The ABCs of No Child Left Behind:
Accountability, Benefits and Controversies
Cameron Diehl

Aiming to address major inequalities and shortcomings within the American education establishment, the Elementary and Secondary Act of 2002 (No Child Left Behind Act, NCLB) propelled the Federal Government to an unprecedented commitment into public education. Since its inception, criticism has mounted from educators to policymakers, claiming that NCLB is an “unfunded mandate” that actually inhibits public education. Proponents respond that the accountability measures and goals of NCLB are long overdue. This policy paper analyzes the core controversies of NCLB and offers additional proposals to improve public education in America. To borrow from a recent president, the paper’s recommended approach to NCLB is “mend it, don’t end it.”

INTRODUCTION

Three days into his first term of office, President George W. Bush fulfilled a major campaign pledge by sending his revolutionary education reform plan to Congress. H.R. 1, the Elementary and Secondary Education Act—No Child Left Behind (NCLB)—was co-sponsored by prominent Democratic Senator Ted Kennedy, enacted by convincing margins of 87-10 in the Senate and 381-41 in the House of Representatives and was signed into law by President Bush on January 8, 2002.

Since then, the initial warm feelings have faded into criticism and finger-pointing by those both inside and outside the education and political establishments. State support for the program has declined, especially in Utah. In 2005, Republican Representative Margaret Dayton called the battle “the last bastion of state sovereignty… Utah just wants the traditional state control of its own children” (Sack, 2005). After a six-week negotiating period for Utah and federal education leaders, the legislature passed HB 1001 in a special session which prioritized Utah education laws over No Child Left Behind (Toomer-Cook, 2005).

What led Utah, the state that voted for President George W. Bush by a larger margin than any other in 2004, to be a leader in the opposition to NCLB? That specific question can only be understood in the context of a broader examination of the need for federal intervention in modern academic direction, the focus and preliminary results of NCLB, the legislative and legal challenges filed by states (including Utah), and an analysis of the future of American education. Opponents give NCLB a report card of three “Fs” and one “P”: federalism, flexibility (teacher qualifications and accountability), funding and penalties. Of major concern to opponents is the misguided focus on a “one-size-fits-all” approach and standardized test scores as the sole indicator of academic progress. While the intentions of NCLB are generally viewed in a positive light, modifications in the federal-state relationship, compliance flexibility, funding mechanisms and accountability standards are necessary in order to successfully raise student achievement across the board.

NCLB STANDARDS:

A brief overview of NCLB is necessary to understand the criticism. With NCLB, each state is “required to: 1) set standards for grade-level achievement and 2) develop a system to measure the progress of all students and subgroups of students in meeting those state-determined grade-level standards.” (U.S. Department of Education, 2005a) For the fiscal year 2005, the Bush administrated budgeted $410 million to directly support the professional development and implementation of state assessments to enable students, parents and educators to understand the performance of every student, school, and local school district. Results are exhibited in a school and district report card that is available to the public and is defined as “adequate yearly progress” (AYP). These annual assessments detail the progress of children in key academic subjects, the achievement gap between disadvantaged students and others, the qualifications of teachers, and the overall quality of the schools. While the approval rating for the intentions of NCLB and AYP is nearly universal, the devil is in the details.
FLEXIBILITY:
Each state has the flexibility to determine its own definition of AYP to demonstrate the achievement (or lack thereof) of each school district and school. To qualify for AYP, schools are required to show that at least 95% of all students in each grade participated in the state assessment, utilizing standardized tests. Students are to be classified in different subgroups, according to race/ethnicity, poverty level, disability and English language proficiency. The size of the subgroup is decided by the state, and must be statistically reliable, to ensure that struggling individual students do not get ignored or lost in the maze of school statistics.

For schools that do not meet AYP statewide goals but are still making progress with their students, NCLB offers a safe harbor provision. These schools are credited with AYP “as long as the school reduces the percent not proficient by 10% from the previous year.” Under “safe harbor,” a school makes AYP if it goes from 50% below the proficiency standard in year 1 to 45% below in year 2, a 5% improvement that is 10% lower than the previous year (Haycock and Weiner, 2005).

EDUCATOR QUALITY:
A key facet of the No Child Left Behind law is the stated emphasis on placing a Highly-qualified teacher in every public school classroom by the current 2005-06 school year. There are three ways for a teacher to be considered “Highly-qualified.” The teacher must hold a bachelor’s degree, have a certification or licensure to instruct in the state, or must have a proven knowledge of his/her core subject. To demonstrate content knowledge, “new elementary teachers must pass a state test of literacy and numeracy, new secondary teachers must either have a college major or pass a rigorous test in the subject area,” and veteran teachers may do one of the above or “demonstrate content knowledge through some other uniformly applied process designed by the state” (Carey, Barth, Hall, Garcia, Licon, Wiener, and Yi, 2003). About 40 states offer such certification alternatives for veteran teachers.

FUNDING:
In one of the more controversial stipulations of NCLB, schools must meet the aforementioned accountability standards in order to qualify for continuing federal funds. Those funds have increased during the Bush administration. In fiscal year 2005, President Bush solicited financial increases for reading programs by $1.4 billion. The most significant chunk ($1.1 billion) was for the Reading First program, $132 million for Early Reading First programs and $100 million for the Striving Readers program. These programs train teachers in effective reading instruction though it has drawn some criticism from teachers. There is a concern that Reading First places excessive emphasis on speed-reading for third-graders and not on comprehension or retention.

