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

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Prepared by the NEA Collective Bargaining and Member Advocacy Department
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The reauthorized Elementary and Secondary Education Act, also known as the No Child Left Behind (NCLB) Act (P.L.107-110) and signed by President George W. Bush in January 2002, includes many provisions that will have a dramatic impact on the work of teachers and education support professionals. Many educators are understandably concerned about the effect this law will have on their jobs, their schools, and the children they teach. NEA members have the right and the opportunity to influence how the law is implemented in their states and school districts. One of the most important tools available to members and their local associations is collective bargaining or, in states without a bargaining statute for public school employees, policy making.

This guide is part of NEA’s “Great Public Schools for Every Child” campaign, which is designed to:

- Support common sense standards and accountability as well as adequate and equitable funding and resources for public schools;
- Encourage districts to help close the achievement gap by investing in public schools and holding teachers, administrators, parents, students, and elected officials responsible for the success of our children and our schools;
- Encourage states and districts to take the lead in setting and implementing high standards to ensure student success;
- Support multiple measures of student success that help prepare students for work and life.

Leaders as well as staff at all levels of the Association must work with members to ensure that every school for every child is a quality public school.

This guide will help local affiliates reach that goal.

Reg Weaver, President
National Education Association
July 2, 2003
The language that appears in this guide has been developed by various state affiliates of the National Education Association (NEA). We are grateful to them for their work and their generosity in sharing what they have developed.

If you have questions about specific provisions, please direct them to the designated state contact person:

**Massachusetts Teachers Association**  
Elementary and Secondary Education Act (ESEA)  
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Alice R. Paes  
Director of Affiliate Services  
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**Michigan Education Association**  
Bargaining Recommendations for Issues Raised by ESEA  
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**New Jersey Education Association**  
Bargaining Recommendations for Title I Paraprofessionals Raised by the Elementary and Secondary Education Act (ESEA)  
Joe Murphy  
Field Representative for Educational Support Services  
609-599-4594 ext. 2390

**Ohio Education Association**  
Bargaining Guide  
Kevin Flanagan  
Regional Director  
330-650-9200

**Pennsylvania State Education Association**  
Suggested Contract Language for Act 16 and ESEA Issues  
Robert Creveling  
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**Wisconsin Education Association Council**  
Bargaining Language Recommendations for ESEA  
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Among NEA staff, special thanks are due to Carolyn York, Bob Strunk, Tim Fitzgerald, Jorge Rivera, and Yolanda Urquhart of Collective Bargaining and Member Advocacy. In addition, we wish to acknowledge the invaluable assistance we received from Joel Packer, NEA Government Relations.

Lynn Ohman  
Director  
NEA Collective Bargaining and Member Advocacy
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This manual offers guidance on the provisions of the Elementary and Secondary Education Act* that NEA members may want to address through bargaining or local policy development and it offers sample model language developed by NEA state affiliates in these areas. The bargaining proposals were developed within the context of state law, labor relations history, and education policy.

The guide is organized by sections, each dealing with a different aspect of the law. It also includes, for greater clarity and usefulness, negotiators’ notes taken directly from state bargaining guides. Important cautions and additional considerations from the state affiliates’ guides have also been included here.

Local NEA affiliates are strongly advised to consider the circumstances unique to your own school districts and always to discuss strategy and specific proposals with your UniServ Directors before proceeding.

We welcome comments from state and local leaders and staff regarding NCLB bargaining and policy development and encourage you to share any language you develop.

Questions or comments regarding ESEA bargaining and policy development should be directed to Bob Strunk, NEA Collective Bargaining and Member Advocacy at 202-822-7567 or rstrunk@nea.org.

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* We will use the term ESEA to mean the Elementary and Secondary Education Act as reauthorized by the No Child Left Behind Act. ESEA is also used interchangeably with the term NCLB.
ESEA includes specific reference to collective bargaining agreements and states that none of the provisions for school improvement, corrective action, or restructuring for failure to make adequate yearly progress will reduce the rights or remedies of employees under the terms of a collective bargaining or similar agreement between employees and employers.

The law reads:

SEC. 1116 (d) CONSTRUCTION.—Nothing in this section 20 U.S.C §6316 (d) 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. [Emphasis added]

Despite this clear statement, this section has again become the subject of dispute between NEA and the U.S. Department of Education. As this situation develops, we will provide updates to state affiliates through your Office of General Counsel. Updated information is also available from NEA Collective Bargaining and Member Advocacy at 202-822-7080.

Finally, while admittedly difficult to bargain, any guarantee that can be gained from the employer that bargaining unit members will be protected from any adverse impact of section 1116 of ESEA is desirable.

The following model language suggested by state associations is designed to prevent or limit such adverse impact.
GENERAL EMPLOYEE PROTECTION  
(SANCTION PROTECTION)

MICHIGAN

Without the agreement of the association, the employer shall take no action to comply with the No Child Left Behind Act of 2001, as amended, 20 USC 6301 et seq., that has an adverse impact on any bargaining unit member.

PENNSYLVANIA

The best protection against sanctions would be a contractual prohibition against adverse employment action relating to implementation of either or both Acts. The following language provides such protection: [Note: Pennsylvania has a state law similar to ESEA.]

Without the agreement of the association, the employer shall not take any action to comply with the Empowerment Act, 24 P.S. 1701-B et seq., or with the No Child Left Behind Act of 2001, as amended, 20 USC 6301 et seq., that has an adverse impact on any bargaining unit member.

Sanction Protection

If a school building is “in corrective action” for failing to meet adequate yearly progress (AYP), the employer shall exercise options provided under the No Child Left Behind Act of 2001, 20 USC 6301 et seq., other than reopening the school as a charter; replacing teachers or support personnel; turning the school over to a private company; or turning the school over to the state.

If the school district is placed “in corrective action” by the state for failing to meet adequate yearly progress (AYP), under the No Child Left Behind Act of 2001, 20 USC 6301 et seq., the employer shall attempt to negotiate with the state that the state will exercise an option available under the Act other than replacing teachers and support personnel; removing individual schools from the jurisdiction of the district; or abolishing the district.

WISCONSIN

Without the agreement of the association, the employer shall take no action to comply with the ESEA of 2001, as amended, 20 USC 6301 et seq., that has an adverse impact on any bargaining unit member.
ESEA requires states to test students in math and reading annually in grades 3-8 and not less than once in grades 9-12. By 2007-08, states must administer a science assessment not less than once in grades 3-5, 6-9, and 9-12.

Additionally, ESEA requires states to establish baselines or starting points they will use to measure their progress over the next 10 years in meeting a key ESEA requirement: that all students will be performing at or above a “proficient” level on state reading and math assessments by 2013-14.

The new law imposes sanctions on schools primarily based on student performance on these state assessments. It is therefore important for local associations to have the right and the opportunity to review any data on state assessments that a state or school district is using, and be able to respond, so, if needed, they can correct that data.

The bargaining language in this section addresses association rights to review data related to the identification of schools in need of improvement and, in some cases, to offer supporting data to dispute the proposed identification.
When an elementary school or a secondary school is identified for school improvement under 20 USC 6316(b) paragraphs (1) or (5), or for corrective action under paragraph (7), or for restructuring under paragraph (8), the employer shall provide the association with an opportunity to review any and all data, including, but not limited to the school-level data, including academic assessment data, on which the proposed identification is based.

Before identifying an elementary school or a secondary school for school improvement under 20 USC 6316 (b) paragraphs (1) or (5), or for corrective action under paragraph (7), or for restructuring under paragraph (8), the employer shall provide the association with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based. If the association believes that the proposed identification is in error for statistical or other substantive reasons, the association may provide supporting evidence to the employer, which shall consider that evidence before making a final determination.

Before identifying an elementary school or a secondary school for school improvement under 20 USC 6316 (b) paragraphs (1) or (5), or for corrective action under paragraph (7), or for restructuring under paragraph (8), the employer shall provide the association with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based. If the association believes that the proposed identification is in error for statistical or other substantive reasons, the association may provide supporting evidence to the employer, which shall consider that evidence before making a final determination.
PENNSYLVANIA

Under ESEA/NCLB, buildings have the authority to review the decisions of districts concerning identification for sanctions. The following language would afford locals the right of review:

Before identifying an elementary school or secondary school for school improvement under 20 USC 6316(b) paragraphs (1) or (5), or for corrective action under paragraph (7), or for restructuring under paragraph (8), the employer shall provide the association with an opportunity to review the school-level data, including but not limited to academic assessment data, on which the proposed identification is based. If the association believes that the proposed identification is in error for statistical or other substantive reasons, the association may provide supporting evidence to the employer, which shall consider that evidence before making a final determination concerning identification.

WISCONSIN

Before identifying an elementary school or a secondary school for school improvement under 20 USC 6316 (b) paragraphs (1) or (5), or for corrective action under paragraph (7), or for restructuring under paragraph (8), the employer shall provide the association with an opportunity to review the school-level data, including academic assessment data, on which the proposed identification is based. If the association believes that the proposed identification is in error for statistical or other substantive reasons, the association may provide supporting evidence to the employer, which shall consider that evidence before making a final determination.
SEA mandates school improvement for any school that fails to make “adequate yearly progress” (AYP) for two consecutive years. Schools that do not make AYP for two consecutive years are designated as schools “in need of improvement” the next year.

A school designated as “in need of improvement” must:

• Develop a two-year improvement plan to strengthen core academic subjects, address the specific issues that cause the school to be identified, and adopt policies and practices that have the greatest likelihood of improving student achievement;
• Spend 10 percent of its Title I funds on improved professional development for its teachers and principal;
• Provide public school choice, if not prohibited by state law;
• Provide 5-15 percent of its Title I funds to pay for transportation costs to implement public school choice;
• Notify parents of the school’s status;
• Receive technical assistance from the school district;
• Receive federal school improvement funds.

If, after being designated as “in need of improvement” for one year, a school still fails to make AYP, it must continue to do the above and provide supplemental services to students (see p. 35). If, after two years of school improvement, the school still fails to make AYP, the school is subject to corrective action absent “exceptional or uncontrollable circumstances.” It must continue with all of the above and take one of the following steps as directed by the school district.

• Replace the school staff who are relevant to the failure;
• 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;
• Restructure the internal organizational structure of the school.

If, after one year in corrective action, the school still fails to make AYP, it must continue to offer school choice and supplemental services and is subject to
restructuring along the lines of one of the following models, as determined by the school district:

- Reopen the school as a public charter school;
- Replace all or most of the school staff (which may include the principal) who are relevant to the failure to make AYP;
- Enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school;
- Turn the operation of the school over to the state educational agency, if permitted under state law and agreed to by the state;
- Implement any other major restructuring of the school’s governance arrangement that makes fundamental reforms, such as significant changes in the school’s staffing and governance.

In addition to the sanctions imposed by school districts on schools that fail to make AYP as described above, states must impose sanctions on school districts that fail to make AYP.

A state may also decide that a school must undergo reconstitution. This is a process that entails severe restructuring, which may include major staffing changes, removal of teachers and/or administrators, or take-over by the state or private entities. Reconstitution may be sought for a variety of reasons, including but not limited to student performance.

Prior to bargaining school improvement issues, local associations should review their individual collective bargaining agreements to avoid conflict with existing rights and obligations included in existing provisions covering such things as curriculum committees, labor-management committees, professional development committees, bargaining procedures, etc. No improvement plan should alter or modify existing bargaining agreements.

School Improvement Plans (SIPs), according to the law, are to be developed in consultation with parents, school staff, and outside experts. The model language proposals that follow offer suggestions for school improvement committees that would ensure input from members of the bargaining unit.
Additional suggestions for model language addressed in this section are:

- Employee protections for serving, or failing to serve, on a SIP committee, and compensation related to serving;
- Specific prohibitions against the SIP modifying or superceding the existing collective bargaining agreement;
- The composition and participation of bargaining unit members on the district and building SIP committees;
- Sending recommendations of the SIP committee to bargaining representatives for mutual agreement at the bargaining table;
- Issues related to layoff, transfer, school calendar, and curriculum for schools that are in the corrective action phase of ESEA. (See also sections on Transfer, Reduction in Force, and Reassignment (p. 26) and Curriculum and Testing (p. 32);
- Provisions to follow for a school undergoing the restructuring process.
**MASSACHUSETTS**

**Employee Protection**
Any participation on a SIP committee shall be voluntary. The participation or lack of participation of an individual bargaining unit member or group of bargaining unit members on a SIP committee shall not be noted or considered in the employer’s employment decisions, including but not limited to evaluation, assignment, extra duty assignment, conference attendance, promotion, discipline, or discharge of any bargaining unit member.

