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Reform, or Séance? Seeking the "Spirit" of No Child Left Behind

by Andrew Rudalevige — August 10, 2005

As recent state critiques of No Child Left Behind (NCLB) make clear, the states and federal government are far apart in their understanding of how the spirit of NCLB might continue to take tangible form. This brief article lays out some of the major divides and their implications and urges that the two sides work in good faith to bridge them.

It comes as little surprise that the consensus forged around the No Child Left Behind Act (NCLB) back in 2001 has begun to unravel. The surprise was that such a consensus was achieved at the time—and doing so required, besides hard work, an appeal to ambiguity during the legislative process that could not be sustained once implementation of the law began. Once the Department of Education, states, and districts had to tangle with the tangible requirements of (among other things) setting standards, creating tests, hiring highly qualified teachers, and providing supplemental tutoring, the widely supported ideal of "accountability" was bound to give way to a series of definitional disputes.

Three-plus years after President Bush triumphantly signed NCLB into law, the question of what accountability was to mean in practice has come to a head. Recent weeks have seen a flurry of controversy over implementation issues. The state of Connecticut has announced that it will sue the federal government over NCLB's funding levels; scattered school districts, along with the National Education Association (NEA), already have. Utah legislators have directed their education department to ignore portions of the law where it conflicts with state policy or requires additional state spending; Texas has been doing likewise largely without such prompting.

What does all this suggest for the future of NCLB? The final report of the National Conference of State Legislatures' (NCSL) Task Force on No Child Left Behind, released this February, provides a useful summary of the range of critiques aimed at NCLB and a jumping off point for considering their significance for the evolution of the law. NCSL's main themes are that education is essentially a state function (thus NCLB oversteps the 10th amendment); that the law provides nowhere near enough new money to persuade the states to ignore that transgression (thus NCLB is, de facto, an unfunded mandate); and, most of all, that the federal government must allow far more flexibility to the unique needs of specific states and districts (thus NCLB is "one size fits all," when states and districts vary wildly.) Secretary of Education Margaret Spellings is urged to waive a wide array of provisions of the law, from those dealing with special education and teacher qualification to the measurement and attainment of adequate yearly progress (AYP). NCSL, in short, wants more money and more freedom to spend it. "Ultimately," says the report (NCSL, 2005), "states should be allowed to develop any system they choose as long as it meets the spirit of NCLB" (p. vii).

Skeptics might wonder whether the states would prefer to meet that spirit via séance—happy to invoke it, but ready to flee should it take material form. After all, it was not until the spring of 2002 that all states were in compliance not with NCLB but with the education reauthorization passed in 1994, and even then only through a generous interpretation of compliance. NCSL's defensive tone, repeatedly asserting the states' commitment to quality education for all, is thus natural enough: the very fact of NCLB indicts state performance on that score. And certainly doubters remain.

But one doesn't have to posit bad faith to worry about bad outcomes. The NCSL report reveals a huge disconnect between state and federal actors that must be bridged if NCLB is to be changed—and preserved—in the ways it needs to be. Most obvious, perhaps, is the funding gap. NCSL suggests that as much as $140 billion in new annual spending might be required to achieve standards-based proficiency; by contrast, total federal spending on NCLB in the president's FY2006 budget proposal is $25.3 billion. The Department of Education, far from apologizing for that figure, touts massive increases in Title I funding since the start of the Bush administration (NCSL, 2005, p. 48; Department of Education, 2005, February). And in fact the divide is even greater than those figures suggest. To truly attain proficiency, NCSL argues, would require solving the challenges to educational achievement posed by "impoverished communities, fragmented families, poor health care and unstable housing conditions."

No one would say that poverty helps children learn. But the suggestion that educational progress awaits the coming of policy heaven to earth implies a psychological gap even wider than the fiscal one. Likewise, NCSL urges that Congress shift the law's "focus from processes and requirements to outcomes and results." Yet this is exactly what Congress thought it was doing in 2001. The metaphors (from sports to livestock care) that threaded congressional debate centered on how one could tell whether children were in fact learning more. "Accountability is the centerpiece," proclaimed House education chair John Boehner's fact sheet on NCLB. "States have accepted billions in federal education aid but have never been held accountable for improving student achievement. Until now."

