



# **ECS Policy Brief**

## **State Involvement in School Restructuring Under No Child Left Behind in the 2004-05 School Year**

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**Education Commission**  
**of the States**

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### **Introduction**

No Child Left Behind (NCLB) was passed with a promise to “change the culture of America’s schools.”<sup>1</sup> A focus on accountability for results is among its main vehicles for transformation, including the requirement that significant action be taken in schools and districts that continue to underperform academically. Toward that end, NCLB requires that if a school does not make adequate yearly progress (AYP) for five consecutive years, its district must create a plan to restructure the school. If the school does not make AYP for six consecutive years, its district must implement this plan.

The language of the legislation places the burden of restructuring on the local education agency (LEA), which is normally the local district. But ultimate accountability for the implementation of the legislation is given to the state education agency (SEA) – i.e., the state department of education. Ambiguity remains, though, regarding the respective roles of LEAs and SEAs. As a result, each SEA has interpreted its role in school restructuring differently. To gain a better understanding of these differing interpretations, this paper examines how state departments of education have been involved in the planning and implementation of school restructuring under NCLB. The experience of these states can serve as a baseline to understand how the restructuring process works in practice and how it may evolve in the future. The information in the paper is based on interviews with state officials as well as reviews of relevant documents.

### **NCLB’s Restructuring Requirements**

NCLB’s focus on accountability places new and more extensive requirements on states and districts to respond to academic underperformance. In particular, the legislation outlines a system of escalating sanctions for schools that receive federal Title I funding and that do not meet AYP.<sup>2</sup> Table 1 lists these sanctions.

#### **In this Brief:**

<b>NCLB’s Restructuring Requirements</b>	<b>1</b>
<b>Overall Findings</b>	<b>3</b>
<b>State-By-State Summary</b>	<b>4</b>
<b>Conclusion</b>	<b>8</b>
<b>Appendix A: States with Schools Implementing Restructuring Options in the 2004-05 School Year</b>	<b>9</b>
<b>Endnotes</b>	<b>10</b>

#### **Acknowledgments**

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**TABLE 1: NCLB'S SANCTIONS FOR SCHOOLS THAT DO NOT MAKE ADEQUATE YEARLY PROGRESS (AYP)**

<b>Consecutive Year of Not Making AYP</b>	<b>Designation</b>	<b>Sanction</b>
1	Warning Year	None
2	School Improvement Year 1	Districts must offer <b>choice</b> for students in underperforming schools to attend other district schools not identified for improvement.
3	School Improvement Year 2	Districts must continue to offer <b>choice</b> as well as provide <b>supplemental educational services</b> such as tutoring and after-school services.
4	School Improvement Year 3	Districts must implement <b>corrective actions</b> for school improvement, above and beyond the continued provision of <b>choice</b> and <b>supplemental services</b> .
5	School Improvement Year 4	District must create a <b>plan for restructuring</b> the school.
6	School Improvement Year 5	District must <b>implement the restructuring plan</b> .

The level of intensity of school improvement activity increases each year, culminating in restructuring after six years of not making AYP. The legislation provides the following list of possible actions for restructuring:

1. Reopening the school as a public charter school.
2. Replacing all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress.
3. Entering into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school.
4. Turning the operation of the school over to the state educational agency, if permitted under state law and agreed to by the state.
5. Any other major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance.<sup>3</sup>

Each option (from here on referred to as Options #1 through #5) is intended to usher in a significant shift in how the school is governed. Which option is chosen and what it looks like in practice, however, is left up to the local level to decide. Therefore, the "how" and "what" of each alternative varies from state to state.

In the 2004-05 school year, 13 states had schools that had reached School Improvement Year 5, the phase in which districts must implement restructuring plans in schools: Alabama, California, Colorado, Georgia, Hawaii, Maryland, Michigan, Nebraska, New York, Ohio, Oklahoma, South Carolina and Tennessee.<sup>4</sup>

## Overall Findings

It is likely to take some time before states have ironed out how to best implement the restructuring provisions of NCLB. There are, however, some general lessons that can be gleaned from initial efforts. These can, in turn, inform how federal, state and local education agencies act in the future. The lessons rarely suggest easy answers. Some imply flaws in the initial legislation, while others point to weak state interpretation and implementation. All raise key issues that need to be addressed if restructuring is to have a significant impact on school success.

