT DISTRICT NAME] is to improve students' achievement. We firmly believe that all children can learn and will achieve when parents are actively involved with their children's education. Our schools are currently engaged in special efforts to improve student performance in our Title I schools that have not made adequate yearly progress for a period of three years. No Child Left Behind legislation encourages educators, parents and approved supplemental educational service providers to work diligently together to incorporate additional services in these schools. 88

**Iowa.** Many of you are aware of the federal No Child Left Behind (NCLB) Act, which requires schools to assess students annually and to meet student achievement goals. If a school does not meet those assessment and achievement goals (termed "adequate yearly progress" or AYP) for two consecutive years, and if the school receives federal Title I funds, then it is placed on a federal "Schools in Need of Assistance (SINA)" list and subjected to federal sanctions. Schools or districts are cited if they a) don't meet 95 percent 214

(continued on next page)

(Table 1-2 continued from previous page)

Opening paragraph of letter	Words preceding sentence mentioning services option
-----------------------------	-----------------------------------------------------

participation rate for assessments, b) don't meet student achievement goals, or c) don't meet attendance rate for elementary and middle schools or graduation rate for high school.

SOURCES: Massachusetts Department of Education, <http://www.doe.mass.edu/ses/results.asp> (accessed October 2006); New Jersey Department of Education, *A Toolkit for Schools, Districts, and Providers to Implement Supplemental Educational Services Under NCLB*, school year 2004-5, 18, <http://www.state.nj.us/education/title1/program/toolkit.pdf>; Colorado Department of Education, "Sample Parent Letter," [http://www.cde.state.co.us/FedPrograms/improvement/download/55\\_ParentLetter.pdf](http://www.cde.state.co.us/FedPrograms/improvement/download/55_ParentLetter.pdf); Delaware Department of Education, "Sample Parent Letter," <http://www.doc.k12.de.us/SchoolImprovement/SES/Sample%20Parent%20Letter%202006%202007.htm>; and Iowa Department of Education, "Notice of AYP Sample Letter C" under NCLB Reporting Requirements, AYP Notifications Under NCLB, Communication Guidelines for Local Districts to Use with Parents, <http://www.iowa.gov/education/blogcategory/497/921/> (all accessed June 13, 2007).

educational services." Parents would likely find the opening of Massachusetts' letter very easy to understand, which might motivate them to read on.

Because school districts can adapt the state examples for their own use, local letters may be better or worse than the state models. A U.S. Government Accountability Office (GAO) study has noted that some providers are dissatisfied with actual district letters, although the problems may not be entirely attributable to state and local decisions. The reason is that guidance from the U.S. Department of Education, which also provides a sample letter, "does not clearly specify all of the key elements required by SES [supplemental educational services] law and regulations. For example, the sample letter does not include information on provider services, qualifications, and effectiveness." The study also reported, "a few state and district officials commented that, when followed, the Title I regulations governing SES yield a letter that is unreasonably long and complex, which may be difficult for parents to understand."<sup>18</sup>

NCLB does not require states to provide model letters, but it does compel them to develop a list of state-approved supplemental educational services providers. Among other things, federal guidance instructs states to incorporate several items into these lists that describe the providers' programs, their records of effectiveness, and their modes of instruction. Analyzing the published lists illustrates how well the states are meeting these requirements.<sup>19</sup>

Table 1-3 presents results from a systematic analysis of these provider lists, which were obtained during October and December 2006 from state education agency websites. A state received credit for each item in table 1-3 if its provider list presented an explicit field with the specified information. The information might have appeared for some providers in another form even if a state did not get credit based on the coding rules that generated table 1-3. That is because some state lists included provider narratives that mentioned some of the specific elements in table 1-3. In other words, a state list might not have an explicit field indicating grade levels served, but a particular provider might have mentioned grade levels in its narrative. In that case, a state would not have received credit for the grade-level item, which appears in the eighth row of table 1-3, for two reasons. First, it is not clear that the state explicitly called for this information, so it is not clear whether all provider narratives included it. Second, and more important, the list is less user-friendly without a specific field for the grade-level item. Practically speaking, it would be much easier for parents to find a field labeled "grade levels served" and to read quickly down to eliminate providers not serving their child's grade. Wading through individual narratives—especially in states with dozens of providers—makes things quite complicated for parents who want to comparison-shop.