A focus on measurable results remains key to the administration. "If you don't measure," President Bush recently asked, "how do you know whether or not you've got a problem in a classroom?" States would largely accept this, probably, but only if they get to define "measurement." Indeed, another wide disconnect opens when considering who ought to be measured (and how, and when). Does measurement require annual testing in grades 3–8 (plus earlier requirements for a high school test) for at least 95 percent of all subsets of students? The president and Congress answered these questions in the affirmative in 2001. But states say no: They want far more flexibility in excluding students from testing, especially for those with special education needs; at least some don't

want to test annually; and NCSL dislikes standardized tests generally. In the end, NSCL begs to differ even with the titular goal of NCLB: Attaining 100 percent proficiency, the report demurs, is "admirable" but "in practice… unattainable" (Office of the White House, 2005; Department of Education, 2005, April; NCSL, 2005, p. 48). On April 7, Secretary Spellings announced a "new approach" to NCLB implementation that promised "additional alternatives and flexibility." Few details are yet available; it seems likely, however, given their importance to the president, that universality, annual testing, and disaggregation are not on the table. On April 28, the president reiterated his support for NCLB, stating that "I will do everything I can to prevent people from unwinding it." Signals have circulated on Capitol Hill that NCLB will under no circumstance be reopened before its required reauthorization date.

And so the sides continue to talk past each other. But neither can "win," in any real sense. On the one hand, it is unlikely that NCLB will go away by judicial fiat; its mandates may be discomfiting but they are not unconstitutional, given that states can opt out of its requirements if they will forego a healthy chunk of cash. On the other, the federal government is, as Bush aide Sandy Kress once put it, a "seven percent investor" in education—it must rely on the talents, good will, and funding decisions of state and district-level personnel to make NCLB work (Rudalevige, 2003, p. 25). Thus the two sides need to move forward in partnership if the gaps noted here are to be bridged.

Doing so will require recognizing that the legislative process that created NCLB bequeathed statutory language that met the needs of an odd coalition wedded to diverging priorities, but not always the needs of those doing the implementing. For example, President Bush promised "freedom in exchange for achievement" during the 2000 campaign. Even though centrist Democrats joined Bush (indeed, arguably prompted him) to urge a drastic reduction in the regulatory underbrush of Title I, in the end this too fell victim to the needs of coalition building and the number of required programs was reduced only slightly (Rudalevige, 2003, pp. 31-36). NCLB demanded strict state standards, but created incentives for states to dumb down those standards (which is not punished) so that they could avoid lagging in AYP (which is punished). Local autonomy was demanded, but the use of national testing as a consequential national check on state results was forbidden—even though doing so would allow for additional local flexibility by creating a way to consistently vet results without Department of Education micromanagement.

Further, in some places legislators' concerns about noncompliance painted the law black and white where nuance might have worked. AYP was strictly linked to comparisons at the same grade level each year, not to the "value added" by schools to the achievement of a specific group of children. Further, the flags indicating school underperformance are raised to the same height whether the school's problem is testing just 94 percent of students in a subgroup or consistent failure to teach students to read. The point, of course, should not be to have everyone pass, but rather to focus resources where they are most needed—and to give educators, administrators, and parents additional, actionable information about school and student achievement. (In this area, the law has clearly taken hold: Recent Century 21 commercials take credit for providing NCLB's "report card" data to prospective homebuyers.)

The most encouraging sign for NCLB's future is that all sides of the policy community are beginning to converge around the need for reform—around the feasibility and desirability, for instance, of a "growth" model of student achievement variants of which have been touted not just by NCSL but by analysts like Checker Finn and Rick Hess. The least encouraging is that, as the divides noted here suggest, there is as yet little agreement on the specifics of those reforms and startlingly little agreement even on the basic facts that must underlie those efforts (the dispute over NCLB funding is one obvious example.)

Thus, what is needed now is dialogue and consistency. Secretary Spellings' recent commitment to both is welcome but needs more detail, sooner rather than later. The states, in turn, must stop blaming NCLB for every shortcoming in their own educational establishments.

In short, to be true to the "spirit" of NCLB, all involved need to commit to explication rather than exorcism. If the finger pointing continues, NCLB may well stay on the books—but present in classrooms only as a none too friendly ghost, with the potential to haunt America's future for generations to come.

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