### ➤ STATES VARY IN THEIR LEVEL OF INVOLVEMENT IN THE RESTRUCTURING PROCESS.

States vary widely in the interpretation of their role in school restructuring, which results in a range of SEA involvement. Some states have chosen more significant involvement in district decisionmaking, such as participating in plan development, modification and monitoring. On the other end of the spectrum, some SEAs do not collect or review plans and provide little oversight of the LEAs. Of the 13 states surveyed, seven SEAs have approval processes of varying rigor for all school restructuring plans, two collect plans but do not officially approve them, one collects plans of only some schools, and three do not collect plans at all.

Local solutions are often the best suited to a particular problem, and NCLB trusts that those closest to the schools are best situated to identify and fix schools. This approach has allowed for more local involvement in improvement, as well as the chance for some superintendents to make major reforms that may not have been encouraged by the SEA. But it also allows a district to choose restructuring actions that are less significant and far-reaching than intended in the legislation.

The ideal level of SEA involvement remains unclear, and gives rise to two questions: Will districts, many of whom have not taken the necessary actions in the past to prevent underperformance, be willing and able to do so now? On the other hand, do SEAs have the capacity and will to require more significant reforms? Currently, there is no clear evidence that states with more SEA involvement have seen more significant reforms in underperforming schools.

### ➤ MOST SCHOOLS HAVE CHOSEN MILD OR MODERATE RESTRUCTURING OPTIONS.

In the study *Can Failing Schools Be Fixed?*, Ronald Brady identifies three levels of involvement seen in intervention strategies:

- **Mild:** identification, planning, technical assistance, professional development, parent involvement and tutoring
- **Moderate:** adding school time, reorganizing the school (decentralization or governance shifts), adopting comprehensive school reform and changing principals
- **Strong:** reconstitution (removing all or most staff), school takeover, district takeover, closing the school, choice, curriculum change (imposed by district), outsourcing operations, redirecting school or district funds, withholding school or district funds, and closing failing district.<sup>5</sup>

Discussions with states suggest that most districts are implementing mild or moderate interventions rather than the stronger interventions, which are “rarely tried because they are controversial and difficult to mount.”<sup>6</sup> According to state officials, most school plans call for activities that fall under “any other major restructuring of the school’s governance arrangement,” or Option #5 in the legislation as enumerated earlier. This option covers an array of activities, such as modifying curriculum, altering the school’s management structure or choosing a school reform model.

It is likely that the trend to this point of mild and moderate rather than strong intervention strategies from districts will be the norm in the future. This may occur in part because districts are threatened by significant reforms that diminish their control, such as state takeover, reopening as a charter or private management.

➤ **DISTRICTS THAT HAVE TRIED STRONGER INTERVENTIONS HAVE FOUND THEMSELVES IN THE MIDST OF DIFFICULT POLITICAL BATTLES.**

Some districts have attempted to require all staff to reapply for jobs or opted to turn struggling schools into charter schools – both of which may conflict with existing union contracts. These attempts have led to intense political pressure and legal battles. For instance, at least two districts that have attempted to transfer underperforming staff are in legal disputes with employees. Not surprisingly, many districts are thus wary about choosing reform strategies that include replacing teachers, while the use of charter status or private management is often seen as politically unpalatable.

➤ **SCHOOLS AND DISTRICTS HAVE USED THE POWER OF INTERVENTION TO REPLACE SOME STAFF MEMBERS WHO WOULD HAVE BEEN DIFFICULT TO REPLACE WITHOUT NCLB SANCTIONS.**

School employees – both administrators and teachers – have traditionally been hard to replace, even in the face of professional shortcomings. While still challenging, the requirement to restructure has allowed some districts to remove principals or teachers that in the past were more protected by contracts and bargaining agreements.