President Bush has stated repeatedly that he wants every American child to read at their grade level and many states (such as Texas, Maryland, California, Ohio and Florida) have invested in reading programs as well. “State expenditures on early childhood education have increased from $267 million in 1988 to $2.54 billion in 2002-2003 (in constant dollars).” (Wattenburg, Hansel, Hendricks and Chang, 2005b) State and local officials, however, contend that the amount of federal funding is not sufficient to meet the basic goals of NCLB.

PENALTIES/ENFORCEMENT:
If schools do not make adequate yearly progress for two straight years, such schools are publicly decried as “failing schools” and NCLB empowers students who attend such schools to transfer to a higher-performing public or charter school within the district on the district tab. Children are also eligible for school supplied supplemental services such as tutoring. If schools fail to meet AYP for four consecutive years, stiffer penalties include reorganization, state takeover, or school closing (“No Child Left Behind Brings Tough, New Accountability Provisions,” 2004).

This stipulation draws major ire from NCLB opponents who argue that the lone mechanism to chart student achievement—standardized tests—is inadequate. If one subgroup struggles, then the entire school is listed as “failing.” From an individual student perspective, many educators argue that standardized tests do not demonstrate the overall ability of students.

The 1st F: Federalism. Who should be accountable, Uncle Sam or state/local entities?

Opponents of NCLB often cite the 10th Amendment to the Constitution which has historically placed control of education in state and local hands. Virginia Solicitor General William Thro said “an argument can be made that the federal government has no power to make education policy” (Hancock, 2005). State and local officials also stress the concept of fiscal accountability. Whatever level of government offers the most funding should have the right to determine how money is spent. State and local levels provide .92 cents out of every dollar spent in K-12 education but increasingly find themselves bound by federal mandates.

Of additional concern to states and localities is a perceived shift in federal relations from cooperative federalism to coercive federalism. From their perspective, the Bush administration’s insistence on policy implementation and the threat of fund withholdings are typical of coercive federalism and in stark contrast to the typical model of cooperative federalism. “The administration needs to recognize how far NCLB deviates from the traditional model of federal-state relations. (They) need to acknowledge the legitimate role of each level of government in education and re-consider the proper role of the federal government (Sunderman and Kim, 2004).”

Historically, states have been considered “laboratories of democracy” because their decisions are “closest to the people.” From a political perspective, NCLB exposes a perceived shift by the Republican Party from its traditional stance on
federalism. During the Clinton administration, Republican Speaker of the House Newt Gingrich vowed to eliminate the Department of Education in an effort to reduce federal intrusion into what had historically been a state and local responsibility. Ironically, it is the Republican administration of President Bush that has increased federal education funding by 40% since 2001 to an unprecedented level in American history (Will, 2005).

Proponents of NCLB assert that models of cooperative federalism focus on which programs work in practice, rather than which level of government has constitutional authority over what policy area. In this context, federal intervention in education was sparked by international relations in the post-World War II world. After the launch of Sputnik by the Soviet Union in 1957, the United States Congress passed the National Defense Education Act that provided expanded funding for program development in science, mathematics and foreign languages (Brinkley, 1995). In the international competition for space exploration, stellar scientific achievement became a national priority.

An additional point made by advocates is that the states as the “laboratories of democracy” have not been ignored. NCLB is rooted in a successful state experiment that has been emulated on a federal level. Education reform began in Texas in the 1980s, a decade before George W. Bush was elected governor. John Cole was instrumental in this process as the President of the Texas Federation of Teachers. “During all that time (pre-1980s), no one was keeping score about matters like student achievement. When a school system doesn’t keep score on student learning, there’s not a lot of pressure for learning to improve” (Cole, 2005).

Previously in Texas, districts would routinely ignore low-test scores to avoid public scorn and humiliation. Once statewide tests for each grade level were established, pressure built on schools to improve, offer competitive salaries and update class resources. Accordingly, student achievement has improved with the greater school accountability. “The test we gave 6th-graders this year was harder than the one we gave 11th-graders back in 1987... we have roughly the same percentage of kids in school, and they’re passing tougher tests at higher rates” (Cole, 2005).

That final point is disputable, say some critics of the revamped Texas education system. Former Houston Independent School District Superintendent Rod Paige used the “Texas miracle” of school improvement as a stepping-stone to become Secretary of Education and unveil NCLB. Robert Kimball, a former assistant principal in Houston revealed that Houston’s reported dropout rate of 1.5% under Paige was actually between 25-50%. Struggling students were encouraged by administrators—whose employment was dependent upon school scores—to not take the test and thus avoid damaging the school. Additionally, more than 3,000 students were not coded as dropouts and their records essentially disappeared (Rather, 2004). Meanwhile a separate Associated Press investigation found that schools nationwide “are deliberately not counting the test scores of nearly 2 million minority students when they report progress by racial groups,” including 65,000 Asian students in Texas (Minority Scores Omitted, 2005).

Advocates of federal intervention in education argue that an important reason for a federal presence is inequality in spending levels between states and between localities. The purse strings of education are controlled by the state legislatures and school funding battles are always fierce. In 2002, the District of Columbia spent $13,187 per pupil while Utah ranked 51st by spending $4,890 per pupil (Public Pupil Spending, 2002). Some districts receive their funding exclusively from property tax, skewing spending towards wealthier neighborhoods. Hence schools in Long Island, New York spend twice as much money per pupil compared to fellow New York City students residing in the South Bronx (Martinez, 2004).

