THE
NO CHILD
LEFT BEHIND
ACT
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EXECUTIVE SUMMARY


The No Child Left Behind Act of 2001 (the Act) represents a historic expansion of the role of the federal government in public education. It is perhaps the most significant change in the role of the federal government with respect to education since the original enactment of the Elementary and Secondary Education Act in 1965.

While the impact of the Act will take several years to be felt, it can be expected that the federal government will no longer be just a funding mechanism for public education but will now be involved in setting the goals for public education. Through the funding of the Title I programs for disadvantaged students, the federal government will require public schools to set achievement level standards and proficiency levels to bring disadvantaged children to the same level as all children.

STATE ACCOUNTABILITY SYSTEM

Section 6311 of the Act requires each state to develop a state accountability system by developing a state plan that addresses academic standards, academic assessments and accountability. The state accountability system must be based on the academic standards and academic assessments developed by the state. The state accountability system must be the same system for all students and must include sanctions and rewards to hold local educational agencies accountable for student achievement and for ensuring adequate yearly progress. What constitutes adequate yearly progress is defined by the state. However, the same high standards of academic achievement must apply to all public school students in the state.

Each state is required to use data from the 2001-02 school year to establish a starting point for measuring the percentage of students meeting or exceeding the state’s proficiency level of academic achievement on the state assessments. The timeline is required to ensure that not later than twelve years after the end of the 2001-02 school year (i.e., June 30, 2014), all students in all identified groups (e.g., economically disadvantaged, limited English proficient, minority) will meet or exceed the state’s proficient level of academic achievement on the state assessments.

ANNUAL STATE REPORT CARD

As part of the state accountability system, Section 6311(h) of the Act requires each state, beginning with the 2002-2003 school year, to develop an annual state report card. The state report card is required to be concise and presented in an understandable and uniform format, and to the extent practicable,
provided in a language that parents can understand.

**ANNUAL LOCAL REPORT CARD**

Section 6311(h)(2) requires each local educational agency to develop an annual local report card beginning with the 2002-03 school year. The annual local report card must include the following:

1. The number and percentage of schools identified for school improvement and how long the schools have been so identified.
2. Information that shows how students served by the local educational agency achieved on the statewide academic assessment compared to students in the state as a whole.
3. For each school, whether the school has been identified for school improvement.
4. For each school, information that shows how the school’s students’ achievement on the statewide academic assessments and other indicators of adequate yearly progress compared to students in local educational agencies in the state as a whole.

**TEACHER QUALIFICATIONS**

Section 6311(h)(6) of the Act requires the local educational agency to notify parents of each student attending any school receiving Title I funds that the parent may request information regarding the professional qualifications of the student’s classroom teacher, including, at a minimum, the following:

1. Whether the teacher has met state qualifications and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.
2. Whether the teacher is teaching under emergency or other provisional status, through which state qualification or licensing criteria have been waived.
3. The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.
4. Whether the child is provided services by paraprofessionals, and, if so, their qualifications.

**LIMITED ENGLISH PROFICIENT CHILDREN**

Section 6312(g) requires each local educational agency receiving Title I funds to provide a language
instruction educational program to inform parents of limited English proficient children, identified for participation in the program, not later than thirty days after the beginning of school, of:

1. The reason for the identification of their child as limited English proficient.
2. The child’s level of English proficiency.
3. The method of instruction used in the program of which the child is or will be participating.
4. How the program will meet the child’s needs.
5. How the program will specifically help their child learn English.
6. The specific exit requirements for the program.
7. In the case of a child with a disability, how the program meets the goals and objectives of the child’s IEP.
8. Information pertaining to parental rights.

In addition, the local educational agency is required to separately inform parents of children in language instruction programs if the school fails to make adequate yearly progress.

LOCAL PARENTAL INVOLVEMENT REQUIREMENTS

Section 6318 of the Act requires a local educational agency that receives Title I funds to implement programs, activities and procedures for the involvement of parents. The programs, activities and procedures must be planned and implemented following consultation with the parents of the participating children. The local educational agency is required to develop a policy or plan for establishing parent participation programs. As part of the plan, each local educational agency is required to convene an annual meeting, to which all parents are invited, and conduct additional meetings at times convenient to parents. Section 6318(d) requires that a component of the parental involvement policy include a school-parent compact, by which the school and parents will build a partnership to help achieve the state’s high academic standards. The compact is required to describe the school’s responsibility to provide high quality curriculum and instruction, and address the importance of communication between parents and teachers. The compact may provide necessary literacy training for parents with Title I funds and may pay reasonable and necessary expenses, including transportation and child care costs, to enable parents to participate in school-related meetings and training sessions.

SCHOOL SUPPORT AND RECOGNITION

Section 6317 of the Act requires each state to establish a statewide system of intensive and sustained support and improvement for local educational agencies and schools receiving Title I funds. The state is required to provide support and assistance to local educational agencies and schools identified in need of improvement through the use of school support teams.

Section 6317(b) requires each state to establish a system for state recognition, including academic
achievement award programs, distinguished schools and awards to teachers. The purpose of these programs would be to recognize schools that meet or exceed their adequate yearly progress for two or more consecutive years and to financially reward these schools.

SCHOOL IMPROVEMENT

Section 6316 of the Act outlines the provisions for school improvement. Section 6316 requires each local educational agency receiving Title I funds to use the state academic assessments and other indicators described in the state plan to annually review the progress of each school served under Title I, to determine whether the school is making adequate yearly progress. The local educational agency is required to publicize and disseminate the results of the local annual review.

Section 6316(b) requires the local educational agency to identify for school improvement any school served under Title I that fails, for two consecutive years, to make adequate yearly progress as defined in the state’s plan. The local educational agency is required to identify failing schools before the beginning of the school year following the failure to make adequate yearly progress. In the case of schools identified for school improvement, the local educational agency must provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency that has not been identified for school improvement, subject to space availability.

Section 6316(b)(3) requires the local educational agency to develop a school plan for each failing school. The plan must be developed in consultation with parents, staff and outside experts, for approval by the local educational agency. The school is required to implement the school plan not later than the beginning of the next full school year following its identification as a failing school. The local educational agency is required to establish a peer review process to assist with the review of the school plan and work with the school as necessary to meet the requirements of the act.

Section 6316(b)(4) requires the local educational agency serving a school identified for school improvement to provide technical assistance as the school develops and implements the school plan. The technical assistance is required to be based on scientifically based research.

Section 6316(b)(5) requires a local educational agency serving a school that fails to make adequate yearly progress by the end of the first school year after identification as a failing school, to:

1. Continue to provide all students enrolled in the school with an option to transfer to another public school served by the local educational agency.
2. Make supplemental educational services available.
3. Continue to provide technical assistance.

Section 6316(b)(6) requires the local educational agency to promptly notify parents of each student enrolled in a school identified for school improvement, corrective action or restructuring.
Section 6316(b)(7) states that any school that fails to make adequate yearly progress, as defined by the state, by the end of the second full school year after identification as a failing school, is required to:

A. Continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency.
B. Continue to provide technical assistance while instituting corrective action.
C. Continue to make supplemental educational services available to children who remain in the school.
D. Identify the school for corrective action and, either replace the school staff, institute and fully implement a new curriculum, significantly decrease management authority at the school level, appoint an outside expert to advise the school, extend the school year or school day, or restructure the internal organizational structure of the school. The local educational agency is required to publish and disseminate information regarding any corrective action taken by the local educational agency.

Section 6316(b)(8) states that if, after one full school year of corrective action, the school continues to fail to make adequate yearly progress, then the local educational agency is required to continue to provide all students enrolled in the school with an option to transfer to another public school served by the local educational agency, and to make supplemental educational services available to children who remain in the school. The local educational agency is also required to prepare a plan to carry out an alternative governance plan not later than the beginning of the school year following the year in which the local educational agency implements corrective action and the school continues to fail to make adequate yearly progress. The alternative government’s governance arrangements may consist of reopening the school as a public charter school, replacing all or most of the school staff, entering into a contract with a private management company, turning the operation of the school over to the state educational agency, or any other major restructuring of the school’s governance arrangements that makes fundamental reforms to improve student academic achievement in the school.

Section 6316(b)(9) requires a local educational agency to provide and pay for the provision of transportation for students in schools that fail to make adequate yearly progress to the public school the students transfers to and attends. If all of the public schools served by the local educational agency to which a child may transfer are identified for school improvement, corrective action or restructuring, the agency shall establish a cooperative agreement with other local educational agencies in the area for a transfer.

Section 6316(b)(14) requires state educational agencies to provide technical assistance to schools identified for school improvement, corrective action or restructuring. If the state educational agency determines that a local educational agency failed to carry out its responsibilities to take such corrective actions as the state educational agency determines to be appropriate, the states shall take such corrective action as the state educational agency determines to be appropriate and in compliance with state
Section 6316(c) requires the state to annually review the progress of each local educational agency receiving Title I funds to determine whether schools receiving Title I funds are making adequate yearly progress toward meeting the state’s student academic achievement standards, and determine if each local educational agency is carrying out its responsibilities under the act. The state is also required to publicize and disseminate the results of the state review. The state is required to identify for improvement any local educational agency that, for two consecutive years, failed to make adequate yearly progress as defined in the state’s plan. It is unclear whether it requires only one identified school, or more than one identified school, for a local educational agency to be designated as failing to make adequate yearly progress. This issue will probably be addressed in the state’s plan.

Section 6316(c)(10) outlines the requirements for corrective action by the state educational agency. After providing technical assistance, the state may take corrective action at any time. These actions may include:

1. Deferring programmatic funds or reducing administrative funds
2. Instituting and fully implementing a new curriculum.
3. Replacing the local educational agency personnel.
4. Removing particular schools from the jurisdiction of the local educational agency and establishing alternative arrangements for public governance and supervision of such schools.
5. Appointing a receiver or trustee, in place of the superintendent and school board.
6. Abolishing or restructuring the local educational agency.
7. Authorizing students to transfer to another school district.

RIGHTS OF SCHOOL EMPLOYEES

Section 6316(d) states that nothing in Section 6316 shall be construed to alter or otherwise affect the rights, remedies and procedures afforded school or school district employees under federal, state or local laws (including applicable regulations or court orders), or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

This provision in the Act will make it difficult for school districts to implement the corrective actions and restructuring summarized above. Most states, including California, have extensive legislation protecting the rights of school employees, and have laws establishing collective bargaining. Under many collective bargaining agreements, the ability of the school employer to transfer or discipline employees because a school has failed to make adequate yearly progress is severely limited. The conflict between the provisions of the Act summarized above and the state laws protecting the rights of employees will be the subject of
much litigation.

SUPPLEMENTAL EDUCATIONAL SERVICES

Section 6316(e) states that in the case of any school identified as failing to make adequate yearly progress, in need of corrective action or restructuring, the local educational agency serving the school shall arrange for the provision of supplemental services to eligible children in the school from a provider with a demonstrated record of effectiveness, that is selected by the parents and approved by the state educational agency, in accordance with reasonable criteria, that the state educational agency has adopted. The local educational agency is required to provide annual notice to parents of the availability of supplemental educational services. Supplemental educational services are defined as tutoring and other supplemental academic enrichment services that are provided in addition to the instruction provided during the school day and are of high quality, research based and specifically designed to increase the academic achievement of the eligible children on the academic assessments required by the Act.

HIGHLY QUALIFIED TEACHERS

Section 6319(a) of the Act requires each local educational agency receiving Title I funding to ensure that all teachers teaching in Title I programs are “highly qualified.” Section 6319(a)(2) requires that by the end of the 2005-2006 school year all teachers teaching in core academic subjects in the state will be highly qualified.

Section 7801(23) of the Act defines the term “highly qualified”. Highly qualified with respect to a public elementary school or secondary school teacher means the following:

1. The teacher has obtained full state certification as a teacher (including certification obtained through alternative routes to certification) or passed the state teacher licensing examination and holds a license to teach in such state; and
2. The teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

PARAPROFESSIONALS

Section 6319(c) of the Act requires each school district receiving Title I funds to ensure that all paraprofessionals hired after January 8, 2002, and working in a program supported with Title I funds, have:

1. Completed at least two years of study at an institution of higher education,
2. Obtained an associates or higher degree, or
3. Met a rigorous standard of quality and can demonstrate, through a formal
state or local assessment, 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.

Section 6319(d) requires existing paraprofessionals to meet these requirements by January 8, 2006. Section 6319(e) contains exceptions for paraprofessionals who are proficient in a language other than English and who provide services primarily to enhance the participation of children by acting as a translator, or whose duties consist solely of conducting parental involvement activities. Section 1119(f) requires that school districts, regardless of the paraprofessionals hiring date, must ensure that all paraprofessionals working in a program supported with Title I funds have earned a secondary school diploma or its recognized equivalent.
INTRODUCTION

On January 8, 2002, President Bush signed the No Child Left Behind Act (NCLB) of 2001 which amends the Elementary and Secondary Education Act (ESEA) (Title I), Public Law 107-110, 20 U.S.C. sections 6301, et seq. On July 5, 2002, the United States Department of Education promulgated final regulations which take effect August 5, 2002 with respect to the Title I provisions relating to standards and assessments. On November 26, 2002, the United States Department of Education released final regulations with respect to the definition of adequate yearly progress and other aspects of the No Child Left Behind Act.

The NCLB represents a historic change in the relationship between the federal government and the states with respect to public education. No longer will the federal government be just a funding mechanism supporting existing programs. The federal government will now be involved in setting the tone, direction and priorities of public education in every school in the United States.

The NCLB and the federal regulations will require the California Department of Education (CDE) to establish state standards and a state assessment system which meet these federal requirements. The new standards may be in the form of new Education Code provisions, Title 5 regulations, or state policies.
CHAPTER 1 - STANDARDS AND ASSESSMENTS

A. STATE RESPONSIBILITY FOR DEVELOPING STANDARDS

Section 6311 of the Act\(^1\) and the federal regulations, 34 C.F.R. section 200.1 through 200.6 outline state responsibilities for developing challenging academic standards. Section 1111(b)(1) and Section 200.1 requires states receiving Title I funds to develop challenging academic content and student academic achievement standards that will be used by the state and its local educational agencies to carry out the goals of Title I. **These academic standards must apply to all public schools and public school students in the state** including public schools and public school students served with Title I funds and must include the same knowledge, skills and levels of achievement expected of all students and include at least mathematics, reading/language arts, and beginning in the 2005-2006 school years, science. States may include other subjects, as well.

Section 6311(b)(1) and Section 200.1(b) require that the challenging academic content standards must: (1) specify what all students are expected to know and be able to do; (2) contain coherent and rigorous content; and (3) encourage the teaching of advanced skills. A state’s academic content standards may be grade-specific or cover more than one grade if grade level content expectations are provided for each of grades 3 through 8. At the high school level, the academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in at least reading, language arts, mathematics, and beginning in the 2005-2006 school year, science.

Section 6311(b)(1) and Section 200.1(c) require that the academic achievement standards be aligned with the state’s academic content standards and include for each content area three levels of achievement – proficient, advanced, and basic. The proficient and advanced levels require that the state determine how well students are mastering the material in the state’s academic content standards and the basic level of achievement requires the state to provide complete information about the progress of lower achieving students toward mastering the proficient and advanced levels of achievement. The state’s academic achievement standards must describe the competencies associated with each achievement level, as well as assessment scores that differentiate among the achievement levels, and a description of the rationale and procedures used to determine each achievement level. Each state is required to develop academic achievement standards for every grade and subject assessed even if the state’s academic content standards cover more than one grade. With respect to science, the state must develop achievement levels and descriptions no later than the 2005-2006 school year and assessment scores after the state has developed its science assessments no later than the 2007-2008 school year. With respect to subjects without standards, the state must describe in its state plan a strategy for ensuring that Title I students are taught the same knowledge and skills and held to the same expectations in those subjects as non-Title I students.

\(^1\) 20 U.S.C. Section 6311.
B. STATE RESPONSIBILITY FOR ASSESSMENT

Section 6311(b)(3) of the Act and Section 200.2 outline the state’s responsibility for assessment of Title I students. Section 200.2(a) requires each state in consultation with local educational agencies to implement a system of high-quality yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading/language arts, and beginning in the 2007-2008 school year, science. The state may also measure the achievement of students in other academic subjects in which the state has adopted challenging academic content and student academic achievement standards. If a state has developed assessments in other subjects for all students, the state must include students participating in Title I programs in those assessments.

Section 6311(b)(3) and Section 200.2(b) require that the state’s assessment system must:

1. Be the same assessment system used to measure the achievement of all students.

2. Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.

3. Be aligned with the state’s challenging academic content and student academic achievement standards and provide coherent information about student attainment of those standards.

4. Be valid and reliable for the purposes for which the assessment system is used and consistent with relevant nationally recognized professional and technical standards.

5. Be supported by evidence from test publishers or other relevant sources that the assessment system is of adequate technical quality for each purpose required.

6. Be administered in accordance with the timelines required.

7. Involve multiple, up-to-date measures of student academic achievement including measures that assess higher order thinking skills and understanding of challenging content.

8. Objectively measure academic achievement, knowledge and skills without evaluating or assessing personal or family beliefs and attitude.
9. Provide for participation in the assessment system of all students in the grades being assessed.

10. Enable results to be disaggregated within each state, local educational agency and school by gender, major racial and ethnic group, English proficiency status, migrant status, disability status under the IDEA, and economically disadvantaged students as compared to students who are not economically disadvantaged.

11. Produce individual student reports.

12. Enable itemized score analyses to be produced and reported to local educational agencies and schools.

C. STATE ACADEMIC ASSESSMENT SYSTEMS

Section 6311(b)(3) and Section 200.3 outline the provisions for designing state academic assessment systems. Section 200.3(a) requires a state’s academic assessment system to address the depth and breadth of the state’s academic content standards, be valid, reliable and of high technical quality, express student results in terms of the state’s student academic achievement standards and be designed to provide a coherent system of grades and subjects. The state’s academic system should meet all these requirements with respect to each grade and subject assessed. States may include in their academic assessment system either a criterion referenced assessment or assessments that yield national norms. A state may include a combination of assessments if it meets certain specified requirements.

D. TIMELINE FOR ASSESSMENTS

Section 6311(b)(3) and Section 200.5 outline the timelines for assessment. Section 200.5(a) requires that the reading/language arts assessments be administered by the 2004-2005 school year. The state must administer the assessments at least once during grades 3 through 5, grades 6 through 9, and grades 10 through 12. Beginning in the 2005-2006 school year, a state must administer both the reading/language arts and mathematics assessments in each of grades 3 through 8 and at least once in grades 10 through 12. The Secretary of Education may extend for one additional year, the timeline if a state demonstrates that full implementation is not possible due to exceptional or uncontrollable circumstances.

Section 200.5(b) requires that beginning no later than the 2007-2008 school year, the science assessments must be administered at least once during grades 3 through 5, grades 6 through 9, and grades
Section 200.5(c) states that beginning with the 2002-2003 school year, the state must promptly provide the results of its assessments no later than the beginning of the next school year to local educational agencies, schools and teachers in a manner that is clear and easy to understand.

E. INCLUSION OF ALL STUDENTS

Section 6311(b)(3) and Section 200.6 require a state’s academic system to provide for the participation of all students in the grades assessed. With respect to special education students found eligible under the IDEA, Section 200.6 requires that appropriate accommodations that each student’s IEP team determines are necessary to measure the academic achievement of the student be provided. For students identified as disabled under Section 504 of the Rehabilitation Act, Section 200.6 requires that appropriate accommodations that each student’s placement team determines are necessary to measure the academic achievement of the student must be provided. In addition, Section 200.6 requires that the state’s academic assessment system provides for one or more alternate assessments for a student with disabilities, who the student’s IEP determines cannot participate in all or part of the state assessment, even with appropriate accommodations. The alternate assessment must yield results in at least reading/language arts, mathematics, and beginning with the 2007-2008 school year, science. Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and beginning in the 2007-2008 school year, science.

With respect to limited English proficient (LEP) students, Section 200.6(b) requires each state to assess LEP students in a valid and reliable manner that includes reasonable accommodations, and to the extent practical, assessments in the language most likely to yield accurate and reliable information on what those students know and can do to determine the student’s mastery of skills in subjects other than English until the student has achieved English language proficiency. In its state plan, the state must identify the languages other than English that are present in the student population served by the state and indicate the languages for which yearly student academic assessments are not available and are needed. The state must make every effort to develop such assessments and may request assistance from the U.S. Department of Education in identifying linguistically accessible academic assessments that are needed.

Section 200.6(b)(2) requires that unless an extension of time is warranted, a state must assess LEP students using assessments written in English in meeting the state’s reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico, for three or more consecutive years. A local educational agency may continue, for no more than two additional consecutive years, to assess a LEP student in a language other than English if the LEA determines, in a case by case individual basis, that the student has not reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English. States are not permitted to exempt LEP students from the states assessment system.
Unless the state receives an extension from the U.S. Department of Education, the state must require each local educational agency, beginning no later than the 2002-2003 school year, to assess annually the English proficiency, including reading, writing, speaking and listening skills, of all students with limited English proficiency in schools in the local educational agency. Under emergency circumstances, the U.S. Department of Education may extend the deadline for one year.

