



# **No Child Left Behind: Where Does the Money Go?**

**Policy Brief**

**by**

**Gerald W. Bracey  
Associate Professor  
George Mason University**

Education Policy Research Unit (EPRU)  
Education Policy Studies Laboratory  
College of Education  
Division of Educational Leadership and Policy Studies  
Box 872411  
Arizona State University  
Tempe, AZ 85287-2411

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**Education Policy Studies Laboratory**  
Division of Educational Leadership and Policy Studies  
College of Education, Arizona State University  
P.O. Box 872411, Tempe, AZ 85287-2411  
Telephone: (480) 965-1886  
Fax: (480) 965-0303  
E-mail: [eps@asu.edu](mailto:eps@asu.edu)  
<http://edpolicylab.org>

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## **Executive Summary**

This brief examines how No Child Left Behind (NCLB) dollars flow from the federal government through states and districts and into the coffers of companies, mostly for-profit companies. The brief makes the case that the law enriches many private companies and individuals, especially those close to President George W. Bush and his family.

The brief describes the essential workings of NCLB, highlighting inherent costs of the law and costs that come with each successive year of failing to make Adequate Yearly Progress (AYP). The brief emphasizes the sanctions applied after two consecutive years of failure (the requirement that all students be offered the opportunity to transfer to another school) and after three consecutive years (the requirement that districts must hire outside tutors, mostly for-profit companies, to provide Supplementary Educational Services).

The inherent costs occur first because at the time of the law's passage, few states had state testing programs sufficiently large to meet the law's requirements. A Government Accounting Office study concluded that NCLB funds would meet the Title I requirements of the law—that all children in Title I schools in grades three through eight

be tested annually in reading and mathematics—only if states limited their assessments to multiple choice tests. If states chose to test all students and not only those in Title I schools (schools with high percentages of students from low-income families), costs would exceed revenue even if multiple choice tests were used.

The inherent costs occur second because of the existence of the Reading First program, funded at just over \$1 billion per year. To obtain Reading First funds, states apply to a federal panel of experts. If approved, states then fund districts on a competitive grant basis. The criteria for curriculum materials that are acceptable under Reading First are quite specific (some say, narrow). The materials were developed by researchers many of whom are authors of approved curricula and who also serve on the panel of experts. For instance, the researchers who wrote the criteria that most states use to evaluate curricula for Reading First applications also served as authors for the Voyager Expanded Learning series, an approved Reading First curriculum. Officers in the Voyager company are mostly former Texas school officials with close political ties to President Bush. The brief discusses conflict of interest issues.

Costs are incurred after a school fails to make AYP for two consecutive years because all students must be offered the opportunity to transfer to a “successful” school and the sending school must pay for transportation. The choice option to date has not worked as envisioned. Few eligible students have changed schools.

Costs are incurred after a school fails to make AYP for three consecutive years because the district must provide Supplemental Educational Services (SES) through before or after school hours. The U.S. Department of Education has ruled that successful districts can act as their own providers, but districts judged in need of improvement

cannot. This ruling eliminates most urban districts—those that receive by far the largest Title I grants—as providers. Providers can be public schools, private schools, colleges and universities and non-profit groups, but most providers are private for-profit companies: 23 of the 25 most often listed providers are for-profits. Only the Boys and Girls Club (19<sup>th</sup>) and the YMCA (23<sup>rd</sup>) are not.

The SES provision has served a higher proportion of eligible students than the choice provision, but even so has thus far served only a small proportion of eligible students. The provision has the potential, though, to funnel over \$2 billion dollars a year to providers.

The accountability of companies providing SES is weak. While all teachers in public schools must be “highly qualified” as defined by the law, those who provide tutoring or other instruction under SES are held to no qualification requirements. The strict criteria seen as providing “scientifically based” educational materials under Reading First are seen as bureaucratic hindrances in SES. U.S. Department of Education officials have said they want “as little regulation [of SES providers] as possible so the market [for SES] can be as vibrant as possible.” This contrast between what is required of schools and what is required of providers has been seen by some as hypocritical.

There are potentially even larger profits to be made after a school fails to make AYP for four or five consecutive years. However, the school year 2005-2006 is only the fourth year that the law has been in effect. Thus the wholesale management changes and reconstitution of schools after four or five years of failure have yet to occur. A short section of the brief describes the school reconstitution efforts in Michigan, a state which appended NCLB to its already-in-place accountability program.

The brief summarizes the known and potential-but-unknown quantities of money that flows through the states and districts under NCLB. The final destination of these large sums of money is unknown, as is whether these funds are being spent on effective services. The brief closes by calling on the U.S. Department of Education to establish policies and procedures to account for the money and to hold private companies to the same standards of accountability which it demands of public schools.

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## **Introduction**

This report examines how No Child Left Behind (NCLB) dollars flow from the federal government through states and districts and into private coffers. It does not attempt to make many connections between NCLB and efforts to control curriculum and instruction for political or ideological purposes. That has been done, and done well, by others.<sup>1</sup> This report also does not attempt to determine if the law's goals are attainable. That, too, has been done elsewhere.<sup>2</sup> This report makes the case that the law enriches many private companies, especially those historically close to the Bushes and their friends.

## **No Child Left Behind: Description of Program Essentials**

Although dwarfed by programs such as Medicare and Social Security, NCLB—Title I of the federal government's Elementary and Secondary Education Act of 2001—represents the largest single federal involvement ever in education. For the 2004-2005 school year, Congress authorized \$18.5 billion, and \$12.342 billion, a sum quite close to the President's budget request, was actually appropriated. For school year 2005-2006, Congress authorized \$20.5 billion; the president has requested \$13.342 billion.

NCLB's advocates tout it as a major increase in aid to the states although several analyses have concluded that the law will cost the states more money than they will receive.<sup>3</sup> Questions have been raised about how the money is to be distributed, and how much of the money of Title I flows through states, districts and schools, and into the treasuries of private companies. The answer to these questions vary with the number of years that a school or district has been labeled "failing."

To comply with NCLB, each state submitted to the U.S. Department of Education a plan indicating a baseline of achievement for 2002-2003 and how the state will move from that baseline to attain the final goal: 100 percent of students at "proficient" or better by the year 2013-2014. Proficient is uniquely defined by each state. The plan also indicates how much schools must raise test scores each year in order to make Adequate Yearly Progress (AYP) on tests administered by the state. In grades three through eight and one grade in high school, all students must be tested annually in reading and math, with science to be added in some grades in 2007. President Bush has proposed to extend the program to test more grades in high school, but the fate of this proposal is uncertain.

The amount of money a school is eligible for under Title I depends on its level of poverty. Technically, schools that do not receive Title I funds do not have to test and do not fall prey to the sanctions imposed by failing to make AYP. In reality, most districts make use of an "embarrassment factor" (publicly displaying their test scores) and test all students and rate schools not receiving Title I funds as well. To date, only a few school districts have refused to take part in NCLB, forfeiting whatever Title I money they would have received otherwise.

At the school level, AYP is required for all subgroups of students; the subgroups are formed by subject tested, grade, gender, ethnicity, socio-economic status, special education status, migrant status, English Language Learner status, and percent of each group who took the tests (95 percent of the students in each group must take the test to meet the law's requirements). Not all subgroups are applicable to all schools. States choose, with U.S. Department of Education approval, the minimum number of students in a subgroup for that group to be reported for NCLB purposes. This can yield puzzling results. For example, in Maryland one school failed to make AYP because its 12 special education students failed to make AYP. Next door in Virginia, another school made AYP even though its 24 special education students failed to make AYP. At the time, the minimum number for reporting in any subgroup was five in Maryland, but 50 in Virginia.<sup>4</sup>

If any one subgroup fails to make AYP, the entire school is labeled to be “in need of improvement”—the media typically use “failed” —and whatever sanctions apply for that year apply to the whole school, not just the subgroup(s) that did not make AYP.

