

No Child Left Behind: The Impact of Increasing the Federal Government's Role in Public Education

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Abstract

This paper examines the effects of the federal government's increased influence on public education through the *No Child Left Behind* (NCLB) legislation. After discussing the evolving role of the federal government in public education that led to the development of NCLB, the NCLB program and rules are described. This paper then investigates how the federal government gained authority in the public education domain. Finally, the consequences of the increased federal presence in public education are discussed.

Development of NCLB

On January 8, 2002, President Bush signed the 1,180-page *No Child Left Behind Act* into law – the culmination of nearly four decades of federal expansion into public education, dating back to the *Elementary and Secondary Education Act* (ESEA) of 1965. As part of his administration's "War on Poverty," President Lyndon Johnson signed the ESEA in 1965 to provide \$2 billion for states to improve educational opportunities for economically disadvantaged students. This influx of federal money into public education signified the federal government had turned its attention to the public education domain. The federal government's interest in public education increased throughout the next decade, as federal spending on education increased more than 200% from 1965-1975. Even though an economic downturn in the 1970s caused federal public education spending to increase by only 2% over the next five years, the establishment of the U.S. Department of Education (DOE) in 1979 made it clear that the federal government intended to remain involved in public education policy (Young, 2004).

In 1980, after campaigning to decrease the size and scope of the federal government, including plans to abolish the DOE, Ronald Reagan became president. In his first term, federal spending on public education declined by 21% (Young, 2004). Despite the decrease in federal funding, the Reagan administration proved to have a lasting impact on public education policy when Reagan and Secretary of Education Terrell Bell assembled the National Commission on Excellence in Education (NCEE). The NCEE was created in August 1981 to "review and synthesize data and scholarly literature on the quality of learning and teaching in the nation's schools, colleges, universities, both public and private, with special concern for the education experience of teenage youth." (U.S. Department of Education, 1983). The NCEE published *A Nation At Risk* in 1983, finding the public educational system was producing mediocre results. Among its findings:

1. 13% of 17-year-olds in the U.S. can be considered functionally illiterate
2. SAT scores consistently declined in verbal, math, physics, and English
3. Only 20% of 17-year-olds could write a persuasive essay
4. Only one-third of 17-year-olds could solve math problems requiring several steps
5. Remedial math courses in public 4-year colleges represented 25% of all college math courses (U.S. Department of Education, 1983)

In addition to focusing attention on the problems in the public education system, the report proposed several solutions. Recommendations were made in four key areas: (Harcourt, 2003)

1. Content – The report concluded that curriculum had become diluted and without a central purpose.
2. Expectations – The report recommended schools adopt rigorous and measurable standards
3. Time – The report found students spent less time on school work and time was used ineffectively
4. Teaching – The report found teacher preparation programs needed substantial improvement

The report concluded that if the U.S. established a common set of academic standards, only 20% of all high school students would have met those standards (U.S. Department of Education, 1983).

Although *A Nation At Risk* called for the creation of a core curriculum and common academic standards, President Reagan left the work of creating those standards to the states (leading to the diversity in content standards and academic expectations among states today). By 1990, the National Center for Educational Statistics reported that 40% of high school graduates met their state standards – double the percentage reported by *A Nation At Risk* in 1983 (NCES, 1990). From this information, it appeared as though this standards-based approach worked, at least at the state level. This standards-based accountability approach to solving educational problems would influence policy-makers in the future.

In 1989, President George H.W. Bush gathered state governors in Charlottesville, Virginia for the first ever National Education Summit. The governors, including then-Governor of Arkansas, Bill Clinton, developed *America 2000*, a report establishing five broad educational objectives to be reached by the year 2000:

1. All children will start school ready to learn
2. The high school graduation rate will increase to at least 90%
3. Students in grades 4, 8, and 12 will demonstrate competency in challenging subject matter
4. Every American adult will be literate and possess skills needed to compete in a global economy
5. Schools will be free of drugs and violence and will offer a disciplined environment (Young, 2004)

To help states meet these goals, the federal government would provide support to the state and local standards movement. The *America 2000* proposal included voluntary national testing tied to “world class” standards – a provision that led to the bill’s death by Republican filibuster (Rudalevige, 2003). Policy-makers argued over whether to create a set of national content standards (increasing the size of government, but ensuring high-quality standards for all) or to keep the current system of state-created standards (ensuring local control over education policy, but allowing some states to have higher standards than others).

In 1992, President Clinton took office and adopted most of the recommendations of *America 2000* to create his federal education policy, *Goals 2000: Educate America Act*. This bill, as proposed, would have created the National Education Standards and Improvement Council (NESIC) – a body with the authority to approve or reject state standards (Young, 2004). It also encouraged states to connect federal programs with state and local reforms affecting all students (Harcourt, 2003). Republicans, taking control of Congress in 1994, opposed the increased federal role in education. The NESIC idea died, but the federal focus on standards and accountability survived.

