

# RURAL SCHOOL DISTRICTS STRUGGLE TO MEET THE DEMANDS OF NO CHILD LEFT BEHIND

## I. INTRODUCTION

Since 1965, there have been “hundreds of programs and hundreds of billions of dollars invested” in education.<sup>1</sup> Yet, American students lag behind foreign students and there is a wide “academic achievement gap”<sup>2</sup> between rich and poor, and white and minority students.<sup>3</sup> A 1998 International Adult Literacy Study showed that the United States is the only country where literacy rates were higher among older adults than in the younger adult population.<sup>4</sup> In 2000, only twenty-nine percent of all fourth graders performed at or above the proficient level in reading.<sup>5</sup> These percentages were even lower for specific groups.<sup>6</sup>

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<sup>1</sup> U.S. DEPARTMENT OF EDUCATION, NO CHILD LEFT BEHIND: A DESKTOP REFERENCE § 2 (Sept. 2002), available at <http://www.ed.gov/admins/lead/account/nclbreference/> (last modified Nov. 22, 2004) [hereinafter NO CHILD LEFT BEHIND: A DESKTOP REFERENCE]. See also Abigail Aikens, Student Work, *Being Choosy: An Analysis of Public School Choice Under No Child Left Behind*, 108 W. VA. L. REV. 233, 234 (2005). There has been more than \$321 billion in federal funding for education since 1965, yet in 1998 sixty percent of high school seniors were not reading proficiently.

<sup>2</sup> The difference between the performance of low-income and minority children on standardized tests when compared to their peers. SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS, NO CHILD LEFT BEHIND: NCLB GLOSSARY, available at <http://ci.sbcss.k12.ca.us/nclb/about/glossary.php> (last visited Oct. 31, 2006).

<sup>3</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 3.

<sup>4</sup> THE EDUCATION TRUST, ESEA: MYTHS VERSUS REALITIES, ANSWERS TO COMMON QUESTIONS ABOUT THE NEW NO CHILD LEFT BEHIND ACT 7, available at [www.edtrust.org](http://www.edtrust.org), (last visited Aug. 6, 2006).

<sup>5</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 4.

<sup>6</sup> *Id.* Only thirteen percent of low-income students, ten percent of African American students, eight percent of students with disabilities, and three percent of limited English proficient students were proficient in reading.

Smaller schools and districts have been shown to be more effective, especially in addressing the needs of low income communities.<sup>7</sup> The research suggests that student learning is enhanced by:

- smaller class size, especially in the lower grades;
- experienced teachers that are certified in the subjects they teach;
- classroom environments conducive to learning;
- availability of appropriate instructional materials;
- communication of expectations;
- material taught that is relevant to that which is tested; and
- tests that accurately measure achievement.<sup>8</sup>

The strongest threat to high student achievement is poverty.<sup>9</sup> Poverty affects the preparedness of students entering school and the ability of the community to generate revenue to support those schools.<sup>10</sup> It has been consistently shown that there is a powerful relationship between concentrated poverty and the results achieved on school level academic tests.<sup>11</sup> High poverty schools have lower test results, higher dropout rates, less prepared teachers, and fewer students taking demanding classes.<sup>12</sup> These students are also less likely to attend or complete post-secondary education.<sup>13</sup> Data has also shown that a disproportionate number of unqualified and inexperienced teachers are employed by schools that teach low-income and minority students.<sup>14</sup> These schools do not get their fair share of money and resources and offer a less rigorous curriculum than wealthier schools.<sup>15</sup>

Prior to January 2002, studies showed that high poverty secondary school classes were seventy-seven percent more likely to be taught by an

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<sup>7</sup> Jerry Johnson & Marty Strange, *Why Rural Matters 2005: The Facts About Rural Education in the 50 States*, THE RURAL SCHOOL AND COMMUNITY TRUST, May 2005, at vii, available at [www.ruraledu.org](http://www.ruraledu.org).

<sup>8</sup> Judith A. Winston, *Rural Schools in America: Will No Child Be Left Behind? The Elusive Quest for Equal Educational Opportunities*, 82 NEB. L. REV. 190, 203 (2003).

<sup>9</sup> Johnson & Strange, *supra* note 7, at 5. See *id.* at 6. Education research commonly uses the percentage of students eligible for subsidized meals to measure student poverty levels.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> Winston, *supra* note 8, at 200.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> THE EDUCATION TRUST, *supra* note 4, at 4.

<sup>15</sup> *Id.*

“out-of-field”<sup>16</sup> teacher than a class in a low poverty school.<sup>17</sup> Higher performing schools focused on teaching content and using tests to assess student performance; lower performing schools tended to teach the test and set goals of improving test scores, rather than concentrating on improving mastery of content.<sup>18</sup>

This Comment analyzes the latest reauthorization of the Elementary and Secondary Education Act (“ESEA”), No Child Left Behind, signed by President Bush on January 8, 2002, and its impact on rural school districts. Rural school districts face unique challenges due to limited funding and geographic location. These districts may face challenges due to being located in a remote and difficult to reach area or being in an agricultural community with a large migrant population. However, most rural schools or districts must deal with inadequate funding and difficulty finding qualified staff. A brief look is taken at the impact within the San Joaquin Valley of California, one of the most agriculturally productive areas in the United States.

## II. NO CHILD LEFT BEHIND

The ESEA was enacted in 1965, when President Lyndon Baines Johnson expanded his war on poverty to improve “learning for the nation’s poorest and most educationally disadvantaged children.”<sup>19</sup> Prior to 2001, the federal role in education focused mainly on “helping special groups of students, such as disadvantaged and disabled children, and addressing urgent national needs, such as improving math and science education.”<sup>20</sup> Originally enacted to provide support to educationally disadvantaged poor students in the areas of reading and mathematics,<sup>21</sup> Title I<sup>22</sup> of ESEA has been the largest federally funded program supporting kindergarten through twelfth grade (“K-12”) public education.<sup>23</sup>

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<sup>16</sup> “‘Out of field’ teachers are those who lack specific certification or a college major in the field they teach.” CENTER ON EDUCATION POLICY, BASIC (AND SOMETIMES SURPRISING) FACTS ABOUT THE U.S. EDUCATION SYSTEM: A PUBLIC EDUCATION PRIMER 29 (2006).

<sup>17</sup> THE EDUCATION TRUST, *supra* note 4, at 5.

<sup>18</sup> *Id.* at 6.

<sup>19</sup> Winston, *supra* note 8, at 202.

<sup>20</sup> CENTER ON EDUCATION POLICY, *supra* note 16, at 16.

<sup>21</sup> Winston, *supra* note 8, at 202.

<sup>22</sup> See No Child Left Behind Act of 2001, Pub. L. No. 107-110 § 2 (2002). ESEA is composed of titles, each addressing a different educational issue. See also SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS, *supra* note 2. The first section of ESEA is Title I. Title I provides additional funding to America’s most disadvantaged students.

<sup>23</sup> Winston, *supra* note 8, at 202.

The most recent reauthorization of the ESEA is the No Child Left Behind Act of 2001 ("NCLB"), which was signed by President George W. Bush on January 8, 2002.<sup>24</sup> NCLB, which President Bush described as "the cornerstone of [his] administration," was designed to improve student achievement and is considered a landmark in education reform.<sup>25</sup> It "has dramatically changed the national conversation over education policy."<sup>26</sup> The intent of NCLB was to provide high quality education to all children, cause a redistribution of educational resources, and an evaluation of educational practices.<sup>27</sup>

NCLB, which received overwhelming bipartisan support, has four key principles.<sup>28</sup> It requires stronger accountability for schools and districts, allows greater flexibility in the use of funds, gives parents choice, and emphasizes using proven teaching methods.<sup>29</sup> There is an increased emphasis on reading, the quality of teachers, and ensuring that all children learn English.<sup>30</sup> "[A]ll federally funded instruction, technical assistance, and professional development activities [must] be supported by scientifically based research."<sup>31</sup>

One principle of NCLB holds schools accountable for raising student achievement.<sup>32</sup> States must have annual performance goals for schools that are based on the percentage of students that are proficient on state tests in the areas of math, reading and language arts.<sup>33</sup> The goal is to have all students proficient in reading and math by the 2013-14 school year.<sup>34</sup>

Districts choose how they will allocate their Title I funds. Title I funds may be provided to schools with poverty rates at or above thirty-five percent<sup>35</sup> to ensure that all children are able to obtain high quality

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<sup>24</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 2.

<sup>25</sup> *Id.* at § 3.

