



Inspiring Vision, Disappointing Results: Four Studies on Implementing the No Child Left Behind Act

By

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Introduction

The No Child Left Behind Act of 2001 (NCLB) is the most significant and controversial change in federal education policy since the federal government assumed a major role in American education almost four decades ago. In many ways, it is the most startling departure in federal educational policy in American history. It is hard to imagine that there are many Americans who do not share its aspirations—to provide better, more demanding education to all students and to have all groups of students in every school move steadily toward a high level of achievement. A number of the specific goals are equally compelling—improving early reading instruction, upgrading the quality of teachers in high poverty schools, providing information for accountability and improvement, and setting the goal that all groups of disadvantaged students make substantial progress every year in every school. Few could disagree with the idea that students in seriously failing schools should have an opportunity to go somewhere else or that it would be good for low-income parents to have resources to supplement their children’s education. When President Bush and Congressional leaders crisscrossed the country the day the new law was signed in January 2002 there was a great sense of bipartisan compromise and accomplishment on a crucial national objective. Years of bitter partisan wrangling over the extension of the most important federal education law were over.

The law, however, includes a very complex structure of changes in educational policy and a number of features that are deeply controversial. President Bush conceded that he had not read it before signing it and it is highly unlikely that anyone could have read and fully understood all the intricate provisions before Congress hurriedly ratified a bargain between the White House and Republican and Democratic leaders in Congress that produced a bill more than a thousand pages long. The new law tells all the states how often they have to test children and what subjects must be emphasized, forcing the great majority to change the assessment processes they had decided were best and to give absolute priority to gains in scores on reading and math tests from grades 3 to 8. The law specifies how much progress schools must make every year for every subgroup of students, and mandates goals that have never been achieved on any scale in high poverty school districts. It requires that students with limited English proficiency and special education children perform at these same high levels and that all schools employ “highly qualified” teachers. The law contains funding set-asides and sanctions that took hold just a few months after the law was signed for thousands of schools. It mandates funding for supplemental services voucher programs that no school district had ever operated. It imposes huge new duties on the states without providing state resources to cover many costs. It requires the states to assume a role with the local schools and districts that goes beyond what any state has ever done on a large scale. While there is very broad support for the goals, there is bitter controversy over not only the substance of the requirements

but also the feasibility and desirability of the dramatically altered role of federal and state administrators in forcing local change.

Some describe NCLB as a path to educational transformation. On the other side, there are critics who denounce it as a plot to undermine public education. Clearly the issues are not only educational but also political and ideological. Obviously this law deserves the most careful attention and needs to be examined in terms of facts and not assumptions.

On first glance, it might seem surprising that a research center focused on civil rights should undertake a major study of an education reform. But this was a reform with a central focus on equalizing opportunity for minority children, one of the central foci of our work. As a research center created to stimulate a new generation of research on basic issues of racial equity, it was clear to us that the most important federal policy that directly affected the life chances of minority youth was Title I, the core of what has now been renamed the No Child Left Behind Act. The Civil Rights Project played an active role in generating research during the time the education bill was before Congress, commissioning fourteen studies by scholars across the country on what was known about ways to gain better results from Title I.¹ Since then we have made studying its impact a high priority. In a period when there are cutbacks in funding for other social services and the courts and executive agencies have narrowed the enforcement of civil rights, we concluded that reforming the only large federal program aimed at improving the education of impoverished children was profoundly important. In a racially stratified, increasingly non-white society with schools increasingly segregated by race and poverty, education is the only major vehicle that could potentially make things more equal. This means that education policies have to work as well as possible.

Our interest in NCLB is very similar to the interest often expressed by President Bush. Our researchers believe that no child should be left behind, as millions have been, that there should be high expectations of children, that resegregation of schools raises the already high stakes of equalizing school opportunity, and that educators should be held responsible for assuring progress for all racial and ethnic subgroups of students. We are in favor of good assessments that measure progress and accountability for results. Since our research starts from the perspective of children and minority communities rather than from the perspective of the school systems, the unions, the political parties, or other interests, we are not at all reluctant to support major changes if they work. Our central concerns are about racial and ethnic equity. Understanding the impact of NCLB on minority children and schools drove our selection of states and districts—we wanted to know how it worked in states with quite different educational systems and policies but with substantial minority enrollments.