Traditionally, the *Elementary and Secondary Education Act* has been reauthorized every five to seven years. Keeping with this tradition, President Clinton signed a reauthorization in 1994 called the *Improving America's Schools Act* (IASA). The IASA required states to:

1. Develop challenging content standards in math and language arts
2. Develop performance standards for 3 levels of achievement (partial, proficient, advanced)
3. Create a unified assessment system to test all students
4. Use standards to establish benchmarks for improvement (“adequate yearly progress”)

The first requirement to create content standards was not new – it was recommended by *A Nation At Risk* in 1983. The second requirement built upon those standards to provide a common set of terms to measure student performance compared to those state standards. The third requirement, calling for a unitary assessment system, was an important change in federal education policy. Dating back to the original ESEA of 1965, the federal government focused almost solely on the achievement of economically disadvantaged (and special education) students. The IASA called on states to measure the achievement of all students; not just those in specific subgroups. Thus, the IASA served to broaden the influence of the federal government in education. All schools, not just those schools with large numbers of disadvantaged students, would be required to follow federal education policies.

The fourth requirement of IASA was also an important change. Instead of simply measuring student performance, as was established in previous federal education policy, the IASA required states and schools to continuously improve student achievement. Although no deadline or final goal was created, schools were required to show continuous progress towards making adequate yearly progress (AYP) or face consequences, such as offering supplemental services and school choice to students or replacing existing staff (Young, 2004). It was also mandated that in order to continue to receive funding, states must comply with the general requirements of IASA.

With no deadline established for states to make AYP, the IASA had no teeth. Standards were supposed to be in place by 1997 (assessment systems and definitions of AYP were to be set by 2001), but the administration never withheld funds from states that failed to meet these timelines (Rudalevige, 2003). The Clinton administration, concerned about upsetting the Republican-controlled Congress, focused on providing states with assistance in developing standards and assessment systems. The lack of sanctions led to the American Federation of Teachers noting that just 17% of states had established clear content standards and assessment systems by the deadlines established under IASA (AFT, 2000). It was clear, however, that the federal government was interested in reviewing state content standards and holding schools accountable for the performance of their students as measured by achievement tests.

In April of 1999, Andrew Rotherham of the Democratic Leadership Council's Progressive Policy Institute wrote an influential white paper on federal education policy. He wrote that Congress, to rectify the IASA's status as “an undertaking without consequences,” should set performance benchmarks and terminate aid to schools and states that failed to meet those benchmarks. Rotherham recommended the 50+ categorical grants in the ESEA be reduced to five broad “performance-based grants: (1) Title I compensatory-education program, (2) teacher quality, (3) English proficiency, (4) public school choice, and (5) innovation (Rudalevige,

2003). During the next reauthorization cycle, Conservatives would come to support Rotherham's ideas of state flexibility in spending money from the five grants tied to measurable performance goals. Democrats generally opposed the broad block grants that threatened educational programs that have specific purposes.

The proposal that finally reached the Senate floor included a pilot block-grant program that would give spending discretion to 15 states. The proposal still allowed states to define AYP, but required states to ensure all subgroups of students would be proficient in 10 years. Schools failing to make AYP for two consecutive years would be required to offer students the change to transfer to another public school in the district and pay the costs of transportation.

This proposal satisfied no one. Liberal Democrats tried to amend the policy to protect existing programs from block grants and to push for class-size reduction, school construction, and teacher training. Conservatives such as Senator Judd Gregg (R-NH) demanded larger block-grant, school choice, and voucher programs (Rudalevige, 2003). Other Democrats, led by Senator Joseph Lieberman (D-CN) pushed a modified block-grant program, which would create five major grants (as defined in Rotherham's paper), raise overall funding by \$35 billion over five years, keep the class-size reduction program, and add \$100 million for public school choice (Rudalevige, 2003). This proposal got just 13 votes. Instead of working on further compromises, both sides decided to take their chances in the upcoming presidential election. This marked the first time in history that the ESEA was not reauthorized on time.

George W. Bush, campaigning as a "Compassionate Conservative," placed education as a priority on his domestic policy agenda. His "compassion" was aimed at those students trapped by "the soft bigotry of low expectations," while his conservatism aimed to maximize parental choice and local flexibility in education spending. Bush also differed from traditional Conservatives by favoring a strong federal role in public education. After becoming president, Bush set out to persuade Republicans in Congress to support what they had rejected just one session earlier.

President Bush invited 20 members of Congress to Austin, Texas to discuss education policy. He pushed the representatives to build upon the successes of IASA and the successes experienced by the state of Texas, which had seen steady improvements in standardized test scores among minority students perhaps due to its mandatory testing policy (Young, 2004). Bush appointed Alexander Kress (a Dallas attorney, Texas school board member, and member of the Democratic Leadership Council) to head a policy staff that would work with these Congressmen. Being a member of the Democratic Leadership Council, Kress was familiar with Rotherham's white paper, the IASA of 1994, *America 2000*, and *Goals 2000*. During this meeting, Bush lobbied to eliminate Republican language calling for the abolition of the Department of Education. Bush also assured Democrats that the voucher issue was not as important as the accountability issue (Rudalevige, 2003).