<sup>26</sup> Dan Hardy, *Bulk of No Child 'Here to Stay,' But Changes Sought*, THE PHILADELPHIA INQUIRER, Sept. 26, 2006, available at <http://philly.com/mld/inquirer/1507944.htm>.

<sup>27</sup> THE EDUCATION TRUST, *supra* note 4, at 4.

<sup>28</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, NO CHILD LEFT BEHIND ACT: ADDITIONAL ASSISTANCE AND RESEARCH ON EFFECTIVE STRATEGIES WOULD HELP SMALL RURAL DISTRICT at 11 (Sept. 2004), available at [www.gao.gov](http://www.gao.gov).

<sup>32</sup> NATIONAL GOVERNORS ASSOCIATION FOR BEST PRACTICES, A PRIMER ON NO CHILD LEFT BEHIND at 1, available at [www.nga.org](http://www.nga.org) (last visited Aug. 6, 2006).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at i.

<sup>35</sup> See U.S. DEPARTMENT OF EDUCATION, NON-REGULATORY GUIDANCE: LOCAL EDUCATION AGENCY IDENTIFICATION OF SCHOOL ATTENDANCE AREAS AND SCHOOLS AND

educational experiences so they may become proficient in the state academic standards and assessments.<sup>36</sup> If the district decides to fund schools with poverty rates below thirty-five percent then all schools must receive Title I funds for each low-income child in the attendance area.<sup>37</sup> These funds are designed to promote schoolwide reform in schools with high percentages of low income students, ensure that scientifically based instructional strategies are available, and challenging academic content is provided.<sup>38</sup> Title I funds are designed to be flexible and “may be used to provide additional instructional staff, professional development, extended-time programs, and other strategies for raising student achievement in high-poverty schools.”<sup>39</sup> Particular emphasis has been placed on closing the achievement gap between minority and low-income students and their peers.<sup>40</sup>

Under NCLB, each state must create annual assessments in reading or language arts and math.<sup>41</sup> These assessments must be administered to all students, including limited English proficient students and students with disabilities.<sup>42</sup> There must be a single statewide accountability system<sup>43</sup> implemented and “annual measurable objectives to measure student progress” must exist to ensure that all groups reach proficiency in reading

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ALLOCATION OF TITLE I FUNDS TO THOSE AREAS AND SCHOOLS at 4-6 (Aug. 2003) [hereinafter NON-REGULATORY GUIDANCE]. Districts rank their schools by the percentage of low income children in attendance. The district must serve, in rank order, the schools above seventy-five percent poverty level. After the district has served all of the schools above seventy-five percent, it may serve lower ranked schools. Districts may choose to allocate funds to schools with at least thirty-five percent of their students at poverty level. The schools must be served in rank order. *See also* The White House, *No Child Left Behind*, <http://www.whitehouse.gov/news/reports/no-child-left-behind.html> (last visited Nov. 9, 2006). If the school’s poverty level is at or above forty percent that school may choose to combine their federal funds in order to receive flexibility in spending.

<sup>36</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 4. *See also* CENTER ON EDUCATION POLICY, *NCLB: URBAN SCHOOLS ARE TAGGED FOR IMPROVEMENT AT HIGHER RATES THAN SUBURBAN OR RURAL SCHOOLS* (June 2005). Thirty-two percent of all Title I schools are rural and eighteen percent of all schools identified for improvement are rural.

<sup>37</sup> NON-REGULATORY GUIDANCE, *supra* note 35, at 6.

<sup>38</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 4.

<sup>39</sup> *Id.*

<sup>40</sup> THE EDUCATION TRUST, *supra* note 4, at 2.

<sup>41</sup> NATIONAL GOVERNORS ASSOCIATION FOR BEST PRACTICES, *supra* note 32, at 3.

<sup>42</sup> U. S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 10. Ninety-five percent of all students must participate in the assessments. This percentage is not only overall, but also within each sub-group.

<sup>43</sup> Each state is required to set academic standards that each child should know and learn. SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS, *supra* note 2.

and math.<sup>44</sup> This is the first time that school districts have been required to disaggregate data<sup>45</sup> by race, ethnicity, gender, poverty level, disability, English language proficiency and migrant status.<sup>46</sup>

Schools that fail to make adequate yearly progress ("AYP")<sup>47</sup> by meeting the goals established by the state face sanctions, such as corrective action<sup>48</sup> and restructuring.<sup>49</sup> Parents of children that attend schools which are designated as low performing are given educational options for their children, which may include transferring the child to a better performing or safer school, or receiving supplemental educational services<sup>50</sup> paid for by the district.<sup>51</sup>

Primarily due to immigration, the number of children that are not proficient in English has grown dramatically.<sup>52</sup> The educational attainment of these students remains low, so NCLB's Title III, Language Instruction for Limited English Proficient and Immigrant Students, is to assist districts in helping the limited English proficient students meet the same state standards as all other students.<sup>53</sup> These students generally demonstrate lower levels of achievement than students whose primary language is English.<sup>54</sup>

NCLB's Title II, Improving Teacher Quality, was implemented to increase student achievement by increasing the quality of teachers.<sup>55</sup> Research shows there is a correlation between teacher quality and student achievement,<sup>56</sup> making teacher quality the most significant educational variable.<sup>57</sup> Low income and minority children have been disproportion-

<sup>44</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 4.

<sup>45</sup> To disaggregate data means to sort the test results into groups of students in order to determine how each group of students is performing. SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS, *supra* note 2.

<sup>46</sup> Winston, *supra* note 8, at 208.

<sup>47</sup> The state's yearly measure of progress toward achieving their academic standards. SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS, *supra* note 2.

<sup>48</sup> A corrective action plan is developed to improve teaching, administration, or curriculum. *Id.*

<sup>49</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 3.

<sup>50</sup> Supplemental services, such as outside tutoring or academic assistance, are offered to low-income students and are paid for by the district. SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS, *supra* note 2.

<sup>51</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 3.

<sup>52</sup> *Id.* at § 5. The limited English enrollment, which was 2.1 million in the 1990-1991 school year, increased to more than 3.7 million for the 1999-2000 school year.

<sup>53</sup> *Id.*

<sup>54</sup> Johnson & Strange, *supra* note 7, at 8.

<sup>55</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 5.

<sup>56</sup> *Id.*

<sup>57</sup> PHYLLIS McCLURE, DIANE PICHE & WILLIAM L. TAYLOR, CITIZENS COMMISSION ON CIVIL RIGHTS, DAYS OF RECKONING: ARE STATES AND THE FEDERAL GOVERNMENT UP TO

ately taught by teachers without full state certification, who are teaching out-of-field, or by inexperienced teachers.<sup>58</sup> The teacher quality provision of NCLB was designed to close this “teacher quality gap.”<sup>59</sup>

The law requires that “all core academic classes must be taught by ‘highly qualified teachers’” and that “poor and minority students are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.”<sup>60</sup> States are required to have a plan with annual measurable objectives to ensure that all teachers in core academic subjects are highly qualified.<sup>61</sup> Principals of schools must attest yearly whether the school is in compliance with the teacher quality requirement and this information must be made available to the public.<sup>62</sup>

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THE CHALLENGE OF ENSURING A QUALIFIED TEACHER FOR EVERY STUDENT? 1 (July 2006). See also Nanette Asimov, *More Uncredentialed Teachers' Students Fail: Seniors Likely to Flunk Exit Test, Study Says*, SAN FRANCISCO CHRONICLE, Dec. 11, 2002 at A-1. A study in California, by the Center for the Future of Teaching and Learning, showed that high schools whose students were taught by uncredentialed teachers had the highest failure rates in math on the high school exit exam.

<sup>58</sup> MCCLURE, PICHE & TAYLOR, *supra* note 57, at 4.

<sup>59</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 5; MCCLURE, PICHE & TAYLOR, *supra* note 57, at 4.

<sup>60</sup> MCCLURE, PICHE & TAYLOR, *supra* note 57, at 6. See also THE EDUCATION TRUST-WEST, CALIFORNIA'S HIDDEN TEACHER SPENDING GAP: HOW STATE AND DISTRICT BUDGETING PRACTICES SHORTCHANGE POOR AND MINORITY STUDENTS AND THEIR SCHOOLS, 3 (2005), available at [www.edtrustwest.org](http://www.edtrustwest.org). An analysis of California's high-poverty schools showed that “ninety-one percent of California's highest-poverty middle school math classes do not have teachers with a major or even a minor in mathematics.”

<sup>61</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 5. A highly qualified teacher will generally hold a valid teaching credential, a bachelor's degree, and has demonstrated competence in teaching skills and knowledge of the subject.