Table 1-3 illustrates that some states have crafted more detailed and systematically organized provider lists than others. Substantively, at least three main findings stand out. First, nearly all states do a good job of helping parents initially sort providers by key criteria. In 82 percent of states parents could quickly learn if a provider served their geographic area; in 80 percent parents could see if a provider served their child's grade level; and in 78 percent parents could easily discern for which school subjects the provider offered instruction.

Second, information on specific curricular or instructional matters was less frequently present. For example, 52 percent of state provider lists explicitly identified the student populations, such as disabled, limited English proficient, or low-income, that each provider specialized in serving. Further, several items that would probably interest many parents appeared inconsistently. The mode, time, and venue of instruction appeared around half the time (on 48, 52, and 58 percent of provider lists, respectively), while only around a third of these lists included fields addressing teacher

TABLE 1-3  
INFORMATION IN STATE LISTS OF APPROVED SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDERS

Provider information item	States including item (%)
<i>Basic information</i>	
Name of contact person	82
Full mailing address	72
Phone number	88
Fax number	38
Email address	74
Website address	48
<i>Clientele served</i>	
Geographic area (e.g., school districts, counties, specific schools)	82
Grade levels	80
Student populations (e.g., disabled, low-income, limited English)	52
<i>Curriculum and instruction</i>	
Subject matter covered (e.g., math, reading, other)	78
Mode of instruction (e.g., small group, one-on-one, via Internet)	48
Time of instruction (e.g., days per week, before school, after school)	52
Venue of instruction (e.g., school, student home, provider office)	58
Teacher/staff qualifications	34
Teacher to student ratio	32
<i>Other information</i>	
Cost of services	42
Method of reporting to parents/schools	16
Frequency of reporting to parents/schools	16
Transportation (e.g., provides transportation, doesn't provide)	28
Evidence of effectiveness	24
Space for provider narrative description	48

SOURCES: Author's calculations based on provider lists available from state education agency websites in October and December 2006.  
NOTE: Percentages are based on N=50.

and staff qualifications (34 percent) and teacher to student ratio (32 percent). Fortunately, nearly all states, 88 percent, did include a provider telephone number that would enable parents, or their advocates, to discuss these items. Still, it is surprising that provider phone numbers did not appear on all state lists.

Finally, most states offered little information regarding accountability. Only 24 percent of provider lists included explicit information on providers' effectiveness in improving student academic outcomes. Anecdotally, some providers did incorporate that, along with other information, in their open-ended narratives, which 48 percent of states allow a provider to include. Still, because the main point of supplemental educational services is to improve student achievement, it is unfortunate that more states do not explicitly single out information on effectiveness. As noted above, only a fraction indicated the method and frequency with which providers reported student academic progress; those items each appeared only 16 percent of the time.

The minimal information on accountability is perhaps not surprising, given that states themselves have had trouble developing methods for ensuring that providers improve academic performance. A recent study from the GAO considered this issue for the 2005–6 school year by examining several different methods states have used to hold providers accountable for increasing student achievement. Even though larger percentages of states said they planned to use these methods eventually, the actual number monitoring achievement during GAO's survey, conducted between January and March 2006, was quite small. Only 15 percent, for example, required the provider to document evidence of increased student achievement on statewide assessments. Other work has reported parallel findings, and some state officials have admitted that these monitoring issues have been rather challenging.<sup>20</sup>

One state official from North Carolina explained to me why monitoring provider performance is not easy. In this person's words, "It is really difficult to separate out the effect of one intervention when simultaneously the regular classroom teacher is providing instruction on a daily basis. Who gets the credit for the growth in academic performance that might be demonstrated?" Monitoring the quality of communication between providers, districts, and parents, this official continued, can also be challenging when providers reside outside the districts they serve.