We believe that a fair and comprehensive evaluation of the program as it unfolds across the country is essential for an intelligent debate and for improving the effectiveness of the law. NCLB passed with a huge majority of both parties supporting it so any findings

¹ Orfield, G. and DeBray, E. (Eds.). (1999). *Hard Work for Good Schools: Facts not Fads for Title I Reform*. Cambridge, MA: The Civil Rights Project, Harvard University.

about structural difficulties with the act should not be interpreted in partisan terms. Our goal is to examine the ways in which the law does or does not move effectively toward its stated objectives, not to assess blame. We believe that with any very complex major reform in an extremely diverse society, a process of analysis, critique, self-critique and adjustment is essential as new knowledge is acquired.

The four studies presented here—on the changing federal role in education, on the efforts of the states to adapt to the new law and on the implementation of the early reforms at the local level—consider the whole system of major changes now under way across the nation. We are not concerned primarily, as some other reports may be, about issues of formal compliance with the law’s requirements. Our focus is on what the law actually means in action, whether it is workable and effective as now implemented, and what the impacts at the state and local level imply for ultimate success. We continually focus back on the basic goals of the law to rapidly improve and equalize the opportunities and performance of low-income and minority children traditionally left behind.

This complex law asserts a level of federal power over American schools far greater than anything in the past. It also adopts two theories of educational change that are fundamentally different than the theories on which Title I was founded in 1965. The law assumes that schools by themselves can achieve dramatic, totally unprecedented, levels of educational achievement for all racial and ethnic groups as well as for children with disabilities, low-income children, and children without English fluency—all in a short space of time. Substantial gains must be made for each of these groups in every individual school. It assumes that there are known methods of reform that will do this, that the driving force will be a great expansion of testing and test-related sanctions, and that the threat of punishment and the loss of both resources and the best students will be strong incentives that will produce improvement at the school level.

The law requires a reorientation of the landscape of educational policy and practice along a number of dimensions. Given the massive demands of the law, the vast diversity among 50 different state systems of education, and the many thousands of school districts that must implement its requirements, it is very difficult to know what is happening and whether or not the policies are working as they are enforced across the country. The studies in this report move the discussion forward by providing reports on implementation and statistical data and evidence from state and local school systems across the country. Gail Sunderman and Jimmy Kim have provided the groundwork for an informed national debate.

Considering the findings in these reports, I believe that the first phase of implementation of NCLB shows very limited capacity at the federal level to understand either the reality of schools or the basic traditions of federal-state and professional relationships in educational policy. Though the reforms are enormously demanding for state and local educators and the many provisions of the law seem contradictory and infeasible to many educators, we find that the states are making a serious effort to comply. Unfortunately the federal role has not been either constructive or adaptive—it has been rigid and often hectoring toward state and local officials raising serious issues. Those provisions of the

law that are central to the administration's policy goals are interpreted rigidly and the assumption has been that those raising questions or objections or asking for consideration of state problems are simply wrong. There have been highly unusual public attacks on those questioning policies by leaders of the U.S. Department of Education. Given the fact that the law was a last-minute pasting together of many ideas, this complex reform was certain to have internal inconsistencies and unanticipated issues that needed to be resolved. A reasonable stance of the administration would have been one of consultation and flexibility together with assessment and feedback.

The transformation sought by the law was supposed to be lubricated by a huge infusion of new federal funds that would add resources to the schools required to produce large improvements; that was the basic political bargain. The fact that this has not been fulfilled at the same time that the combination of earlier state tax cuts and a national recession created fiscal cutbacks in almost all states, has made a very difficult situation seem impossible to many educators.

A basic conclusion of the four studies in this report is that there were major developments under the law that the advocates of the law neither anticipated nor wanted. Certainly the sponsors had no desire to harm public schools; to the contrary they had extremely optimistic ideas about making them better. Surely the first rule in treating a school that is facing very serious challenges and not delivering effective education is the same as the principle of medicine: first, do no harm. Yet there has been harm. Surely no one wanted to disrupt the strong mutually supportive federal-state-local relationships between governments and within the education profession that are essential to successfully implementing a reform in an educational system where the vast majority of educators work for local school districts under state systems of educational policy. Legislators did not mean to radically alter American federalism. In fact, speeches in support of the legislation often promised increased local control.