In an attempt to solve this problem at the height of the Civil Rights Movement, the federal government invested heavily in education, seeking to remedy racially-motivated economic inequalities. The Elementary and Secondary Education Act of 1965 (and other laws) extended aid based on the economic needs of schools. Between 1964 and 1967, total federal expenditures for education and technical training increased from $5 billion to $12 billion (Brinkley, 1995).

Nevertheless, there are still American students that face archaic and insufficient textbooks, overcrowded classrooms, a drastic shortage of certified instructors, and a crumbling, unsanitary school infrastructure (Kozol, 1992, p. 345). Despite the gains of the Civil Rights Movement, American schools are more segregated now than in the 1960s because of residential segregation. Children usually attend their neighborhood school and if their neighborhood is predominately one race or one socioeconomic demographic, then the school will be proportional. For most low-income families, housing choice and the neighborhood school is out of necessity, not luxury.

Student performance is also negatively impacted by lack of resources and low socioeconomic status. Test performances in third grade are correlated to experiences by age 3, meaning poor children are at a disadvantage before they even enter public schools because of their lack of exposure to vocabulary and academic achievement at home (Hart and Risley, 2003). Researchers have also found students in high-poverty schools were held to lower standards than their middle and upper class counterparts. On average, “students with the same knowledge of math earned a ‘D’ if they attended a low-poverty school but earned an ‘A’ if they attended a high-poverty school” (Wattenburg, Hansel, et al., 2005a).

Mental and physical health problems, social and home environment, malnourishment and lack of parental intervention also restrain and inhibit children. Schools suffer the consequences for these domestic and societal matters and thus are
no longer merely places for teaching youth reading, writing, and arithmetic. Renowned columnist George Will explained that families are also responsible for student achievement and even suggested an extended school year to better compete internationally.

Schools reflect the families from which their pupils come—the amount of reading material in the homes, the amount of homework done, the hours spent watching television, etc. Anyone who thinks parents hungrier for greater academic rigor should try to get parents to pay the price—more dollars for more school days and decreased vacation time (Will, 2005 P. A15).

Recent evidence from the Trends in International Mathematics and Science Study (TIMSS) demonstrate the urgency of refocusing efforts on American education from an international perspective. In 2003, 49 nations performed in the third TIMSS, the first having occurred in 1995. There were positives—only Singapore and Japan outperformed U.S. fourth graders in science, and the achievement gap between white and African American students narrowed from 110 points to 78 points since 1995.

In 2003, the U.S. showed a significant improvement with eighth grade results, by 15 points in 1995 and by 12 points from 1999. The achievement gaps between whites and African-Americans as well as white and Hispanic students have narrowed. Those scores are noteworthy; African-American student scores climbed from 422 to 462 between 1995 and 2003 and Hispanic scores rose from 446 to 482 between the same years (TIMSS at a Glance, 2005).

Unfortunately, the TIMSS also revealed bad news: American fourth graders still trail behind 11 countries (Singapore, Hong Kong, Japan, Taiwan, Belgium, Netherlands, Latvia, Lithuania, Russian Federation, England and Hungary) in mathematics. U.S. eighth graders trail the same 11 nations in mathematics plus five more (South Korea, Estonia, Malaysia, Slovak Republic and Australia). Eight countries (Singapore, Taiwan, South Korea, Hong Kong, Estonia, Japan, Hungary and Netherlands) lead in eighth-grade science scores.

Let’s be honest—no one in the White House is losing sleep because Hungarian students specifically are outperforming Americans in three of four measured TIMSS categories (TIMSS at a Glance, 2005). However, American kids will be in direct competition with students from the global community (read between the lines: Singapore, Japan, China, Europe) and this data should be distressing to educators, policymakers, parents and students alike.

Susan Sclafani, the Assistant Secretary in the Office of Vocational and Adult Education in the United States Department of Education, added these numbers: “The percentage of 12th graders scoring ‘Below Basic’ on the NAEP 2002 Math Assessment was 35% of ALL students, 56% of Hispanic students, 69% of African-American students, and 60% of low-income students” (Sclafani, 2005). This is particularly worrisome, she observed, with “300 million qualified people just an internet click away in China, India, Japan and Russia… If we fail (our students), by 2015 America will be a second rate power and the nexus of innovation will be overseas” (Sclafani, 2005).

Such concerns are echoed by research that shows “the percentage of American students completing high school has actually fallen since 1970… and college graduation rates remained essentially flat” (West, 2003). This despite evidence that a college graduate makes 140% of the hourly wage as a percentage of a typical high school graduate’s wages (West).

Employment opportunities are also more plentiful for college graduates; between March 1993 and March 2003, employment of people aged 25-64 with advanced degrees increased by more than 3.2 million (U.S. Department of Education, 2005a). It is also argued that student achievement directly leads to national economic growth. A recent report estimates that, “significant improvements in education over a 20-year period could lead to as much as a four percent addition to the Gross Domestic Product” (U.S. Department of Education, 2005b). In today’s dollars, that sum tallies over $400 billion of financial growth that otherwise would be lost if education is not prioritized. Bottom-line: the more Americans who attend college, the more secure America’s long-term economic interests will be.

Education is supposed to be the great equalizer in human society. Yet for a nation that guides the globe politically and economically and expects to do so for generations to come, this grim data paints a disturbing portrait of America’s future.