**Compensation**
Employees participating in SIP committee activities, including training and scheduled committee meetings, will be compensated on a per diem basis for all time involved. If SIP committee meetings or activities are scheduled during an employee’s regular workday, the employee shall be released from duties without loss of time or pay.

**MICHIGAN**

*Prior to bargaining school improvement issues, review your collective bargaining agreement to avoid conflict with existing rights and obligations embodied in provisions covering such things as curriculum committees, labor-management committees, professional development committees, negotiations procedures, etc.*

**School Improvement Plans**
No School Improvement Plan provision shall alter, modify, violate, or supersede, except as mutually agreed in writing by the employer and the association, this agreement or any other formal or informal understanding, condition, or practice established between the parties. The foregoing shall apply to any School Improvement Plan the employer intends to implement.

**Scope**
No SIP committee or School Improvement Plan shall address the issues of wages, hours, terms, and other conditions of employment or matters established in statute such as the Public Employment Relations Act, the Michigan Teacher Tenure Act, etc. No SIP committee shall engage in collective bargaining or have the authority to address employment matters.
Employee Participation
Any participation in a SIP committee shall be voluntary. The participation or lack of participation of an individual bargaining unit member or group of bargaining unit members in a SIP committee shall not be noted or considered in the employer’s employment decisions, including but not limited to evaluation, assignment, extra duty assignment, conference attendance, promotion, discipline, or discharge of any bargaining unit member.

Program Evaluation
After implementation of a SIP committee, the employer and the association will periodically evaluate the work and operation of the committee.

School Improvement Plan Committees
School Improvement Plan committee(s) shall be established to deal with the provisions of the No Child Left Behind Act of 2001, as amended, 20 USC 6301 et seq. The composition of the district’s SIP committee and any building’s SIP committee shall be subject to the following provisions:

- The majority of each SIP committee shall be employees selected by the respective bargaining agent of each bargaining unit within the district. The total number of bargaining unit employees on the SIP committee shall be allocated among the bargaining units according to the relative size of each bargaining unit.
- For building level SIP committees the association may choose one (1) contract specialist (as one of the representatives of the bargaining unit) who may or may not be a member of the building staff.
- The administrator members and the bargaining unit members of the SIP committee will mutually agree to the other individuals to be members of the committee (i.e., parents, students, and others in the school community).

Compensation
Employees participating in SIP committee activities, including training and scheduled committee meetings, will be compensated on a per diem basis for all time involved. If SIP committee meetings or activities are scheduled during an employee's regular workday, the employee shall be released from duties without loss of time or pay.
Bargaining

Every School Improvement Plan recommended by the SIP committee shall be immediately submitted to the bargaining representatives of the parties. Upon the demand of either party, the parties shall meet and negotiate the School Improvement Plan. No School Improvement Plan shall be implemented without the mutual agreement of the parties.

ESEA, a.k.a. the No Child Left Behind Act of 2001, 20 USC 6301 et seq., mandates school improvement plans for any school building that fails to make “adequate yearly progress” for two consecutive years. The possible remedies, some mandated, some suggested, some multiple choice options, (see 20 USC 6316) include:

- School choice (within the district, students may choose the building to attend);
- High quality professional development;
- Adopt policies and practices concerning the school’s core academic subjects;
- Establish specific annual, measurable objectives for student progress;
- Specify technical assistance to be provided to the school building;
- Identify strategies to promote effective parental involvement;
- Incorporate before-school, after-school, and summer activities;
- Incorporate a teacher mentoring program;
- Make supplemental educational services available to the school building (including after school tutoring);
- Replace the school staff who are relevant to the failure;
- 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;
- Restructure the internal organizational structure of the school;
- And the end of the road, pick one of the following:
  - Reopening the school as a public charter school.
  - Replacing all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress.
  - Entering into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school.
  - Turning the operation of the school over to the state educational agency, if permitted under state law and agreed to by the state.
• Any other major restructuring of the school’s governance arrangement that makes fundamental reforms, such as significant changes in the school’s staffing and governance.

To the extent possible, the association should bargain the content of the school improvement plans that otherwise may include some of the more horrific provisions listed immediately above. All of the above provisions appear in Section 1116 (20 USC 6316) of ESEA and therefore can not supercede any provision of a collective bargaining agreement as provided by 20 USC 6316 (d.).

**OHIO**

**School Improvement Plans**

No School Improvement Plan provision shall alter, modify, violate, or supersede, except as mutually agreed in writing by the employer and the association, this agreement or any other formal or informal understanding, condition or practice established between the parties. The foregoing shall apply to any School Improvement Plan the employer intends to implement.

**Scope**

No SIP committee or School Improvement Plan shall address the issues of wages, hours, terms, and other conditions of employment or matters established in Ohio Revised Code Chapters 3319 and 4117.

No SIP committee shall engage in collective bargaining or have the authority to address employment matters.

**Employee Participation**

Any participation in a SIP committee shall be voluntary. The participation or lack of participation of an individual bargaining unit member or group of bargaining unit members in a SIP committee shall not be noted or considered in the employer’s employment decisions, including but not limited to evaluation, assignment, extra duty assignment, conference attendance, promotion, discipline, or discharge of any bargaining unit member.

**Program Evaluation**

After implementation of a SIP committee, the employer and the association will periodically evaluate the work and operation of the committee.
School Improvement Plan Committees

School Improvement Plan committee(s) shall be established to deal with the provisions of the No Child Left Behind Act of 2001, as amended, 20 USC 6301 et seq. The composition of the district’s SIP committee and any building’s SIP committee shall be subject to the following provisions:

- The majority of each SIP committee shall be employees selected by the respective bargaining agent of each bargaining unit within the District. The total number of bargaining unit employees on the SIP committee shall be allocated among the bargaining units according to the relative size of each bargaining unit.
- For building level SIP committees the association may choose one (1) contract specialist (as one of the representatives of the bargaining unit) who may or may not be a member of the building staff.
- The administrator members and the bargaining unit members of the SIP committee will mutually agree to the other individuals to be members of the committee (i.e., parents, students, and others in the school community).

Compensation

Employees participating in SIP committee activities, including training and scheduled committee meetings, will be compensated on a per diem basis for all time involved. If SIP committee meetings or activities are scheduled during an employee's regular workday, the employee shall be released from duties without loss of time or pay.

Bargaining

Every School Improvement Plan recommended by the SIP committee shall be immediately submitted to the bargaining representatives of the parties. Upon notification that a school is entering the first year of “school improvement,” the parties shall meet and negotiate the School Improvement Plan. No school improvement plan shall be implemented without the mutual agreement of the parties. Prior to implementing a School Improvement Plan, the parties must exhaust the mutually agreed upon dispute resolution procedures contained in Article___. Under no circumstances shall the SIP committee consider replacement of bargaining unit members as an option in complying with ESEA.
Act 16 requires an improvement plan for districts on the Empowerment List and ESEA/NCLB requires an improvement plan for the buildings identified for sanctions. Thus, a district might need improvement plans under both statutes. The following language might be helpful in addressing these requirements:

1. **School Improvement Plan Committees**
   a. School Improvement Plan (SIP) committees shall be established to deal with the provisions of the No Child Left Behind Act of 2001, as amended, 20 USC 6301 et seq. The composition of the district’s SIP committee and any building’s SIP committee shall be subject to the following provisions:
      1. The majority of each SIP committee shall be employees selected by the respective bargaining agent of each bargaining unit within the district. The total number of bargaining unit employees on the SIP committee shall be allocated among the bargaining units according to the relative size of each bargaining unit.
      2. For building level SIP committees, the association may choose one (1) contract specialist (as one of the representatives of the bargaining unit) who may or may not be a member of the building staff.
      3. The administrator members and the bargaining unit members of the SIP committee will mutually agree to the other individuals to be members of the committee (i.e., parents, students, and others in the school community).

2. **Improvement Plans and Operation of Teams Responsible for Designing Such Plans**
   a. No improvement plan under either Act 16 or ESEA shall alter, modify, violate, or supersede, except as mutually agreed in writing by the employer and the association, this agreement or any other formal or informal understanding, condition, or practice established between the parties.
   b. No improvement plan under Act 16 or ESEA shall address the issues of wages, hours, terms, and other conditions of employment or matters established in statutes and regulations.
c. No empowerment team or school improvement committee shall engage in collective bargaining or have the authority to address employment matters.

d. Any participation on an empowerment team or in a school improvement committee shall be voluntary. The participation or lack of participation of an individual bargaining unit member or group of bargaining unit members in developing improvement plans shall not be noted or considered in the employer’s employment decisions, including but not limited to evaluation, assignment, extra duty assignment, conference attendance, promotion, discipline, or discharge of any bargaining unit member.

e. After designation of an empowerment team, and/or a school improvement committee, the employer and the association will periodically evaluate the work and operation of the team and committee.

f. Employees participating in empowerment team or SIP committee activities, including training and scheduled committee meetings, will be compensated on a per diem basis for all time involved. If empowerment team or SIP committee meetings or activities are scheduled during an employee’s regular workday, the employee shall be released from duties without loss of time or pay.

g. Every improvement plan or revision of the plan recommended by the empowerment team or SIP committee shall be immediately submitted to the bargaining representatives of the parties. Upon the demand of either party, the parties shall meet and negotiate the improvement plan. No improvement plan shall be implemented without the mutual agreement of the parties.

WISCONSIN

Adequate Yearly Progress (AYP)

1. In the event that a school is considered to have failed to meet AYP under the No Child Left Behind Act of 2001, as amended, 20 USC 6301 et seq., the employer agrees to the following procedure that will be implemented in order to comply with the corrective action that is required under ESEA.

A. Second Year of School Improvement

1. If a school fails to make AYP for three consecutive years and is placed in a “second year of school improvement,” the ______ district agrees that no
member of this bargaining unit shall be displaced as a result of the district’s decision to provide supplemental services.

B. First Year of Corrective Action
1. If a school fails to make AYP for four consecutive years and is placed in the “first year of corrective action,” the district shall not replace or transfer staff that have been deemed “relevant to failure” under AYP.
2. The employer shall not extend the employee’s school day or school year except by mutual agreement of the parties.
3. In the event the employer considers implementing a new curriculum, the employer and association shall have equal members of association representation and employer representation, not to exceed four members, to construct a new curriculum to comply with the law.

C. Second Year of Corrective Action
1. If a school fails to make AYP for five consecutive years and is placed in the “second year of corrective action,” the district shall not replace or transfer staff that have been deemed “relevant to failure” under AYP.
2. The employer shall not extend the employee’s school day or school year except by mutual agreement of the parties.
3. In the event the employer considers implementing a new curriculum, the employer and association shall have equal members of association representation and employer representation, not to exceed four members, to construct a new curriculum to comply with the law.
4. In the event the employer considers reopening a school as a charter school, this school will be considered an instrumentality of the _____ school district, and all rights, benefits, and obligations under the _____ collective bargaining contract shall apply.
5. In the event the employer considers turning the impacted school over to the state of Wisconsin for management, the employer shall not abdicate its rights and responsibilities to enforce the _____ collective bargaining contract.
6. Under no circumstances shall a private management company be permitted to take over the impacted school.
7. Should the employer consider “major restructuring” of the impacted school, a joint committee of association and management employees shall meet to agree on the implementation of said restructuring.

WEAC recommends that locals use this language as a guideline for a better understanding of sanctions that may be imposed on a school as a result of failure to meet AYP. Please review boilerplate contract language to ensure that members are not harmed as a result of failure to meet AYP.