Schools that do not meet their growth targets are subject to sanctions which increase in severity with each successive year of failure. Each sanction has different implications regarding how Title I money will be distributed. It is important, therefore, to examine the sanctions that apply with each successive year. A summary of the consequences of failing to make AYP for different numbers of consecutive years follows. The sanctions are cumulative. For example, if a school fails to make AYP three years in a row, the school bears the sanctions from both years two and three (there are no sanctions for a single year of failure).



## **Essentials of NCLB Sanctions**

This section begins with a description of the sanctions incurred by schools after each consecutive year of failure. The descriptions are followed by a discussion of what the sanctions cost the districts and schools, and how they benefit private for-profit corporations. The discussion is organized by what happens at the end of each consecutive year a school fails to make AYP. Some costs, however, were not anticipated by NCLB and are independent of year-contingent sanctions (i.e. states hiring firms with expertise in detecting cheating on tests, and states developing databases that permit the state to track individual students as long as they remain in the state's public schools).

### ***Sanctions***

#### **End of Year 0**

There are cost considerations from the outset because most states did not operate a testing program of the magnitude required by the law. Some states did not test in all required grades and some states did not test annually. To date, the U.S. Department of Education has adamantly insisted that all grades covered by the law be tested each year. Thus, many states have experienced large increases in the costs of their testing programs and the reporting systems needed to provide the results to parents, as also required by the law. CTB/McGraw-Hill, Harcourt Assessment, NCS Pearson, Riverside (Houghton Mifflin), and Educational Testing Service are companies that dominate the K-12 achievement test market. Few states develop tests, score them, and report the results using state civil servants.

In addition to testing, the law requires that curricula adopted for beginning reading instruction, known as Reading First, be backed by “scientifically based research.” The phrase “scientifically based research” occurs 111 times in the 1,100 pages of the law. This has required a number of states to adopt new curricula that meet criteria established through the U. S. Department of Education, or risk having applications for Reading First funds rejected. Many of the same firms that supply tests also supply textbooks and other curricular materials.

### **End of Year 1**

The school is placed on a “watch list” and must develop a plan to improve.

### **End of Year 2**

The school must offer all students the option to transfer to a different, “successful” school within the district. The sending school must pay for any transportation costs. If the failing school later makes AYP, the students who left are not required to return, but the sending school no longer has to pay for transportation.

Initially, the U. S. Department of Education held that crowding at a receiving school could not be used to refuse students from sending schools. The receiving schools needed to build capacity and add classrooms, mobile units, extra teachers, etc. The logistical realities of the choice option, however, have resulted in little enforcement of this provision. In cities where schools are already crowded, only a tiny percentage of eligible students have received the choice option. In some rural areas, choosing a different school can require rides of several hours, and in parts of Alaska and Hawaii, a plane ride. For many small districts, no option exists.

In addition, negative reactions from receiving schools have constricted some choice programs. For instance, in 2003-2004, some 8,000 New York City students availed themselves of the choice option. Reactions from principals at the receiving schools led the city to limit the number of transfers to 1,000 students in 2004-2005.<sup>5</sup>

Where the choice option cannot be utilized by all students in a failing school, it is supposed to be offered to the “neediest” first—those with the lowest test scores. It is not always the lowest scoring students who ask to change schools. In Fairfax County, Virginia, a district of some 160,000 students, two Title I schools failed to make AYP. Although neither of the schools would be labeled “low performing” in a normative sense, some subgroups did not make AYP. The students who opted to go to other schools were largely high-scoring students.

### **End of Year 3**

The school must offer “supplemental educational services” (SES). These services can vary but typically consist of: (1) after-hours programs of small group work, (2) individual tutoring at the school, or (3) online instruction at the school or at the student’s home. Each state develops a list of qualified providers. Some districts have used district teachers to provide such tutoring. Chicago Public School provided the SES for a time, but was later declared ineligible by the U.S. Department of Education because Chicago is itself a “failing” district.<sup>6</sup> The U.S. Department of Education’s action in this case implies that competent teachers do not exist in the Chicago system and that the dynamics of one-on-one tutoring or small groups are no quite different from the 30-to-1 pupil-to-teacher ratio often found in urban classrooms. The U.S. Department of Education has contended

that if the schools cannot improve achievement during the regular school day, they cannot do so in the hours after school, either, nor do they deserve the chance to try.

### **End of Year 4**

The school must opt from a variety of corrective actions:

- Replace school staff relevant to the failure (staff refers to teachers).
- Put in place a new curriculum.
- Decrease management authority at the school.
- Appoint outside experts to advise the school.
- Extend the school year or the school day.
- Restructure the internal organization of the school.<sup>7</sup>

### **End of Year 5**

The school must opt from a variety of corrective actions:

- Reopen as a charter school.
- Replace all or most of the staff.
- Contract with an outside entity to operate the school.
- Institute other significant governance and staffing changes likely to improve the school.<sup>8</sup>

## **Annual Reports from All Schools, Districts and States**

In addition to the annual assessments in grades three through eight, states must produce and disseminate annual report cards that provide information on the results of such assessments. The state report cards must show the trends for the state in the

subcategories listed earlier, and a comparison of the state's performance to the state's goal. The state must also provide data on district progress listing the schools in each district that failed to make AYP. The report cards must also show the high school graduation rate, the professional qualifications of the teachers in the state, the percentage of teachers with emergency or provisional credentials, and the percentage of classes not taught by highly-qualified teachers as defined by NCLB. Descriptions must compare these indicators separately for high- and low-poverty schools.

School districts must prepare similar report cards showing district-level data and data for each school.

### ***NCLB Dollar Consideration Year By Year***

#### **Year Zero: Testing**

At the time the No Child Left Behind Act (NCLB) was passed, very few states maintained sufficiently large testing programs to satisfy the law's requirements. Table 1 shows the number of additional tests needed to comply with the law varied from state to state as reported by the Government Accounting Office (GAO) report.<sup>9</sup>

**Table 1: Number of Tests States Needed to Add to State Testing Programs to Comply with Title I**

<b>Number of Tests Needed</b>	<b>Number of States</b>
<b>None</b>	5
<b>1-3</b>	4
<b>4-6</b>	6
<b>7-9</b>	17
<b>10-12</b>	10
<b>13 or more</b>	10

Source: Government Accounting Office. (2003, May). *Characteristics of tests will influence expenses; information sharing may help states realize efficiencies* (GAO-03-389). Washington, DC: Author.

Note: Presence of the District of Columbia and Puerto Rico brings total to 52

The GAO estimated that if states used only multiple-choice questions, they would spend \$1.9 billion over a six-year period (from 2002 to 2008) to develop, score, and report results. If they used all open-ended questions, they would spend \$5.3 billion. Testing with the then-current mix of multiple-choice and open-ended questions would cost \$3.9 billion. NCLB would provide sufficient funds to cover the costs of the multiple-choice-only option, but not the other two.<sup>10</sup> One study from Accountability Works argued that funds for testing would be sufficient,<sup>11</sup> but many dismissed the study’s assumptions as unreasonable.<sup>12</sup> Note that the projections are for meeting the Title I requirements. The number of Title I schools varies a great deal from district to district. If districts test all schools and not just Title I schools, the cost of testing would rise substantially, even using only multiple-choice tests.