### Corrective Action and Restructuring

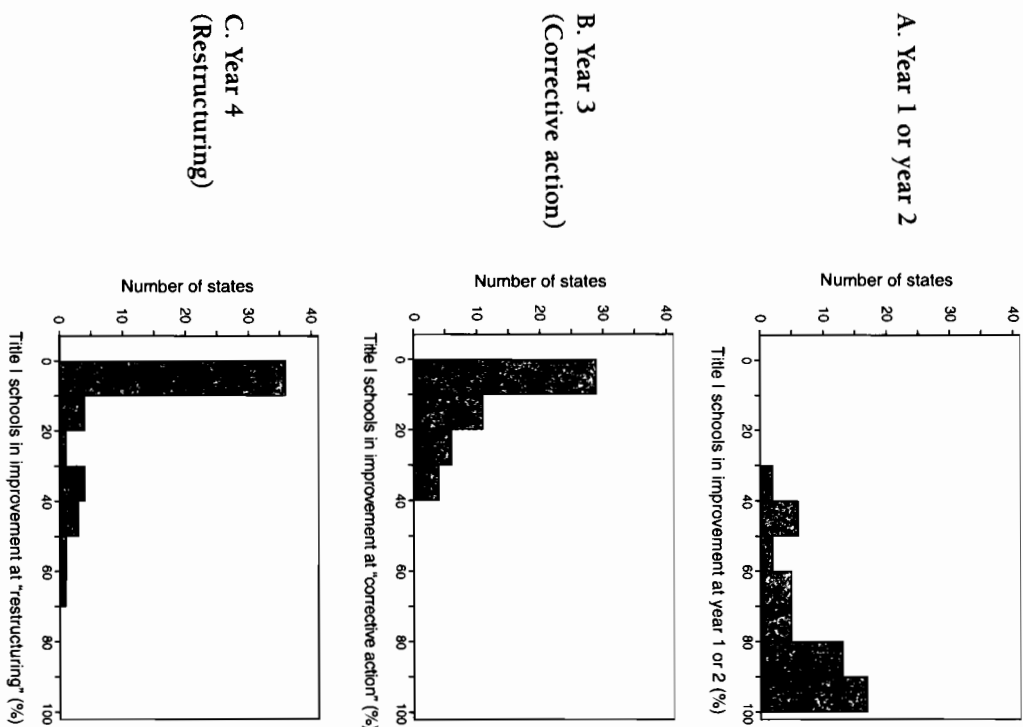
Unlike NCLB school choice or supplemental educational services, which rely heavily on parental decisions, the law's corrective-action and restructuring provisions take shape primarily when state and local officials act. Importantly, NCLB offers many options at these stages of improvement. How corrective action and restructuring actually unfold can vary tremendously across states and within them. Figure 1-1 has already illustrated that variability for districts, with part A documenting that most states have very low percentages of districts in improvement status.

Figure 1-3 provides additional information about Title I schools that have consistently missed AYP. Specifically, the figure shows the percentage of those schools, by number of states, that reached various stages of improvement status during 2004–5. For example, the bar furthest to the right in part A shows that seventeen states had at least 90 percent of their Title I schools in improvement at the year 1 or year 2 stage. In contrast, the leftmost bar in part B says that twenty-nine states had fewer than 10 percent of their Title I schools in improvement at the corrective-action stage. Finally, part C shows thirty-six states having fewer than 10 percent of Title I schools in improvement facing restructuring.

Two key conclusions emerge from figure 1-3 and provide an overall backdrop for this section. First, only a few states possess much experience working with Title I schools at the corrective-action and restructuring stages. Looking at the actual numbers that generated part B reveals that eight states had no Title I schools in improvement that had reached corrective action; for part C there were twenty-one states with no Title I schools in improvement at the restructuring stage. Those results were due in part to real differences in school performance, but also, and perhaps most significantly, to how states calculate AYP.