Our research shows that under the law federal control is being expanded drastically, reaching far more deeply into core local and state educational operations than ever before, without regard to state or local capacity. There are 50 different state systems of education in the U.S, which have always dominated most aspects of educational policy making. The previous large expansion of the federal role came during the civil rights era and the issue was about obtaining full access to public schools for groups previously excluded or discriminated against—racial minorities, girls, immigrants not speaking English well, and students with disabilities. That was a very contentious set of issues but did not seriously change the basic internal operation of schools. Curriculum, instruction, evaluation, management, sanctions, and qualifications of teachers and staff members remained overwhelmingly matters of state and local control. The No Child Left Behind Act enforces the same basic federal model of reform and accountability on all of the states and local districts.

The NCLB act places extreme importance on the “proficiency level” on state tests, using it to establish the ultimate goal of reforms and the amount of change needed each year. Unfortunately these levels vary widely among the states and the term has no common

meaning and can be redefined by the states. This research shows that a one-size-fits-all accountability model does not work in all conditions, sharply constrains state policy and undercuts the capacity of educators to make needed changes. It punishes schools in one state for achievement levels that are defined as great successes in another. Since all the states had state testing and accountability systems before the law was enacted and many had worked for a long time to create systems that coordinated curriculum, teacher training, and assessments, we found that none of the states we studied gave up their previous system when the new federal requirements were imposed—they simply added another, sometimes quite inconsistent system on top of it. Obviously this was a disruptive and costly process since, for example, the law required the development and annual use of hundreds of new tests that states had not believed to be necessary. Producing this quantity of tests rapidly swamped the test making capacity of the several large test development companies and made it nearly impossible to comply with the law's requirements that the tests be valid measures of things students had actually been taught. Under the law, very high stakes for schools and school leaders were immediately attached to these new tests.

The law was intended to foster high achievement, but given the way it was set up, the states with the lowest proficiency standards looked the most successful. Since no national standard was set and states were free to change their own standards, states could improve their apparent success most easily by lowering the standard, thus lowering the amount of yearly progress that was required to avoid sanctions.

The basic bargain in the reform was a tradeoff of more assessment for large increases of resources to meet higher standards. In fact, however, the substantial growth of federal resources lasted only one year and the first year under the act saw the beginning of a state fiscal crisis, which brought cuts in state-funded services in almost all states. The resource part of the bargain was not honored but the accountability provisions were not modified accordingly. Some recent estimates find that the new law did not even fund the added costs imposed by the new federal assessment and intervention requirements. A January 2004 analysis prepared for the Ohio State Legislature and examined by a wide range of educational experts estimated that the cost of complying with the law would be \$1.5 billion annually.² Studies in Maryland, Texas and Indiana as well as other states all found substantially increased state costs to comply with the law. If one were to add the costs of days lost to instruction for additional testing and test preparation unrelated to general learning, the true economic and educational costs would be enormous. The question is whether these costs will produce corresponding benefits, who should decide on priorities for spending of state education funds, and what would be lost that might otherwise have been funded. These are serious issues and create serious conflict within the federal system.

Much of the conflict over the law has featured the resource issue, often implicitly or explicitly implying that larger appropriations would have made it possible to reach all the goals. A great deal of previous experience with many reform plans, however, suggest that

² Driscoll, W. & Fleeter, H. (2003, December 12). *Projected costs of implementing the federal "No Child Left Behind Act" in Ohio*. Columbus, OH: Levin, Driscoll & Fleeter.

this is a serious oversimplification and that even with substantially larger resources the adequate yearly progress requirements and subgroup accountability would have created very severe problems.

The developing conflict over money and federal regulation is not partisan. State and local officials of various political backgrounds have expressed concerns and officials of many ideologies have voiced their frustration as they try to comply with the law. The former President of the Virginia Board of Education, Mark Christie, for example, wrote to the U.S. Department of Education expressing a “strong protest” to the federal testing mandate. “We do not believe these amendments represent sound or rational policies, especially the intention of the U.S. Department of Education to apply future testing policies.... to this past academic year on a retroactive basis.... The manner in which the federal government is imposing the policies.... violates the principles of balanced and cooperative federalism.” He said that the resulting policies lacked “common sense” and that it “would be unfair in the extreme to impose sanctions on clearly high-performing Virginia schools.” He noted that some schools with the highest ranking under the state’s tough testing policy would be publicly branded as failing schools under the federal requirements.³ In Arizona an elected GOP state superintendent criticized the law; in Chicago the Superintendent appointed in a Democratic city assailed various provisions.

