



REPORT TO SENATORS
OLYMPIA SNOWE AND
SUSAN COLLINS

*Task Force
on No Child
Left Behind*

March 2005



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TASK FORCE

Members

Jane Amero, South Portland
former Maine State Senator
Maine Coalition for Excellence in Education

Margaret Arbuckle, Farmington
Director, Western Maine Partnership

Sandra Bernstein, Ft. Kent
Superintendent MSAD # 27

Tom Calderwood, Searsport
School Board Member, MSAD #56

Kernan Cross, Boothbay Harbor
School Board Member
Boothbay/Boothbay Harbor CSD

Margaret Emery, Waterford
Principal and Teacher
Waterford Memorial School

Robert Ervin, Bangor
Superintendent
Bangor School Department

Peter Geiger, Lewiston
Chair
Maine Coalition for Excellence in Education

Thomas Ingraham, Hampden
Principal
Reeds Brook Middle School

Leon Levesque, Lewiston
Superintendent
Lewiston School Department

Leo Martin (Co-Chair), Kennebunkport
Former State Education Commissioner of
Education

Carol McElwee, Caribou
Teacher
Caribou High School

Anne Pooler (Co-Chair), Bangor
Associate Dean of Education
and Human Development
University of Maine

Trisha Rhodes, Bar Harbor
Literacy Specialist
Reading Recovery Teacher

Diane Robinson, Dover-Foxcroft
Teacher
Morton Avenue Elementary School

Mary Small, Bath
Former Maine State Senator

Janet Weston, Eastport
Administrator of Special Services
School Union 104

Jerry White, North Haven
Superintendent
MSAD #65

Barbara Winslow, Skowhegan
Teacher
Bloomfield Elementary School

Liaisons to the Task Force

Richard Durost, Augusta
Maine Principals Association

Terry McCabe, Augusta
Maine School Management Association

Patrick Phillips, Augusta
Maine Department of Education

TASK FORCE PROCESS

The Task Force held nine meetings in Orono on the campus of the University of Maine. Representatives of the Maine Department of Education, the U.S. Department of Education, and individual educators with expertise in specific issues provided significant input to the Task Force. The Task Force formed several subcommittees which worked outside of the formal Task Force meetings to prepare initial drafts of individual sections of the Task Force report. The following is a chronological list of the principal Task Force activities.

- March 16, 2004 Organizational meeting
- Presentations by Maine Commissioner of Education, Susan Gendron, Deputy Commissioner, Patrick Phillips, and Deputy Secretary of the U.S. Department of Education, Gene Hickok
- March 30, 2004 Presentation on Maine's Teacher Certification requirements and the implementation of NCLB highly qualified teacher requirements by Judith Malcolm, Maine Department of Education
- Presentation of challenges facing middle schools meeting highly qualified teacher requirements by middle school principals Carol Weeks and Bill Leithiser and University of Maine education faculty Edward Brazee and Gert Nesin
- Presentation on standards for highly qualified special education teachers by Judith Malcom.
- May 4, 2004 Overview of NCLB by Deputy Secretary of Education Gene Hickok
- Discussion of NCLB with the Deputy Secretary and Department of Education liaisons to Maine, Kerri Briggs and Gretchen Slease
- June 1, 2004 Discussion of report format
- Subcommittee status reports
- July 21, 2004 Subcommittee status reports
- September 29, 2004 Deputy Commissioner Patrick Phillips and representatives of the Maine Department of Education presented responses to questions that the Task Force had asked during previous discussions of the subcommittee reports
- October 20, 2004 Discussion of draft of task force report
- November 5, 2004 Discussion of draft of task force report.

January 14, 2005 Discussion of draft of task force report.

Following the last meeting of the Task Force a final draft of the report was sent to the members for their review on February 16, 2005. The draft was revised to incorporate suggestions from the members and a complete final report was sent to the Task Force on March 21, 2005.

Acknowledgments

The Task Force thanks the University of Maine College of Education and Human Development for providing meeting spaces and other logistic support for the Task Force. In particular we appreciate the assistance of Theresa McMannus for her efforts to facilitate the Task Force meetings and to assist the members of the Task Force. We also want to thank Research Associate Professor Valerie Ruhe from the College of Education and Human Development for her extensive assistance in preparing the section of the report on reading. Additionally, we are truly indebted to the expertise of Julian Haynes in crafting this report.

SUMMARY OF THE TASK FORCE REPORT

The No Child Left Behind Act (NCLB) is, unquestionably, the boldest federal initiative in education policy since initial enactment of the Elementary and Secondary Education Act of 1965. The law's broad objective that all children learn is supported by all and is widely accepted as exceptionally consequential, especially in its emphasis on the disaggregation of data and performance of population subgroups. At the level of education policy, the intent and goals of NCLB and of Maine laws share some common elements.

- ? Both call for high levels of performance in the content areas of the Maine Learning Results (MLR)
- ? Both emphasize teacher quality
- ? Both emphasize the disaggregation of data

Given the correlation between the goals of NCLB and the MLR, the challenge that this Task Force faced was to confront the issues raised by NCLB, to ask how the common state and federal objectives could be met, and to assess how the NCLB and the MLR could be coordinated better to the benefit of the citizens of Maine. Maine's Senators specifically charged the Task Force with three core missions:

- Examine the problems that Maine schools are facing in implementing NCLB under the state's accountability plan and recommend improvements in the current NCLB regulations and policies which will alleviate these problems.
- Make recommendations for longer-term action via potential statutory changes during the reauthorization of the ESEA.
- Recommend ways to provide greater clarity to educators, parents, and citizens of the State of Maine about the law's goals and the relationship to Maine Learning Results.

Recommendation to Maine's Senators

The Task Force Report includes twenty-six recommendations to Maine's U.S. Senators for changes in the NCLB Act itself or in the regulations under which it is being implemented. These recommendations are designed to allow more flexibility to the Maine's Department of Education, school districts, and schools as well as to address concerns about NCLB that have arisen during the first few years of its implementation. The recommendations are in five areas:

- **Annual Yearly Progress, Assessment, and Accountability**
- **Reading and Limited English Proficiency Students**
- **Special Education**
- **Highly Qualified Teachers**
- **Funding**

The specific recommendations and the rationale for making them will be found in the body of the report. In some cases carrying out these recommendations will require changes to the statute; others may be accomplished through greater flexibility by the Department of Education and changes in regulations. Finally, the goal of some recommendations may be accomplished through modifications to Maine's approach to the implementation of NCLB and to Maine's implementation plan. The report concludes with suggestions to the Maine Department of Education related to these local options and to the relationships between the NCLB and the MLR.

REPORT OF THE TASK FORCE

The No Child Left Behind Act (NCLB) enacted in 2001 with broad bipartisan support is, unquestionably, the boldest federal initiative in education policy since initial enactment of the Elementary and Secondary Education Act of 1965. To many it is seen as an unwarranted and inappropriate intrusion of the federal government into the traditional state and local control of K-12 education — yet, the law’s broad objective that all children learn is supported by all and is widely accepted as exceptionally consequential, especially in its emphasis on the disaggregation of data and performance of population subgroups. At the level of education policy, the intent and goals of NCLB and of Maine laws share some common elements.

