

No Child Left Behind Update

How the Bush Administration Has Failed in Funding and Implementing this Historic Education Law



April 2, 2004

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Dear Colleague:

As our schools work to improve our educational system, significant attention continues to be directed towards the No Child Left Behind Act (NCLB). This Law, passed two years ago with bipartisan support, seeks to ensure all children - regardless of income, background, or race - with an equal opportunity at a high quality public education.

The goal of the law is simple: to ensure that all students—not just some students, but all students—improve their learning at school by eliminating the achievement gap between different groups of students. That is why the law requires school systems to look at not only how its students are doing as a whole, but at how particular groups of students are doing. Schools that are succeeding for some students—such as only the white students or only the wealthy students—will no longer be considered successful. To be considered successful, they must succeed with all children.

NCLB helps by targeting resources to the schools that face the greatest challenges—schools that are having trouble meeting the needs of some students. Unfortunately, the Bush Administration is failing our schools by breaking its promise to fully fund NCLB. Democratic Members have been fighting to ensure our schools have the resources and guidance they need to implement this law.

This report provides an update on the NCLB funding shortfall and Democratic efforts to reach full funding, an overview of recent announcements by the Department of Education that expand NCLB flexibility sought by Democrats, and Democratic efforts to ensure that schools can implement this important law.

Many of us will be speaking to teachers, students, and parents during the April District Work Period. I hope you will find this information useful as you prepare for these discussions.

Sincerely,

/s/

George Miller
Senior Democratic Member
Committee on Education & the Workforce

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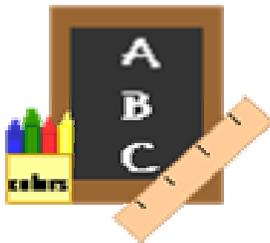
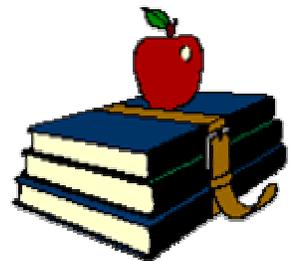
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Executive Summary

The No Child Left Behind Act (NCLB) was enacted into law in January 2002. Since that time, our schools, principals and teachers have been working hard to implement its reforms for our public schools. NCLB has brought a new focus to public education. Schools now focus on all children, including disadvantaged children. States are working to upgrade the quality of their teachers, with the goal of ensuring that all children are taught by highly qualified teachers who know the subjects they are teaching. Our public schools are determined to meet these challenges. We need to ensure they have the resources and tools to succeed. Democratic Members have been fighting to get the funding promised to our schools under this law.

The best efforts of our schools and teachers have been frustrated by the Bush Administration's failure to provide the resources he promised to help schools put these reforms in place. Since NCLB was enacted, our schools and our children have been shortchanged by \$27 billion. President Bush's FY 2005 budget breaks his promise to fully fund NCLB by \$9.4 billion. These shortfalls are complicated by the continued financial crisis facing many of states. At the very time when the Federal government needs to keep its funding commitments to our schools, the Bush Administration and Republican-led Congress have let them down.



Funding is not President Bush's only NCLB failure. Rather than focus on improving our public schools, the Bush Administration has issued confusing and contradictory regulations on NCLB as it continues to advocate for private school vouchers. Common sense flexibilities have all too often been delayed or denied. In the recent months and weeks, the Bush Department of Education has responded slowly to pressure from Democrats and educators to provide greater flexibility while meeting the law's objectives. Areas in which the Bush Department of Education has recently provided flexibility on include: testing of children with disabilities and limited English proficiency, qualifications of teachers in rural areas, and the testing participation requirements. But this is not enough.

Democratic Members have repeatedly called upon Secretary Paige to properly implement NCLB in a manner that doesn't create new barriers for schools. The Department of Education has responded to some of these requests through its recent regulatory announcements, but continues to reject Democratic requests not to penalize schools for the Department's failure to issue regulations in a timely manner. We want states to be allowed to apply the new regulations in assessing schools' performance from last year. Had the Department of Education issued the regulations on time, many schools would have met NCLB's accountability goals rather than appearing on State lists of non-performing schools. Penalizing schools for the Department's delay simply isn't fair to America's educators, or the children they serve. Democrats continue to

press this issue, and are redoubling our efforts to fight for fair application of these regulations.

NCLB Funding Shortfall

Before Congress passed the No Child Left Behind Act (NCLB), President Bush made a commitment that if Congress enacted reforms to improve public schools, he would provide the resources. He has not kept his commitment. The NCLB funding shortfall to date is nearly \$27 billion. The President's Budget for FY 2005 underfunds NCLB by \$9.4 billion.

