

The Soft Bigotry of Low Expenditures

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The No Child Left Behind Act (NCLB) was put forward by President Bush to end what he called “the soft bigotry of low expectations.” The Act passed Congress with broad bipartisan support, with many legislators agreeing to NCLB’s testing regimen in exchange for White House promises of specific budget increases, embodied in the form of spending authorizations for 2002 and beyond. However, actual White House budget requests and actual congressional appropriations have fallen short of these promised levels and have now generated litigation. This article identifies and examines different approaches for calculating necessary funding for NCLB. It then considers the implications of past and current appropriate levels.

George W. Bush has repeatedly called for the end of the “soft bigotry of low expectations” in American schools (Bush, 2004). In this compelling catch phrase, Bush echoed two important findings from education research: the achievement of children suffers from low expectations, and these low expectations fall disproportionately on children of color (Heubert & Hauser, 1999; Nieto, 2003; Singham, 2003; Zeichner, 1995).

Candidate Bush proposed to end this soft bigotry through what he called “accountability,” by which he meant a system of punishments and rewards based on widespread and frequent achievement testing. Linking incentives and penalties tied to test scores would, according to Bush, force schools to produce high-scoring students. His basic theory, which is both unproven and controversial, is that attaching consequences to test scores will motivate educators. These newly inspired educators would have higher expectations for their students, including those neglected in the past, and thus would improve their teaching.

Bush’s “No Child Left Behind” (NCLB) (2002) legislation, which was put forward to implement this hypothesis, passed Congress with broad bipartisan support. Yet many Democrats (and possibly some Republicans) supported the legislation only after the White House agreed to specific spending increases (Rudalevige, 2003). Federal education spending had been increasing in the years leading up to the legislation—a trend that these Democrats, led by Senator Edward Kennedy, did not

wish to see reversed by the new administration. We are concerned that many readers will not understand what is meant by “spending authorizations” etc. We suggest the following rewrite: “... wish to see reversed by the new administration. For many Democrats, therefore, NCLB’s testing regimen was acceptable only in exchange for White House promises of specific budget increases. Owing to the nature of the congressional budget process, these promises were embodied in the form of spending ‘authorizations’ for 2002 and beyond. In a nutshell, an authorization is a prerequisite to a later appropriation for a program, but Congress is not legally bound to match the amount of earlier authorization with the later appropriation. And, in fact, this is what happened with the NCLB. Actual White House budget requests and actual congressional appropriations have fallen short of these promised levels.”

THE LEGISLATION

Republicans downplay this shortfall, pointing out that appropriations are often less than authorizations if Congress later determines that less spending is necessary (Education Leaders Council, 2004). Democrats respond that in this case the authorizations reflected a negotiated promise from both the White House and Republican congressional leaders; they also emphasize the scale of the shortfall in this case (Democratic Staff, 2003, 2004). The White House request for 2005 and 2006 are not only well below the authorizations for that year, but are even below the amounts authorized for 2002. And the congressional appropriation reduced the White House request an additional \$760 million, resulting in the smallest budget increase in nearly a decade (Robelen, 2004).

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Comparison of Title I Initial Authorizations, White House Requests and Congressional Appropriations

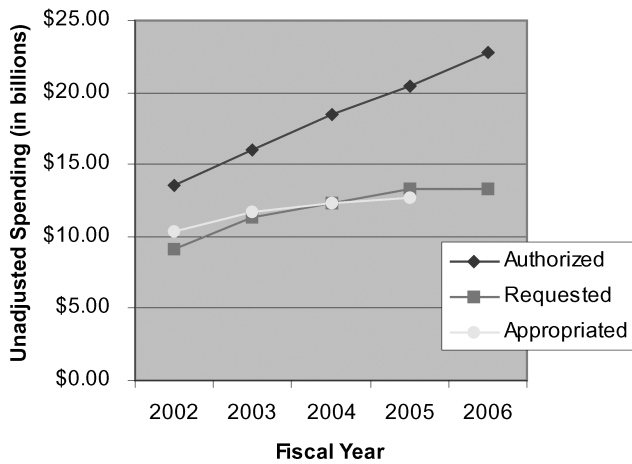


Figure 1
Comparison of Title I initial authorizations, white house requests and congressional appropriations. *Note:* All amounts are in unadjusted dollars. Title I figures are for ESEA Title I-A grants to local educational agencies. *Sources:* Education Week (2004); No Child Left Behind Act (2002); Office of Management and Budget (2005); U.S. Department of Education (2004b); U.S. House of Representative Committee on Appropriations.