- ? Both call for high levels of performance in the content areas of the Maine Learning Results (MLR)
- ? Both emphasize teacher quality
- ? Both emphasize the disaggregation of data

At the same time many of NCLB’s supporters believe the statute could be strengthened by changing its “all or nothing” approach to classifying schools that do not meet its standards for improvement to a graduated response system that recognizes the complex factors contributing to inadequate performance; by correcting an overemphasis on testing; and, in spite of the significant increase in federal funding that has occurred since its passage, by providing additional funding.

Given the correlation between the goals of NCLB and the MLR, the challenge that this Task Force faced was to confront the issues raised by NCLB, to ask how the common state and federal objectives could be met, and to assess how the NCLB and the MLR could be coordinated better to the benefit of the citizens of Maine. Maine’s Senators specifically charged the Task Force with three core missions:

- Examine the problems that Maine schools are facing in implementing NCLB under the state’s accountability plan and to recommend improvements in the current NCLB regulations and policies which will alleviate these problems.
- Make recommendations for longer-term action via potential statutory changes during the reauthorization of the ESEA.
- Recommend ways to provide greater clarity to educators, parents, and citizens of the State of Maine about the law’s goals and the relationship to Maine Learning Results.

Commendations

The Task Force identified aspects of NCLB that reinforced or supported the MLR and Maine’s ongoing efforts to improve the quality of K-12 education. Among these are:

- ? Gives a sense of urgency to holding schools accountable for the quality of education and for improving the achievement of their students

- ? Identifies schools that need to improve AND offers them limited support
- ? Increases federal funding
- ? Requires public reporting of student achievement levels
- ? Brings attention to sub groups that underperform the general population
- ? Involves parents to a greater degree
- ? Emphasizes the importance of early literacy
- ? Assesses all students and expects all students to improve
- ? Brings renewed attention to teacher qualification and professional development with a focus on providing multiple ways for teachers to demonstrate qualifications – including the HOUSSE

SPECIFIC ISSUES

I. Annual Yearly Progress, Assessment, and Accountability

A. How *No Child Left Behind* addresses the subject

NCLB’s goal is for ALL students to become proficient as defined by each state’s own assessments. NCLB requires Maine to establish a starting point based on current levels of performance on the MEAs and to establish a trajectory of improvement that, if followed, will result in all students being proficient in reading, math and science when tested during the school year 2013-2014. The trajectory must increase performance levels from the starting point to the goal in “substantially equal increments” the measurement of which is called adequate yearly progress (AYP). Schools must meet AYP as a whole and by subgroups and each school must test at least 95 percent of its students as a whole and 95 percent of each of the reportable subgroups.¹ When a school fails to make AYP for two consecutive years in one grade either as a whole or in one of the subgroups, it is identified as a “Continuous Improvement Priority School” (CIPS) and must create a school improvement plan including parents, school staff, district

¹Maine Department of Education has chosen a minimum subgroup size of 20 students over two years for AYP requirements, and a minimum subgroup size of 41 students over two years for participation requirements. NCLB AYP requirements do not apply when the subgroup size drops below these minimum levels. See section 1111(b)(2)(C)(v)(II), which states that 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.”

personnel and outside experts. Although this designation is intended to provide additional technical assistance and resources to support academic growth, it is commonly interpreted as punishing the school. This is reflected in the media’s use of “failing school” to refer to a “priority school.” Once receiving this designation a school can be made to feel less worthy than other schools. Further, within the school selected students and/or teachers may be made scapegoats and blamed for the schools “failure.”

B. Maine’s AYP Targets

NCLB requires that each state submit its own plan detailing how it will meet NCLB’s accountability goals. Under the statute, each state determines yearly AYP proficiency targets that increase annually or every two to three years with all groups reaching 100% in the 2013-2014 school year. Below is a chart showing the AYP targets set by Maine in their state plan.

Maine’s AYP TARGETS BY SCHOOL YEAR													
(Percent meeting proficiency)													
Level/ Test	2001- 2002	2002- 2003	2003- 2004	2004- 2005	2005- 2006	2006- 2007	2007 -2008	2008- 2009	2009- 2010	2010- 2011	2011- 2012	2012- 2013	2013- 2014
Grade 4 Reading	34%	34%	34%	41%	41%	41%	49%	58%	66%	75%	83%	92%	100%
Math	12%	12%	12%	21%	21%	21%	32%	43%	55%	66%	77%	89%	100%
Grade 8 Reading	35%	35%	35%	42%	42%	42%	50%	58%	67%	75%	83%	92%	100%
Math	13%	13%	13%	22%	22%	22%	33%	44%	55%	66%	78%	89%	100%
Grade 11 Reading	44%	44%	44%	50%	50%	50%	57%	64%	71%	78%	86%	93%	100%
Math	13%	13%	13%	22%	22%	22%	33%	44%	55%	66%	78%	89%	100%

These AYP targets reflect, for each year, the percent of students in a grade or subgroup who must meet the grade-level content standards set by the Maine Learning Results. Maine’s state plan specifies that the Maine Education Assessment (MEA) will be the assessment used to measure student progress in meeting these AYP targets for grades 4, 8, and 11. Maine sets the cut scores on the MEA that are used to determine when a particular score constitutes “proficiency.” During the first several years, NCLB requires assessment in only three grades, but beginning in school year 2005-2006, reading and math assessments are required annually in grades 3-8, as well as grade 11. For the additional assessments required in grades 3,5, 6, and 7, the Maine Department of Education is piloting a two-hour exam in each subject, which is a combination of selected response and constructed response items. These assessments will be developed and administered using the federal assessment funds appropriated under NCLB. The Maine Department of Education is still considering a model would will augment both the MEAs and the off-year assessments with Maine’s local assessment system (LAS), once development

and implementation of LAS is completed.

C. How Do the Standards of NCLB Compare with Maine's Requirements for Demonstrating Improvement Prior to NCLB?

Prior to NCLB, Maine required schools to show improvement in grades 4, 8 and 11. Schools which failed to make improvement in performance for two consecutive years were listed as schools in need of improvement and were required to make "significant" gains in scores to be removed from the list with Maine Department of Education providing significant technical assistance to these schools. NCLB requires a much more rigorous and prescriptive definition of progress based on a target of 100 percent proficiency over a twelve year span. Further NCLB, by requiring 95 percent participation and AYP of all individual sub groups of students (special education, racial and ethnic, economic status, and LEP status), requires schools to test all students and to respond to poor performance by individual subgroups. The definition of AYP progress under NCLB is more rigorous than under the previous statute; it is also more complicated, it has led to confusion, and requires extensive explanation and time in order to comply.

Although the standards of NCLB are more demanding on an annual basis — especially in grades three through eight, Maine's standard for a high school diploma is more rigorous than the AYP standards of NCLB. By the school year 2008-2009, Maine requires twelfth grade students to demonstrate proficiency in five content areas of the Maine's Learning Results including math and reading in order to receive a diploma. In the same year, AYP under NCLB requires 64 percent to be proficient in reading and 44 percent to be proficient in mathematics. One might project Maine's diploma requirement back onto grades three through eight and assume that Maine expects 100 percent proficiency in these grades prior to 2008-2009 if the state actually expects all twelfth grade students to meet the requirements for a high school diploma.