School Reconstitution Process (Teachers)

Prior to January 31 of each school year, the superintendent may notify any _____ school that it has been identified for reconstitution. Prior to December 15 of each school year, the staff members at any ____ school may request that the superintendent identify their school for reconstitution when at least two-thirds of the teaching staff assigned to the school supports the request in a vote conducted by the _____ building representative.

The following process shall be implemented at schools identified for reconstitution:

1. The school shall develop a comprehensive educational plan to improve student achievement. The plan shall be developed through a democratic, consensus-building process in which staff members, parents, and other school community members shall have an opportunity to be actively involved in the development of the overall vision and specific plan for the school.

2. Commencing in February, following identification of a school for reconstitution, staff members at the school shall begin the process of in-service/planning required to develop a comprehensive educational plan for the school. Time for the staff to engage in the planning process may be provided by any combination of the following:

   a. Teachers who attend in-service activities shall receive additional compensation in accordance with _____ of the contract.

   b. Up to one-half of each (banking day) may be used for planning activities related to reconstitution. If the teaching staff concurs by at least a two-thirds vote, additional time up to a full day of each (banking day) may be used for planning related to reconstitution.
c. Each week teachers may be required to attend a one (1)-hour, after-school plan development/in-service meeting for the entire teaching staff related to reconstitution. The maximum amount of time teachers shall be required to attend these meetings shall not exceed four (4) hours per month. With agreement of the teaching staff (two-thirds vote), the four (4) hours per month may be scheduled as two (2), two (2)-hour blocks of time per month, or in any other manner not to exceed four (4) hours per month during the school year. Teachers shall attend in-services with additional compensation in accordance with _____ of the contract. At the discretion of the superintendent, students at a school identified for reconstitution may be released for half days or full days for the purpose of providing time for staff inservice and/or planning activities.

3. An educational plan shall be considered completed by the school after it is supported by a two-thirds vote of the teaching staff and supported by the principal following discussion with the school council. Teaching staff shall include all certificated, _____ represented employees assigned to the school.

4. The educational plan shall then be submitted to a broadly-based _____ districtwide reconstitution committee composed of no more than seven (7) members appointed by the superintendent. The committee shall contain _____ administrators and community members and at least one (1) member recommended for appointment by the association. The educational plan shall be submitted to the committee after it is complete, but no later than November 1 of the school year following identification of a school for reconstitution. The _____ districtwide reconstitution committee may send the plan back to the school for further development or recommend the plan to the superintendent. The superintendent may send the plan back to the school for further development or approve the plan no later than February 1 of the school year following identification of a school for reconstitution.

5. The educational plan shall be implemented at the start of the school year following approval of the plan by the superintendent.

6. In order to provide assurances that staff members are committed to the new educational plan at reconstituted schools, the following processes are established:
a. All teacher-unit staff members assigned to a school identified for reconstitution shall have the opportunity to participate in the process of developing the educational plan. The ___ administration shall notify teachers, who may be newly assigned to a school undergoing reconstitution, that they are expected to be involved in developing an educational plan. Teachers who choose not to commit to the planning process shall not be permanently assigned. Those permanently assigned staff members who are not interested in participating in the development of a plan shall be excessed in June of the school year in which the school is identified for reconstitution. Those staff members who remain at the school, but who fail to participate in the planning process, shall be designated as excessed by the principal in June following approval of the new educational plan by the superintendent and reassigned in accordance with the contract. Participation, as used in this section, means attending 90 percent of the plan development/in-service sessions, unless unable to attend for a reason recognized under _____, of the contract, or unless excused by the principal.

Please modify this section of the language to suit situations where there are not multiple opportunities for employment within the district for teachers. This language, which is based on the language from the Milwaukee Teachers Association contract, speaks to excessed employees, which is to say those employees who are laid off from one school and who still have rights to work at another school in the district.

b. After the new plan has been approved by the superintendent, each teacher-unit staff member shall have the opportunity to determine if he/she is in agreement with the new educational plan. If so, the staff member shall be treated as excessed and reassigned in accordance with the provisions _____ of the contract prior to implementation of the new educational plan.

c. If, after the new educational plan has been implemented, a teacher determines that he/she is unable to agree with the program at a reconstituted school, that teacher shall confer with the principal at the earliest opportunity. The principal shall allow the teacher to transfer from his/her current position to any vacant position within the school district in accordance with _____ of the contract.
7. The parties understand that the provisions of school reconstitution process, are experimental in nature and shall expire upon one (1) year notice by either party to the other of its intent to end the provisions. Such notice shall not be given before June, ____.

School Reconstitution Process, ESP
In the event a school is reconstituted as defined under Article ___ Section ___ of the _____ Teachers collective bargaining agreement, the district agrees that no employee shall be adversely affected as a result of the implementation of this language.
Beginning in the 2002-2003 school year, ESEA requires school districts that receive Title I funds to prepare and disseminate an annual report card about its performance that specifies, among other things:

- The performance of students in the district on state assessments versus the performance of all students in the state on those assessments.
- The number and percentage of schools in the district identified for school improvement, corrective action, or restructuring.

In addition, school districts must prepare and disseminate annual report cards on each school in the district, specifying whether the school has been identified to be in need of improvement, corrective action, or restructuring and how the students in that school have performed on state assessments.

School districts may include other information in these report cards such as class size, percent of students receiving free or reduced price lunch, school attendance, and data on the school finance system. Proposed model language to include these subjects on the report cards follow.

In addition, proposed model language to limit the use of test scores and ensure that employee evaluations (or discipline or discharge) will not result from test scores or test results should be considered. Several state affiliates also recommend language that specifically excludes parents, students, or other district employees from participating in evaluation of bargaining unit members.

Under the “Parental Notification” provision, schools that receive Title I funds must notify parents of their right to request information on the “Professional Qualifications” of their child’s teachers. In addition, the school must affirmatively notify parents if their child has been taught for four or more weeks by a teacher who is not "highly qualified" as that term is defined under ESEA. In relation to these provisions, proposed model language should be considered to require school districts to notify members in writing about parental requests for information and to limit the information provided to items related to certification and degrees earned. In order to protect the rights of bargaining unit members, provisions should be negotiated to limit the type of information that may be provided to what is called for under ESEA. In fact, Section 1111(i) of ESEA requires such information to be “collected and disseminated in a manner that protects the privacy of individuals.” A sample parental notification letter is available from the NEA Office of General Counsel.
The parties agree that parents, students, or other district employees will not be used to evaluate bargaining unit members. No test scores or test results of any kind will be used to evaluate bargaining unit members.

PENNSYLVANIA

Under the Act, districts must provide parents with information about the qualifications of their child’s teacher(s). The statute requires at a minimum that four types of information must be provided but allows districts to provide additional information. The provision below limits the type of information that may be provided to those areas of information that must be provided under the statute. The following language is suggested:

If the district receives a request from a parent for information about the professional qualifications of the his/her child’s teacher(s) pursuant to the No Child Left Behind Act of 2001, 20 USC 6301 et. seq., the district shall only provide information about the following: (1) whether the teacher has met state qualifications and licensing criteria for the grade levels and subject areas taught; (2) whether the teacher has emergency or provisional certification; (3) the degree(s) and certification held by the teacher and subject area for each degree or certification; (4) whether the child is receiving services of a paraprofessional and the qualifications of the paraprofessional. The district shall also notify the teacher in writing about any parental request for information about the teacher’s qualifications and the information provided by the district in response to the request.

Evaluations
1. The parties agree parents, students, or other district employees may not participate in any way in evaluating bargaining unit members and that information received from these individuals may not be used in evaluating bargaining unit members.

2. The employer may not use student test scores, test results, or an analysis of such scores or results as a basis for evaluating, disciplining, or discharging teachers.
WISCONSIN

A. Should a school be considered Title I and required under ESEA of 2001, as amended, 20 USC 6301 et seq., to provide annual report cards to the parents and the public, the following information shall also be required to be reported:

1. Student attendance and tardiness
2. Class sizes
3. Student turnover
4. Number of after-school programs
5. Conditions of buildings (what must be repaired)
6. Integration of technology
7. Percentage of students receiving free or reduced price lunch
8. School safety concerns or issues

B. The employer shall not initiate the release of the name(s) or grade level(s) of teachers who are deemed to be highly qualified. Nor shall the employer initiate the release of the names or grade levels of those teachers who are not considered highly qualified.

C. Prior to the release of any public information, the employer shall meet with a designee of the association to review and to modify where necessary information that is intended to be released to comply with ESEA.

D. Prior to the release of information due to a public records request, the employer shall notify the impacted members via certified mail to inform them that a request has been made. The impacted members shall have the ability to object to the release of this information, per Wisconsin Supreme Court Case 94-2795 SSA.
As a result of provisions in section 1116 of ESEA that impose sanctions on schools “in need of improvement,” including the option of public school choice (see p. 8-10), it may be necessary to examine existing contract language to make sure it contains adequate protections for bargaining unit members who may face transfers, lay-offs, or reassignments.

State affiliates recommend securing language that:

- Defines transfers and specifies how voluntary and involuntary transfers may occur;
- Allows involuntary transfers only where there is reasonable and just cause;
- Bars layoffs and involuntary transfers resulting from ESEA or provides parameters and limitations on transfers and lay-offs including employee layoff recall rights;
- Places limits on assignments outside a teacher’s certification.

State affiliates also strongly recommend language that protects Title I paraprofessionals, who are required to meet new qualifications (see Paraeducator Quality p. 49). Some state affiliates recommend that paraprofessionals who have performed successfully in the past as a paraprofessional automatically be considered qualified under ESEA. This appears to conform to the statutory provision that a paraprofessional meet the federal standard if the employee can demonstrate his/her knowledge of and ability to assist in instruction of reading, writing, and math, based on a state or local assessment. The U.S. Department of Education has confirmed that such assessment does not have to be a written test. In addition, Title I paraprofessionals who do not meet the new qualifications by the law’s deadline should have rights to transfer to similar non-Title I positions with equal pay and hours.
MASSACHUSETTS

No employee shall be laid off in whole or in part or terminated as a result of the implementation of a “public school choice” option, restructuring, or any other provision of the No Child Left Behind Act of 2001, 20 USC 6301 et. seq.

No current paraprofessional employee working with a Title I program/district supported by Title I funds shall be laid off in whole or in part or terminated from employment by the district for failure to meet the ESEA requirements of 20 USC 6319 (c). An employee who is unable to meet the deadline established by law shall be transferred to another bargaining unit position of equal pay and hours as such vacancy occurs.

MICHIGAN

A. **Definition of “Transfer”**  A “transfer” shall be defined as either a voluntary or involuntary change in: (1) a bargaining unit member’s position or assignment to another position or assignment within the bargaining unit, (2) building assignment, (3) grade level(s) included in an assignment in preK-6, (4) subject area(s) included in an assignment, (5) a non-classroom assignment such as librarian, guidance counselor, itinerant personnel, etc., or (6) special education assignment such as learning disability, emotionally impaired, etc. Transfers to vacancies shall be governed by the language above pertaining to vacancies. Other transfers will be governed by this section.

B. **Voluntary Transfers**  A request for a transfer may be made at any time in writing to the personnel office with a copy to the association. The request shall specify the school, grade, subject/position sought. Requests for a transfer by bargaining unit members wishing to switch positions shall be granted. Subject to certification, a request for voluntary transfer shall be granted unless the granting of same is inconsistent with the language pertaining to the filling of vacancies. Receipt of the request for transfer shall be acknowledged by the employer within five (5) working days. No bargaining unit member shall be discriminated against because of a request to transfer.

C. **Involuntary Transfers**  Involuntary transfers may be effected only for reasonable and just cause. Thirty (30) days notice of the intention to transfer specifying the
reasons for same and the specific position to be transferred to shall be provided to the affected bargaining unit member and the association. Cause for involuntary transfer includes only cause involving the individual’s performance, or as part of a necessary reduction of force, as determined pursuant to this agreement to maintain the most senior staff possible districtwide consistent with the requirements of this agreement. The specifics of the use of involuntary transfers as part of staff reduction shall be set forth in the layoff and recall article of this agreement.

