



September 5, 2007

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

The Honorable Howard “Buck” McKeon
Ranking Member
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

On behalf of the more than 1.4 million members of the American Federation of Teachers (AFT), I am writing to offer our comments on the Aug. 28, 2007, Title I discussion draft of the Elementary and Secondary Education Act reauthorization, No Child Left Behind (NCLB).

We understand that this is a “draft” document and as such is not meant to represent the House Education and Labor Committee’s final resolution of the important issues addressed in the document. We have approached it as such, and view it as the beginning of what we hope will be productive discussions leading to the passage of a bill that will provide our students and schools with the support they need to be successful.

Parents, teachers, elected officials and others have called for substantive changes to NCLB. However, the suggested revisions do not appear to adequately address their concerns and need further thought and substantially more clarity. We also would like to note that our comments are somewhat preliminary and may need further revision; we have yet to see the other titles of the bill and therefore cannot make an informed judgment as to how all the pieces fit together.

Five years of experience with NCLB have taught us many things. Chief among them is the need to take time and care to ensure—as nearly as possible—that what is enacted in Washington will work in our nation’s classrooms. We cannot achieve the law’s admirable goals if we do otherwise.

The AFT is particularly concerned with the following:

Accountability and Assessments: The discussion draft attempts to address many of the AFT-identified problems with NCLB’s current accountability mechanism—the adequate yearly progress (AYP) formula—by including a growth model and an effort to move away from a single high-stakes test.

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The AFT is concerned, however, that the growth model is in reality a trajectory model and does not fully give credit for the gains in student achievement that schools are making. The AFT believes the legislation must allow states to utilize other types of growth models that are fair and accurate, set achievable growth standards, and help schools demonstrate that they are making progress, including those that do not have the capacity to measure individual student progress and therefore cannot implement a growth model.

In addition, despite the fact the multiple indicators allowed in the draft bill are compensatory in nature, the AFT is also doubtful that they will provide an answer to the problems with AYP. For example, the multiple indicators allowed, particularly at the elementary school level, could simply lead to additional testing on top of the other testing provisions in the bill, such as the call for formative assessments. Further, the expected rates of growth and goals for the multiple measures are set at an unrealistic level.

The AFT welcomes the draft's efforts to address the low graduation rates of too many of our students—particularly disadvantaged and minority students. We are concerned, however, that the draft's proposed solution will exacerbate existing problems with AYP.

The AFT is pleased that the draft offers a more realistic approach to identifying schools for school improvement by allowing such schools to be identified based on the performance of the same subgroup in the same subject. We also are pleased it maintains the safe harbor provision and the use of confidence intervals. We strongly suggest that the use of confidence intervals be expanded to cover multiple indicators and growth models.

The AFT is pleased that states are authorized to work in consortia to develop standards and aligned assessments. We also are pleased that the National Academy of Sciences is charged with doing a comparison on rigor of standards and assessments between states. The AFT is disappointed, however, that the draft legislation could add even more testing without first making sure the tests are improved. We also believe that there needs to be a greater emphasis on developing grade-by-grade, well-sequenced and coherent content frameworks.

English Language Learners/Special Education Students: The AFT believes it is important to maintain a process that ensures an appropriate mechanism to assess how well these students are doing and whether they are being provided with appropriate resources and supports. Toward that end, we appreciate the flexibility in the bill for testing and AYP for special education students and English language learners. However, we believe more is needed. For example, IEP teams should have the authority to determine appropriate assessments for special education students, and that authority should not be undermined by including arbitrary caps on how many of

their scores may be counted for AYP purposes. Although the draft bill improves the provisions regarding the use of native-language assessments and excludes the use of test scores from recently arrived ELLs, the AFT believes that these students' scores should be excluded from AYP until they have completed three years of instruction in English.

School Improvement Interventions/Redesign: The AFT supports provisions that make the school improvement process more effective by providing a planning year and three years to implement the plan. We also support provisions requiring consideration of capacity and desegregation orders in implementing public school choice.

However, there are still serious problems with the interventions. For example, the AFT is concerned that the draft still continues the use of unproven programs such as supplemental educational services (SES) without sufficient, and sufficiently transparent, safeguards to ensure quality, articulation with a school's curriculum and an accurate measure of the effectiveness of their programs. In the draft bill, SES is a *mandated* intervention for high-priority and high-priority redesign schools, although no evidence has emerged from the GAO or from state or district studies that SES is effective at raising student achievement. The schools with the greatest challenges in moving students forward, in this instance high-priority schools, should not be required to spend a significant percentage of Title I funds on unproven programs or programs that divert significant resources to a provider's overhead and bottom line. Rather, local education agencies (LEAs) should have the flexibility to use available funds for any research-based interventions tailored to local needs.

