



Financing Education under President Bush : the 2002 “No Child Left Behind” Act¹

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In the United States, education is primarily a state and local responsibility and the structure of education financing reflects this overwhelmingly local role. Of the estimated \$852 billion that were spent nationwide on education at all levels for the 2003-2004 school year (\$470 for K-12 education), about 90 percent came from either state (46%), local (37%), or private sources (9%), while the federal government covered the remaining 8 percent².

Budgets for elementary and secondary schools and the ways they are financed vary in each state and school district³. Generally, states use a combination of income taxes, corporate taxes, sales taxes, and various fees. Local districts mostly rely on local property taxes, which means that there is an important disparity between schools located in affluent neighborhoods and schools located in poorer zones.

I. Why the NCLB? Goals of the reform

Since the 1983 Report *A Nation at Risk* published under Ronald Reagan's presidency which highlighted the failings of American public schools and marked the beginning of achievement goals and tests in almost all states, education has been a major concern for Americans and a leading campaign theme for all presidential candidates. When he took office in 2001, President George W. Bush had put education at the top of his "compassionate conservative" agenda and was adamant his presidency would change things around.

At the present time, two-thirds of low-income and minority student are still performing below the basic level. In view of this dismal performance, the Federal *Elementary and Secondary Education Act* (ESEA), dubbed "No Child Left Behind", was voted by Congress in 2001 and signed by President Bush on January 8th 2002. The law reauthorizes and expands many of the programs already included in the two previous *Elementary and Secondary Education Acts* of 1965 and 1994. It contains 10 major programs, including the most visible (and most

controversial) Title I, called “Improving the education of the disadvantaged” that focuses federal government attention and money on those students traditionally “left behind”.

The most important provisions are the following:

- Testing requirements are expanded so that all students reach “proficiency goals” by 2013-14: beginning in school year 2005-06, all students in grades 3 to 8 and at least one grade in high school must be tested each year in reading and mathematics and students with a limited English proficiency will be tested in English after three years in the educational system. Science assessments will be added in 2007-08 in at least one upper elementary, middle, and high school grade. All in all, the NCLB requires 17 annual tests, against 6 previously. 95% of the students enrolled must take the tests.
- Schools must all employ “highly qualified” teachers by the end of the 2005-2006 school year.
- If a school is labelled as “in need of improvement”, it faces severe sanctions and penalties: after two years in the failing category, it must give parents the choice of transferring their children to another, better performing public school in the district. After three years, it must provide supplemental education services.
Depending on the number of years of inadequate performance, these sanctions can mean withholding funds, deciding to institute new curricula, replacing teachers, changing the governance or the top leadership, converting the school into a “charter school”, appointing outside experts, and even restructuring entire schools and districts.
To move out of this predicament, a school has to make “adequate yearly progress” (AYP) for two consecutive years.
Unlike previous education reform laws, no transition period was allowed.

In early 2004, more than a quarter (28%) of the nation’s public schools were on academic probation according to the Center on Education Policy, i.e. 26,000 out of a total number of 91,400.

The cornerstone of this reform is the idea of market accountability. Schools compete against one another to attract the best and brightest and are now held accountable for their students’ progress. They can be sanctioned in case the federal requirements are not met. Free-market principles, including accountability, choice, competition and market sanctions are brought forward to try and rescue an ailing public school system.

Historically, the NCLB is the most interventionist piece of legislation since the sixties and it changes the nature of federal help to schools. Usually, the federal government only steps in by providing additional resources to a particular type of students, such as those with disabilities (IDEA, *Individuals with Disabilities Education Act*) or disadvantaged children (Head Start for example).

This time, the NCLB takes regulatory federalism one step further and greatly expands the role of the federal government in education. It still targets federal monies to a particular group of children (those “left behind”), but now exercises control over all American public schools through very strict implementation procedures and deadlines.⁴

The “fathers” of the reform came from both sides of the political spectrum: on the Republican side President Bush and Representative John Boehner (R-OH), on the Democratic side senators Edward Kennedy (D-MA) and Representative George Miller (D-CA). Democrats, including presidential candidate John Kerry, agreed to sign the bill and accepted to compromise on the more market-oriented goals of the Republicans because it promised to authorize record amounts of federal funds to help failing schools.

We shall first examine how both federal and state governments went about financing this reform, and show that the NCLB is a good illustration of the current administration’s devolution policy – a legacy of Ronald Reagan’s New Federalism – whereby the federal government both grants more freedom and responsibilities to the state and local governments while surreptitiously increasing its control over the lower branches of the federal system.

We shall also see that, three years into the reform, much of the skepticism that was voiced at the time –and largely brushed aside—by education specialists, teachers’ unions and professionals who warned that the reform would be both much more costly and difficult to put into practice than expected is sadly proving to have been well-founded. On more than one count, the NCLB has been disappointing and has fallen short of its objectives.