**ANALYSIS:**

It is indisputable that for a variety of reasons ranging from poverty to location, American students lag behind other students internationally. The legal argument aside, the ultimate question is whether or not student performance has improved with the recent federal foray into education. NCLB proponents claim that cooperative federalism places the emphasis on “what works” as opposed to strict Constitutional authority. NCLB has demonstrated major problems from recent decades, in particular, the achievement gap between students and the sociological inequalities reflected in classrooms. Education Secretary Margaret Spellings declared that due to NCLB, more progress has been made in the past five years to close the achievement gap between white, African-American and Hispanic 9-year-olds then in the previous thirty years (Spellings, 2005).

NCLB has also required consistency in curriculums, pointing out correctly that while Alabama kids do compete with Utah kids domestically, American kids as a whole are on a new competitive field with other nations and the educational establishment must adapt accordingly. “In most countries with a common curriculum, linkage of curriculum, assessment, and teacher education is tight. In the U.S., there is lit-
tle connection between what students are supposed to learn, the knowledge on which they are assessed, and what we expect our teachers to know” (Shanker, 2005).

Nevertheless, the funding discrepancy (which will be detailed later) means that unless the Department of Education offers more financial assistance, the final authority should rest with state and local education administrators, schoolteachers and individual families. This should not be considered an excuse to avoid improvement, as pointed out by the Washington Post. “Ideally, (NCLB) would jolt previously satisfied educators out of complacency and lead to improvements. But an easier response is to lash out… but the backlash is the result of a poorly written law for which the federal government has given poor guidance” (“Spellings Test”, 2005).

The law of unintended consequences has also forced many districts to choose between reading and math under NCLB and other subjects. Since NCLB passed, “71% of the nation’s 15,000 school districts had reduced the hours of instructional time spent on history, music and other subjects” to focus more on reading and math (Dillon, 2006). NCLB proponents declare that without reading and math other subjects are useless, while teachers point out that students learn differently and should be provided with more, not less opportunities in school.

NCLB must be modified to recognize the proper role of the federal government, offer strong national leadership to choreograph standards and monitor progress, while also respecting the local jurisdiction of educational policy.

**The 2nd F: Flexibility in meeting the standards**

Opponents of NCLB criticize the standards as being too rigid and penalties as excessive. Administration officials respond that NCLB has been flexible to state needs, both in how federal education dollars are spent and the type of programs states can develop to meet the Act’s mandates. Up to 50% of non-Title I NCLB funds from varying grants can be invested according to the district’s needs, allowing, they claim, unprecedented local flexibility with federal dollars.

Nevertheless, teachers and administrators nationwide are holding their collective breaths over the struggle to fulfill AYP requirements. Nancy Koher of the Center on Education Policy argues that the inflexibility of the AYP requirements will cause schools that are not performing poorly to still fail at AYP. She reasons that schools with diverse enrollments often have a more difficult time making AYP because they have to meet performance targets for more subgroups, and that a school could raise achievement for struggling students but not make AYP if these students are still below the proficiency level (Koher, 2005).

As the initial results of AYP were reported, the concerns expressed by many states increased. In 2003, “more than 28,000 schools, or 32% of all public schools in the United States, failed to demonstrate adequate yearly progress (AYP) toward meeting the accountability requirements of NCLB. Of these schools, more than 6,000 failed to meet the law’s requirements for two or more years—leaving them just two years away from facing severe sanctions (“State Support Teams Swing Into Action to Assist Schools Not meeting AYP,” 2004).

Utah has attempted to create its own progress model, known as the Utah Performance Assessment System for Students (U-PASS). In April 2006, the U.S. Department of Education agreed to review eight state accountability programs (Alaska, Arkansas, Arizona, Delaware, Florida, North Carolina, Oregon, Tennessee) but ruled that the U-PASS program was unacceptable for determining school progress under NCLB (Baker, 2006). Among the reasons given by the Department of Education is that Utah compares each student’s growth from one year to the next, rather than contrasting an entire school’s third grade class with the previous year’s class.

In addition, NCLB requires separate reporting of math and reading scores. Utah combines math and reading scores and factors in “attendance, graduation rates, difficulty of courses taken and achievement on writing assessments” (Baker, 2006). Finally, U-PASS would require that 75% of students be on grade level by the 2013-2014 school year, not at the 100% mandated by NCLB. Proponents of U-PASS argued that kids learn at different rates and have distinct skills and that holding every single student to the exact same standard is akin to expecting every child at school’s end to run a five minute mile. Some can naturally, some can with training, and some, despite strenuous exercising, would still come up short. The effort should not be discounted as “failing” but the Department of Education was unconvinced.

**Analysis:**

The underlying assumptions behind the NCLB requirement for AYP are that standardized test models accurately assess student development and that every school and student should be at the exact same standard. Both assumptions are incorrect. The real debate over flexibility should be about growth models versus the “one-size-fits-all” approach to NCLB and what form of testing should occur.

Teachers argue that measuring student achievement—and concurrently, teacher ability—by one final cumulative test is unfair to both students and teachers. How many elected officials would want one snapshot moment to be the sum total of their entire year of effort? Yet that is what is expected of teenagers and elementary-aged schoolchildren and upon which teacher employment is dependent. Educators are not opposed to standardized tests and utilize them to show program effectiveness in some areas of student achievement (National Education Association, 2006), so long as they are accompanied by other methodology to track student progress.
Potential options to compliment testing include writing/work samples from throughout the year, graduation rates and teacher-designed assessments.

Vito Perrone, Director of Programs in Teacher Education at Harvard University wrote, “children who have been routinely encouraged to be cooperative learners are forbidden to talk while testing. Children who have been taught to work problems out slowly are told speed is essential” (Perrone, 1991, p. 91). He argued that standardized tests do not reveal learned knowledge, just a sophisticated guessing-game and that the test focus is detrimental to academics. “To actually develop a responsive, developmental classroom environment is to risk lower scores on standardized test. Teachers and children do not need this external pressure” (Perrone).