A more basic difference was Maine's mode of assessment that used measurement of progress over grade spans rather than by each grade. This allowed Maine to accommodate the measurement of progress to differences in individual development rates; it allowed schools to sequence instruction differently; and it gave teachers greater flexibility in designing instruction and objectives suited to each student. NCLB's annual testing requirements in reading and math may inadvertently create incentives for schools to follow a more standardized curriculum in these areas in which all students are expected to progress in "lock step" with each other.

D. Perception of the Task Force

? Although it is reasonable to expect and to require all schools to show gains in the proportion of students at the proficient level, the target goal of 100% of students achieving proficiency in total and in all subgroups is unrealistic. All students should be expected to make gains, but the demand by NCLB that all students reach grade level proficiency in reading, math, and science by 2013 and by the MLR that high school diploma recipients will be proficient in five content areas of the MLR by 2008 places

an unfair and unrealistic burden on the student, the teacher and school system.

- ? Under NCLB a school may fail to achieve AYP when special needs students as a subgroup do not meet the state's AYP standards. This has unintended but negative consequences for attitudes toward special education students at a school.
- ? NCLB focuses on evaluating schools and school accountability in contrast to the focus of the MLR on assessing individual student learning and individual student accountability. Each approach has both strengths and weaknesses.
- ? NCLB does not distinguish among the variety of causes that can lead to identifying a school in need of improvement and provides only one response to these different causes. For example it treats a school in which LEP students fail to make AYP in reading identically to the way it treats a school in which all students in all grades fail to make AYP in mathematics. It treats a school which fails to make AYP because of participation identically to the way it treats a school in which the tested students fail to meet AYP. It tries to impose a single solution on a highly varied and complex set of conditions. While this reflects the challenge of any federal legislation, the "all or nothing" identification process may undermine the credibility of the identification of underperforming schools and thus undermine NCLB's effectiveness.
- ? NCLB measures schools by grades not by student growth and progress. In other words, this year's grade four will be compared to next year's grade four. This may not be a valid way of assessing a school's performance, and it fails totally to assess growth which should be assessed in the same students over time. Even though the Department of Education allows flexibility in how states measure AYP in small schools, measurement by grades rather than student progress remains a problem for small schools.
- ? There is a fundamental issue surrounding how proficiency is defined. Maine's approach has been to define proficiency using a combination of local and state measurements, both the MEA and local assessments. For the next few years until the local assessment system is incorporated into the calculation of proficiency, AYP will be calculated solely on the basis of the state test, an assessment that was never intended to be the only basis for determining proficiency.
- ? NCLB has had unanticipated consequences – for example increased test anxiety for students from grade three through high school, loss of teaching time to assessments, community misinterpretation of the meaning of school being classified as not making adequate progress, and the scapegoating of subgroups, such as special education and ELL populations.

E. Recommendations

1. Allow states the option of measuring student progress over grade spans.

2. States should have the option of adopting another challenging, but clearly realistic ten to fifteen year target for improvement. (For example, instead of using 100 per cent proficiency as the target, use the average level of proficiency in the state's top quintile. If 80 percent of students in the top quintile are proficient, then 80 per cent, rather 100 per cent, would become the target for all schools. Schools that were already at or above 80 percent could be required to improve by a specified, realistic percent).
3. States should be allowed to use a measurement for AYP that tracks longitudinal student growth rather than comparing one class to the next class.
4. When calculating AYP for a school, use only the scores of students who have attended the school or another school in the same LEA continuously for at least two full school years.
5. NCLB should provide a graduated response that recognizes different levels of failure to meet AYP.
6. The Secretary of Education should have the authority to approve an alternative state standard for participation that meets the objective of the NCLB 95% participation requirement.
7. A non-public school, that receives Title I funds should also be held accountable for meeting AYP standards of NCLB for those students who receive Title I services.

II. Reading and Limited English Proficiency Students

A. How *No Child Left Behind* addresses the subject.

One of the main goals of NCLB is to improve the reading performance of all our country's children, both native speakers of English and those who are English language learners (ELL). Although the goal is identical for the two groups and although the groups share many needs, each presents the schools with its own challenges.

To support reading instruction in the early elementary grades for all students, native English speakers and English language learners the NCLB replaced the *Reading Excellence Act* (REA) with *Reading First* (RF) which authorizes both a formula program and competitive grants to the states, and provides a significant increase in federal dollars for reading initiatives (\$268 million in FY 2001 under the REA to \$900 million in FY 2002 under RF). The Reading First legislation grew out of concerns about student reading achievement and the need to try to reach

children at a younger age.² In response to these concerns, Reading First promotes the use of “scientifically based research” to provide high-quality reading instruction for students in grades K-3, to help every student read at grade level by the end of the third grade. In developing Reading First, policy makers relied on the findings of two important reports: (1) The National Research Council’s 1998 report titled “Preventing Reading Difficulties in Young Children, and (2) the National Reading Panel’s 2000 report titled “Teaching Children to Read.” Based on the findings of these reports, Reading First requires that Reading First programs include explicit and systematic instruction in the five essential components of effective reading instruction: (1) phonemic awareness; (2) phonics; (3) vocabulary development; (4) reading fluency, including oral skills; and (5) reading comprehension strategies.

In addition to the Reading First formula grant, NCLB also created a new program, “Early Reading First,” that authorizes competitive grants to provide preschool-aged children with exposure to high quality, language rich environments.

To support English language acquisition for ELL students the NCLB consolidated a competitive grant from the Bilingual Education Act and a formula grant from the Emergency Immigrant Education Act as a formula grant in Title III of NCLB, the Language Acquisition State Formula Grant Program. These formula grants are awarded on the basis of a state’s limited English Population (LEP) students and its Recent Immigrant Population (RIM) students. The purpose of these grants is to help LEP and RIM students attain English language proficiency (including reading), participate fully in English language instruction in academic subjects, and to fully master core academic content. Title III requires an annual assessment of English proficiency for all LEP students. In addition, Title I of NCLB requires that LEP students participate in the states’ annual math and reading/language arts assessments. The performance of these students must be reported as a specific subgroup and the sub group must meet the states’ standards for AYP (if the numbers of LEP students meet the states’ minimum subgroup size).

B.1 How Does RF differ from the REA and from Maine’s approach to reading instruction.

As mentioned above, the Reading First legislation grew out the conclusions of several national studies that reflected concern about student reading achievement and the need to reach children at a younger age, using the latest research on reading instruction. At the same time, the Maine Department of Education had engaged in its own state level effort to put in place extensive standards, guidelines, and assessments for reading programs. *A Solid Foundation* was published by the Department in 2000 as a guide in establishing and improving successful early reading programs and has been very well received.