No Child Left Behind emerged as a 30-page legislative blueprint just three days after President Bush's inauguration. This blueprint included the block-grant proposal (dating back to Rotherham's paper in 1999), annual testing requirements for grades 3-8 (expanding on IASA's requirements), and the publication of state and school report cards (based on the reporting system in Texas). This proposal also required states to participate in the National Assessment of Educational Progress each year (in order to provide a standard

measuring stick for all states and schools). Title I schools would be required to demonstrate that disadvantaged students were making AYP. The proposal did not specify the requirements for sanctions when a school failed to make AYP, but did include provisions for public school choice, supplemental services, and vouchers towards private schools. The proposal also indicated that schools failing to make AYP would receive reduced administrative funding (Rudalevige, 2003).

President Bush tried to gain bipartisan support for this proposal. He took the name “No Child Left Behind” from the Liberal Children’s Defense Fund, whose mission is “to leave no child behind.” (Liberal Children’s Defense Fund, 2005). He also had representatives Kress and Gregg convince Senator Kennedy to support the proposal (thus gaining the support of the Democratic regulars). With Kennedy on board, it didn’t matter that Jim Jeffords left the Republican Party to become an independent – it appeared as though the bill was going to quickly pass without major obstacles.

In its attempt to appeal to all political viewpoints, the NCLB proposal didn’t address many of the policy details needed for implementation. Nonetheless, the bill was introduced on March 22, 2001. After a couple months deliberation, the House Committee on Education and the Workforce reported the bill out of committee in May of 2001. Disagreeing with the bill’s focus on using assessments as the sole basis on which to measure school performance, the National Educators Association (NEA) sent letters to Congressional leaders voicing its members’ concerns (NEA, 2004). The letters had little impact -- the voucher provisions were defeated as was the coalition of Barney Frank (D-MA) and Peter Hoekstra (D-MI) who attempted to eliminate annual testing requirements (Rudalevige, 2003). On May 23, House Resolution 1 (HR-1) was passed by a vote of 384-45 (Republicans made up 3/4 of the “no” votes) (Young, 2004).

The cost and scope of the NCLB bill bloated in the Senate. Senate Democrats agreed to \$181 billion in special education funding over ten years in addition to the \$132 billion set aside for Title I. A total of 89 programs were included in the Senate version of the bill (up from 55 programs in the existing law and 47 programs in the House bill) with a total price of \$33 billion (compared to \$19 billion in the president’s plan and \$23 billion in the House’s version). Over the course of seven weeks, 150 amendments were made to the bill (Rudalevige, 2003). Some of the most drastic attempts to amend the bill included Senator Paul Wellston’s (MN) failed attempt to defer annual testing requirements unless federal Title I funding was tripled (Rudalevige, 2003). Without that provision, Senate Bill S1 was approved 91-8 on June 14, 2001.

The NEA once again issued letters against the proposal. Between July and August of 2001, the NEA submitted 14 separate sets of comments to conference staff on each of the major programs and issues where the House and Senate differed (NEA, 2005). Towards the end of July, both the House and Senate agreed to establish a conference committee to pass NCLB in a bipartisan effort. Before the committee could convene, the General Accounting Office (GAO) issued a report that concerned many legislators (Young, 2004).

The GAO report indicated that thousands of schools would be labeled “in need of improvement” under the current definitions of proficiency and AYP (Young, 2004). This report sparked a movement against the strong accountability provisions in NCLB. Jim Jeffords created analyses claiming that a majority of schools would fail under the bill’s formula for calculating AYP. This led to new language in the bill requiring at least a

1% improvement in test scores each year for each subgroup (rather than the more stringent requirements defined by the current language in the bill). The new language would also allow schools to be judged over 3-year periods, instead of annually, and would more heavily weight the scores of the lowest achieving students (this giving schools more credit for closing the achievement gap than for overall achievement gains). This new language was declared to be unfair by civil rights groups, so AYP negotiations continued (Rudalevige, 2003).

It was now obvious that NCLB was not going to pass without opposition. Conservatives wouldn't pass the bill without vouchers, Liberals wouldn't pass the bill with vouchers; teacher's unions didn't want mandatory testing, while President Bush's main focus was on accountability. The debate reached its apex when the National Conference of State Legislatures called the bill's testing provisions "seriously and perhaps irreparably flawed." (Young, 2004).

Working through the controversy, the conference committee took five months to bridge 2,750 differences between the House and Senate versions of the bill (Rudalevige, 2003). The bill's language was revised to reflect concerns raised by the GAO and special interest groups. Even the September 11th attack and following anthrax scare did not push NCLB off the legislators' agendas. The final language in the bill allowed for a pilot block-grant program along with extra money for charter schools. Special education funding was cut, while supplemental service provisions were refined. Schools were required to have all students reach proficiency within 12 years. Districts were allowed to average results across three-year periods, but still required to make AYP annually. While states were required to participate in NAEP biennially, sanctions were not tied to NAEP performance. AYP provisions were vague and purposefully announced last to avoid pressure from special interest groups (Rudalevige, 2003).