In the current AYP model, it is impossible to track actual development on a student basis because of the dependence on standardized tests. Under NCLB, each class is compared to the preceding class instead of tracking the individual student through the years. A student identifier number would allow districts and states to follow students from school to school without having to start over. Consequently, “the AYP formula does not give schools sufficient credit for improvements in student achievement” (No Child Left Behind, Its Problems, Its Promises, 2004). The current U-PASS system includes a growth component and the willingness by the Department of Education to further examine growth models from eight states is encouraging.

**Educator Quality:**

Districts are required to publicly report the percentage of classes that are taught by teachers who have not met the “highly qualified” standard and the parents of the children in said classes must be notified accordingly by letter. The burden of defining teachers as “highly qualified” rests with state departments of education. Since 2001, states have been busy designing policies that meet the federal requirements, constructing data systems that track progress and conducting outreach to districts.

Initially, state-reported results contained great discrepancies with four states reporting that less than 50% of classrooms have “highly qualified” teachers while 20 states proclaim that over 90% of their classrooms meet that description (Carey, Barth, et al., 2003). Additional funds have been set aside by the President in 2005 ($5.1 billion) in support of teachers through recruitment incentives, training, loan forgiveness and tax relief (U.S. Department of Education, 2005a).

Faced with heavy criticism over the definition of “highly qualified teachers,” the Department of Education relaxed some federal rules for rural schoolteachers, science teachers, and state evaluations (Robelen, 2004). Much of the criticism stemmed from the “law’s narrow definition of teacher quality (because) it emphasizes teachers’ knowledge of their subjects rather than teaching methods, and problems with its implementation limit serious improvement, especially in schools serving mainly poor and minority children” (Keller, 2004).

The new regulations focus on three areas. First, teachers in rural school districts who teach more than one subject will have a three-year extension to satisfy the “highly qualified” criteria if they have already qualified as such in at least one core subject. Nearly 5,000 districts, or approximately one-third of school districts nationwide, are eligible for this flexibility. Second, science teachers are now permitted to be highly qualified either in the “broad field” of science or more specifically, such as physics or biology.

Finally, a “high, objective, uniform state standard of evaluation” or HOUSSE provision will enable teachers to demonstrate subject-matter competence rather than enrolling in formal higher education or passing a subject-mastery examination (Robelen, 2004). Under state HOUSSE standards, “teachers can demonstrate content knowledge through some combination of experience, college coursework, professional development, or other state-determined measures” (Carey, Barth et al., 2003). Secretary Spellings also recently informed states that if they are making a good-faith effort to reach the Highly Qualified Teacher standard but were unable to do so by the end of the 2005-06 school year, they would not lose federal funds (Spellings, 2005). The Department of Education cited these decisions as evidence of their willingness to work with the states and be flexible with NCLB provisions.

The Education Trust, a Washington, D.C.-based education think-tank, complained that “several states have exploited the latitude built into the law... combined with the Department of Education’s laissez faire approach to enforcing even minimal teacher quality standards, some of these states define “highly qualified” in ways that are nearly meaningless” (Carey, Barth et al., 2003). According to the Trust, major discrepancies in the standard include states saying that certification and content knowledge are the same thing, and an excessive emphasis on teacher experience occurs at the expense of content knowledge.

For example, Utah’s submission following the 2002-03 school year stated that 96% of Utah teachers were “highly qualified.” Yet a parenthetical addition modified that statistic and said that only 25% of teachers were “fully” highly qualified with the remaining 71% as “interim” highly qualified status. Utah’s report indicated that “it is impractical and unreasonable to suggest that all teachers will meet the highly qualified requirements for all courses.” The Education Trust points out that NCLB obligates states to the expectation that all students should be taught by instructors who are “highly qualified” (Carey, Barth et al., 2003).

**Analysis:**

Nobody discounts the benefits of “highly qualified” teachers and Secretary Spellings has been proactive in offering flexibility to teachers and districts alike to meet the new standards. Qualification should take into account both the
teacher’s academic background and the teacher’s classroom experience. Mandating that a qualified, veteran teacher reenroll in school on his/her own dime for training in his/her subject of expertise is both redundant and professionally demeaning.

Of concern are the national demands that special education instructors be “highly qualified” in each core academic subject they teach. If a special education or an English Language Learning teacher is certified by the state, it means the teacher commands knowledge both of the academic disciplines and of how to facilitate student learning. They teach by different rules to different kids than standard classroom teachers and should not be discounted or penalized for their specific expertise. Consequently, the “highly qualified teacher” federal standard should be satisfied.

Lost in the dialogue however is the fact that unless there is a reduction in class size, even “highly qualified” teachers struggle when classrooms are overcrowded. Studies have proven that student achievement increases as class size decreases. ProjectSTAR, a four-year study of kindergarten, first, second and third-grade classrooms in Tennessee compared classes of 13-17 students with classes of 22-26 students in 79 schools. They concluded that smaller classes substantially outperformed larger classes on standardized tests in inner-city, urban, suburban and rural schools, and that there was earlier identification of special needs among students in smaller classes (Pritchard, 1999). Similar projects in schools in North Carolina, Indiana and Wisconsin emulate the STAR results.