No bargaining unit member shall be involuntarily transferred in order to implement a school improvement plan developed pursuant to the No Child Left Behind Act of 2001, 20 USC 6301 et seq.

**Reduction in Force**

No employee shall be laid off in whole or in part or reduced in hours or pay as a result of the implementation of a “public school choice” option provided by the No Child Left Behind Act of 2001, 20 USC 6301 et seq.

**Assignment:**

A teacher involuntarily assigned to teach an elementary grade level outside his/her certification or assigned to teach one (1) or more classes in a subject area in which he/she does not have a major shall not be adversely impacted by said assignment. Said teacher shall be granted the first vacancy he/she applies for provided he/she is certified for the vacancy and for secondary positions and he/she also holds a major in the subject areas included in the assignment. This paragraph shall not supercede the vacancy, transfer, layoff, or recall provisions of the agreement.

**OHIO**

No employee shall be laid off in whole or in part or reduced in hours or pay as a result of the implementation of a “public school choice” option, restructuring or other provision existing as a result of the No Child Left Behind Act of 2001 20 USC 6301 et. seq.

No current paraprofessional employee working with a Title I program shall be laid off or terminated from employment by the district for failure to attain two (2) years of study at an institution of higher education or obtain an associates or higher degree. Past successful performance of paraprofessional duties as supported by local
district evaluation shall constitute meeting rigorous standards of quality and demonstrate knowledge of, and the ability to assist in instructing, reading, writing, mathematics, and/or reading readiness.

PENNSYLVANIA

Transfers
1. A “transfer” shall be defined as either a voluntary or involuntary change in: (1) a bargaining unit member's position or assignment to another position or assignment within the bargaining unit; (2) building assignment; (3) grade level(s) included in an assignment in preK-6; (4) subject area(s) included in an assignment; (5) a non-classroom assignment such as librarian, guidance counselor, itinerant personnel, etc.; or (6) special education assignment such as learning disability, emotionally impaired, etc.

2. Voluntary Transfers: A request for a transfer may be made at any time in writing to the personnel office with a copy to the association. The request shall specify the school, grade, subject/position sought. Requests for a transfer by bargaining unit members wishing to switch positions shall be granted. Subject to certification, a request for voluntary transfer shall be granted unless the granting of same is inconsistent with the language pertaining to the filling of vacancies. The employer shall acknowledge receipt of the request for transfer within five (5) working days. No bargaining unit member shall be discriminated against because of a request to transfer.

3. Involuntary Transfer: Involuntary transfers may be affected only for reasonable and just cause. Thirty (30) days notice of the intention to transfer specifying the reasons for same and the specific position to be transferred to shall be provided to the affected bargaining unit member and the association. Cause for involuntary transfer includes only cause involving the individual's performance or as part of a necessary reduction of force, as determined pursuant to this agreement to maintain the most senior staff possible districtwide consistent with the requirements of this agreement. The specifics of the use of involuntary transfers as part of staff reduction shall be set forth in the layoff and recall article of this agreement.
**Reduction in Force**
No bargaining unit member shall be involuntarily transferred, laid off in whole or in part or reduced in hours or pay in order to implement a school improvement plan or school choice requirements under the Empowerment Act, 24 P.S. 1701-B et seq. or under No Child Left Behind Act of 2001, 20 USC 6301 et seq.

**Assignment**
A teacher involuntarily assigned to teach an elementary grade level outside his/her certification or assigned to teach one (1) or more classes in a subject area in which the teacher does not have a major shall not be adversely impacted by said assignment. Said teacher shall be granted the first vacancy he/she applies for provided he/she is certified for the vacancy and for secondary positions, also holds a major in the subject area included in the assignment. This paragraph shall not supercede the vacancy, transfer, and layoff or recall provision of the agreement.

**WISCONSIN**

**Transfers**
1. A transfer is the filling of all new or vacated positions by a current bargaining unit member and is governed by Article ____, Job Posting.

2. Upon transfer to a job within the same pay range, the employee shall retain his/her pay rate. If not at the maximum, he/she shall advance normally on the salary schedule.

3. An employee going to a lower rated job through a voluntary transfer shall receive the maximum of the new range if lower or the step equivalent to his/her former wage. If temporarily or involuntarily transferred, he/she shall receive no reduction in pay.

4. An employee going to a higher rated job through a voluntary transfer shall be placed on the salary schedule at his/her same step. If not at the maximum, he/she shall advance normally on the salary schedule.

**Involuntary Transfer**
1. No employee shall be transferred involuntarily without good reason(s) and without a conference on the matter. The employee will be given written notice stating
the reason(s) for the transfer. No employee will be involuntarily transferred to another campus.

2. Where the district for good reasons determines to fill a position by involuntary transfer and two or more bargaining unit employees are qualified for the position, the district will select the employee with the least seniority for the involuntary transfer.

3. Employees transferred involuntarily to temporarily fill a new or vacated job shall have the right to return to their own position when the new or vacated position is permanently filled. In no case shall an employee be required to remain in the new/vacated position for longer than two (2) months.

4. An employee who is involuntarily transferred shall suffer no loss of wages, hours, or other benefit or advantage as a result of such transfer.

No bargaining unit member shall be involuntarily transferred in order to implement a school improvement plan developed pursuant to ESEA of 2001, 20 USC 6301 et seq.

**School choice:** No employee shall be laid off in whole or in part or reduced in hours or pay as a result of the implementation of a “public school choice” option provided by ESEA of 2001, 20 USC 6301 et seq.

**Assignment:** A teacher involuntarily assigned to teach an elementary grade level outside his/her certification or assigned to teach one (1) or more classes in a subject area in which he/she does not have a major shall not be adversely impacted by said assignment. Said teacher shall be granted the first vacancy he/she applies for provided he/she is certified for the vacancy, and, for secondary positions, also holds a major in the subject areas included in the assignment. This paragraph shall not supercede the vacancy, transfer, layoff, or recall provisions of the agreement.
Many provisions of ESEA require that curriculum, professional development, and other activities be designed and implemented based on scientifically based research. Examples include programs funded through the Reading First, Title I, and Title II (teacher quality) provisions of the statute.

In addition, ESEA requires, under both Title I and Title II, that school district plans be developed in consultation with teachers and other appropriate school personnel (see Sec. 1111(d) (1)).

Joint instructional councils are entities through which local and state affiliates may play a role in the local development and implementation of ESEA guidelines. Participation in, monitoring, and/or attempting to influence these organizations may give association members a voice in the discussion of many pressing issues brought forth by ESEA. These issues include: teaching techniques, curriculum improvement, pupil testing and evaluation, philosophy and goals of the district, research and experimentation in the area of curriculum improvement, class size as it relates to the quality of instructional programs, academic freedom, adequacy of textbooks and supplies, guidelines for professional development through graduate work, and summer school curriculum.

This section provides language on the establishment of a joint instructional council, made up of equal numbers of association and district representatives and establishes the role and responsibilities of the council.
**CURRICULUM AND TESTING**

**MICHIGAN**

**Joint Instructional Council**
A joint instructional council is hereby established. The council shall be composed of ___ bargaining unit members, selected by the association, and an equal number of representatives selected by the administration. Bargaining unit members who serve on the council shall be compensated in accordance with the rate provided in Appendix ___ or shall be provided released time. All expenses pertaining to the staff and clerical assistance needed by the council shall be provided by the employer.

**Council Responsibilities**
The joint instructional council shall initiate and establish policies affecting the design, development, and implementation of all district instructional programs. In conjunction with its recognized responsibilities for professional development and in-service training, the council’s responsibilities shall include:

1. Develop and maintain a comprehensive districtwide curriculum;
2. Develop procedures and criteria for the continuous evaluation of all district instructional programs;
3. Conduct an annual review, and update of the district’s plan and policies for testing and assessment of academic achievement and pupil performance;
4. Research, review, and issue recommendations regarding any proposed change or revision in instructional programs or curricula in the district;
5. Promulgate appropriate policies relating to all district instructional programs and curricula;
6. Establish, alter, or otherwise modify district curricula as determined herein;
7. Approve, reject, or modify all recommendation(s) of the textbook committee.

The council will review and approve all changes in existing or proposed instructional programs or curricula prior to implementation.

**PENNSYLVANIA**

**Tests and Curriculum Language**
1. Joint Instructional Council—A joint instructional council is hereby established. The council shall be composed of ___ bargaining unit members, selected by the
association, and an equal number of representatives selected by the administration. Bargaining unit members who serve on the council shall be compensated in accordance with the rate provided in Appendix ____ or shall be provided released time. The employer shall provide all expenses pertaining to the staff and clerical assistance needed by the council.

2. Council Responsibilities—the joint instructional council shall initiate and establish policies affecting the design, development, and implementation of all district instructional programs. In conjunction with its recognized responsibilities for professional development and in-service training, the council’s responsibilities shall include:

a. Develop and maintain a comprehensive districtwide curriculum;
b. Develop procedures and criteria for the continuous evaluation of all district instructional programs;
c. Conduct an annual review and update of the district’s plan and policies for testing and assessment of academic achievement and pupil performance;
d. Research, review, and issue recommendations regarding any proposed change or revision in instructional programs or curricula in the district;
e. Promulgate appropriate policies relating to all district instructional programs and curricula;
f. Establish, alter, or otherwise modify district curricula as determined herein;
g. Approve, reject, or modify all recommendations of the textbook committee;
h. The council will review and approve all changes in existing or proposed instructional programs or curricula prior to implementation.
ESEA requires schools that do not make “adequate yearly progress” (AYP) for three consecutive years to provide supplemental educational services to economically disadvantaged students in the school and, to the extent funds are limited for such services, to give low-achieving, low-income students priority for such services. One of the supplemental services mentioned in the law is tutoring, which research has shown can be an effective intervention under certain conditions. In addition to tutoring, states may offer parents before- and after-school academic services and/or summer school programs.

The provision of supplemental services may become a bargaining issue because the provision of such services may be bargaining unit work. The recommended language suggests protections in the following areas:

1. Ensure that supplemental services provided by bargaining unit members are voluntary and made on the basis of seniority;
2. Prevent contracting out of bargaining unit work;
3. Guarantee that no bargaining unit member will be assigned to work for which that member is not certificated or licensed;
4. Define bargaining unit work.

SUPPLEMENTAL SERVICES
SUPPLEMENTAL SERVICES

MASSACHUSETTS

Any and all work traditionally performed by members of the bargaining unit shall continue to be performed by bargaining unit members.

PENNSYLVANIA

SUPPLEMENTAL SERVICES

Eligible students in buildings identified for the second year of improvement under the ESEA are entitled to “supplemental services” (essentially tutoring services) under ESEA/NCLB. Thus, identified buildings in a designated district will have to offer these services. The following language addresses the impact of such services upon bargaining unit members:

Employees of the district who provide “supplemental services” to students in a school identified as “in improvement” or “in corrective action” under the No Child Left Behind Act of 2001, 20 USC 6301 et seq., shall be paid at the rate of _____. Participation of employees of the district in providing supplemental services shall be voluntary and assignments shall be made to volunteers on the basis of seniority within the bargaining unit.

WISCONSIN

Bargaining Unit Work (Supplemental Services) (Teachers):

Assignment of Bargaining Unit Work

A. Except as may be provided for elsewhere in this agreement, there shall be no sub-contracting or other assignment of bargaining unit work to employees of the district who are not in the bargaining unit, to employees of any other employer, or to any other individuals. Bargaining unit work shall be performed only by employees who are members of the bargaining unit and entitled to the benefits of this agreement; provided, however, that, in the absence of such an employee, the district may assign bargaining unit work to per diem substitute personnel for a period of time not to exceed forty-five (45) consecutive work days.