➤ **ALIGNMENT BETWEEN NCLB AND FORMERLY ENACTED STATE ACCOUNTABILITY SYSTEMS HAS PROVEN DIFFICULT.**

States that had robust accountability systems in place prior to NCLB have had a difficult time combining the two systems. This difficulty has resulted in situations where some schools under state sanctions are not under NCLB sanctions, and vice versa. States that allow significant interventions under their own accountability system, such as conversion to a charter school or private management, have rarely used these actions with schools that have to be restructured under NCLB.

➤ **TIMELINES ARE NOT ALWAYS CONDUCTIVE TO THE SCHOOL IMPROVEMENT PROCESS.**

States report that timelines are among the biggest impediments to successful implementation of the law. In some cases, schools are not identified for improvement until after the school year has already started due to when test scores are available for release, which makes it difficult to remove staff or reopen under new leadership. A more common complaint from states is that the reforms made in the corrective-action phase (School Improvement Year 3) are not given enough time to succeed before the restructuring phase kicks in, resulting in either a marginalization of the corrective action phase or the morphing of sanctions such that corrective measures end up serving as the restructuring plan.

➤ **THE U.S. DEPARTMENT OF EDUCATION HAS GIVEN VERY LITTLE GUIDANCE ON HOW RESTRUCTURING SHOULD BE IMPLEMENTED.**

All of the states surveyed reported that the U.S. Department of Education (USDOE) has given either no or insufficient guidance on how to implement restructuring. States generally view the lack of guidance as a negative, although at least one state said that less federal involvement allows more flexibility to accomplish state goals.

## State-By-State Summary

The following information provides a brief snapshot of how each of the 13 states has interpreted its role in the school restructuring process. It is not an exhaustive look at the state's accountability system, but rather an overview of the restructuring processes and strategies for each state.<sup>7</sup>

### Alabama

Alabama had 24 schools in the implementation stage of restructuring in 2004-05. The SEA provides technical assistance to schools for improvement planning to fulfill NCLB's demand that states help "build capacity" in schools and districts. The Alabama Department of Education, however, is still in what an official termed the "discovery mode" regarding the best way to oversee the restructuring phase. To this point, the state has collected the restructuring plans from each school, which are approved by SEA staff and sent to the state superintendent for review, if necessary. While there is not an official approval process

at the state superintendent's level, plans may be reviewed at any time. Beginning in the 2004-05 school year, the state began to attach federal Title I money to the completion of the restructuring plan, which encourages schools to finish plans in a timely manner.

Alabama is one of the few states in the nation that has not yet passed a charter school law, so that restructuring option is not available. But Alabama does have a history of supporting state takeovers. Under its state accountability system enacted prior to NCLB, low-performing schools may be taken over by the state through the appointment of a "person or persons" to run the school.<sup>8</sup> At this point, however, state takeover has not been used for NCLB school improvement. The state department of education reports that each of the 24 schools chose actions considered compliant with Option #5 under the restructuring provision of NCLB, or "any other major restructuring of the school's governance arrangement." The interpretation of this option ranges from hiring a new principal to providing teacher bonuses for student achievement to reconfiguring staff. There also were elements of Option #2 (i.e., the replacement of staff) in some schools, but not to the extent suggested in the legislation.

## California

The sheer size of the state – in terms of geography and the number of schools – has meant that the California Department of Education is limited in its capacity to be heavily involved in the planning or implementation of school restructuring. The state offers technical assistance to LEAs through guiding documents and regional technical assistance providers, but the state gives districts a great deal of flexibility in determining what actions to take at each underperforming school. This decision appears to be due in part to a philosophy of local control and in part to the logistical difficulty of oversight. With the large number of schools possibly reaching restructuring in the future, the capacity of the SEA would need to grow significantly to allow for more extensive oversight. The state does not collect specific restructuring plans, but relies on district reporting through the consolidated application process for schools in Years 3, 4 and 5 of school improvement.