F. ASSESSMENT REPORTS

Section 6311(b)(3) and Section 200.8 outline the requirements for assessment reports. A state’s academic assessment system must produce individual student interpretive, descriptive and diagnostic reports that include information regarding achievement on the academic assessments measured against the state’s student academic achievement standards, which will help parents, teachers and principals to understand and address the specific academic needs of students. The student reports must be provided to parents, teachers and principals as soon as is practicable after the assessment is given in an understandable and uniform format and in a format or language the parents can understand. The itemized scores and the analysis of the scores must produce a report to local educational agencies and schools so that parents, teachers, principals and administrators can interpret and address the specific academic needs of students, but does not require the release of test items.

Section 6311(b)(3) and Section 200.9 authorize a state to defer the start or suspend the administration of assessments that were not required prior to January 8, 2002, for one year for each year the federal government does not appropriate sufficient funds. However, a state may not cease the development of assessments, even if sufficient funds are not appropriated.

Section 6320 and Section 200.10 state that private schools, even private schools that receive Title I funds, are not required to participate in a state’s academic assessment system. Section 200.10(b) requires a local educational agency that provides services to eligible private school students under Title I to consult with appropriate private school officials to determine how services to eligible private school students will be academically assessed and how the results of that assessment will be used to improve those services.

G. NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS (NAEP)

Beginning in the 2002-2003 school year, Section 6311 and Section 200.11, require each state that receives funds under the NCLB to participate in biennial state academic assessments of fourth and eighth grade reading and mathematics under the state National Assessment of Educational Progress (NAEP), if the United States Department of Education pays the cost of administering those assessments. A local educational agency that receives NCLB funds must participate, if selected, in the NAEP assessments.
H. SUMMARY OF STANDARDS AND ASSESSMENTS

As is evident from the above summary of Section 6311 and the federal regulations relating to standards and assessments, much of the responsibility for developing the specific standards and assessment system are left to the state. It can be expected that the California Department of Education will be developing these standards and assessment procedures and disseminating information to districts in the near future. Districts should provide their input on how the state should implement these federal requirements to the California Department of Education to ensure effective and efficient implementation.
CHAPTER 2- ACCOUNTABILITY AND ADEQUATE YEARLY PROGRESS

A. STATE ACCOUNTABILITY SYSTEM

Section 6311\(^2\) of the Act requires each state to develop a plan that addresses academic standards, academic assessments and accountability. Section 6311(b)(2)(A) requires that each state plan demonstrate that the State has developed and is implementing a single, statewide accountability system that will be effective in ensuring that all local education agencies (LEAs) make adequate yearly progress. The state accountability system must be based on the academic standards and academic assessments developed by the state as required by the Act. The state accountability system must be the same system for all students and must include sanctions and rewards to hold local educational agencies accountable for student achievement and for ensuring adequate yearly progress.

Section 6311(b)(2)(B) requires that each state plan demonstrate based on academic assessments, what constitutes adequate yearly progress of the schools in the state toward enabling all public elementary schools and secondary school students to meet the state’s student academic achievement standards while working toward the goal of narrowing the achievement gaps in the state.

B. DEFINITION OF ADEQUATE YEARLY PROGRESS

Section 6311(b)(2)(C) states that adequate yearly progress shall be defined by the state in a manner that:

1. Applies the same high standards of academic achievement to all public elementary and secondary school students in the state.

2. Is statistically valid and reliable.

3. Results in continuous and substantial academic improvement for all students.

4. Measures the progress of public elementary school, secondary schools and local educational agencies and the state based primarily on the academic assessments developed by the state.

5. Includes separate measurable annual objectives for continuous and substantial improvement for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, students

\(^2\) 20 U.S.C. Section 6311; see, also, 34 C.F.R. Section 200.12.
with limited English proficiency and all students.

6. Includes graduation rates for public secondary students and at least one other academic indicator as determined by the state for all public elementary school students,

7. At the state’s discretion, may also include other academic indicators such as achievement on other state or locally administered assessments, decreases in grade to grade retention rates, attendance rates and changes in the percentages of students completing gifted and talented advance placement and college preparatory courses.

Section 6311(b)(2)(D) requires that the state ensure that the indicators used are valid and reliable and are consistent with relevant nationally recognized professional and technical standards.

Section 200.13 requires the state accountability system to apply the same annual measurable objectives separately to all public school students and students in each of the following subgroups:

1. Economically disadvantaged students,
2. Students from major racial and ethnic groups,
3. Students with disabilities,
4. Students with limited English proficiency.

Section 200.14 requires that a state’s definition of adequate yearly progress include the following:

1. A timeline,
2. Starting points,
3. Intermediate goals,
4. Annual measurable objectives,
5. Other academic indicators.

Section 200.15 states that each state must establish a timeline for making adequate yearly
progress that ensures that no later than the 2013-2014 school year, all students in each group will meet or exceed the state’s proficient level of academic achievement. Section 200.15(b) specifically states that a state may not extend its timeline for all students to reach proficiency beyond the 2013-2014 school year.

Section 200.16 states that states are required to use data from the 2001-2002 school year as the starting points in reading, language/arts and in mathematics for measuring the percentage of students meeting or exceeding the state’s proficient level of academic achievement. Section 200.17 states that each state must establish intermediate goals that increase in equal increments over the period covered by the timeline. The first incremental increase must take effect not later than the 2004-2005 school year. Each following incremental increase must occur in not more than three years.

Section 200.18 requires each state to establish annual measurable objectives that:

1. Identify for each year a minimum percentage of students that must meet or exceed the proficient level of academic achievement on the state’s academic assessments,

2. Ensure that all students meet or exceed the state’s proficient level of academic achievement by the 2013-2014 school year.

Section 200.18(b) requires that states’ annual measurable objectives be the same throughout the state for each school and may be the same for more than one year, consistent with the state’s intermediate goals.

Section 200.19 requires each state to use as an academic indicator for high schools the graduation rate. The graduation rate is defined as:

1. The percentage of students, measured from the beginning of high school, who graduate from high school with a regular diploma (not including an alternative degree that is not fully aligned with the state’s academic standards, such as a certificate or a GED) in the standard number of years; or,

2. Another definition, developed by the state and approved by the United States Secretary of Education in the state plan, that more accurately measures the rate of students who graduate from high school with a regular diploma.

In defining the graduation rate, the state must avoid counting a dropout as a
transfer student.

With respect to elementary and middle schools, Section 200.19(b) requires states to include additional academic indicators determined by the state, including but not limited to, the following:

1. Additional state or locally administered assessments not included in the state assessment system,

2. Grade to grade retention rates,

3. Attendance rates,

4. Percentages of students completing gifted and talented, advanced placement and college preparatory courses.

Section 200.19(c) states that these other academic indicators must be valid and reliable, consistent with relevant, nationally recognized professional and technical standards, if any, and consistent throughout the state within each grade span. A state may, but is not required to, increase the goals of its other academic indicators over the course of the timeline. The state must disaggregate its other academic indicators by each group but need not disaggregate those indicators for determining adequate yearly progress. These other indicators may not be used to reduce the number of, or change, the schools that would otherwise be subject to school improvement, corrective action or restructuring, but may be used to identify additional schools for school improvement or in need of corrective action or restructuring.

Section 200.20 states that a school or local educational agency makes adequate yearly progress if each group of students meets or exceeds the state’s annual measurable objectives and the school or local educational agency, respectively, meets or exceeds the state’s other academic indicators. For a group to be included in the determination of adequate yearly progress for a school or local educational agency, the number of students in the group must be sufficient to yield statistically reliable information.

Section 200.21 states that every state that receives NCLB funds must, beginning with the 2004-2005 school year, annually review whether the state has made adequate yearly progress as defined by the state for each group of students, and met its annual measurable achievement objectives relating to the development and attainment of English proficiency by limited English proficient students. A state must include all students who were enrolled in schools in the state for a full academic year in reporting on the yearly progress of the state.
C. TIMETABLE FOR ADEQUATE YEARLY PROGRESS

Section 6311(b)(2)(E) sets the starting point for making adequate yearly progress. Each state is required to use data from the 2001-2002 school year to establish a starting point for measuring the percentage of students meeting or exceeding the state’s proficient level of academic achievement on the state assessments. Section 6311(b)(2)(F) states that each state shall establish a timeline for adequate yearly progress. The timeline shall ensure that not later than twelve years after the end of the 2001-2002 school year (2013-2014), all students in each group (e.g. economically disadvantaged, limited English proficient, minority) will meet or exceed the state’s proficient level of academic achievement on the state assessments.

A timetable regarding failure to make adequate yearly progress appears in the Appendix to this workbook.

D. CRITERIA FOR ADEQUATE YEARLY PROGRESS

Section 6311(b)(2)(G) states that each state shall establish statewide annual measurable objectives for meeting these requirements which:

1. Shall be set separately from the assessments of mathematics and reading or language arts.

2. Shall be the same for all schools and local educational agencies in the state.

3. Shall identify a single, minimum percentage of students who are required to meet or exceed the proficient level on the academic assessments that applies separately to each group of students or shall ensure that all students will meet or exceed the state’s proficient level of academic achievement on the state assessments within the state’s timelines, and

4. May be the same for more than one year subject to the requirements for intermediate goals for annual yearly progress.

Section 6311(b)(2)(H) establishes the intermediate goals for meeting the requirements for adequate yearly progress.

Section 6311(b)(2)(I) states that each year, for a school to make adequate yearly progress:

1. Each group of students must meet or exceed the objectives set by the state, except that if any group does not meet those objectives in any
particular year, the school shall be considered to have made adequate yearly progress if the percentage of students in that group who did not meet or exceed the proficient level of academic achievement on the state assessments for that year, decrease by 10% of that percentage from the preceding year and that group made progress on one or more of the academic indicators, and

2. Not less than 95% of each group of students who are enrolled in the school are required to take the assessment consistent with the Act’s guidelines.

Section 6311(b)(2)(J) establishes a uniform averaging procedure of adequate yearly progress. Section 6311(b)(2)(K) provides that the accountability provisions of the Act shall be overseen for charter schools in accordance with state charter school law.

It can be expected that the California Department of Education will be developing standards for measuring adequate yearly progress. The standards may be established by statute (Education Code), regulation (Title V), or policy. States will be required to submit their definitions of adequate yearly progress at the beginning of 2003. Districts should work with state officials in developing a workable definition of adequate yearly progress.
CHAPTER 3 - STATE AND LOCAL REPORT CARDS

A. ANNUAL STATE REPORT CARD

Section 6311(h) of the Act sets forth the requirements for the annual state report card. Section 6311(h)(1) (A) states that not later than the beginning of the 2002-2003 school year, unless the state has received a one year extension, a state that receives Title I funds shall prepare and disseminate an annual state report card. The state report card is required to be concise and presented in an understandable and uniform format and to the extent practicable provided in a language that the parents can understand.

Section 6311(h)(1)(C) requires that the annual state report card include:

1. Information on student achievement at each proficiency level on the state academic assessments. The information must be aggregated and disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency and economically disadvantaged, except that such disaggregation shall not be required in a case in which 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.

2. Information that provides a comparison between the actual achievement levels of each group of students and the state’s annual measurable objectives for each group of students on each of the academic assessments.

3. The percentage of students not tested (disaggregated by groups).

4. The most recent two year trend in student achievement in each subject area and for each grade level for which assessments are required.

5. Aggregate information on any other indicators used by the state to determine the adequate yearly progress of students in achieving state academic achievement standards.


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3 20 U.S.C. Section 6311(h).
7. Information on the performance of local educational agencies in the state regarding making adequate yearly progress, including the number and names of each school identified for school improvement.

8. The professional qualifications of teachers in the state, the percentage of such teachers teaching with emergency or provisional credentials, and the percentage of classes in the state not taught by highly qualified teachers, in the aggregate and disaggregated by high poverty (top quartile of poverty) compared to low poverty schools (bottom quartile of poverty) in the state.

Section 6311(h)(1)(D) allows the state to include in its annual state report card other information the state believes will best provide parents, students and other members of the public with information regarding the progress of each of the state’s public elementary and secondary schools. Such information may include:

A. School attendance rates.

B. The average class size in each grade.

C. Academic achievement and gains in English proficiency of limited English proficient students.

D. The incidence of school violence, drug abuse, alcohol abuse, student suspensions and student expulsions.

E. The extent and type of parental involvement in the schools.

F. The percentage of students completing advance placement courses and the rate of passing of advance placement tests.

G. A clear and concise description of the state’s accountability system, including a description of the criteria by which the state evaluates school performance and the criteria that the state has established to determine the status of schools regarding school improvement, corrective action and restructuring.

B. ANNUAL LOCAL REPORT CARD

Section 6311(h)(2) sets forth the requirements for annual local educational agency report cards. Section 6311(h)(2)(A) states that not later than the beginning of the 2002/2003 school year, a local educational agency that receives federal Title I funds shall prepare and disseminate
an annual local educational agency report card. The state educational agency may provide the local educational agency one additional year if there are exceptional or uncontrollable circumstances, or the state has received an extension from the United States Department of Education.

Section 6311(h)(2)(B) states that the state educational agency shall ensure that each local educational agency collects appropriate data and includes in the local educational agency’s annual report:

1. The number and percentage of schools identified for school improvement and how long the schools have been so identified.

2. Information that shows how students served by the local educational agency achieved on the statewide academic assessment compared to students in the state as a whole.

3. For each school, whether the school has been identified for school improvement.

4. For each school, information that shows how the school’s students achievement on the statewide academic assessments and other indicators of adequate yearly progress compare to students in local educational agencies in the state as a whole.

Section 6311(h)(2)(C) allows a local educational agency to include in its annual local educational agency report card any other appropriate information whether or not such information is included in the annual state report card. However, the information must yield statistically reliable information, as determined by the state and not reveal personally identifiable information about an individual student. The local educational agency is required, not later than the beginning of the 2002/2003 school year, to publically disseminate the information to all schools in the school district served by the local educational agency and to all parents of students attending those schools in an understandable and uniform format and, to the extent practicable, provide in a language that the parents can understand, and make the information widely available through public means, such as posting on the Internet, distribution to the media, and distribution through public agencies, except that if a local educational agency issues a report card for all students, the local educational agency may include the information as part of such report.

C. ANNUAL REPORT TO THE U.S. SECRETARY OF EDUCATION

Section 6311(h)(4) requires each state educational agency to report annually to the U.S. Secretary of Education and make widely available within the state the following:
1. Beginning with the 2002/2003 school year, information on the state’s progress in developing and implementing the academic assessments required by the Act.

2. Beginning not later than the 2002/2003 school year, information on the achievement of students on the academic assessments required by the Act, including the disaggregated results for the categories of students identified in the Act.

3. In any year before the state begins to provide the information, information on the results of student academic assessments (including disaggregated results) required by the Act.

4. Beginning not later than the 2002/2003 school year, unless the state has received an extension, information on the acquisition of English proficiency by children with limited English proficiency.

5. The number and names of each school identified for school improvement as required by the Act, the reason why each school was so identified and the measures taken to address the achievement problems of such schools.

6. The number of students and schools that participated in public school choice and supplemental service programs and activities under the Act.

7. Beginning not later than the 2002/2003 school year, information on the quality of teachers and the percentage of classes being taught by highly qualified teachers in the state, local educational agency and the school.

Section 6311(h)(5) requires the U.S. Secretary of Education to annually transmit to Congress a report that provides national and state level data on the information collected under the Act.

It can be expected that the California Department of Education will be developing an annual state report card in the near future. Districts should provide their input on how the state should implement these requirements.
CHAPTER 4 - PARENT NOTIFICATION

A. PARENTS’ RIGHT TO KNOW

Section 6311(h)(6) of the Act contains provisions regarding information parents have a right to know. Section 6311(h)(6) requires, at the beginning of each school year, that a local educational agency that receives Title I funds notify the parents of each student attending a school receiving Title I funds that the parent may request, and the local educational agency will provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student’s classroom teacher, including, at a minimum, the following:

1. Whether the teacher has met state qualifications and licensing criteria for the grade levels and subject areas in which the teacher provides instruction.

2. Whether the teacher is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived.

3. The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree.

4. Whether the child is provided services by paraprofessionals, and, if so, their qualifications.

In addition, parents may request that a school that receives Title I funds shall provide information on the level of achievement of a parent’s child in each of the state academic assessments as required by the Act and timely notice that the parent’s child has been assigned, or has been taught for four or more consecutive weeks, by a teacher of core academic subjects who is not highly qualified (e.g., has an emergency credential). The notice and information provided to parents must be in an understandable and uniform format and to the extent practical, provided in a language that the parents can understand.

4 20 U.S.C. Section 6311(h)(6); see, also, 34 C.F.R. Section 200.61.
B. LIMITED ENGLISH PROFICIENT CHILDREN

Section 6312(g)\(^5\) requires each local educational agency receiving Title I funds to provide a language instruction educational program to inform parents of limited English proficient children identified for participation in such a program not later than 30 days after the beginning of the school of:

1. The reasons for the identification that their child is limited English proficient and in need of placement in the language instruction education program.

2. The child’s level of English proficiency, how such level was assessed, and the status of the child’s academic achievement.

3. The methods of instruction used in the program in which their child is or will be participating and the methods of instruction used in other available programs, including how such programs differ in content, instructional goals, and the use of English and the native language as part of the instructional program.

4. How the program in which their child is, or will be participating, will meet the educational strengths and needs of their child.

5. How the program will specifically help their child learn English, and meet age appropriate academic achievement standards for grade promotion and graduation.

6. The specific exit requirements for the program, including the expected rate of transition from such program into classrooms that are not tailored for limited English proficient children, and the expected rate of graduation from secondary school for such programs if Title I funds are used for children in secondary schools.

7. In the case of a child with a disability, how such program meets the objectives of the child’s IEP.

\(^5\) 20 U.S.C. Section 6312(g).
8. Information pertaining to parental rights that includes written guidance detailing the right that parents have to have their child immediately removed from the language instruction educational program upon their request, the option that the parents have to decline to enroll their child in the language program or to choose another program or method of instruction, if available, and the right to assistance in selecting among various programs and methods of instruction if more than one program or method is offered by the local educational agency.

In addition to providing information required, each local educational agency that is using Title I funds to provide language instruction programs, and that has failed to make progress on the annual measurable achievement objectives for any fiscal year, shall separately inform parents of the failure not later than 30 days after such failure occurs. The notice to parents shall be in an understandable and uniform format and, to the extent practical, provided in a language that the parents can understand. For those children who have not been identified as limited English proficient prior to the beginning of the school, the local educational agency shall notify parents within the first two weeks of the child being placed in the language instruction education program. Each local educational agency receiving Title I funds shall implement an effective means of outreach to parents of limited English proficient students to inform the parents as to how the parents can be involved in the education of their children and be active participants in assisting their children to attain English proficiency, achieve at high levels in core academic subjects, and meet challenging state academic achievement standards and state academic content standards expected of all students, including holding, and sending notice of opportunities for, regular meetings for the purpose of formulating and responding to recommendations from parents of students in the language instruction educational program.

C. LOCAL PARENTAL INVOLVEMENT REQUIREMENTS

Section 6318 of the Act\(^6\) outlines the provisions relating to parental involvement. Section 6318(a) requires that a local educational agency that receives Title I funds must implement programs, activities and procedures for the involvement of parents and programs assisted under Title I. Such programs, activities and procedures must be planned and implemented only after meaningful consultation with parents of participating children. Each local educational agency is required to develop jointly, agree on with, and distribute to parents of participating children a written parent involvement policy. The policy is required to be incorporated into the local educational agency’s plan and establish the agency’s expectations for parent involvement and describe how the local agency will:

\(^6\) 20 U.S.C. Section 6318.
1. Involve parents in joint development of the plan and the process of school review and improvement.

2. Provide the coordination, technical assistance and other support necessary to assist participating schools in planning and implementing effective parent involvement activities to improve student academic achievement and school performance.

3. Build the school’s and parent’s capacity for strong parental involvement.

4. Coordinate and integrate parental involvement strategies with parental involvement strategies under other programs such as Head Start, Reading First, Early Reading First, Even Start, Parents as Teachers and Home Instruction Program for Preschool Youngsters and state-run preschool programs.

5. Conduct, with the involvement of parents, an annual evaluation of the content and effectiveness of the parental involvement policy in improving the academic quality of the schools, including identifying barriers to greater participation by parents in activities authorized by the Act (with particular attention to parents who are economically disadvantaged, disabled, limited English proficient, have limited literacy or of any racial or ethnic minority background), and use the findings of such evaluation to design strategies for more effective parental involvement, and to revise, if necessary, the parental involvement policies.

6. Involve parents in the activities of the school.

Section 6318(a)(3) states that each local educational agency shall reserve not less than one percent of the agency’s allocation of Title I funds to carry out parental involvement activities, including promoting family literacy and parenting skills, unless the agency’s allocation is $5,000 or less. Parents of children who are receiving these services must be involved in the decisions regarding how the funds are allotted for parental involvement activities.

D. LOCAL PARENTAL INVOLVEMENT POLICIES

Section 6318(b) requires each school receiving Title I funds to jointly develop with, and distribute to parents of participating children, a written parental involvement policy agreed on by such parents that describes the means for carrying out parental involvement policies. Parents must
be notified of the policy in an understandable and uniform format and, to the extent practical, provide in a language the parents understand. The policy must be made available to the local community and updated periodically to meet the changing needs of parents in the school. If the school has a parental involvement policy that applies to all parents, the school may amend that policy, if necessary, to meet the requirements of the Act. If the local educational agency has a school district level parental involvement policy that applies to all parents, the local educational agency may amend that policy, if necessary, to meet the requirements of the Act. If the plan is not satisfactory to the parents of participating children, the local educational agency must submit any parent comments with the plan when the local educational agency submits the local plan to the state.