We also are concerned that the discussion draft does not require SES providers to hire tutors who meet the definition of a highly qualified teacher, but solely changes the minimum background information providers must share with parents. We believe strongly that SES providers should use highly qualified instructors and be held to the same standards as those required of public schools and public school teachers.

The AFT is troubled by the school redesign language. The draft language eliminates the current law's provision that allows for any "other major restructuring of the school's governance arrangement that makes fundamental reforms" from the list of allowable activities. We agree with recent recommendations from the Center for Education Policy, based on its studies of restructuring, that call for retention of this option because it has proven to be effective by allowing and encouraging multiple strategies. Additionally, schools and districts should be given the flexibility to use the best options available. Finally, LEAs are given the authority to move a school into redesign at any point, in both section 1116 and the Graduation Promise Act. This is counterintuitive to the new approach reflected in the draft, which provides schools with planning and implementation periods before entering the redesign phase.

The AFT welcomes the 10 percent cap on the number of schools in a district that may be designated high-priority redesign. It is a sound policy because it allows LEAs to focus limited capacity and resources on the schools that need them the most. One issue unresolved in the draft is how the schools identified in the new Graduation Promise Fund will interact with this cap. Another unresolved issue is what happens to a charter school that is its own LEA.

The AFT supports maintaining the existing state set-aside for school improvement activities at 4 percent. Fluctuations in Title I spending in recent years combined with the existing state set-aside and hold-harmless provisions have reduced funding districts serving high concentrations of disadvantaged students below the amount they are entitled to under the Title I formula.

Collective Bargaining: The AFT is pleased with the retention of the construction clause in sec. 1116(l) that codifies teacher input as embodied by collective bargaining, which we believe is crucial for effective reform. We are, however, concerned that new provisions in the bill which relate to teacher assignments and compensation will require the clause to be expanded to include more than sec. 1116. For example, the draft legislation places a limitation on how many years a student can be taught by a novice teacher, provides financial incentives and rewards to teachers who serve in schools eligible for school improvement or identified for redesign, monetary rewards for International Baccalaureate and Advanced Placement teachers and new comparability requirements for teacher salaries. All of these suggested provisions deal with issues that are a mandatory part of collective bargaining. **The AFT recommends the construction clause be expanded to include the entire Act.**

The foregoing suggested expansion of the construction clause is particularly important in light of the fact that the draft provisions represent an unprecedented intrusion by the federal government into the state collective bargaining rights of teachers and school districts. Up until this time, federal education law set clear goals, but it left the specifics of how those goals would be met to the parties to accomplish through collective bargaining. This approach made sense in the matrix of federal-state relations because it is state, not federal, law that defines the bargaining rights and relationship between the teachers unions and the school districts. In addition, the process of collective bargaining, by design, gives the parties the needed flexibility to fashion agreements that meet the broad federal goals which will in fact work at the local level. The draft proposals upset that balance between federal and state law and undermine the necessary flexibility at the local level that is needed to make NCLB a success.

Comparability: All students should be taught by highly qualified teachers. On that, we believe, there is general agreement. We are concerned, however, that the draft's approach would not be effective in achieving this goal. Many Title I schools already have experienced and extraordinary teachers. The schools that don't often suffer from

terrible building conditions, unsupportive leadership, and a lack of professional supports, as well as other factors that contribute to an unacceptable learning and teaching environment. This makes it all the more disturbing that the draft legislation removes the current law's requirement for comparability in curriculum, materials and instructional supplies.

If we are to improve teaching and learning at Title I schools, then states and local school districts must first address these underlying issues. We need real remedies, not ones that could lead to forced transfers, which would simply drive teachers out of the profession or to other, more-advantaged schools.

Other Issues: The AFT is concerned with the changes made to the Comprehensive School Reform program. Rather than improving the program, the suggested changes will lead this valuable program in the wrong direction.

Thank you for considering our comments. We look forward to working with you as the bill moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'KWC', with a long horizontal flourish extending to the right.

Kristor W. Cowan
Director, Legislation Department

KWC:emc opeiu#2 afl-cio