The idea of the law was that high poverty schools in serious academic trouble were going to receive much more money and better teachers. An outcome that was certainly not contemplated by the authors of the law was the imposition of special burdens and requirements and higher and more rapid loss of resources on the schools serving the most disadvantaged population. Money is being diverted from overwhelmingly minority schools in a process that began in the first year of the program. These schools are facing sanctions and being publicly branded as failures, at much higher levels than schools for the affluent, even if they achieve the same rate of academic growth during a year as their more affluent peers. When Congress voted to require all children make yearly progress toward each state’s proficiency level, discussion did not reflect the statistical reality that the students, schools, and subgroups furthest behind would have to make more progress each year to avoid sanctions.

There was no indication at the time the law was passed that the substantial increase in resources was for one-year only,⁴ that the states were all going into their own fiscal crisis, or that the schools would get much less than promised because of provisions in the law that required school districts to hold back 20% of their Title I funds to provide for choice and supplemental services. This meant that even if parents in the schools not making sufficient progress did not want these options, the money was not available until too late in the year to be used effectively for school reform.

³ Letter from Mark Christie to Under Secretary Eugene Hickok, June 9, 2003.

⁴ Some states question whether the NCLB increase was truly an increase. For example, Maryland received a 27% increase in ESEA funding in fiscal year 2002 (the year prior to NCLB) and a 25% increase in ESEA funding the year before NCLB was enacted (FY 2001). Department of Legislative Services. (2003). *Issue papers: 2004 legislative session*. (pp. 58-59). Annapolis: Author.

This set-aside was an ironic reversal of earlier Title I legislation. Since the 1980s the effort in Title I policy had been to permit school districts to plan ahead and to concentrate its funds on a specific long-term reform strategy. The new law disrupted that trend in two ways—first by transferring a substantial share of funds outside of the systemic reform budget into set-asides and, second, by the extraordinary emphasis placed on short-term results on the state’s reading and math tests. Many of the reforms adopted under previous rules, including whole-school reform models, were aimed at changing how instruction was delivered and achieving broad educational objectives, which may or may not have been consistent with a given state test. Under NCLB the emphasis shifts to improving test scores, but only in some subjects.

Choice and Market Reforms. When it came to specifying the remedy for schools that did not adequately meet the testing requirements, NCLB turned to the other basic theory of this reform movement—competition. In a period strongly shaped by theories of markets and privatization, conservatives tended to define the basic problem of public schools as the bureaucracy and monopoly of the public schools and to support choice and vouchers for private schools as ways to bring competition into the system and to force public schools to change and become more effective. In *No Child Left Behind*, there were two required sanctions for schools that were defined as “in need of improvement.” The first was that the schools must offer their children an option of transferring out of low performing schools. The second was that parents should be able to purchase supplemental services with money taken from the school budget and put in the parents’ pocket for this purpose. The assumption underlying the transfer option, of course, was that a parent could do a better job of choosing their own child’s school and that competition would make all schools better. This was often described as giving low-income families the kinds of choices that white suburban families had. Such competition, it was hoped, would generate strong alternatives and better outcomes for families. This discussion did not rest on any evaluation of the number and quality of choices that might be available.

The second market-based reform was the product of a compromise between voucher supporters and opponents. The supplemental services policy was a decision to give some of the money used for school reform to individual parents in schools that were not improving test scores for all groups of students fast enough. The basic assumption was that the school would not use the money effectively, that the market would provide better alternatives for parents, and that parents could chose something that would work better than the educators.

Our study shows that neither of these options were used by more than a tiny minority of families and that the choice system did not offer many obviously beneficial transfer options—some of the schools that students could transfer to were weaker than the school students were transferring from. The supplemental service option was little used and the supply of options was not exciting in terms of probable impact. There were no serious accountability requirements for these provisions.

Some of the problems were obvious. Low-income parents do not have very good information and studies of choice over the years have shown it works best for more educated and affluent parents.⁵ To justify the cost of a choice plan, especially one with transportation, there have to be substantially better choices available and very good information. If schools and administrators are expected to encourage choice, the program should not be set up so that poor and overburdened schools and systems will lose funding every time a student exercises choice. This is a huge and major obstacle to real choice.