II. An unprecedented budget increase for the federal government

To finance this reform, Bush was able to convince Congress to appropriate for the 2002 fiscal year an 18% increase over the previous year. The rise went on each year after that, albeit more slowly (see graphs 1 and 2):

NCLB funding:

FY 2001: \$18.6 billion

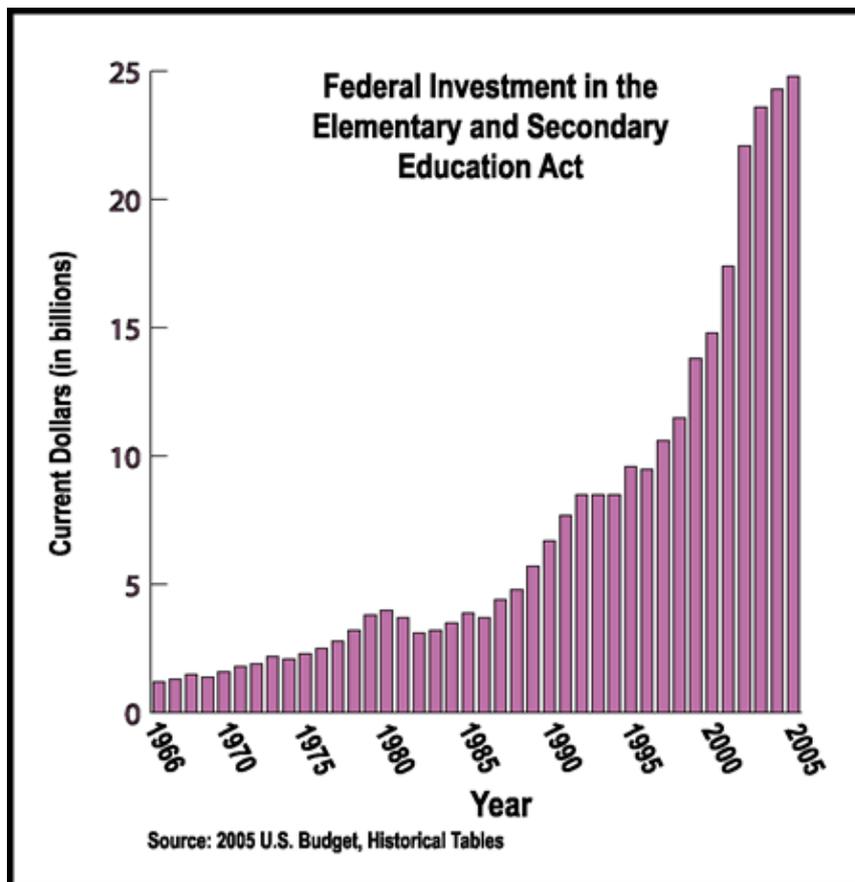
FY 2002: \$22.1 billion, +18 %

FY 2003: \$23.8 billion, + 6.4%

FY 2004: \$24.4 billion, + 4.8%

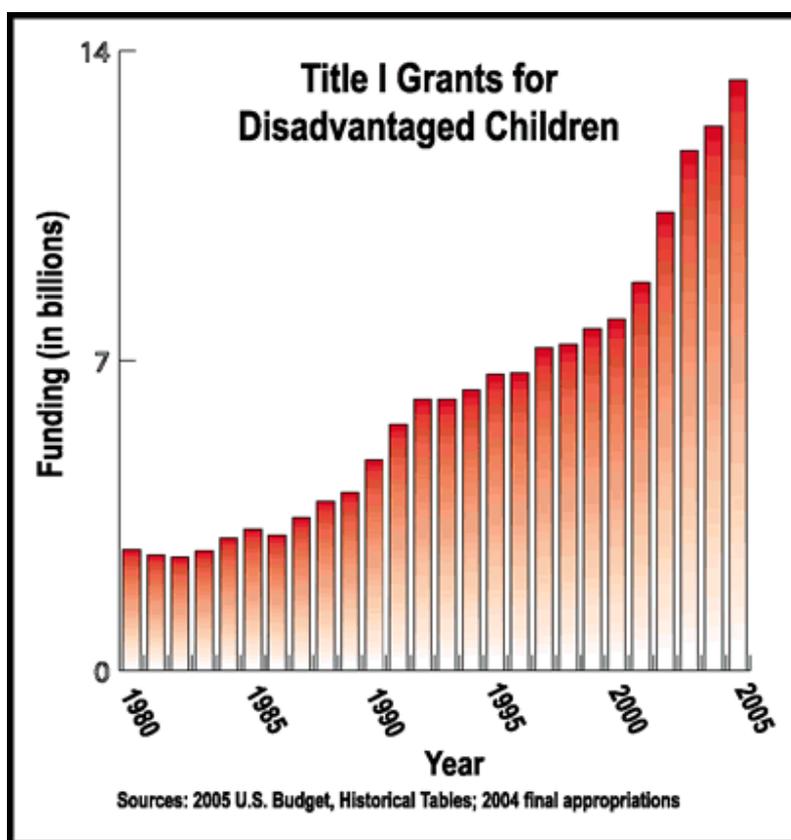
FY 2005: \$25.2 billion (including \$13 billion for Title 1), + 3.6%

Graph 1: Federal Investment in the Elementary and Secondary Education Act



All in all, national K-12 education spending has increased 101 percent since 1990-91, 48 percent since 1996-97, and 22 percent since the 1999-2000 school year. For NCLB alone, the federal budget increase has been of almost 40% since President Bush took office in 2001.