The Reading First initiative represents a significant expansion of previous federal reading

²According to recent NAEP data, only 31% of 4th graders are at or above the proficient level in reading, and for 4th graders eligible for free or reduced price lunch, only 13% are at the proficient level.

initiatives, and an accompanying increase in federal dollars for these efforts. (The former REA contained only a competitive grant program that had significantly less funding). However, Reading First represents a departure from earlier federal reading programs in two significant ways: first, it contains far more stringent requirements related to the use of scientifically based research, and secondly, under Reading First, federal funding directed to LEAs is conditioned on additional diagnostic assessments (which may not be aligned with the MLR). Maine, however has relied on the MEAs, which are aligned with MLR as a basis for curriculum and assessment. Further its reading instruction and assessments are designed to produce and to measure progress over grade spans using multiple assessments.

B.2 How Does Title III of NCLB differ from previous requirements related to LEP and RIM Students

The NCLB makes three major changes in the area of LEP and RIM students. First, it consolidates formula and competitive grant programs as a single, population-based formula grant. Further it greatly increases the funds available to schools for instruction to ELL³. Second, it eliminates language encouraging one specific methodology, bilingual education, giving the SEA and LEAs greater flexibility in the use of federal language acquisition funding. Third, NCLB significantly tightens the assessment requirements for LEP students and the demands placed on the schools for the performance of LEP students.

C.1. Perception of the Task Force (Reading First)

The Maine Department of Education is the recipient of a five year, \$20 million Reading First grant, and is required to distribute eighty percent of the state's grant as subgrants to LEAs; flexibility is given to states to determine in their application the details of this subgrant. The State has experienced difficulty finding LEAs willing to participate in the program and there have been significant problems with the award of subgrants to the LEAs. Fifty-seven LEAs met the requirements Maine established in its RF grant and were eligible to apply for funds. Following an information session at which the requirements for participation were presented, eleven LEAs were interested in applying and nine of these subsequently submitted proposals. Following technical assistance a total of seven LEAs received grants.

One cause of the low participation was the extensive process for getting approval of the state application – Maine received approval of its Reading First Grant at the end of the initial grant period which condensed the time frame in which the state Department of Education had to implement the subgrant process and involve the LEAs in the process; a second was the requirement that an LEA adopt a core reading program. Participation was further restricted by Maine's decision to require participation in the Maine Literacy Collaborative and the use of Reading Recovery as a condition for participating. Since Maine's Reading First application did

³Under the Immigration Education Act Maine received a formula grant of \$91,000. Under Title III of NCLB Maine receives the small state minimum grant of \$500,000. Under the former Bilingual Education Act several Maine LEAs (notably the Portland Schools) competed successfully for competitive grants.

not include the use of Reading First funds for Reading Recovery (due to a belief that the use of Reading Recovery would not be approved by U.S. Department of Education), LEAs were obligated to meet the costs of Reading Recovery from local funds. As a result of the difficulties with implementing this program the Department has been unable to award about \$800,000 of the first year's Reading First funds and they will be returned to ED. Despite the initial difficulties caused by the requirement of establishing a core reading program, many Maine schools are starting to think that this may be a good idea. In addition the University of Maine is leaving the Literacy Collaborative and will be offering a more flexible option which does not require use of Reading Recovery. Further the U.S. Department of Education has assured the Task Force that there is no list of reading programs which cannot be used. These changes may increase the number of districts interested in participating in Reading First in subsequent years.

The remaining twenty percent of the Reading First grant is allocated to state-wide departmental activities for teacher professional development. This has been much more successful than the sub grants to LEAs. Between five- and six-hundred teachers have participated in professional development in the teaching of reading. The Department is also using Reading First funds to develop, jointly with Maine Public Broadcasting, a video featuring Maine teachers modeling effective reading practices.

The Task Force also observed:

- ? The goal that all children will read at grade level by the end of grade three is laudable, but needs to be reexamined because it does not consider the preponderance of evidence demonstrating that some children with learning disabilities can not attain this goal.
- ? Having definite criteria for selecting and evaluating reading instruction methods is worthwhile, but states should determine their own criteria.
- ? Research should guide reading programs, but the research base mandated under NCLB is too restrictive and should be wider and redefined.
- ? There have been considerable advances in performance-based assessments which are closer to "real world" tasks and have better predictive ability. The use of these assessments in addition to the tests currently used would enhance the validity and reliability of our inferences about students' abilities
- ? RF, because of its emphasis on scientifically-based methods of reading instruction, proscribes a very narrow and very traditional approach to literacy development. The Task Force has serious reservations about the completeness and adequacy of the scientific research base and believes that Maine's schools and teachers need more, not less, instructional flexibility.

C.2. Perceptions of the Task Force (English Language Acquisition)⁴

The goal of Reading First presents a special challenge to schools with significant numbers of ELL/LEP students. Many of these students need sheltered language and content classes, where both grammatical forms and content are taught simultaneously, extra time and instruction in English literacy in the form of extended school year, longer schooldays, and professionally-trained teachers. The mandated language testing of children who are learning to speak English should be based on realistic expectations of growth in literacy skills of a second language and require the development of valid and reliable testing instruments. The task force believes that NCLB does not adequately consider these factors in its goals for English language learners.

Although most schools in Maine have small numbers of LEP students, two LEAs, Portland and Lewiston, have very significant numbers of LEP students, many of whom are recent immigrants. Portland currently enrolls approximately 1000 students classified as LEP speaking a total of 53 different native languages. Many have arrived in Portland with their schooling interrupted; some have had no schooling and are illiterate in their native languages. About half of these students enter the Portland School in high school. Many have experienced trauma prior to reaching this country; the consequences of this trauma may constitute a disability for these students comparable to disabilities currently recognized in special education students under IDEA.

This population of students is very diverse – in ethnicity but, more importantly, in amount of previous education, chronological school placement, literacy in their native language, and prior personal history. Although the Task Force completely supports the goal of NCLB that all LEP students become fully proficient in English and core academic subjects, it doubts the appropriateness of “force-fitting” this distinctly dissimilar immigrant population into an assessment system designed for students raised in the United States.

Under Title I of NCLB, LEP students must be assessed for AYP in Reading/Language Arts using the MEAs – exams that are designed for traditional English language speaking students. In addition, under Title III, their English acquisition must be tested annually using the Access Test, which is designed to assess ELL. The Task Force questions the requirement for both these assessments, and the use of the MEA to determine AYP for these students. In math and science, NCLB requires the school to assess AYP using the MEAs. However, it does not recognize these students are entering the school at all grade levels. Some begin learning English and math in first grade. Others begin learning English in high school – some of these may come to high school literate in another language and with strong previous core academic backgrounds – others with neither. In math and science assessment, it allows the use of language accommodations for the first three years that a student is educated in the United States (a limit that can be extended for several years on an individual student basis). However, it does not provide the funding necessary to accomplish this in a state like Maine that receives the minimum

⁴The Task Force thanks the central administration of the Portland Schools for its input on this issue.

grant and has students speaking many minor languages for which instructional and testing materials must be translated locally, possibly on a student-by-student basis.

Finally, there appears to be a technical problem in the way AYP is calculated for the LEP population which may prevent some schools from ever making AYP and may even penalize a school for success with its LEP population. An ELL student who becomes proficient in English is removed from the LEP subgroup two years after reaching proficiency. At the same time new ELL students are entering the population. Thus, successful ELL students are removed from the numerator of the fraction used to determine AYP while the denominator is increased. A school which is successfully moving ELL to proficiency may appear to be making little improvement based on the proportion of LEP students who are proficient. This situation could be avoided if all ELL students were retained in the LEP subgroup until they leave the school.