The NEA submitted a letter stating that despite their concerns over the cut in special education funding, they would not oppose the final conference agreement (NEA, 2005). With most of the debates on major issues settled, the House and Senate passed the final version of *No Child Left Behind* by votes of 384-41 and 87-10 on December 18, 2001 (Young, 2004). President Bush signed NCLB (Public Law Number 107-110) into law on January 8, 2002.

NCLB Program & Rules

To meet the goal of improving academic performance of disadvantaged students, NCLB required states to: (1) develop content and performance standards, (2) develop assessment systems and accountability plans, and (3) track student progress through adequate yearly progress (AYP) goals.

(1) Content & Performance Standards

The 1994 IASA signed by President Clinton required states to develop challenging content standards (what students should learn) in language arts and mathematics by the 2002-03 school year (although no sanctions were placed on states failing to meet the deadline). NCLB expands upon the IASA by requiring states to develop challenging content standards in science by the 2005-06 school year. \$10.35 billion was

authorized to fund states in the development of their standards, which must have their standards approved when they submit their implementation plans to the DOE (all state implementation plans were approved on June 10, 2003). States failing to develop approved content standards by the stated deadlines will receive sanctions (described later in this paper).

Additionally, NCLB requires states to develop performance standards (how much/well students should learn) to represent three levels of achievement: (1) partially proficient, (2) proficient, and (3) advanced. These performance benchmarks must align with the content standards and must clearly define the level at which a student is declared to be proficient in a content area.

(2) Assessments & Accountability Plans

Under the 1994 IASA, states were required to develop and administer assessments aligned with their math and language arts content/performance standards once grades 3-5, 6-9, and 10-12. Again, no sanctions were placed on states that failed to meet these requirements. NCLB expands upon the IASA by requiring states to test all students in grades 3-8 and 11 annually. Language arts and mathematics tests must be in place by 2005-06, while science testing must take place by 2007-08. Additionally, states are required to participate in the National Assessment of Educational Performance (NAEP) biennially beginning in 2002-03. Sanctions are placed on states not meeting these requirements.

In requiring the participation of all students in the assessment system, NCLB mandates that 95% of all students must be tested each year. Furthermore, 95% of students in each subgroup (male/female, racial groups, disabled students, low-income students) must be tested. This requirement does not apply if the number of students in any subgroup is insufficient to yield statistically reliable information or if the results would reveal identifiable information about an individual student.

Originally, NCLB allowed states to develop alternative assessments for up to 0.5% of the state's most disabled students. This was later increased to allow 1% of students to take alternative assessments. States must provide accommodations to other disabled students (as specified in their Individual Education Plans) in order to meet the 95% participation rate.

To aid states in the development of their assessment systems, \$387 million was directly appropriated for annual assessment development. Of that amount, \$370 million was automatically appropriated to the states (each state receives \$3 million; the rest is distributed per-pupil). Another \$17 million was appropriated for competitive grants to states based on the quality of their applications. NCLB includes a provision which allows states to suspend the administration of their assessment systems if federal funding does not meet specified funding levels each year (Young, 2004).

NCLB also mandates that states administer tests of English proficiency to all limited English proficiency (LEP) students by 2002-03. Students who have attended a school in the U.S. for three consecutive years must be tested in English unless an individual assessment by the school district finds testing in the native language would be more reliable. A total of \$665 million was appropriated as state grants (based on percentage of immigrant students in each state) for LEP testing.

Reporting

Under the 1994 IASA, student test scores must be reported at the state, district, and school level and must be reported for gender, race, English proficiency, migrant status, disability, and socioeconomic subgroups. School districts were also required to produce profiles for each school and disseminate these reports to teachers, parents, students, and the community. NCLB authorizes sanctions against states and school districts not meeting these requirements. Furthermore, these “school report cards” must include information on teacher qualifications in each school - specifying the percentage of classes taught by teachers who are “highly qualified” (as defined in NCLB) in each school. These report cards must be developed beginning in 2002-03.

No direct funding was appropriated to aid states in the development of these report cards, but states may use a portion of the \$10.35 billion appropriated for Title I for this purpose.

(3) Adequate Yearly Progress & Proficiency Goals

Under the 1994 IASA, states were required to use their performance standards to establish “adequate yearly progress” (AYP). AYP refers to annual achievement goals that all schools and school districts in the state were required to meet. States developed these performance goals (such as “90% of students must be proficient in reading”) and schools were told that they could face sanctions if the goals were not met.

NCLB strengthened both the goals and sanctions of the IASA. NCLB mandates that all students must be proficient in reading, math, and science by the year 2014 (12 years after the law was passed). AYP goals are defined established by each state as annual benchmarks to ensure states and schools progress towards this 100% proficiency goal each year. For example, if 40% of the students in a state were proficient in 2002, the state may decide to set AYP goals of 5% each year in order to reach the 100% proficiency goal by 2014.

NCLB also requires schools, school districts, and states to ensure each student subgroup meets AYP goals. States, therefore, must demonstrate that low-income, racial minority, and disabled students are making continual progress towards 100% proficiency. NCLB also clearly states the sanctions facing schools, districts, and states if AYP goals are not met.