No doubt the projections from both the GAO and Accountability Works greatly underestimated how much money states would actually spend over the period. They estimated only compliance costs, not performance costs. That is, they did not take into account what expenditures would be required to bring all children to a level near 100

percent proficiency. The National Council of State Legislatures concluded that at best, the federal funding would come close to covering compliance costs, but not begin to touch the far more expensive performance costs.<sup>13</sup>

The projections did not take into account the extensive purchase of “test prep” materials. In addition, at the time the reports were published (early 2003 for the GAO study, early 2002 for that from Accountability Works), the use of “formative evaluation” had not taken hold the way it has now. Formative evaluation uses tests to diagnose particular problems a student is having, or to measure progress on the objectives that will be covered by the “big” test used for NCLB. It is not clear that the tests now being offered as “formative” differ in any meaningful way from the “summative” tests that are used to determine if the school has made AYP except that it is often easier to get individual student data from the formative assessments. In any case, ETS’ John Oswald said, “The formative-assessment market is a big one, and it’s growing like crazy, and it’s accompanied by a lot of professional development to help teachers use those.”<sup>14</sup>

In late May 2005, two of the largest players on the testing scene, Harcourt Assessment and McGraw-Hill, rolled out on-line testing systems that make extensive use of so-called formative testing. The Harcourt system has two components, “periodic assessments called Class Links that are guided by each state’s academic content standards, and annual tests called Class Views that are guided by the blueprints for state accountability tests.” The McGraw-Hill system contains “timed assessment of weekly reading passages to help diagnose students’ overall reading ability, fluency, decoding skills and comprehension skills.” McGraw Hill’s system also contains a weekly assessment for language arts.<sup>15</sup>

Eduventures, a Boston-based education industry marketing and research firm, projected that annual industry revenues from state assessments would grow from \$572 million in 2003 to \$810 million in 2006. The projections for this period are linear. If one assumes the same growth rate for some years not in the Eduventures projection, then revenues for state testing programs come to about \$5.4 billion over the same period as the GAO spending projections (2002 to 2008). In 2003, Eduventures put the total spending on K-12 testing, including test prep in 2003, at \$1.81 billion with a projected rise to \$2.29 billion by 2006. Of the \$1.81 billion, Eduventures estimated that \$334 million would go to the larger companies' subcontractors.<sup>16</sup>

Eduventures contends that nine companies currently account for approximately 87 percent of the market:

Major Publishers

- CTB-McGraw-Hill
- Harcourt Assessment
- Pearson Assessment
- Riverside Publishing (Houghton Mifflin)
- Education Testing Service

Smaller Publishers

- Touchstone Applied Science Associates
- Measurement, Inc.

Nonprofits

- Measure Profits
- Northwest Evaluation Association



Harcourt Assessment is linked to the various Harcourt publishing houses and all are part of the Reed Elsevier empire that earned \$5.6 billion in sales in 2001.

CTB/McGraw-Hill is linked to the various other McGraw-Hill publishing endeavors. For the nine months ending September 30, 2004, McGraw-Hill enjoyed revenues of \$3.84 billion and net profits of \$566 million. Pearson has seen rapid growth including the acquisition of the test-scoring firm, NCS Corporation. It recently passed Riverside to become the third largest company in the field.<sup>17</sup>

Riverside's best known product, no doubt, is the Iowa Tests of Basic Skills, but it recently entered the online arena with the purchase of Edusoft which permits teachers to make "mini-tests" that will estimate how close children are to passing the state test. According to Edusoft's website, its data warehouse contains 100,000,000 student scores from 500,000 assessments. The website also states that 300 districts signed up "last year."<sup>18</sup>

A few other players have substantial contracts. Educational Testing Service returned aggressively to the K-12 market. Its state testing contracts garner about \$90 million a year with \$275 million arriving from California over a five-year period. ETS made its move shortly after abandoning its tradition of having educators run the company and installing a marketing executive as president. Data recognition has been growing and now has about \$100 million in annual revenues (not all from state testing), and the American Institutes for Research has entered the field with yearly revenues of about \$40 million.<sup>19</sup>

Observers have often noted that the testing industry is virtually unregulated.<sup>20</sup> Said Walt Haney of Boston College, “There is more public oversight of the pet industry and the food we feed our dogs than there is for the quality of tests we make our kids take.”<sup>21</sup> The industry is not accountable for the tests that are used to hold schools accountable.

It is only when someone accidentally discovers an error that quality control procedures and accountability enter the picture. Martin Swaden, a Minnesota lawyer and father of a public school student, threatened to sue the state of Minnesota for refusing to let him look at his daughter’s test and answer sheet at the same time. The state yielded. The daughter had failed the state’s then-high school exit test and the father reasoned that the best way to help her pass was to see what items had caused her difficulties. What he found, though, was that the answer sheet had been mis-keyed. Some 47,000 Minnesota students received lower scores than they deserved, 8,000 failed when they should have passed—including Swaden’s daughter—and 525 seniors had been wrongfully denied diplomas. NCS Corporation, later purchased by Pearson for \$2.5 billion, eventually settled for \$8 million.<sup>22</sup> This is one example of several instances where a testing company error has punished students.<sup>23</sup>

The probability of mistakes has likely increased since the arrival of NCLB. Test use was already growing and the various testing companies were raiding each other for talented employees. In the opinion of some, the increase in testing has pushed the companies beyond capacity. An April examination of the “employment opportunities” window of the ETS website found 98 professional openings, 65 of which were still available in May. States now insist on obtaining results from scoring-reporting services

in time frames—weeks—that were heretofore considered impossible and, indeed, might have been before recent technological advances. States have begun to build substantial penalty clauses into their contracts covering not only errors but specific dates by which the companies must have satisfactorily completed specific services.<sup>24</sup>

## **Curriculum**

Thus far, the flow of money to private corporations from curricular decisions has occurred largely in the process of deciding what curricular materials to use for the Reading First program. In its first year, this program was funded at just under one billion dollars, and the President's request for 2005 is for \$1.125 billion.

The states' approach to Reading First has been greatly influenced by the report of the National Reading Panel (NRP) issued through the National Institute of Child Health and Human Development (NICHD).<sup>25</sup> That report has been the target of scathing criticism,<sup>26</sup> even from at least one of the NRP's own members.<sup>27</sup> The U.S. Department of Education has stated explicitly that it has not prepared and will not prepare a list of "approved" curriculum programs for Reading First funds. It has, however, favorably pointed to the NRP report's use of "scientifically based research" and its emphasis on phonics.

The U.S. Department of Education might have taken great pains to refrain from providing an approved list of Reading First materials, but the materials adopted for this program are "remarkably similar" around the country.<sup>28</sup> This similarity occurs partially because some districts consulted with researchers involved with the NRP or consulted with authors of various materials. More often, it appears, districts simply copy the applications of other, more successful districts. The U.S. Department of Education has

also assisted homogeneity by energetically promoting the “Consumer’s Guide to Evaluating a Core Reading Program.”<sup>29</sup> Most states require applicants for Reading First grants to use the criteria in this document to evaluate possible materials.

The Consumer’s Guide was written by Edward Kame’enui and Deborah Simmons at the University of Oregon. The University of Oregon shares in a \$37 million grant from the U.S. Department of Education to RMC Research Corporation (the University of Texas and Florida State University also are partners). Kame’enui and Simmons are also authors of the Voyager reading series and a Scott Foresman series, two programs that, not surprisingly, show well on the Consumer’s Guide. This has raised red flags in some quarters over potential conflicts of interest.