B. No bargaining unit member may be assigned to a work assignment or responsibilities that requires a license or certification, which the employee does not hold.
Definition of Bargaining Unit Work

“Bargaining unit work” shall consist of all those duties, assignments, tasks, or responsibilities that are fairly within the scope of responsibilities applicable to the kind of work performed by bargaining unit employees and/or that have been historically or customarily performed by employees in positions included in the bargaining unit. Any educational policy-related duties, which have been historically or customarily performed by bargaining unit employees, shall not be considered bargaining unit work within the meaning of this article.

The parties agree that parents, students, or other district employees will not be used to evaluate bargaining unit members. No test scores or test results of any kind will be used to evaluate bargaining unit members.

Bargaining Unit Work (Supplemental Services) (ESP):

Definition of Bargaining Unit Work

“Bargaining unit work” consists of all those duties, assignments, tasks, or responsibilities that are fairly within the scope of responsibilities applicable to the kind of work performed by bargaining unit employees and/or that have been historically or customarily performed by employees in positions included in the bargaining unit.

Assignment of Bargaining Unit Work

a. Except as may be provided for elsewhere in this agreement, there shall be no subcontracting or other assignment of bargaining unit work to employees of the district who are not in the bargaining unit, to employees of any other employer, or to any other individuals. Bargaining unit work shall be performed only by employees who are members of the bargaining unit and entitled to the benefits of this agreement provided, however, that in the absence of such an employee, the district may assign bargaining unit work to casual employees for a period of time not to exceed sixty (60) days per year.*

b. No bargaining unit member may be assigned to a work assignment or responsibilities, that requires a license or certification, which the employee does not hold.

*If there is a change in the number of days here, be sure to coordinate with definition of casual employee under Definition of Employees section.
While ESEA does not call for increases in salaries and wages, the statute does provide additional funding under both Title I and Title II that may be used for this purpose. For instance, a Title I school program must include “strategies to attract high-quality highly qualified teachers to high-need schools,” which appears to refer to additional funding to retain teachers. Under Title II, a school district may use funds to recruit and retain highly qualified teachers as well as to recruit and hire teachers to reduce class size.

Furthermore, there are sections of ESEA, the implementation of which may increase employee workload, e.g., by providing for employee participation on SIP committees, employee participation in mentoring and/or tutoring, and additional or extended school days. Bargaining language providing for additional compensation for such duties is recommended. ESEA provisions requiring additional education and qualifications for paraprofessionals should also be the basis for demanding higher salaries and wages. Provisions should also be included to define the work day, work week, school year, and the rate at which work beyond the defined day will be compensated.

Local associations are cautioned again about allowing districts to link student performance or test scores to teacher evaluations or merit pay.
Additional Compensation:
Bargaining unit members who serve in any capacity on committees, mentoring, tutoring, and/or teaching for extended days or additional days to meet provisions of school improvement plans required by ESEA 2001 should be compensated for their time at the hourly rate or its equivalent (as determined by use of the employee’s per diem rate).

Reimbursement for professional development costs:
Although costs associated with complying with any increased professional development activities as might be required under ESEA 2001 related to “highly qualified” employee provisions or new paraprofessional education requirements are not wages, but there ought to be reimbursement provisions for all course work, professional development activities, or any other such costs. Similar reimbursement should also cover additional employee costs associated with obtaining new and/or additional certification/licensure.

Merit Pay:
Negotiator’s Note: The law does allow for merit pay, bonuses, and stipends as incentives related to student test performance that the association has traditionally cautioned against. Similar kinds of School Improvement Plan recommendations that have a bargaining affect should require bargaining between the school board and the association before any implementation. Teacher evaluations should not be linked to student performance, merit pay, or any similar provisions that may cause tiered approaches to compensation.

Hours:
Any additional hours available to bargaining unit members as made available through a School Improvement Plan required by the No Child Left behind Act of 2001, 20 USC 6301 et. seq. shall be offered voluntarily to all the employees certified/licensed (qualified where it affects ESP) and such work shall be offered on the basis of the most senior applicants. Additional hours or days shall be rotated among applicants so there is equitable distribution of the additional time. All additional hours or workdays shall be compensated at the bargaining unit member’s regular hourly or daily rate of pay.
Regular Teacher Work Day

A. The regular teacher workday for employees covered by this agreement shall be as follows:

- Elementary (grades pre-K-6): 8:15 a.m. to 3 p.m.
- Secondary (grades 7-12): 7:45 a.m. to 3:45 p.m.

The regular teacher workday shall include a duty-free lunch period consisting of thirty (30) minutes.

B. All work assignments scheduled for performance outside the regular teacher workday shall be considered overtime assignments. Unless compensation for such overtime assignments is provided for elsewhere in this agreement, teachers assigned such overtime assignments shall be compensated at the rate of [$30.00] per hour, with a one-hour minimum payment per assignment.

C. As used in this Article, a teacher's regular hourly rate of pay shall be determined by dividing the teacher's yearly salary by the product of 190 (contract days per year) x 8 (hours per workday).

Work Year, Work Week, Work Day (ESP)

Work Year

An employee's work year is established at the time of hire. Any reduction in number of weeks of work will be considered a partial layoff and subject to the provisions of Article ____, Layoff.

1. The calendar(s) for (year) and (year) are attached as Appendices ____ and ____ and are made a part of this agreement.

2. Full year employees shall be employed from ____ day ____ month to ____ day ____ month. (You may specify each classification here if you wish).
3. School year employees shall be employed as follows:

   a) 
   b) 
   c) 
   d) 
   e) 
   f) 

**Work Week**

The standard workweek shall not exceed five (5) consecutive days, Monday through Friday.

**Work Day**

4. The parameters for the employee workday shall be the following continuous hours

   a) ___ a.m. to ___ p.m.
   b) ___ a.m. to ___ p.m.
   c) ___ a.m. to ___ p.m.
   d) ___ a.m. to ___ p.m.
   e) ___ a.m. to ___ p.m.
   f) ___ a.m. to ___ p.m.

5. A ___ minute uninterrupted lunch hour shall be included in the above-stated work day.
**Class Size**

**SEA** provides that funding available under Title II—Teacher Quality State Grants—may be used to reduce class size. This program is a consolidation of the former class size reduction program with the former Eisenhower Professional Development Program. Since research now provides a clear link between reduced class size and improved student performance, guarantees should be bargained to ensure that available funds are used exclusively to reduce class size.
**CLASS SIZE**

**MASSACHUSETTS**

The employer shall apply for all available funds under the No Child Left Behind Act 2001, 20 USC 6301 et. seq., for reducing class sizes. The employer shall use said funds exclusively to lower class sizes.

**MICHIGAN**

The employer shall apply for all available money under the No Child Left Behind Act of 2001, 20 USC 6301 et seq., for reducing class sizes and shall use said money exclusively to lower class sizes below the maximum allowed under this agreement.

**OHIO**

The employer shall apply for all available funds under the No Child Left Behind Act 2001, 20 USC 6301 et seq., for reducing class sizes. The employer shall use said funds exclusively to lower class sizes below the maximums permitted under this agreement.

**PENNSYLVANIA**

The employer shall apply for all available money under the No Child Left Behind Act of 2001, 20 USC 6301 et seq., for reducing class sizes and shall use said money exclusively to lower class sizes below the maximum allowed under this agreement.
HIGHLY QUALIFIED TEACHERS/PROFESSIONAL DEVELOPMENT

According to ESEA, all teachers newly hired after the first day of the 2002-03 school year must be “highly qualified” if they work in a Title I school; those in other public schools must be “highly qualified” by 2005-06.

Under ESEA, a “highly qualified” elementary school teacher who is new to the profession has a bachelor’s degree; is fully licensed or certified by the state; and has passed a test demonstrating subject knowledge and teaching skills in reading, writing, math, and other areas of any basic elementary school curriculum. Certification and licensure requirements must not be waived on an emergency, temporary, or provisional basis. Alternative routes to certification, as defined by the state, are allowed. Current elementary school teachers either must meet these requirements or demonstrate they are competent through meeting a new statewide standard of competency. Each state will develop a uniform method other than a test to determine whether current teachers who have not passed a test are competent.

Under ESEA, a “highly qualified” middle or secondary school teacher who is new to the profession is fully licensed or certified by the state and does not have any certification or licensure requirements waived on an emergency, temporary, or provisional basis. Alternative routes to certification are allowed. New middle and secondary school teachers also must demonstrate competency in each subject they teach by passing a state test; satisfying the state evaluation standard used to judge competency; or completing an academic major or coursework equivalent to a major, a graduate degree, or advanced certification. Current middle or secondary school teachers must demonstrate they are competent by meeting these criteria or by meeting the new statewide standard of competency as explained above.

ESEA further requires that Title II funds be used for professional development activities. This provision may provide opportunities to negotiate improved language on professional development.

If a collective bargaining agreement does not already contain a provision allowing employees to participate in decision making about professional training and development, then local associations may want to negotiate one. Such provisions should address the responsibilities of a professional development committee, employee representation on the committee, and compensation or released time for employee committee members. The provision should also describe...
clearly the limits of the committee's authority with respect to any matters reserved to the bargaining representative.

In addition, specific language on professional development may also be sought such as language on tuition reimbursement, in-service training opportunities and costs, and certification and licensure costs.
HIGHLY QUALIFIED TEACHERS/PROFESSIONAL DEVELOPMENT

MASSACHUSETTS

Professional Development Committees (Elements of a proposal)
You should consider negotiating contract provisions that include language on the scope and power of professional development committees as well as employee representation on these committees and how the representatives are chosen. You might also include either compensation or release time to serve on such committees. There should be an agreement on the amount of money in the budget that will be set aside to cover the cost of in-service programs that, in the case of paraprofessionals, will allow them to meet the new requirements of the law. There should be no cost incurred by the employee.

Reimbursement for Certification/Licensure (Teachers and Paraprofessionals)
The employer shall reimburse each employee for all costs and/or fees assessed for the application, addition, renewal, and/or reinstatement of any teaching certificate/license or other credentials issued by the Massachusetts Department of Education and/or for any related costs incurred.

Tuition Reimbursement (Teachers and Paraprofessionals)
The employer shall reimburse each employee for all tuition and/or workshop costs (including tuition, fees, books, lab fees, etc.) for all classes/course-work taken by the employee. Reimbursement shall be made within _____ after the employee submits proof of satisfactory completion of the course(s) and receipts for the costs.

MICHIGAN

Reimbursement for Costs of Certificates
The employer shall reimburse each employee for all costs and/or fees assessed for the application, addition, renewal, and/or reinstatement of any teaching certificate, permit, authorization, endorsement, and/or approval issued by the Michigan Department of Education, the intermediate school district, or other authorizing agency.
**Tuition Reimbursement**

The employer shall reimburse each employee for all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four (4) weeks after the employee submits proof of satisfactory completion of the course(s) and receipts for the costs.

**OHIO**

**Local Professional Development Committees (LPDC)**

There shall be at least _____ (number) ( ) LPDC association members who also serve on the employer’s professional development planning committee.

The LPDC’s role and responsibilities shall not expand as a result of the No Child Left Behind Act of 2001, 20 USC.

*There is no requirement under ESEA 2001, 20 USC, that requires LPDCs to increase their current responsibilities. Should the employer want to increase the duties of the LPDC, it must do so via the formal negotiations process. LPDCs should not expand their responsibilities beyond those outlined in statute, LPDC guidelines, and their respective collective bargaining agreements.*

*If the CBA is silent or does not contain a provision that addresses how the employer will design and implement professional development, Ohio Education Association recommends the inclusion of such a provision. This will ensure that employees are actively involved in the decision making regarding training, resources, allocation of funds, etc.*

**Reimbursement for Certification/Licensure**

The employer shall reimburse each employee for all costs and/or fees assessed for the application, addition, renewal, and/or reinstatement of any teaching certificate/license, approval issued by the Ohio Department of Education and/or for any related costs incurred.

**Tuition Reimbursement (Teachers and Paraprofessionals)**

The employer shall reimburse each employee for all tuition costs (including tuition, fees, books, lab fees, etc.) for all classes, coursework taken by the employee. Reimbursement shall be made within _____ ( ) after the employee submits proof of satisfactory (number of days or weeks) completion of the courses(s) and receipts for the costs.
PENNSYLVANIA

Reimbursement of Certificate Costs Language
The employer shall reimburse each employee for all costs and/or fees assessed for the application, addition, renewal, and/or reinstatement of any teaching certificate, permit, authorization, endorsement, and/or approval issued by the Pennsylvania Department of Education or other authorizing agency.