Funding for the development and monitoring of AYP goals is included as part of the \$10.35 billion appropriated for Title I.

Sanctions & Awards

As was discussed earlier, a failing of the 1994 IASA was that sanctions were not placed on states failing to meet the requirements of the law. Under NCLB, states, schools, and school districts face sanctions if:

- 1) The state fails to develop content standards, performance standards, or an assessment system
- 2) Fewer than 95% of students are assessed in a year
- 3) Fewer than 95% of students in any subgroup are assessed in a year
- 4) Student achievement decreases
- 5) Student achievement increases, but does not increase enough to meet AYP goals
- 6) Achievement levels for a particular subgroup of students fails to meet AYP goals

The severity of the sanctions depends on the number of consecutive years a school or district fails to meet its goals. These sanctions can include:

- 1) Being listed as a “school in need of improvement” on the annual state report card
- 2) Being required to develop 2-year school improvement plans to increase student achievement
- 3) Being required to set aside 10% of funds for professional development
- 4) Paying to transport students to the public school (or possibly school district) of their choice
- 5) Paying for supplemental services (from an approved provider) for low-income students
- 6) Eliminating staff members who contribute to the problem
- 7) Being forced to implement a new curriculum
- 8) Restructuring the school as a charter school or state-controlled school
- 9) Abolishing or restructuring the entire school district.

If a school or district meets its AYP goals for one year, sanctions are suspended. In order to be taken off the sanctions list completely, schools must meet their AYP goals for two consecutive years. NCLB also contains language describing a “safe harbor option” for schools. If a school increases the proficiency rate of one of its student subgroups by at least 10% in one year and shows increases in another measure of student performance, the school will not face sanctions.

NCLB also offers rewards for states, districts, and schools that are in compliance with the law. One-time bonuses were offered to states that established content standards and assessment systems by the specified deadlines. Funds were authorized to reward states that narrow the achievement gap and improve overall student achievement. Finally, schools that make the greatest progress in improving the achievement of disadvantaged students will receive recognition from the DOE and will receive funding bonuses (Young, 2004).

Through its authority to sanction and reward states, school districts, and schools, the federal government gained lots of influence over public education through NCLB. It wasn't always this way – in fact, the federal government had virtually no influence over public education until the mid-20th century. How did the federal government gain its authority over public education and what are the impacts of that authority?

Sources of Federal Authority in Public Education

Because the U.S. Constitution does not designate a role in public education for the federal government, states were originally responsible for developing, implementing, and funding education policies. This all changed when the federal government took an interest in the quality of the nation's public schools in the mid 1960s. The original *Elementary and Secondary Education Act* (ESEA) gave the federal government the authority to supplement state support of public education.

Originally designed by Francis Keppel, President Johnson's Commissioner of Education, the ESEA authorized grants to improve the education of the economically disadvantaged. Since the federal government has the responsibility to see its money is spent effectively, the ESEA also gave the federal government the implied authority to oversee the achievement of low-income students. Originally authorized only through 1970, Congress has reauthorized the ESEA every five to six years. Each reauthorization cycle has managed to expand upon the authority of the ESEA (examples include the 1994 IASA and *Goals 2000* discussed in Part

I of this paper). NCLB currently authorizes the federal government to oversee the achievement of all students; not just the economically disadvantaged.

The authority of the ESEA has also expanded through the annual budget cycle. In its initial year, \$1.94 billion was appropriated. The 1994 budget called for \$13 billion (of which \$10.3 billion was appropriated). In 2002, the first year of *No Child Left Behind*, \$22.5 billion was appropriated for the ESEA. Current language in NCLB authorizes Congress to spend “such sums as may be required” to implement the education reforms beyond fiscal year 2002 (U.S. Budget, 2005). Each time the federal government has increased spending on education, it has increased its authority (either legislative or implied) in public education matters.

Agency & Administrative Authority

While the federal government gained legislative and implied authority over public education, it granted administrative authority for the ESEA to the U.S. Department of Education (DOE). First established in 1867 by President Andrew Jackson, the purpose of the DOE was to gather statistics about the nation’s schools. Less than one year after its conception, public fear over the increased federal control of local public schools caused President Jackson to convert the DOE into the Office of Education, an agency with reduced authority over local schools (Ed Facts, 1992).

The limited authority of the Office of Education would expand through legislative action. The *Second Morrill Act of 1890* granted the Office of Education the authority to administer support for public colleges and universities. The 1917 *Smith-Hughes Act* and the 1946 *George-Barden Act* granted the Office authority over workforce training for high school students. The *Lanham Act of 1941* and the *Impact Aid Laws* of 1950 authorized the Office of Education to pay local school districts impacted by the presence of the military during World War II. The 1944 *GI Bill* and the 1958 *National Defense Education Act* further increased the Office’s influence by authorizing the Office of Education to provide postsecondary assistance to nearly 8 million WWII veterans (Ed Facts, 1992).