The Center on Education Policy (CEP) found that a number of states’ Reading First applications were rejected initially, but then accepted after they added that they would use the Consumer’s Guide or DIBELS (Dynamic Indicators of Basic Early Literacy Skills), another University of Oregon product. Forty-two states indicated that they would use the Consumer’s Guide at the state or local levels. Only two states mentioned specifically the use of other instruments. CEP could not determine if the states that added the Consumer’s Guide and DIBELS did so because they determined that they were the best instruments or because they were pressured by reviewers.<sup>30</sup>

The Association of American Publishers has sent numerous letters to federal and state education officials and to the University of Oregon complaining about restrictions on applicants. AAP School Division Executive Director Stephen Driesler wrote in a letter to the university,

Evaluators of unknown credentials used a rating system for which no descriptors have been made available, and in some cases, used criteria for which no research substantiation can be found. ...In addition, there is some appearance of conflict of interest, as the most highly rated program on the list was authored at the University of Oregon by researchers now associated with the federal technical-assistance center [there].<sup>31</sup>

Concerned that the limits of the reviews were not made public, Driesler asked for

- Immediate posting on the website of the credentials of the reviewers.
- A listing of ALL programs submitted for review, not just the priority programs.
- A timeline for review of all submitted materials.
- A description of the limitations of the review, including that no research evidence of effectiveness was reviewed as part of the process.
- The implementation of a publisher appeal process to address errors, omissions, or questions regarding the research validity of the criteria used.<sup>32</sup>

A small circle of reading researchers comprise what *Education Week* labeled both a “select group”<sup>33</sup> and an “in group.”<sup>34</sup> Some were members of the National Reading Panel and most are involved with both Reading First and commercially published reading instruction and test materials. Elaine Garan of California State University, Fresno drew links among these researchers and their financial connections to commercial products:

For one of my presentations, I made an overhead transparency of some of the vested financial interests of the scientific researchers and their connections to government policy. I tried color-coding to make the links easier to follow. When I came to Edward Kame'enui, I ran out of colors. He has financial links at so many levels, I can't list them all here....The bottom line is that we have a handful of researchers with financial links to their own research. They do the research

- that supports their programs,
- that support their own professional development enterprises,
- that matches the assessments they designed,
- that supports their own learning programs,
- that align with government mandates,
- that are based on their own scientific research.<sup>35</sup>

It appears to be a closed loop, hermetically sealed against outside influences. The old investor term “interlocking directorate” also seems appropriate.

Barnett Alexander “Sandy” Kress is within that circle. He was elected chairman of the Dallas County Democratic Party in 1986 and about then became interested in education. Kress became enamored by accountability and offered that as a way to raise test scores and money. In 1990, the Dallas School Board put him in charge of a commission to develop an accountability system. Kress' commission presented a system that ranked schools by test scores and offered bonuses to schools showing the greatest improvements. Kress was elected to the school board in 1992, but left the board in 1995 after allegations that he was involved in a taped conversation with another board member

who had used racial slurs when discussing how to limit the power of Black board members. It was never proven if the other voice was Kress'.<sup>36</sup>

Kress moved to Austin and was asked for a briefing on education by George W. Bush, then preparing to run against Governor Ann Richards. The tutoring led to friendship. After joining the law firm Akin, Gump, Strauss, Hauer, and Feld, Kress landed lobbying contracts with textbook publisher, McGraw-Hill. He was the principal builder of and head cheerleader for the Governor's Reading Initiative which handed most textbook contracts to that firm.<sup>37</sup>

Kress played a major role in the construction of No Child Left Behind, and shortly after that law's passage, Kress' name turned up on lists of lobbyists in both Austin and Washington. One estimate puts his post-NCLB lobbying earnings at \$4 million. Kress is still officially a democrat and refers to himself as "post-partisan."<sup>38</sup>

Such a loop is not new to the Bush administration nor is the link to textbook and testing companies solely the province of Sandy Kress. In 2002, writer Stephen Metcalf observed that the Bushes and the McGraws have had close ties since they started to vacation together in the 1930s. Harold McGraw, Jr., sits on the board of the Barbara Bush Foundation for Family Literacy. George H. W. Bush graced Mr. McGraw with a literacy award. McGraw ladled a literacy award on Rod Paige, and Paige, in turn, was a featured speaker at McGraw functions. Harold McGraw III was a member of the George W. Bush transition team and visited the White House the first day Bush occupied it.<sup>39</sup>

The Business Roundtable, an organization serving 200 of America's largest corporations, has figured large in Bush's education program, being one of NCLB's most

passionate advocates. The praise and support have been led enthusiastically by State Farm Insurance's CEO, Edward Rust, Jr., who holds the following posts: Chairman of the Business Roundtable's Education Task Force, Bush transition team member, and McGraw-Hill board member.

In the 1990's then-governor Bush pressed early literacy programs for Texas. Observers noted that almost all of the early literacy researchers Bush invited to speak and testify at various hearings were also McGraw-Hill authors, and that the testimony supported McGraw-Hill products.

In Georgia, Cindy Cupp is trying to break into the circle of the interlocking directorate. The former reading director for the Georgia Department of Education and now a publisher of K-1 beginning reading texts, Cupp reports that Georgia school districts that have included her materials in applications for Reading First grants have had their grants rejected. The Georgia Department of Education has admitted that reviewers of the applications were supposed to simply review the applications, not evaluate the programs themselves, but evaluate they did. Apparently, one negative evaluation of Cupp's products came from a reviewer who admitted later that she had not actually seen them.<sup>40</sup>

The most publicly visible clash between a Reading First application and "scientifically based" reading curricula occurred when New York City installed the Phonics Month by Month program developed by Patricia Cunningham and Dorothy Hall at Wake Forest University. Not enough phonics, said critics, especially Reid Lyon at NICHD. Sol Stern of the Manhattan Institute weighed in against the Phonics Month by Month curriculum in the *New York Post*,<sup>41</sup> and a long essay by James Traub in the *New*



*York Times Sunday Magazine* questioned the wisdom of the city's approach.<sup>42</sup> The application was repeatedly rejected. The city eventually caved in and abandoned Phonics Month by Month in 49 schools in favor of the Voyager Expanded Learning series, developed, in part, by Kame'enui in order to secure \$34 million in Reading First money.<sup>43</sup>

The selection of Voyager drew the ire of Betsy Gotbaum, the Public Advocate for the City of New York. Gotbaum observed that Voyager had been called "the best example of the worst reading programs for young children." Gotbaum asked New York City Schools Chancellor, Joel Klein four questions:

- During your selection process, did you see research that indicated Voyager's success? If so, I would like to have a copy.
- Did you consult any reading experts when choosing Voyager?
- There are many successful reading programs across the country. Which programs did you evaluate and why did you select Voyager?
- Why did you decide to implement Voyager citywide instead of testing the program in a small number of schools?<sup>44</sup>

Klein never responded.<sup>45</sup>

The irony of the Reading First situation, if it can be called irony, is that *none* of the programs *approved* for Reading First money can actually claim support from "scientifically based research." In its booklet, *Identifying and Implementing Educational Practices Supported by Rigorous Evidence: A User Friendly Guide*, the U.S. Department of Education holds up randomized studies, or randomized field trials as they are often called, as the "gold standard" of acceptable research.<sup>46</sup> It is difficult to imagine a new

drug receiving the approval of the Food and Drug Administration with no more evidence than what the test and textbook publishers offer for their products. Stephen Driesler of the American Association of Publishers noted that evidence supporting the effectiveness of these programs was missing. Kathleen Kennedy Manzo had similar sentiments of these programs in *Education Week*:

They don't have randomized studies pitting their products against other methods or materials; the studies they have commissioned have not been published in scholarly journals; and the companies have not documented improvements in student achievement across the range of schools and students. The programs have thrived, however, on their reputations among educators as having met the specified—and perceived—research standards in the Reading First legislation which is part of the No Child Left Behind Act.<sup>47</sup>

Some publishers appear to be trying to obtain more genuine research data, but one wonders if their efforts will fall short. For instance, Pearson has hired “a small army” of researchers and commissioned “independent” studies and reviews.<sup>48</sup> The word “independent” appears in quotes because a common finding in pharmaceutical research is that research sponsored by the drug's manufacturer is much more likely to obtain results favorable to the drug than research sponsored by a government or a foundation.<sup>49</sup>

It is not known what impact the adoption of specific materials for Reading First programs has on the rest of a school district. Are they also adopted for non-Reading First schools? Reading First ends at grade three. Are materials from the same publisher adopted beyond grade three in hopes of providing more continuity than a shift to another publisher might? The answer is unknown. What is known is that 40 states responded on

a survey that the U.S. Department of Education was enforcing Reading First either “strictly” (18) or “very strictly” (22). Only a few said “not very strictly.” This figure is second only to the 41 states giving the same responses for AYP.<sup>50</sup>

The links of other researchers/entrepreneurs to politicians are also tightly woven. In late May 2005, it was announced that Kame’enui would leave the University of Oregon to become commissioner of special education for the U.S. Department of Education. At the same time, it was announced that Bush “Reading Czar,” Reid Lyon, would leave NICHD to develop a private teacher preparation program with George W. Bush friend, Randy Best.

Best developed and owned Voyager Expanded Learning, approved for Reading First, before a recent sale to ProQuest for \$380,000,000.<sup>51</sup> Best was also a “Pioneer,” defined as a person who raised more than \$100,000 for the presidential campaign of George W. Bush.<sup>52</sup> Best was assisted in promoting Voyager by his senior vice president, Jim Nelson, whom Bush had earlier appointed to lead the Texas Education Agency. Nelson left Voyager in 2004 to become superintendent of the Richardson, Texas school district. His wife, Karen, remained as a Voyager vice president. A month after his appointment, Richardson District began purchasing large quantities of Voyager products. The total expenditure was over \$400,000, but the purchase orders never exceeded \$250,000, the threshold for an expenditure requiring the approval of the board of education. An earlier Richardson superintendent, Vernon Johnson, purchased Voyager curriculum materials for the district before leaving to become Voyager’s CEO.<sup>53</sup>

Voyager does not appear to be shy about donating to those who buy its products. Shortly after now-indicted Georgia State School Superintendent, Linda Schrenko,

awarded Voyager a \$1.1 million contract, Voyager contributed \$56,750 to Schrenko's gubernatorial campaign (it failed).<sup>54</sup>

The U.S. Department of Education earlier delivered \$37 million to the American Board for the Certification of Teacher Excellence (ABCTE) which has developed a program to certify teachers through tests alone. So far only Idaho, Pennsylvania, Florida, Utah, and New Hampshire recognize credentials offered by the board. ABCTE initially contracted with the ACT testing program in Iowa City, IA, to provide the tests, but the agreement was short lived. ABCTE then signed with Promissor, a division of Houghton Mifflin.<sup>55</sup> The Board has also contracted with Pearson VUE, an electronic testing subsidiary of Pearson Education to create online delivery of the tests. Thus far there is no projected link of ABCTE to the Best/Lyon project, but such a link in the future would not be surprising.

As of mid-2005, the financial impact from curriculum issues has been largely spent on reading. In 2003, though, the government announced a new program to be housed at the NICHD, to try "to do for math and science what it has done for reading: sponsor a systematic program of research that will drive improvement in curriculum and instruction, especially for struggling students." Rodger Bybee, director of the Biological Sciences Curriculum Study, opined that the development of curricular materials from the research should be left to educators, but it remains to be seen if that will happen.<sup>56</sup>

Although there have been "math wars" analogous to the reading wars, the science curriculum would seem to have the potential for most controversy given the evolution/intelligent design debate and given that a substantial number of critics have

accused the Bush administration of subjugating science to its ideological and policy agendas.<sup>57</sup>

### **End of Year 1: Watch List**

The school is placed on a watch list and must develop a plan for improvement.

### **End of Year 2: The Choice Option**

Schools not making AYP for two consecutive years must offer all children in the school the option of transferring to a “successful” school. “Successful” is written in quotes because, as noted above, if any single subgroup fails the entire school fails. Thus 36 of 37 subgroups could show AYP, but the school would still be labeled “failing.”

The choice option has been something of a farce, it is conceded all around. In New York, of some 300,000 eligible students in 2003-2004, only 8,000 transferred. Principals at the receiving schools complained so much about the arriving students that in 2004-2005, only 1,000 were permitted to transfer.<sup>58</sup> Chicago has a similar ratio of eligible students to transfers<sup>59</sup> and this likely holds in all major cities. The Center on Education Policy (CEP) estimates that maybe one percent of eligible students actually change schools. The CEP’s surveys for the 2002-2003, 2003-2004, and 2004-2005 school years found that 0.8 percent, 1.8 percent, and 0.6 percent, respectively, of eligible students had transferred schools.<sup>60</sup>

Lorna Jimerson of the Rural School and Community Trust coined the term “placism,” a term coined to describe discrimination against people based on where they live. While there are aspects of placism in cities, they differ from those found in rural

areas: Students in rural areas wishing to exercise their choice option might have none, or it might require a dysfunctionally long trip.<sup>61</sup>

The choice option could have a major impact on schools and systems. The size of the impact to date depends on how one counts. Palm Beach County, Florida, the 16<sup>th</sup> largest district in the country, spent less than three percent of its allocation for transportation. Looked at another way, though, that is \$975,000 that was not used for instruction.<sup>62</sup> Perhaps in some places the transportation costs for the few students choosing to transfer are paid to a private firm. Mostly, though, they appear to be born by the districts using in-house resources.

The impact of the choice option, and of all other corrective actions imposed on schools, will grow over time. The state of California has projected that by the year 2013-2014, when all students are required to be proficient, NCLB will declare that 99 percent of the Golden State's schools are failing.<sup>63</sup> California has among the lowest test scores in the nation as measured by NAEP, but even in Minnesota, one of the country's highest scoring states, the projection indicates an 80 percent failure rate by 2014.<sup>64</sup>

The choice option will likely undergo revision when the law comes up for reauthorization in 2007. Popular ideas for revision include having school choice apply only to groups not making AYP or giving those groups priority, having school choice be one option among a number of options, or making school choice change places with the Supplemental Educational Services (SES) provision, bringing SES to bear in the second year and school choice in the third. If Michael Petrilli, speaking as a then-associate assistant deputy secretary, believes that the U.S. Department of Education will push for the creation of additional capacity for receiving schools. Petrilli admits that the creation

of additional capacity “doesn’t happen overnight.”<sup>65</sup> It is hard to see how one could accurately predict which schools would need what kinds of additional capacity.

The Citizens’ Commission on Civil Rights (CCCR) has published material favorable to the choice option, apparently accepting without critical review and without results that the option benefits children. CCCR reports that in at least some places, the choice option assists desegregation, but provides examples only for a few districts in South Carolina and Alabama.<sup>66</sup>

The CCCR has also promoted the idea that NCLB should include inter-district choice. At the present time, choice can be exercised only within a single district unless there is some voluntary collaboration between two or more districts or some state policy on inter-district choice. If the law were revised to required inter-district choice, some states would likely view that policy as a return to forced busing.