NCLB Funding – FY 2002-2007

(in billions of dollars)

	FY 2002	FY 2003	FY 2004	FY 2005
Authorization¹	26.4	29.2	32	34.3
Appropriations	22.2	23.8	24.5	TBD <i>Bush request: 24.9</i>
Shortfall	- 4.2	- 5.4	- 7.5	- 9.4

As part of the cumulative NCLB shortfall, the recent Bush Budget undercuts many of NCLB's critical priorities:

- ✚ Nearly 5 million disadvantaged children would not receive additional help in math and reading. The Bush Budget underfunds the Title I program by \$7.2 billion.
- ✚ Nearly 15,000 teachers would be denied high quality professional development over the past three years due to his freezing teacher quality funding. This will result in 325,000 students being taught by teachers without necessary training and professional development.
- ✚ The Bush Budget proposes the 4th straight freeze for the 21st Century Community Learning Centers program. The Bush Budget shortchanges this program by \$1 billion, leaving 1.4 million children without safe and nurturing after-school programs.

As States and local communities continue to suffer from severe budget shortfalls, inadequate Federal investments will further jeopardize the education reforms of NCLB. Schools desperately need resources to implement these reforms. Now is the worst possible time for the Bush Administration to renege on funding promises made to America's schools, their teachers and our children.



¹ Totals assume continuation of programs without authorization levels defined in NCLB at FY 2002 levels.

Guidance and Regulations Recently Issued by the Department of Education

NCLB and Special Education Students

Opponents of NCLB charge that it sets unrealistic standards for students with disabilities and unfairly holds schools accountable for their results. In reality, while NCLB requires schools to report on the educational progress of children with disabilities and includes them as an Adequate Yearly Progress (AYP)² subgroup, schools have some degree of flexibility in how they test students with disabilities and in how they count these results toward making AYP.

Democratic Members have worked to ensure that regulations allow the academic progress of these children to be measured properly. Proper implementation of NCLB will ensure that schools are not labeled unfairly as non-performing due to the test results of children with disabilities. In addition, Democratic Members have fought hard for full funding of the Individuals with Disabilities Education Act (IDEA). Republicans also promised to fully fund IDEA once legislation reforming this law passed the House. The Republican leadership has already reneged on these promises, leaving schools without sufficient resources to educate children with disabilities.

Background

NCLB requires states to include the nearly 6 million elementary and secondary children with disabilities in their accountability systems, and to hold children with disabilities to the same grade level standards as their peers. This is important because when they are excluded from accountability systems, two things often occur: 1) rates of referral to special education increase dramatically as schools attempt to avoid being judged based on the scores of students who may be struggling to reach the standards (although they may not be disabled), and 2) students with disabilities do not necessarily receive the academic attention they deserve to learn at their highest potential.



Special Education Regulations

The Department of Education recently issued regulations requested by Democratic Members that allow states to provide students with disabilities with accommodations, such as increased time or the use of assistive technology, to ensure that their unique needs are taken into account as they participate in the assessment process. The number of students who can receive accommodations is not capped.

² AYP is the centerpiece of the NCLB accountability system for school districts and schools. AYP is calculated based on the performance of subgroups of children at each school. Subgroups include children with disabilities, children with limited English proficiency, children from low-income families, and children of major racial and ethnic groups. AYP measures progress based on subgroups so the achievement of all students are considered in a school.

These regulations also allow states to adopt alternative achievement standards for children with the most significant cognitive disabilities. The regulations also provides flexibility on how states include assessment scores based on the alternative achievement standards in AYP calculations. States are permitted to use the alternative achievement standard for students with the most significant cognitive disabilities, subject to a cap of one percent of all students assessed. States can also seek exemptions to the one percent cap if they have a larger population of students with the most significant cognitive disabilities. Simply stated, these regulations translate into more flexibility for schools to properly assess and account for the academic success of children with disabilities. This also means that schools will not be unfairly identified as non-performing due to the test results of children with disabilities.

The Bush Administration can and should do more to help schools meet the assessment needs of children with disabilities, such as:

✚ **Offer Consistent and Timely Regulations.** Guidance from the Department of Education on this issue has been slow and contradictory. In August 2002, the Secretary proposed a regulation to allow states to use alternative achievement standards for some students but said the number of proficient scores used toward AYP could not exceed 0.5 percent. However, a final December 2002 regulation contradicted this, stating that alternative achievement standards were not allowed. In June 2003, the Department issued a final regulation allowing states to develop and use alternative achievement standards, but only allowed for states to count the scores for a maximum of 1.0 percent of the students.

✚ **Fully Fund IDEA.** The President's budget proposal for next year includes \$11.1 billion for IDEA state grants, which is \$2.5 billion less than authorized in H.R. 1350, the IDEA reauthorization bill passed by House and supported by the White House last year. Full funding would equal \$22.4 billion next year. Even though full funding was promised once reforms to IDEA were adopted, the Republican leadership has reneged on this commitment.



NCLB and Limited English Proficient Children

The Department of Education recently announced new regulations requested by Democratic Members that will help students who are new to this country and the English language while also giving states and local school districts greater flexibility to meet the requirements of No Child Left Behind.



Assessing Limited English Proficient Students

Limited English proficient (LEP) students who are new to the United States often have a difficult time participating in assessments due to language barriers or the lack of schooling prior to arriving in the U.S. from their native countries. This can make it difficult to assess their content knowledge in reading and other language arts in their first year of enrollment in a U.S. public school.