This spending gap is particularly apparent with regard to Title I, Part A the section of the Elementary and Secondary Education Act (ESEA)¹ focusing on children from low-income homes. The appropriations for Title I, Part A in the first four years of NCLB are only 69% of the authorized amount, a deficit of over \$21.4 billion (Figure 1). The gap between Title I, Part A authorizations and appropriations has grown each year, increasing from \$3.15 billion in 2002 to a \$7.26 billion shortfall in 2005. The White House budget request for 2006 offers no increase on its 2005 request (\$13.34 billion) while cutting key programs, including the Even Start literacy program and Upward Bound programs for inner-city youths (Allen & Baker, 2005; Office of Management and Budget [OMB], 2005). As early as the FY2002 budget, these spending levels drew complaints—primarily from the congressional Democrats, who framed their disappointment in terms of betrayal. Rep. George Miller said,

Time and again, we had discussions with...President Bush about the significance of [the NCLB] reforms.... He said, "If you accomplish this, the money, the resources, will follow." One year later, he's broken his promise. (Robelen, 2003)

Senator Kennedy (2003) complained, "The President's budget may provide the resources to test our children, but not enough to teach them" (¶1).

Democratic critics of President Bush compared the "tin cup" education budget to the White House request (at the time) for \$670 billion in tax cuts over the next decade (Kennedy, 2003).² They pointed out that the President has always demonstrated an inclination to prioritize tax cuts over education spending, dating back to his years as governor of Texas. At that time, he threatened to block raises for teachers if the state legislature denied him the property tax cuts he wanted. He also backed Texas Republicans when they funded his tax cuts by slashing education programs, especially kindergarten. Opposing making kindergarten mandatory, he said, "We can't afford it in the state of Texas" (Dubose, 1999).

Later, when congress was considering budgets for FY2003, 2004, 2005, and 2006, these critics were joined by state level policymakers, including many Republicans. In February 2004, the Republican-dominated Oklahoma legislature unanimously passed a resolution seeking repeal of NCLB (Dillon, 2004; National School Board Association [NSBA], 2004). Similar bills were passed in Vermont and were considered (but did not pass) in Maine and New Hampshire (NSBA, 2004). The Republican-controlled Virginia House of Delegates passed a resolution by a vote of 98-1 calling NCLB an unfunded mandate that will cost "literally millions of dollars that Virginia does not have" (Becker & Helderman, 2004, p. 1). All Republicans in the Virginia House voted to condemn NCLB, a fact that the Republican Education Committee chairman James H. Dillard offered as proof that "the damn law is ludicrous" (Becker & Helderman, 2004, p. 1). A study in Ohio, commissioned by the legislature, led state Senator Robert A. Gardner, the Republican education committee chairman, to conclude that there's "no question" that NCLB "costs more than the federal government has given us." (Hoff, 2004, p. 22). By the summer of 2004, "27 state legislatures drafted 54 bills to protest the costs, penalties, and unprecedented federal oversight of school policy under [NCLB]" (Kelderman, 2004, ¶2).

The following year, the bipartisan revolt continued. In April 2005, the Republican-dominated legislature in Utah passed HB1001, giving legal preference to Utah's education priorities over those of the federal NCLB law (Dillon, 2005). A near-unanimous legislature approved this bill even though Education Secretary Spellings threatened to withhold \$76 million in federal funding from the state (Sack, 2005). At the same time, the attorney general of Connecticut was threatening a lawsuit, and various school districts around the country joined in a separate lawsuit led by the National Education Association (these lawsuits are discussed later in this article).

Reacting to the White House's budget request for FY2006, Robert Gordon—a senior fellow at the Center for American Progress and a defender of NCLB—wrote:

The new budget abandons the pretense of funding education increases. [The President's] No Child Left Behind

request now falls \$12 billion short, fully one-third of the authorization level. . . . At the very moment when reform's demands have climbed—when more schools must allow students to transfer, offer tutoring, or prepare to shut down—the gap between funding envisioned and funding offered for reform has widened into a chasm. (Gordon, 2005)

Senator Dick Durbin of Illinois has suggested that Congress suspend the NCLB testing mandates until President Bush agrees to sufficient increases in education spending. This approach is unlikely to gain political traction, but it would provide some relief to states now facing a major dilemma. The National Conference of State Legislatures (NCSL) estimates that the new testing requirements alone will cost states a total of \$1 billion per year to implement, but the congressional FY2005 appropriation provides only \$412 million for this purpose (U.S. Department of Education, 2004a). NCSL also calculated that the Congressional ESEA appropriation for FY2004 falls \$9.6 billion short of the cost to states of implementing the NCLB mandates.