Finally, some would restore the original vision for the choice option which was to have private schools be eligible to receive the students from failing schools. This also appears to be a position favored by the U.S. Department of Education. “The same people who are saying capacity problems mean that we can’t do school choice are the same people who argued against including private schools in No Child Left Behind,” said Petrilli.<sup>67</sup>

As with the other sanctions of NCLB, there is no scientifically-based research to bolster the idea that letting students transfer to “successful” schools will help them. And, in the case of transfers to private schools, the scientific evidence from Milwaukee, Cleveland, Dayton, New York City, and Washington, D.C., strongly suggests that the

students who transfer obtain no achievement benefit. This option, though, could have significant benefit to private corporations.

### **End of Year 3: Supplemental Education Services**

The provision for Supplemental Educational Services (SES) to schools that have failed to make AYP for three consecutive years has drawn the involvement of many companies. Over 1,800 companies have their names on approved provider lists in various states.<sup>68</sup> Districts must set aside up to 20 percent of their total Title I grant for the combination of the choice option and SES. With little money being spent for choice, if the President's budget recommendations are adopted, more than \$2 billion dollars will be available for SES contractors in the school year 2005-2006.

Not all contractors are for-profit corporations: non-profits, community organizations, institutions of higher education, faith-based organizations, and school districts themselves act as providers. The community and faith-based organizations are small. Additionally, if a district is itself declared to be "in need of improvement," it is no longer eligible to provide SES, although teachers in such a district can be and have been hired by private providers. A survey by the Center on Education Policy (CEP) found that the number of districts serving as providers shrank from 37 percent in 2003-2004 to 27 percent in 2004-2005, no doubt because more districts were determined to be in need of improvement and therefore ineligible to render SES.<sup>69</sup>

Because urban areas are both the most populous districts and those most at risk of being declared in need of improvement, the largest sums for SES will be available principally to the private for-profits. CEP found that the percentage of urban districts providing SES shrank from 43 percent in 2003-2004 to only 11 percent in 2004-2005.<sup>70</sup>



Preliminary allocations for 2005-2006 indicate that the amount of money going to the 100 largest districts, which serve 2.6 million Title I children, will rise by 67 percent from \$4.1 billion to \$6.9 billion, making them all the more attractive to providers.<sup>71</sup>

More than any other provision in NCLB, SES is seen as a potential source of inefficiency at best, fraud at worst as indicated by some 2005 headlines: “A Lucrative Brand of Tutoring Goes Unchecked,”<sup>72</sup> “Test-Prep Firms Bribing Students Just to Show Up,”<sup>73</sup> and “SES: Two Billion Reasons to Worry.”<sup>74</sup>

Under the law, states create lists of approved providers and districts must choose from those lists. In a school required to provide SES, all low-income children are eligible to receive the services. If all eligible children cannot be served, priority must be given to the lowest achieving first. According to the CEP, only about 20 percent of eligible children are receiving services, but districts in a CEP survey reported on average the funding capacity to serve only 22 percent of eligible students.<sup>75</sup> This last figure might be *high* because people appear to be confused about SES eligibility. Some, how many is not known, think that to be eligible, children have to be low income *and* low performing when in fact they only have to be low income. The percentage that could be served was smallest in small districts (18 percent) and very large districts (16 percent).<sup>76</sup>

Table 2 shows the preliminary allocations for the school year 2005-2006 for the nation’s 20 largest school districts, rounded to the nearest million.

**Table 2: Preliminary Title I Allocations 2005-2006, 20 Largest Districts**

<b>District</b>	<b>Allocation</b>
New York City	\$857,000,000
Los Angeles Unified	434,000,000
Chicago	302,000,000
Dade County (FL)	138,000,000
Broward County (FL)	59,000,000
Clark County (NV)	53,000,000
Philadelphia	172,000,000
Houston	104,000,000
Detroit	154,000,000
Hillsborough County (FL)	44,000,000
Palm Beach County (FL)	33,000,000
Dallas	84,000,000
Fairfax County (VA)	16,000,000
Orange County (CA)	38,000,000
Montgomery County (MD)	19,000,000
San Diego	49,000,000
Prince George's County (MD)	29,000,000
Duval County (FL)	30,000,000
Honolulu	34,000,000
Charlotte-Mecklenburg (NC)	24,000,000

Source: Title I Online. (2005, March 7). *Preliminary Title I School District Allocations for SY 2005-06*. Retrieved June 10, 2005, from:

[http://www.titleionline.com/libraries/titleionline/free\\_resources/allocation03-05.html](http://www.titleionline.com/libraries/titleionline/free_resources/allocation03-05.html)

Note: The smallest allotment among the 100 largest districts is \$12,000,000 which goes to Phoenix, 96<sup>th</sup> in size.

### *Who is minding the store?*

The requirements for providers come close, on paper, to being as rigorous as those for curriculum adoption in Reading First. Providers are supposed to have a proven track record, to have research-based offerings, to offer materials aligned with the state's objectives, and to demonstrate that they are financially sound. They must promise to obey federal and state civil rights and health laws and regulations, and should have programs available to different groups of students—e.g., those who do not speak English as a native language.

These criteria seldom come into play in any meaningful sense. The state, which must approve the providers, can set aside only one percent of its Title 1 grant to administer that grant. It cannot field a staff who can evaluate all of the applicants rigorously—it is not known how many providers applied for SES status in California, but 257 are on the approved list.<sup>77</sup> As mentioned earlier, more than 1,800 providers are on various state lists. The Michigan Department of Education in its entirety employs 200 people<sup>78</sup> and has 98 approved providers.<sup>79</sup> In Illinois, the state has one staff person to oversee the results from 75 approved providers.<sup>80</sup>

Elizabeth Swanson, Director of After School and Community School Programs for Chicago Public Schools, testified before the House Committee on Education and the Work Force that the “evidence” that providers submitted and the “evaluation” (she put quotes around both words) process used by the State of Illinois were both inadequate.

Dr. Swanson contrasted the weak approval process and “cursory review” for SES providers with the “rigorous and extensive approval process for state or federal funding...” She also admitted to chafing at having to “cede evaluation responsibilities to

the state” and accept state-approved providers that CPS perceived as unqualified<sup>81</sup> (Chicago has been successful in having one provider, Platform Learning, removed from seven schools in part because of tutors’ repeated absences which, on at least one occasion, left 70 children watching the movie “Garfield” rather than studying reading and math. It continues to offer tutoring in 67 other Chicago schools as part of a \$15 million contract).<sup>82</sup>

Not only does the law tolerate a weak approval process, it applies no criteria to those who actually provide the programs to the children. While the law demands that all regular classroom teachers be “highly qualified” by 2005-2006 and sets out demanding criteria for establishing whether or not they are “highly qualified,” no such criteria exist for the SES teachers and tutors unless they are criteria established by the provider.