D. Recommendations

8. The U.S. Department of ED should provide additional flexibility in regulations and in the grant application process to allow more quality reading programs to qualify for Reading First Funds. The Administration's excessively narrow application of the scientifically-based research requirement has created problems with melding federal reading efforts with state reading efforts.
9. The goals for English language proficiency of students who are learning to speak English should be more flexible, and schools should be given the ability, with appropriate guidelines and controls, to set levels of proficiency appropriate to individual students. One possibility would be to use IDEA as a model, develop appropriate IEPs for LEP students, and assess AYP based on alternative assessments and the goals of these students IEPs.
10. Exempt LEP students from the annual state assessments in reading and language arts. Use the Access examination as a basis for determining AYP until the students transition out of an LEP program.
11. When determining AYP, all ELL students should be retained in the LEP subgroup until they leave the school, even if they have become proficient in English.
12. Allow the SEA/LEA to establish alternative definitions of AYP for different categories of LEP students, *e.g.* students entering the American education system in early elementary years and students entering in secondary school; students literate in their native language and students without native language literacy; and students entering with limited prior education and students entering with prior education appropriate to their grade levels.
13. The small state minimum for State Language Acquisition grants should be increased to one million dollars.

14. Create a competitive grant program for schools with high LEP populations as whole or in a subgroup.

III. Special Education

A. How *No Child Left Behind* addresses the subject.

The intent of NCLB is to assure that students with special needs receive an education that is as rigorous, standards-based and professionally delivered as that of regular education students. Therefore NCLB mandates that most special education students meet the same standards and take the same assessments (with appropriate accommodations) as regular education students. The federal regulations control the number of students classified as severely cognitively impaired for whom proficient scores based on alternate assessments and can be counted when determining AYP to 10 percent of the special education population (although an LEA or state may apply for an exception to this cap). Further NCLB requires that each school report the performance of special education students as a group, if the number of special education students meets the state's minimum subgroup size.

B. How does NCLB compare with existing performance standards for special education students?

Highly Qualified Teachers. NCLB applies the same standards for Highly Qualified Teachers in special education that it applies to regular education teachers. However, teachers in special education with primary instructional responsibility for disabled students frequently teach multiple subjects (especially in grades seven through twelve) and are unlikely to have a "major" in each of the core subject areas. Extensive content knowledge requirements limit the opportunity and creativity of special education teachers to meet the unusual needs of their students. Finally, rural schools do not have sufficient special education staff or numbers of special education students to assign teachers to a single content area and, rarely do teachers have dual or triple content area certification.

Assessment: Because NCLB is a school accountability law, concerns have arisen about how its requirements relate to existing responsibilities of schools to serve special education students under IDEA. IDEA contains a number of specific requirements for special education students. Specifically, IDEA requires each special education student to have an Individual Education Plan (IEP) tailored to the special needs resulting from the student's disability and appropriate to the student's cognitive ability. Since 1997, IDEA has also required that each Pupil Evaluation Team (PET) assess each special education student against the standards of his or her IEP. For students without cognitive impairment these standards would be identical to the standards of the MLR, while students with cognitive impairment may be assessed against alternate standards appropriate to the goals of the students IEP. While NCLB does nothing to alter these requirements, it does create new and problematic assessment requirements for special education students related to the AYP determination made under the statute.

The federal regulations control the number of cognitively impaired students for whom

proficient scores based on alternate assessments can be counted when calculating proficiency rates to one percent of the total student population or to ten percent of the special education population (although an LEA or state may apply for an exception to this cap). Thus some special education students who do not have significant impairment, but are sufficiently impaired to require an IEP, must be tested with and classified based on the results of the MEA. Although these special education students are entitled to any testing accommodation specified in their IEP, these students, known as “gap children,” are required to meet the same grade level standards on the MEA as regular education students even if different content standards and instructional goals are specified in their IEPs. The result is a diverse population treated as a homogeneous population. Many students are in special education because they have a disability that impedes their meeting the content standards for their grade level. If students were able to meet grade level standards, there is substantial likelihood that they would no longer be in special education.

Adequate Yearly Progress. Since the measurement of AYP had not been implemented prior to NCLB, a specific comparison can not be made. But the inclusion of special education students as an identified sub group in the measurement of AYP has had a significant impact on students, teachers, and communities. Their inclusion creates the potential for these students to be scapegoated and viewed as impediments to the school placing it in jeopardy of the incremental corrective actions available under the statute. This is an unfair burden to place on students who are already struggling with stigma and handicapping. This could be avoided if alternate assessments based on each student’s IEP were used.

C. Recommendations

a. Highly Qualified Teacher requirement

15. During the reauthorization of the ESEA, thoroughly reassess the definition of a highly qualified special education teacher considering the unique competencies required for effective instruction of special needs students (*e.g.* methodologies, curriculum adaptations, accommodations, modifications, consultation, remediation and specialized instruction), the diverse and often changing settings within which special education teachers must function, and best way to use the HOUSSE for special education teachers.

b. Assessment

16. NCLB’s AYP requirements related to the assessment of special education students should be reevaluated and modified to reflect the more individualized instructional and assessment approach for special education students contained in IDEA.

c. Adequate Yearly Progress (AYP)

17. AYP for special education students should be measured by the degree of progress towards meeting the goals of the students’ Individual Education Plans (IEP) using the assessments defined by the students’ IEPs. In particular, the method used for

determining AYP should provide fully for the performance of “gap children,” those students with mild or moderate cognitive impairment who have difficulty performing at grade level but are not severe enough to be included in the “one percent group” for whom the alternative assessment is used when measuring AYP.

IV. Highly Qualified Teachers

A. How *No Child Left Behind* addresses the subject.

NCLB requires all teachers to meet highly qualified teacher (HQT) standards. It defines a HQT as a teacher who fully meets a state’s certification requirements and has a baccalaureate degree. In addition, all new elementary school teachers must pass a rigorous test covering the content of the elementary school curriculum; new secondary school teachers who teach core academic subjects must have either a major in each subject taught or pass a rigorous exam in the subject. Middle school teachers have the option of meeting the HQT standards for either elementary or secondary school depending on their teaching assignment. Experienced teachers are given the additional option of demonstrating that they are HQT by completing a state-designed Highly Objective Uniform State Standard of Evaluation (HOUSSE). NCLB further specifically defines history, economics, geography, and government as individual core academic subjects rather than social studies as a single subject. The regulations provide some extension of time for high school teachers in rural schools who teach multiple core academic subjects to demonstrate qualifications.

B. How the Standards of NCLB Compare with Maine’s Requirements for Certification.

Maine is in the process of implementing revised teacher certification requirements as part of the strategy for implementing the MLR. Once these are fully implemented (August 1, 2005), most teachers new to the profession will fully meet the NCLB standard as HQTs in their area of certification – except for the problem areas, social studies, special education, and middle level as discussed below . Most experienced teachers in Maine have been able to meet the standard by using the Maine HOUSSE. However, since the format and reporting requirements have not yet been finalized, we do not know the final resolution of the status of all experienced teachers.