In July 2006, states were required to turn in a plan on the steps they were taking to ensure that poor and minority students were receiving an equitable share of high quality teachers. Bess Keller, *In Every Core Class, a Qualified Teacher...*, EDUCATION WEEK, (Aug. 30, 2006), available at <http://www.edweek.org>. Nine states were found to have fully acceptable plans and four states flunked. An independent review of the state plans by the Education Trust found that the “documents were ‘sprinkled with vague plans that lacked the data to properly target the strategies or evaluate their effectiveness.’” *Id.*

Teachers in New York brought suit claiming that the states public “teacher certification program is racially discriminatory in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-2000e-17.” *Gulino v. New York State Dept. of Ed.*, 460 F.3d 361, 363 (2d Cir. 2006). The teachers are minority teachers who have been unable to pass one component of the State Teacher Certification Examination, a state test which requires passing a multiple choice and essay test on basic college level content. *Id.* at 369.

<sup>62</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 5.

## III. RURAL SCHOOL FUNDING

The largest source of education funding, more than ninety percent,<sup>63</sup> comes from state and local funding sources.<sup>64</sup> This causes inequality in funding due to the heavy reliance on local property assessments and taxes to fund education.<sup>65</sup> State methods of funding school districts have been the subject of multiple lawsuits.<sup>66</sup> Since 1970, there has been litigation in forty-six states concerned with the inequality of education funding.<sup>67</sup>

Since local revenues are based mainly on property taxes,<sup>68</sup> rural school districts are disadvantaged because they have fewer resources due to “diminished local property tax bases and inequitable distributions of state funds.”<sup>69</sup> States have attempted to make up for the inequity in funding by inserting a poverty factor into their basic aid formula, using separate programs to provide poverty aid, or both.<sup>70</sup> However, the additional aid is still well below what is necessary to compensate for the challenges of providing a quality education to children of poverty.<sup>71</sup>

During the 2002-2003 school year, approximately nineteen percent of children attended a school located in a rural area.<sup>72</sup> A school is designated by the Department of Education (“DOE”) as rural if it is in an area the Census Bureau has designated as rural<sup>73</sup> and has a population of fewer than 2,500.<sup>74</sup> There are specific issues that rural school districts

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<sup>63</sup> CENTER ON EDUCATION POLICY, *supra* note 16, at 17.

<sup>64</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 32.

<sup>65</sup> Marty Strange, *Equitable and Adequate Funding for Rural Schools: Ensuring Equal Educational Opportunity for All Students*, 82 NEB. L. REV. 1, 1 (2003).

<sup>66</sup> See generally Christopher R., Lockard, Note, *In the Wake of Williams v. State: The Past, Present, and Future of Education Finance Litigation in California*, 57 HASTINGS L.J. 385, 392 (2005).

<sup>67</sup> Strange, *supra* note 65, at 1. See also CENTER ON EDUCATION POLICY, *supra* note 16, at 20. The litigation changed focus in the late 1980’s and began focusing on language in state constitutions that entitle students to an “adequate” education. This strategy has caused many state school finance systems to be found unconstitutional. These states have to restructure their finance systems to provide additional funding to some districts.

<sup>68</sup> CENTER ON EDUCATION POLICY, *supra* note 16, 19.

<sup>69</sup> Johnson & Strange, *supra* note 7, at 21.

<sup>70</sup> *Id.* States have used similar funding strategies for the additional expense of educating English Language Learners. Yet again, this additional aid is well below what is needed to meet the special needs of these students.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 1.

<sup>73</sup> National Center for Education Statistics, Information on Public Schools and School Districts in the United States: Identification of Rural Locales, [http://nces.ed.gov/ccd/rural\\_locales.asp](http://nces.ed.gov/ccd/rural_locales.asp) (last visited Oct. 29, 2006).

<sup>74</sup> Johnson & Strange, *supra* note 7, at 2.



face when it comes to educational funding.<sup>75</sup> The salaries offered in rural areas are generally not competitive with non-rural districts.<sup>76</sup> Two related factors are the location and small size of the district or school, which contribute to the higher per pupil cost of educating the students.<sup>77</sup> Additionally, the cost of maintaining facilities is generally paid out of local property tax revenues.<sup>78</sup> Many rural facilities are outdated, sub-standard, and often lack the up-to-date technology that is needed to make the most of opportunities for instructional and non-instructional use.<sup>79</sup> Finally, there is limited access to equal educational opportunities due to the higher cost of accessing services.<sup>80</sup>

The costs of implementing the requirements of NCLB are large.<sup>81</sup> These requirements fall disproportionately on rural school districts.<sup>82</sup> Although research has shown that smaller schools and districts are more effective in addressing the educational needs of low-income students,<sup>83</sup> in order to become more cost effective, some rural schools have chosen to consolidate.<sup>84</sup> Even rural schools that show good student achievement results are in danger of consolidation because they may be seen as being too small and inefficient.<sup>85</sup> If consolidation occurs, the new school is

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<sup>75</sup> Strange, *supra* note 65, at 4.

<sup>76</sup> *Id.* See also THE EDUCATION TRUST-WEST, *supra* note 60, at 3. The largest percentage of any individual school budget is expended on teacher salaries. Typically teacher salaries are determined by years of overall teaching experience, years of experience within the district, certification status, and level of education. The practical effect of this is that the most educated and most experienced teachers are also the most expensive for the school to hire.

<sup>77</sup> Strange, *supra* note 65, at 4-5.

<sup>78</sup> *Id.* at 6.

<sup>79</sup> Johnson & Strange, *supra* note 7, at 22.

<sup>80</sup> Strange, *supra* note 65, at 7.

<sup>81</sup> See *School District of Pontiac v. Spelling*, No. 05-CV-71535-DT, 2005 U.S. Dist. Lexis 29253 at \*5 (E.D. Mich. 2005) (Illinois alleges the cost of developing and administering required tests will cost \$15.4 million per year but it receives only \$13 million per year in federal funding, Connecticut received \$218,000 while actual cost was over \$18 million in 2005, Jordan, UT and Anchorage, AL allege the cost of collecting, analyzing, and reporting data was more than the district received in NCLB funds). See also *Connecticut v. Spelling*, No. 3:05-CV-1330 (MRK), 2006 U.S. Dist. Lexis 69552 (Conn. 2006) (Connecticut alleged that NCLB provided unfunded mandates in violation of 20 U.S.C. § 7907(a). Court determined it did not have subject matter jurisdiction over any of the state's claims, other than the claim that the secretary denying the amendment to the state plan violated the Administrative Procedures Act, 5 U.S.C. §§ 701-706).

<sup>82</sup> *Round Two on No Child Left Behind*, RURAL POLICY MATTERS, (Aug. 2006), available at <http://www.ruraledu.org>.

<sup>83</sup> Johnson & Strange, *supra* note 7, at 20.

<sup>84</sup> Winston, *supra* note 8, at 196.

<sup>85</sup> Johnson & Strange, *supra* note 7, at vi.

often long distances from the students' homes causing difficulties in providing extended day programs, after school sports, or other school based activities.<sup>86</sup>

Rural districts may apply for additional funding under NCLB's Title VI, Flexibility and Accountability.<sup>87</sup> Through the Rural Education Achievement Program ("REAP"), the federal government has attempted to address some of the specific challenges of rural districts.<sup>88</sup> REAP's purpose is to help rural districts, which lack personnel and resources, to effectively compete for and make use of federal funds.<sup>89</sup>

The Rural Education Initiative: Small, Rural School Achievement ("SRSA") provides additional funds and flexibility to certain small, rural districts.<sup>90</sup> A district is eligible for SRSA funds if they meet attendance or population criteria and only serve schools in an area defined by the U.S. Department of Education as, either, rural or rural near an urban area.<sup>91</sup> The recipient of the funds must establish specific goals and objectives to increase student achievement, decrease the dropout rate, or other factors that they choose to measure, and to continue in the program, must meet AYP.<sup>92</sup>

The Rural Education Initiative: Rural and Low Income Schools ("RLIS") provides funds to those rural districts that serve high concentrations of low income students.<sup>93</sup> Districts that are eligible for funds under SRSA may not receive funds under RLIS.<sup>94</sup> The recipient of RLIS funds must establish specific educational goals and objectives that increase student achievement and decrease the dropout rate.<sup>95</sup> Both SRSA and RLIS funds may be used for a variety of activities, including professional development, educational technology, and teacher recruitment and retention.<sup>96</sup> While the federal government has acknowledged the additional costs of NCLB in rural areas by providing additional funding, this has

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<sup>86</sup> Winston, *supra* note 8, at 196.