Susan Wright of the Clark County, Nevada public school system put it this way:

“Vendors do not have to hire highly qualified teachers, yet Title I schools must have only highly qualified teachers working with students. How is it appropriate for an outside vendor to hire ‘unqualified’ teachers or paraprofessionals and a school cannot?”<sup>83</sup>

Similarly, according to writer Susan Eaton, this double standard “underscores the hypocrisy inherent in the No Child Left Behind legislation’s supplemental services provision. The law requires local districts, still without adequate funding, to retain a fuzzily defined cadre of ‘highly qualified’ teachers. But private tutors paid with public dollars need have no qualifications whatsoever.”<sup>84</sup>

Others have expressed concerns. Jack Jennings, CEO of the Center on Education Policy, near the end of 2004 commented, “[The states] better put something (to evaluate

providers) in place pretty fast. Millions of dollars are being spent and nobody knows what's happening."<sup>85</sup>

The weak oversight, though, is apparently no accident. What are seen as rigorous criteria for states that wish to adopt curricula for Reading First are seen as bureaucratic impediments for SES providers. "We want as little regulation as possible so the market can be as vibrant as possible," said Michael Petrilli, at the time a U.S. Department of Education official (he has since returned to the Thomas B. Fordham Foundation).<sup>86</sup> In fact, districts and states alike are hamstrung in monitoring providers by federal rules. The law requires the state to make the determination that a provider has failed for two consecutive years and only then to remove that provider from the list of approved organization. But 35 of 50 states responding to a survey from the Center on Education Policy reported that determining whether the learning strategies of providers were high quality was a serious challenge, a response topped only by the challenge of determining if providers were raising achievement (36 states).<sup>87</sup>

An unknown amount of money is diverted from instruction to "bribes" offered to the students to show up—in New York at least, the tutors do not get paid if the kids do not attend the tutoring sessions. New York rules allow companies to offer incentives to students for coming to the sessions, but forbid such action aimed at getting students to sign up.<sup>88</sup>

The Princeton Review offers students vouchers for small prizes that they can obtain immediately, or the students can save the vouchers for a larger prize such as a PlayStation video game console or an MP3 player. Schools often have vendor fairs in order for parents to see the various offerings available. Companies at these fairs vie for

parents' attention. Newton Learning brought in break-dancers to perform at the fairs, then offered Visa gift cards worth \$100 to students who had perfect attendance for the 80-hour program. Platform Learning inked a contract with Sony to obtain Walkmans in bulk for their incentives.<sup>89</sup>

Richard Condon, special commissioner of investigation for the New York City school district, launched an investigation into the marketing techniques. A December 2004 story indicated that the study would be complete in “the next few weeks,”<sup>90</sup> but a May 19, 2005, telephone query received the same answer—“in about three weeks.”

Concerns over the quality of the services provided led nine providers to form the Education Industry Association (EIA) which now claims over 800 member businesses and individuals, although the list of members at the association's website shows only about 100 businesses. The EIA has developed definitions for various levels of tutors and a code of ethics for providers, but it is not clear how many providers follow the EIA guidelines. In addition, the U.S. Department of Education has established the Supplemental Educational Services Quality Center at the American Institutes for Research. The Center is charged with expanding the number of students receiving SES and with improving the coordination of SES services among the various actors involved.

Several popular providers advise that their programs have been supported by “independent” or “third party” research. When this researcher asked where that research might be found, though, they either did not reply or said the research was available only to customers. As shown in the “Curriculum” section of this report, the reading instruction programs used in Reading First are not supported by “gold standard” research. Large multinational firms with many resources produce the Reading First materials. It is

unlikely that the much smaller SES providers had the resources to conduct or to have contracted to have conducted high-quality research.

### ***Who is rendering services?***

As previously noted, nationally there are some 1,800 approved SES providers. Some providers are more active than others. A survey of six states in 2002-2003 found 201 public schools and local education agencies serve as providers. The states had accepted between 56 percent and 86 percent of all applicants, some using formal rating systems, some not. This survey was conducted before the U.S. Department of Education's ruling that districts in need of improvement cannot provide SES and it is not known how the list would have been affected by that ruling. Fourteen colleges and universities served as providers as did 15 faith-based organizations, 32 private online companies, and 231 private for-profits.<sup>91</sup>

Although there is diversity among types of providers, the for-profits are the most active. As of December 2004, among the 25 providers most frequently found on state-approved provider lists, 23 are for-profit companies. Only the Boys and Girls Club (19<sup>th</sup>) and the YMCA (23<sup>rd</sup>) are not. Plato Learning (now including Lightspan which it purchased) appeared on 41 lists while Kaplan K-12 Learning Services and Education Station, an offshoot of Sylvan, appeared on 37. Others on more than 30 lists were Huntington Learning Centers, Kumon Math and Reading Centers, and The Princeton Review.<sup>92</sup> Not all of the providers on the lists are necessarily rendering services—contracts are arranged with individual school systems.

The actions vendors take in finding customers do not always seem particularly well behaved. According to Susan Wright of Clark County, Nevada, "Vendors have

become extremely competitive in their recruitment of students. They have gone door-to-door recruiting students in neighborhoods regardless of [student] eligibility. ... Vendors have aggressively approached parents in front of schools to recruit parents. They have caused much anguish and confusion among these parents because they are being accosted by strangers hawking their wares.” Vendors often thrust papers to sign with no explanation and seem in a rush to sign students up, but not to begin the instructional program or to ensure students’ attendance.<sup>93</sup>

Several companies have explored the possibility of using tutors in New Delhi and Bangalore to provide services. The West Delhi-based Educomp Datamatics and Career Launcher in New Delhi are offering tutoring to American students, but a scan of their websites did not uncover any services aimed at SES-eligible students.<sup>94</sup> In Fremont, California, a Kerala-born software engineer, Biju Mathew, operates Growing Stars which has 20 tutors in Kerala aiding 180 students in the U.S. for \$20 an hour. Mathew claims all of his tutors all have mathematics or science backgrounds and prior teaching experience. “American teachers of comparable quality would be doubly expensive,” says Mathew.<sup>95</sup>

The outsourcing of tutoring to India has caused unease. Representative George Miller has asked the Government Accounting Office to investigate. Nancy Van Meter of the AFT expressed concern over the lack of quality control for all tutors, but thinks offshoring tutoring raises the issue even more dramatically.<sup>96</sup>

In the entrepreneurial spirit exemplified by the earlier quote from Michael Petrilli, Petrilli’s new boss, Chester Finn, president of the Thomas B. Fordham Foundation said, “No one knows just how much such ‘outsourcing’ of SES services is underway, but NPR



says it's happening so it's probably occurring, at least on a small scale. And why not? If a Bangalore call center can help you troubleshoot your computer or toaster oven, why can't an English-speaking, Bangalore-based tutor help your child learn the parts of speech or principles of multiplication?"<sup>97</sup> Finn's analogy has definite limits. As noted earlier, the criteria for highly qualified teachers do not apply to supplemental educational services. In addition, a company's computers are, with small variations on the fringes of the design, essentially identical machines. Children vary.

Will SES raise achievement? The earlier section on evaluation suggests we will not know. Belfield & d'Entremont indicate that earlier experience with for-profit provision of education is not encouraging. They commented that experience from the 1990's suggests:

- There are no easy administrative savings.
- For-profit providers do not offer instruction that is demonstrably superior to that in public schools.
- There are additional costs in marketing, establishing brand equity, politicking and community building.
- Few economies of scale exist, making it difficult to franchise the operations.<sup>98</sup>

Belfield and d'Entremont think we cannot tell about the impact of SES until a comprehensive evaluation is conducted, "But, disadvantaged students may not benefit from a free market of choice."<sup>99</sup>

SES providers are likely benefiting from NCLB by providing services to children who are not from low-income families. According to the Washington Post, the number of parents sending their students to learning centers run by Sylvan, Kumon, etc., is

rapidly growing. Some of these parents are likely the parents of children who were denied SES because they didn't meet the low-income criterion.<sup>100</sup>

### ***Who is being served?***

Although the proportion of students eligible for SES who are actually receiving services is much larger than the proportion exercising the choice option, for the most part it is still a small proportion. Only 11 states reported that 20 percent or more of eligible students were receiving services.<sup>101</sup>

A study conducted for the U.S. Department of Education in 2002-2003, found that “most states in the sample did not put forth much effort to encourage provider applications.”<sup>102</sup> In the districts monitored by this study, the percentage of eligible students receiving services ranged from 0 percent to 41 percent, with a median of 6 percent. Table 3 shows the results of a larger survey of 91 districts in 2003-2004 conducted jointly by Association of Community Organizations for Reform Now (ACORN) and the American Institute for Social Justice (AISJ).