These legislative acts, in addition to the 1965 ESEA, increased the authority of the federal government in public education. To administer these legislative policies and programs, Congress passed the *Department of Education Organization Act* of 1979, creating the U.S. Department of Education (DOE) whose mission was to:

1. Strengthen federal commitment to ensuring access to educational opportunity for every individual
2. Supplement and complement the efforts of states, the local school systems, the private sector, public and private nonprofit educational research institutions, community-based organizations, parents, and students to improve the quality of education
3. Encourage increased involvement of the public, parents, and students in federal education programs
4. Promote improvements in the quality and usefulness of education through Federally supported research, evaluation, and sharing of information
5. Improve the coordination of Federal education programs
6. Improve the management of Federal education activities
7. Increase the accountability of Federal education programs to the President, the Congress, and the public (Ed Facts, 1992)

Throughout its existence, the DOE has been transferred and reassigned to many different departments. In 1981, the DOE was established as a cabinet-level position under the auspices of the Department of Health, Education, and Welfare. The current mission of the DOE is “to ensure equal access to education and to promote educational excellence throughout the Nation.” Under this mission, the DOE is authorized with four responsibilities:

1. To establish financial aid policies, to administer distribution of these funds, and to monitor their use
2. To collect data, oversee research, and disseminate information on America's schools to the public
3. To identify major issues and problems in education and to focus attention to these problems
4. To enforce federal statutes prohibiting discrimination in programs and activities receiving federal funds and to ensure equal access to education

The policies and programs for which the DOE is responsible must be authorized by Congress and signed into law by the President. The DOE is only granted the authority to develop regulations used to implement these policies. To oversee the actions of the DEO, these regulations are then published in the Federal Register and reviewed by Congress (Ed Facts, 1992).

In establishing the DOE, Congress was careful to specify areas in which the DOE does not have authority. According to the DOE website, the DOE does not establish schools/colleges, develop curricula, or set requirements for enrollment and graduation. These responsibilities remain with states and local school districts. As stated in the 1979 *Department of Education Organization Act*, the DOE is prohibited from exercising “any direction, supervision, or control over the curriculum program of instruction, administration, or personnel of any educational institution, school, or school system.” (Young, 2004).

The 1965 ESEA, the development of the DOE in 1979, and the huge increases in federal funding levels have caused the federal government to gain authority in public education. This authority has been solidified through the programs and rules of NCLB. While it is clear that the federal government has gained authority over public education, the consequences of that authority are not as clear. What impact has the increased presence of the federal government had on public education?

Outputs & Outcomes: Consequences of Increased Federal Authority over Public Education

The programs and rules under NCLB provided benefits and burdens to states, school districts, and schools. States received additional funding from the federal government in the form of formula grants (based on the percentage of low-income students within school districts). States also received additional funding based on the quality of their assessment systems, the quality of their NCLB implementation plans, and their ability to close achievement gaps.

In exchange for this additional funding, states and school districts receiving Title I funds were required to develop content standards and implement assessment systems. NCLB also required states and school districts to report the results of their annual assessments and determine whether or not they met AYP goals. States were also required to sanction schools and school districts failing to meet AYP goals.

While NCLB is still a relatively new law, the consequences of its programs, rules, benefits, and burdens on public education are beginning to be experienced.

Short-Term Outcomes

Immediately after NCLB was signed into law, states scrambled to develop content standards and accountability systems. Some states that had previously implemented assessment systems sought waivers from the NCLB requirements, while other states quickly gathered resources to meet these new requirements. While NCLB allocated \$400 million for states to develop accountability plans, The National Association of State Boards of Education estimated the cost of implementing testing programs at \$7 billion over seven years (The National Association of State Boards of Education, 2002).

This movement to develop accountability systems led to an increased focus on professional development. State Departments of Education hired assessment experts to train employees in the areas of content standards, assessment, and data analysis. Teachers and school administrators, knowing little about the specific requirements of NCLB, also needed training. For example, school districts in Iowa spent their professional development time informing teachers of the NCLB provisions. Educators were trained to develop and interpret content standards, administer assessments, and analyze standardized test results. Some schools and school districts trained teachers to teach their students test-taking skills. The major short-term consequence of NCLB was to increase the focus educators placed on student achievement and testing.

Mid-Term Outcomes

After a few years under NCLB, another consequence has been felt by the schools receiving sanctions for failure to meet AYP goals. According to the National Education Association, 26,896 schools failed to meet their AYP goals during the 2003-04 academic year. This number dropped to 20,948 schools the following year. Looking at these numbers, it appeared as though NCLB requirements led to higher test scores for students. In fact, in 2004-05, 38 states managed to decrease the number of schools failing to make AYP (NEA, 2005).

The NEA identifies three possible reasons for the declining number of schools failing to make AYP:

1. Federal Rules Changes -- The DOE has changed rules regarding the testing of disabled students and English Language Learners, causing fewer of these students to be included in the school accountability systems.
2. State Accountability Plan Changes -- Many states, including Iowa, have modified their implementation plans. These modifications, including raising the number of students in each subgroup required for reporting purposes, can hide the performance of low-achieving students.
3. AYP Goal Threshold -- In 2004-05, the AYP goals did not increase for many states. The chart on page 20 of this paper demonstrates that AYP goals will increase for the 2005-06 academic year. This should lead to an increase in the number of schools failing to make AYP (NEA, 2005).