Restructuring on the local level varies widely throughout the state. The SEA has not allowed state takeover of schools due to capacity concerns, but districts have chosen other options outlined in the legislation, ranging from changes in organizational structures to reopening schools as charter schools.

Prior to NCLB, California had created an accountability system in which underperforming schools, titled "state-monitored schools," are subject to a variety of possible restructuring options, including a parent-led charter application, state reassignment of staff and outside management (excluding for-profit providers).<sup>9</sup> Up to this point, these options do not appear to have had an effect on schools identified by NCLB. This situation may change, however, with the Governor's Initiative to Turn Around Failing Schools, which provides the state superintendent of public instruction with significant power to intervene in schools that continue to underperform academically.

## Colorado

Colorado made headlines in 2000 when it adopted a state accountability system, which requires that schools that are rated "unsatisfactory" for three years in a row are automatically converted to a charter school. The first school subject to this legislation recently went through this process independent of NCLB's requirements.

Under NCLB, Colorado has only one school in the implementation stage of restructuring, but two in the planning stage. The option to reopen as a charter school however was not applied to the school in the implementation stage. Instead, this school took actions such as changing the curriculum and replacing some staff, while remaining in operation without large changes to its management.

The Colorado SEA has worked closely with the schools in the planning stages, offering assistance through its school support teams, which work directly with schools on improvement planning. The state does collect restructuring plans, although there is a question whether they will continue to do so since there is little time for the state to follow up with districts and schools regarding the quality or implementation of the chosen strategy. The Colorado SEA, like others, is walking the delicate line of ensuring that restructuring takes place while honoring the relationship between the LEA and the school.

## Georgia

Georgia had 39 schools in School Improvement Year 5 during the 2004-05 school year. The Georgia SEA takes an active role in the design and approval of plans submitted to the state from districts with restructuring schools. The state's School Field Book outlines how to write a restructuring plan, and then regional support teams, made up of individuals with educational and management expertise, judge the plan's quality. Georgia recently revised its state accountability system in an attempt to align state-defined consequences for underperformance with NCLB. It defines what each sanction means in practice for schools in need of improvement in Georgia.

For the 2004-05 school year, the state encouraged schools to choose Option #5 because each sanction's meaning had not yet been determined. Georgia law does not allow state takeovers of schools, although all other NCLB sanctions are possible. Officials expect that most schools in restructuring this coming school year will choose Option # 5, although there are schools that have submitted plans to convert to charter status. It is unlikely that private companies will be used to manage schools in the near future, as the state does not feel it has been given sufficient guidance on how to judge which private management companies have a proven record of success.

## Hawaii

Hawaii is unique among the states profiled in that it is a single-district state so there is little distinction between the LEA and SEA. This situation has allowed Hawaii to avoid some of the tension experienced by other states regarding their role relative to LEAs. Hawaii currently has 26 schools that have not made AYP for six years, and plans are to have restructuring fully initiated at the beginning of the 2005-06 school year for those schools that have not shown progress.

Hawaii has defined a statewide system for restructuring that is a mixture between Option #5 and Option #3 (i.e., contract with a private entity), and a step short of state takeover. A school's complex area superintendent (CAS), analogous to a district superintendent in other states, creates a restructuring plan based on the root causes of underperformance identified in the school improvement planning process in previous years. The CAS then chooses a restructuring provider, which may be either a private entity or the CAS itself, to help implement the plan. The provider must do a complete diagnostic assessment for the school and will be contracted to bring in "wraparound services" in which a representative from the provider is embedded in the school community. If a private company is chosen, the principal is expected to work with the provider, and no principals or teachers will be fired. The private management company will not have ultimate authority over the school nor will it have any control over the budget. The CAS leads the planning process, but the state has to approve the final restructuring plan.

## Maryland

Maryland, with 29 schools implementing restructuring during the 2004-05 school year, has taken an active role in overseeing plans written by schools. All plans are reviewed based on a rubric and must ultimately be approved by the state board of education with the recommendation of the state superintendent. The state plans to monitor the implementation of the plans, most likely through paper reports.