<sup>87</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 9.

<sup>88</sup> CYNTHIA REEVES, NORTH CENTRAL REGIONAL EDUCATIONAL LABORATORY, EDUCATIONAL POLICY PUBLICATIONS: IMPLEMENTING THE NO CHILD LEFT BEHIND ACT: IMPLICATIONS FOR RURAL SCHOOLS AND DISTRICTS 2 (Jan. 2003).

<sup>89</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 9.

<sup>90</sup> NO CHILD LEFT BEHIND: A DESKTOP REFERENCE, *supra* note 1, at § 9.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 9.

been inadequate to overcome the additional expense of implementing the requirements in rural areas.<sup>97</sup>

#### IV. THE DIFFICULTY IN MEETING THE HIGHLY QUALIFIED REQUIREMENT FOR RURAL SCHOOL DISTRICTS

While each state faces its own unique challenges,<sup>98</sup> the requirements of NCLB are particularly challenging to most rural districts.<sup>99</sup> The provisions requiring high quality teachers and paraprofessionals, and AYP are especially burdensome.<sup>100</sup> The problems faced by rural districts are caused because NCLB was designed to deal with the deficiencies of urban educational systems and little consideration was given to the issues rural school districts face.<sup>101</sup>

All districts are challenged by the teacher quality provision of NCLB because there is a nationwide teacher shortage.<sup>102</sup> Three elements that contribute to this shortage are the challenges of recruiting the number of candidates needed for staff vacancies, the difficulty in retaining teachers already hired, and the actual demand for highly qualified teachers.<sup>103</sup> “[R]equiring schools to have highly-qualified teachers is a ‘gigantic issue’ for rural districts.”<sup>104</sup> These districts have fewer students, may have three or fewer schools, and be located in geographically remote locations.<sup>105</sup> If the district is located long distances from metropolitan areas or lacks social opportunities, the district’s ability to recruit and retain teachers is affected.<sup>106</sup>

These districts need to find people committed to the rural way of life.<sup>107</sup> It can be difficult to attract younger, single people to communities

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<sup>97</sup> Lorna Jimerson, Ed.D., The Rural School and Community Trust, *Special Challenges of the “No Child Left Behind” Act for Rural Schools and Districts*, THE RURAL EDUCATOR, Spring 2005 at 5, available at [www.findarticles.com](http://www.findarticles.com).

<sup>98</sup> Johnson & Strange, *supra* note 7, at 19.

<sup>99</sup> Ellie Ashford, *Rural School Districts Particularly Challenged by NCLB Law*, SCHOOL BOARD NEWS, Oct. 8, 2002, available at <http://www.nsba.org>. (last visited Aug. 10, 2006).

<sup>100</sup> *Id.* See also Reeves, *supra* note 88, at 2.

<sup>101</sup> Raju Chebium, *Rural Schools Brace for a Hard Time Finding Teachers*, GANNETT NEWS SERVICE, Aug. 4, 2005, LEXIS, Nexis Library Gannett News Service file.

<sup>102</sup> Lorna Jimerson, Ed.D., *The Competitive Disadvantage: Teacher Compensation in Rural America*, RURAL TRUST POLICY BRIEF SERIES ON RURAL EDUCATION 7 (Mar. 2003).

<sup>103</sup> *Id.*

<sup>104</sup> Ashford, *supra* note 99.

<sup>105</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 8.

<sup>106</sup> *Id.* at 18.

<sup>107</sup> Ashford, *supra* note 99.

that are isolated with small populations.<sup>108</sup> Many rural communities are losing population as the “younger, better-educated, and more upwardly mobile” residents are moving to larger urban areas,<sup>109</sup> leaving the poorest, least educated, least mobile, and most at-risk of educational failure behind.<sup>110</sup> Large numbers of new residents, often of very diverse ethnic and racial backgrounds, are moving into some rural communities.<sup>111</sup> In agricultural communities, the population may include a number of migrant workers, which creates a large transient population.<sup>112</sup> Serving transient populations requires specialized skills and resources to meet their unique needs.<sup>113</sup> This diversity creates challenges in meeting student needs.<sup>114</sup>

It is not uncommon for over forty percent of rural students to be participating in free and reduced lunch programs.<sup>115</sup> Rural districts also report that they may be facing declining student enrollment which causes less funding to be available and a reduction in the number of teachers in the district.<sup>116</sup> As schools lose teachers, the remaining teachers must assume additional responsibilities, including teaching additional subjects.<sup>117</sup> This implicates both the high quality teacher requirement of NCLB and the ability of the school to recruit or retain teachers.

Another reason that rural districts face unique challenges in complying with NCLB is that their small size and geographically isolated location can limit access to resources.<sup>118</sup> The structures which are generally associated with improved academic performance are often not present in their communities or the homes of economically disadvantaged students.<sup>119</sup> These characteristics have affected the rural school district’s ability to comply with the provisions of NCLB.<sup>120</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> Jimerson, *supra* note 97, at 2.

<sup>110</sup> Johnson & Strange, *supra* note 7, at 22.

<sup>111</sup> Jimerson, *supra* note 97, at 2.

<sup>112</sup> Johnson & Strange, *supra* note 7, at 10.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at vii.

<sup>115</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 8. *See id.* at 7. Sixty-five percent of rural schools are eligible to receive Title I funds due to the number of children in poverty attending the school. *See also* NON-REGULATORY GUIDANCE, *supra* note 35, at 4. Participation in free and reduced lunch programs can be used to identify students as economically disadvantaged.

<sup>116</sup> NON-REGULATORY GUIDANCE, *supra* note 35, at 12; Reeves, *supra* note 88, at 2.

<sup>117</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 12.

<sup>118</sup> Reeves, *supra* note 88, at 3.

<sup>119</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 12.

<sup>120</sup> *Id.*

While rural districts located near a suburban area have less difficulty in recruiting teachers, the teachers tend to leave after only a few years.<sup>121</sup> Improving teacher retention rates is necessary in order to provide every child with a high quality teacher.<sup>122</sup> Attrition rates are high among new teachers.<sup>123</sup> Forty-six percent of new teachers leave the profession within the first five years of beginning their teaching career.<sup>124</sup> Since one of the characteristics of low performing schools is high attrition rates, improving retention rates will have a large impact on low performing schools.<sup>125</sup>

Rural schools have financial hurdles as well.<sup>126</sup> Rural districts report difficulty recruiting teachers due to their inability to offer competitive salaries.<sup>127</sup> Rural teacher compensation is generally less than for teachers in urban or suburban districts when comparing beginning salary, average salary, and highest salary amounts.<sup>128</sup> The salary disparity increases as the teacher moves along the salary schedule because of increased training and experience.<sup>129</sup>

Wealthier districts are able to supplement salaries with local taxes, generally property taxes.<sup>130</sup> This disadvantages rural districts, which have a lower tax base, and are therefore limited in their ability to supplement salaries.<sup>131</sup> The difficulty finding highly qualified teachers is compounded by the fact that teachers are paid less than other profession-

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<sup>121</sup> PATRICIA CAHAPE HAMMER ET AL., RURAL TEACHER RECRUITMENT AND RETENTION PRACTICES: A REVIEW OF THE RESEARCH LITERATURE, NATIONAL SURVEY OF RURAL SUPERINTENDENTS, AND CASE STUDIES OF PROGRAMS IN VIRGINIA 4 (2005), available at [www.ale.org](http://www.ale.org).

<sup>122</sup> NATIONAL GOVERNORS ASSOCIATION FOR BEST PRACTICES, *supra* note 32, at 7.

<sup>123</sup> *Id.* A California study, using 1999-2000 data, found that programs offering support to new teachers improved attrition rates. Teachers enrolled in the program had a nine percent attrition rate after five years, compared to a thirty-seven percent attrition rate for teachers that did not participate in a program offering support. See also Jimerson, *supra* note 102, at 14. Job dissatisfaction has been found to account for one quarter of this attrition. Job dissatisfaction is caused by the lack of administrative support, lack of input into decision-making, student discipline problems, and low pay. The most common reason given for leaving a district is low pay.

<sup>124</sup> CENTER ON EDUCATION POLICY, *supra* note 16, at 31.

<sup>125</sup> NATIONAL GOVERNORS ASSOCIATION FOR BEST PRACTICES, *supra* note 32, at 7.