Tuition Reimbursement Language
The employer shall reimburse each employee for all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four (4) weeks after employee submits proof of satisfactory completion of the course(s) and receipts for the costs.

WISCONSIN

Reimbursement of Certificate Costs: (Teacher & ESP)
Reimbursement for Costs of Certificates: The employer shall reimburse each employee for all costs and/or fees assessed for the application, addition, renewal, and/or reinstatement of any teaching certificate, permit, authorization, endorsement, and/or approval issued by the Wisconsin Department of Public Instruction.

Tuition Reimbursement: (Teacher & ESP)
Tuition Reimbursement: The employer shall reimburse each employee for all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four (4) weeks after the employee submits proof of satisfactory completion of the course(s) and receipts for the costs.

In-service/Training: Employees who are required to obtain licensure/certification due to changing roles determined by the district and/or legislation shall be trained by the district and/or compensated for such training. Said compensation shall include, but not be limited to, the cost of credits for certification, license fees, wages, etc.
Paraeducator (Paraprofessional) Quality

ESEA mandates that all states receiving Title I funds must develop a plan to ensure that all new paraeducators hired after January 8, 2002, and working in a program supported by Title I funds (except those who work primarily as translators or solely on parental involvement activities) meet the following requirements. Paraeducators employed on or before January 8, 2002, must satisfy one of the following requirements within four years (i.e., by January 8, 2006).

- Complete at least two years of postsecondary study;
- Obtain an associates (or higher) degree; or
- Meet a rigorous “standard of quality”—as defined by the state—such as a formal state or local assessment of knowledge of, and the ability to assist in teaching, reading, writing, and math.

Local associations may want to include provisions in their collective bargaining agreement specifying how paraprofessionals will be able to meet the standard set by their state department of education.

Provisions local associations may want to consider include:

1. How paraprofessionals hired on or before January 8, 2002, can fulfill the “highly qualified” requirements of ESEA.
2. Exclusion from educational requirements for paraprofessionals working primarily as translators or solely on conducting parental involvement activities.
3. Assurance that the employer covers all expenses incurred in meeting the requirements.
4. A provision for professional development training.
5. A guarantee that a paraprofessional not able to meet the deadline be transferred to another bargaining unit position of equal pay and hours.
6. Creation of a salary structure that provides higher pay for increased skills and training.
7. Delineation of the duties of paraprofessionals.
8. Provision for bonus pay.
Paraeducator (Paraprofessional) Quality

Massachusetts

A. Paraprofessionals hired on or before January 8, 2002, and required by ESEA of 2002, 20 USC 6301 et. seq., to meet the requirements of 20 USC 6319(c) by January 8, 2006, shall:

1. Obtain a secondary school diploma or its recognized equivalent by January 8, 2006; and

2. Be allowed to choose which of the four options below he/she will elect in order to satisfy requirements of 20 USC 6319(c):
   a. Completion of at least two years of study at an institution of higher education (48 credit hours); or
   b. Obtain an associate’s (or higher) degree; or
   c. Meet a rigorous standard of quality and demonstrate, through a formal state academic assessment:
      i. Knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
      ii. Knowledge of, and the ability to assist in instructing, reading readiness, as appropriate, or
   d. Meet a rigorous standard of quality and demonstrate, through a formal academic assessment, as defined by mutual agreement of the association and the employer,
      i. Knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
      ii. Knowledge of, and the ability to assist in instructing, reading readiness, as appropriate.

If a paraprofessional has been determined by another school district or by the Massachusetts Department of Education as having met the requirements of 20 USC 6319(c), then he/she shall be considered by this school district as meeting the requirements of 20 USC 6319(c).

B. The employer shall pay all expenses incurred after January 8, 2002, for each employee required to meet the requirements of 20 USC 6319(c), including all tuition and/or workshop costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be
made within four (4) weeks after the employee submits proof of satisfactory completion of the course(s) and receipts for the costs.

C. Paraprofessionals hired on or before January 8, 2002, and required by ESEA to meet the requirements of 20 USC 6319(c), shall be provided professional development training by ____ 2003, regarding ESEA 2002 and the requirements of 20 USC 6319(c). For those paraprofessionals electing to meet the requirements of 20 USC 6319(c) by a formal academic assessment, training shall be provided to assist in the satisfactory completion of the assessment. All training shall be during work hours and paid at the bargaining unit member’s regular hourly rate.

D. An employee subject to the requirements of 20 USC 6319(c) who is unable to meet the requirements by the deadline established by law, shall be transferred to another bargaining unit position of equal pay and hours as soon as such a vacancy occurs, provided he/she does not otherwise apply for and receive a vacancy and further provided that said transfer shall not supercede the vacancy, transfer, layoff, or recall provisions of the agreement.

The Massachusetts Teachers Association (MTA) has worked with the Massachusetts Department of Education to develop comprehensive local assessment for instructional paraprofessionals. Copies are available through MTA by e-mailing nrobbie@massteacher.org

MICHIGAN

Qualifications of Title I Paraprofessionals:

A. Paraprofessionals hired on or before January 8, 2002, and required by the No Child Left Behind Act of 2001, 20 USC 6301 et seq., to meet the requirements of 20 USC 6319 (c) by January 8, 2006, shall:

1. Obtain a secondary school diploma or its recognized equivalent by January 8, 2006; and
2. Be allowed to elect which of the four options below he/she will elect in order to satisfy requirements of 20 USC 6319 (c):
   a. Completion of at least two years of study at an institution of higher education; or
   b. Obtain an associate’s (or higher) degree; or
c. As defined by the Michigan State Department of Education, meet a rigorous standard of quality and demonstrate, through a formal state academic assessment:
   (i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
   (ii) knowledge of, and the ability to assist in instructing, reading readiness, as appropriate, or

The Michigan Department of Education is preparing to implement the “ACT WorkKeys” paper and pencil test as the state assessment to determine if a paraprofessional meets the qualification requirements of ESEA. This test should be available to all in the spring or summer of 2003.

d. As defined by the mutual agreement of the association and the employer, meet a rigorous standard of quality and demonstrate, through a formal academic assessment:
   (i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
   (ii) knowledge of, and the ability to assist in instructing, reading readiness, as appropriate.

The Michigan Department of Education is developing criteria to allow school districts and local associations to bargain or otherwise adopt a local assessment of parapersonals rather than use the state WorkKeys test. The criteria should be available some time in 2003. Depending on what the state allows, you may want to bargain more specific contract language than “d.” immediately above. Some of the specific options that may be allowed in order to satisfy the requirement for an assessment are:

(1) a paper and pencil test, or
(2) a verbal interview or verbal test, or
(3) a satisfactory written evaluation based upon observation of performance, or
(4) the completion of an appropriate training program approved by the school district, or
(5) an assessment by the school district administration that given the standards of employment of the school district, any paraprofessional with no findings of unsatisfactory performance entered in his/her personnel file within the last _____ months meets the requirements of 20 USC 6319 (c).
3. If a paraprofessional has been determined by another school district or by the Michigan Department of Education as meeting the requirements of 20 USC 6319(c), then he/she shall be considered by this school district as meeting the requirements of 20 USC 6319(c).

B. The employer shall pay all expenses incurred after January 8, 2002, for each employee required to meet the requirements of 20 USC 6319 (c), including all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four (4) weeks after the employee submits proof of satisfactory completion of the course(s) and receipts for the costs.

C. Paraprofessionals hired on or before January 8, 2002 and required by the No Child Left Behind Act of 2001 to meet the requirements of 20 USC 6319 (c) shall be provided professional development training by January 1, 2003, regarding the No Child Left Behind Act of 2001 and the requirements of 20 USC 6319 (c). For those paraprofessionals electing to meet the requirements of 20 USC 6319 (c) by a formal academic assessment, training shall be provided to assist in the satisfactory completion of the assessment. All training shall be during work hours and paid at the bargaining unit member’s regular hourly rate.

D. An employee subject to the requirements of 20 USC 6319 (c) who is unable to meet the requirements by the deadline established by law shall be transferred to another bargaining unit position of equal pay and hours as soon as such a vacancy occurs; provided he/she does not otherwise apply for and receive a vacancy and further provided that said transfer shall not supercede the vacancy, transfer, layoff, or recall provisions of the agreement.

NEW JERSEY

A. Paraprofessionals hired on or before January 8, 2002, and required by ESEA, 20 USC 6301 et seq., to meet the requirements of 20 USC 6319 (c) by January 8, 2006, shall:

1. Be allowed to elect which of the four options will satisfy requirements of 20 USC 6319 (c):
a. Completion of at least two years of study at an institution of higher education defined as 48 credit hours; or
b. Obtain an associate's (or higher) degree; or
c. As defined by the New Jersey State Department of Education, meet a rigorous standard of quality and demonstrate, through a formal assessment of skills on a test specifically designed for this purpose:
   (i) 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, as appropriate, or
d. As defined by the New Jersey State Department of Education, meet a rigorous standard of quality and demonstrate through a program offering a combination of alternative assessments and formal training opportunities—
   (i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics, or
   (ii) knowledge of, and the ability to assist in instructing, reading readiness, as appropriate.

B. The board shall pay all expenses incurred after January 8, 2002, for each employee required to meet the requirements of 20 USC 6319 (c), including all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four weeks after the employee submits proof of satisfactory completion of the course(s) and receipts for the costs.

B.2. In order to assist paraprofessionals in meeting the higher education qualifications of 20 USC 6319 (c) the board shall provide courses from an accredited institution of higher learning sufficient in number for meeting the qualification standard by January 8, 2006. The courses shall be open to all paraprofessionals, offered in the school district, and given during working hours. There shall be no cost to the paraprofessionals who shall not suffer a loss of pay for attending any course.

C. Paraprofessionals hired on or before January 8, 2002, and required by ESEA to meet the requirements of 20 USC 6319 (c) shall be provided professional development training by January 1, 2003, regarding ESEA and the requirements of 20 USC 6319 (c). For those paraprofessionals electing to meet the requirements of 20 USC
6319 (c) by a formal skills assessment, training shall be provided to assist in the satisfactory completion of the assessment. All training shall be during work hours and paid at the bargaining unit member's regular hourly rate.

D. An employee subject to the requirements of 20 USC 6319 (c) who is unable to meet the requirements by the deadline established by law shall be transferred to another bargaining unit position of equal pay and hours as soon as a vacancy occurs; provided he/she does not otherwise apply for and receive a vacancy, and further provided that said transfer shall not supersede the vacancy, transfer, layoff, or recall provisions of the agreement.

E. Duties of Paraprofessionals—

Paraprofessionals shall only be assigned duties per ESEA, 20 USC 6319 (g):
(A) to provide one-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;
(B) to assist with classroom management, such as organizing instructional and other materials;
(C) to provide assistance in a computer laboratory;
(D) to conduct parental involvement activities;
(E) to provide support in a library or media center;
(F) to act as a translator; or
(G) to provide instructional services to students in accordance with the limitations defined in the next section.

LIMITATIONS – A paraprofessional:
A. May not provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher;
B. May assume limited duties that are assigned to similar personnel who are not working in a program supported with Title I funds, 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;
Qualifications of Title I Paraprofessionals:

(c) NEW PARAPROFESSIONALS—

(1) IN GENERAL—each local educational agency receiving assistance under this part (Title 1, Sec. 1111-1127) shall ensure that all paraprofessionals hired after the date of enactment of ESEA (1-8-02) and working in a program supported with funds under this part shall have—

(A) completed at least two years of study at an institution of higher education;

(B) obtained an associate’s (or higher) degree; or

(C) met a vigorous standard of quality and can demonstrate, through a formal state or local academic assessment:

(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(ii) knowledge of, and the ability to assist in instructing, reading readiness, as appropriate.