There is a history of using private management companies to fix failing schools in Maryland. In 1992, the Baltimore City School District contracted with an educational management company to run a set of schools in Baltimore. That contract was terminated only three years later due to dissatisfaction with the management company. In 2000, the state itself took over three of the most underperforming schools in Baltimore and gave a management contract to a private company to operate them. At this point, none of the 29 schools implementing restructuring have been subject to this option. Instead, all schools have hired a "turnaround specialist" who will work with the school to make changes. Up until 2003, Maryland did not have a charter school law, so the option of reopening as a charter school is a relatively new one.

## Michigan

Michigan had 62 schools in School Improvement Year 5 during the 2004-05 school year. The state has taken a hands-on approach to helping districts work with schools on creating restructuring plans. Each plan is reviewed by the Michigan SEA and sent back for revision when necessary. The state withholds money earmarked for restructuring until plans are acceptable.

In order to help districts choose a strategy, the state defined what each option might look like for a Michigan school and added an additional option of “coaching,” which provides schools with a state-trained coach who facilitates the improvement process. The state removed the option of turning over schools to the state, although it is allowed by law. According to state officials, this option was not practical: “The state does not have the human resources to run individual schools. The state would not see that as their role.”<sup>10</sup> The actions taken by schools vary, most falling under Option #5 or Option #2, although it appears that those that chose staff replacement were not as broad as the legislation’s language suggests.

## Nebraska

Nebraska currently has two non-Title I schools and one Title I school in the implementation phase of restructuring. The Title I school is a small, rural high school with fewer than 500 students and is the only school in its district. The state met onsite with the district and the school improvement team to help identify improvement strategies that were already in place while working with the school and a regional service unit to assist in any additional changes needed.

A state official described Nebraska as a “local control state” in which each school and district has its own unique improvement activities. The state recommends an improvement process for schools to follow, but leaves the decisionmaking to districts. School restructuring plans are collected by the state to ensure compliance, but the specific school strategies do not need to be approved. The SEA ensures that plans are peer reviewed and, if requested, it will perform site visits to ensure that plans are enacted.

Regardless of their situation under NCLB, all districts are engaged in school improvement planning as part of an accreditation process, and therefore the state does not expect more out of schools than implementing plans already designed through the accreditation process. The improvement strategies chosen at the one Title I school in the implementation phase of restructuring fall under Option #5. The state does not expect approaches such as closure or reconstitution, hoping instead to see more comprehensive changes such as adoption of new curriculum or reform models.

## New York

New York had the largest number of schools (89) implementing restructuring in the 2004-05 school year. Currently, the state does not send out teams from the SEA to districts, but rather relies on regional support centers that provide technical assistance to districts that in turn work with schools. The state commissioner of education has the right to collect plans but is not obligated to do so. Therefore, plan collection tends to be dependent on a school’s status under the state accountability system. For instance, the only restructuring plans officially collected by the state are those of schools that are simultaneously declared “schools under registration review” based on the state accountability system criteria. If a school is not “under review,” the SEA may do some review of the NCLB restructuring plan, but less focus is placed on these schools.

New York has worked hard to fit NCLB within its own state system of accountability, although separate systems still remain. For instance, the “schools under registration review” process has different, more extensive criteria for performance than NCLB, and schools identified by one system may not be by the other. Under the state system, a process has been created in which schools are gradually closed and then reopened with new management; however, none of the schools restructured under NCLB was subject to this reform.

The SEA does not encourage one restructuring option over another, and officials report that in practice most schools have chosen Option #5, with at least one making more significant staff changes that could fall under Option #2. This situation may change in the future if the chancellor of the New York City Public Schools uses his expanded power over failing schools in the district, including the ability to assume joint or direct control. The chancellor already has called for 50 new charter schools to open in the district, in part to supply seats for students coming from underperforming schools.<sup>11</sup>

## Ohio

The Ohio SEA has taken a hands-off approach to the restructuring of 11 schools under NCLB. Officials respect the language of NCLB that makes school restructuring the responsibility of districts. Regional service offices help districts work on restructuring plans, and the districts in turn work with schools directly. The state does not collect plans and considers them, in the words of a state official, the “legal property of the district” and not the state. Because of the distance placed between the SEA and LEA in school restructuring, the state is not able to report definitively on what actions the schools chose, although it is likely that restructuring activities fell within Option #5.