The second conclusion emerges when one compares part A of figure 1-3 with parts B and C. Even though many states have had limited experience with school corrective action and restructuring, many will likely face larger numbers of Title I schools reaching these stages in the future. The distribution in part A indicates that most Title I schools in improvement in 2004–5 were at the year 1 or year 2 stage. If those schools continue to struggle, states will start seeing more enter corrective action and restructuring. That

FIGURE 1-3  
TITLE I SCHOOLS IN IMPROVEMENT STAGES BY NUMBER OF STATES,  
2004-5



Source: Adapted from U.S. Department of Education, Institute of Education Sciences, *National Assessment of Title I Interim Report to Congress: Volume 1*, by Stephanie Stullich, Elizabeth Eisner, Joseph McCrary, and Collette Roney; NCEE 2006-4000, February 2006, exhibit 31, <http://ies.ed.gov/ncee/pdf/20064000.pdf> (accessed May 4, 2007).

NOTE: Percentages apply to Title I schools subject to NCLB's cascade of remedies. For example, the tallest bar in part B reads that twenty-nine states have less than 10 percent of Title I schools that are in improvement and have reached corrective action.

will place new demands on state officials as they attempt to implement these remedies.

**State Oversight of Corrective Action and Restructuring.** To understand the states' role in corrective action and restructuring, one should remember that NCLB defines local school districts as the primary change agents for schools in these stages of improvement. The law outlines support roles for state education agencies at all levels of improvement status, but in general, as federal guidance indicates, a local school district has "primary responsibility for assisting its schools that do not make adequate progress toward meeting established student academic achievement targets."<sup>21</sup> Comments from Patti Hammel, a local school official in South Carolina's Georgetown County Schools, suggest as much. "Corrective action does not mean state intervention," she said. "It's a district-wide look at programs and how to allocate resources."<sup>22</sup> Even during restructuring, theoretically the most demanding NCLB remedy, federal guidance says that NCLB "does not require the LEA [local education agency] or a school to submit to the SEA [state education agency] a restructuring plan or a report describing the alternative governance arrangements the LEA is implementing in a school identified for restructuring."<sup>23</sup>

But given the states' overall responsibility for public education, NCLB does stipulate that states can become more deeply involved in the improvement process. According to federal guidance, at the restructuring stage of improvement the state "may choose to have more significant involvement in district decision-making, such as by collecting and reviewing plans or participating in plan development, modification, and monitoring." Some states monitor more aggressively than others.<sup>24</sup>

In contrast, NCLB does outline very specific responsibilities for state education agencies dealing with local school districts that reach corrective action. Beyond providing technical assistance, the required corrective actions can be quite dramatic. At this stage of district improvement, state education agencies must do at least one of the following: defer program or administrative funds; require the district to adopt a new curriculum; replace key district personnel who are preventing the district from making AYP; remove specific schools from the district's jurisdiction; strip the local school board and superintendent of their power and appoint a receiver or

trustee to administer the district; or abolish or restructure the district. Importantly, state education agencies must act in ways "consistent with State law."<sup>25</sup>

**Versions of Corrective Action and Restructuring.** High-stakes accountability and NCLB's cascade of remedies imply that schools and districts repeatedly missing AYP should experience the most dramatic consequences. By that logic, schools entering corrective action or restructuring should feel greater pressure than those at earlier stages of improvement. But that might not always occur in practice. Schools in restructuring might close and reopen as charter schools—a very radical change—while others might opt for a lesser consequence that is nevertheless consistent with the law's restructuring options. Hoping to avoid disagreements with district officials, and believing that support rather than coercion will improve schools, many states have used NCLB's corrective-action and restructuring remedies in ways that avoid more radical reform measures.