Graph 2: Title I Grants for Disadvantaged Children



Yet, in spite of these rising funds and the initial bipartisan support, opponents quickly started to bicker⁵.

First, disagreements were voiced over the real extent of the federal budget increases for all federally-funded education programs. After the first two years, while Congress kept increasing

federal appropriations for Title I (which accounts for about half of the USED elementary and secondary school funds), it became clear that appropriations for other elementary and secondary education programs had actually decreased -2.6% (\$9.2 million). There was not so much a net increase overall as a shift in the allocation of funds.

The trend is likely to continue in FY 2005 : the President has requested \$57.3 billion in discretionary appropriations for the entire Department of Education (this excludes the mandatory or “entitlement” programs whose amount is set by law), with, as before, most new resources earmarked for NCLB programs⁶. On the other hand, 38 programs administered by the USED are set to disappear, and most other programs will probably be frozen at the FY 2004 level (table 1).

President Bush and his fellow Republicans counter that the federal government is now spending far more money for elementary and secondary education than at any time in the nation’s history, which is both true... and misleading. And even with the increases, the federal share for elementary and secondary education still only amounts to 8% of total education expenses⁷.

Controversy also appeared over the gap between authorizations (the amounts theoretically allowed by the Act) and appropriations (what Congress actually grants). For FY 2004, the estimated authorization was of \$32 billion, while the appropriations reached only \$24.4 billion, that is to say \$7.6 billion short of the initial target. Yet, when the bill passed in 2001, there was the expectation that appropriations for Title I would continue to grow by significant amounts to offset the tough accountability requirements placed on states. Democrats felt cheated and claimed NCLB was underfunded.

Republicans retorted that this claim was disingenuous since the existence of a gap between authorizations and appropriations is commonplace, regardless of the law being voted. This gap reflects not so much a “promise” as a “cap” that Congress cannot exceed: they give as evidence the 1994 reauthorization of the federal *Elementary and Secondary Education Act* which took place when Democrats were holding both Congress and the White House, and during which Democrats authorized \$13 billion but appropriated only \$10.3⁸.

Table 1. Fiscal Years 2003 and 2004 Appropriations and President's FY 2005 Budget Request For Major Discretionary Education Programs

Program	FY 2003 Appropriations	FY 2004 Appropriations	FY 2005 President's Request
Title I Grants to School Districts	\$11,688,664,000	\$12,342,309,200	\$13,342,309,000 (8.1%)
Reading First	\$ 993,500,000	\$ 1,023,923,000	\$ 1,125,000,000 (9.9%)
Impact Aid	\$ 1,188,226,000	\$ 1,229,526,739	\$ 1,229,526,739
Teacher Quality	\$ 2,930,825,000	\$ 2,930,126,132	\$ 2,930,126,132
Technology Grants	\$ 695,947,000	\$ 691,840,913	\$ 691,840,913
After-School Programs	\$ 993,500,000	\$ 999,070,500	\$ 999,070,500
State Assessments	\$ 384,484,000	\$ 390,000,000	\$ 410,000,000 (5.1%)
Innovative Programs	\$ 382,498,000	\$ 296,548,500	\$ 296,548,500
Safe and Drug-Free Schools	\$ 468,949,000	\$ 440,907,650	\$ 440,907,650
English Language Acquisition	\$ 683,747,000	\$ 681,214,978	\$ 681,214,978
IDEA State Grants	\$ 8,874,398,000	\$10,068,106,452	\$11,068,106,000 (21.5%)
Vocational Ed. State Grants	\$ 1,192,200,000	\$ 1,195,007,610	\$ 1,012,000,000 ¹
Tech Prep	\$ 107,298,000	\$ 106,664,942	\$ 0 (-100%)
Adult Education	\$ 587,217,000	\$ 590,232,957	\$ 590,232,957
Pell Grant Maximum Award	\$4,050 ²	\$4,050 ²	\$ 4,050 ²
SEOG	\$ 760,028,000	\$ 770,455,335	\$ 770,455,335
Work-Study	\$ 1,004,428,000	\$ 998,501,875	\$ 998,501,875
Perkins Loans	\$ 99,350,000	\$ 98,763,835	\$ 0 (-100%)
LEAP	\$ 66,565,000	\$ 66,172,266	\$ 0 (-100%)
Trio Programs	\$ 827,089,000	\$ 832,558,750	\$ 832,558,750
GEAR-UP	\$ 239,082,000	\$ 298,230,000	\$ 298,230,000
HEA Teacher Quality	\$ 89,415,000	\$ 88,887,451	\$ 88,887,451
Institute of Education Sciences	\$ 447,956,000	\$ 475,892,569	\$ 371,496,000 ³
TOTAL ⁴	\$53,112,759,000	\$55,662,467,609	\$57,339,052,000 (3%)

1 President Bush's budget proposes a new "Secondary and Technical Education" program to replace the Perkins program.

2 This represents the maximum award amount that a student could receive, not the appropriations level.

3 President Bush's budget would eliminate approximately \$124 million in funding for regional education laboratories, comprehensive regional assistance centers, and other technical assistance entities and instead create "Comprehensive Centers" funded at \$27 million.