**Table 3: Percent of Students Eligible to Receive Supplemental Educational Services Actually Receiving Such Services in 91 Districts**

Percent Eligible Enrolled	Number of Districts
0-1	9
2-5	4
6-10	6
11-20	7
21-40	11
41-60	4
61-80	2
81-100	1

Source: Association of Community Organizations for Reform Now, and, American Institute for Social Justice (2004). *Accountability Left Behind*. Washington, DC and Dallas, TX: Authors. p. 6.

Thus SES has great growth potential growth and in the few years of NCLB, substantial growth has already been seen. Some of the numbers are impressive. Catapult Learning’s income from NCLB rose from \$2.8 million in 2003 to \$21.3 million in 2004. It saw an enrollment jump from 5,000 to 25,000. Platform Learning, founded in 2002, served 12,000 students in 2003-2004 and an estimated 50,000 in 2004-2005. Huntington Learning Centers, which says it took a cautious approach to expansion, saw a tenfold increase from 1,000 students in 2002-2003 to 10,000 students in 2004-2005.<sup>103</sup>

Districts have varied greatly in their ability and willingness to inform parents of the existence of SES. Some appear to have made extra efforts while others have been disorganized or obstructionist. William Howell at Harvard University proposed the creation of an independent organization to disseminate information because “it is sheer

folly to expect school districts to vigorously implement an accountability scheme that disrupts their school assignment procedures, drains money from their coffers, and threatens their administrative autonomy.”<sup>104</sup>

Some districts complained they lacked the staff to provide information in a variety of languages. One district lamented that the students, who did not really understand the SES process, had to act as the translators for their parents. In some districts, many letters to parents came back, “return to sender: address unknown.” It must be kept in mind that SES is available only to the children of low-income parents. Such parents normally experience many work-related and social capital difficulties that hinder their getting involved with their children’s schooling. They tend to remain distant from the school. <sup>105</sup>

Providers have noted that districts face many problems in implementing SES, but at the same time feel that some actions have been obstructionist. Jeffrey Cohen, President of Catapult Learning, told the House Committee on Education and the Workforce that “we have seen parent notification letters that are impossible to decipher. We have seen multi-part registration processes that seem to challenge or dare parents to register, rather than encourage them. We have been prohibited from talking to school principals or parents.”<sup>106</sup>

Similarly the report from ACORN/AISJ noted that “even parents who are interested in enrolling their children in the supplemental services program are being excluded through confusion, too many steps and too much paperwork, a lack of convenient locations and a lack of home computers.”<sup>107</sup>

Still, Cohen reported that, overall, the enrollments in SES had grown 100 percent from 2002-2003 to 2003-2004, and further large increases were anticipated.

A problem was voiced by Kevin Teasley, president of the Greater Educational Opportunities Foundation (an SES provider in Indianapolis) concerning how districts get paid. According to Teasley, in Indianapolis at least, providers are paid on a per-pupil basis. It does not matter if the hourly rate is \$18 an hour or \$100 an hour. In testimony to the House Committee on Education and the Work Force, Teasley suggested setting a minimum number of hours that tutoring must be provided. It is not clear how widespread this payment practice is.<sup>108</sup>

## **End of Years 4 and 5**

The school year 2005-2006 will mark the fourth year of the NCLB law. Thus no schools have experienced the corrective actions the law calls for after four or five consecutive years of not making AYP. Certainly the option of turning entire schools over to Education Management Organizations or other private firms has the potential to send large sums to the private sector.

Some states—Texas, Colorado, California, Oregon and Michigan among them—appended NCLB to their ongoing state accountability programs. Michigan, in particular, used the year 2003-2004 as a quasi year four to prepare 101 schools, mostly in the Detroit area, for restructuring in 2004-2005.

It is too early to have any test information from these schools, but the Center on Education Policy issued a brief report with some qualitative data and case studies of schools that chose different options for improvement.<sup>109</sup> Michigan did not impose the more draconian sanctions such as state or private firm takeover, nor did it reopen any schools as charter schools, but offered a menu of options from which schools could choose. Most chose to replace staff and/or the principal (63 percent), imported an

external model (15 percent ), employed a coach from the Coaches Institute (12 percent), or changed the governance by appointing a governing board (12 percent) (numbers do not sum to 100 percent because some schools chose more than one strategy). The Coaches Institute is unique to Michigan, based on Edgar Schein's theories of managing change (themselves built on Kurt Levin's theorizing), and developed by the Alliance for Building Capacity in Schools, a collaboration of 13 institutions of higher education, teachers unions, parent groups, public schools and professional education organizations.

## Conclusion

Looking at the consequences of failing to meet the requirements of NCLB over differing periods of time one is struck by two things:

- The large sum of money that flows through the states and districts into private coffers, especially to those coffers politically close to the Bush administration and
- The stunning double standard of the feet-to-the-fire treatment of public schools contrasted with the lax treatment of private corporations that provide materials or services the law requires the schools to use.

A summary of where money might flow to private sources and the amounts involved:

- Test development, scoring and reporting: \$2.29 billion per year by 2006 (Eduventures estimate).
- Curriculum adoption, Reading First: potential annual amount \$1.1 billion.

Actual amount unknown.

- Curriculum adoption, other curriculum areas, other grades: potential and actual unknown.
- Choice and Supplemental Services: potential annual amount, \$2 billion, actual unknown.
- “Restructuring” (various forms): potential amount and actual amount unknown.
- Contracting for services to monitor cheating: unknown.
- Contracting to develop student-tracking databases: unknown.
- Professional development: unknown.

Even without having firm figures, it is clear that several billions of taxpayer dollars will be spent each year and it is equally clear that, at present, no real process of accountability is in place to monitor where the money is spent or how effectively it is spent. History shows that under such conditions money is wasted and fraudulent expenditures are likely.

Over the years, districts will continue to spend money on curriculum and testing and they will spend more and more money spent on choice, supplementary services, and various forms of school “reconstitution.” As reported earlier, California predicts that by 2013-2014, NCLB will label 99 percent of its schools as failures, while Minnesota puts the figure at 80 percent. Most states have a “balloon mortgage” approach to AYP, requiring little improvement in the first few years and much larger achievement gains as the witching year of 2014 approaches.<sup>110</sup>

Currently, the U.S. Department of Education holds states, districts, and schools strictly accountable for achievement gains or lack there of, but exerts no pressure

whatsoever on the companies providing services to the education agencies, and has no way of knowing where the money goes. As noted earlier, the education agencies are held to strict, explicit criteria of accountability, but those same criteria are seen as bureaucratic barriers when applied to private firms and are withheld from private firms in order to produce the most “vibrant” market possible. Eaton called this hypocritical. This researcher could not agree more. The U.S. Department of Education should establish policies and procedures to rectify this dreadful state of affairs.



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