Many state governments are currently facing a significant budgetary crisis. In part, this is because of the economic downturn of the past five years combined with revenue restrictions adopted by many states (often mirroring California's "Proposition 13"). Federal policy is also to blame. Linkages between the federal and state tax codes reduce state revenues; federal law prohibits certain state taxes; health care costs have shifted from the federal Medicare program to Medicaid (largely a state obligation); and education laws such as the Individuals with Disabilities Education Act (1990) and NCLB have placed growing financial obligations on states without a corresponding growth in the federal funding (Lav & Brecher, 2004). Given these substantial fiscal pressures, the underfunding by the federal government of NCLB's requirements has forced states to redistribute their limited revenues, implementing federal goals at the expense of locally determined goals.

DETERMINING SUFFICIENT FUNDING

To say that appropriated funding falls short of authorized funding may signify a broken promise, but it reveals little about actual need. When Senator Kennedy and Representative Miller complain about failure to fully fund NCLB, they are generally referring to one possible way to calculate "full funding": the gap between promised and appropriated amounts. But other approaches and formulas have also been proposed. In fact, these other approaches tend to reveal even larger gaps.

In recent years, states have begun conducting cost studies that help to estimate NCLB's budgetary impact. These studies attempt to determine how much it would cost to raise all test scores of a given state's children up

to that state's standard. William Mathis recently analyzed 40 adequacy studies (covering 26 states) that estimated the instructional costs of raising student scores to the level of the state learning standards (Mathis, in press; see also Mathis, 2005).³ Based on these studies, he reached a "conservative estimate" that the additional costs associated with providing all students with adequate standards-based opportunities would require a funding increase of 27.5%. That is, for a state to achieve NCLB goals (not including the costs of the testing itself), total spending on education in that state would have to increase by at least 27.5% (Mathis, in press). This works out to a national increase of \$137.8 billion—more than 11 times the current level of Title I funding (Mathis, in press; see also Karp, 2005).

Another approach for determining the cost of "full funding" is examined by the National Education Association (NEA) (2004), which presents estimates from two groups, the Committee for Education Funding and Fiscal Planning Services, Inc. Both groups turned to the law's own definitions, which is a standard approach for defining full funding. Looking at the statutory language of NCLB, one finds that the targeted grant section of Title I "stipulates that for every child of school age living in poverty, school districts are eligible to receive 40 percent of the average per pupil expenditure in the state" (NEA, 2004, p. 5).⁴ Based on such definitions,⁵ the Committee for Education Funding (CEF) calculated 2003 Title I full funding at \$27.6 billion, and FPSI calculated full funding at \$28.2 billion (CEF, 2002; Fiscal Planning Services, 2003). CEF (2003) also calculated full funding for 2004, arriving at a figure of \$30.4 billion. This means that the actual funding appropriated for 2003 was only 42% of full funding, declining in 2004 to less than 41% of full funding.

Some supporters of NCLB have criticized the methodology of such studies. Their primary argument has been that cost analyses should only include expenses that are directly required by NCLB (Education Leaders Council [ELC], 2004; Peterson & West, 2004). The main cost under this definition would be the development and administration of tests.⁶ The General Accounting Office (2003) estimated this development and administration would cost states anywhere from \$1.9 to \$5.3 billion, depending on the nature of the tests and how they were to be scored. The rationale for claiming that only this relatively small cost is mandated by NCLB and not indirect costs (such as the educational resources required to raise student test scores) is straightforward: schools are already obliged to educate.⁷ State and district efforts to improve test scores and thereby meet NCLB's Adequate Yearly Progress (AYP) goals are directed toward pre-existing obligations to provide quality educational opportunities. It comes with ill grace for states 'to argue' that the federal government should pay for these additional opportunities because without NCLB they would have left these children behind.

However, even setting aside indirect educational costs, NCLB's accountability requirements include several expensive items in addition to test development and administration. The National Conference of State Legislators (2004) (NCSL) identifies the follows:

These requirements mandate that states 1) determine whether all schools, not only Title I schools, are making Adequate Yearly Progress (AYP) toward a goal of 100% proficiency for all students in 12 years . . . ; 2) develop both annual measurable objectives and intermediate goals; 3) monitor whether local educational agencies . . . meet the required AYP thresholds; 4) collect and report on individual student, school, district and state test data (among other requirements, these reports must include information by disaggregated student groups—i.e., sex, race, socioeconomic status, English learners, and special education population); and 5) state educational agencies . . . are required to provide technical assistance for schools that are identified for school improvement. (p. 7)