Almost none of the major civil rights lessons from close to a half-century of experience were incorporated into the choice plan. For example, it did not prohibit choices that would increase segregation by paying for white students who wanted to transfer out of integrated schools, it did not reassign faculty so there would be someone in the receiving schools who could communicate with immigrant parents in their own language, transportation was not organized conveniently, and the best schools were often put off limits. Good choice plans, such as those for many magnet schools, could offer better choices under more equitable conditions, particularly if choice across school district lines was actively pursued. So far the transfer option is usually a relatively inconsequential and often empty promise.

Supplemental services were a shot in the dark. There were no working models of this idea, there had been no major experiments, and no one knew that it would be a giant administrative headache for school districts—it was just a political compromise. The only places in our sample where it is being used on any scale are in New York City and in Los Angeles, where most of the services are actually being provided by the city's school district. This is a very indirect and inefficient way of funding city school program activities. Obviously, a serious cost and benefit study of the supplemental services program, which includes an assessment of administrative costs, the possible educational benefits, and the effect on a school's general reform plan is badly needed. At present there is no reason to think that it would work and no knowledge about how to make it work, no possibility of serious coordination with classroom instruction and no serious evaluation meeting scientific standards under way or planned in the districts studied. It is a shot in the dark during a time of urgent need for funding the general school reforms.

NCLB is transforming educational policy and practice on a grand scale, particularly in low-income schools and districts and in schools serving the nation's rapidly increasing minority population. Though it contains many good goals, its implementation to date has been seriously flawed both by internal contradictions in a vast and confusing law and by an insensitive and arbitrary administration more focused on ideology than on knowledge of what works. The administration is trying to impose a model of educational reform on states and districts that lacks internal coherence and in an arbitrary manner that is consistent with its policy goals. The model attempts to redefine the only important purpose of schooling as getting a federally approved rate of increase on math and reading tests. This approach ignores the judgment and experience of the vast majority of educators who work for state and local agencies.

⁵Fuller, B & Elmore, R.F. (Eds.). (1996). *Who chooses? Who loses?* New York: Teachers College Press.

The system of cooperative federalism in education was designed to encourage and support 50 very different systems of education growing out of widely different political systems and practical circumstances. NCLB as now implemented undermines the development and implementation of states' own systems designed to reform curriculum and assessment and undermines the implementation of whole school models and long-term basic reform at the school and district levels. In circumstances where the state, the district or the school has been pursuing a coherent model for change it brings about layering and tensions and may generate contradictions between reform models. It requires that schools and districts be evaluated primarily in terms of the federal requirements. State and local systems, in general, are doing the best they can to cope.

Because these new requirements are not convincing to most educators and because the fiscal promises have been broken, political resistance began at the district level and is working its way up through the system. We found that most state officials are doing the best they can to comply and do not wish to challenge the federal officials but increasingly are moving in that direction as frustrations mount. The skepticism expressed by the National Governors Association and the National Council of State Legislators is increasingly being voiced by ranking educational leaders. Ironically the law forces the growth of state bureaucracy and regulation. It adds more paperwork and takes time away from instruction for testing, test preparation, and the processing of results and their consequences by educators at all levels, hardly the intent of an administration committed to shrinking government.

From a civil rights perspective, the best outcome would not be a train wreck that would simply reject the law and produce a movement towards more block grants to schools. The results under existing block grants are too disappointing and the inequalities that the President and Congress spoke of are too real and present. Federal leadership can play an important role. We do need public accountability for what happens to all groups of students and that should be genuinely extended to serious accountability for graduation and other outcomes, not just test scores. What is sorely needed now is an acknowledgment that the too-hasty compromises and contradictions need to be sorted out, that experts in implementing deep educational change and people who know what the reasonable expectations for progress are and how to measure progress in a more sophisticated way be brought into the process. The accountability system needs to be accountable and changed if it is excessively costly or ineffective. I believe that the policies and practices could be greatly improved, that attention could be focused on trying to define and document methods of actually moving toward the original goals, and the climate of hostility replaced by a climate of cooperative search for real gains for all students. This needs to be done soon.

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