4 This total reflects only the appropriations for discretionary education programs in the U.S. Department of Education. Spending for mandatory or "entitlement" programs are not included in this total because the amount that must be appropriated for these programs is set by law.

Source: *the Center on Education Policy*, March 2004

III. An even greater increase for state and local governments

The reform illustrates a spreading practice which consists in transferring federal costs and competences to state and local governments which are already strapped for funds and struggling to balance their budgets.

When Congress enacted NCLB, there was little attention paid to what it would actually cost the states and local governments. One problem with the new law is that it imposes test-based accountability to all students in public schools, not just those in schools receiving Title I funds. This means that federal requirements concern all public schools while federal dollars are funnelled to some schools only. And as evidence started building up showing that the costs incurred by the reform would vastly exceed the additional revenues received from the federal government, the debate started to sour. Several studies which broke down the costs of all these different programs (new assessment procedures, data collection, remedial education, etc.) revealed a gap that ranged from 15% to 46%, depending on the state, between current educational resources and what would be needed to meet federal requirements⁹. Those increases were even greater for rural areas and special populations of students.

A few examples

- In 2002, the New Hampshire School Administrators Association estimated that NCLB would bring in about 77 federal dollars per student on average while creating at a minimum \$575 per student in new financial obligations. This translates into a 7.5 to 1 ratio¹⁰. The additional costs included \$5.5 million for assessments, \$11.7 million to meet the highly qualified teacher requirements, \$16.6 million to attract and retain other professionals, \$35.4 million for new technology, and \$62.8 million for special education students.
- Vermont, which considered not participating in the federal program, came to the same conclusion. While the federal government provided a total of \$51.6 million, the new law would require a minimum of \$158.2 million (a 15.5% increase) in new expenditures by the state, that is to say a 3:1 ratio¹¹. The state reckoned that the federal increase it would receive under NCLB amounted to an increase of less than 0.5 % of state expenditures on education, not really worth the trouble. The estimated additional costs included \$149.5 million for remediation, \$0.5 million for additional tests, and \$8.2 million for test administration and instructional time lost to testing.
- In Maryland, the total cost of implementing NCLB was deemed likely to outweigh the federal funds the state receives, namely because of the need to develop a new assessment program that currently does not exist¹².

Worse still, NCLB was voted at a time when state governments faced their biggest decline in revenues in at least twenty years. In nearly all of the 50 states, because of the economic slowdown of the early 2000 and the fiscal policy of the Bush administration, to which must be added the increased costs of programs such as TANF (Temporary Assistance to Needy Families, now entirely administered by the states) and Medicaid (in 1997, welfare represented 17% of states' budgets, now it eats up 20%), states were all struggling financially. Therefore, since apart from Vermont, all states are constitutionally forbidden from running a deficit, this meant budget cuts and a cap on new spendings. In 2002, 37 states cut spendings for a total amount of \$12,6 billion and another \$14,5 billion in 2003¹³. Public sector employees were laid off in seventeen states including Connecticut, California, Colorado, Massachusetts, Oregon, South Carolina, Utah and Virginia. Social programs were axed (including Medicaid, professional training and housing aid), as well as state and local budgets allocated to the upkeep of natural sites. Police departments, firefighters, schools and public colleges faced the same predicament. In Massachusetts for instance, tuition fees for public colleges were raised 24% in 2002.

The new education reform could not have come at a worse time.

Another, less publicized, problem is linked to changes in the way Title I funds are distributed between high and low-poverty schools. Because new, more accurate formulas were set up to distribute these funds, more dollars are now going to the higher-poverty schools, and less to the lower-poverty ones. While this shift in distribution may seem a worthwhile goal (help the truly poor), schools and districts in which poverty is less severe are in fact losing out because they still need to implement the strict assessment measures mandated by the law. This is also one reason why critics argue that NCLB is underfunded in spite of the large federal amounts received, including John Kerry who now echoes the protest movement and estimates that the law has been \$26 billion short since 4 years¹⁴.

Usually, the federal government provides revenue sharing to help states weather economic crises. But this time, during a winter 2003 meeting of the National Governor's Association, President Bush made it clear he would not provide fiscal relief to the states, given the size of the federal budget deficit and the costs of the war in Iraq. He promised instead more flexibility for states on spending and asserted that his plan to eliminate taxes on corporate dividends would boost the economy¹⁵. In May 2003, the federal government finally relented

and Bush signed the federal *Jobs and Growth Tax Relief Reconciliation Act* which authorized and funded \$20 billion spread across two years (FY 2004 and FY 2005), with half devoted to flexible grants to states and half to help support Medicaid. While this aid was welcomed by states, it was temporary and relatively small.