## Oklahoma

Oklahoma, with four schools implementing restructuring and eight in the planning stage, leaves almost all oversight of restructuring to districts. The state provided technical assistance to districts and some schools regarding restructuring, but the process was mainly implemented by districts. The state collects restructuring plans to ensure that schools understand the options they have, but the plans do not have to be officially approved.

Oklahoma adopted an accountability system prior to NCLB that offered a variety of interventions for underperforming schools, ranging from increased funding to operation of school by personnel employed by the SEA.<sup>12</sup> As in other states, these policies have not informed the restructuring plans of schools under NCLB. All four schools chose Option #5, achieving restructuring by changing leadership, switching curriculum or decreasing site control by transferring more power to the district.

## South Carolina

South Carolina has nine schools in Year 5 of school improvement. The state's response to restructured schools has evolved over the past year as the South Carolina SEA developed guidance for districts that outlined restructuring options while still leaving significant decisionmaking authority with the LEA. Each school that has to be restructured works with an external review team to identify improvement strategies. These teams are part of the state accountability system developed prior to NCLB, and therefore these schools had been working with teams prior to their identification as restructured schools. The SEA's office of school quality reviews school restructuring plans, and the state requires follow-up site visits and documentation to ensure implementation.

The state does not encourage one restructuring option over another. In the first year of restructuring, the state reports that most schools have chosen reforms consistent with Option #5.

## Tennessee

Tennessee has taken a hands-on approach with its 17 schools in restructuring, as well as all schools that have missed progress targets, using NCLB sanctions on both Title I and non-Title I schools. Through the placement of a state-identified exemplary educator or state field service person, the SEA works with schools and districts to help identify necessary improvement steps. School restructuring plans go through an official approval process at the state level, and schools are actively monitored for compliance. Noncompliance can result in the constraint of funds flowing to the school.

Tennessee enacted an accountability policy prior to NCLB that allowed the state commissioner of education to take significant action in low-performing schools, including state takeover or charter conversion. This policy has informed the state's action in regard to the NCLB-restructured schools, but the two systems are not parallel. For NCLB, Tennessee defined nine potential options for restructuring ranging from small changes to the more drastic state takeover. According to state officials, most schools chose reorganization or replacement of staff.

## Conclusion

All 13 states have put a significant amount of time and resources into understanding what restructuring policies will be most effective for their schools. The structure of NCLB allows for a high level of state autonomy in making these decisions. This freedom allows for innovation and smart local solutions, but also leaves space for mediocre reform efforts. Such discretion is evidenced by the varied involvement of states in ensuring that meaningful restructuring is occurring, as well as by the small number of schools that have implemented stronger school restructuring options. There is still only a rough understanding of the purposes and practices of restructuring, which has led to uneven implementation of these provisions.

More important, the issues and problems suggested in this paper are likely to compound as more and more schools reach School Improvement Year 5. State capacity, already stretched in some states, will be strained even further. These capacity problems will be further exacerbated by the introduction of district restructuring by states via NCLB within two years. States that have remained laissez-faire in their involvement in school restructuring may find themselves without the defined processes and infrastructure to meet this new challenge. At the same time, those states that have taken a more active role in revising and approving school restructuring plans may not have sufficient capacity to continue this work in a meaningful way as numbers grow.

The process of determining state involvement in the implementation of school restructuring under NCLB has evolved over the past year. It will surely continue to do so as more schools enter the restructuring stage. More years of data on student achievement in restructured schools will also provide useful evidence on what practices result in the desired outcomes. As states innovate and learn from each other, federal and state officials will likely be looking for best practices to emerge that will inform accountability practices in the coming years.