In some instances, state personnel appear to oppose drastic action on philosophical grounds. In Illinois, for example, Becky Watts, chief of staff for the state Board of Education, has argued against state takeovers of schools because "Illinois is a local control state, and schools are best run by local school districts and local communities."<sup>26</sup> Dana Tofig, spokesman for the Georgia Department of Education, appeared to agree. Despite having eighty-five schools slated for restructuring, Tofig noted that the department would not take over any because "Our focus is on helping schools."<sup>27</sup> Oregon's state school superintendent, Susan Casillo, said that she would not take over a school even if state law allowed it because "As long as we have schools that are trying, that are making progress, then we need to support them. If all you use is the stick, you are not going to get anywhere."<sup>28</sup>

Those philosophical arguments are sometimes rooted in disagreements over the appropriate way to hold schools accountable for results. Comments from John Winn, education commissioner of Florida, illustrate that line of thinking. In comparing Florida's approach to accountability to that of NCLB, Winn said, "We have schools that are doing very well that are closing the achievement gap and achieving at high levels and still not making AYP. . . . I'm going to be hard-pressed to put the federal sanctions ahead of our state accountability system."<sup>29</sup>

When states do intervene during corrective action or restructuring, typically they offer added support to schools and districts. Although Iowa has not had many schools enter corrective action, a state official there told me that the "most appropriate action" for schools at that point "seems to be the curriculum review and redesign." Another state official in North Carolina told me that the state approaches corrective action by providing "direct assistance to the schools that miss the greatest percentage of their AYP targets." Consistent with the remarks of education commissioner Winn, Florida, which shows schools making strong progress on its own metrics but has increasing numbers of schools missing AYP, has been quite lax with those reaching the restructuring phase. Even though several Florida schools should have been well into that phase of improvement status as the fall 2006 school year began, the state was giving districts until January 2007 to devise school restructuring plans and until August 2007 to implement them.<sup>30</sup>

A popular approach has been for states to send "turnaround specialists" into schools and districts needing corrective action. These individuals might be state agency employees, private consultants, or former expert teachers or principals. Such supportive measures foster direct state involvement that is less coercive than other NCLB options. Some states dispatch these advisors with much deference to local prerogatives. In Pennsylvania, for example, the state division chief for district and school development, Sally Chamberlain, explained that even this sort of measure "is a cooperative thing" because a school district "has to agree to allow the team to come in."<sup>31</sup>

One thing facilitating more supportive or suggestive measures, rather than high-stakes ones, is a major loophole in the NCLB school restructuring requirement. Section 1116(b)(8)(B) of NCLB allows schools in restructuring to employ "any other major restructuring of the school's governance arrangement that makes fundamental reforms" to help the school make AYP. What these other major reforms are is open to interpretation. A study in California found that this was the most popular option by far. During 2005–6 it was chosen by 76 percent of schools reaching the restructuring stage and involved measures including "hiring coaches who will help teachers work together in new ways" and "appointing a leadership team to oversee school operations." Those moves fall short of what lay observers might consider "restructuring," but technically they could still be consistent with the letter of the law.<sup>32</sup>

Despite generally favoring more supportive approaches to corrective action and restructuring, some states have gotten tough by directly intervening or withholding funds. An Alaska official told me that for school districts entering corrective action, the state has required specific elements in a districtwide improvement plan, and that NCLB funds are "prorated and released upon completion of key milestones." At the start of the 2006-7 school year, at least four Pennsylvania school districts, including Philadelphia, were under some form of state control for failing to make AYP.<sup>33</sup> And in California, despite the somewhat lenient measures described above, the existence of that state's charter school law helped enable the California Charter Schools Association in October 2006 to win a multimillion-dollar federal grant to open fifty-two new charter schools, ten of which were traditional public schools slated for restructuring under NCLB.<sup>34</sup>

Perhaps the most aggressive attempted use of NCLB's remedies by a state official occurred in Maryland. During the spring of 2006, the state Department of Education, led by superintendent Nancy Grasmick, tried to take over eleven Baltimore schools that had failed to make scheduled progress. The state legislature blocked that move and gave these schools another year before the state agency could assert its power in this way. The result was a district corrective-action plan that, among other things, required curricular changes, training, and a study to determine if academic leaders in the school district should be replaced, changes that fell short of more radical measures that might have ensued under more direct state control.<sup>35</sup>

**Explaining Choices for Corrective Action and Restructuring.** States have tended to favor less dramatic reforms at the corrective-action and restructuring stages for several reasons. A lack of political will to make tough choices is likely one, but at least three others are relevant, too.