Section 6318(c) requires each school receiving Title I funds to:

1. Convene an annual meeting, at a convenient time, to which all parents of participating children must be invited and encouraged to attend, to inform parents of their school’s participation in Title I and to explain the right of the parents to be involved.

2. Offer a flexible number of meetings, such as meetings in the morning or evening, and may provide, with funds provided under the Act, transportation, child care, or home visits as such services relate to current parental involvement.

3. Involve parents, in an organized ongoing and timely way in the planning, review and improvement of programs under the Act, including the planning review and improvement of the school parental involvement policy and the joint development of the school wide program plan except that if the school has in place a process for involving parents in the joint planning and design of the school’s programs, the school may use that process, if such process includes an adequate representation of parents of participating children.

4. Provide parents of participating children timely information about programs, a description and explanation of the curriculum in use at the school, the forms of academic assessment used to measure student progress and the proficiency level students are expected to meet, and if requested by parents, opportunities for regular meetings to formulate suggestions and to participate, as appropriate, in decisions relating to the education of their children and respond to any suggestions as soon as practically possible.
5. If the school wide program plan is not satisfactory to the parents of participating children, submit any parent comments on the plan when the school makes the plan available to the local educational agency.

E. SCHOOL-PARENT COMPACT

Section 6318(d) states that as a component of the school level parental involvement policy, each school receiving Title I funds shall jointly develop with parents for all children served under Title I, a school-parent compact that outlines how parents, the entire school staff, and students will share the responsibility for improved student academic achievement and the means by which the school and parents will build and develop a partnership to help children achieve the state’s high academic standards. The school-parent compact shall:

1. Describe the school’s responsibility to provide high-quality curriculum and instruction in a supportive and effective learning environment that enables the children served under Title I to meet the state’s student academic achievement standards, and the ways in which each parent will be responsible for supporting their children’s learning, such as monitoring attendance, homework completion, and television watching; volunteering in their child’s classroom; and participating, as appropriate, in decisions relating to the education of their children and positive use of extracurricular time.

2. Address the importance of communication between teachers and parents on an ongoing basis through parent teacher conferences in elementary schools, at least annually, during which the compact shall be discussed as the compact relates to the child’s individual achievement, frequent reports to parents on their child’s progress and reasonable access to staff, opportunities to volunteer and participate in their child’s class, and observational classroom activities.

Section 6318(e) states that to ensure effective involvement of parents and to support a partnership among the school, parents, and the community to improve student academic achievement, each school and local educational agency receiving Title I funds shall do all of the following:

1. Provide assistance to parents of children served by the school or local educational agency, as appropriate, in understanding such
topics as the state’s academic content standards and state academic achievement standards, state and local academic assessments, the requirements of Title I and how to monitor a child’s progress and work with educators to improve the achievement of their children.

2. Provide materials and training to help parents to work with their children to improve their child’s achievement, such as literacy training and using technology, as appropriate, to foster parental involvement.

3. Educate teachers, pupil services personnel, principals, and other staff, with the assistance of parents, in how to reach out to, communicate with, and work with parents as equal partners, implement and coordinate parent programs, and build ties between parents and the school.

4. To the extent feasible and appropriate, coordinate and integrate parent involvement programs and activities with other federal programs and conduct other activities, such as parent resource centers, that encourage and support parents to more fully participate in the education of their children.

5. Ensure that information related to school and parent programs, meetings, and other activities is sent to the parents of participating children in a format, and to the extent practical, in a language the parents can understand.

6. Involve parents in the development of training for teachers, principals and other educators to improve the effectiveness of such training.

Section 6318(e) also states that local educational agencies and schools receiving Title I funds may:

1. Provide necessary literacy training for parents from funds received under the Act if the local educational agency has exhausted all other reasonably available sources of funding for such training.

2. Pay reasonable and necessary expenses associated with local
parental involvement activities, including transportation and child care costs, to enable parents to participate in school-related meetings and training sessions.

3. Train parents to enhance the involvement of other parents.

4. Arrange school meetings at a variety of times, or conduct in-home conferences between teachers and with parents who are unable to attend such conferences at school, in order to maximize parental involvement and participation.

5. Adopt and implement model approaches to improving parental involvement.

6. Establish a district wide parent advisory council to provide advice on all matters related to parental involvement in programs supported by the Act.

7. Develop appropriate roles for community-based organizations and businesses and parental involvement activities.

8. Provide such other reasonable support for parental involvement activities as parents may request.

Section 6318(f) requires the local educational agency and schools, to provide full opportunities for the participation of parents with limited English proficiency, parents with disabilities, and parents of migratory children, including providing information and school reports in a format and, to the extent practicable, in a language the parents can understand.

Section 6318(h) requires the state educational agency to review the local educational agency’s parental involvement policies and practices to determine if the policies and practices meet the requirements of the Act.
CHAPTER 5 - LOCAL EDUCATIONAL AGENCY PLANS

A. CONTENTS OF THE LOCAL PLAN

Section 6312 of the Act\(^7\) sets forth the requirements for local educational agency plans. A local educational agency which receives Title I funds is required to submit a local educational plan. The purpose of the plan is to help low-achieving children meet challenging academic standards. Each local agency plan shall include:

1. A description of high-quality student academic assessments, if any, that are in addition to the academic assessments described in the state plan, that the local educational agency and schools will use –
   A. To determine the success of children served under Title I in meeting the state student academic achievement standards, and to provide information to teachers, parents, and students on the progress being made toward meeting the state student academic achievement standards.
   B. To assist in diagnosis, teaching, and learning in the classroom in ways that best enable low-achieving children served under Title I to meet state student achievement academic standards and do well in the local curriculum.
   C. To determine what revisions are needed to projects so that such children meet the state student academic achievement standards.
   D. To identify effectively students who may be at risk for reading failure or who are having difficulty reading, through the use of screening, diagnostic, and classroom-based instructional reading assessments.

2. At the local educational agency’s discretion, a description of any other indicators that will be used.

3. A description of how the local educational agency will provide additional educational assistance to individual students assessed as needing help in meeting the state’s challenging student academic achievement standards.

4. A description of the strategy the local educational agency will use to coordinate programs with programs to provide professional development for teachers and principals, and, if appropriate, pupil services personnel,

\(^7\) 20 U.S.C. Section 6312.
administrators, parents and other staff, including local educational agency level staff.

5. A description of how the local educational agency will coordinate and integrate services provided with other educational services at the local educational agency or individual school level, such as –
   A. Even Start, Head Start, Reading First, Early Reading First, and other preschool programs, including plans for the transition of participants in such programs to local elementary school programs.
   B. Services for children with limited English proficiency, children with disabilities, migratory children, neglected or delinquent youth, Indian children served under Part A of Title VII, homeless children, and immigrant children in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the instructional program.

6. An assurance that the local educational agency will participate, if selected, in the state National Assessment of Educational Progress in 4th and 8th grade reading and mathematics.

7. A description of the poverty criteria that will be used to select school attendance areas under Section 6313.

8. A description of how teachers, in consultation with parents, administrators, and pupil services personnel, in targeted assistance schools under Section 6315, will identify the eligible children most in need of services under this part.

9. A general description of the nature of the programs to be conducted by such agency’s schools under Sections 6314 and 6315 and, where appropriate, educational services outside such schools for children living in local institutions for neglected or delinquent children, and for neglected and delinquent children in community day school programs.

10. A description of how the local educational agency will ensure that migratory children and formerly migratory children who are eligible to receive services are selected to receive such services on the same basis as other children who are selected to receive services.

11. If appropriate, a description of how the local educational agency will use
funds to support preschool programs for children, particularly children participating in Early Reading First, or in a Head Start or Even Start program, which services may be provided directly by the local educational agency or through a subcontract with the local Head Start agency designated by the Secretary of Health and Human Services under Section 641 of the Head Start Act, or an agency operating an Even Start program, an Early Reading First program, or another comparable public early childhood development program.

12. A description of the actions the local educational agency will take to assist its low-achieving schools identified under Section 6316 as in need of improvement.

13. A description of the actions the local educational agency will take to implement public school choice and supplemental services, consistent with the requirements of Section 6316.

14. A description of how the local educational agency will meet the requirements of Section 6319.

15. A description of the services the local educational agency will provide homeless children.

16. A description of the strategy the local educational agency will use to implement effective parental involvement under Section 6318.

17. Where appropriate, a description of how the local educational agency will use Title I funds to support after school (including before school and summer school) and school-year extension programs.

B. LOCAL AGENCY ASSURANCES

Section 6312(c) requires each local educational agency plan to provide assurances that the local educational agency will:

1. Inform eligible schools and parents of schoolwide program authority and the ability of such schools to consolidate funds from federal, state, and local sources.

2. Provide technical assistance and support to schoolwide programs.
3. Work in consultation with schools as the schools develop the schools’ plans pursuant to Section 6314 and assist schools as the schools implement such plans or undertake activities pursuant to Section 6315 so that each school can make adequate yearly progress toward meeting the state student academic achievement standards.

4. Fulfill such agency’s school improvement responsibilities under Section 6316, including taking actions under Paragraphs (7) (corrective action such as technical assistance, supplemental services, tutoring, staff replacement, new curriculum, outside consultants) and (8) (restructuring which may include alternative governance, replacing staff, private management, state management) of Section 6316(b).

5. Provide services to eligible children attending private elementary schools and secondary schools in accordance with Section 6320, and timely and meaningful consultation with private school officials regarding such services.

6. Take into account the experience of model programs for the educationally disadvantaged, and the findings of relevant scientifically based research indicating that services may be most effective if focused on students in the earliest grades at schools that receive funds under this part.

7. In the case of a local educational agency that chooses to use Title I funds to provide early childhood development services to low-income children below the age of compulsory school attendance, ensure that such services comply with the performance standards established under Section 641A(a) of the Head Start Act.

8. Work in consultation with schools as the schools develop and implement their plans or activities under Sections 6318 (Parental Involvement) and 6319 (Staff Training and Qualifications).

9. Comply with the requirements of Section 6319 regarding the qualifications of teachers and paraprofessionals and professional development.

10. Inform eligible schools of the local educational agency’s authority to obtain waivers on the school’s behalf under Title IX and, if the state is an Ed-Flex Partnership state, to obtain waivers under the Education Flexibility Partnership Act of 1999.
11. Coordinate and collaborate, to the extent feasible and necessary as determined by the local educational agency, with the state educational agency and other agencies providing services to children, youth, and families with respect to a school in school improvement, corrective action, or restructuring under Section 6316 if such a school requests assistance from the local educational agency in addressing major factors that have significantly affected student achievement at the school.

12. Censure, through incentives for voluntary transfers, the provision of professional development, recruitment programs, or other effective strategies, that low-income students and minority students are not taught at higher than other students by unqualified, out-of-field, or inexperienced teachers.

13. Use the results of the student academic assessments required under Section 6311(b)(3), and other measures or indicators available to the agency, to review annually the progress of each school served by the agency and receiving funds under this part to determine whether all of the schools are making the progress necessary to ensure that all students will meet the state’s proficient level of achievement on the state academic assessments described in Section 6311(b)(3) within 12 years from the end of the 2001-2002 school year.

14. Ensure that the results from the academic assessments required under Section 6311(b)(3) will be provided to parents and teachers as soon as is practically possible after the test is taken, in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand.

15. Assist each school served by the agency and assisted under this part in developing or identifying examples of high-quality, effective curricula consistent with Section 6311(b)(8)(D).

C. ADDITIONAL REQUIREMENTS

Section 6312(d) requires that each local educational agency plan shall be developed in consultation with teachers, principals, administrators and other appropriate school personnel, and with parents of children in schools served with Title I funds. Each such plan shall be submitted for the first year for which the Act is in effect and shall remain in effect for the duration of the agency’s participation under the Act. Each local agency shall periodically review and, if necessary, revise its plan.
Section 6312(e) requires each local educational agency plan to be filed according to a schedule established by the state educational agency. The state educational agency shall approve a local educational agency’s plan only if the state educational agency determines that the local educational agency’s plan enables schools served with Title I funds to substantially help children served under Title I to meet the academic standards expected of all children. The state educational agency is required to review the local educational agency’s plan to determine if the plan complies with the provisions of the Act.
A. ELIGIBLE SCHOOL ATTENDANCE AREAS

Section 6313 of the Act\(^8\) states that a local educational agency shall use funds received under the Act only in eligible school attendance areas. Eligible school attendance areas are defined as the geographical area in which the children who are normally served by that school reside and the term “eligible school attendance area” means a school attendance area in which the percentage of children from low income families is at least as high as the percentage of children from low income families served by the local educational agency as a whole.

Section 6313(a)(3) requires that if Title I funds allocated under Section 6313(c) are insufficient to serve all eligible school attendance areas, a local educational agency is required to annually rank, without regard to grade spans, the agency’s eligible school attendance areas in which the concentration of children from low income families exceeds 75% from highest to lowest according to the percentage of children from low income families and serves such eligible school attendance areas in rank order. If funds remain after serving all eligible school attendance areas, a local educational agency is required to annually rank such agency’s remaining eligible school attendance areas from highest to lowest, either by grade span or for the entire local educational agency according to the percentage of children from low income families and serve such eligible school attendance areas in rank order either within each grade span grouping or within the local educational agency as a whole.

Section 6313(b) grants the local educational agency discretion to designate as eligible any school attendance area or school under certain specified conditions. Section 6313(c) requires a local educational agency to allocate funds to eligible school attendance areas or eligible schools in rank order on the basis of the total number of children from low income families in each area or school.

B. SCHOOLWIDE PROGRAMS

Section 6314\(^9\) outlines the procedures for use of Title I funds for schoolwide programs.

Section 200.25 states that the purpose of a schoolwide program is to improve academic achievement throughout a school so that all students, particularly the lowest achieving students, demonstrate

\(^8\) 20 U.S.C. Section 6313.

\(^9\) 20 U.S.C. Section 6314; see, also, 34 C.F.R. §§ 200.25-200.29.

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proficiency related to the state’s academic standards. The improved achievement is to result from improving the entire educational program of the school.

A local educational agency may consolidate and use Title I funds together with other federal, state and local funds in order to upgrade the entire educational program of the school that serves an eligible school attendance area if not less than 40% of the children from the eligible school attendance area are from low income families or not less than 40% of the children enrolled in the school are from low income families. If a local educational agency qualifies for the schoolwide program, the schoolwide program is required to include the following components:

1. A comprehensive needs assessment of the entire school that is based on information which includes the achievement of children in relation to the state academic content standards and the state student academic achievement standards.

2. Schoolwide reform strategies that –
   A. Provide opportunities for all children to meet the state’s proficient and advanced levels of student academic achievement.
   B. Use effective methods and instructional strategies that are based on scientifically based research that –
      1. Strengthen the core academic program in the school;
      2. Increase the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs and opportunities, and help provide an enriched and accelerated curriculum; and
      3. Include strategies for meeting the educational needs of historically underserved populations.
   C. Include strategies to address the needs of all children in the school, but particularly the needs of low-achieving children and those at risk of not meeting the state student academic achievement standards who are members of the target population of any program that is included in the schoolwide program, which may include –
      1. Counseling, pupil services, and mentoring services;
      2. College and career awareness and preparation, such as college and career guidance, personal finance education, and innovative teaching methods, which may include applied learning and team-teaching strategies; and
      3. The integration of vocational and technical education programs.
   D. Address how the school will determine if such needs have been
met.

E. Are consistent with, and are designed to implement, the State and local improvement plans, if any.

3. Instruction by highly qualified teachers.

4. In accordance with Section 6319 and subsection (a)(4), high-quality and ongoing professional development for teachers, principals, and paraprofessionals and, if appropriate, pupil services personnel, parents, and other staff to enable all children in the school to meet the state’s student academic achievement standards.

5. Strategies to attract high-quality highly qualified teachers to high-need schools.

6. Strategies to increase parental involvement in accordance with Section 6318, such as family literary services.

7. Plans for assisting preschool children in the transition from early childhood programs, such as Head Start, Even Start, Early Reading First, or a state-run preschool program, to local elementary school programs.

8. Measures to include teachers in the decisions regarding the use of academic assessments described in Section 6311(b)(3) in order to provide information on, and to improve, the achievement of individual students and the overall instructional program.

9. Activities to ensure that students who experience difficulty mastering the proficient or advanced levels of academic achievement standards required shall be provided with effective, timely additional assistance which shall include measures to ensure that students’ difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance.

10. Coordination and integration of federal, state, and local services and programs, including programs supported under this Act, violence prevention programs, nutrition programs, housing programs, Head Start, adult education, vocational and technical education, and job training.

Section 6314(b)(2) requires that any eligible school that desires to operate a schoolwide program
shall first develop, in consultation with the local educational agency and its school support team or other technical assistance provider, a comprehensive plan for reforming the total instructional program that:

1. Describes how the school will implement the schoolwide program.

2. Describes how the school will use resources under the Act and from other sources to implement those components.

3. Includes a list of state educational agencies and local educational agencies’ programs and other federal programs that will be consolidated in the schoolwide program.

4. Describes how the school will provide individual student academic achievement results in a language that parents can understand, including an interpretation of those results to the parents of the child who participates in the academic assessments.

The comprehensive plan shall be developed during a one year period, developed with the involvement of parents and other members of the community to be served and individuals who would carry out such plans including teachers, principals, and administrators, and if appropriate, pupil service personnel, technical assistance providers, school staff and if the plan relates to a secondary school, students from such schools. The plan shall be in effect for the duration of the school’s participation and reviewed and revised as necessary by the school. The plan should be available to the local educational agency, parents and the public and the information contained in such plan shall be in an understandable and uniform format, and, to the extent practicable, provided in a language that the parents can understand, and, if appropriate, developed in coordination with other federal programs.

Section 200.28 states that a schoolwide program must incorporate reform strategies in the overall instructional program. Those strategies must provide opportunities for all students to meet the state’s proficient and advanced levels of student academic achievement, address the needs of all students in the school, particularly the needs of low achieving students and those at risk of not meeting the state’s student academic achievement standards who are members of the target population of any program and included in the schoolwide program and address how the school would determine if those needs have been met. The schoolwide program must use effective methods and instructional practices that are based on scientifically based research that strengthen the core academic program, provide an enriched and accelerated curriculum, increase the amount and quality of learning time, such as providing an extended school year and before and after school and summer programs and opportunities, include strategies for meeting the educational needs of historically underserved populations and are consistent with, and are designed to implement, state and local improvement plans, if any.

Section 200.28(b) states that a schoolwide program must ensure instruction by highly qualified
teachers and provide ongoing professional development. The schoolwide program must include strategies to attract highly qualified teachers, provide high quality and ongoing professional development, align professional development with the state’s academic standards, devote sufficient resources to carry out effectively the professional development activities, and include teachers in professional development activities regarding the use of academic assessments, to enable them to provide information on, and to improve, the achievement of individual students and the overall instructional program.

Section 200.28(c) requires that a schoolwide program involve parents in the planning, review, and improvement of the schoolwide program plan. The schoolwide program must have a parental involvement policy that includes strategies such as family literacy services to increase parental involvement, and describe how the school will provide individual student academic assessment results, including an interpretation of those results, to the parents of students who participate in the academic assessments. Section 200.28(d) states that a schoolwide program must include activities to ensure that students who experience difficulty attaining the proficient or advanced levels of academic achievement standards will be provided effective, timely, additional support, including measures to ensure that those students’ difficulties are identified on a timely basis and provide sufficient information on which to base effective assistance to those students. Section 200.28(e) requires that a schoolwide program in an elementary school include plans for assisting preschool students in the successful transition from early childhood programs to the schoolwide program. Section 200.29 authorizes a school to consolidate and use in its schoolwide program federal funds from other federal programs, such as migrant education, Indian education, and special education.

C. TARGETED ASSISTANCE SCHOOLS

Section 6315\(^{10}\) outlines the requirements for targeted assistance schools. Section 6315(a) states that in all schools selected to receive Title I funds that are ineligible for a schoolwide program or that choose not to operate such a schoolwide program, the local educational agency serving that school may use Title I funds only for programs that provide services to eligible children identified as having the greatest need for special assistance.

Section 6315(b) defines eligible children from the eligible population as those children identified by the school as failing, or most at risk of failing, to meet the state’s challenging student academic achievement standards on the basis of multiple, educationally related, objective criteria established by the local educational agency and supplemented by the school. Children who are economically disadvantaged, children with disabilities, migrant children or limited English proficient children are eligible for services on the same basis as other children selected to receive services. To assist targeted assistance schools and local educational agencies to meet their responsibility to provide for all Title I students the opportunity to meet the state’s challenging student academic achievement standards in subjects determined by the state, each targeted assistance program shall:

\(^{10}\) 20 U.S.C. Section 6315.
1. Use the program’s Title I resources to help participating children meet the state’s challenging student academic achievement standards expected for all children.

2. Ensure that planning for students served under the Act is incorporated into existing school planning.

3. Use effective methods and instructional strategies that are based on scientifically based research that strengthens the core academic program of the school and that--
   A. Give primary consideration to providing extended learning time, such as an extended school year, before- and after-school, and summer programs and opportunities;
   B. Help provide an accelerated, high-quality curriculum, including applied learning; and
   C. Minimize removing children from the regular classroom during regular school hours for instruction provided under the Act;
   D. Minimize removing children from the regular classroom during regular school hours for instruction provided under the Act.