## Appendix A

### States with Schools Implementing Restructuring Options in the 2004-05 School Year

	<b>Number of Schools in School Improvement Year 5 during 2004-05 (Implementing Restructuring)<sup>13</sup></b>	<b>Restrictions on Options Due to State Law</b>	<b>State Approval of School Restructuring Plans</b>
<b>Alabama</b>	24	No charter school law	Yes. Approved by state department and mailed to the state superintendent.
<b>California</b>	10	None	No. Full plans are not collected or approved.
<b>Colorado</b>	1	No state takeover	No. Written with state teams and collected by the department. No formal approval process.
<b>Georgia</b>	39	No state takeover	Yes. Judged by teams according to rubric. Approved by state.
<b>Hawaii</b>	26	None	Yes.
<b>Maryland</b>	29	No state takeover. Charter school law passed in 2003, but no charters opened yet.	Yes. Approved by the state superintendent and the state board of education.
<b>Michigan</b>	62	No state takeover	Yes. Each plan reviewed and approved by the SEA.
<b>Nebraska</b>	3	No state takeover; no charter school law	No. Plans may be collected in the future.
<b>New York</b>	89	None	Yes and no, depending on region and status of school.
<b>Ohio</b>	11	None	No. Plans are viewed as the legal property of the district.
<b>Oklahoma</b>	4	None	No. Plans are collected but no approval is necessary.
<b>South Carolina</b>	9	None	Yes. Approved by the state office of school quality.
<b>Tennessee</b>	17	None	Yes. The state both approves and monitors plan implementation.

## Endnotes

<sup>1</sup> U.S. Department of Education, *Stronger Accountability*, [www.ed.gov/nclb/accountability/index.html?src=ov](http://www.ed.gov/nclb/accountability/index.html?src=ov).

<sup>2</sup> There is a parallel sanctioning structure established for whole districts not making AYP. SEAs are placed in charge of implementing corrective actions that intensify with each year of underperformance. Similar to schools, if districts are marked for improvement for five years, the state is required to take actions such as reduce funding, replace district personnel, abolish or restructure the district, or allow intradistrict choice for students. As of the 2004-05 school year, districts had only reached Year 3 of improvement because states began tracking district performance later than individual school performance.

<sup>3</sup> NCLB Legislation, <http://www.ed.gov/policy/elsec/leg/esea02/pg2.html#sec1116>.

<sup>4</sup> Some states had been collecting valid AYP data in compliance with Improving America's Schools Act of 1994, and therefore already had reliable data for years prior to the passage of NCLB. For this reason, these states had schools further along in the school improvement process than other states.

<sup>5</sup> Brady, Ronald C., *Can Failing Schools Be Fixed?* The Fordham Foundation, January 2003, p. 8-9.

<sup>6</sup> Brady, p. 10-18.

<sup>7</sup> The numbers reported represent the 2004-05 school year unless otherwise noted, as most states have yet to identify the schools in need of improvement for the 2005-06 school year. State descriptions are based on interviews with SEA officials between January and July 2005 and reviews of relevant documents. Many processes are in flux and may have changed by the publication of this paper.

<sup>8</sup> Ziebarth, Todd, "State Policies for School Restructuring," *StateNotes*, Education Commission of the States, December 2004, <http://www.ecs.org/clearinghouse/57/02/5702.pdf>, p.9.

<sup>9</sup> Ziebarth, p. 9-10.

<sup>10</sup> *Makeovers, Facelifts, or Reconstructive Surgery? An Early Look at NCLB School Restructuring in Michigan*, Center on Education Policy, December 2004, p. 4.

<sup>11</sup> In New York City, students from underperforming schools will be given top priority in new charter schools.

<sup>12</sup> Ziebarth, p. 18.

<sup>13</sup> Numbers were gathered from state officials and Web sites and in general reflect the 2004-05 school year, as most states have yet to determine school improvement status for the 2005-06 school year.

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