First, state policies often do not support the more demanding remedies that NCLB suggests. Recall that NCLB and its accompanying guidance say that the remedies states choose must be consistent with state law. That can prevent several measures from gaining traction. Not all states allow state education departments to take over struggling local districts or schools, for example.<sup>36</sup> Additionally, even though many states have charter school laws, some make it rather difficult for charters to form, or they even cap the number of charter schools that can operate.<sup>37</sup> State policy can also limit the introduction

of private management companies into struggling public schools. Such companies cannot participate in major restructuring efforts in Kentucky, for example, because the state has not developed regulations to govern how they would be paid for their efforts.<sup>38</sup>

State policies governing teachers present a related obstacle that can limit corrective-action or restructuring measures. Laws that guarantee teachers a right to collectively bargain, and in turn produce binding teacher contracts, can make radical changes to school personnel difficult. Further, state policies governing teacher licensing can narrow local options. Certification requirements sometimes discourage individuals from becoming teachers, creating major problems in communities that already have a limited teacher pool from which to choose. As it may be extremely difficult for those communities to restructure schools by replacing entire school staffs, local leaders may consider the other, less radical remedies that NCLB allows.<sup>39</sup>

Second, state education agencies possess varying capacities to intervene aggressively in low-performing schools and districts. In part, these capacity challenges persist because the capabilities of state education agencies have not kept pace with their evolving roles.<sup>40</sup> Many state officials told me that the increasing numbers of schools and districts entering corrective action or restructuring have significantly stretched their limited capabilities. One Iowa official explained to me that "Looking at the overall curriculum, instruction, and assessment for a district," which state support teams do in troubled districts, "is a demanding task that doesn't fit well in the timeframe dictated in the federal legislation [NCLB]." These difficulties exist, the official noted, even though the state already has a relatively well-established network of support units, called area education agencies, to serve local districts.

A North Carolina official explained to me that the "capacity to provide assistance" is a major challenge because "There are not enough staff members at the state level to address the needs in all the districts/schools in improvement." The official expected those challenges to intensify, given "the exponential increase in the number of districts entering improvement. Last year, there were forty-four districts, this year there are sixty-two." Ironically, one related issue, further straining state capacity, has been the incremental flexibility that federal officials have offered to states as they implement NCLB. As the North Carolina official noted, "In our state alone, there have been twenty-nine changes in how the AYP rules have been

applied in our accountability workbook." Those changes, while designed to ease burdens on states, can actually create more work, as state officials must communicate these adjustments to local districts and then help districts and schools incorporate them into their improvement plans.

Even when states provide support to help districts and schools analyze their weaknesses, local leaders sometimes get little guidance about what to do next. In Massachusetts, for example, one researcher has found that "The state has done a good job . . . at the identification phase. They're less clear what you actually do about it . . . The reality is that the state doesn't have enormous capacity right now to engineer significant interventions for turnaround schools."<sup>41</sup> State officials in Alaska and Delaware expressed similar sentiments about capacity in exchanges with me.

A third reason limiting the use of more radical options is that corrective action and restructuring depend not only on state capabilities but on local ones, too. Federal policymakers rely heavily on states for NCLB's success, and the law's delegation chain means that states in turn lean heavily on local ideas and leadership.<sup>42</sup> A state official in Connecticut explained to me why this is often difficult. Typically, school principals "were trained to be managers and not instructional leaders," this person noted. "It is difficult to assist with systemic change in school districts when the leaders in the district do not have the technical skills to lead large-scale organizational change." Connecticut has tried to ameliorate these problems by recruiting retired, successful urban principals to advise current officials managing the corrective-action and restructuring processes. In West Virginia, a state official relayed a similar story to me, saying how "developing [local] leadership for change and school improvement [and] training schools and districts to make data-based decisions" are two of the major challenges the state has faced in trying to implement NCLB's cascade of remedies.