<sup>126</sup> Jimerson, *supra* note 97, at 1. See also Johnson & Strange, *supra* note 7, at 12. Rural districts vary in the amount of money they spend on student transportation due to unavoidable issues, such as terrain and geography, school and district size, and the allowable length of bus rides for students.

<sup>127</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31 at 5.

<sup>128</sup> Jimerson, *supra* note 102, at 8.

<sup>129</sup> *Id.* at 9.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 10.

als.<sup>132</sup> The fact that, even within the same state, rural districts pay less than non-rural districts intensifies the problem since the districts are generally hiring from the same pool of potential teachers.<sup>133</sup>

Traditionally, teachers in rural schools have been generalists who teach a variety of subjects at different grade levels.<sup>134</sup> Due to the size of the school, teachers often have to teach multiple subjects.<sup>135</sup> The effect of this is that the rural teacher has a greater workload, while earning less than a teacher in an urban or suburban area.<sup>136</sup> Requiring these teachers to have degrees in each of these subjects presents enormous difficulties.<sup>137</sup> As Brent Walker, principal of Haverhill Cooperative Middle School in New Hampshire said, "What rural districts often have to do is find the right person who's the right fit for the school ... and invest in training that person for that unique roll."<sup>138</sup>

The difficulty in retaining teachers also makes it difficult "to establish a cohesive, collaborative staff."<sup>139</sup> Effective professional development and coherent curriculum coordinated across grade levels and subjects becomes difficult due to new teachers continually coming into the system.<sup>140</sup> The result of being unable to recruit and retain teachers causes under-prepared teachers to be hired, teachers teaching out of their field, fewer course options, larger class size, less experienced staff, and fragmented professional development.<sup>141</sup> These trends are the opposite of the elements which have been found to improve student learning.<sup>142</sup>

Rural communities are also less likely to encourage their paraprofessionals to become highly qualified so they may increase the supply of teachers that meet the NCLB requirements.<sup>143</sup> Rural districts can have difficulty in establishing partnerships with colleges or sending paraprofessionals for training because of the distance from the institution.<sup>144</sup> The small number of employees in the rural district does not make it cost

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<sup>132</sup> *Id.* New college graduates in other professions start at higher salaries than teachers: "over thirty-five percent more in sales and marketing, forty-three percent more in business administration and sixty-eight percent more in engineering."

<sup>133</sup> *Id.* at 10-11.

<sup>134</sup> Chebium, *supra* note 101.

<sup>135</sup> Jimerson, *supra* note 97, at 4.

<sup>136</sup> HAMMER ET AL., *supra* note 121, at 5.

<sup>137</sup> Jimerson, *supra* note 97, at 4.

<sup>138</sup> Chebium, *supra* note 101.

<sup>139</sup> Jimerson, *supra* note 102, at 12.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 13.

<sup>142</sup> *Id.*

<sup>143</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 26.

<sup>144</sup> *Id.* at 26-27.

effective to have a college send representatives to the community to offer training or classes.<sup>145</sup>

Professional development is important because teachers who have strong content based knowledge are more effective than teachers without it.<sup>146</sup> This knowledge is achieved, not only by formal education, but also through content rich professional development.<sup>147</sup> Rural districts often have difficulty in providing professional development activities to their teachers.<sup>148</sup> This affects the ability for their teachers to be highly qualified.<sup>149</sup>

The small size of the rural school, with limited personnel, causes difficulty in allowing teachers to receive training and attend conferences that would increase the student's ability to meet proficiency goals.<sup>150</sup> Substitute teachers may not be available to cover classes.<sup>151</sup> Due to these challenges, rural school districts are "more likely to use distance learning" to help meet the teacher quality requirements of NCLB.<sup>152</sup>

Contributing to the overall problem is that the DOE has given the states poor guidance<sup>153</sup> and done virtually no enforcement of any of the teacher quality provisions of the law.<sup>154</sup> The DOE accepted faulty information provided by the states without question, despite indications that the submitted data was inaccurate.<sup>155</sup> An analysis of forty state reviews by the Citizens' Commission on Civil Rights shows that little progress has been made in most states in implementing the teacher quality and equity provisions of NCLB.<sup>156</sup> Also, minimal effort has been made by the DOE in verifying states' efforts.<sup>157</sup> The DOE has not addressed the issue of the disparity in teacher quality that is based on student's race and income.<sup>158</sup> Only three states, Ohio, Nevada, and Tennessee, "reported complete data on the quality of teachers assigned to poor and minority"

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<sup>145</sup> *Id.* at 27.

<sup>146</sup> THE EDUCATION TRUST-WEST, *supra* note 60, at 4.

<sup>147</sup> *Id.*

<sup>148</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 14.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at 16.

<sup>151</sup> *Id.* at 16-17.

<sup>152</sup> *Id.* at 5.

<sup>153</sup> Ben Feller, *States Don't Meet Education Law, Report Says*, THE FRESNO BEE, Aug. 11, 2006, at A10.

<sup>154</sup> McClure, Piche & Taylor, *supra* note 57, at 8.

<sup>155</sup> *Id.* at 9-10. An Education Trust analysis of state reported data for the 2002-2003 school year reported that states largely reported questionable and unreliable data. The Department of Education took no action to ensure that states reported honest data.

<sup>156</sup> *Id.* at 15.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 18.

students.<sup>159</sup> A report by the Education Institute shows that, four years after NCLB was enacted, low-income children were still being denied equal access to highly qualified teachers.<sup>160</sup>

Research suggests that one of the most effective strategies to ensure an adequate number of highly qualified teachers is to establish high-quality mentoring programs.<sup>161</sup> Mentoring programs use the skills and expertise of an experienced teacher to assist new teachers.<sup>162</sup> However, rural districts find it difficult to offer mentoring programs for teachers.<sup>163</sup> This is because they have few teachers, existing teachers may teach multiple subjects or grade levels, and there may be large distances between districts that limit the availability of teachers to serve as mentors.<sup>164</sup>

#### V. WHAT IS BEING DONE TO MEET THE HIGH QUALITY TEACHER REQUIREMENT?

Although there is little evidence that the use of financial incentives to recruit teachers actually reduces turnover or increases student achievement, thirty states offer financial incentives.<sup>165</sup> These incentives include, not only yearly bonuses and salary increases, but also scholarships, housing benefits, and loan forgiveness.<sup>166</sup> There are seventeen states that offer incentives for teachers who work in schools which are hard-to-staff.<sup>167</sup>

Several states have developed programs to attract and retain teachers. Since 1998, Mississippi has used their Critical Needs Teacher Scholarship Program to draw teachers to forty-seven "critical shortage" geographic areas, primarily located in the Mississippi Delta region, by using college scholarships and assisted housing programs.<sup>168</sup> Of the 332 teach-

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<sup>159</sup> Feller, *supra* note 153, at A10.

<sup>160</sup> MCCLURE, PICHE & TAYLOR, *supra* note 57, at 4.

<sup>161</sup> HAMMER ET AL., *supra* note 121, at 9.

<sup>162</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 20.

<sup>163</sup> *Id.* at 5.

<sup>164</sup> *Id.*

<sup>165</sup> Linda Jacobsen, *Teacher-Pay Incentives Popular But Unproven*, EDUCATION WEEK, Sept. 27, 2006, available at <http://www.edweek.org/ew/articles/2006/09/27/05incentive.h26.html?print=1>. See also Press Release, Office of the Press Secretary, *Fact Sheet: The No Child Left Behind Act: Challenging Students Through High Expectations* (Oct. 5, 2006) available at [www.whitehouse.gov/news/releases/2006/10/20061005-2.html](http://www.whitehouse.gov/news/releases/2006/10/20061005-2.html). Congress has created a Teacher Incentive Fund which allows districts to reward teachers who teach in the neediest schools and have students that demonstrate improvement.