4. Coordinate with and support the regular education program, which may include services to assist preschool children in the transition from early childhood programs such as Head Start, Even Start, Early Reading First or state-run preschool programs to elementary school programs.

5. Provide instruction by highly qualified teachers.

6. Provide opportunities for professional development with resources provided under the Act, and, to the extent practicable, from other sources, for teachers, principals, and paraprofessionals including, if appropriate, pupil services personnel, parents, and other staff, who work with participating children in Title I programs or in the regular education program.

7. Provide strategies to increase parental involvement in accordance with Section 6318, such as family literacy services.

8. Coordinate and integrate federal, state, and local services and programs, including programs supported under this Act, violence prevention programs, nutrition programs, housing programs, Head Start, adult education, vocational and technical education, and job training.
Section 6315(d) states that to promote the integration of staff supported with Title I funds into the regular school program and overall school planning and improvement efforts, public school personnel who are paid with Title I funds may participate in general professional development and school planning activities and assume limited duties that are assigned to similar personnel who are not so paid including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school.

D. SCHOOL SUPPORT AND RECOGNITION

Section 6317 of the Act\textsuperscript{11} outlines the requirements for school support and recognition. Section 6317(a) states that each state shall establish a statewide system of intensive and sustained support and improvement for local educational agencies and schools receiving Title I funds in order to increase the opportunity for all students served by those agencies and schools to meet the state’s academic content standards and student academic achievement standards. In carrying out a statewide system of intensive and sustained support and improvement, the state shall first provide support and assistance to local educational agencies with schools subject to corrective action and assist those schools. The second priority shall be to provide support and assistance to other local educational agencies with schools identified as in need of improvement, and the third priority shall be to provide support and assistance to other local educational agencies and schools participating in Title I that need support and assistance in order to achieve the purposes of the Act. Section 6317(a)(4) requires that the statewide system include, at a minimum, the following approaches:

1. Establishing school support teams for assignment to, and working in, schools in the state that are subject to corrective action or identified as in need of improvement.
2. Providing such support as the state educational agency determines necessary and available in order to ensure the effectiveness of such teams.
3. Designating and using distinguished teachers and principals who are chosen from schools served under Title I that have been especially successful in improving academic achievement.
4. Devising additional approaches to provide the assistance needed such as providing assistance through institutions of higher education and educational service agencies or other local consortia and private providers of scientifically based technical assistance.

Section 6317(a)(5) outlines the composition of school support teams. Each school support team

\textsuperscript{11} 20 U.S.C. Section 6317.
is required to be composed of persons knowledgeable about scientifically based research and practice on teaching and learning and about successful schoolwide projects, school reform, and improving educational opportunities for low-achieving students including:

1. Highly qualified or distinguished teachers and principals
2. Pupil services personnel
3. Parents
4. Representatives of institutions of higher education
5. Representatives of regional educational laboratories or comprehensive regional technical assistance centers
6. Representatives of outside consulting groups, or
7. Other individuals as the state educational agency, in consultation with the local educational agency, may determine appropriate.

Each school support team assigned to a school shall review and analyze all facets of the school’s operation, including the design and operation of the instructional program, and assist the school in developing recommendations for improving student performance in the school. Each school support team is also required to collaborate with parents and school staff in the design, implementation and monitoring of a plan that, if fully implemented, can reasonably be expected to improve student performance and help the school meet its goals for improvement including adequate yearly progress. The school support team is also required to evaluate, at least semiannually, the effectiveness of school personnel assigned to the school, including identifying outstanding teachers and principals, making findings and recommendations to the school, the local educational agency and, where appropriate, the state educational agency, and to make additional recommendations as the school implements the plan concerning additional assistance that is needed by the school or the school support team. After one school year, the school support team, in consultation with the local educational agency, may recommend that the school support team continue to provide assistance to the school, or that the local educational agency or the state educational agency, as appropriate, take alternative actions with regard to the school.

Section 6317(b) of the Act outlines the requirements for state recognition including academic achievement awards programs, distinguished schools, and awards to teachers. Section 6317(b) requires each state receiving a grant under the Act to establish a program for making academic achievement awards to recognize schools that meet the criteria under the Act and, as appropriate and as funds are available, financially reward schools that meet that criteria. The criteria for awards require that a school has significantly closed the achievement gap between groups of children, or exceeded their adequate yearly progress for two or more consecutive years.

Section 6317(b)(2) requires the state to designate those schools that have made the greatest gains in closing the achievement gap for exceeding adequate yearly progress. Such distinguished schools may serve as models for and provide support to other schools, especially schools identified for improvement.
Section 6317(b)(3) authorizes a state to recognize and provide financial awards to teachers teaching in a school that consistently makes significant gains in academic achievement in the areas in which the teacher provides instruction or to teachers or principals designated as distinguished.
CHAPTER 7 - SCHOOL IMPROVEMENT

A. GENERAL REQUIREMENTS

Section 6316 of the Act\(^{12}\) outlines the provisions for academic assessment and local educational agencies school improvement. Section 6316(a)(1) requires each local educational agency receiving Title I funds to use the state academic assessments and other indicators described in the state plan to annually review the progress of each school served under Title I to determine whether the school is making adequate yearly progress. The local educational agency may also use additional academic assessments and additional academic indicators to review the progress of each school served under Title I to determine whether the school is making adequate yearly progress. However, the local educational agency may not use the such indicators if the indicators reduce the number or change the schools that would otherwise be subject to school improvement, corrective action or restructuring.

The local agency is required to publicize and disseminate the results of the local annual review to parents, teachers, principals, schools and the community so that teachers, principals, and other staff in schools continually refine, in an instructionally useful manner, the program of instruction to help all children served under Title I to meet state standards. The local agency is also required to review the effectiveness of the actions and activities the schools are carrying out under Title I with respect to parental involvement, professional development and other activities. The state educational agency is required to ensure that the results of the state academic assessments administered in that school year are available to the local educational agency before the beginning of the next school year.

Section 6316(b) and Section 200.32 require a local educational agency to identify for school improvement any elementary school or secondary school served under Title I that fails, for two consecutive years, to make adequate yearly progress as defined in the state’s plan. The local educational agency is required to identify failing schools before the beginning of the school year following the failure to make adequate yearly progress.

B. PUBLIC SCHOOL CHOICE – TRANSFER

Section 6316(b)(1)(E) and Section 200.44 state that in the case of the school identified for school improvement, the local educational agency shall, not later than the first day of the school year following such identification, provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, which may include a public charter school, that has not been identified for school improvement, “unless such an option is prohibited by state law.” The federal statute goes on to state that in providing students the option to transfer to another public school, the local educational agency shall give priority to the lowest achieving children from low income families, as

\(^{12}\) 20 U.S.C. Section 6316; see, also, 34 C.F.R. Sections 200.30-200.53.
determined by the local educational agency.

California law does not prohibit intradistrict transfers. However, California law requires that intradistrict transfers be determined on a random, unbiased basis (i.e., a lottery). When limited space is available, Education Code Section 35160.5 requires the governing board of each school district, as a condition of the receipt of school apportionments, to adopt rules and regulations establishing a policy of open enrollment within the district for residence of the district. The policy must include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that the selection of pupils is made through a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based on his or her academic or athletic performance. The governing board of the school district is required to determine the capacity of the schools in its district.

It would appear that there is a direct conflict between federal and California law when the request for intradistrict transfers exceed the capacity of the schools in the district. Therefore, in our opinion, when there is limited space available and the demand for intradistrict transfers exceeds the space available, the provisions of the No Child Left Behind Act, Section 6316(b)(1)(E), do not apply in California since the federal law specifically exempts states where the use of academic criteria (e.g., giving priority to the lowest achieving children from low income families) is prohibited by state law.

The federal regulations support the position that these provisions are prohibited by California law and state law should be followed. Section 200.44(a)(2) states that the local educational agency must offer the option to transfer, not later than the first day of the school year following the year in which the local educational agency administered the assessments that resulted in its identification of the school for improvement, corrective action, or restructuring. The schools to which students may transfer may not include schools that the local educational agency has identified for improvement, corrective action, or restructuring, or are persistently dangerous as determined by the state, and may include one or more public charter schools. If more than one school meets the requirements of Section 200.44, the local educational agency must provide the parents of students eligible to transfer a choice of more than one such school, and take into account the parents’ preferences among the choices offered.

Section 200.44(b) states that a local educational agency may invoke the state law prohibition on choice only if the state law prohibits choice through restrictions on public school assignments, or the transfer of students from one public school to another public school. It would appear that, in California, Education Code Section 35160.5 prohibits choice through restrictions on the use of academic performance and requires choice be exercised through a random, unbiased process such as a lottery.

Therefore, in our opinion, students who exercise their right of choice under the NCLB in California should be included in the lottery with other students through the use of a random, unbiased process.

Section 200.44(d) states that a local educational agency may not use lack of capacity to deny students the option to transfer. Section 200.44(e) states that the local educational agency must give priority
to the lowest achieving students from low income families. These two provisions appear to be contradictory. By establishing a priority system, the NCLB (but not the United States Department of Education) recognized that there would be a lack of capacity in many school districts and, as a result, a priority system for low achieving students from low income families had to be established. The United States Department of Education’s position, not recognizing the lack of capacity, appears to go beyond Congressional intent and may be subject to legal challenge. In practical terms, it is unworkable, since school districts cannot ignore state and local health and safety laws, which limit the number of students in school buildings. In addition, the NCLB does not provide federal funds for the construction of additional school buildings.

Section 200.44(g) states that if a student exercises the public choice option to transfer to another public school in the district, the local educational agency must permit the student to remain in that school until the student has completed the highest grade in the school. Section 200.44(i) states that if a student exercises the option to transfer to another public school in the district, the local educational agency must, consistent with Section 200.48, provide or pay for the student’s transportation to the school. The local educational agency’s obligation to provide transportation for the student ends at the end of the school year in which the school from which the student transferred is no longer identified by the local educational agency for school improvement, corrective action, or restructuring. Section 200.48 authorizes a school district to pay for choice related transportation and supplemental educational services from NCLB funds. The local educational agency must spend a minimum of an amount equal to 5% of its federal funds for transportation. The LEA must spend an amount equal to 20% of its NCLB funds to provide or pay for transportation of students and to satisfy all requests for supplemental education services.

Section 200.44(j) states that for students with disabilities under the Individuals with Disabilities Education Act (IDEA), and students covered under Section 504 of the Rehabilitation Act, the public school choice option must provide a free appropriate public education. It is unclear whether this requirement means that districts must create special education programs at schools which do not currently house these programs, particularly with respect to low incidence disabilities.

In a draft guidance which is non-binding, the United States Department of Education stated school districts may consider whether the school the parents choose can meet the needs of the child and implement the child’s IEP or 504 plan. If the school of choice can implement the child’s existing IEP then the child may transfer without reconvening the IEP team. If the school of choice cannot implement the child’s existing IEP then the IEP team must meet to decide if the child’s placement should be changed, the IEP should be changed or how the matter should be resolved. If no resolution is reached the due process procedures of the IDEA may be used.

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C. REVIEW OF TEST DATA

Section 6316(b)(2) provides an elementary school or a secondary school identified for school improvement for corrective action or restructuring, an opportunity to contest its identification as a failing school. The local educational agency is required to provide the school with an opportunity to review the school level data, including academic assessment data on which the proposed identification as a failing school is based. If the principal of the school believes or the majority of the parents of the students enrolled in the school believe that the proposed identification is incorrect due to statistical or other substantive reasons, the principal may provide supporting evidence to the local educational agency, which shall consider that evidence before making a final determination. No later than thirty days after a local educational agency receives the evidence from the school, the local educational agency shall make public a final determination on the status of the school.

D. CONTENTS OF SCHOOL PLAN

Section 6316(b)(3) and Section 200.41 state that not later than three months after a school has been identified as a failing school, the local educational agency shall develop or revise a school plan, in consultation with parents, school staff and outside experts for approval by such local educational agency. The school plan is required to cover a two year period and:

1. Incorporate strategies based on scientifically based research that will strengthen the core academic subjects in the school and address the specific academic issues that caused the school to be identified for school improvement, and may include a strategy for the implementation of a comprehensive school reform model.

2. Adopt policies and practices concerning the school’s core academic subjects that have the greatest likelihood of ensuring that all groups of students enrolled in the school will meet the state’s proficient level of achievement on the state academic assessment not later than twelve years after the end of the 2001-2002 school year (i.e. June 30, 2014).

3. Provide an assurance that the school will spend not less 10 percent of the funds made available to the school under Section 1113 of the Act (eligible school attendance areas) for each fiscal year that the school is in school improvement status for the purpose of providing to the school’s teachers and principal, high quality professional development that directly addresses the academic achievement problem that caused the school to be identified for school improvement, meets the requirements for professional development activities under Section 1119 and is provided in a manner that affords increased opportunity for participating in that professional
development.

4. Specify how the funds will be used to remove the school from school improvement status.

5. Establish specific annual measurable objectives for continuous and substantial progress by each group of students enrolled in the school that would ensure that all groups of students will, in accordance with adequate yearly progress, meet the state’s proficient level of achievement on the state academic assessment not later than June 30, 2014.

6. Describe how the school will provide written notice about the school’s status to parents of each student enrolled in the school, in a format and, to the extent practicable, in a language that the parents can understand.

7. Specify the responsibilities of the school, the local educational agency, and the state educational agency serving the school under the plan, including the technical assistance to be provided by the local educational agency and the local educational agency’s responsibilities.

8. Include strategies to promote effective parental involvement in the school.

9. Incorporate, as appropriate, activities before school, after school, during the summer and during any extension of the school year.

10. Incorporate a teacher mentoring program.

The local educational agency may condition approval of a school plan on the inclusion of one or more of the corrective actions specified in Section 6316(7)(C)(IV) or feedback on the school improvement plan from parents and community leaders.

A school is required to implement the school plan (including a revised plan) not later than the beginning of the next full school year following its identification as a failing school. The local educational agency is required, within 45 days of receiving a school plan, to establish a peer review process to assist with review of the school plan and promptly review the school plan, work with the school as necessary and approve the school plan if the plan meets the requirements of the Act.

The federal regulations, 34 C.F.R. §200.41(c)(4), state that the measurable goals in the school improvement plan must address the specific reasons for the school’s failure to make adequate progress and must promote for each group of students enrolled in the school continuous and substantial progress that ensures that all students meet the state’s annual measurable objectives.
E. TECHNICAL ASSISTANCE

Section 6316(b)(4) and Section 200.40 state that for each school identified for school improvement, the local educational agency serving the school shall provide technical assistance as the school develops and implements the school plan. The local educational agency is required to provide the following technical assistance:

1. Assistance in analyzing data from the assessments to identify and address problems in instruction, to identify problems in implementing the parental involvement requirements of Section 6318, to comply with the professional development requirements in Section 6319, to carry out the responsibilities of the school and local educational agency under the school plan, and to identify and address solutions to these problems.

2. Assistance in identifying and implementing professional development, instructional strategies and methods of instruction that are based on scientifically based research and that have proven effective in addressing the specific instructional issues that caused the school to be identified for school improvement.

3. Assistance in analyzing and revising the school’s budget so that the school’s resources are more effectively allocated to the activities most likely to increase student academic achievement and to remove the school from school improvement status.

Assistance may be provided by the local educational agency through mechanisms authorized under Section 6317 (School Support and Recognition) or by the state educational agency, an institution of higher education, a private not-for-profit organization, or for profit organization, an educational service agency or another entity with experience in helping school improve academic achievement. Technical assistance provided by a local educational agency or an entity approved by that agency shall be based on scientifically based research.

F. FAILURE TO MAKE ADEQUATE YEARLY PROGRESS

Section 6316(b)(5) and Section 200.32 state that in the case of any school that fails to make adequate yearly progress by the end of the first school year after identification as a failing school, the local educational agency serving the school shall:

1. Continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency.
2. Make supplemental educational services available.

3. Continue to provide technical assistance.

**G. NOTICE TO PARENTS**

Section 6316(b)(6) and Sections 200.36 and 200.37 require a local educational agency to promptly provide to parents of each student enrolled in an elementary or a secondary school identified for school improvement, for corrective action, or restructuring the following:

1. An explanation of what the identification means and how the school compares in terms of academic achievement to other elementary or secondary schools served by the local educational agency and the state educational agency.

2. The reasons for the identification for school improvement.

3. An explanation of what the school identified for school improvement is doing to address the problem of low achievement.

4. An explanation of what the local educational agency or state educational agency is doing to help the school address the achievement problem.

5. An explanation of how the parents can become involved in addressing the academic issues that caused the school to be identified for school improvement.

6. An explanation of the parents’ option to transfer their children to another public school, with transportation provided by the local educational agency when required by the Act or to obtain supplemental educational services for the child in accordance with the Act.

**H. CORRECTIVE ACTION**

Section 6316(b)(7) and Sections 200.33 and 200.42 address the corrective action requirements of the Act. Corrective action is defined as action consistent with state law, that substantially and directly responds to the consistent academic failure of the school that caused the local educational agency to take corrective action and any underlying staffing, curriculum or other problems in the school that is designed to increase substantially the likelihood that each group of students enrolled in the school identified for corrective action, will meet or exceed the state’s proficient levels of achievement on the state academic assessment.
In the case of any school that fails to make adequate yearly progress as defined by the state by the end of the second full school year after identification, the local educational agency is required to:

1. Continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency.

2. Continue to provide technical assistance while instituting any corrective action.

3. Continue to make supplemental educational services available to children who remain in the school.

4. Identify the school for corrective action and take at least one of the following corrective actions:
   
a. Replace the school staff who are relevant to the failure to make adequate yearly progress.
   
b. Institute and fully implement a new curriculum, including providing appropriate professional development for all relevant staff, that is based on scientifically based research and offers substantial promise of improving educational achievement for low achieving students and enabling the school to make adequate yearly progress.
   
c. Significantly decrease management authority at the school level.
   
d. Appoint an outside expert to advise the school on its progress toward making adequate yearly progress based on its school plan.
   
e. Extend the school year or school day for the school.
   
f. Restructure the internal organizational structure of the school.

Section 6316(b)(7)(D) allows the local educational agency to delay, for a period not to exceed one year, implementation of corrective action or restructuring if the school makes adequate yearly progress for one year, or if its failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforseen decline in the financial resources of the local educational agency or school. However, the period of delay shall not be taken into account in determining the number of consecutive years of failure to make adequate yearly progress.

Section 6316(b)(7)(E) requires a local educational agency to publish and disseminate information regarding any corrective action the local educational agency takes at a school to the public and to the parents of each student enrolled in the school in an understandable and uniform format, and to the extent practicable, in a language that parents can understand and through such means of the Internet, the media and public agencies.
I. RESTRUCTURING

Section 6316(b)(8) and Section 200.43 outline the requirements for restructuring. If, after one full school year of corrective action, a school subject to such corrective action continues to fail to make adequate yearly progress, then the local educational agency is required to continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency and to make supplemental educational services available to children who remain in the school. The local educational agency is also required to prepare a plan and make necessary arrangements to carry out an alternative governance plan not later than the beginning of the school year following the year in which the local educational agency implements corrective action and the school continues to fail to make adequate yearly progress. The local educational agency is required to implement one of the following alternative governance arrangements for the school consistent with state law:

1. Reopening the school as a public charter school.

2. Replacing all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress.

3. Entering into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school.

4. Turning the operation of the school over to the state educational agency, if permitted under state law and agreed to by the state.

5. Any other major restructuring of the school’s governance arrangements that make fundamental reforms, such as significant changes in the school’s staffing and governance, to improve student academic achievement in the school and that has substantial promise of enabling the school to make adequate yearly progress as defined under the state plan.

The local educational agency is required to provide prompt notice to teachers and parents whenever there is failure to make adequate yearly progress after corrective action is taken or when alternative governance requirements must be implemented. The local educational agency is required to provide the teachers and parents with an adequate opportunity to comment before taking any action with respect to alternative governance and participate in the development of a plan.

Section 200.43(c) states that if a school continues to fail to make adequate yearly progress, the local educational agency must implement the restructuring plan no later than the beginning of the school year following the year in which the local educational agency developed the restructuring plan, and continue to
offer public school choice and supplemental educational services. A local educational agency is no longer required to carry out the restructuring plan if the restructured school makes adequate yearly progress for two consecutive school years.

J. FEDERAL FUNDING OF TRANSPORTATION AND SUPPLEMENTAL EDUCATIONAL SERVICES

Section 6316(b)(9) requires a local educational agency to provide and pay for the provision of transportation for students enrolled in schools that fail to make adequate yearly progress to another public school in the district.

Section 6316(b)(10) and Section 200.48 require a local educational agency to spend an amount equal to 20 percent of its allocation of Title I funds unless a lesser amount is needed for transportation and supplemental educational services. If the amount of funds is insufficient to provide supplemental educational services to each child whose parents requests the services, the local educational agency shall give priority to providing the services to the lowest achieving children.

K. INTERDISTRICT TRANSFER

Section 6316(b)(11) and Section 200.44(h) state that if all the public schools served by a local educational agency to which a child may transfer are identified for school improvement, corrective action, or restructuring, the agency shall, to the extent practicable, establish a cooperative agreement with other local educational agencies in the area for a transfer. Section 200.44(h) also states that a local educational agency may offer supplemental educational services to eligible students in their first year of school improvement.