Mathis (2004) lists five possible approaches to determining what would constitute adequate NCLB funding: (1) relative increases, meaning a comparison of spending before and after NCLB became law; (2) the direct costs of administering the law, calculated as the costs of developing and administering the tests minus whatever costs states would have incurred for any tests they would have had even without NCLB (with similar calculations for other NCLB requirements); (3) comparing the authorized and appropriated levels; (4) calculations, such as those presented by the NEA (2004), based on the law's internal definitions; and (5) the cost of teaching children to meet state standards. The first two approaches support the claim that NCLB funding is currently sufficient or even generous. The final three approaches yield shortfalls in NCLB funding ranging (for Title I, Part A in 2004) from \$6.15 billion to almost \$118 billion. As a policy matter, each argument will likely find some receptive audience.⁸ Beyond the policy arena, the dispute also has a legal dimension, as discussed in the following section.

QUESTIONING STATES' OBLIGATION TO SPEND FUNDS

The NCLB legislation retained a provision that has existed in the ESEA since its 1994 reauthorization. The provision states, "Nothing in this Act shall be construed to . . . mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act" (20 U.S.C. §7907(a)). In April 2005 the National Education Association (NEA), joined by nine school districts and several other parties, filed a federal lawsuit alleging that the U.S. Department of Education has violated this provision (Dobbs, 2005; see also National Education As-

sociation, 2003). The state of Connecticut is planning a similar lawsuit (Frahm, 2005).

The legal rationale for these lawsuits was outlined a year earlier, in a May 2004 legal opinion letter from Wisconsin's Attorney General (Lautenschlager, 2004).⁹ Her letter focused on the same spending provision and concludes:

In my view, the plain language of 20 U.S.C. §7907(a) means that the United States Department of Education and its officials cannot require any State, or subdivision of a State, to engage in actions under the ESEA, with its threat of losing federal funding, if taking those actions would require the State or subdivision to draw upon its own monetary resources. (pp. 4–5)

Counsel for the National Conference of State Legislators (NCSL) reached the same conclusion: "the plain meaning of the statutory language is fairly clear—states, or local subdivisions, do not have to spend funds on the costs of NCLB that are not paid for by the Act itself" (NCSL, 2003, p. 5). Read this way, the provision releases states and local school districts from NCLB obligations that are not fully funded.

Although tangential to the main legal opinion, Lautenschlager's letter cites three NCLB provisions as inadequately funded: (1) the cost of developing and administering tests; (2) the costs of implementing sanctions against schools that do not meet AYP requirements; and (3) the cost of sufficient funding "to permit virtually every student in every school to reach 'proficiency' levels on standardized tests" (Lautenschlager, 2004, p. 5). Thus, she implicitly incorporates Mathis' (2004) option "5" the cost of teaching children to meet standards from among the approaches to determining adequate NCLB funding. The NEA lawsuit follows a similar approach, alleging costs associated with the following:

(a) revis[ing] the state's curriculum standards in core academic areas, (b) develop[ing] standardized tests aligned with the curriculum standards to measure the progress of public school students in meeting those standards, (c) requir[ing] school districts to administer those tests to all but a very small group of students, (d) based on the performance of students on those tests, both overall and within specified subgroups (viz., major racial and ethnic groups, low income students, limited English proficiency students and disabled students), requir[ing] school districts to determine whether schools, and whether the school districts themselves, are making AYP in improving student performance on those tests, (e) if schools and school districts are not making AYP, tak[ing] certain specified actions against those schools and school districts, and, finally, (f) ensur[ing] that school staff (teachers and paraprofessionals) meet prescribed qualification requirements. (*Pontiac v. Spellings*, 2005, ¶32)

Among the costs associated with escaping AYP mandates, the complaint includes expenses needed to raise

student performance to proficiency levels on the NCLB-required tests (*Pontiac v. Spellings*, 2005, ¶61–70). Connecticut's anticipated lawsuit also concerns costs. The state currently administers its test annually to fourth-, sixth- and eighth-graders. NCLB requires an extension of testing to include third-, fifth- and seventh-graders. Also relying on 20 U.S.C. §7907(a), the same spending provision underlying the NEA lawsuits the Connecticut Attorney General contends that this requirement for added years of testing will unfairly cost taxpayers hundreds of millions of dollars. (Frahm, 2005)

COMMENTARY AND CONCLUSION

Americans appreciate the notion of accountability, at least in theory. Students should be responsible for their own learning. Teachers should be responsible for teaching. Principals and school districts should provide teachers and students the resources needed for success. If any of these people do not carry out their responsibilities, there should be repercussions. When students underperform, they should be failed and their teachers and school administrators should be sanctioned or fired. But confronted with the reality of the crisis conditions in many American schools, these simplistic responses amount to little more than empty blustering. More to the point, they amount to a cry that something—some unspecified thing—needs to be done and that teachers and educational authorities know what that thing is and will do it if only a big enough sword is held over their heads.