C. Perceptions of the Task Force

- As long as NCLB holds the state, LEA, and the individual school accountable for improved student outcomes, why is it necessary to impose highly prescriptive controls on the quality of teachers. Would be more appropriate for these requirements to be invoked only in those units consistently failing to make progress?
- Even though Maine’s certification requirements assure that most new teachers are highly qualified and the widespread success of experienced teachers using the

HOUSSE to demonstrate their qualifications, there are several areas in which the HQT standards present challenges which are discussed below.

Small/Rural Schools. The HQT requirements do not recognize the reality of many small rural schools where teachers in middle and high school must teach multiple subjects and where teachers are often re-assigned to different content area instruction on a yearly basis because of low enrollments. These teachers could find themselves working on different requirements each year. Small and rural schools are already experiencing difficulty recruiting teachers. With relatively low starting salaries, immediate performance expectations, high state standards for certification, and unattractive retirement benefits, meeting the added burden of becoming highly qualified in multiple academic areas makes staffing these schools even more difficult at a time when a significant number of Maine's teachers is very near retirement. Additionally many teachers do not have access to course work that is needed to meet the HQT standards when they are teaching multiple subjects or are required to change the area in which they teach. In addition, about half of Maine's small rural schools enroll English language learners, where access to credentialed ESL or bilingual teachers remains an ongoing challenge.

Social Studies. Although NCLB does not disaggregate and name the individual sciences as core academic subjects, it specifically names History, Geography, Economics, and Government individually as core academic subjects. Many schools integrate instruction in these four areas as "social studies" and most "social studies" teachers in Maine have multiple class assignments that cross those disciplines, and, usually "social studies" teachers teach two or three of the sub disciplines. As a result meeting the highly qualified teacher requirements presents a unique problem — a social studies teacher must meet the standards in each of these four areas. To expect a teacher to have the equivalent of a major in all four areas is not reasonable. This may lead to the unintended consequence that fewer schools will offer courses in subjects like geography and economics.

D. Recommendations

18. NCLB should recognize that many schools integrate instruction in history, geography, economics, and government as social studies and allow highly qualified social studies teachers with "general" or "broad field" designation rather than the specific concentrations such as economics and political science.
19. Consider establishing a maximum number of subject areas in which an individual teacher would be required to be Highly Qualified and encourage additional subject matter knowledge for teachers with assignments in more subjects than the maximum.
20. The SEA should have the authority to set alternative standards in small rural schools for HQT that incorporate factors such as school size and breadth of the program of studies.
21. Impose specific teacher qualification standards as a mandatory corrective action only on units which consistently fail to make improvement.

V. Funding

A. How *No Child Left Behind* addresses this subject

NCLB, as the most recent reauthorization of the Elementary and Secondary Education Act, builds on and modifies the law's previous versions. Essentially it maintains the funding objectives embodied in the original ESEA — to support the efforts of states and individual schools to improve the educational attainment of economically disadvantaged students. Thus the principal issues related to the funding of NCLB are not the purpose or form of the funding. Instead they are:

? **First**, the requirements placed on the schools in return for funding — these requirements, new assessments and stricter accountability, are posing additional challenges on schools; and,

? **Second**, whether Congress is allocating sufficient money to accomplish what NCLB requires of states and local school systems.

The legislation has its origin in a bipartisan effort to provide an equal footing for all students, regardless of income. Its reforms are designed to close the achievement gap between rich and poor students, to provide struggling schools with the assistance needed to improve, to enhance teacher quality, to direct resources to at risk and disadvantaged youth, and to provide schools with the flexibility needed to meet local needs. The previous sections discussed the implementation of these reforms and identified the major problems that Maine's schools are encountering implementing them from an operational or procedural perspective. This section will address the financial aspects of implementing and the adequacy of NCLB authorized appropriations.

Authorized and Appropriated Funds. NCLB differs from its predecessor by including specific annual authorization levels for Title IA beginning at \$13.5 billion in FY 2002 and rising to \$25 billion in FY 2007. (Title I is by far the largest component of federal funding for K-12 education reform efforts in the NCLB Act.) Actual appropriations for Title IA have to date been below the authorized levels. In FY 2002 the actual appropriation was \$10.3 billion and is projected to reach \$13.3 billion in FY 2005 when the NCLB authorized level will be \$20.5 billion.

FY	Authorized	Appropriated	Apps/Auth
2002	\$13.5 Billion	\$10.3 Billion	76.3%
2003	\$16.0 Billion	\$11.7 Billion	73.1%
2004	\$18.5 Billion	\$12.3 Billion	66.5%
2005	\$20.5 Billion	\$13.3 Billion	64.9%

2006	\$22.75 Billion	—	—
2007	\$25 Billion	—	—

The following table summarizes the actual appropriations to Maine under ESEA for fiscal years 2001 through 2005 under the major formula programs. FY 2002 is the first year of appropriations under NCLB and, at the time of writing, the appropriations for FY 2004 and 2005 are estimates.

	FISCAL YEAR				
	2001	2002	2003	2004	2005
ESEA Title I Grants to LEAs	33,353,347	37,942,178	47,816,946	45,160,071	48,790,068
Reading First State Grants	0	2,699,093	3,394,509	2,818,984	3,130,734
Even Start	1,122,500	1,127,500	1,120,106	1,113,439	1,014,181
Migrant Students	4,193,998*	4,385,435*	4,385,435*	2,104,032	2,086,760
Neglected and Delinquent Students	157,586	142,013	212,745	186,851	194,448
Comprehensive School Reform (Title I)	839,438	843,047	801,863	957,602	703,775
Capital for Private School Children	4,941	0	0	0	0
Impact Aid Basic Support Payments	2,253,025	2,525,117	2,303,176	2,185,518	2,459,708
Impact Aid for Children with Disabilities	188,699	158,375	184,940	177,541	198,411
Impact Aid Construction	16,508	29,079	22,247	22,175	26,147
Teacher Support**	9,789,069	13,567,163	13,965,246	13,961,804	13,895,209
Mathematics and Science Partnerships	0	0	499,218	741,850	888,336
Educational Technology State Grants	2,250,000	3,075,155	3,214,970	3,304,308	2,390,020
21st Century Community Learning Centers	0	1,522,706	2,755,958	4,895,445	4,856,279
State Grants for Innovative Programs	1,911,525	1,911,525	1,899,100	1,472,363	985,056
State Assessments	0	3,899,136	3,941,464	3,934,394	3,974,596
Rural and Low-income Schools Program	0	234,765	1,929,972	2,210,529	2,247,317
Small, Rural School Achievement Program	0	1,896,864	1,697,980	1,878,788	1,910,205
Grants for Expelled/ Suspended Students	0	250,000	248,375	0	0
Indian Education--Grants to LEAs	131,415	128,126	125,335	127,519	126,499
FIE Comprehensive School Reform	209,995	314,249	312,206	294,782	0
Safe and Drug-Free Schools and Communities State Grants	2,142,933	2,307,865	2,292,555	2,152,629	2,135,030
Language Acquisition State Grants	0	500,000	500,000	500,000	500,000
Immigrant Education	91,392	0	0	0	0
Total of all Programs Funded under No Child Left Behind	58,656,371	79,459,391	93,624,346	90,200,624	92,512,779

*The larger grants in 2001-2003 were due to fraudulent applications not higher levels of appropriation.