L. TERMINATION OF SCHOOL IMPROVEMENT REQUIREMENTS

Section 6316(b)(12) states that if any school identified for school improvement, corrective action or restructuring, makes adequate yearly progress for two consecutive years, the local educational agency shall no longer subject the school to the requirements of school improvement, corrective action or restructuring or identify the school for school improvement for the succeeding school year.

M. STATE EDUCATION AGENCY RESPONSIBILITIES

Section 6316(b)(14) requires state educational agencies to provide technical assistance to schools identified for school improvement, corrective action, or restructuring. If the state educational agency determines that a local educational agency failed to carry out its responsibilities to take such corrective actions as the state educational agency determines to be appropriate, the state shall take such corrective actions as the state educational agency determines to be appropriate and in compliance with state law. The
state educational agency shall ensure that academic assessment results are provided to schools before any identification of the school as a failing school may take place. The state education agency will notify the U.S. Secretary of Education of major factors that were brought to the attention of the state educational agency that have significantly affected student academic achievement in schools identified for improvement.

N. STATE REVIEW OF LOCAL EDUCATIONAL AGENCY IMPROVEMENT

Section 6316(c) and Section 200.50 require the state to annually review the progress of each local educational agency receiving Title I funds to determine whether schools receiving Title I funds are making adequate yearly progress toward meeting the state’s student academic achievement standards and to determine if each local educational agency is carrying out its responsibilities under the Act. The state is also required to publicize and disseminate to the local educational agencies, teachers and other staff, parents, students and the community the results of the state review, including statistically sound disaggregated results. In the case of a local educational agency that, for two consecutive years, has exceeded adequate yearly progress as defined in the state plan, the state may reward the school pursuant to Section 1117 of the Act.

Section 6316(c)(3) requires the state to identify for improvement any local educational agency that, for two consecutive years, failed to make adequate yearly progress as defined in the state’s plan. It is unclear whether it requires only one identified school or more than one identified school for a local educational agency to be designated as failing to make adequate yearly progress.

Section 6316(c)(4) states that when reviewing targeted assistance schools the state may choose to review the progress of only the students in the school who are served or eligible for services under Title I. Section 6316(c)(5) requires the state, before identifying a local educational agency for improvement or corrective action, to provide the local educational agency with an opportunity to review the data, including academic assessment data on which the proposed identification is based. If the local educational agency believes that the proposed identification is in error for statistical or other substantive reasons, the local agency may provide supporting evidence to the state which the state shall consider before making a final determination not later than 30 days after the state provides a local educational agency with the opportunity to review such data.

Section 6316(c)(6) requires the state educational agency to promptly provide to the parents of each student enrolled in a school served by a local educational agency identified for improvement, the results of the state review and if the agency is identified for improvement, the reasons for that identification and how parents can participate in upgrading the quality of the local educational agency.

Section 6316(c)(7) states that each local educational agency identified for improvement shall, not later than three months after being so identified, develop or revise the local educational agency plan in consultation with parents, school staff and others. The plan shall:
1. Incorporate scientifically based research strategies that strengthen the core academic program in schools served by the local educational agency.

2. Identify actions that have the greatest likelihood of improving the achievement of participating children in meeting the state’s student academic achievement standards.

3. Address the professional development needs of the instructional staff serving the district by committing to spending not less than 10 percent of the funds received by the local educational agency under Subpart 2 for each fiscal year in which the agency is identified for improvement for professional development.

4. Include specific measurable achievement goals and targets for each of the groups of students identified in the disaggregated data consistent with adequate yearly progress.

5. Address the fundamental teaching and learning needs in the schools of that agency, and specific academic problems of low achieving students, including a determination of why the local educational agency’s prior plan failed to bring about increased student academic achievement.

6. Incorporate, as appropriate, activities before school, after school, during the summer, and during an extension of the school year.

7. Specify the responsibilities of the state educational agency and the local educational agency under the plan, including specifying the technical assistance to be provided by the state educational agency and the local educational agencies responsibilities.

8. Include strategies to promote effective parental involvement in the school.

The local educational agency shall implement the plan (including a revised plan), not later than the beginning of the next school year after the school year in which the agency was identified for improvement.

O. STATE RESPONSIBILITIES

Section 6316(c)(9) outlines the state educational agency’s responsibilities. For each local educational agency identified, the state educational agency shall provide technical or other assistance if requested to better enable the local educational agency to develop and implement the local educational agency’s plan and to work with schools needing improvement. Technical assistance provided by the state
educational agency shall be supported by effective methods and instructional strategies based on scientifically based research. Such technical assistance shall address problems, if any, in implementing the parental involvement activities described in Section 6318 and the professional development activities described in Section 6319.

P. CORRECTIVE ACTION BY THE STATE

Section 6316(c)(10), and Section 200.50 outline the requirements for corrective action by the state educational agency. In order to help students served under Title I to meet challenging state student academic achievement standards, each state is required to implement a system of corrective action that is consistent with state law and substantially and directly responds to the consistent academic failure that caused the state to take such action and to any underlying staffing, curricular or other problems in the agency and is designed to meet the goal of having all students served under Title I achieve at the proficient and advanced student academic achievement levels. After providing technical assistance, the state may take corrective action at any time with respect to a local educational agency that has been identified as failing to make adequate yearly progress as defined by the state by the end of the second full school year. The state shall continue to provide technical assistance while instituting any corrective action.

In the case of a local educational agency identified for corrective action, the state educational agency shall take at least one of the following corrective actions:

1. Deferring programmatic funds or reducing administrative funds.

2. Instituting and fully implementing a new curriculum that is based on state and local academic content and achievement standards, including providing appropriate professional development based on scientifically based research for all relevant staff that offers substantial promise of improving educational achievement for low achieving students.

3. Replacing the local educational agency personnel who are relevant to the failure to make adequate yearly progress.

4. Removing particular schools from the jurisdiction of the local educational agency and establishing alternative arrangements for public governance and supervision of such schools.

5. Appointing, through the state educational agency, a receiver or trustee to administer the affairs of the local educational agency in place of the superintendent and school board.

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6. Abolishing or restructuring the local educational agency.

7. Authorizing students to transfer from a school operated by a local educational agency to a higher performing public school operated by another local educational agency and providing to such students transportation (or the costs of transportation) to such schools.

Prior to implementing any corrective action, the state educational agency shall provide notice and a hearing to the affected local educational agency if state law provides for such notice and hearing. The hearing shall take place not later than 45 days following the decision to implement corrective action. The state educational agency shall publish, and disseminate to parents and the public, information on any corrective action the state educational agency takes through such means as the Internet, the media, and public agencies.

A state educational agency may delay, for a period not to exceed one year, implementation of corrective action if the local educational agency makes adequate yearly progress for one year or its failure to make adequate yearly progress is due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency. The one year period shall not be taken into account in determining the number of consecutive years of failure to make adequate yearly progress. If the local educational agency makes adequate yearly progress for two consecutive school years following identification, the state educational agency need no longer identify the local educational agency for improvement or subject the local educational agency to corrective action for the succeeding school year.

Q. RIGHTS OF SCHOOL EMPLOYEES

Section 6316(d) states that nothing in Section 6316 shall be construed to alter or otherwise affect the rights, remedies and procedures afforded school or school district employees under federal, state or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

This provision in the Act makes it difficult for school districts to implement the corrective actions and restructuring summarized above. Most states, including California, have extensive legislation protecting the rights of school employees and have laws establishing collective bargaining. Under many collective bargaining agreements, the ability of the school employer to transfer or discipline employees because a school has failed to make adequate yearly progress is severely limited. The conflict between the provisions of the Act summarized above and the state law protecting the rights of employees will, most likely, be the subject of much litigation.
R. SUPPLEMENTAL EDUCATIONAL SERVICES

Section 6316(e) and Sections 200.45-200.47 outline the provisions relating to supplemental educational services. In the case of any school identified as failing to make adequate yearly progress, in need of corrective action or a restructuring, the local educational agency serving the school shall arrange for the provision of supplemental educational services to eligible children in the school from a provider with a demonstrated record of effectiveness, that is selected by the parents and approved by the state educational agency in accordance with reasonable criteria that the state educational agency has adopted. Each local educational agency is required to provide, at a minimum, annual notice to parents of the availability of services, the identity of approved providers that are within the local educational agency or whose services are reasonably available in neighboring local educational agencies, and a brief description of the services, qualifications, and demonstrated effectiveness of each such provider.

If requested, the local educational agency shall assist parents in choosing a provider from the list of approved providers maintained by the state, apply fair and equitable procedures for serving students if the number of spaces and approved providers is not sufficient to serve all students, ensure that eligible students with disabilities under the IDEA and Section 504 and limited English proficient students receive appropriate supplemental educational services, accommodations and language assistance, and not disclose to the public the identity of any student who is eligible for, or receiving, supplemental educational services without the written permission of the parents of the students.

Section 200.45 defines supplemental educational services as tutoring and other supplemental academic enrichment services that are in addition to instruction provided during the school day, specifically designed to increase the academic achievement of eligible students, as measured by the state’s assessment system, and enable these children to attain proficiency in meeting state academic achievement standards and are of high quality and research based. Only students from low income families are eligible for supplemental educational services. The local educational agency must determine family income on the same basis that the local educational agency uses to make allocations to schools.

Section 200.45(c) states that if a local educational agency identifies a school for a second year of improvement, corrective action, or restructuring, the local educational agency must arrange for each eligible student in the school to receive supplemental educational services from a state approved provider selected by the student’s parents. If a school was in school improvement status for two or more consecutive school years, or subject to corrective action on January 7, 2002, the state must ensure that the local educational agency makes available supplemental educational services to all eligible students not later than the first day of the 2002-2003 school year. The local educational agency must continue to make available supplemental educational services to eligible students until the end of the school year in which the local educational agency is making those services available.

At the request of a local educational agency, the state educational agency may waive, in whole or in part, the requirement that the local educational agency make available supplemental educational services.
If the state educational agency determines that none of the providers of those services on the list approved by the state educational agency makes those services available in the area served by the local educational agency, or within a reasonable distance of that area, and the local educational agency provides evidence that it is not otherwise able to make those services available. The state education agency must notify the local educational agency, within 30 days of receiving the local educational agency’s request for a waiver, whether it approves or disapproves the request and, if it disapproves, the reasons for the disapproval, in writing. A local educational agency that receives a waiver must renew its request for that waiver on an annual basis. If the amount of funds available for supplemental educational services is insufficient to provide services to each student whose parents request these services, the local educational agency must give priority to the lowest achieving students.

Section 6316(e)(3) and Section 200.46(b) require the local educational agency to enter into an agreement with providers. The agreement shall:

1. Require the local educational agency to develop, in consultation with parents (and the provider chosen by the parents), a statement of specific achievement goals for the student, how the student’s progress will be measured, and a timetable for improving achievement that, in the case of a student with disabilities, is consistent with the student’s IEP.

2. Describe how the student’s parents and the student’s teacher or teachers will be regularly informed of the student’s progress.

3. Provide for the termination of such agreement if the provider is unable to meet such goals and timetables.

4. Contain provisions with respect to the making of payments to the provider by the local educational agency.

5. Prohibit the provider from disclosing to the public the identity of any student eligible for, or receiving, supplemental educational services without the written permission of the parents of such student.

In the case of an eligible student with disabilities under the IDEA or Section 504, the services provided must be consistent with the student’s IEP or 504 plan.

Section 6316(e)(4) and Section 200.47 outline the state educational agency’s responsibilities with respect to supplemental educational services. The state educational agency is required to:

1. Consult with local educational agencies, parents, teachers, and other interested members of the public, and promote maximum participation by
providers to ensure, to the extent practicable, that parents have as many choices as possible.

2. Develop and apply objective criteria to potential providers that are based on a demonstrated record of effectiveness in increasing the academic proficiency of students in subjects relevant to meeting the state academic content and student achievement standards adopted by the state.

3. Maintain an updated list of approved providers across the state and by school district, from which the parents may select.

4. Develop, implement and publically report on standards and techniques for monitoring the quality and effectiveness of the services offered by approved providers and for withdrawing approval from providers that fail, for two consecutive years, to contribute to increasing the academic proficiency of students.

5. Provide annual notice to potential providers of supplemental educational services of the opportunity to provide services and of the applicable procedures for obtaining approval from the state educational agency to be an approved provider for those services.

Section 6316(e)(5) outlines criteria for providers. In order for a provider to be included on the state list, a provider must comply with all of the following:

1. Provide parents of children receiving supplemental educational services and the appropriate educational agency with information on the progress of the children in increasing achievement, in a format and to the extent practicable, a language that such parents can understand.

2. Ensure that instruction provided and content used by the provider are consistent with the instruction provided and content used by the local educational agency and state, and are aligned with state student achievement standards.

3. Meet all applicable federal, state and local health, safety and civil rights laws.

4. Ensure that all instruction and content are secular, neutral and non-ideological.
Section 200.47 requires the state educational agency to ensure that eligible students with disabilities under the IDEA and Section 504 receive appropriate supplemental educational services and accommodations. The state educational agency is required to ensure that eligible students who have limited English proficiency receive appropriate supplemental educational services and language assistance.

Section 200.47(b) sets forth the standards for state educational agency approval of providers. A provider is defined as a non-profit entity or for profit entity, a local educational agency, an educational service agency, a public school, including a public charter school, or a private school that has a demonstrated record of effectiveness in increasing the academic achievement of students in subjects relevant to meeting the state’s academic content and student achievement standards and is capable of providing supplemental educational services that are consistent with the instructional program of the local educational agency and with the state academic content standards and state student achievement standards, is financially sound, and in the case of a public school, has not been identified for improvement, corrective action, or restructuring. In order for the state educational agency to include a provider on the state list, the provider must agree to provide parents of each student receiving supplemental educational services and the appropriate local educational agency with information on the progress of the student in increasing achievement. This information must be in an understandable and uniform format, including alternative formats upon request, and, to the extent practicable, in a language that the parents can understand. The instruction the provider utilizes must be consistent with the instruction provided in the content used by the local educational agency and the state educational agency and be aligned with state student academic achievement standards and are secular, neutral, and nonideological, and meet all applicable federal, state and local health, safety, and civil rights laws. As a condition of approval, a state may not require a provider to hire only staff that meet the requirements of a highly qualified teacher.

Section 6316(e)(6) sets forth the amounts for supplemental educational services. The amount that a local educational agency shall make available for supplemental educational services for each child receiving supplemental educational services under Title I shall be the lesser of the amount of the agency’s allocation under Subpart (2) divided by the number of children from families below the poverty level, or the actual costs of the supplemental educational services received by the child. The state educational agency may use funds that the agency reserves under Title I to assist local educational agencies that do not have sufficient funds to provide services for all eligible students requesting supplemental educational services. The local educational agency is required to continue to provide supplemental educational services to a child receiving such services until the end of the school year in which the services were first received. The funds may not be used to pay for religious worship or religious instruction.

At the request of the local educational agency, a state educational agency may waive, in whole or in part, the requirement to provide supplemental educational services if the state educational agency determines that:

A. None of the providers of those services on the list approved by the state
education agency makes those services available in the areas served by
the local educational agency or within a reasonable distance of that area.

B. The local educational agency provides evidence that is not able to provide
those services.

The state educational agency must notify the local educational agency, within 30 days of receiving
the local agency’s request for a waiver to provide supplemental educational services, whether the request
is approved or disapproved, and if disapproved, the reasons for the disapproval in writing.

Section 6316(e)(12) defines an eligible child as a child from a low income family for purposes of
receiving supplemental educational services. The term provider means a non-profit entity, a for-profit
entity, or a local educational agency that has a demonstrated record of effectiveness in increasing student
academic achievement, is capable of providing supplemental educational services that are consistent with
the instructional program of the local educational agency and the academic standards established by the
states, and is financially sound. The term “supplemental educational services” is defined as tutoring and
other supplemental academic enrichment services that are provided in addition to the instruction provided
during the school day and are of high quality, research-based and specifically designed to increase the
academic achievement of the eligible children on the academic assessments required by the Act, and attain
proficiency in meeting the state’s academic achievement standards.

S. NOTICE TO OTHER FEDERAL AGENCIES

Section 6316(h) states that the Secretary of Education may notify, to the extent feasible and
necessary, other relevant federal agencies regarding the major factors that were determined by the state
educational agency to have significantly affected its student academic achievement.

It can be expected that the California Department of Education will enact policies to implement
these provisions. Districts should provide input to the state with respect to the implementation of these
provisions.
CHAPTER 8 - LIMITS ON LIABILITY

A. IN GENERAL

The Act applies not only to teachers but to all officers (i.e., school board members) and employees of the school district. The Act does not apply to school districts as an entity. Section 6732\textsuperscript{14} states that the purpose of the Act is to provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline and an appropriate educational environment. The Act applies to states that receive Title I funds and is a condition of the state receiving Title I funds.

Section 6736\textsuperscript{15} of the Act limits the liability of school officers and employees for acts or omissions on behalf of the school if:

1. The officer or employee was acting within the scope of employment or responsibilities to a school or governmental entity;

2. The actions of the officer or employee were carried out in conformity with federal, state and local laws (including rules and regulations) in furtherance of efforts to control, discipline, expel or suspend a student or maintain order or control in the classroom or school;

3. The officer or employee was properly licensed, certified or authorized by the appropriate authorities for the activities or practice involved in the state in which the harm occurred, where the activities were or practice was undertaken within the scope of the officer or employee’s responsibility, if appropriate or required;

4. The harm was not caused by willful or criminal misconduct, gross negligence, recklessness misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the officer or employee, and;

5. The harm was not caused by the officer or employee operating a motor vehicle, vessel, aircraft or other vehicle for which the state requires the operator or owner of the vehicle, craft or vessel to possess an operator’s

\textsuperscript{14} 20 U.S.C. Section 6732.

\textsuperscript{15} 20 U.S.C. Section 6736.
license or maintain insurance.

**B. PREEMPTION OF STATE LAW**

Section 6735\(^{16}\) indicates that the Act preempts the laws of any state to the extent such laws are inconsistent with the Act but does not preempt any state law that provides additional protection from liability for school officers and employees. The Act does not apply to any civil action in a state if the state legislature enacts a state statute which cites the authority of Section 6735, declares the election of the state legislature that Section 6735 shall not apply and containing no other provisions. Section 6736(b)\(^{17}\) states that a state law, despite the preemption of the Act, may:

1. Require a school or governmental entity to adhere to risk management procedures including mandatory training of teachers;

2. Make the school or governmental entity liable for the acts or omissions of its officers or employees to the same extent as an employer is liable for the acts or omissions of its employees;

3. Limit liability if the civil action was brought by an officer of a state or local government pursuant to state or local law.

**C. PUNITIVE DAMAGES**

Section 6736(c)\(^{18}\) states that punitive damages may not be awarded against a school officer or an employee in an action brought for harm based on the act or omission of an officer or employee acting within the scope of the officer or employee’s employment or responsibilities to a school or governmental agency unless the plaintiff establishes by clear and convincing evidence that the harm was proximately caused by an act or omission of such officer or employee that constitutes willful or criminal conduct or a conscious flagrant indifference to the rights or safety of the individual harmed. Section 6736(c) authorizes other federal and state laws to further limit the award of punitive damages.

\(^{16}\) 20 U.S.C. Section 6735.

\(^{17}\) 20 U.S.C. Section 6736(b).

\(^{18}\) 20 U.S.C. Section 6736(c).
D. LIMITATIONS ON LIABILITY

Section 6736(d)\textsuperscript{19} states that the limitations on the liability of a school officer or employee shall not apply to any misconduct that:

1. Constitutes a crime of violence or act of international terrorism for which the defendant has been convicted in a court;

2. Involves a sexual offense as defined by applicable state law for which the defendant has been convicted in any court;

3. Involves misconduct for which the defendant has been found to have violated a federal or state civil rights law, or;

4. Where the defendant was under the influence of intoxicating alcohol or any drug at the time of misconduct as determined pursuant to applicable state law.

In addition, Section 6736(d)\textsuperscript{20} states that the limitations on liability under the Act shall not apply to misconduct during background investigations or during other actions involved in the hiring of a school officer or employee. Section 6736(e)\textsuperscript{21} states that nothing in the Act shall be construed to affect any civil action brought by any school or governmental entity against any school officer or employee of such school or to affect any state or local law, rule or regulation or policy pertaining to the use of corporal punishment.

Section 6737\textsuperscript{22} limits the amount of liability of each defendant who is a school officer employee to the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant for harm to the plaintiff. Section 2367 requires the court to render a separate judgment against each defendant and requires the trier of fact (i.e., a jury in a jury trial or the judge in a court trial) to determine the percentage of responsibility of each person responsible for the plaintiff’s harm whether or not such person is a party to the action. Under present law, and individual defendant can be required to pay the entire judgment and then seek reimbursement from the other defendant. Section 6737 will require the plaintiff to seek recovery from each defendant in portion to their percentage of

\textsuperscript{19} 20 U.S.C. Section 6736(d).

\textsuperscript{20} 20 U.S.C. Section 6736(d).

\textsuperscript{21} 20 U.S.C. Section 6736(e).

\textsuperscript{22} 20 U.S.C. Section 6737.
responsibility. However, in most cases, under state law, the public agency will be required to defend all school officers and employees and pay the judgment. See, Government Code Sections 995 et seq.

Section 6738\textsuperscript{23} states that the Act shall apply to any claim for harm caused by an act or omission of a school officer or employee if that claim is filed on or after April 8, 2002, without regard to whether the harm that is the subject of the claim or the conduct that caused the harm occurred before April 8, 2002.