A closer look at the data paints a more pessimistic picture. While the number of schools failing to make AYP has declined, the number of schools actually receiving sanctions (failing to make AYP for 2 or

more consecutive years) has increased. While the number of “failing schools” decreased from 8,652 in 2003 to 6,256 in 2004, this number jumped to 10,991 in 2005 (NEA, 2005). Forty-four states saw increases in the number of schools facing sanctions since 2002-03. The following table shows the number of schools facing sanctions during the 2002-03 school year:

Schools Facing Sanctions in 2002-03							
Alabama	57	Illinois	435	Montana	68	Puerto Rico	234
Alaska	11	Indiana	97	Nebraska	105	Rhode Island	34
Arizona	344	Iowa	26	Nevada	19	South Carolina	31
Arkansas	0	Kansas	118	New Hampshire	4	South Dakota	13
California	1,009	Kentucky	107	New Jersey	274	Tennessee	132
Colorado	154	Louisiana	24	New Mexico	63	Texas	121
Connecticut	28	Maine	19	New York	529	Utah	22
Delaware	20	Maryland	118	North Carolina	17	Vermont	28
D.C.	12	Massachusetts	259	North Dakota	20	Virginia	35
Florida	246	Michigan	1,513	Ohio	760	Washington	60
Georgia	625	Minnesota	79	Oklahoma	33	West Virginia	13
Hawaii	85	Mississippi	122	Oregon	9	Wisconsin	113
Idaho	88	Missouri	63	Pennsylvania	256	Wyoming	0
TOTAL							8,652

NCLB has not been able to clearly identify schools and states that are failing to increase student achievement. As the NEA noted, apparent improvements in test scores may be due to modifications in NCLB rules or state implementation plans. Differences in the number of failing schools among states are due primarily to differences in state standards than actual differences in educational quality. For example, it appears as though Arkansas (with no failing schools) has a better quality educational system than Michigan (with its 1,513 failing schools). Yet on the National Assessment of Educational Progress, Michigan had a higher percentage of students proficient in reading than Arkansas.

While differences in numbers of failing schools might not be “real,” the sanctions faced by these schools are. Parents of students at these schools can choose to attend another public school. Students at these schools are given supplemental services and more school time is devoted to test preparation skills. Teachers at these schools – whose jobs may be at risk – are given more professional development responsibilities. Administrators at these schools must develop school improvement plans and must do as much damage control as possible.

According to the case study provided by Dr. Helms, the increasing number of schools failing to make AYP could also lead to the following outcomes: (1) lowered standards, (2) score inflation, (3) curriculum narrowing, (4) neglected content outside reading, math, and science, (5) cheating, (6) doing more with less, (7) diversion of resources, (8) more policy relevant information, (9) better feedback to teachers and parents, (10) better tracking of individual student progress, (11) better tracking of teachers, (12) changes in teacher assignment practices, (13) improved reading and math achievement, (14) more resources for at-risk students (Helms, 2004).

Long-Term Outcomes

NCLB is still a relatively new law, but some of its long-term outcomes can be predicted. With its testing requirements and focus on research-based methods, NCLB will lead to a more sophisticated research base for the education field. NCLB will also provide opportunities for private education companies to profit via its testing requirements (test publishers and test preparation companies) and its provisions for supplemental services. NCLB will also have a significant impact on teacher education programs.

Another outcome is that NCLB has brought attention to several important educational debates:

1. The role of the federal government in education
2. School choice, vouchers, and public vs. private schools
3. The role of testing in education; the role of test preparation in education
4. The role of experimental research in education (versus the traditional observational research)
5. Local vs. state-developed vs. national curriculum

NCLB will provide lots of data for researchers interested in these debates.

Yet another outcome of NCLB has been the increased federal legislation activity in education. The table on the next page provides a partial list of educational legislation proposed in response to NCLB. Legislation has been proposed to modify the testing requirements of disabled students, change the definition of AYP, and even eliminate the testing requirements of NCLB. Some states have gone as far as to consider refusing federal Title I funds in order to escape the sanctions of NCLB. As the number of failing schools increases, the pressure to modify NCLB will grow.

While it is somewhat difficult to identify the outcomes of NCLB, it's even more difficult to determine public opinion regarding those outcomes. Polls such as the *36th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Towards Public Schools* conducted in 2004 seem to indicate a majority of the public disagrees with the programs and policies of NCLB. For example, the poll found:

- 67% say the performance of a school's students on a single test is not sufficient
- 81% are concerned that the emphasis on English and math will mean less emphasis on other subjects
- 52% oppose separating test scores by race and ethnicity, disabled status, and poverty level
- 61% oppose requiring special education students to meet the same standards as other students

On the other hand, the poll also found that 51% of those surveyed believe NCLB will improve student achievement in their local schools. John Boehner (R-OH), Chairman of the House Education & the Workforce Committee, disputes the results of the above poll, declaring its questions were based on distorted descriptions of NCLB. Boehner cites a 2003 survey that found:

- 91% of respondents support requiring school districts to give parents annual report cards
- 76% support allowing students in underachieving schools to transfer to better public/charter schools.