<sup>166</sup> Jacobsen, *supra* note 165.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*



ers who participated in the program, sixty-five percent continued to teach in a critical shortage area.<sup>169</sup>

To successfully use incentive programs, they must be targeted to the specific needs they are intended to address.<sup>170</sup> Mentoring, professional development, ongoing bonuses for increased achievement, and strong school leadership are needed to retain teachers in hard-to-staff schools.<sup>171</sup> As Lewis C. Solomon, President of the Milken Family Foundation said, “You don’t want just any teacher to come, you want effective teachers.”<sup>172</sup> The Milken Family Foundation launched the Teacher Advancement Program in 1999, which is being used in thirteen states.<sup>173</sup> The program, currently administered by the National Institute for Excellence in Teaching, offers “multiple career paths for teachers, ongoing school-based professional development, evaluations tied to student performance, and performance-based compensation”.<sup>174</sup> Incentives for teachers transferring to low-performing schools may be included.<sup>175</sup>

Literature shows that there are four common characteristics of effective recruitment and retention practices.<sup>176</sup> The recruitment and retention practices need to be strategic.<sup>177</sup> The district needs to analyze their needs, develop plans, and make decisions to maximize results.<sup>178</sup> In order to be effective, the efforts must be sustained.<sup>179</sup> This means they must become part of the school’s culture.<sup>180</sup> The strategies used need to be specific to the school.<sup>181</sup> Finally, the teachers need to feel rooted to the community.<sup>182</sup> Isolation is a major factor affecting rural teachers.<sup>183</sup> Comfort and connectedness are necessary to overcome this feeling of isolation.<sup>184</sup>

The DOE has established a Rural Education Task Force to coordinate and focus on rural education efforts.<sup>185</sup> A grant was awarded to establish

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> HAMMER ET AL., *supra* note 121, at vii.

<sup>177</sup> *Id.* at 11.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 12.

<sup>181</sup> *Id.* at 11.

<sup>182</sup> *Id.* at 12.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 6.

a National Center for Research and Development in Rural Education.<sup>186</sup> The purpose “is to develop, test, and disseminate new approaches to improve teaching and learning, and ultimately student achievement.”<sup>187</sup>

In response to the concerns expressed by western legislators<sup>188</sup> that rural districts would not be able to meet the teacher quality requirement, in March 2004, the Secretary of Education announced flexibility for the areas having the highest need.<sup>189</sup> Rural districts, approximately one-third of all school districts, were allowed additional flexibility in meeting the requirement to have all teachers highly qualified by the end of the 2005-2006 school year.<sup>190</sup> However, in determining which schools were eligible for the extension, the federal government used criteria favoring small, self-contained districts.<sup>191</sup> This resulted in the majority of the schools which benefit from the extension being located in the West and Plains states.<sup>192</sup> In the South, rural schools tend to be part of larger districts which do not qualify for the extension.<sup>193</sup> For example, “while 440 districts in Nebraska, 375 districts in Montana and 80 districts in Oregon qualified, for the extra time, no districts in South Carolina or Alabama qualified,” and only one district in Florida and West Virginia qualified for the extra time.<sup>194</sup>

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<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 39.

<sup>188</sup> Julia Silverman, *Teachers in Rural West Get Extension to Meet Goals; South Left Out*, VENTURA COUNTY STAR, July 11, 2004, Main News at 10.

<sup>189</sup> Letter from Rod Paige, U.S. Secretary of Education, to Chief State School Officers, (Mar. 31, 2004), available at <http://www.ed.gov/print/policy/elsec/guid/secletter/040331.html>.

<sup>190</sup> *Id.*; U.S. DEPARTMENT OF EDUCATION, NEW NO CHILD LEFT BEHIND FLEXIBILITY: HIGHLY QUALIFIED TEACHERS, (Mar. 2004) available at <http://www.ed.gov/print/nclb/methods/teachers/hqtflexibility.html>; see also Bess Keller, *U.S. Education Department Gives States Reprieve in Meeting “Highly Qualified” Teacher Requirement*, EDUCATION WEEK (Oct. 24, 2005), available at [www.edweek.org](http://www.edweek.org) (On October 21, 2005, states were notified by the U.S. Secretary of Education, Margaret Spellings, that federal funds would not be withheld from states that do not have one hundred percent of their teachers “highly qualified”); Letter from Margaret Spellings, U.S. Secretary of Education, to Chief State School Officers, (Oct. 21, 2005), available at <http://www.ed.gov/policy/elsec/guid/secletter/051021.html> (States that demonstrate enough progress based upon criteria established by the Department of Education will receive a one year extension to meet the requirement); Sam Dillon, *Most States Fail Demands in Education Law*, NEW YORK TIMES, July 25, 2006 (Facing criticism from a variety of different groups, Margaret Spellings has toughened her stance on enforcing the law and states have been threatened with losing funding).

<sup>191</sup> Silverman, *supra* note 188, at 10.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

The extension applied to districts that are eligible to participate in SRSA and gave additional time for multiple subject teachers, who are highly qualified in one subject, to become highly qualified in all areas they teach.<sup>195</sup> Teachers who are currently employed teaching multiple subjects, that do not meet the criteria to be considered highly qualified in all areas they teach, have until the end of the 2006-07 school year to meet the highly qualified requirements for each subject area.<sup>196</sup> The district must provide professional development and mentoring or supervision to ensure that the teachers become highly qualified in the additional core academic subjects.<sup>197</sup>

## VI. A LOOK AT THE SAN JOAQUIN VALLEY

“Five of the ten most agriculturally productive counties in the United States” are located in the San Joaquin Valley, which is comprised of eight counties in California’s Central Valley.<sup>198</sup> The San Joaquin Valley is “a severely economically depressed region suffering from high poverty, unemployment, and other adverse social conditions.”<sup>199</sup> Agriculture is the “most significant socioeconomic feature of the [San Joaquin Valley].”<sup>200</sup> The area attracts a large number “of lower-skilled workers from across the state as well as from significant international migration,”<sup>201</sup> which includes a large number of Latino immigrants.<sup>202</sup> These immigrants tend to be poorly educated, unskilled workers who come to the area to work in the agricultural community.<sup>203</sup>

In some areas of the San Joaquin Valley, close to two-thirds of the residents have not completed high school.<sup>204</sup> Many of the immigrants are employed as low-skilled, part-time, seasonal employees in the agricultural industry.<sup>205</sup> The communities which are economically dominated by agriculture “are characterized by very high rates of poverty among im-

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<sup>195</sup> Letter from Rod Paige, *supra* note 189.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> TADLOCK COWAN, CONGRESSIONAL RESEARCH SERVICE, CALIFORNIA’S SAN JOAQUIN VALLEY: A REGION IN TRANSITION, CRS-1 (Dec. 12, 2005), *available at* [http://www.house.gov/nunes/documents/San\\_Joaquin\\_Valley\\_CRS.Report.pdf](http://www.house.gov/nunes/documents/San_Joaquin_Valley_CRS.Report.pdf).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at CRS-4.

<sup>201</sup> *Id.* at CRS-5.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at CRS-19.

<sup>204</sup> *Id.* at CRS-5.

<sup>205</sup> *Id.* at CRS-6.

migrants.”<sup>206</sup> Due to the lack of diversification in the economic structure of the rural communities, there are few opportunities for the immigrants outside of agriculture.<sup>207</sup> The extended growing season allows workers to be employed year round as farm laborers and has caused the agricultural community to move away from using migrant workers.<sup>208</sup> In 2002, farm workers were the largest employment category in Fresno and Madera counties, with 20,000 workers.<sup>209</sup>

The school districts in urban areas of the San Joaquin Valley often have so many applicants they turn hundreds away.<sup>210</sup> This is due to the number of teachers who graduate each year from the schools in the area.<sup>211</sup> Fresno State University, Fresno Pacific University, National College, and Chapman University all have credential programs which put approximately 2,000 new teachers into the community each year.<sup>212</sup> While hiring for the 2002-03 school year, Fresno Unified received 2,800 applications for 300 positions, Clovis Unified received 1,000 applications for 113 positions, and Visalia Unified received 1,200 applications for 95 positions.<sup>213</sup>

Tulare County, located in the central San Joaquin Valley, is the second largest producer of agricultural commodities in the United States.<sup>214</sup> The rural schools in the county demonstrate the stereotypical characteristics of rural schools. In 2003, over fifty-four percent of the county’s population identified themselves as Hispanic.<sup>215</sup> Fifty-nine percent of the schools in Tulare County qualified to receive the extension for their teachers to become highly qualified.<sup>216</sup> Stone Corral Elementary School, in the community of Seville, has “few community facilities and only a Texaco station to stop at for lunch.”<sup>217</sup> The school is located approximately forty-five miles south-east of Fresno in Tulare County.<sup>218</sup> The

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<sup>206</sup> *Id.* at CRS-7.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at CRS-8.

<sup>209</sup> *Id.* at CRS-9-10.

<sup>210</sup> Javier Erik Olvera, *Looking for Class Work*, THE FRESNO BEE, Sept. 2, 2002, at A1.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> Tulare County, CA, <http://www.co.tulare.ca.us/about/default.asp> (last visited Oct. 29, 2006).

<sup>215</sup> COWAN, *supra* note 198, at CRS-26.

<sup>216</sup> Scott A. Mayes, *Feds Ease Rules About the Quality of Teachers in Rural Districts*, VISALIA TIMES-DELTA, Mar. 16, 2004, at 4A.

