

Dr. Dave: I recently heard a local school teacher describe the federal No Child Left Behind Law as a “ticking time bomb.” What does he mean? Should I be worried?

A. No Child Left Behind (NCLB) is the term applied to the 2002 reauthorization of the 1965 Elementary and Secondary Education Act. NCLB dramatically changes the nature of the federal role in local schools. Previously, that role was limited to providing a modest level of funding to schools attended by students with special needs.¹

NCLB increasingly involves the federal government in virtually all aspects of local education. Its goal is widely shared: increasing the accountability of schools and raising the level of educational performance of all students, especially minorities and students from low income families. Indeed, the Act passed with substantial bipartisan support, 91 to 8 in the Senate and 384 to 45 in the House.

The devil is in the details, and NCLB’s details have spawned an increasing tension between school districts and the federal government, in red states and blue states alike.

Here’s the problem in a nutshell. NCLB requires every school to raise all students to the “proficient” level of achievement in reading and math by 2014. To measure progress towards the goal, the law requires a dramatic increase in educational testing. All schools must test all students in reading and math in the third through eighth grades, and at least once in high school.²

Schools must report their test scores by ten sub-groups (i.e. race, eligibility for free or reduced price lunches, special needs, etc).³ At least 95 percent of the students in each subgroup must take the tests. Each school’s progress is measured by the increasing percentage of students passing the test in each and every subgroup.

Schools must make “adequate yearly progress” toward the goal of 100 percent proficiency in 2014. Schools that do not meet their targets for each sub-group are labeled “in need of improvement” and subject to escalating sanctions.

¹ Federal spending accounted for a little over 7 percent of some \$400 billion in total K-12 education spending in 2004.

² The law required states to test at least once in grades 3-5, 6-9, and 10-12 beginning in 2002-2003, and must have their full testing systems in place by 2005-2006. Twenty-three states and the District of Columbia currently meet the testing requirements for 2005-2006, up from 20 states last year.

³ The ten sub-groups are: total population, special education students, English language learners, white, African-American, Asian/Pacific Islander, native Americans, Hispanic, other ethnicities, and economically disadvantaged.

- After two years of failing to meet the progress goals, schools must allow their students to transfer to other public schools, with the school district covering transportation costs.⁴

- After three years, schools must pay for supplementary educational services for students, such as tutoring by private firms.

- After four years, schools must take significant corrective actions such as replacing staff or implementing a new curriculum.

- After five years of failure, the nuclear option goes into effect. Schools face complete restructuring which can mean anything from state takeover to imposing private management on public schools.

The nation is entering the third school year since the act was passed. Sanctions have been imposed on underperforming schools, and grimmer ones loom in the near future.

The NCLB law also provides mandatory standards for increasing the quality of teaching. I'll get to that in a minute.

With me so far? OK, now it gets a bit complicated.

Most states and educators see value in an aggressive plan to improve student performance. They support testing as a way of measuring student performance, and agree that for too long, states and schools have been able to hide poor outcomes for poor and minority students behind aggregated test scores. But they point to several very significant flaws in NCLB.

The most important is that NCLB provides funding only for testing and assessment, not for actually improving student performance, and it provides only a fraction of the funding needed even for testing and assessment. This coupled with the fact that the sanctions will reduce the money schools, especially poor schools, have available for improvement, means that the ultimate impact of NCLB could be to undermine the ability of schools to reach its widely shared goals.

The law provides \$2.3 billion from 2003 through 2007 for states to develop and execute assessments.⁵ The Government Accountability Office (GAO) estimates the total costs to states for testing and assessment over that period will be between \$1.9 billion and \$5.3 billion, depending on the types of tests used.⁶ The low figure is if the schools only used

⁴ Some schools were already identified as needing improvement under the 1994 version of the Elementary and Secondary Education Act. These schools were immediately required to offer public school choice, and supplemental services beginning no later than 2002-2003.

⁵ Each state receives \$3 million, regardless of size, and an additional allocation based on its share of the school-age population.

⁶ U.S. Government Accountability Office, [*Title I: Characteristics of Tests Will Influence Expenses; Information Sharing May Help States Realize Efficiencies*](#), GAO-03-389, May 2003.

straight multiple-choice tests; the high figure is for tests that combine multiple-choice, short-answer and essay questions, which provides a substantially better evaluation of student performance. A median figure of \$3.8 billion is what the current mix of state testing costs, which means states bear an additional cost of \$1.5 billion for testing mandates alone.