**Under the IASA Teacher Support was provided through Eisenhower Professional Development State Grant and a Class Size Reduction Grant. Under NCLB these two grants were combined as a single Improving Teacher Quality State Grant and the states were given greater flexibility in the use of these funds

Before the enactment of NCLB, Title I was funded at about 32 percent of the maximum payment calculated under the basic grant allocation formula. Many individuals and organizations consider the calculated maximum “full funding.” Although under NCLB appropriations have risen to approximately 49 percent of the calculated maximum payment, many argue that the requirements of NCLB are superimposed on a system already lacking the funds it needs to serve all low income children. At the same time, ESEA funding in Maine has increased from \$58.6 million in 2001 (the last year of the IASA) to a projected \$92 million for FY 2005, an increase of 57 percent. During the same five years the total federal K-12 appropriation has increased from \$108.2 million to \$154.4 million (+42.6%), and the special education portion of the total appropriation has risen from \$36.0 million to \$57.4 million (59.5%). Despite these substantial increases, the federal proportion of K-12 funding has never exceeded ten percent of total funding spent on education statewide. This split between federal resources and state and local resources is hardly unique to Maine – states across the nation reflect similar percentages of federal assistance. The relatively limited role of federal education funding reflects the fact that the financing of education costs has historically been considered the primary responsibility of state and local governments, with federal funding focused on addressing gaps in state and local support (for needy children in particular) and supporting other national needs. However, given the increased accountability demands of the federal government under NCLB, there is now greater scrutiny of whether the additional responsibilities brought by the federal law are adequately supported by federal resources.

Although the costs of NCLB have been the subject of many studies, accurate cost information is extremely difficult to determine, and can fluctuate widely based on various assumptions adopted at the start of the study. While attempting to address funding issues raised in Maine by NCLB, underlying questions emerged: “What proportion of the cost of bringing all children up to Maine’s academic standards should be provided by the federal government?” and “Do Maine’s schools have the resources needed to bring all children up to Maine’s academic standards as required by NCLB?” At least part of the first question has an answer; the federal government should pay any costs a state or school incurs bringing students up to state academic standards that they would not have incurred reaching this goal in the absence of NCLB. This assumes that the state has a responsibility to provide the resources required for all children to achieve the standards the state has adopted. In Maine, this obligation appears to have been accepted by the state’s commitment to funding Essential Programs and Services – that is to provide the resources required for all children to master the Maine Learning Results. If State and local education funding is inadequate for this purpose, the shortfall is not a problem created by NCLB. Thus we might phrase the two questions in an alternative manner, “Is the difficulty in meeting the goals of NCLB caused by a failure of the federal government to fund the incremental costs the law imposes on the State and schools?” or “Is the difficulty caused by a failure of Maine and local school districts to provide the resources necessary for Essential Programs and Services and to accomplish Maine’s Learning Results?”

Looking at the federal responsibility — the incremental costs beyond funding Essential Programs and Services imposed by NCLB might include the following.

1. **Data systems.** A district has to produce more detailed student achievement data to report

on the school-by-school performance of student subgroups, teachers' credentials, and school safety; one-time and ongoing costs for software and staff training, and staff time to establish and maintain a data system must be planned. The NCLB does not authorize funds specifically for these purposes, but the creation of data systems is one allowable use of several funding streams including assessment development grants and highly qualified teacher grants.

2. **Highly-qualified teachers and Paraprofessionals.** By the 2005-06 school year, all teachers in core academic subjects must meet NCLB's requirements for being highly qualified, all paraprofessionals who work in an instructional capacity in programs supported by the federal Title I program also must be highly qualified. This poses substantial new costs in the areas of teacher recruitment and retention, professional development, and teacher and paraprofessional compensation. Title II of NCLB provides funding for all of these activities. Maine received almost \$14 million dollars under NCLB in 2004 for this purpose; \$4 million more than it received in the year prior to the enactment on NCLB.
3. **Services for students with limited English proficiency.** Some school districts might incur new costs to assess students' ability to speak, read, and write in English or to test students in their primary language. Moreover, to successfully meet their AYP requirements, many school districts might need to strengthen the quality of their language-acquisition programs or serve more students in those programs.
4. **Services for students with disabilities.** Because students with disabilities must achieve proficiency like other students, the education program and services needed to produce that outcome, IEPs (Individualized Education Plans) could involve additional costs. Further, depending on the subject matter qualifications lawmakers require of special education teachers, a district might have to budget additional funds to attract and retain special education teachers who can meet those qualifications. However, IDEA already requires schools to provide instruction that will enable all special needs students to meet the goals of their IEPs. Federal funding for special education is currently less than half of the commitment made by the Individuals with Disabilities Act. If Congress were to fund IDEA fully, Maine's schools would receive an additional \$60- \$70 million annually. Failure to fund IDEA adequately rather than NCLB may be the problem.
5. **Choice and supplemental services in Title I schools.** Title I schools that are in "improvement status" will face additional costs. Generally, school districts must set aside up to 20 percent of their Title I funds to pay for choice and supplemental services. If a district's Title I allocation does not grow by the amount needed to offset these costs, less Title I money will be available for in-school services unless the local budget is increased. Title I funding to an individual district will vary because of demographic changes and the dynamics of the distribution formulas as well as because of the Title I appropriation. Therefore it is not possible to make a statement that will apply to all LEAs, but, since the passage of NCLB, the Title I allocation to Maine as a State has increased by 40 percent. If every district used the full 20 percent reservation for choice-

related transportation and supplemental education services, the amount available for other students would still be above the pre-NCLB levels.

6. **Report cards and parent notification.** Despite the increasing availability of online technology and the opportunity to disseminate some of the NCLB's parent notification requirements in a student handbook, through the media, and in other existing resources, school districts are likely to incur additional costs to produce report cards and meet other NCLB notification requirements. These expenses are an allowable administrative use of Title I funds.
7. **Staff time and opportunity costs.** Compliance with NCLB also will require a significant commitment of time by administrators, principals, and teachers for program implementation and reporting. While some school districts will add staff, most others will draw staff time from other activities. It is not whether NCLB-related activities should be done, but what the real financial impact will be. In calculating the actual program costs of NCLB, the hourly or daily rate of existing staff should be considered as a cost, along with the cost of lost education functions or services in other areas.