<sup>217</sup> *Id.*

<sup>218</sup> Mapquest, <http://www.mapquest.com> (last visited Nov. 3, 2006).

kindergarten to eighth grade school,<sup>219</sup> which is identified as rural,<sup>220</sup> has an average daily attendance of 142 students.<sup>221</sup> Since the school is small and isolated, it is not unusual for a teacher to teach two grade levels and also assume other responsibilities.<sup>222</sup> It is difficult for a community such as this to recruit highly qualified teachers.<sup>223</sup> According to Juan Lopez, Superintendent, “teachers want to be in a big city...It’s very inviting to want to work in Visalia.”<sup>224</sup>

When hiring for the 2002-03 school year, Earlimart School District in southern Tulare County,<sup>225</sup> had difficulty finding thirteen qualified applicants from the 200 applications received.<sup>226</sup> Earlimart School District, approximately forty miles north of Bakersfield,<sup>227</sup> is a rural, agricultural community which is defined as a mid-sized city on the urban fringe.<sup>228</sup> The district superintendent “has noticed a revolving door of new teachers who commute to his district from Bakersfield and Fresno until they get enough experience to land jobs in larger districts.”<sup>229</sup> This is even after the district boosted beginning teacher salaries to try to attract more applicants.<sup>230</sup>

Farmersville Unified School District, in Tulare County,<sup>231</sup> also set beginning teacher salaries to attract more applicants.<sup>232</sup> They had approximately thirty applicants for six positions at the beginning of the 2002-03

<sup>219</sup> Tulare County Office of Education, <http://www.tcoe.org/districts/stonecorral.shtm> (last visited Oct. 29, 2006).

<sup>220</sup> See Fiscal Year 2006 Spreadsheet for Small, Rural School Achievement Program and Rural Low-Income School Program, California School Districts, 14, available at <http://www.ed.gov/programs/reaprsas/grant06/index.html> (last visited Nov. 3, 2006); National Center for Education Statistics, *supra* note 73 [hereinafter Fiscal Year 2006 Spreadsheet].

<sup>221</sup> Tulare County Office of Education, *supra* note 219.

<sup>222</sup> Mayes, *supra* note 216.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> Map of Tulare County, [http://www.co.tulare.ca.us/about/ig/map\\_tulare\\_county.jpg](http://www.co.tulare.ca.us/about/ig/map_tulare_county.jpg) (last visited Oct. 29, 2006).

<sup>226</sup> Olvera, *supra* note 210, at A1.

<sup>227</sup> Earlimart Elementary School District, District Profile, <http://www.earlimart.org/personnel/page2.html> (last visited Nov. 3, 2006).

<sup>228</sup> See Fiscal Year 2006 Spreadsheet, *supra* note 220, at 14; National Center for Education Statistics, *supra* note 73.

<sup>229</sup> Olvera, *supra* note 210, at A1.

<sup>230</sup> *Id.*

<sup>231</sup> Map of Tulare County, *supra* note 225.

<sup>232</sup> Olvera, *supra* note 210, at A1.

school year.<sup>233</sup> Half of these applicants were not highly qualified as they had not completed their teaching credentials.<sup>234</sup>

In the northern San Joaquin Valley, many of the rural schools do not fit the stereotype of being isolated, poor, and struggling to attract and retain teachers.<sup>235</sup> Hart-Ransom School “is surrounded by orchards and grazing livestock.”<sup>236</sup> Although the kindergarten through eighth grade school<sup>237</sup> is rural, it is not remote.<sup>238</sup> Hart-Ransom Union School District is small<sup>239</sup> and located “about five minutes from downtown Modesto.”<sup>240</sup> The district has “a ‘state of the art’ computer lab and technology coordinator [offering ongoing] computer-based instruction and technological support to staff.”<sup>241</sup> The “district has a long, distinguished record of high student achievement,”<sup>242</sup> and offers desirable working conditions due to small class size and involved parents.<sup>243</sup>

Knights Ferry Elementary School in the hills east of Oakdale receives seventeen to twenty-five applicants for every job opening.<sup>244</sup> The school, which has an attendance of 144 students,<sup>245</sup> receives strong community support, high test scores, and has strong administrative leadership.<sup>246</sup> However, rural Merced River School District has trouble recruiting teachers.<sup>247</sup> Although the district has strong parent support and few discipline problems, the district’s schools are forty minutes from Modesto.<sup>248</sup>

Kerman Unified School District is seventeen miles southwest of Fresno.<sup>249</sup> It is “near the middle of Fresno County in the heart of the agricultural region.”<sup>250</sup> The district is a high-poverty district where seventy-

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> Elizabeth Johnson, *Rural Teachers Passing Test*, THE MODESTO BEE, Apr. 18, 2004, at B1.

<sup>236</sup> *Id.*

<sup>237</sup> Hart-Ransom District Information, [http://www.hartransom.org/District\\_Info/index.html](http://www.hartransom.org/District_Info/index.html) (last visited Nov. 4, 2006).

<sup>238</sup> Johnson, *supra* note 235, at B1.

<sup>239</sup> Hart-Ransom District Information, *supra* note 237.

<sup>240</sup> Johnson, *supra* note 235, at B1.

<sup>241</sup> Hart-Ransom District Information, *supra* note 237.

<sup>242</sup> *Id.*

<sup>243</sup> Johnson, *supra* note 235, at B1.

<sup>244</sup> *Id.*

<sup>245</sup> Fiscal Year 2006 Spreadsheet, *supra* note 220, at 7.

<sup>246</sup> Johnson, *supra* note 235, at B1.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> Welcome to the Kerman Unified School District Web Site, *available at* <http://www.kermanusd.k12.ca.us/default.htm> (last visited Oct. 29, 2006).

<sup>250</sup> *Id.*

two percent of the students qualify for free or reduced meals, seventy-five percent of the district's students are Hispanic, and thirty-one percent are English Learners.<sup>251</sup> The district's designation changed from rural to small town in the 2003-04 school year.<sup>252</sup> At the beginning of the 2006-07 school year, an additional fifty new students showed up at Kerman Middle School.<sup>253</sup> The district recruited for two teachers to accommodate the additional instructional periods needed, but could find no one to take the jobs.<sup>254</sup> Until they were able to hire teachers, they used substitutes to fill the vacancies.<sup>255</sup> A school is limited on the amount of time it can use substitutes who are not "highly qualified" which caused a different substitute to be placed in the classroom every thirty days.<sup>256</sup>

Not all of these districts are classified as rural, but they are all located in a rural area. The designation affects their ability to qualify for REAP funding. However, whatever classification they have been given by the DOE, they face the same problems recruiting teachers. Teachers prefer not to work in districts with high poverty levels, low achievement scores, and high numbers of English learners, especially when they are located in a rural area.

## VII. ADDITIONAL CHALLENGES FACED BY RURAL SCHOOL DISTRICTS

Teacher quality is not the only challenge caused by the small size of rural districts. There are special statistical challenges when using the state assessment plans to make determinations about academic performance.<sup>257</sup> The determination of whether the school meets AYP is based on small amounts of data.<sup>258</sup> The small numbers can make progress from year to year look very unstable causing the school to be in danger of being misidentified as "failing" AYP.<sup>259</sup> There is also the concern that releasing results may identify individual students.<sup>260</sup>

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<sup>251</sup> *Id.*

<sup>252</sup> Changes in School District Rural Locale Status: California, available at <http://nces.ed.gov/ccd/PDF/sstates/CA.pdf> (last visited Oct. 29, 2006); see Fiscal Year 2006 Spreadsheet, *supra* note 220, at 7; NATIONAL CENTER FOR EDUCATION STATISTICS, *supra* note 73.

<sup>253</sup> Christina Vance, *Educators Say Federal Law Ties Their Hands*, THE FRESNO BEE, Sept. 18, 2006, available at <http://fresnobee.com/23/v-printerfriendly/story/8102.html> (last visited Oct. 28, 2006).

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> Jimerson, *supra* note 97, at 1.

<sup>258</sup> *Id.* at 2.

<sup>259</sup> *Id.* at 3.

<sup>260</sup> *Id.* at 4.