However, real accountability does not end with students, teachers, or principals. Students need highly qualified teachers and appropriate, up-to-date learning materials (Darling-Hammond, 2000b; Sanders & Rivers, 1996). Teachers need extensive education in pedagogy and subject matter, and they need to be paid salaries that reflect this training (Darling-Hammond, 2000a; Ingersoll, 2003). School administrators cannot magically conjure up proper learning environments and qualified teachers out of thin air (National Commission on Teaching America's Future, 2004). In short, teachers need quality opportunities to teach, and students need quality opportunities to learn.

Texas, which embarked upon standards-based accountability before the rest of the country and which provided a model for NCLB, may now provide a lesson with regard to funding. In late 2004, a Texas state court declared the state's school-finance system to be in violation of the Texas constitution's requirement that the state provide an adequate, suitable, and efficient education system, citing NCLB and the achievement gap as two key factors (*West Orange Cove ISD v. Nelson*, 2004). The court highlighted the need for more categorical funding to assist with the education of minority, low-income, and non-English-speaking students. This funding, the court noted, is particularly necessary given NCLB's require-

ment that districts close the achievement gap between these subgroups and the rest of the student population. The Texas model for NCLB—just like NCLB itself—cannot succeed without adequate funding. A standards-based accountability system without adequate resources is virtually guaranteed to leave children behind.

In recognition of those resource needs, the White House and Congress in 2001 agreed that testing would not operate as an alternative to increased funding. Rather, the federal government was to match its new role—mandating standards, tests, and specific repercussions for test scores the government deems inadequate—with an increased role in providing the resources necessary for students and schools to meet those standards. The two roles were supposed to be coupled. The federal government, not only state and local authorities, was pledged to meet specific obligations.

At the broadest level, every American should agree with NCLB's professed goals of inclusivity. The name adopted for the Act paraphrases the motto of the Children's Defense Fund: "Leave No Child Behind." By embracing this slogan and this goal, the policy seems to join with those who see educational equity and educational excellence as interlinked. The NCLB rhetoric implies a vision of a public school system designed, prepared, and expected to provide high-quality opportunities to all children, including children with disabilities, low-income children, English-language learners, and children of color. But without increased funding, many children will inevitably continue to be left behind.

Where is the money? The White House now says, money doesn't matter. "The color of change is not always green" proclaimed education undersecretary Eugene Hickok (Schemo, 2003, p. 16). Peterson and West (2004) similarly challenge the assumption that "more money makes for better schools" (p. 58). Americans are told that all that is necessary is to set standards, increase expectations, impose tests, broadly encourage competition, and punish failure. Yet, whatever the merits of the NCLB accountability strategy, it degenerates to mere gimmickry in the absence of adequate funding.

Demands for widespread accountability must extend to those who are making the demands. The White House and Congress did agree to set funding standards for themselves in conjunction with the achievement standards for schools and pupils, but they have failed to meet or even acknowledge their self-imposed funding benchmarks. Accountability for those at the bottom has not been matched by accountability at the top. Soft bigotry or hard cynicism, America's children deserve better.

NOTES

1. The NCLB is a reauthorization of the ESEA.
2. Although the White House has repeatedly promoted tax cuts, the specific proposals and amounts vary from year to year.

3. These states are Alabama, Arkansas, Colorado, Connecticut, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Missouri, Montana, Nebraska, New York, North Dakota, Ohio, Oregon, South Carolina, Texas, Utah, Vermont, Washington, and Wisconsin.

4. As the NEA notes, this eligibility exists "within a range that raises the amount in the lowest-spending states and lowers it in the highest-spending states" (NEA, 2004, p. 5).

5. Although most Title I funding is defined by formulas in the law, some parts are not covered by such definitions. For these latter parts, the calculations reported here used current or previous congressional authorizations, adjusted for inflation.

6. In fact, NCLB's testing provisions are the only substantial requirement of the law with a separate line item in the federal budget (NCSL, 2004).

7. In the vast majority of states, this obligation is clearly set forth in their constitutions. But even in states where the constitutional obligation is contested, the political and historical obligation is widely accepted.

8. "Depending on who is asked, NCLB either imposes an onerous financial burden on schools or provides enough aid for states and schools to administer it" (The U.S. Commission on Civil Rights, Office of the General Counsel, 2004, p. 39).

9. An attorney general's opinion letter is essentially advice to a client. It is not a binding legal precedent, although these letters are sometimes cited by courts and can be persuasive.

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