Smaller classes allow teachers to dedicate more time to individual students while also offering students more opportunities to participate publicly in the classroom. Reducing class size to less than twenty students leads to higher student achievement and more frequent teacher-student interaction. If policymakers want to maximize the potential of “highly qualified teachers,” then educational policy must reflect proven studies and pursue smaller class sizes.

While the capital cost of building additional classroom space is expensive, a policy alternative recommended by veteran teacher and Utah Education Association President Pat Rusk is to assign a second teacher into classrooms. The student-teacher ratio would be halved immediately and the teachers cumulatively could share lesson plans and offer more individual assistance. Veteran teachers could mentor aspiring teachers daily, encourage them through the first tumultuous years and prepare them with proven teaching practices and classroom management. Imagine, a “highly qualified” veteran teacher spending everyday coaching a young teacher as part of the classroom experience. The confidence and capacity of young teachers would dramatically improve and more “highly qualified” veteran teachers would be the result. Mentors would be eligible for pay-raises for motivating not just students but the next generation of teachers. High-need and overcrowded classrooms would be served first and the initial capital costs would be non-existent (Rusk, 2006).

THE 3RD F: FUNDING:

Funding disagreements are ground zero for NCLB opponents. A central problem in determining funding levels is that no line-item marked “No Child Left Behind” exists in the federal budget. Instead there are a number of federal programs school districts can use to meet NCLB requirements.

Title I, the primary federal supplemental education support program, serves more than 15 million students in virtually every school district and more than half of all public schools. Two-thirds of American elementary schools receive 85% of existing Title I expenditures with the other 15% being distributed to middle and high schools (National Association of Secondary School Principals, 2005). In Chicago, the school district established after-school programs and small summer classes for the thousands of children who were at-risk at being retained in their previous grade. The Center on Education Policy (2005) found that “among school districts with schools that failed to make AYP, 99% were providing ‘extra or more intensive instruction to low-achieving students’; 84% were providing ‘before- or after-school, weekend, or summer programs’; and 48% were hiring ‘additional teachers to reduce class size’” (Wattenburg, Hansel, et al., 2005b).

Before NCLB, the Federal Government had also stepped into education policy on behalf of disabled students with the Individuals with Disabilities Education Act (IDEA). IDEA “required that students with disabilities be included in state and district-side assessment programs… (NCLB) ensures that these assessments measure how well students with disabilities have learned required material in reading and mathematics” (U.S. Department of Education, 2005 a). However, the federal government has only funded IDEA at 17% of its appropriation and cut the budget by an extra 1% in 2006 (McFarland, 2006a).

No Child Left Behind also emphasizes English instruction to students considered limited English proficient (LEP) through scientifically based teaching methods. NCLB consolidated the US Department of Education’s bilingual and immigrant education programs and the 2005 presidential budget provided $681 million for LEP students. Testing for LEP students will occur in reading and language arts in English once they have attended school for three consecutive years in the United States (U.S. Department of Education, 2005a).

An additional funding mechanism dedicated to high-need students is Title II, Part D, the technology component of No Child Left Behind. Title II, Part D exists to empower all students regardless of race, ethnicity, gender, income, location or disability to take advantage of technology in elementary and secondary schools and to close the “digital divide.” It also integrates technology resources with teacher training and curriculum development (State Educational Technology Directors Association [SETDA], 2005). Such technology funding directly supports NCLB initiatives by providing access to software, online resources and virtual learning;
enhancing data systems and supporting the development of highly qualified teachers by providing online courses and virtual communication (SETDA, 2005).

Thus far, Title II, Part D funds have been in high demand. 81% of all districts in the country receive NCLB II D funds. Between the states and the District of Columbia, states have been allocated a combined $620 million which is then turned into a formula and competitive grants for national technology activities, Ready-to-Learn television and Child Internet Safety (Mangan and Mercer, 2005). These programs are above and beyond a computer lab in each school, they provide instruction to low-income students—that would probably be unavailable otherwise—on how to become highly-skilled and functional with technology.

On a state level however, funding is virtually non-existent. Twelve states have no other funding earmarked for technology in schools and 25 states depend on Title II D funds as the primary source of funds (SETDA, 2005). These technological opportunities are essential for American students in our connected global society, but would be eliminated without nearly exclusive federal funding. Students primarily served by Title II D funds would have no other access at home or at school to technology-based education and would subsequently fall further behind other students nationwide and globally.

Consequently, Federal officials insist NCLB is not an unfunded government mandate. Section 9527 (a) of the NCLB statute which states: “nothing in this Act shall be construed to authorize an officer or employee of the Federal government to...mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this Act” (U.S. Department of Education, 2005a). They point to the aforementioned dollars for special education, Title I, ELP, and Title II Part D as evidence of federal commitment.

State and local officials see a much different picture. The unifying bond among NCLB critics is the bottom line. “If the federal government makes an education policy, it has to provide states with money to implement it,” said Virginia Solicitor General William Thro, and with NCLB “the federal government puts you in a position where you have no choice and you have to take the money.” That conduct, he adds, is coercion by the federal government (Hancock, 2005). As for the “historic” increases in federal funding, the National Education Association (largest teacher’s union) contends that states still fund 92 cents of every education dollar and Uncle Sam’s portion is about two percent of the entire K-12 spending (National Education Association, 2005).