In summary, the provision of this federal Act limits the individual liability of school board members and employees. The provisions of the Act do not, however, limit the liability of the school district itself.

\textsuperscript{23} 20 U.S.C. Section 6738.
CHAPTER 9 - HIGHLY QUALIFIED TEACHERS AND PARAPROFESSIONALS

A. TEACHERS

Section 6319(a) of the Act and Section 200.55 of the regulations state that, on the first day of the first school year after the date of the enactment of the Act (i.e., first school day of the 2002-2003 school year), each local educational agency receiving Title I funding shall ensure that all teachers hired after the first day of school, and teaching in a program supported with Title I funds, are highly qualified.

Section 200.55(a) clarifies that the requirement in 6319(a) applies to all teachers who teach core academic subjects in a program supported with NCLB funds. These programs include a teacher in a targeted assistance school who is paid with NCLB funds, a teacher in a schoolwide program school, or a teacher employed by a local educational agency with funds under the NCLB to provide services to eligible private school students.

Section 6319(a)(2) and Section 200.55(b) require that each state educational agency receiving Title I funds is required to develop a plan to ensure that all teachers teaching in core academic subjects within the state are highly qualified not later than the end of the 2005-2006 school year. The term “core academic subjects” is defined to mean English, reading, or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. Section 200.55(d) states that the requirements in this section do not apply to teachers hired by private, elementary, and secondary schools. However, the requirements do apply to teachers of core academic subjects employed by a local educational agency to provide services to eligible private students. The “highly qualified” requirement also applies to special education teachers, if they teach core academic subjects.

The plan shall establish annual measurable objectives for each local educational agency and school that, at a minimum, require the following:

1. An annual increase in the percentage of highly qualified teachers at each local educational agency and school, to ensure that all teachers teaching in core academic subjects in each public elementary and secondary school are highly qualified not later than the end of the 2005-2006 school year.

2. An annual increase in the percentage of teachers who are receiving high quality professional development to enable such teachers to become highly qualified and successful classroom teachers.

3. Other measures as the state educational agency determines to be appropriate to increase teacher qualifications.
Each local educational agency receiving Title I funds is required to develop a plan to ensure that all teachers teaching within the school district served by the local educational agency are highly qualified not later than the end of the 2005-2006 school year.

Section 6319(b) requires annual state and local reports. Each state educational agency must require each local educational agency receiving Title I funds to publicly report, each year, beginning with the 2002-2003 school year, the annual progress of the local educational agency as a whole, and each of its schools, in meeting the measurable objectives described in the state plan. Each state educational agency receiving Title I funds must prepare and submit each year, beginning with the 2002-2003 school year, a report to the Secretary of Education describing the state educational agency’s progress in meeting the measurable objectives described in its state plan. Each year, beginning with the 2002-2003 school year, the Secretary of Education shall publicly report the annual progress of state educational agencies, local educational agencies and schools in meeting the measurable objectives described in each state’s state plan.

The regulations, Section 200.57, add additional requirements to the state plan. These additional requirements include:

1. An annual increase in the percentage of highly qualified teachers at each local educational agency and school, and teachers who are receiving high quality professional development to enable them to become highly qualified and effective classroom teachers;

2. State assistance in helping local educational agencies and schools meet the requirements of the NCLB with respect to highly qualified teachers;

3. A system to monitor the progress of local educational agencies and schools in meeting these requirements;

4. A description of the specific steps the state educational agency will take, until the state educational agency fully complies with the requirements of the NCLB, to ensure that Title I schools provide instruction by highly qualified teachers, including steps that the state educational agency will take to ensure that minority children and children from low income families are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers, and evaluate and publicly report the progress of the state educational agency with respect to these steps.

Section 200.57(b) outlines the requirements for local plans to ensure that all teachers of core academic subjects are highly qualified not later than the end of the 2005-2006 school year, including teachers employed by the local educational agency to provide services to eligible private school students. The local plan must include incentives for voluntary transfers, professional development, recruitment
programs, and other effective strategies to ensure that minority students and students from low income families are not taught at higher rates than other students by unqualified, out-of-field, or inexperienced teachers.

Section 7801(23)\textsuperscript{24} and Section 200.56 define the term “highly qualified.” When the term “highly qualified” is used with respect to any public elementary school or secondary school teacher, it means the following:

1. The teacher has obtained full state certification as a teacher (including certification obtained through alternative routes to certification) or passed the State Teacher Licensing Examination, and holds a license to teach in such state, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the state’s public charter school law, and

2. The teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

Section 200.56 adds additional requirements for teachers participating in an alternative route to certification program. Section 200.56 requires that alternative route to certification programs require the teacher to meet the following requirements:

1. A high quality professional development program that is sustained, intensive, and classroom focused, in order to have a positive and lasting impact on classroom instruction before and while teaching;

2. A program of intensive supervision that consists of structured guidance and regular, ongoing support for teachers or a teacher mentoring program;

3. Allows the teacher to function as a teacher in the classroom, only for a specified period of time not to exceed three years; and

4. Demonstrates satisfactory progress toward full certification as prescribed by the state, and the state ensures that through its certification and licensure process, the teacher will have passed a state teacher licensing examination and hold a license to teach in the state.

\textsuperscript{24} 20 U.S.C. Section 7801; see, also, 34 C.F.R. Section 200.56.
With respect to elementary school teachers who are new to the profession, the term “highly qualified” means that the teacher holds at least a bachelor’s degree and has demonstrated, by passing a rigorous state test, subject knowledge and teaching skills in reading, writing, mathematics and other areas of the basic elementary school curriculum. With respect to a middle or secondary school teacher who is new to the profession, the term “highly qualified” means that the teacher holds at least a bachelor’s degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by:

1. Passing a rigorous state academic subject test in each of the academic subjects in which the teacher teaches, or

2. Successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, or advanced certification in credentialing.

The term “highly qualified” when used with respect to an elementary, middle or secondary school teacher who is not new to the profession (the term “new to the profession” is undefined as to time or number of years of experience, but would, most likely, be a teacher with no prior teaching experience) means that the teacher holds at least a bachelor’s degree, meets the requirements set forth below for teachers new to the profession and has passed a rigorous State test or demonstrates competence in all academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that:

A. Is set by the State for both grade appropriate academic subject matter knowledge and teaching skills.

B. Is aligned with challenging State academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals and school administrators.

C. Provides objective, coherent information about the teacher’s attainment of core content knowledge in the academic subjects in which a teacher teaches.

D. Is applied uniformly to all teachers in the same academic subject, and the same grade level throughout the state.

E. Takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject.
F. Is made available to the public upon request.

G. May involve multiple, objective measures of teacher competency.

**B. PARAPROFESSIONALS**

Section 6319(c) of the Act and Section 200.58 of the regulations require each school district receiving assistance under Title I funds to ensure that all paraprofessionals hired after January 8, 2002, and working in a program supported with funds under Title I shall have:

1. Completed at least two years of study at an institution of higher education;

2. Obtained an Associate’s or higher degree; or

3. Met a rigorous standard of quality and can demonstrate, through a formal state or local assessment, 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.

Section 200.58 defines a paraprofessional as an individual who provides instructional support and does not include individuals who have only non-instructional duties, such as providing technical support for computers, providing personal care services, or performing clerical duties. Section 200.59(b) sets forth examples of instructional support duties as follows:

1. One-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from the teacher;

2. Assisting in classroom management;

3. Assisting in computer instruction;

4. Conducting parental involvement activities;

5. Providing instructional support in a library or media center;

6. Acting as a translator;

7. Providing instructional support services.
Section 200.58 defines “a program supported with funds under subpart A of this part” as a paraprofessional in a targeted assistance school who is paid with NCLB funds, a paraprofessional in a schoolwide program school, or a paraprofessional employed by a local educational agency with NCLB funds to provide instructional support to a public school teacher who provides services to eligible private school students.

Under California law, Education Code Section 45344.5, instructional aides must pass the district proficiency exam in basic reading, writing and mathematics skills for high school seniors. While the proficiency exam has been replaced by a high school exit exam for high school seniors, Section 45344.5 could be amended so that the proficiency exam could be utilized to meet the requirements of Section 6319(c) and Equal Employment Opportunity Commission requirements that prohibit the imposition of false or artificial barriers to employment.

Section 6319(d) requires existing paraprofessionals to meet these requirements by January 8, 2006. Section 6319(e) and Section 200.58(e) contain exceptions for paraprofessionals who are proficient in a language other than English and who provide services primarily to enhance the participation of children in programs under this part by acting as a translator, or whose duties consist solely of conducting parental involvement activities. Section 6319(f) and Section 200.58(b) require that school districts, regardless of the paraprofessional’s hiring date, must ensure that all paraprofessionals working in a program supported with Title I funds have earned a secondary school diploma or its recognized equivalent.

Section 200.59(c) states that a paraprofessional may not provide instructional support to a student, unless the paraprofessional is working under the direct supervision of a teacher who is highly qualified. A paraprofessional works under the direct supervision of a teacher if the teacher plans the instructional activities that the paraprofessional carries out, the teacher evaluates the achievement of the students with whom the paraprofessional is working, and the paraprofessional works in close and frequent physical proximity to the teacher.

Section 6319(h) and Section 200.60 authorize a school district receiving Title I funds to use such funds to support ongoing training and professional development to assist teachers and paraprofessionals in satisfying the requirements of Section 6319. Section 6319(i) requires each school district to require that the principal of each school operating a program under Section 6314 (Schoolwide Programs) or 6315 (Targeted Assistance Schools) attest annually in writing as to whether the school is in compliance with the requirements of Section 6319.
CHAPTER 10 - MISCELLANEOUS REQUIREMENTS

A. CONSTITUTIONALLY PROTECTED SCHOOL PRAYER

Section 7904\(^{25}\) of the Act requires that no later than September 1, 2002, and every two years thereafter, the Secretary of Education shall provide guidance to state educational agencies, local education agencies and the public on constitutionally protected prayer in public elementary schools and secondary schools, including making the guidance available on the Internet. As a condition of receiving Title I funds, a local educational agency shall certify in writing to the state educational agency involved that no policy of the local educational agency prevents, or otherwise denies participation in, constitutionally protected prayer in public elementary and secondary schools as set forth in the guidance.

The certification shall be provided by October 1, of each year. The state educational agency shall report to the U.S. Secretary of Education by November 1, of each year, a list of those local educational agencies that have not filed a certification or that complaints have been made to the state educational agencies that the local educational agencies are not in compliance with the guidance. The Secretary of Education is authorized and directed to secure compliance with its guidance by a local educational agency by issuing and securing compliance.

B. BOY SCOUTS

Section 7905\(^{26}\) of the Act also entitled, “The Boy Scouts of America Equal Access Act” prohibits any local educational agency receiving Title I funds from discriminating against or denying equal access or a fair opportunity to meet to any group officially affiliated with the Boy Scouts of America or any other youth group if it has a designated open forum or a limited open forum. A local educational agency may not deny such access or discriminate based on the membership or leadership criteria of the organization or oath of allegiance to God and country. Section 9525 does not require a local educational agency or any school to sponsor a Boy Scout group or any of the designated youth groups.

Section 7905(c) authorizes the Secretary of Education to secure compliance with this requirement through the Office for Civil Rights and through enforcement under the 1964 Civil Rights Act. The Secretary of Education is empowered to cut off federal funds for failure to comply with this provision.

\(^{25}\) 20 U.S.C. Section 7904.

\(^{26}\) 20 U.S.C. Section 7905.
C. CURRICULUM

Section 7906\(^{27}\) prohibits Title I funds from being used to develop or distribute materials or operate programs or courses of instruction directed at youth that are designed to promote or encourage sexual activity whether homosexual or heterosexual, to distribute or aid in the distribution by any organization of legally obscene materials to minors on school grounds, to provide sex education or HIV prevention education in schools unless that instruction is age appropriate and includes the health benefits of abstinence or to operate a program of contraceptive distribution in the schools. Section 7906(b) states that nothing in Section 7906 shall be construed to authorize a federal officer or employee to mandate, direct, review or control state or local instructional content, curriculum or related activity.

D. MILITARY RECRUITERS

Section 7908\(^{28}\) requires schools receiving Title I funds to give military recruiters access to schools and the names, address and telephone number of secondary school students. A secondary school student or the parent of the student may request that the student’s name, address and telephone listing not be released without prior written parental consent and a local educational agency shall notify parents of the option to make a request and shall comply with any request. Each local educational agency receiving Title I funds is required to provide military recruiters the same access to secondary school students as is provided generally to post-secondary educational institutions or to prospective employers of those students. The Secretary of Education is required to notify principals, school administrators and other educators about the requirements of Section 7908 within 120 days of the enactment of the Act (May 8, 2002).

E. SCHOOL SAFETY

Section 7912\(^{29}\) requires that each state receiving Title I funds shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the state in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by state law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary or secondary school within the local educational agency, including a public charter school. As a condition of receiving Title I funds, a state shall certify in writing to the Secretary of Education that the state is in compliance with this requirement.

\(^{27}\) 20 U.S.C. Section 7906.

\(^{28}\) 20 U.S.C. Section 7908.

\(^{29}\) 20 U.S.C. Section 7912.
F. STUDENT RECORDS

The NCLB amended 20 U.S.C. §1232 (FERPA) by creating an exception to the release of student records when the United States Attorney General or an Assistant Attorney General of the United States who has been designated by the U.S. Attorney General, submits a written application to a court of competent jurisdiction for a court order requiring an educational agency to permit the Attorney General or the Attorney General’s designee to collect educational records in the possession of the educational agency that are relevant to an authorized investigation or prosecution of a terrorism offense or an act of domestic or international terrorism. An educational agency or institution that, in good faith, produces educational records in accordance with the order issued by the court is immune from liability to any person for that production. In addition, the educational institution is not required to maintain a record of the Attorney General’s access to the student’s educational records.

The NCLB amended 20 U.S.C. §1232 (FERPA) relating to the protection of student rights by requiring the development of local policies concerning student privacy, parental access to information and the administration of certain physical examinations to minors. Section 1232(c) requires that all local educational agencies that receive federal funds develop and adopt policies in consultation with parents regarding the following:

1. The right of a parent to inspect, upon the request of the parent, a survey created by a third party before the survey is administered or distributed by a school to a student.

2. Arrangements to protect student privacy that in the event of the administration or distribution of a survey to a student.

3. The right of a parent to inspect, upon the request of the parent, any instructional material used as part of the educational curriculum for the student.

4. The administration of physical examinations or screenings that the school or agency may administer to a student.

5. The collection, disclosure or use of personal information collected from students for the purpose of marketing or selling that information.

6. The right of a parent to inspect upon the request of the parent, any instrument used in the collection of personal information before the instrument is administered or distributed to a student.
The parent has a right to inspect, upon the request of the parent, any survey which contains or inquires into one or more of the following items:

1. Political affiliations or beliefs of the student or the student’s parent.
2. Mental or psychological problems of the student or the student’s family.
3. Sex, behavior or attitudes.
4. Illegal, antisocial, self-incriminating, or demeaning behavior.
5. Critical appraisals of other individuals with whom respondents have close family relationships.
6. Legally recognized, privileged or analogous relationships such as those of lawyers, physicians and ministers.
7. Religious practices, affiliations or beliefs of the student or the student’s parents.
8. Income.

The policies developed by a local educational agency shall provide for reasonable notice of the adoption or continued use of such policies directly to the parents of students enrolled in schools served by that agency. The notice, at a minimum, shall be provided at least annually at the beginning of the school year and within a reasonable period of time after any substantive change in such policies, and offer an opportunity for the parent to opt the student out of participation in an activity the parent finds objectionable based on the criteria discussed above. The local agency is required to directly notify the parent of a student, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when the following activities are scheduled or expected to be scheduled:

1. Activities involving the collection, disclosure or use of personal information collected from students for the purpose of marketing or selling that information.
2. The administration of any survey containing one or more of the items discussed above.
3. Any non-emergency invasive physical examination or screening that is required as a condition of attendance administered by the school and scheduled by the school in advance and not necessary to protect the
immediate health and safety of the student or other students.

If a local agency has in place, on or before January 8, 2002, policies meeting the requirements of the new federal law, the agency is not required to develop and adopt new policies.

Section 1232(c)(4) states that the following items are not subject to the requirements of the Act:

1. College or other post-secondary education recruitment or military recruitment.

2. Book clubs, magazines and programs providing access to lowcost literary products.

3. Curriculum and instructional materials used by elementary schools and secondary schools.

4. Tests and assessments used by elementary schools and secondary schools to provide cognitive, evaluative, diagnostic, clinical, aptitude or achievement information about students and the subsequent analysis and public release of the aggregate data from such tests and assessments.

5. The sale by students of products or services to raise for school related or educational related activities.

6. Student recognition programs.

In addition, the provisions of 1232 do not apply to surveys administered to students in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. §1400, et seq. The term “invasive physical examination” is defined as any medical examination that involves the exposure of private body parts or any act during such examination that includes incision, insertion or injection into the body but does not include a hearing, vision or scoliosis screening. The term “personal information” is defined as individually identifiable information, including a student’s or parent’s first and last name, a home or physical address, a telephone number or a social security identification number. The term “survey” includes an evaluation.

G. HOMELESS STUDENTS

The NCLB added the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C. sections 11431, et seq. These amendments to the McKinney-Vento Act took effect on July 1, 2002. The amendments authorize the U.S. Secretary of Education to make grants to States to enable States to assist homeless students in accordance with the requirements set forth below.
Section 11434(a) defines the term “homeless children and youth” as individuals who lack a fixed, regular and adequate night time residence and includes:

1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship or a similar reason; are living in motels, hotels, trailer parks or camping grounds due to the lack of alternative adequate accommodation; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement.

2. Children and youth who have a primary night time residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

3. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar settings.

4. Migratory children who qualify as homeless for the purpose of this part.

Section 11434(a)(6) defines a “unaccompanied youth” as a youth not in the physical custody of a parent or guardian.

Section 11431 states that it is the policy of Congress that each state educational agency receiving federal funds under the program shall ensure that each child of a homeless individual and each homeless youth has equal access to the same “free appropriate public education” as provided to other children and youths. Section 11431 does not specifically define the term “free appropriate public education.” It is unclear whether the term in the context of homeless students has the same meaning as term does with respect to disabled children under the IDEA, 20 U.S.C. Section 1400 et seq. Section 11431 also requires states that have compulsory residency requirements as a component of the state’s compulsory school attendance law to review and undertake steps to revise such laws, regulations, practices or policies to ensure that homeless children and youths are afforded the same free appropriate public education as provided to other children and youths.

Section 11431 also states that homelessness alone is not sufficient reason to separate students from the mainstream school environment and homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging state student academic achievement standards to which all students are held. Other provisions of the No Child Left Behind Act require states as part of the state accountability system to develop the standards.

Section 11432 authorizes the U.S. Secretary of Education to make grants to states to carry out the
provisions of the Act. Section 11432(e)(3) prohibits the segregation of homeless students in a separate school or in a separate program within a school based on the student’s status as homeless. The Act exempts separate schools for homeless students that were operated in fiscal year 2000 under specified conditions which would include programs operated in Orange County such as Project Hope.

Section 11432(e)(3)(C) sets forth requirements for receiving federal funds for homeless students. The school must provide written notice at the time any student seeks enrollment, and at least twice annually while the student is enrolled, to the parent or guardian that:

1. The student has a right to continue his or her education in the school of origin for the duration of homelessness in any case in which a family becomes homeless between academic years or during an academic year, or for the remainder of the academic year if the student becomes permanently housed during an academic year. Alternatively, the child may enroll in any public school that non-homeless students who live in the attendance area in which the student is actually living are eligible to attend. “School of origin” is the school that the student attended when permanently housed or the school in which the student was last enrolled.

2. No homeless student is required to attend a separate school for homeless students.

3. Homeless students shall be provided comparable services, including transportation services, educational services and meals through school meals programs.

4. Homeless students should not be stigmatized by school personnel.

Section 11432(g) outlines the requirements of state plans. Most states that receive funds under the Act must develop a plan that includes the following:

1. A description of how homeless children are or will be given the opportunity to meet the same challenging state academic achievement standards all students are expected to meet.

2. A description of the procedures the state educational agency will use to identify homeless students in the state and to assess their special needs.

3. A description of procedures for the prompt resolution of disputes regarding the educational placement of homeless students.
4. A description of programs for school personnel to heighten the awareness of such personnel of the specific needs of homeless students.

5. A description of the procedures that ensure that homeless students who meet the relevant eligibility criteria are able to participate in federal, state or local food programs.

6. A description of the procedures that ensure that homeless students have equal access to the same public preschool programs as other children in the state. That homeless students are not separated from the public schools and are given equal access to appropriate secondary education and support services and are able to participate in federal, state or local before and after school care programs.

7. Strategies to address problems identified by the state.

8. Strategies to address other problems with respect to the education of homeless students, including problems resulting from enrollment delay that are caused by immunization and medical records requirements, residency requirements, lack of birth certificates, school records or other documentation, guardianship issues, or uniform or dress requirements.

9. A demonstration that the state educational agency and local educational agencies in the state have developed policies to remove barriers to the enrollment and retention of homeless students in the schools of the state.

10. Assurances that the state educational agency and local educational agency in the state will adopt policies and practices to ensure that homeless students are not stigmatized or segregated on the basis of their status of homeless.