Most states raised their debt levels (to such an extent that financial analysts dropped California's credit rating from 'AAA' to 'BBB' in 2003) and all had to raise taxes, which put them totally at odds with the much touted federal policy of tax cutting. Income tax was raised in New York, Massachusetts, California, Oregon, and New Jersey for example, while the sales tax went up in Tennessee, Kansas, Nebraska, and North Carolina. Other taxes (on tobacco, corporate tax, taxes on capital gains) also went up. And of course, many local governments had no choice but to raise their property tax (an unpopular measure which voters sometimes oppose – cf. Proposition 13 in California, and the recent refusal of Ohio voters during the November 2nd election referendum).

This funding crisis was reverberated all the way down the system. As states resisted spending increases, so local governments and school districts were transferred an ever growing share of the burden. Schools themselves, via their PTAs, now lead fund-raising campaigns and call upon the generosity of private donors. Resorting to private funds has become common practice in public schools all over the country. Foundations, businesses, even parents are increasingly asked to chip in. School administrators have become part-time lobbyists, on the lookout for potential sponsors likely to bet on their school and help them make ends meet. While this trend toward private funding is not new and has been developing in the United States for about 15-20 years now, the NCLB has greatly accelerated its effects.

Although states did see an improvement in revenue shortfalls and budget gaps for FY 2004, they still face a total budget gap of \$2.8 billion. Early in 2004, opposition to the new law started to spread to the right. Republican lawmakers in a dozen or so states passed anti-No Child Left Behind resolutions. The discontent first boiled over in Utah, where the House attacked the law as an infringement of states' rights.

IV. A critical assessment of the major changes required by the reform

➤ Adequate Yearly Progress (AYP)

Starting with the 2002-2003 school year, all states and districts were required to come up with an accountability plan that had to be approved by the Department of Education, and publish annual report cards that measure each school throughout a state. Schools must detail how they intend to make AYP, or “adequate yearly progress” toward meeting state standards.

For most states, this meant a change in the assessment tools already in place and absolute priority given to gains in scores on reading and math tests. They also had to establish a single accountability system for all schools, since, as we have seen before, all public schools are to be assessed. States with two systems—one for Title I schools and another for other schools, mostly middle and high schools—had to find ways to merge them.

But this issue raises a host of other problems as well.

Since the law leaves it to the states to determine the rigor of their standards, tests, and passing scores, states with tough standards are disadvantaged (they will mechanically have more failing schools), and may be tempted to lower the bar (an option chosen by Michigan for instance), so as to lower the amount of yearly progress required to avoid both sanctions and the necessary costs of improving the failing schools.¹⁶ Because of the way the law was set up, the states with the lowest proficiency standards look the most successful. And indeed, huge variations were observed between states, with as high as 76% of schools in Florida and 68% in Missouri not making AYP and as low as 5% in Alabama and Wisconsin, 8% in Vermont and 13% in Texas. To try and guard against this perverse effect, NCLB requires that all 50 states and the District of Columbia participate every 3 years in the National Assessment of Educational Progress exam (NAEP). State scores will be compared so that those states whose scores on NAEP are not consistent with the number of failing schools will feel pressured to raise their standards.¹⁷ "There's nothing we can do to prohibit states from setting low standards, but we can make things very public," explains federal assistant Secretary of Education Susan B. Newman¹⁸.

➤ Testing and assessment procedures

Under the law, all students are to reach “proficiency goals” by 2013-14. This proficiency is narrowly defined according to test scores in only two subjects, reading and mathematics, which means that the academic performance of schools is now strictly correlated to those two subjects alone.

Aside from the fact that many educators question the intrinsic value of high-stakes testing (which mostly measures the aptitude of students to be drilled to take tests, and not their actual learning as measured by the ACT or SAT for instance¹⁹), from a technical viewpoint, many states lacked the administrative capacity and technical expertise to implement such an ambitious test-based accountability system. Here again, it was a money issue²⁰. In June 2003, only 11 states had accountability plans that were fully approved by the Department of Education.

The law proved not only costly to implement, but several incoherences soon brought to light its more rigid aspects: one such problem was the way data on student achievement in each district and school had to be “disaggregated”, that is to say broken down by race, ethnicity, gender, disability status, migrant status, English proficiency and poverty status. Since very few states had ever reported such detailed information, this added an extra layer of administrative procedure. And because of this requirement, a school for which scores went up for all students taken in bulk could still be labeled “failing” if scores for one subgroup missed the mark. The law also required that 95% of students take the tests, which meant that schools could fall short of the 95% mark if one single student was missing on the day the test was given²¹.

➤ Transfer options

If a school misses the target for two consecutive years, NCLB gives parents the option of sending their children to a better performing school in the district. The district must pay for the extra expense. In case all schools in the district have been identified by the state as “in need of improvement”, the state may authorize parents to choose better schools in neighboring districts.