The NEA accuses the government of shortchanging schools by at least $27 billion, not including promised money for impoverished areas. The NEA also accuses the president of cutting $43 billion for 48 programs that primarily serve the neediest students. NCLB mandates additional costs of yearly testing, attaining grade level in reading and math for all students, and making sure that all teachers meet the “highly-qualified” banner. In a since-dismissed lawsuit, NEA argued that “states have shifted money away from such other priorities as foreign languages and smaller classes. The money gap has hurt schools’ ability to meet progress goals, which in turn has damaged their reputations” (First national suit, 2005). The Center on Education Policy estimates that 80% of schools have incurred costs not paid for by federal funds (Toppo, 2005).

While more than thirty states have verbalized complaints about NCLB, the state of Connecticut has taken legal action. According to state Attorney General Richard Blumenthal, the state “would need to spend $8 million by 2008 to comply with the testing requirements of the law” (Hendrie, 2005). The $8 million would have to come from state coffers and would only satisfy testing. What happens to the academic programs that would have been otherwise funded? Gone. What about schools that need extra money because they don’t meet AYP? Unresolved. The core argument, according to Blumenthal: NCLB is “an illegal, unconscionable unfunded mandate” (Hendrie, 2005).

Several state cost studies detail the funding crisis faced by virtually every state. Jordan School District in Utah projected in January, 2004, that taxpayers would pay $1.19 billion to meet NCLB mandates through 2013-2014 (Legislative Fiscal Analyst, 2004). Even President Bush’s home state of Texas is not immune to the shortfall; it is estimated that it will cost an additional $425 per pupil to simply meet the current AYP requirement and once the proficiency standards rise to 70% of all students, the extra cost will be $1,205 per pupil (National Education Association, 2005). Money of that quantity is just simply not available.

Take for example the very schools that Title I is supposed to help. “Just 20% of districts nationwide with the neediest students say that they have adequate money to assist schools identified for improvement under AYP” (Wattenburg, Hansel, et al., 2005b). Robert Chanin, the lead attorney in the now dismissed NEA lawsuit, said that there is a $30 billion shortfall over the next five years in Title I funds in the difference of available funds compared to congressionally appropriated funds, and a $70 billion shortfall between available and what would be considered “full-funding” (Chanin, 2005). If school districts don’t execute the law in its entirety, then waivers are denied and money is pulled. The Department of Education will not take “no money” for an answer to the question of fulfilling all of NCLB’s regulations.

ANALYSIS:
Again it seems that rigid NCLB regulations interfere with education. Obviously there is a finite amount of financial resources. Testing can help identify struggling schools, but earmarking significant chunks of money solely for testing as opposed to student resources, technology and teacher training impairs cumulative educational efforts. School districts are already straining to meet needs and NCLB requirements are
causing inescapable burdens. To maximize scarce resources, NCLB should follow the example of Community Development Block Grants (CDBG).

In the CDBG program, the federal government appropriates funds in block grants to be utilized on the municipality level to address needs determined by municipal officials. Recipients are still accountable for the distributed funds but federal guidelines provide flexible direction, while the spending is determined by local leaders (U.S. Department of Housing and Urban Development, 2006). Increased expenditures on testing will never convert into improved education unless an investment is made into school, teacher and student resources beforehand. Testing should be an indicator of progress in certain areas but not the end-all for school improvement. Title I and Title II Part D are excellent stepping-stones that allow principals the flexibility to address their school needs either by hiring counselors, reading specialists, offering after-school programs or purchasing resources. Such financing flexibility needs to be available for all schools to first meet their needs and then to offer developmental programming.

THE P: PENALTIES/ENFORCEMENT

The state of Utah serves as a potential example of the consequences of failure to achieve AYP. Out of 62 categories for students from low income and non-English speaking background, the state is not in compliance with 37 categories. If the Title I and Even Start issues are not resolved, the potential loss of federal funds would total $53 million. For a state with the lowest per-pupil spending in the nation, it can ill afford to lose these funds (McFarland, 2006b). Moreover, it appears the state has a long way to go to meet the requirements. Federal review has been completed for 31 states, and Utah ranks 8th from the bottom according to Utah’s NCLB coordinator (McFarland, 2006b).

Chicago students have experienced non-compliance first-hand. Windy city schools and their 80,000 students, for example, failed to meet state test scores for two consecutive years and could consequently not serve as a federally funded provider of supplemental services (Ashford, 2005). Chicago does not have sufficient city resources to finance remedial programs and has now temporarily lost federal aid. That translates into $53 million in federal funded tutoring services that have been temporarily disrupted. The 80,000 affected Chicago kids are trapped in poor-performing schools and now, because of the inflexibility of the NCLB statute, are isolated from additional academic services which, by the same law, they are required to receive.

Under NCLB, after two years of a school’s “failing” to meet standards, students are permitted to transfer to another public or private school. To date, this option has been available more in theory than in practice. In the 2003-04 school year, 6.2% of American students were eligible to switch schools but less than 1.7 percent actually did so. For Utah schoolchildren, the figures are comparable. In the 2004-05 school year, 11 schools with a total enrollment of 6,325 students failed to meet federal requirements two years in a row, yet only 90 students transferred (McFarland, 2006a).

One potential explanation, according to National School Board Association Associate Executive Director Michael Resnick, is that when a school doesn’t meet NCLB standards, it might not reflect the quality of education at the school. “A school may fail to meet NCLB goals because a single subgroup of students does poorly on the standardized tests. If parents believe their own children are doing well, there’s little incentive to exercise their choice option… parents want to send their children to neighborhood schools (Stover, 2005).