These comments suggest that local districts and schools are experiencing some of the same administrative growing pains as states themselves. Moving from a compliance- to a performance-oriented mindset within schools and districts, especially where student achievement has suffered for several years, is a steep challenge. North Carolina's strategy, noted earlier, of targeting the most robust state assistance to the districts performing the most poorly seems to recognize this fact. The state's approach appears

premised on the belief that low district capacity, which targeted state assistance can ameliorate, is a major barrier to improving student success.

#### **NCLB in a Fragmented Intergovernmental System**

Despite Washington's growing role in education, NCLB's cascade of remedies will succeed or fail in large part based on how well state officials strategically apply the high-stakes and supportive measures that the law allows. Reasonable people can disagree on how to strike that balance. But without a major revolution in educational governance in this country, federal and local officials will continue relying heavily upon state policy and leadership to improve the educational fortunes of thousands of American children who attend struggling public schools. Put another way, the persistence of state power in education means that NCLB's ambitions and federal officials' promises to enforce the law strictly will continue to collide head-on with the primary institutions that control American schools. NCLB has provided Washington with a stronger lever to press for change. But given the law's lengthy delegation chain and the reluctance of federal officials to assert real control through a national curriculum and national exams, federal officials' options remain limited.

If it is difficult for Washington to guarantee real high-stakes accountability and consequences for low educational performance, there are several ways that national policymakers can use the logic of suggestive accountability to improve state implementation of NCLB's remedies. Even though NCLB is now more than five years old, it is still quite difficult for even experienced researchers, let alone casual observers, to determine at any given moment how many schools and districts in each state are at each level of improvement status. Simply knowing those totals and being able to compare them across state lines would provide lay observers and policymakers with important information about where and how NCLB's remedies are taking hold across the country. Without clear data on how states are shepherding implementation of NCLB, it will be impossible for policymakers at any level of government to judge the effectiveness of the law's remedies.

Overall, NCLB's ambitious approach to accountability has created new challenges and opportunities for education reformers across the United

States. Despite the high-stakes logic that motivates the law's remedies, the evidence reveals that state implementation has varied tremendously. The states' internal political climates, their own policy choices, and their capabilities have had a tremendous impact on how the law's remedies are taking shape. That is not surprising, given NCLB's many moving parts and the challenging position that states occupy in the nation's intergovernmental system.

## 2

### America's Great City Schools: Moving in the Right Direction

*Michael Casserly*

No Child Left Behind (NCLB), the nation's boldest reform of federal education policy, is over five years old. And it is becoming increasingly evident that this landmark legislation is both living up to many of the promises its strongest proponents hoped for and encountering many of the pitfalls its harshest critics warned against.

The promise of NCLB, of course, rests in its pledge to attain academic proficiency for all students by 2013–14. The law sets bold goals, mandates extensive testing, requires greater transparency in public reporting, offers parental choice, and holds school officials accountable for results. At the same time, it has attracted widespread opposition, has spurred what some see as an overemphasis on test preparation, has narrowed curricula, and has encouraged new ways of gaming the system.

So far, test scores in reading and mathematics have increased—at least in some places. Reading scores in large central cities show significant increases on the National Assessment of Educational Progress (NAEP), but scores nationally remain flat. Math scores, for their part, are going up everywhere. More importantly, the country's largest central city school systems are narrowing gaps between themselves and the nation in both reading and math.<sup>1</sup> It is not clear that the new federal law drove those gains, but it may have helped to sustain them.

Five years after the law's enactment, it is clear that a school and school district may be in full compliance with NCLB and still not be raising student achievement. Conversely, it is quite possible to raise student achievement