This rapidly proved both difficult to put in practice and unpopular among receiving schools which openly opposed transfers on grounds of overcrowding and fearing that the new students

would pull down their test scores.²² In addition, some of the schools that students could transfer to were actually worse than the school students wanted to transfer from, depending on what kind of rating procedures were taken into account. Since all the states already had such rating systems in place before the law was enacted, most of them simply added the new one on top of it, a move which was very often confusing for parents and educators alike²³. In Florida for instance, most of the state's public schools did not meet one or more targets for NCLB in 2003, whereas Governor Jeb Bush had announced that schools were doing better than ever on the state's "A-Plus" education plan. In some cases, schools would make the test for reading, but not for maths. Worse, sometimes incoherences appeared between two sets of **federal** evaluation: a school deemed "failing" under the AYP criteria would actually be praised by the USED's Blue Ribbon Schools Program, which is recognized as a mark of excellence.

The result was a logistical nightmare, confusion over data, rising conflict between state and federal evaluation systems, and an increasingly unpopular reform. Numerous appeals by schools were brought forth, many of which were successful.

The assumption underlying this transfer option was that a parent could do a better job of choosing his own child's school and that competition would make all schools better. This was often described as giving low income families the kinds of choices that white affluent suburban families had. Such competition, it was hoped, would lead to real alternatives and better outcomes for disadvantaged families. But no evaluation of the number and quality of choices available was really undertaken.

In fact, only a tiny minority of families (2%) did actually exercise their transfer option.

This strategy contrasts sharply with previous school reforms, in which poorly-performing schools were given additional resources and flexibility, not sharp sanctions. Before NCLB, there was no serious enforcement of the federal requirements and no states lost federal money for non-compliance.

➤ Supplemental education services

The second market-based reform was the product of a compromise between voucher supporters and opponents. Though vouchers were not part of NCLB, the supplemental

services policy stems from the decision to give some of the money used for school reform to individual parents in schools that are not improving fast enough. Here also, the basic idea was that the market would provide better alternatives for parents, and that parents could choose something that would work better than the educators.

If a school fails to reach the target for a third year (including years prior to enactment of the NCLB Act), it must offer supplemental after-school services. These include tutoring and other academic services. Districts must annually notify parents and describe for them a list of providers which have been approved by the state. The providers must give parents and districts information on the progress of each student they serve. This option was more successful than the transfer: in the 2002-2003 school year, 46% of the students eligible for this tutoring received it.

This is one of the nation's largest experiments in educational capitalism : private companies are openly invited to offer tutoring in failing public schools. This effort is financed with federal money previously spent on the schools themselves. It is estimated that some 1,000 companies, nonprofit groups, religious groups or educational agencies, often unconnected to the schools, have jumped on the bandwagon, rushing into this newly opened educational niche which experts say could be a \$2 billion-plus tutoring market. Most companies pay instructors \$18 to \$25 per hour, and some as little as \$12 per hour, far below what most public school teachers earn. The NCLB also opens the door to alternative certification.

➤ Teacher qualification

Under the NCLB's Title II "Preparing, Training and Recruiting High Quality Teachers and Principals", all teachers are to be "highly qualified" by 2005-06 and schools receiving Title I funds must notify parents if an unqualified teacher is in the classroom for more than four consecutive weeks. Emergency certification, which was increasingly employed by low-income schools to fill vacancies is now prohibited.

"Highly qualified" means having a bachelor's degree in the core academic subject taught, being certified or licensed to teach in the state of employment, and having proven knowledge of the subjects taught. Here also, diversity is the rule since states each have different certification requirements: in Virginia and Maryland for instance, test scores above the

median are required, while Minnesota is much more generous and accepts scores at the 25th percentile²⁴.

Even so, at the present time, it is estimated that about 22% of all teachers at the secondary level have not majored or minored in the subjects they teach, and the figure is closer to 30% in math, science, and special education.²⁵ Having all these unqualified teachers pass a competency test will cost both time and money.

Finding competent teachers will also mean raising salaries to attract potential candidates to a profession in which shortages are more often due to low pay and little social gratification. Each year, about one-third of the graduating education majors do not become teachers, while another third stop teaching within the first five years. Last year New York City granted teachers willing to work in disadvantaged schools a 15% pay raise and the starting teacher salary rose from \$32,000 to \$39,000. These increases essentially erased the city's teacher shortage in just one year, showing that if the price is right, supply and demand can quickly be matched²⁶.

In the teacher qualification category also, the reform comes with a big price tag.

Conclusion

If the NCLB is ever to work, it will first take adjustments, fine-tuning the law to accommodate the huge complexities of a decentralized education system with 50 different management styles and techniques. Getting to grips with the nuts and bolts of the law necessarily highlights some incoherences and discrepancies that have to be ironed out. And after its initial unyielding stance²⁷, the federal government is now increasingly accepting to listen to what opponents have to say (the November election was one likely reason): in March 2004, 14 states (Alaska, California, Connecticut, Arizona, Idaho, Louisiana, Maine, Montana, Nebraska, Nevada, New Hampshire, Pennsylvania, Utah and Washington) asked the federal government to revise the stringency of its testing rules and federal officials announced that schools could exempt students with grave injuries or medical conditions from the standardized exams used to rank schools. Schools will also now be permitted to average the

share of students who take the exams over three years, rather than rely on a single year, to achieve the 95 percent minimum. The change to the law is the fourth since December 2003. Earlier changes eased the testing rules for disabled students (December 2003), then students who were still learning English and who will now have one year to learn the language before they can be tested (February 2004) as well as provisions demanding that schools hire only teachers who are qualified for the subjects they are teaching (March 2004), which proved impossible in small rural districts where teachers regularly teach two or three different subjects. In recent months, federal officials have allowed more than 40 states to amend their school accountability systems in ways that have often made it easier to meet the federal standards.