Further adding to the confusion over public opinion, the *36th Annual Phi Delta Kappa/Gallup Poll of the Public's Attitudes Towards Public Schools* found that 68% of respondents said they know little or nothing about NCLB.

Date	Proposed Legislation
05/20/03	Senator Feingold (D-WI) proposes S. 956 – the Student Testing Flexibility Act of 2003
06/06/03	NEA submits the Great Public Schools for Every Child bill
06/11/03	Representative Moore (D-KS) introduced the Keeping Our Promises to America's Children Act (HR 2394) which would suspend sanctions against schools that fail to meet AYP unless Title I is fully funded
07/10/03	The House rejected (199-223) an amendment that would have suspended for one year the sanctions imposed on schools that fail to meet AYP because Title I was not fully funded
09/10/03	Representative Strickland (D-OH) proposes a bill to amend AYP and the sanction provisions of NCLB
12/09/03	Secretary Paige announced the first rules change under NCLB, providing additional flexibility in assessing certain students with disabilities
01/08/04	Senator Kennedy and Democrats on the Senate HELP committee sent a letter to Secretary Paige criticizing NCLB funding/implementation
02/19/04	Secretary Paige announced a new rule providing flexibility for assessing limited-English-proficient students
03/15/04	Secretary Paige announced new rules providing flexibility for rural teachers in meeting the "highly qualified teachers" rules
03/24/04	31 Democratic members of the House and Senate Education committees sent a joint letter to Secretary Paige asking him to allow states to recalculate AYP determinations for the 2002-03 school year based on the new AYP rules
03/29/04	Secretary Paige announced new flexibility in calculating the 95% participation rate. This was the 4 th and final change announced by Paige
05/13/04	The Wisconsin Attorney General issued a legal opinion stating that NCLB is an unfunded mandate & the state does not have to spend its own money to comply
06/17/04	Senator Kennedy (D-MA) & Representative Miller (D-CA) introduced the NCLB Fairness Act reexamining school ratings based on revised guidelines
07/22/04	Representative John (D-LA) introduced the Keeping Our Education Promise to America's Children act (HR 4957). The legislation would defer sanctions imposed on school districts for any year in which Title I is funded at less than 97% of the authorized amount
Source: National Education Association (2004)	

Conclusions

NCLB, in increasing the federal presence in public education, has had both positive and negative outcomes. It appears, however, that the negative outcomes are overwhelming the positive outcomes. More and more educators and legislators are speaking out against NCLB and its accountability provisions. For example, many legislators are now declaring NCLB to be an "unfunded mandate."

The NEA recently (4/21/05) filed the first lawsuit against NCLB, claiming it to be an "unfunded mandate." Wisconsin Attorney General Peg Lautenschlager first issued a legal opinion in May of 2004 questioning the federal government's right to mandate accountability provisions without fully funding them. The challenge was due to a provision in NCLB stating the federal government cannot "mandate a state to spend any costs not paid for under this act." Lautenschlager concluded that to meet the mandates under NCLB, the state of Wisconsin would require an additional \$2.5 billion in total expenditures (Lautenschlager, 2004). A report released by the Public Agenda organization found that 89% of superintendents and 88% of public school principals call NCLB an "unfunded mandate" (Public Agenda, 2003). The bipartisan National Governors Association voted unanimously in 2003 to declare NCLB to be an "unfunded mandate" (Willen, 2003).

Other sources have declared that NCLB is neither unfunded nor a mandate. The General Accounting Office found that NCLB is not an “unfunded mandate” under the specific legal definition found in the *Unfunded Mandates Reform Act of 1995* (URMA). The GAO concluded that since states are under no obligation to accept federal education funds, NCLB is not a mandate (United States General Accounting Office, 2004). Another study conducted by the Education Leaders Council found that NCLB was not an unfunded mandate and that states would actually receive a \$787 million surplus in federal education funds from 2004 to 2005 (Education Leaders Council, 2004). A 2004 report from the U.S. Department of Education’s Budget Services Office backs up this claim, declaring that states are “sitting on more than \$10 billion in federal education funding appropriated between FY 2000 and FY 2003 (U.S. Department of Education, 2004).

Voices supporting NCLB took a blow in January of 2005, when the USA Today discovered that radio host Armstrong Williams was paid \$240,000 to “regularly comment on NCLB” during his radio broadcast and to interview Secretary of Education Rod Paige for radio spots airing in 2004. This agreement was part of a \$1 million deal the U.S. Department of Education made with the Ketchum public relations firm to promote NCLB through video “news releases” designed to look like news reports (Toggo, 2005). This scandal served to further solidify opposition to the NCLB legislation.

The biggest outcome of NCLB and the increased federal presence in public education has been controversy.

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