Just last month, the Department of Education changed the assessment requirements of NCLB regarding LEP students. While all LEP students are required to take an English language proficiency assessment and the math assessment, the Department of Education excuses them, during their first year of enrollment in U.S. schools, from taking the reading/language arts assessment. Schools are also permitted to calculate AYP without including the results of these assessments. Regardless, students would be counted as participants for AYP purposes. This flexibility provides teachers and students more time for English language instruction and academic achievement, rather than focusing on test scores.

Limited English Proficiency Students as a NCLB “Subgroup”

LEP is not a demographic group per se, but a classification that changes as a student gains language proficiency. Its membership can change from year to year with language proficient students exiting each year and new LEP students entering each year. Since LEP students exit the subgroup once they attain English language proficiency, states may have difficulty demonstrating improvements on state assessments for this student subgroup.

The Department of Education responded to Democratic concerns by allowing states to include students who have attained English proficiency in the LEP subgroup for up to two years. This policy is an option for states, not a requirement. It will give states the flexibility to ensure that AYP calculations credit schools and local education agencies (LEAs) for improving English language proficiency from year to year – so schools will benefit rather than being penalized when these children are successful.



The Bush Administration can and should do more to help schools meet the needs of limited English proficient children:

- ✚ Democratic Members have asked the Department of Education to help states develop assessments in the native languages of immigrant children. States need both resources and technical assistance to develop these assessments. Such assessments would more accurately measure the academic skills of limited English proficient students, leading to better instruction and learning.

- LEP children continue to be taught by the teachers with the poorest qualifications. NCLB requires states to ensure all teachers are highly qualified. The Department of Education has provided little technical assistance or oversight to ensure that states are working towards this goal.

NCLB and Participation in Assessments

No Child Left Behind requires all students to participate in a state's annual assessment. At least 95 percent of a school's students must actually take the assessments in order for that school to make AYP. Full participation in assessments will make our schools more inclusive, responsive and fair. However, this 95 percent requirement has been criticized as being too rigid. New regulations by the Department allow schools to average participation rates, providing additional flexibility in meeting the 95 percent requirement. This will ensure that schools are not unfairly labeled as non-performing, simply because a few children are not assessed in any given year.

Average Participation Rate



In order to make AYP, schools must demonstrate that at least 95 percent of all students participated in the assessment. This requirement must be met for all students in a school and subgroups of those students (including ethnicity, poverty, disability, or English language proficiency). A common complaint about NCLB, however, is that schools can miss making AYP if one student in one subgroup is absent during testing. In order to avoid this scenario, the Department of Education announced new regulations allowing states to use data from the previous one or two years to average the participation rate data for a school and/or subgroup as needed. If this two- or three-year average meets or exceeds 95 percent, the school will meet this AYP requirement. These new regulations will ensure that schools are not unfairly identified as non-performing due to substandard assessment participation in any given year.

For example, a school might find that its participation rate dropped to 94 percent for one year. If in the previous two years, the rates were 95 percent and 96 percent then the school may average these three years to meet the 95 percent participation rate requirement.

Medical Emergencies

There are rare circumstances when a student cannot take the assessment during the entire testing window, including make-up dates, due to a significant medical emergency. For example, this could include a student who is recovering from a car accident. These students remain enrolled at the school, although such circumstances might prohibit them from participating in the test during the testing window. New Department regulations now allow schools to omit such students when calculating

their participation rates. This will ensure that schools whose averages might be affected by such situations will not be unduly identified as non-performing.

NCLB and Teachers in Rural Schools

Because of the proven correlation between teacher quality and student academic achievement, NCLB includes provisions stating that all teachers of core academic areas must be "highly qualified." Approximately one-third—or almost 5,000—of all school districts in the United States are considered rural and teachers in these areas are often required to teach more than one academic subject.



In order to assist states in meeting the “highly qualified” teacher requirement, the Department of Education allows teachers in some rural districts who are highly qualified in at least one subject to have three years to become highly qualified in the additional subjects that they teach. They must also be provided professional development, intense supervision or structured mentoring to become highly qualified in additional subjects.

Democrats Efforts to Fairly Apply New Regulations

Thirty Democratic Members of the House Education and the Workforce Committee and the Senate Health, Education, Labor and Pensions Committee recently wrote Education Secretary Paige asking for these new regulations to be used to recalculate last year’s AYP results for schools. The Department of Education took two years to issue these regulations, despite the fact that public schools have been engaged in the challenges of NCLB since the law was enacted. Many schools were likely labeled as non-performing under NCLB because these regulations were not in place last year. This simply isn’t fair and masks the academic progress that many of these schools are making. Secretary Paige has publicly denied this request. Democratic Members have written him to urge him to reconsider this position. To deny schools this common sense flexibility is to show disregard for the efforts they have made to implement NCLB’s reforms.

Conclusion

Democratic Members of Congress are serious about education reform, but have been hindered by the Bush Administration’s ongoing failure to provide our schools with the resources and guidance they need to help all students. The Bush Administration’s credibility gap widens each day that it continues to renege on its responsibility to fully fund and properly implement NCLB.