Another necessary prerequisite for the NCLB to work is the unfaltering commitment of all the agents involved in the reform, as well as adequate funds to foot the bill. Yet on both counts, it seems that there is much to be wanting.

The increasing skepticism expressed by the National Governors Association and the National Council of State Legislators is being echoed by educational leaders, especially the NEA which also resents the arbitrariness of some of the law's requirements and the lack of dialogue with education partners, whose judgment and experience were largely overlooked.

Some critics suspect that the current administration's plan is less about fixing the schools than about privatizing the whole system and strengthening the role of religious schools by opening the way to a federal voucher system that sends children to private schools at public expense. Private education companies and Education Management Organizations (a reminder of the HMO system) now represent 9 to 10% of the education market, with companies such as Edison, National Heritage Academies, or White Hat Ventures LLC.

Although, as said earlier, vouchers were not part of NCLB, President Bush's 2005 budget proposal did however include \$756 million for vouchers, while the Supreme Court ruled in its *Zelman v. Simmons Harris* June 2002 hearing that vouchers are constitutional and not an advancement of religion.

Public support also seems to be weakening: the 35th annual Phi Delta Kappa/Gallup poll of public attitudes about the public schools found little support for the strategies that are an integral part of NCLB²⁸. For instance, 61% of the public favored local control of education

over federal or state control and 66% did not believe that a single statewide test was the best way to determine whether a school needs improvement or how well a student is doing (72%). They also rejected the idea of using a fixed standard for judging schools, preferring instead some measure of improvement (84%).

Opposition to the law is gaining momentum today. Doubts are being raised about the real amounts of federal funding and the additional costs incurred by state and local governments are believed to have been largely underestimated. As for the future, what kind of long-term federal commitment can NCLB expect to get in view of the growing federal budget deficit and Bush's refusal to raise taxes ? The figures released in September 2004 by the Congressional Budget Office, Washington's independent budget watchdog, point to a 2004 deficit of \$422 billion or 3.6% of GDP and estimates that for the next ten years a cumulative deficit of \$2.3 trillion could be expected²⁹. The *New York Times* talks of a Pinocchio budget.³⁰

In October 2004, figures showed that schools were improving on the year before. But does this mean that children are learning better, or simply that states and local governments have found a way around federal requirements by bringing down their evaluation criteria? We have seen how states are tempted to tamper with the system in their legitimate quest for cost-effectiveness and budget balance.

The law assumes that schools can achieve totally unprecedented levels of educational achievement for all racial and ethnic groups in a short space of time, and that the threat of punishment and the loss of both resources and the best students will be strong incentives to improve. Yet, at this point in time, for all the reasons examined in this paper, it is doubtful whether the children usually 'left behind' are indeed making progress at school and being given the improved education promised by this over-ambitious reform.

¹ Aside from USED and other government sources (essentially the US Department of Education Budget Service, the Congressional Budget Office and the National Center for Education Statistics), most of the critical information presented in this paper is drawn from several in-depth studies published by the Civil Rights Project at Harvard University (<http://www.civilrightsproject.harvard.edu/>), especially the February and September 2004 reports on NCLB, and the Center on Education Policy, a nonpartisan group (<http://www.ctredpol.org/>), especially the January and June 2004 reports.

² In fiscal year 2004, the federal Education Department's \$63.3 billion appropriation was about 2.7 percent of the federal government's nearly \$2.3 trillion budget.

³ Some states have a higher percentage of their overall budget allotted to education than others : only 13.7% in Connecticut against 34.3% in Wyoming for instance.

⁴ for example, although the law does indeed grant states much greater flexibility in the use of funds for state and local activities than previous laws – since states may transfer up to 50% of the funds they receive for state level activities among Titles II (Teachers and Technology), and IV (Safe and Drug-Free Schools and 21st Century Learning Community Learning Centers) and Title V Part A (Innovative Programs Block Grant.) -- on the other hand, they may not transfer funds **out of** Title I, only into it, and even inside Title I, priorities are set, and school districts must hold back 20% of the funds to provide for choice and supplemental services.

⁵ for an in-depth criticism of NCLB funding, see in particular the April 2 2004 report by Congressman George Miller: *How the Bush Administration Has Failed in Funding and Implementing the Historic Law*, <http://edworkforce.house.gov/democrats/nclbapril2004update.pdf>

⁶ In particular: Title I, for which the President is seeking \$13.3 billion, an increase of \$1 billion over the 2004 level, the “Reading first” program (+9.9%), and the State Assessment Grant Program which helps States in developing assessment tools (+5%).