11. Local educational agencies will designate an appropriate staff person as a local educational liaison for homeless students to carry out the requirements of the Act.

12. The state and its local educational agencies will adopt policies and practices to ensure that transportation is provided, at the request of the parent or the student to and from the school of origin in accordance with the following requirements:

A. If the homeless child or youth continues to live in the area
served by the local educational agency in which the school of origin is located, the student’s transportation to and from the school of origin shall be provided or arranged by the local educational agency in which the school of origin is located.

B. If the homeless student’s living arrangements in the area served by the local educational agency of origin terminate and the student, though continuing his or her education in the school of origin, begins living in an area served by another local educational agency, the local educational agency of origin and the local educational agency in which the homeless student is living shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the school of origin. If the local educational agencies are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally.

Section 11432(g)(3) requires the local educational agency and states receiving funds to act in the child’s best interest by continuing the child’s education in the school of origin for the duration of homelessness in any case in which the family becomes homeless between academic years or during the academic year or for the remainder of the academic year if the child becomes permanently housed during the academic year or enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child is actually living are eligible to attend. In determining the best interest of the child, the local educational agency is required to:

1. To the extent feasible, keep a homeless child in the school of origin except when doing so was contrary to the wishes of the child’s parent or guardian.

2. Provide a written explanation, including a statement regarding the right to appeal to the homeless child’s parent or guardian if the local educational agency sends the child to a school other than the school of origin or a school requested by the parent.

3. In the case of an unaccompanied child or youth, ensure that the homeless liaison designated by the school district assists in placement or enrollment decisions, considers the views of the student and provides notice to the student of the right to appeal.

Section 11432(g)(3)(C) requires the school selected by the student’s parents or the student to
immediately enroll the homeless child or youth even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency or other documentation. The enrolling school is required to immediately contact the school last attended by the child or youth or obtain relevant academic and other records. If the child or youth needs to obtain immunizations or immunization or medical records, the enrolling school shall immediately refer the parent or guardian of the child or youth to the local educational liaison designated by the school district who shall assist in obtaining necessary immunizations or immunization or medical records.

Section 11432(g)(3)(E) states that if a dispute arises over school selection or enrollment in a school, the student shall be immediately admitted to the school in which enrollment is sought pending resolution of dispute. The parent or guardian of the student shall be provided with a written explanation of the school’s decision regarding school selection or enrollment, including the rights of the parent or student to appeal the decision. The parent or student shall be referred to the local educational liaison who shall carry out the dispute resolution process as expeditiously as possible after receiving notice of the dispute. And in the case of an unaccompanied student, the homeless liaison shall ensure that the youth is immediately enrolled in school pending resolution of the dispute.

Section 11432(g)(3)(G) defines “school of origin” as a school that the student attended when permanently housed or the school in which the student was last enrolled. Section 11432(g)(3)(H)(4) states that each homeless student who is assisted under the Act shall be provided services comparable to services offered to other students in the school selected, including the following:

1. Transportation services.
2. Educational services for which the student is eligible.
3. Programs and vocational and technical education.
4. Programs for gifted and talented students.
5. School nutrition programs.

Section 11432(G)(3)(H)(6) requires the local educational liaison for homeless students to ensure that:

1. Homeless children are identified by school personnel and through coordinated activities with other entities and agencies.
2. Homeless students enroll in and have a full and equal opportunity to succeed in schools of that local educational agency.
3. Homeless students receive educational services for which such families, children and youth are eligible.

4. The parents of homeless students are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children.

5. Public notice of the educational rights of homeless students is disseminated where such children and youth receive services, such as schools, family shelters and soup kitchens.

6. Enrollment disputes are mediated in accordance with the Act.

7. The parents of homeless students and any unaccompanied student is fully informed of all transportation services, including transportation to the school of origin, as described in paragraph (1)(J)(iii), and has assisted in assessing transportation to that school that is selected under paragraph (3)(A).

H. SERVICES PROVIDED TO PRIVATE SCHOOL STUDENTS

Section 6320 and 200.62 outline the responsibilities for providing services to private school children. After a timely and meaningful consultation with appropriate officials of private schools, a local educational agency must provide special educational services or other benefits on an equitable basis and in a timely manner to eligible children who are enrolled in private, elementary, and secondary schools and ensure that teachers and families of participating private school children participate on a basis equitable to the participation of teachers and families of public school children receiving these services.

Section 200.62(b) states that eligible private school children are children who reside in participating public school attendance areas of the local educational agency, regardless of whether the private school they attend is located in the local educational agency, and meet the eligibility requirements of the NCLB, 20 U.S.C. Section 6315(b). Among the eligible private school children, the local educational agency must select children to participate consistent with Section 200.64. The services and other benefits a local educational agency provides must be secular, neutral, and nonideological.

Section 200.63 states that in order to have timely and meaningful consultation, a local educational agency must consult with appropriate officials of private schools during the design and development of the local educational agency’s program for eligible private school children. At a minimum, the local educational agency must consult on the following:
A. How the local educational agency will identify the needs of eligible private school children;

B. What services the local educational agency will offer to eligible private school children;

C. How and when the local educational agency will make decisions about the delivery of services;

D. How, where, and by whom the local educational agency will provide services to eligible private school children;

E. How the local educational agency will assess academically the services to eligible private school children, and how the local educational agency will use the results of that assessment to improve Title I services;

F. The size and scope of the equitable services that the local educational agency will provide to eligible private school children, and the proportion of funds that the local educational agency will allocate to these services;

G. The method or sources of data that the local educational agency will use to determine the number of private school children from low income families residing in participating public school attendance areas, including whether the local educational agency will extrapolate data if a survey is used;

H. The equitable services the local educational agency will provide to teachers and families of participating private school children.

Section 200.63(c) states that consultation by the local educational agency must include meetings of the local educational agency and appropriate officials of the private schools and occur before the local educational agency makes any decisions that affects the opportunities of eligible private school children to participate in Title I programs. The local educational agency must meet with officials of the private schools throughout the implementation and assessment of the Title I services. Section 200.63(d) states that consultation must include a discussion of service delivery mechanisms the local educational agency can use to provide equitable services to eligible private school children and a thorough consideration and analysis of the views of the officials of the private schools on the provision of services through a contract of a third party provider. If the local educational agency disagrees with the views of the officials of the private schools on the provision of services through a contract, the local educational agency must provide, in writing, to the officials of the private schools the reasons why the local educational agency chooses not to
use a contractor.

Section 200.63(e) states that the local educational agency must maintain in its records and provide the state educational agency a written affirmation, signed by officials of each private school with participating children, that the required consultation has occurred. If the officials of the private schools do not provide the affirmations within a reasonable period of time, the local educational agency must submit to the state educational agency documentation that the required consultation occurred.

Section 200.63(f) states that an official of a private school has the right to complain to the state educational agency that the local educational agency did not engage in timely and meaningful consultation or consider the views of the official of the private school.

Section 200.64 states that funds expended by a local educational agency for services for eligible private school children in the aggregate must be equal to the amount of funds generated by private school children from low income families. Section 200.65 states that a local educational agency shall ensure the teachers and families of participating private school children participate on an equitable basis in professional development and parent involvement activities. Section 200.66 states that a local educational agency must use NCLB funds to provide services that supplement, and in no case supplant, the services that would, in the absence of Title I services, be available to participating private school children.

Section 200.67 states that the local educational agency must keep title to and exercise continuing administrative control of all property, equipment and supplies that the local educational agency acquires with funds from NCLB for the benefit of eligible private school children. The local educational agency must ensure that the equipment and supplies placed in a private school are used only for Title I purposes and can be removed from the private school without remodeling the private school facility. The local educational agency must remove equipment and supplies from a private school if the local educational agency no longer needs the equipment and supplies to provide Title I services, or removal is necessary to avoid unauthorized use of the equipment or supplies for other than Title I purposes. The local educational agency may not use NCLB funds for repairs, minor remodeling, or construction of private school facilities.

I. OTHER PROVISIONS

Section 7901\textsuperscript{30} of the Act requires a maintenance of effort by the state in order for a local educational agency to receive Title I funds. The state educational agency must maintain a combined fiscal effort per student or the aggregated expenditures of the agency and the state not less than 90\% of the combined fiscal effort or aggregate expenditures of the preceding year. Section 7902\textsuperscript{31} of the Act prohibits a state from taking into consideration federal funds in determining the eligibility of a local educational agency

\textsuperscript{30} 20 U.S.C. Section 7901.

\textsuperscript{31} 20 U.S.C. Section 7902.
for state aid. Section 7903\textsuperscript{32} states that any results from an individual assessment of a student under the Act becomes part of the educational records of the student and is subject to all of the federal protections for student records.

Section 7907\textsuperscript{33} states that nothing in the Act shall be construed to authorize an officer or employee of the federal government to mandate, direct or control a state, local educational agency or a school’s curriculum, programs of instruction or allocation of state or local resources or to mandate a state or any subdivision of the state to spend any funds or incur any costs not paid for under the Act. Section 7907(b) states that no Title I funds may be used by the United States Department of Education to endorse, approve or sanction any curriculum designed to be used in a elementary or secondary school. Section 7907(c) states that no state shall be required to have academic content or student academic achievement standards approved or certified by the federal government in order to receive financial assistance under the Act.

Section 7909\textsuperscript{34} states that no funds under the Act may be used to develop, pilot test, field test, implement, administer or distribute any federally sponsored national test in reading, mathematics or any other subject unless specifically and explicitly authorized by law. This prohibition does not apply to international comparative assessments developed under the National Education Statistics Act of 1994 and administered to only a representative sample of students in the United States and in foreign countries.

Section 7911\textsuperscript{35} states that nothing in the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or collections of data under the Act.

Section 7913\textsuperscript{36} states that nothing in the Act shall be construed to require, authorize or permit the Secretary of Education, a state education agency, a local educational agency or a school to grant to a student or deny or impose upon a student any financial or educational benefit or burden in violation of the Fifth or Fourteenth Amendments of the Constitution or other law relating to discrimination in the provision

\textsuperscript{32} 20 U.S.C. Section 7903.
\textsuperscript{33} 20 U.S.C. Section 7907.
\textsuperscript{34} 20 U.S.C. Section 7909.
\textsuperscript{35} 20 U.S.C. Section 7911.
\textsuperscript{36} 20 U.S.C. Section 7913.
of federally funded programs or activities. Section 7914\textsuperscript{37} prohibits discrimination on the basis of race, color, religion, sex, national origin or disability in any program funded under the Act.

Section 7915\textsuperscript{38} authorizes the Secretary of Education to issue regulations under the Act only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements and assurances required by the Act.

\begin{flushright}\textsuperscript{37} 20 U.S.C. Section 7914.\end{flushright}

\begin{flushright}\textsuperscript{38} 20 U.S.C. Section 7915.\end{flushright}
SAMPLE LETTER TO EXISTING PARAPROFESSIONALS

Dear _____________:

As you may be aware, a new federal law requires that paraprofessionals, such as instructional aides, meet new requirements effective January 8, 2006. This new federal law requires that paraprofessionals complete two years of college, obtain an Associate’s Degree, or pass an exam demonstrating knowledge and ability to assist in instructing reading, writing and mathematics.

When we receive this information, we will forward it on to you. It is the intent of the __________ School District to assist you in meeting these requirements. Please feel free to call _____________ if you have any questions.
NOTICE TO PARENTS

To: All Parents

From: [Insert name] School District

Date: [Insert date]

As a parent of a student in the [insert name] School District, under the No Child Left Behind Act of 2001, you have a right to know the professional qualifications of the teachers who instruct your child. The No Child Left Behind Act gives you the right to ask for the following information about each of your child’s classroom teachers:

• Whether the State of California has licensed or qualified the teacher for the grades and subjects he or she teaches.
• Whether the teacher is teaching under an emergency permit or other provisional status by which state licensing criteria have been waived.
• The teacher’s college major; whether the teacher has any advanced degrees and, if so, the subject of the degrees.
• Whether any instructional aides or similar paraprofessionals provide services to your child and, if they do, their qualifications.

If you would like to receive any of this information, please contact [insert name] at [insert telephone number].

[Districts may provide additional information to parents about the education, experience, and qualifications of teachers.]
NOTICE TO PARENTS

[Use if Child is Taught by an Emergency Permit Teacher for Four or More Consecutive Weeks]

To: All Parents

From: [Insert name] School District

Date: [Insert date]

As a parent of a student in the [insert name] School District in a program funded under the No Child Left Behind Act of 2001, you have a right to know the professional qualifications of the teachers who instruct your child. The No Child Left Behind Act requires the school district to notify you in a timely manner that the teacher that has been assigned to your child’s class has the following professional credentials: [e.g. specify the type of credential such as Emergency Permit]

[Districts may provide additional information to parents about the education, experience, and qualifications of teachers]

If you have any questions, please contact [insert name] at [insert telephone number].
OUTLINE OF
STATE IMPLEMENTATION REQUIREMENTS
OF THE NO CHILD LEFT BEHIND ACT

I. STATE ACCOUNTABILITY SYSTEM (Section 6311)\(^{39}\)

A. Academic Standards
B. Academic Assessments
   1. Beginning in the 2004-2005 school year, reading/language arts assessments must administered at least once during grades 3 through 5, grades 6 through 9 and grades 10 through 12.
   2. Beginning in the 2005-2006 school year, a state must administer both the reading/language arts and mathematics assessments in each of grades 3 through 8, and at least once in grades 10 through 12.
   3. Beginning in the 2007-2008 school year, science assessments must be administered at least once during grades 3 through 5, grades 6 through 9, and grades 10 through 12.
C. Uniform Accountability System for All Students
D. State Definition of Adequate Yearly Progress
E. State Establishment of Starting Point for Proficiency Level of Academic Achievement on State Assessments
F. Assessment Reports
   1. Individual Student Reports
   2. Itemized Scores

II. ANNUAL STATE REPORT CARD (Section 6311(h))\(^{40}\)

A. Beginning in the 2002-2003 School Year

III. ANNUAL STATE REPORT TO THE U.S. SECRETARY OF EDUCATION (SECTION 6311(h)(4))\(^{41}\)

A. Beginning in the 2002-2003 School Year

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\(^{39}\) 20 U.S.C. Section 6311; see, also, 34 C.F.R. Sections 200.1 through 200.6

\(^{40}\) 20 U.S.C. Section 6311(h).

\(^{41}\) 20 U.S.C. Section 6311(h)(4).
IV. STATE RESPONSIBILITY FOR SCHOOL SUPPORT AND RECOGNITION (Section 6317)\(^{42}\)

A. Establishment of a Statewide System  
B. Establishment of State School Support Teams  
C. State Academic Achievement Award Programs for Schools and Teachers

V. STATE RESPONSIBILITY FOR SCHOOL IMPROVEMENT (Section 6316)\(^{43}\)

A. Technical Assistance to Schools Identified for Improvement, Corrective Action or Restructuring  
B. Annual Review of the Adequate Yearly Progress of Each Local School District and School  
C. System of Corrective Action to Ensure Adequate Yearly Progress  
D. Development and Maintenance of List of Certified Supplemental Education Service Providers

VI. STATE RESPONSIBILITY FOR ENSURING HIGHLY QUALIFIED TEACHERS ARE IN THE CLASSROOM (Section 6319)\(^{44}\)

A. State Plan  
1. The State Plan must ensure that all teachers teaching in core academic subjects within the state are highly qualified not later than the end of the 2005-2006 school year.  
2. Beginning with the 2002-2003 school year, each state must report to the U.S. Secretary of Education the state and local agency progress in meeting the goals of the State Plan.

VII. STATEWIDE SCHOOL SAFETY POLICY (Section 7912)\(^{45}\)

A. Certification of Compliance to U.S. Secretary of Education  
B. Development of Policy in Consultation with Representatives of Local Education Agencies

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\(^{42}\) 20 U.S.C. Section 6317.  
\(^{43}\) 20 U.S.C. Section 6316.  
\(^{44}\) 20 U.S.C. Section 6319.  
\(^{45}\) 20 U.S.C. Section 7912.
NO CHILD LEFT BEHIND ACT (NCLB)

TIMETABLE

I. 2002-2003 SCHOOL YEAR

A. Set the Starting Point for Making Adequate Yearly Progress\footnote{20 U.S.C. Section 6311 (b)(2).}
B. Annual State and Local Report Cards on Student Progress \footnote{20 U.S.C. Section 6311(h)}
C. State Progress Report to U.S. Secretary of Education\footnote{20 U.S.C. Section 6311(h)(4).}
D. District Notification to Parent of Right to Know Teacher Qualifications\footnote{20 U.S.C. Section 6311(h)(6).}
E. Notice to Parents of Limited English Proficient Children\footnote{20 U.S.C. Section 6312(g).}
F. Development of Local Parental Involvement Policy as Part of Local Plan\footnote{20 U.S.C. Section 6318(b).}
G. Development of School-Parent Compact\footnote{20 U.S.C. Section 6318(d).}
H. Begin Development of Local Plan\footnote{20 U.S.C. Section 6312.}
I. Provide Local Agency Assurances\footnote{20 U.S.C. Section 6312(c).}
J. Ensure That All Newly Hired Teachers in Title I Programs Are Highly Qualified\footnote{20 U.S.C. Section 6319.}
K. Publicly Report Progress Toward Hiring Highly Qualified Teachers in Title I Programs\footnote{20 U.S.C. Section 6319(b).}
L. Paraprofessionals Hired After January 8, 2002 for Title I Programs Must Meet New Requirements\footnote{20 U.S.C. Section 6319(c).}
M. Certify to the U.S. Secretary of Education That No Local Policy Infringes on Constitutionally Protected Prayer as Set In Guidance from U.S. Secretary of Education.\textsuperscript{13}

N. State Certification that a Statewide School Safety Policy is in Place.\textsuperscript{14}

O. States Must Participate in the National Assessment of Educational Progress (NAEP), Fourth and Eighth Grade Reading and Mathematics.\textsuperscript{15}

P. All Limited English Proficient Students Must Be Assessed in their English or Language Reading and Writing Skills Each Year.\textsuperscript{16}

Q. Students Enrolled in Schools Identified for Improvement During the 2001-2002 School Year May Transfer to Another Public School in the School District. The School District is Required to Pay for and Provide Transportation to the Other School.\textsuperscript{17}

R. Students Who Attend Schools That Are in School Improvement Status for Two or More Years Prior to the Enactment of The No Child Left Behind Act Must be Offered Supplemental Educational Services (i.e., Tutoring) or Offered the Opportunity to Transfer to Another Public School at School District Expense.\textsuperscript{18}

S. District Must Develop Criteria for and a List of Approved Supplemental Service Providers.\textsuperscript{19}

T. School Districts Must Provide Technical Assistance to Schools in School Improvement Status.\textsuperscript{20}

\section*{II. 2005-2006 SCHOOL YEAR}

A. State Science Standards Must Be Established\textsuperscript{21}

\begin{itemize}
\item \textsuperscript{13} 20 U.S.C. Section 7904.
\item \textsuperscript{14} 20 U.S.C. Section 7912.
\item \textsuperscript{15} 20 U.S.C. Section 6311(c)(2).
\item \textsuperscript{16} 20 U.S.C. Section 6311(b)(7).
\item \textsuperscript{17} 20 U.S.C. Section 6316(b)(9).
\item \textsuperscript{18} 20 U.S.C. Section 6316(e).
\item \textsuperscript{19} 20 U.S.C. Section 6316(e).
\item \textsuperscript{20} 20 U.S.C. Section 6316(b)(4).
\item \textsuperscript{21} 20 U.S.C. Section 6311(b)(1)(c).
\end{itemize}
B. All Teachers Who Teach Core Subjects in Title I Programs Must Be Highly Qualified.  
C. All Paraprofessionals Must Be Highly Qualified Except Those Not Providing Instruction.  
D. State Must Assess Mathematics and Reading/Language Arts Each Year in Grades 3 through 8 and One Year in Grades 10 through 12.  
E. 95% of All Students and 95% of Students in Each Identified Subgroup Must Be Tested.

III. 2007-2008 SCHOOL YEAR

A. States Must Assess Science One Year in Grades 3 through 5, 6 through 9 and 10 through 12.

IV. 2013-2014 SCHOOL YEAR

A. All Students (100%) Must Meet the State’s Proficiency Standard in Reading, Mathematics and Science by the End of the School Year.

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22 20 U.S.C. Section 6319.  
23 20 U.S.C. Section 6319(c).  
24 20 U.S.C. Section 6311(b)(3).  
26 20 U.S.C. Section 6311(b)(3).  
27 20 U.S.C. Section 6311(b)(2).
I. FIRST YEAR AFTER IDENTIFICATION FOR SCHOOL IMPROVEMENT

A. Section 6316(b)(5)\textsuperscript{28} states that in the case of any school that fails to make adequate yearly progress by the end of the first school year after identification for school improvement, the local educational agency serving the school shall:

1. Continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency.

2. Make supplemental educational services available.

3. Continue to provide technical assistance.

B. Section 6316(b)(6)\textsuperscript{29} requires a local educational agency to promptly provide to parents of each student enrolled in an elementary or a secondary school identified for school improvement the following:

1. An explanation of what the identification means and how the school compares in terms of academic achievement to other elementary or secondary schools served by the local educational agency and the state educational agency.

2. The reasons for the identification for school improvement.

3. An explanation of what the school identified for school improvement is doing to address the problem of low achievement.

4. An explanation of what the local educational agency or state educational agency is doing to help the school address the achievement problem.