Rural schools tend to have large concentrations of minority and economically disadvantaged students.<sup>261</sup> Students from economically disadvantaged families and communities tend to not perform as well academically as children from advantaged backgrounds.<sup>262</sup> There are far fewer community resources available, such as public libraries and computers, that can be used to help improve academic performance.<sup>263</sup>

There has been much opposition to the use of the accountability model in determining AYP. To address the dissatisfaction with the accountability model, there is discussion that the law should be changed to use a “growth model” instead of requiring students to meet federal accountability standards.<sup>264</sup> The use of a “growth model” allows districts to meet their AYP as long as the students show continuing improvement.<sup>265</sup> This would make meeting AYP more realistic for all districts, including rural districts. While the small size of the district or school affects their ability to implement the student proficiency provisions of NCLB,<sup>266</sup> most rural districts offer “tutoring, extended day and summer programs, or other remedial services” to increase academic achievement.<sup>267</sup> These programs are valuable because other enrichment programs may not be available in the community.<sup>268</sup>

The requirement that school choice be offered is not feasible for many rural school districts.<sup>269</sup> Offering choice implies that other schools at the appropriate grade level are available for the student to attend.<sup>270</sup> Similarly, offering supplemental services assumes there are providers willing to come to the area or within busing distance.<sup>271</sup> The nearest supplemental service provider may be long distances away.<sup>272</sup> Supplemental service providers may be reluctant to come to rural districts because the small

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<sup>261</sup> *Id.* at 1; U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 5.

<sup>262</sup> Jimerson, *supra* note 97, at 1.

<sup>263</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 5; Winston, *supra* note 8, at 196.

<sup>264</sup> Hardy, *supra* note 26. *See also*, Alyson Klein, *Political Shift Could Temper NCLB Resolve: If Democrats Take House or Senate, Uncertainty Ahead*, EDUCATION WEEK (Sept. 27, 2006), available at [www.edweek.org](http://www.edweek.org).

<sup>265</sup> Hardy, *supra* note 26.

<sup>266</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 5.

<sup>267</sup> *Id.* at 19.

<sup>268</sup> *Id.* at 20.

<sup>269</sup> Ashford, *supra* note 99.

<sup>270</sup> Jimerson, *supra* note 97, at 5.

<sup>271</sup> *Id.* at 6.

<sup>272</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 18.



numbers of students that need services make it difficult for a business to be profitable.<sup>273</sup>

Rural communities often lack the technological infrastructure that is available in non-rural settings.<sup>274</sup> High-speed internet connections are not available in many rural communities.<sup>275</sup> Students in rural communities are less likely to have telephone service, computers, or the internet available at home.<sup>276</sup> Even when Internet capabilities are established, there can be challenges in using technology.<sup>277</sup> This may include limited capacity or connection difficulties, and difficulty in recruiting personnel for technical maintenance.<sup>278</sup> There is also concern “about the effectiveness of online instruction for low-achieving and younger students who may need direct teacher contact.”<sup>279</sup>

### VIII. CONCLUSION

While research has shown that “compensation plays a key role in the recruitment and retention of teachers,” this is a complicated relationship.<sup>280</sup> The role which compensation plays varies depending on other factors, such as gender, amount of experience, and job satisfaction.<sup>281</sup> Working conditions may also be a more significant factor than salary for some teachers.<sup>282</sup> However, studies do indicate that increased compensation encourages more college students to consider education as a profession and that qualified teachers tend to teach in districts which have more economically advantaged students and where they receive higher salaries.<sup>283</sup> Increased compensation may also improve teacher attrition rates.

Increasing salaries alone will not solve the dilemma facing rural school districts. Officials concede that money alone will not keep teachers in challenging schools.<sup>284</sup> In 1999, Massachusetts offered bonuses of \$20,000 to teachers new to the state.<sup>285</sup> One year later, one-fifth of the

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<sup>273</sup> *Id.* at 17.

<sup>274</sup> Johnson & Strange, *supra* note 7, at 23.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 31, at 18, 23.

<sup>278</sup> *Id.* at 23.

<sup>279</sup> *Id.* at 21.

<sup>280</sup> EDUCATION COMMISSION OF THE STATES, EIGHT QUESTIONS ON TEACHER RECRUITMENT AND RETENTION: WHAT DOES THE RESEARCH SAY? A SUMMARY OF THE FINDINGS 5 (2005).

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> Jimerson, *supra* note 102, at 13.

<sup>284</sup> Jacobsen, *supra* note 165.

<sup>285</sup> *Id.*

teachers who received the bonus were no longer in the classroom and others had left to teach in suburban schools.<sup>286</sup> Additional strategies are necessary, such as: encouragement and support for people living in rural communities to become teachers, encouraging higher education institutions to target rural students for recruitment, encouraging curriculum that includes coursework and experiences to show the uniqueness of rural communities and to prepare teachers for working in a small rural school, encouraging placement of student teachers in rural communities, supporting high quality professional development that is accessible and relevant to rural schools, and exploring the use of technology in professional development for rural teachers.<sup>287</sup>

While NCLB has been met with opposition from teachers, districts, and states,<sup>288</sup> lawmakers believe the law, which is up for renewal in 2007, will retain its signature features.<sup>289</sup> Support for NCLB does not appear to be as great as it was when initially passed by the legislature.<sup>290</sup> Democratic lawmakers appear to be preparing to push for substantial revisions to the law.<sup>291</sup>

Dissatisfaction with NCLB has centered on the reliance on standardized tests to measure student progress and the requirement that teachers be highly qualified.<sup>292</sup> Legislation has been proposed to allow credit for showing improvement in areas other than standardized tests.<sup>293</sup> Lawmakers have also expressed dissatisfaction that the law does not place emphasis on subjects such as art, music, or geography, which educate the "whole child."<sup>294</sup>

As the legislature is debating the reauthorization of NCLB in 2007, Senator Edward Kennedy stated that better solutions are needed to re-

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<sup>286</sup> *Id.*

<sup>287</sup> Jimerson, *supra* note 102, at 18.

<sup>288</sup> See *School District of Pontiac v. Spelling*, No. 05-CV-71535-DT, 2005 U.S. Dist. Lexis 29253 (E.D. Mich. 2005) (School district's action, alleging that NCLB imposes unfunded mandates upon the States, dismissed for failure to state a claim); *Kegerreis v. United States*, No. Civ.A. 03-2232-KHV, 2003 WL 22327188 (D. Kan. 2003) (Suit by public school teacher, alleging that NCLB is unconstitutional because it seeks to hold only school personnel accountable, dismissed as it did not allege a case or controversy); *Reading School District v. Dept. of Education*, 855 A.2d 166 (Pa. Commw. Ct. 2004) (Court upheld DOE designation of district schools as School Improvement against district challenge of lack of technical assistance and native language testing).

<sup>289</sup> Hardy, *supra* note 26.

<sup>290</sup> Klein, *supra* note 264.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

spond to challenges which have been identified.<sup>295</sup> However, it is not expected to see a groundswell of opposition to NCLB in Congress.<sup>296</sup> As Ross Wiener, Policy Director of Education Trust, stated, "The critics are obviously the most vocal, but there really is a silent majority in the middle."<sup>297</sup> This silent majority believes that NCLB "is the right direction for K-12 education."<sup>298</sup>

It appears obvious that NCLB needs to adopt a growth model, rather than accountability model to determine AYP. The expectation that one hundred percent of students reach proficiency, without any allowance for special education issues or English Language proficiency, is unrealistic. A growth model requires districts to demonstrate that their students are improving, while allowing for the realities of teaching children with differing educational needs.

Rural districts need to do more to recruit from within the rural community. They need find ways to partner with colleges to make contact with potential teachers earlier in their educational experience. By attempting to establish a relationship with teacher candidates early in their education, the rural districts may increase interest in their community. Also, more emphasis needs to be placed on promoting the benefits of teaching in a rural community, such as small class size and the ability to establish relationships with the students.

There need to be efforts within the rural community to create an atmosphere of acceptance of teachers new to the community, making them feel connected. Rural districts need to offer professional development to increase the quality of teachers that continue teaching in the district. The district must create a strong leadership base to make the district a more desirable educational environment for teachers. Offering support and mentoring to inexperienced teachers is critical, whether this be through teachers in their own district or by creating a consortium with other districts to offer mentoring. Technology can be helpful in connecting teachers in remote areas with mentors in other districts.

While the goals of NCLB are admirable, many of the provisions of the law are in conflict with the realities of education in such a diverse society. The goal to have every child meet measurable standards and for every student to be taught by a highly qualified teacher is commendable. However, schools are diverse communities and NCLB does not recognize and allow for this diversity. The reality is that the factors which

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<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> *Id.*

effect student achievement go beyond what occurs in the classroom. Society does not embrace a “one size fits all” philosophy. Yet, NCLB expects education to become a system that does not recognize the same diversity which permeates our culture.

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