⁷ Even if the federal share has been slowly inching up over the years, from 6% in 1990 to over 8% today (National Governor's Association & National Association of State Budget Officers, 2003).

⁸ *No Child Left Behind Funding: Pumping Gas into a Flooded Engine?* An Analysis by the Majority Staff of the U.S. House Committee on Education & the Workforce; U.S. Rep. John Boehner (R-OH), Chairman, January 14, 2004, <http://edworkforce.house.gov/issues/108th/education/nclb/nclbfundingreport.pdf>

⁹ see in particular William J. Mathis, *No Child Left Behind: Costs and Benefits*, Phi Delta Kappan, 2003, <http://www.pdkintl.org/kappan/k0305mat.htm>

¹⁰ New Hampshire School Administrators Association, November 26, 2002.

¹¹ Vermont Society for the Study of Education, 2002

¹² Maryland Department of Legislative Services, 2002

¹³ National Governor's Association & National Association of State Budget Officers, 2003.

¹⁴ for a thorough discussion of the intricacies of Title I funding, cf. Thomas W. Fagan and Nancy L. Kober, *Title I funds: Who's Gaining, Who's Losing & Why*, CEP Report, June 2004,

http://www.ctredpol.org/pubs/Title1_Funds_15June2004/Title_1_Funds_15June2004.pdf

¹⁵ Ironically many of the Bush administration tax cuts resulted in lost revenue to states that tie their state income tax rate to the federal rate, because since states pass on the cuts to local governments, many had no option but to raise property taxes.

¹⁶ The same perverse effect was noticed about the size of the subgroups that are to be measured. Since federal law also breaks scores into subgroups -- special education students, blacks, the poor -- if a school misses in just one subgroup, it's failing. But each state decides what size a subgroup is. In Florida for example, a subgroup is 30 students. But in Texas, officials negotiated a larger minimum subgroup size of 50. This means the same school might fail in Florida but pass in Texas.

¹⁷ Often called "The Nation's Report Card," the National Assessment of Educational Progress (NAEP) is the only nationally representative, continuing assessment of what America's students know and can do in various subject areas. As a congressionally mandated project of the National Center for Education Statistics (NCES) within the U.S. Department of Education, NAEP provides a comprehensive measure of students' learning at critical points in their school experience. The assessment has been conducted regularly since 1969. Because it makes objective information about student performance available to policymakers and the general public at national and state levels, NAEP plays an important role in evaluating the conditions and progress of the nation's and individual states' student education at grades 4, 8, and 12. Thus, NAEP can serve as a common benchmark to validate states' progress on their own tests.

¹⁸ Starr, A., “Why Johnny Can't fail: New test standards leave states plenty of wiggle room”, *Business Week*, November 25 2002, pp. 72-74.

¹⁹ Amrein, A. L. & Berliner, D. C. “High-stakes testing, uncertainty, and student learning”. *Education Policy Analysis Archives*, 10 (18), 2002. Retrieved from <http://epaa.asu.edu/epaa/v10n18/>

²⁰ NCLB authorizes up to \$490 million to help states develop and administer the additional tests required by the act, but Congress must appropriate a certain level—\$390 million in FY 2004—or else states can suspend the administration of the assessments required by Title I. Federal appropriations for this line item were approximately \$360 million in FY 2002 and \$387 million in FY 2003. Each state gets a base allocation of \$3 million per year, plus additional federal funds based on the size of its student population, with larger states receiving more money. So while North Dakota received about \$3.5 million from the federal government for assessment development in FY 2003, California received over \$30 million.

²¹ Last December, then in February 2004, the federal government accepted to count out disabled students and students with a limited English proficiency. Cf conclusion of this paper.

²² New York City Public Schools, under Chancellor Joel I. Klein, approved 8,000 transfer requests in fall 2003, which led to the worst overcrowding of schools in years. In Chicago, district officials limited the number of transfers based on school capacity. 270,000 children were eligible to transfer, 19,000 signed up to move, 1,097 students won the right to transfer through a lottery, and only half of them ultimately did.

²³ In this respect, the law will ironically not necessarily lead to better cost-effectiveness and rational spending. By adding more paperwork and taking time away from instruction for testing, test preparation, assessment and the processing of results, it will actually favor the growth of state bureaucracy and regulation.

²⁴ William Beaver, "Can No Child Left Behind Work?", *American Secondary Education* 32 n°2, 3-18 Spring 2004.

²⁵ Winter, G., "A quest to up grade teaching", *The New York Times*, January 22 2003, p. B6.

²⁶ Rothstein, R., "Teacher shortages are usually a myth", *The New York Times*, September 25 2002, p. B8.

²⁷ Rod Paige, the US Education Secretary, even called the NEA a terrorist organization (he later excused himself).

²⁸ Rose & Gallup, 2003.

²⁹ <http://www.cbo.gov/ftpdocs/57xx/doc5773/08-24-BudgetUpdate.pdf> (retrieved October 4th 2004).

³⁰ February 3, 2004