(2) CLARIFICATION—The receipt of a secondary school diploma (or its recognized equivalent) shall be necessary but not sufficient to satisfy the requirements of paragraph (1) (C).

(d) EXISTING PARAPROFESSIONALS—Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired before the date of the enactment of ESEA (1-8-02), and working in a program supported with funds under this part shall, not later than four years after the date of enactment (4 years after 1-8-02), satisfy the requirements of subsection (c).

(e) EXCEPTIONS FOR TRANSLATION AND PARENTAL INVOLVEMENT ACTIVITIES—

Subsections (c) and (d) shall not apply to a paraprofessional:

(1) who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in program under this part by acting as a translator; or

(2) whose duties consist solely of conducting parental involvement activities consistent with section 1118.

(f) GENERAL REQUIREMENTS FOR ALL PARAPROFESSIONALS—

Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals working in a program supported with funds under this part,
regardless of the paraprofessionals’ hiring date, have earned a secondary school diploma or its recognized equivalent.

Duties of Title I Paraprofessionals

(g) DUTIES OF PARAPROFESSIONAL—

(1) IN GENERAL—Each local educational agency receiving assistance under this part shall ensure that a paraprofessional working in a program supported with funds under this part is not assigned a duty inconsistent with this subsection.

(2) RESPONSIBILITIES PARAPROFESSIONALS MAY BE ASSIGNED—A paraprofessional described in paragraph (1) may be assigned—

A) to provide one-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;

B) to assist with classroom management, such as organizing instructional and other materials;

C) to provide assistance in a computer laboratory;

D) to conduct parental involvement activities;

E) to provide support in a library or media center;

F) to act as a translator; or

G) to provide instructional services to students in accordance with paragraph (3).

(3) ADDITIONAL LIMITATIONS—A paraprofessional described in paragraph (1)—

A) may not provide any instructional service to a student unless the paraprofessional is working under the direct supervision of a teacher consistent with section 1119; and

B) may assume limited duties that are assigned to similar personnel who are not working in a program supported with funds under this part, 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.

USE OF FUNDS—A local educational agency receiving funds under this part may use such funds to support ongoing training and professional development to assist teachers and paraprofessionals in satisfying the requirements of this section.
A. Paraprofessionals hired on or before January 8, 2002, and required by ESEA of 2001, 20 USC 6301 et seq., to meet the requirements of 20 USC 6319 (c) by January 8, 2006, shall:

1. Obtain a secondary school diploma or its recognized equivalent by January 8, 2006; and
2. Be allowed to elect which of the four options below he/she will elect in order to satisfy requirements of 20 USC 6319 (c):
   a. Completion of at least two years of study at an institution of higher education; or
   b. Obtain an associate’s (or higher) degree; or, as defined by the Ohio Department of Education, meet a rigorous standard of quality and demonstrate, through a formal state academic assessment knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
   i. knowledge of, and the ability to assist in instructing, reading readiness, as appropriate, or
   c. As defined by the mutual agreement of the association and the employer, meet a rigorous standard of quality and demonstrate, through a formal academic assessment:
      ii. knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
      iii. knowledge of, and the ability to assist in instructing, reading readiness, as appropriate.
3. If a paraprofessional has been determined by another school district or by the Ohio Department of Education as meeting the requirements of 20 USC 6319 (c), then he/she shall be considered by this school district as meeting the requirements of 20 USC 6319 (c).

B. The employer shall pay all expenses incurred after January 8, 2002, for each employee required to meet the requirements of 20 USC 6319 (c), including all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four (4) weeks after the employee submits proof of satisfactory completion of the course(s) and receipts for the costs.
C. Paraprofessionals hired on or before January 8, 2002, and required by ESEA of 2001 to meet the requirements of 20 USC 6319 (c) shall be provided professional development training by January 1, 2003, regarding ESEA of 2002 and the requirements of 20 USC 6319 (c). For those paraprofessionals electing to meet the requirements of 20 USC 6319 (c) by a formal academic assessment, training shall be provided to assist in the satisfactory completion of the assessment. All training shall be during work hours and paid at the bargaining unit member’s regular hourly rate.

D. An employee subject to the requirements of 20 USC 6319 (c) who is unable to meet the requirements by the deadline established by law shall be transferred to another bargaining unit position of equal pay and hours as soon as such a vacancy occurs; provided he/she does not otherwise apply for and received a vacancy and further provided that said transfer shall not supercede the vacancy, transfer, layoff, or recall provisions of the agreement.
### SAMPLE PARAPROFESSIONAL JOB DESCRIPTION

<table>
<thead>
<tr>
<th>Job Title: ______________</th>
<th>Immediate Supervisor ______________</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pay Range: ______________</td>
<td>$____ to $____ per hour, in accordance with the collective bargaining agreement.</td>
</tr>
<tr>
<td>Work Day: ______________</td>
<td>____ hours per day (____ hours per week) in accordance with the collective bargaining agreement.</td>
</tr>
<tr>
<td>Work Year: ______________</td>
<td>____ days per year, in accordance with the collective bargaining agreement.</td>
</tr>
</tbody>
</table>

**Machines and Equipment Involved:**
- Computer
- Copy machine
- Overhead projector

**Basic Job Function:** To assist the certificated/licensed teacher with classroom management and the promotion of learning.

**List of Job Duties/Responsibilities:** Provide one-on-one tutoring to eligible students; Assist with classroom management; Provide assistance in computer lab; Conduct parental involvement activities; Provide support in library or media center.

**Note:** Title 1 paraprofessionals may assume limited duties that are assigned similar personnel at the same school.
PENNSYLVANIA

QUALIFICATIONS OF PARAPROFESSIONAL LANGUAGE

1. Paraprofessionals hired on or before January 8, 2002, and required by the No Child Left Behind Act of 2001, 20 USC 6301 et seq., to meet the requirement of 20 USC 6319(c) by January 8, 2006, shall:
   a. Obtain a secondary school diploma or its recognized equivalent by January 8, 2006; and
   b. Be allowed to elect which of the four options below he/she will elect in order to satisfy requirements of 20 USC 6319(c)
      1. Completion of at least two years of study at an institution of higher education; or
      2. Obtain an associates (or higher) degree; or
      3. As defined by the Pennsylvania Department of Education, meet a rigorous standard of quality and demonstrate, through a state approved academic program;
         a. Knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or
         b. Knowledge of, and the ability to assist in instructing, reading readiness, as appropriate, or
         c. If a paraprofessional has been determined by another public school employer district or by the Pennsylvania Department of Education as meeting the requirement of 20 USC 6319 (c), then he/she shall be considered by this employer district as meeting the requirements of 20 USC 6319 (c).

2. The employer shall pay all expenses incurred after January 8, 2002, for each employee required to meet the requirements of 20 USC 6319 (c), including all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four (4) weeks after the employee submits proof of satisfactory completion of the course(s) and receipts for the costs.

3. Paraprofessionals hired on or before January 8, 2002, and required by the No Child Left Behind Act of 2001, to meet the requirements of 20 USC 6319 (c) shall
be provided professional development training by January 1, 2003, regarding the No Child Left Behind Act of 2001, and the requirements of 20 USC 6319 (c). For those paraprofessionals electing to meet the requirement of 20 USC 6319 (c) through a state approved program, training shall be provided to assist in the satisfactory completion of the program. All training shall be during work hours and paid at the bargaining unit member’s regular hourly rate.

4. An employee subject to the requirements of 20 USC 6319 (c) who is unable to meet the requirements by the deadline established by law shall be transferred to another bargaining unit position of equal pay and hours as soon as such a vacancy occurs; provided he/she does not otherwise apply for and receive a vacancy and further provided that said transfer shall not supercede the vacancy, transfer, layoff, or recall provisions of the agreement.

5. (Alternative language to 4 above (ALSO MAY BE USED FOR TEACHERS)) If an employee is unable to meet qualification requirements of the No Child Left Behind Act of 2001, USC 6301, et. seq., by the deadline established by law, the employer shall provide the employee with additional professional development activities during the school day designed to assist the employee in meeting such requirements. The employer shall not negatively evaluate, discipline, or discharge an employee for failing to meet qualification requirements established under the Act.

**BONUS FOR EMPLOYEES MEETING QUALIFICATION REQUIREMENTS LANGUAGE**

Paraprofessionals hired prior to January 8, 2002, who meet qualification requirements under the No Child Left Behind Act of 2001, 20 USC 6301, et seq., will receive bonus of _____ at the time that the paraprofessional provides proof to the employer that he/she has met such qualifications.
Qualifications of Title I Paraprofessionals:

WEAC recommends the following language for all currently employed paraprofessionals assigned in Title 1 classrooms or schoolwide programs in order to meet ESEA requirements for highly qualified paraprofessionals.

I. Any employee employed as of (effective date), who has successfully completed the required probationary period in Article ___, will be considered highly qualified and will be deemed as meeting the requirements of 20 USC 6319 (c) by means of interview and performance observation.

II. If a paraprofessional has been determined by another school, school district, or by the Wisconsin Department of Public Instruction as meeting the requirements of 20 USC 6319(c) as a highly qualified paraprofessional, then he/she shall be designated as meeting the requirements of 20 USC 6319(c) by this district.

III. For newly hired paraprofessionals who must initially meet the requirements of 20 USC 6319 (c) as highly qualified paraprofessionals, two of the following three options shall be used no later than completion of the probationary period to assess if the candidate or employee is highly qualified:

a. Test. A test in reading, writing, and mathematics, to be no longer than 21 questions in length. The level of test shall correspond to the appropriate school level at which the employee is assisting. This test shall be given during work hours, and the employee will be given notice of a minimum of one week before such assessment will be given. The employer shall provide the employee with a minimum of two hours of test preparation during the employee’s work week prior to the test being given.

b. Performance. Successful determination of performance shall be demonstrated by:
   1. A classroom observation of the paraprofessional’s ability to assist in reading, writing, and/or mathematics, conducted by a school administrator, or
   2. An employee’s demonstration of ability to make relevant corrective comments on a student work sample in the areas of reading, writing, and/or mathematics. The paraprofessional’s responses may be given orally or in writing, or
3. A portfolio, which may include letters of recommendation, documents showing the ability to assist students in reading, writing, and/or mathematics, relevant training, previous evaluations, resume, or other relevant materials.

4. Interview. The employee’s initial interview as an applicant with the employer shall include questions regarding ability and experience in assisting students in reading, writing, and/or mathematics.

IV. An employee subject to the requirements of 20 USC 6319 (c), who is unable to meet these requirements shall be transferred to another bargaining unit position of equal pay and hours as soon as such a vacancy occurs. *(With this language, a local must make a determination of what should be the remedy for those employees who are unable to transfer to a vacant position. Reassignment of another individual to the Title I position may be an option, but it should be at the employee’s request and not an involuntary transfer. This language will need to correspond with a local’s reassignment, transfer, and layoff provisions.)*

V. In the event an employee fails to meet the requirements of 20 USC 6319 (c) to be deemed highly qualified, the employer shall provide professional development training by *(insert date)*. The employee shall be afforded another opportunity to be assessed following the completion of this professional development training. Additionally, an employee may be assessed at any reasonable time upon the employee’s request.

*WEAC recommends the following language as sample language to use for tuition reimbursement.*

The employer shall pay all expenses incurred after January 8, 2002, for each employee required to meet the requirements of 20 USC 6319 (c), including all tuition costs (including tuition, fees, book costs, lab fees, etc.) for all classes and/or coursework taken by the employee. Reimbursement will be made within four (4) weeks after the employee submits proof of satisfactory completion of the course(s) and receipts for the costs.
Because ESEA could potentially lead to a variety of personnel actions, it is recommended that local associations review their collective bargaining agreements or local policies to make sure they have adequate protections related to personnel files. If not, stronger language should be bargained.

This section includes recommended language on the contents of employee personnel files, limiting their contents to work performance and standard personnel data and excluding student performance on test scores, other assessments, and parental complaints. It also offers language on complaint procedures for staff members to dispute items in their personnel files.