ANALYSIS:

Increased scrutiny has brought the public focus to struggling schools and highlighted inequalities between schools. The unintended consequences of the enforcement policies are to push schools, teachers and students into a high-stakes poker game of universal standards without taking into account substantial growth over several years. “NCLB is not about helping kids, it’s about labeling schools, and sanctions and consequences, not… about improvement,” charged Utah State Superintendent of Public Instruction Patti Harrington (Toomer-Cook, 2005).

The “one-size-fits-all” mandate of NCLB assumes that every school in every location has the means to hire highly-qualified teachers and retain them, assumes that a state standardized test is the lone means for student achievement, and assumes that the achievement gap can be closed and reading and math proficiency attained by 2013-2014. Worthy goals, definitely; but misguided goals, according to opponents. Lauren Resnick and Chris Zurawksy, editors of Research Points, a publication of the American Educational Research Association write, “with the addition of accountability—and without a curriculum that defines broader educational goals—narrow tests… become the de facto curriculum” (Resnick & Zurawksy, 2005, p. 15).

Compare such an ultimatum to another public service, that of law enforcement. While every citizen would wholeheartedly support eliminating all violent crimes by 2014, they would not be as keen to support the program if prosecution of property crimes were neglected. However, if police and community efforts succeed in reducing violent crimes by 2014, then the program should be considered successful and the police department should not be penalized for “failing” to meet the 100% goal.

Schools are faced with that quandary. NCLB mandates that schools invest in testing, but the unintended consequences are that testing becomes the top priority. With limited amount of resources, educators must be allowed optimum flexibility to best address their students’ needs without being overly dependent on “teaching to the test” to preserve their school and their job. Kids aren’t naïve, they recognize the
stated importance of the standardized tests and they are just as demoralized as the faculty when they are labeled as failures. “Not only do we set an impossible goal, but we measure success by the most minimalist and almost irrelevant measures,” said Richard Rothstein, author of “Class and Schools” and a guest lecturer at Teachers College, Columbia University in New York. “Schools can’t overcome the well-documented link between poverty and poor academic achievement” (Lynn, 2004).

Educators and students are not opposed to being held accountable and indeed, NCLB correctly obligates public awareness of school performance. Of concern is that the proposed resolution for a “failing school” is a backdoor voucher program, long opposed by the mainstream public education establishment. If the NCLB standard was modified to include a growth component, more emphasis on student work samples and teacher evaluation, and decreased emphasis on standardized testing, the progress and performance of individual schools and students would be better represented. The national government would still take a leading role in directing education and calling for public accountability while allowing schools and teachers to cater to the needs of students.

CONCLUSION

Standards-based education is a necessity. That includes a common, defined curriculum, tests that accurately measure knowledge, special attention to struggling children, expanded professional development for “highly qualified” teachers, smaller class sizes, and a federal-state accountability system that targets needy schools and makes resources available to them without being punitive. Schools are buildings; the people in the school should be improved, not “failed.”

The ultimate goal of an improved public school system is to mold generations that are prepared for the challenges in an evolving world and can be productive, responsible citizens. It is crucial that this message is driven home to current students AND their parents. In order to leave no child behind, the United States should make the effort to provide an equitable start for all children. Investments into health care, after-school programs and affordable housing would lead to academic improvement (Lynn, 2004) and should be considered as part of social educational policy.

American students need more interaction with highly qualified teachers in school through smaller class sizes and more time focused on real-world applicable, evolving curriculum. Educators need the flexibility to select a target for achievement that is appropriate for the current state of their student body and then improve incrementally. While the three R’s are still the foundation, the student skill set must include critical thinking, decision-making, writing ability and multiple language mastery; skills that are not identifiable solely by a standardized test. Tomorrow’s America will need fewer C-3PO protocol droids and more thoughtful, independent, ethical leaders like Luke Skywalker. Standards need to be developed to test problem-solving skills and include a writing component, not just be of the multiple-guess regurgitation variety. The Federal Government should empower states and districts to enact consistent accountability measures but then hold the “feet to the fire” of local entities for academic progress.

Says Richard Elmore, Professor of Educational Leadership at the Harvard Graduate School of Education, “building capacity in failing schools is going to require a lot of feet on the ground… improvement is a process not an event. Schools build capacity by generating internal accountability and working their way through problems of instructional practice at ever-increasing levels of complexity and demand” (Elmore, 2005, p. 27).

Under the proper leadership, schools can blossom into the community headquarters for scientific discovery, artistic creativity, civic service and participation, social and moral development, and athletic achievement. Kids learn valuable lessons such as responsibility, discipline, teamwork and punctuality alongside their academic pursuits. Observed G. Don Gale, former editorial director at KSL-TV in Salt Lake City, “good educators realize the knowledge students learn will soon be forgotten or obsolete, but the habits and values they acquire will last a lifetime. Competence is important. But confidence, compassion and congeniality are too.” (Gale, 2003).

Teacher reaction to NCLB has been of the “mend it, don’t end it” variety. In fact, two-thirds of the members of the American Federation of Teachers support the goals and motives of NCLB (Wattenburg, Hansel, et al., 2005a). To get students up to standard, it will take time, discipline, effort, and money. Until now, the full investment has never been made. An investment today will bring rewards tomorrow. Education budgets are always a recession away from the chopping block and American students deserve better.

The United States can reclaim its place among the educational elite if it has the patience and the will to refine this project and let it mature. The America of tomorrow demands a skilled, motivated, educated people and we owe it to those who have laid the current groundwork to leave the country better than how we found it. Inside the Library of Congress—the apex of American intellectualism—reads this warning and promise, to be interpreted and built upon as we will: “The foundation of every state is the education of its youth.”

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