B. Perception of the Task Force

- ? The Act places new requirement on state and local staff, such as requiring them to provide technical assistance to districts or schools in need of improvement, to provide extra instruction to children who are not performing well, to expand high-quality professional development to teachers, to expand school choice, to arrange for supplemental services, to implement new data systems, to help teachers use test data to improve instruction, and to do other tasks necessary to bring every student to proficiency in reading and mathematics by 2014. The Task Force is concerned that the Maine Department of Education and many Maine LEAs do not have sufficient staff and expertise to provide the technical assistance to schools identified for improvement.
- ? The Maine Department of Education can reserve 4% of the state's \$45.2 million Title I grant to carry out its school improvement responsibilities under NCLB (\$1.8 million). However, if a state's allotment is less than that of the previous year, the state is required to use a hold-harmless provision that takes money from the state reservation to assure that districts with a poverty level over 30% will receive at least 95% of their 2003-2004 allocation; those with a poverty rate of between 15 and 29% receive at least 90%; and all others receive at least 85%. For 2004-2005 Maine received \$2.7 million less than the previous year (due to changes in poverty estimates in recent census data). After applying the "hold harmless" provision the State only had \$278,285 to assist schools in need of improvement. In Maine, with large numbers of small LEAs, the allocation of dollars to any single LEA with a school in need of improvement may involve amounts that are too small for the LEA/school to fund a meaningful initiative. In 2004 sixteen Title I schools did not make AYP for two consecutive years and have been designated priority schools for assistance. With

carry-over from the previous year Maine will be able to assist these schools. Next year, when the AYP proficiency target is raised (see table in Section I) the Task Force expects this number to grow significantly and the funds available to the state to assist them will not be adequate at current funding levels.

- ? Most of the schools that failed to meet the AYP standard were identified for the students with disabilities subgroup. Federal funding for special education is about 20 percent of the average per pupil cost; this is less than half of the commitment made by the Individuals with Disabilities Act. If Congress were to fund IDEA fully, Maine's schools would receive an additional \$60- \$70 million annually. Failure to fund IDEA adequately compounds the problems that Maine faces meeting the demands of NCLB.
- ? The requirement of NCLB that Maine's students meet Maine's definition of proficiency is made more challenging by state-level decisions. Maine has established very high levels of proficiency which may be unrealistic. Further, achieving the goals of the MLRs depends on adequate funding of Essential Programs and Services in every LEA.

Recommendations

22. Adopt the US General Accounting Office (GAO) recommendation to replace "supplement not supplant" with "maintenance of effort." The GAO found that the requirement of "supplement not supplant," which requires a school district to show that federal funds are not being used to replace state and local resources, is simply "unworkable" for school wide programs. As the GAO showed in its report, implementing this provision of Title I is cumbersome, inefficient and difficult. Instead, the GAO recommends expanding the oversight mechanism of "maintenance effort," which is a broad oversight tool that examines the *combined* effort of a district and state to maintain a certain level of spending. The maintenance of effort mechanism permits broad flexibility and allows districts to use local, state and federal resources more efficiently.
23. Require the GAO to analyze the cost of implementing all aspects of NCLB and directly link the implementation of the law's requirements to the appropriation of sufficient federal funding to cover the cost of federal requirements. This provides insurance that no federal education regulation goes without federal pay. If funding is inadequate, the regulations of NCLB would be deferred until Congress appropriates the funds at the levels identified by the GAO analysis. The current statute has established a precedent for this approach by making the testing requirement dependent on a minimum level of funding appropriated to the states for test development.
24. Clarify that NCLB does not create a private right of civil action by parents and/or students.
25. As part of the reauthorization of the ESEA by Congress, the Health, Education, Labor,

and Pensions Committee should hold a comprehensive series of hearings addressing federal and state funding, AYP calculations and determinations, school choice and the provision of supplemental services, and teacher and paraprofessional qualification requirements.

26. Consider adding a factor in the funding formula that allocates funds based on the relative rigor of the states' standards. States with relatively more rigorous standards would receive relatively larger per pupil allocations.

NCLB and the Maine Learning Results: Options for the Maine Department of Education

One of the three charges of Maine’s senators to the Task Force was, “Recommend ways to provide greater clarity to educators, parents, and citizens of the State of Maine about the law’s goals and the relationship to Maine Learning Results.” During the Task Force’s study of the implementation of NCLB, it found that the two were intimately related. As the report points out, the two share a similar goal – that all Maine’s students meet the Maine Learning Results; the NCLB uses the Maine Learning Results as its standard; the NCLB uses the Maine Education Assessment to measure performance⁵; and it uses Maine’s definition of proficiency to determine adequate yearly progress. The principal difference is found, first, in the frequency of assessment – annual under NCLB rather than by grade span under the Maine Learning Results, and, second, the NCLB requirement for Annual Yearly Improvement with all students proficient in reading, math and science by academic year 2013-2014 while the MLR require proficiency in five areas for graduation beginning in 2008.

Overall the Task Force found that both educators and the general public did not fully understand NCLB, and were not making a distinction between the requirements of NCLB and the requirements of Maine’s Learning Results. The following excerpts from an eighth grade student’s letter to the editor of the Bangor Daily News⁶ is illustrative of the public’s confusion:

“We feel pressured to pass up to 15 assessments a year.

“In many ways, it can affect success, too. When a student graduates, if he does not pass all of these No Child Left Behind tests, even if he is a straight A student, he will be handed a certificate of being present. This may affect the job you've been dreaming of, or planning for in earlier years.”

NCLB does not require “up to 15 assessments a year.” It requires assessments in reading, math, and science; any additional tests are local or state requirements. The graduation requirements are part of the Maine Learning Results; NCLB does not establish standards for high school diplomas.

Further, discussions with educators suggest that many do not completely understand all the requirements of NCLB, especially the flexibility allowed to the state and the decisions that have been made at the state level regarding the implementation of NCLB. This leads the Task Force to make the following recommendations to the Maine Department of Education.

⁵However, as noted in the body of the report, this is a use for which these tests were not designed. When Maine’s planned assessment model based on a combination of the state tests and local multiple local measurements is implemented, the state will have a more valid measure of proficiency.

⁶“Look Who’s Left Behind,”Bangor Daily News, Feb. 7, 2005

1. Teachers and administrators need to be more accurately informed about NCLB and the options available to them. The U.S. Department of Education has offered to hold informational meetings for Maine teachers to explain the requirements of NCLB. The Maine Department should pursue this offer, and make more use of the flexibility in the current regulations.
2. NCLB allows each state to establish the minimum subgroup size that must be reported. Maine should consider increasing the size of the subgroup for which it requires reporting.
3. The regulations allow a school or an LEA to exceed the cap on the percent of special education students for whom alternative assessments can be counted when determining AYP (as long as the state aggregate cap is not exceeded). The Department should offer more assistance to schools whose special education population justifies such an exception. Further, the Secretary of Education can raise this cap if Maine demonstrates that its population of special education students for whom the alternative assessment is appropriate warrants an increase. The Department should pursue this option.
4. The standard for proficiency is set by Maine. Although Maine's high standards are commendable, they may be unrealistic and not achievable; the task force encourages the state to reexamine these levels.
5. There is a widespread misconception that NCLB prohibits Maine from using multiple measures of assessment and its local assessment system. The Department should make efforts to correct this perception and should intensify its efforts to implement the planned local assessments using multiple measures.
6. For ELL students explore the assessment options allowed by NCLB for the use of exams in the students' native languages.
7. Establish a feedback reporting process that uses the performance of students on the MEAs to provide teachers with the specific information they need to improve instruction.