Also, as noted on page 23, ESEA protects certain privacy rights relating to the preparation and dissemination of information regarding district and school performance and teacher qualifications.
Please see Section 1317.070-3 of the current Ohio Education Association Contract Language Development Guide, with the following addition:

**File Contents**

The file shall be limited to work performance, discipline, and routine personnel data. No parental complaints will be placed and/or maintained in the personnel file.* No records indicating students’ performance on standardized tests, including, but not limited to scores on the test(s) required by ESEA and/or the Ohio Department of Education, will be placed and/or maintained in the personnel file. No misleading, inaccurate, invalid information or anonymous documents shall be included in the file.

*This is the ideal; if the administration will not agree to this, bargain a complaint procedure, an example of which follows:

**Complaint Against an Instructional Staff Member**

A. The administration may commence an investigation as to the authenticity of any information related to a complaint regarding the bargaining unit member from any identified parent, identified student, or other identified member of the public. The administration shall notify the complainant of said procedure. No complaint will be placed in the main personnel file of a bargaining unit member unless:

1. A conference was held including the complainant, the bargaining unit member, association representative, and the principal or immediate supervisor of the bargaining unit member. Said meeting was scheduled based on time availability of the parent and affected teacher.

2. The findings and resolution, if any, of the aforementioned conference have been reduced to writing by the principal or the immediate supervisor and initialed by the bargaining unit member. Such initialing shall not be construed as agreeing with the document, but only that the bargaining unit member received a copy of the document.

3. In the event a record of the conference held between the complainant, bargaining unit member, and immediate supervisor is filed in the bargaining unit member’s personnel file, the member shall be notified in writing and be given an opportunity to write a rebuttal to such record for placement in the person-
nel file. Such rebuttal must be filed within ten (10) working days from the
date notice is given to the bargaining unit member.

4. In cases where the school board is considering termination of the employee’s
contract, the rights and procedures under the Ohio Revised Code §3319.16
shall be applied and shall supersede the procedures identified above.

5. Nothing herein shall be interpreted to preclude the school board and employ-
ee from entering into a written settlement agreement with regard to the com-
plaint. A copy of said settlement shall be placed in the employee’s personnel
file.

B. Complaints will be filtered through the administration with attempts of resolution
at the lowest possible level. No complaint regarding a teacher will be considered
by the school board unless the procedure outlined above has been followed.

6. Notice of the school board consideration of the complaint will be given to the
teacher involved by means of certified mailing or personal service at leave five
(5) working days prior to the school board meeting. Notice will be mailed to
the last registered address of the teacher filed with the school board.

7. The complaint shall be heard by the school board in executive session and the
school board shall establish procedures for said hearing. The association and
the teacher shall receive advance notification of the procedures. The teacher
shall be entitled to be in attendance when the complaint is heard by the
school board and the teacher shall be entitled to association representation at
the hearing.

8. Resolution by the school board action will become a part of the teacher’s file,
and the teacher shall receive a copy of the action. The teacher may attach an
opinion or statement to the filed complaint within 10 working days of board
action.

C. Any finding by the school board is subject to the contractual grievance procedure.
ESEA offers school districts some flexibility in spending federal funds. Specifically, all school districts may transfer up to 50 percent of their federal funds from education technology, safe and drug-free teacher quality, or innovative programs. Funds may be transferred from any one or more of these programs into any one or more of the other programs listed or from these programs into Title I. Also, the school district has the flexibility to use its Title II teacher quality funds for any one or more of some 20 activities.

Therefore, depending on local needs, associations may want to consider the following contract provisions:

1. Requiring the district to apply for and use professional development funds to enable paraprofessionals to become certificated teachers;

2. Not using ESEA funds for teacher testing, tenure reform, merit pay, or differential pay;

3. Requiring that available funds be used for professional development of paraprofessionals and teachers, for hiring teachers to reduce class size, for hiring nurses, and for supporting nurse services;

4. Guaranteeing the association equal representation in determining fund flexibility and transferability.
ESEA FUNDING

PENNSYLVANIA

ALLOCATION OF ESEA/NCLB FUNDS LANGUAGE—ESEA gives districts a great deal of flexibility with regard to expenditure of federal funds. Depending upon the needs of your local, you may want to propose one or more of the following provisions:

1. The district shall apply for all available money under the No Child Left Behind Act of 2001, 20 USC 6301, et seq., for professional development activities designed to enable paraprofessionals to become certified teachers and shall use such funds exclusively for this purpose.

2. The employer shall not use funds received under the No Child Left Behind Act of 2001, 20 USC 6301 et seq., for testing teachers, tenure reform, and merit pay or for differential pay.

3. The employer shall apply for all available money under the No Child Left Behind Act, 20 USC 6301 et seq. for paraprofessional development activities designed to enable paraprofessionals and teachers to meet qualification requirements of the Act and shall use such funds exclusively for this purpose. The employer shall use funds received for Innovative Programs under Title V-A of the No Child Left Behind Act of 2001, 20 USC 6301, et seq., exclusively for hiring teachers to reduce class size, for hiring nurses, and for supporting nurse services.

4. An equal number of representatives of the employer and of the association, the latter representatives selected by the association, shall be involved in the development and negotiation of any agreement concerning fund flexibility and transferability pursuant to Title VI of the No Child Left Behind Act of 2001, 20 USC 6301 et seq.
By requiring school districts to meet federal and state achievement goals, school management may seek to alter existing collective bargaining agreement provisions by opening collective bargaining agreements mid-term. This section offers serious cautions and suggestions regarding the possible use of mid-term negotiations on ESEA-related issues. It also discusses the advantages and disadvantages of bargaining a commitment to negotiate ESEA-related issues as they arise.
OHIO

Model Language

A. No action shall be taken without the agreement of the association in regard to any issue relating to the board’s compliance with the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (2002), where said action would adversely impact any bargaining unit member or otherwise affect the wages, hours, or terms and conditions of employment of any bargaining unit member. The board and the association agree that:

(1) only the most extraordinary circumstances will warrant mid-term negotiations on ESEA-related issues;
(2) mid-term negotiations shall only be undertaken in the utmost good faith and where ESEA compliance issue cannot be addressed through methods that do not adversely impact bargaining unit members or affect wages, hours, or working conditions; and
(3) Mid-term negotiations shall address both the ESEA-related decision and the decision’s effects on wages, hours, and/or terms and conditions of employment.

B. In the event that the association and the Board agree to undertake mid-term negotiations on any issue related to ESEA, or if so ordered by an arbitrator, the following ground rules shall apply:

Specify
(1) desired restrictions on exchange of proposals,
(2) number of meetings, and
(3) whether mediation will be employed at any point in the negotiations.

C. Any tentative agreement reached shall be subject to ratification by a 3/4ths majority of the bargaining unit.

D. All disputes arising under this article shall be submitted to final and binding arbitration pursuant to the grievance procedure set forth in Article ____ herein. This agreement to submit to binding arbitration shall include, but shall not be limited to, the issue of whether an impasse has occurred and/or the resolution of the underlying issue in the event of impasse or failure of the bargaining unit to ratify.
Analyzing the Model Language: Is it Advisable To Negotiate for Any Anticipatory Commitment To Bargain ESEA-Related Issues?
The model language above, or any language intended to blunt the effect of ESEA, must not be viewed as a panacea. The negotiators for a local association must candidly evaluate the local bargaining history and the variables unique to the school district. A local association’s decision whether to bargain an anticipatory commitment to negotiate ESEA-related issues should take into account the following:

A. Advantages of a Negotiated Commitment To Bargain:
- The model language requires the school board to acknowledge its obligation to negotiate wages, hours, and terms and conditions of employment.
- The model language puts the school board on notice that it cannot “hide behind” ESEA in order to run roughshod over the collective bargaining agreement.
- As it is impossible to anticipate every potential way in which ESEA will insinuate itself into the workplace (or the contract), the generalized promise to bargain provides some degree of recourse for whatever form that implementation of ESEA may take.
- The “binding arbitration” requirement called for in the model language is intended to deter the school board from frivolously invoking ESEA in an effort to undermine the collective bargaining agreement.
- The parties’ agreement to modify the contract only if no other extra-contractual method for ESEA compliance exists is intended to deter the board from looking for its ESEA solutions in the collective bargaining agreement in the first instance.

B. Disadvantages of a Negotiated Commitment To Bargain:
- If the local association is unable to obtain final and binding arbitration, then a commitment to negotiate may have little, if any, advantage over current SERB law. In fact, a negotiated agreement to bargain may preempt SERB’s ULP jurisdiction, and do little more than place the parties on the fast track of “bargaining/impasse/unilateral implementation.” A negotiated commitment to bargain without the backup of binding arbitration may not benefit the local association in proportion to the cost of obtaining the language at the table.
• Even binding arbitration has, at best, a 50-50 chance of providing the desired result.
• More aggressive school boards may, with or without binding arbitration, still elect to take every issue remotely connected to ESEA through the contractual process for leverage. The school board may take the approach of advancing a multitude of ESEA-related issues in order to leverage a compromise on a significant portion of the issues. Local associations in such districts must be prepared to fully address each and every issue on an expedited basis. (Of course, a local association could apply this strategy in reverse, by insisting that each and every ESEA-related matter be taken through the contractual process. This scenario simply presents a matter of contractual leverage cutting both ways.)

C. Other Variables To Consider in Regard to the Model Language:
• Is it possible to obtain final and binding arbitration? If not, will the negotiated language create a “faster track” to unilateral implementation than would pursuit of the existing SERB ULP remedy?
• Assess the temperament of the local participants. Is the school board likely to implement the negotiated language in good faith? Is the school board litigious, or otherwise likely to use any contractual remedies as a weapon against the association?
• Conversely, what is the local association’s threshold for conflict? Does the local tenaciously pursue every grievance, or is it reluctant to file grievances under any circumstances? The local may not wish to pay at the table for language it is reluctant to enforce.
• How does the school board react to SERB ULP proceedings? Some school boards are highly adverse to being named in an unfair labor practice charge; others seem to be unaffected. (The same analysis can be applied to the school board’s reaction to grievances/arbitration in general). If ULPs are particularly distasteful to the school board, then existing SERB remedies may be a better “value” than paying a high price for watered down bargaining language at the table.
• Does the school board already have an extensive agenda of ESEA compliance issues (i.e. is the district pro-active or reactive in regard to ESEA)? If the school district has an agenda of specific issues, would it be more beneficial for the local association to pin down specific language for defined issues than to
negotiate a blanket agreement to bargain? It is wise to explore which issues the school board may be willing to address in substance. A local association may sacrifice an opportunity to obtain clarity and protection on a few significant issues (such as teacher transfer rights or tenure) by “spending” all of its leverage on a generalized promise to negotiate. In practice, this generalized promise could take the significant issues down the “negotiate/impasse/imple-ment” fast track.

**CONCLUSION**

As the foregoing discussion demonstrates, there is no single solution that will reconcile ESEA with every collective bargaining agreement. In weighing the above advantages, disadvantages, and variables, local associations can assess their unique circumstances to develop the least intrusive method for ESEA compliance. ESEA compliance will be an ongoing and inherently “mid-term” process. As tempting as it may be to negotiate a comprehensive solution in advance, even a blanket commitment to negotiate ESEA-related issues will require vigilant enforcement and periodic modifications.
In addition to the information found in this guide, the Web sites noted below offer extensive information on ESEA. The U.S. Department of Education Web site contains the statute as well as the regulations for implementation. The NEA ESEA link contains all of NEA’s information on ESEA.

**Internal Web site for NEA and state and local affiliates:**

www.connect.nea.org/esea  
National Education Association’s ESEA internal Web site

**Public Web sites:**

www.nea.org/esea  
National Education Association

www.ed.gov/offices/OESE/esea/  
U.S. Department of Education

www.edworkforce.house.gov  
U.S. House Committee on Education and the Workforce

www.nclb.ecs.org  
Education Commission of the States

www.nga.org  
National Governors Association

www.ncsl.org  
National Conference of State Legislatures

www.nasbe.org  
National Association of State Boards of Education

www.ccsso.org  
Council of Chief State School Officers