A Minnesota study identified \$42 million in new federal funding and \$39 million in new costs, not counting the costs of complying with sanctions, meeting "qualified teachers" requirements, and raising student performance. Ohio calculates that the state needs \$104 million for administration alone, but is getting only \$44 million in new federal money.⁷

Despite the sweeping new mandate, federal funds are increasing only modestly. The increase in federal education spending following passage of NCLB amounts to about 1 percent of all K-12 education spending. On the other hand, one recent study, based on an examination of ten states, indicate that to meet the Act's objectives could require schools to increase their budgets by some 20-35 percent per year over the next four years.⁸ The New Hampshire School Administrators Association estimated that its state will receive about \$77 in new federal money for each student, while the obligations imposed by the law will cost at least \$575 per student.

School districts in Vermont, Michigan, and Texas have filed a suit arguing that NCLB violates federal law against unfunded mandates.⁹ Moreover, Section 9527 of the act itself states that nothing in the Act authorizes the federal government to "mandate, direct or control...(any local or state education agency) to spend any funds or incur any costs not paid for under this act."

States are concerned that NCLB's requirements and sanctions may be counterproductive. The additional costs of annual testing in math and reading, for example, may force the states to drop testing of a wider range of subjects. Budget constraints in Missouri have forced the state to skip its science and social studies tests for two years in a row. The Illinois legislature passed a law prohibiting the state from testing in any subject not mandated by federal law, including social sciences and writing.

Some districts are finding that the costs of sanctions for failing to make adequate yearly progress exceed the amount of federal money they receive, encouraging them to opt out of federal funding entirely. Two states, Colorado (SB 50) and North Dakota (HB 1365) are debating bills that would allow districts to opt out of the law and raise local taxes to compensate for the federal money they forgo. Two districts in Illinois have declined Title I money rather than comply with penalties for failing to make adequate yearly progress for students with disabilities.¹⁰ In 2003-2004 three districts each in Connecticut and

⁷ William Mathis, *EdWeek*, 2004

⁸ See William Mathis, "No Child Left Behind: Costs and Benefits", *Kappan*. May 2003.

⁹ Ed Barna, "[Schools will file lawsuit over federal funding](#)," *Rutland Herald*, February 1, 2005.

¹⁰ Consolidated High School District 230, Orland Park, Illinois, declined \$136,000 in federal assistance for the 2004-2005 school year; neighboring Township High School District 211 in Palatine, Illinois declined \$238,000. Neither of the districts made adequate yearly progress for

Vermont abandoned the Title I designation for at least one school in the district because they believed it was not cost effective. Other districts are shifting Title I and district funds between schools to avoid penalties.¹¹

Some states argue that it is simply impossible to comply with some of the NCLB sanctions. For example, after two years of not making adequate yearly progress for any one subgroup, schools must allow students to attend other public schools. But there are rarely slots open. In Chicago, 200,000 students are eligible for transfer; only 500 spaces are available in higher-performing schools. Baltimore had 30,000 students in 83 failing schools in 2003, but only 11 possible receiving schools with fewer than 200 open seats. One third of the nation's schools are already using portable buildings because of overcrowding.¹²

The Department of Education insists that schools add more classrooms, hire more teachers or take whatever steps are necessary to allow school choice. Last year, New York City found slots for all students who wanted to transfer, in part, by increasing class size in the receiving schools. Class sizes in some schools swelled from the low 20s to over 30, arguably reducing the quality of education in the receiving school.

NCLB emphasizes testing, but allows the states to decide the content of the tests and what the passing score is. The law tends to encourage states to lower their state standards so as to avoid being penalized. The rigor of state tests varies greatly, which makes it impossible to compare them across state lines.

Since the 1980s, students have been taking a national educational test called the National Assessment of Educational Progress (NAEP). This is an annual test for 4th, 8th, and 10th graders. All students in the same grade take the same (very challenging) test.

It is instructive to compare state test scores with the scores by the same students on the federal test. Thirty-nine percent of Wyoming students achieved proficient in the state assessment, and 34 percent achieved proficient on the NAEP. This might indicate that the state and federal tests were equally rigorous. Similarly, 21 percent of South Carolina's students achieved proficient on the state assessment, compared to 24 percent on NAEP. But in Texas, while 86 percent of students achieved at the proficient level on the state

students with disability in the 2002-2003 school year. Two other Illinois school districts are considering taking the same step.

¹¹ Mary Ann Zehr, "[Wary Districts Shift or Forgo Federal Funds](#)," *Education Week*, September 14, 2004. For example, a Suffolk, Virginia school district chose to shift all of its \$2.6 million in Title I money to elementary schools rather than continuing to spend part of the money in two of its four middle schools. The two schools had not made adequate yearly progress for African-American and low-income students. By shifting the money, the district avoided having to let students at the low-performing schools transfer. The school board says the schools will continue to have the same services, but they will be financed with district funds.