5. An explanation of how the parents can become involved in addressing the

\textsuperscript{28} 20 U.S.C. § 6316(b)(5).

\textsuperscript{29} 20 U.S.C. § 6316(b)(6).
academic issues that caused the school to be identified for school improvement.

6. An explanation of the parents’ option to transfer their children to another public school, with transportation provided by the local educational agency when required by the Act or to obtain supplemental educational services for the child in accordance with the Act.

II. SECOND YEAR AFTER IDENTIFICATION FOR SCHOOL IMPROVEMENT

A. In the case of any school that fails to make adequate yearly progress as defined by the state by the end of the second full school year after identification, the local educational agency is required to:

1. Continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency.

2. Continue to provide technical assistance while instituting any corrective action.

3. Continue to make supplemental educational services available to children who remain in the school.

4. Identify the school for corrective action and take at least one of the following corrective actions:

   a. Replace the school staff who are relevant to the failure to make adequate yearly progress.

   b. Institute and fully implement a new curriculum, including providing appropriate professional development for all relevant staff, that is based on scientifically based research and offers substantial promise of improving educational achievement for low achieving students and enabling the school to make adequate yearly progress.

   c. Significantly decrease management authority at the school level.

   d. Appoint an outside expert to advise the school on its progress.

   e. Extend the school year or school day for the school.
f. Restructure the internal organizational structure of the school.

B. Section 6316(b)(7)(E)\textsuperscript{30} requires a local educational agency to publish and disseminate information regarding any corrective action the local educational agency takes at a school to the public and to the parents of each student enrolled in the school in an understandable and uniform format, and to the extent practicable, in a language that parents can understand and through such means of the Internet, the media and public agencies.

III. THIRD YEAR AFTER IDENTIFICATION FOR SCHOOL IMPROVEMENT

A. Section 6316(b)(8)\textsuperscript{31} states that if, after the third year after identification for school improvement and one full school year of corrective action, a school subject to such corrective action continues to fail to make adequate yearly progress, then the local educational agency is required to:

1. Continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, and,

2. To make supplemental educational services available to children who remain in the school.

B. The local educational agency is also required to prepare a plan and make necessary arrangements to carry out an alternative governance plan not later than the beginning of the school year following the year in which the local educational agency implements corrective action and the school continues to fail to make adequate yearly progress. The local educational agency is required to implement one of the following alternative governance arrangements for the school consistent with state law:

1. Reopening the school as a public charter school.

2. Replacing all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress.

3. Entering into a contract with an entity, such as private management company, with a demonstrated record of effectiveness, to operate the public school.

4. Turning the operation of the school over to the state educational agency, if


\textsuperscript{31} 20 U.S.C. § 6316(b)(8).
5. Any other major restructuring of the school’s governance arrangements that make fundamental reforms, such as significant changes in the school’s staffing and governance, to improve student academic achievement in the school and that has substantial promise of enabling the school to make adequate yearly progress as defined under the state plan.

C. The local educational agency is required to provide prompt notice to teachers and parents whenever there is failure to make adequate yearly progress after corrective action is taken or when alternative governance requirements must be implemented. The local educational agency is required to provide the teachers and parents with an adequate opportunity to comment before taking any action with respect to alternative governance and participate in the development of a plan.
OUTLINE OF THE EFFECTS OF
THE NO CHILD LEFT BEHIND ACT
ON SPECIAL EDUCATION

I. In General
   A. The enactment of the No Child Left Behind Act (NCLB) will have numerous effects on
      special education policy and practice.
   B. The main effects appear to be in the area of accountability and personnel.

II. Accountability
   A. The NCLB requires school districts to show adequate yearly progress toward meeting the
      goal of 100 percent proficiency in reading and math for all students in grades 3 through 8
      within 12 years. This would include special education students.
   B. The NCLB states that school districts “... must ensure and demonstrate incremental
      improvement in student performance toward meeting 100 percent proficiency for all
      students, including special education students in the state by June 30, 2012.”
   C. If special education students within a school fail to make adequate yearly progress toward
      reaching 100 percent proficiency, the school will face the consequences outlined in the
      NCLB that are intended to improve performance including allowing public school choice,
      providing supplemental instructional services, corrective actions and restructuring.
   D. The accountability measures will create an incentive to link special education IEP goals
      with the content standards of the general education curriculum.
   E. Both the IDEA and NCLB require the participation of special education students in
      statewide and districtwide assessments with appropriate accommodations, as necessary.
      The NCLB requires that the participation rate meet a minimum of 95 percent participation
      for all students or the state will be out of compliance with the NCLB and subject to
      sanctions.

III. Personnel Issues
   A. The NCLB requires that every teacher be highly qualified if they teach core academic
      subjects by June 30, 2006.
   B. This will, most likely, include special education teachers and may preclude certified regular
      education teachers from teaching special education classes with emergency, temporary or
      provisional special education certification.
# TABLE OF NO CHILD LEFT BEHIND ACT PROVISIONS AND THEIR EFFECT ON SPECIAL EDUCATION

<table>
<thead>
<tr>
<th>NO CHILD LEFT BEHIND SECTION</th>
<th>COMMENTS</th>
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| 1111 (20 U.S.C. § 6311) (State Plans) | - The NCLB state plan must be developed in coordination with the IDEA.  
- The academic standards under the NCLB will also require review as these standards may conflict with the “general curriculum” requirements of the IDEA, Sec. 1414(d).  
- The NCLB addresses all public elementary and secondary school children, thus clearly including all children receiving (or potentially receiving) special education services.  
- Each state must develop standards in subject areas determined by each state, but must include the subject areas of mathematics, reading or language skills and at a later date, science. |
| 1111(b) (20 U.S.C. § 6311(b)) (Academic Standards) | - The NCLB requires both academic content standards and academic achievement standards.  
- The requirement for “performance goals and indicators” (IDEA, Sec. 1412(a)(16)) for children receiving the support of special education in relation to the student academic achievement standards under these statutes will need to be reviewed in light of the NCLB.  
- The NCLB requires the delineation of annual objectives for specific populations (e.g. students with disabilities) within the overall student population.  
- Separate measurable annual objectives must be developed for each of the specified student population subgroups including students with disabilities), and except where noted, data shall be disaggregated for these subgroups. |
• According to the definitions section of the NCLB, students with disabilities would appear to have the same definition as child with a disability under Sec. 1402 of the IDEA.

• Section 1111(b)(2) requires the inclusion of graduation rates at the secondary level using the standard of a “regular diploma.”

• Section 1111(b)(2) provides for a timeline of 12 years in which all students in the state will meet or exceed the proficient level of the state standards of academic achievement.

• Each state is required to identify a single minimum percentage of students annually who are required to meet or exceed the proficient level on academic assessments that applies separately to each group of students including students with disabilities.

• Under Section 1111(b)(2)(I), 95 percent of each sub-group of students is required to participate in the assessments, with accommodations, guidelines, and alternative assessments provided in the same manner as those provided under Section 1412(a)(17)(A) of the IDEA.

• Section 1111(b)(3) provides for reasonable accommodations in assessments for students with disabilities as defined under Sec. 1402(3) of the IDEA.

• Assessments must be so constructed as to allow disaggregation for students with disabilities in each state as already required under the IDEA (Sec. 1412(a)(17) and state statutes.

• Section 1111(h) requires that the annual state report card address the professional qualifications of teachers, including those teaching with emergency or provisional credentials. This requirement of full public disclosure of teacher qualifications is present throughout the NCLB, including strong emphasis on the right-to-know the precise qualifications of teachers. This requirement will, most likely, include special education teachers.

• Section 1112 lays out the requirements of the local educational agency plans.
1114
(20 U.S.C. §6314)
(Schoolwide Programs)

• Schoolwide programs are continued under Section 1114, but funds available under the NCLB must supplement and not supplant state and local funds provided to the school for special education; and, federal statutory and regulatory provisions can be removed, but not the requirements under the IDEA in Section 1413(a)(2)(D) (which provide for schoolwide programs under the IDEA).

1115
(20 U.S.C. §6315)
(Targeted Assistance Schools)

• Section 1115(b)(2) states that children with disabilities are eligible for services under NCLB on the same basis as other children.

1116
(20 U.S.C. §6316)
(School Improvement)

• Section 1116 outlines the provisions for school improvement.

• Under Section 1116(b)(1), all students enrolled in a school identified for school improvement, are given the option of transferring to another public school in the school district. If all of the schools in a school district are identified for improvement, or if an entire local school district is identified by the SEA for improvement, students are given the option of transferring to a school in another school district.

• The requirements of public school choice as it relates to students with disabilities may require the school chosen to offer programs that meet the goals of the child’s IEP.

1116(e)
(20 U.S.C. §6316(e))
(Supplemental Educational Services)

• Section 1116(e) requires a school in any of the three phases of school improvement, corrective action, or restructuring, to provide supplemental educational services (i.e. tutoring) to eligible children including children with disabilities. The provider of tutoring must prepare a required statement of specific achievement goals that are consistent with the student’s IEP.

• The relationship of supplemental educational services to special education, related services, and supplemental aids and services as required under the IDEA may lead to increased disputes at IEP meetings.
• All teachers hired after the day of enactment, teaching in a program supported with funds under this part (Title I, Part A), must be highly qualified (i.e. not have an emergency permit).

• As of June 30, 2006, all teachers teaching in core academic subjects must be highly qualified. In essence, “highly qualified” means that a teacher must be fully certified or licensed, hold a bachelor’s degrees, and demonstrate competence in both content knowledge and teaching skills.

• All paraprofessionals, working in a program supported with NCLB funds, after the date of enactment, must meet NCLB requirements. All paraprofessional hired before January 8, 2002, must meet these requirements not later than 4 years after enactment. (i.e., January 8, 2006).

• The statutory definition of the responsibilities of paraprofessionals will require careful review in relation to the authority for paraprofessionals contained at Section 1412(a)(15)(B)(iii) of the IDEA and its accompanying regulations, particularly with respect to one-on-one tutoring and the provision of instructional services.

• Section 9101(34) states that professional development activities must be aligned with and directly related to the curricula and programs tied to the student academic standards, particularly students with disabilities.

• Section 9101(34) states that all professional development activities must be developed with extensive participation not only of teachers, principals, and administrators of schools, but parents as well.

• Section 9101(34) states that professional development activities are authorized for the provision of instruction in methods of teaching children with special needs.

• Section 9101(34) states that professional development programs are authorized to enable paraprofessionals to become certified and licensed teachers, which will need to be considered in relation to IDEA statute and regulations with respect to paraprofessionals and assistants.
• The term scientifically based research is used frequently throughout the NCLB. The extent of its applicability to IDEA professional development activities and IDEA-authorized research activities is uncertain.

• 95% of funds allocated to a state must be passed through in subgrants to the state’s local educational agencies. There is a requirement that the local application must include a needs assessment addressing professional recruitment, preparation, and retention.

• Section 2123(a)(2) establishes programs to train and hire special education teachers, including hiring special education teachers to team-teach in the regular classroom.

• Section 2123(a)(3) emphasizes training in how to teach and address the needs of students with different learning styles, particularly students with disabilities, students with special learning needs (including gifted students), and students who are English language learners.

• Section 2123(a)(4) emphasizes incentives, including financial incentives, to principals who have a demonstrated record of improving the academic achievement of all students, but particularly students from economically disadvantaged families, students from racial and ethnic minority groups, and students with disabilities.

• Section 2123(a)(7) emphasizes recruiting and retaining highly qualified teachers in order to reduce class size, particularly in the early grades, including special education teachers.
INDEPENDENT CONTRACTOR AGREEMENT
SUPPLEMENTAL EDUCATIONAL SERVICES

This AGREEMENT is hereby entered into between the _________________________________
District, hereinafter referred to as "DISTRICT," and _________________________________________
Name of Independent Contractor
______________________________________________________________________________
Mailing Address City State Zip Telephone Number

WHEREAS, DISTRICT is authorized by Section 53060 of the California Government Code to
contract with and employ any persons for the furnishing of special services and advice in financial, economic,
accounting, engineering, legal or administrative matters, if such persons are specially trained and experienced
and competent to perform the special services required;

WHEREAS, DISTRICT is in need of such special services and advice; and

WHEREAS, CONTRACTOR is specially trained and experienced and competent to perform the
special services required by the DISTRICT, and such services are needed on a limited basis;

WHEREAS, the No Child Left Behind Act, 20 U.S.C. Section 6316(e) outlines the requirements
for supplemental educational services;

WHEREAS, Section 6316(e)(3) contains the following requirements:

a. Requires District to develop, in consultation with parents (and the
   provider chosen by parents), a statement of specific achievement goals for
   the student, how the student’s progress will be measured, and a timetable
   for improving achievement, in the case of a student with disabilities, is
   consistent with the student’s IEP.

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b. Requires a description of how the student’s parents and teacher or teachers will be regularly informed of the student’s progress;

c. Requires a provision for the termination of the agreement if the provider is unable to meet the goals and timetables required;

d. Requires provisions with respect to the making of payments to the provider by District;

e. Prohibits the provider from disclosing to the public the identity of any student eligible for, or receiving, supplemental educational services without the written permission of the parent of such student.

NOW, THEREFORE, the parties agree as follows:

1. **Services** to be provided by CONTRACTOR: Supplemental educational services pursuant to 20 U.S.C. Section 6316(e). Pursuant to application form attached hereto as Appendix A. Services shall be provided by ________________________________.

   (Name of specific individual, if desired)

2. **Term.** CONTRACTOR shall commence providing services under this AGREEMENT on ____________, ____, and will diligently perform as required and complete performance by ____________, ____. 

3. **Compensation.** DISTRICT agrees to pay the CONTRACTOR for services satisfactorily rendered pursuant to this AGREEMENT a total fee not to exceed _________________ Dollars ($ __________). DISTRICT shall pay CONTRACTOR according to the following terms and conditions: ______________________________________________________

   ______________________________________________________

   _______________________________________________________.
4. **Expenses.** DISTRICT shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for DISTRICT, except as follows: 

______________________________________________________________________________

________________________________________________________________________________

5. **Independent Contractor.** CONTRACTOR, in the performance of this AGREEMENT, shall be and act as an independent contractor. CONTRACTOR understands and agrees that he/she and all of his/her employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers’ Compensation. CONTRACTOR assumes the full responsibility for the acts and/or omissions of his/her employees or agents as they relate to the services to be provided under this AGREEMENT. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR’s employees.

6. **Materials.** CONTRACTOR shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this AGREEMENT, except as follows: 

______________________________________________________________________________

________________________________________________________________________________

CONTRACTOR’s services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession.

7. **Originality of Services.** CONTRACTOR agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays, and/or video productions prepared for, written for, submitted to the DISTRICT and/or used in connection with this AGREEMENT, shall be wholly original to CONTRACTOR and shall not be copied in whole or in part from any other source, except that submitted to CONTRACTOR by DISTRICT as a basis for such services.
8. Copyright/Trademark/Patent. CONTRACTOR understands and agrees that all matters produced under this AGREEMENT shall become the property of DISTRICT and cannot be used without DISTRICT’s express written permission. DISTRICT shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the DISTRICT. CONTRACTOR consents to use of CONTRACTOR’s name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

9. Termination. DISTRICT may, at any time, with or without reason, terminate this AGREEMENT and compensate CONTRACTOR only for services satisfactorily rendered to the date of termination. Written notice by DISTRICT shall be sufficient to stop further performance of services by CONTRACTOR. Notice shall be deemed given when received by the CONTRACTOR or no later than three days after the day of mailing, whichever is sooner.

DISTRICT may terminate this AGREEMENT upon giving of written notice of intention to terminate for cause. Cause shall include: (a) material violation of this AGREEMENT by the CONTRACTOR; or (b) any act by CONTRACTOR exposing the DISTRICT to liability to others for personal injury or property damage; or (c) CONTRACTOR is adjudged a bankrupt, CONTRACTOR makes a general assignment for the benefit of creditors or a receiver is appointed on account of CONTRACTOR’s insolvency. Written notice by DISTRICT shall contain the reasons for such intention to terminate and unless within _____________(____) days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this AGREEMENT shall upon the expiration of the _____________(____) days cease and terminate. In the event of such termination, the DISTRICT may secure the required services from another contractor. If the cost to the DISTRICT exceeds the cost of providing the service pursuant to this AGREEMENT, the excess cost shall be charged to and collected from the CONTRACTOR. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to DISTRICT. Written notice by DISTRICT shall be deemed given when received by the other party, or no later than three days after the day of mailing, whichever is sooner.

10. Hold Harmless. CONTRACTOR agrees to and does hereby indemnify, hold harmless and
defend the DISTRICT and its governing board, officers, employees and agents from every claim or demand made and every liability, loss, damage or expense, of any nature whatsoever, which may be incurred by reason of:

(a) Liability for damages for: (1) death or bodily injury to person; (2) injury to, loss or theft of property, or (3) any other loss, damage or expense arising out of (1) or (2) above, sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, upon or in connection with the services called for in this AGREEMENT, however caused, except for liability for damages referred to above which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

(b) Any injury to or death of any person(s), including the District’s officers, employees and agents, or damage to or loss of any property caused by any act, neglect, default, or omission of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, arising out of, or in any way connected with, the services covered by this AGREEMENT, whether said injury or damage occurs either on or off DISTRICT's property, except for liability for damages which result from the sole negligence or willful misconduct of the DISTRICT or its officers, employees or agents.

(c) Any liability for damages which may arise from the furnishing or use of any copyrighted or uncopyrighted matter or patented or unpatented invention under this AGREEMENT.

11. Insurance. Pursuant to Section 10, CONTRACTOR agrees to carry a comprehensive general and automobile liability insurance with limits of ________________ Dollars ($____________) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect CONTRACTOR and DISTRICT against liability or claims of liability which may arise out of this AGREEMENT. In addition,
CONTRACTOR agrees to provide an endorsement to this policy stating, "Such insurance as is afforded by this policy shall be primary, and any insurance carried by DISTRICT shall be excess and noncontributory." No later than _______ (__) days from execution of this AGREEMENT by the DISTRICT and CONTRACTOR, CONTRACTOR shall provide DISTRICT with certificates of insurance evidencing all coverages and endorsements required hereunder including a thirty (30) day written notice of cancellation or reduction in coverage. CONTRACTOR agrees to name DISTRICT and its governing board, officers, agents and employees as additional insureds under said policy. [Please check with DISTRICT's Risk Manager regarding any and all insurance provisions.]

12. **Assignment.** The obligations of the CONTRACTOR pursuant to this AGREEMENT shall not be assigned by the CONTRACTOR.

13. **Compliance With Applicable Laws.** The services completed herein must meet the approval of the DISTRICT and shall be subject to the DISTRICT’s general right of inspection to secure the satisfactory completion thereof. CONTRACTOR agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to CONTRACTOR, CONTRACTOR’s business, equipment and personnel engaged in services covered by this AGREEMENT or accruing out of the performance of such services.

14. **Permits/Licenses.** CONTRACTOR and all CONTRACTOR's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this AGREEMENT.

15. **Employment With Public Agency.** CONTRACTOR, if an employee of another public agency, agrees that CONTRACTOR will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which services are actually being performed pursuant to this AGREEMENT.

16. **Entire Agreement/Amendment.** This AGREEMENT and any exhibits attached hereto
constitute the entire agreement among the parties to it and supersedes any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the AGREEMENT.

17. **Nondiscrimination.** CONTRACTOR agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

18. **Non Waiver.** The failure of DISTRICT or CONTRACTOR to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this AGREEMENT, shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

19. **Notice.** All notices or demands to be given under this AGREEMENT by either party to the other, shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this AGREEMENT, the addresses of the parties are as follows:

**DISTRICT:**

____________________________________

____________________________________

____________________________________

____________________________________

**CONTRACTOR:**

____________________________________

____________________________________

____________________________________

____________________________________
20. **Severability.** If any term, condition or provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

21. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this AGREEMENT, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorneys’ fees.

22. **Governing Law.** The terms and conditions of this AGREEMENT shall be governed by the laws of the State of California with venue in Orange County, California. This AGREEMENT is made in and shall be performed in Orange County, California.

23. **Exhibits.** This AGREEMENT incorporates by this reference, the following exhibits, which are attached hereto and incorporated herein: (if applicable)

THIS AGREEMENT IS ENTERED INTO THIS ___ DAY OF ____, 20__.

_____________________________________  _______________________________________
Name of District Contractor Name

By: __________________________________  By: __________________________________

_____________________________________  _______________________________________
Typed Name Typed Name

_____________________________________  _______________________________________
Title Title

_____________________________________  _______________________________________
Social Security or Taxpayer Identification Number
APPENDIX A

APPLICATION TO PROVIDE SUPPLEMENTAL EDUCATIONAL SERVICES

20 U.S.C. Section 6316(e)

1. Name, address and telephone number of provider.

2. Please attach a resume of qualifications to provide services.

3. Describe the services that will be provided to the student based on his/her needs and consistent with the content and instruction provided by the school district.

4. Describe the objectives of the services and the timeline for meeting the objectives. Objectives are measurable, time-limited, and logically related to the purpose of the services.

5. Describe the performance measures necessary to meet the objectives in a timely manner.

6. Describe how the student’s parents and designated school district staff will be informed of the student’s progress.

7. Outline the timetable for improving the student’s achievement. In the case of a student with disabilities, the timetable will be consistent with the student’s individual education program under Section 614(d) of the Individuals with Disabilities Education Act.