¹² Gerald W. Bracey, [Setting the Record Straight](#), George Mason University and High/Scope Educational Research Foundation, 2004.

assessment, only 26 percent passed the NAEP. North Carolina's disparity between the state and federal test was equally wide.¹³

The irony here is that schools in Wyoming will have a much more difficult time than Texas schools in achieving the goal of 100 percent of their students passing the state tests, even though Wyoming's students appear to be performing at a much higher educational level than Texas students based on a direct comparison.

Since each state gets to define "adequate yearly progress", many have opted for plans that require little improvement initially and large gains as 2014 approaches. Consequently, the first analysis of the law's impact found 1,500 failing schools in Michigan and none in Arkansas. Based on these states' usual performance, this makes little sense.¹⁴ Michigan responded by lowering the percentages of students who had to pass to get a school off the needs improvement list; for example, lowering the required passing rate on high school English from 75 percent to 42 percent. This reduced the number of nonperforming schools by 80 percent.

The NCLB law also strives to improve teacher quality. Quality of teaching and instruction may be the single most important variable in student academic progress that schools can directly affect. NCLB requires "highly qualified teachers." The measure used doesn't measure the quality of their teaching but the number of their credentials. There is no help for teachers to meet the new credential requirements. Rural states in particular have complained that the expectation for teachers to have a degree in each subject they teach is unreasonable.

This has led to some instructive confrontations and one very recent dramatic retreat by Washington. Up until January 2005, the U.S. Department of Education had insisted that 3,800 North Dakota teachers were not qualified because they lacked the credentials needed by the NCLB.¹⁵ Faced with an imminent breakdown of North Dakota's school system – a system that by all accounts, performs very well – in February 2005, the Department decided that North Dakota teachers were qualified.¹⁶

The NCLB law also introduces an unprecedented level of federal control over local school curriculums. This led five Madison, Wisconsin elementary schools to reject some \$2 million in federal Reading First funds (part of NCLB). Continuing to participate in the program would have meant gradually ceding control over how reading is taught in Madison's schools, as the Reading First program requires all teachers to use scripted lessons. The schools' administrators didn't think a change in curriculum was needed.

¹³ RAND Corporation, [Research Brief: Meeting Literacy Goals Set by No Child Left Behind](#), 2004.

¹⁴ Gerald W. Bracey, [Setting the Record Straight](#), George Mason University and High/Scope Educational Research Foundation, 2004.

¹⁵ The NCLB requires that teachers have a major in the subject they are teaching. North Dakota elementary school teachers major in elementary education, which was, apparently, not deemed a subject by the federal Department of Education.

¹⁶ [Grand Forks Herald](#), February 3, 2005.

More than 80 percent of the district's third graders scored proficient or better in the state's last round of testing.¹⁷

Dissatisfaction with NCLB has led two-thirds of state legislatures to debated whether to opt out of the law altogether.¹⁸ But instead of rejecting the law – and the money – outright, most states are seeking waivers from portions of the law.

Forty-seven states have asked the Department of Education for permission to relax their accountability standards, and 42 of these had been approved by November 2004.¹⁹ For example, Missouri lowered its targets for the percentage of students who must score at the “proficient” or “advanced” level from 38.8 percent to 26.6 percent in reading and writing, and from 31.1 percent to 17.5 percent in math. Instead of large increases every three years, the state will gradually increase its targets over a 10-year period.

Connecticut is seeking a waiver from the requirement for annual testing in grades 3 through 8, instead preferring to continue its practice of testing every two years. The state also wants to judge schools on individual student performance over time, rather than the distribution of scores within the school in any given year. It wants to focus on support, rather than penalties, for schools deemed in need of improvement.

The teacher who called the NCLB a “ticking time bomb” was referring to the ratcheting up of sanctions. As schools move closer to having to meet the almost impossible goal of having 100 percent of all its students pass the state test, an ever-greater percentage will be subject to ever-greater disciplinary action.

The NCLB law itself, however, appears to offer considerable flexibility to the federal Department of Education to deal with problems. Section 9401 of the law states that the Secretary of Education “may waive any statutory or regulatory requirement” of the act for states or districts that request such waivers, provided they show how the waivers would increase the quality of instruction for students or improve their academic achievement.

The pressure cooker is on the stove. What will happen to our local schools systems? Don't touch that dial.

¹⁷ [Memo from District Superintendent Art Rainwater](#), with supporting data, on decision to reject federal funds, October 14, 2004. Carol Carstensen, “[Why Madison Schools Rejected Federal Grant](#),” *Wisconsin State Journal*, November 2, 2004.

¹⁸ Utah has been the most vocal. Last year its state House of Representatives passed a bill to that effect, and a similar bill is being considered this year. House Joint Resolution 3 asserts that Utah should rely on its own “proven system of student accountability” unless the federal government amends the act, provides adequate funding and extends the existing waiver authority.

¹⁹ Lynn Olson, “[Data Show Schools Making Progress on Federal Goals](#),” *Education Week*, September 8, 2004.