

**DRAFT 9-6-05**

## **Education Policy Statement**

### **No Child Left Behind**

**Robert B. Kozma, Ph.D.**

The national discussion of educational policy is currently being shaped by the No Child Left Behind (NCLB) Act of 2001. The bi-partisan group of legislators who hammered out this law had a laudable goal: to create provide quality education for all students. We support this goal. But in structure and implementation, this law is deeply, seriously flawed and we recommend its repeal.

In short, the Bush Administration's educational policies and budgets fall far short of the vision that PDA has for a just, equitable, and effective educational system. Indeed it is as if the Administration was trying to so over-burden and under-fund public education as to undermine the system, insure its failure, and precipitate demand for its privatization. While NCLB began as a bi-partisan effort, its principles supported by Democrats and the teachers' unions, this unworkable and punitive law has since been broadly criticized by Democrats and Republicans alike at the national, state, and local levels. Its many shortcomings are reviewed after a brief summary of its major components.

*Summary of NCLB.* As a candidate in 2000, George Bush promised to be the "Education President". The signature legislation that marks the first term of his Presidency is the "No Child Left Behind Act," signed in January of 2002. While the title of the Act implies equality of opportunity, its primary emphasis is on school accountability. There are 7 essential components of the Act:

- Each State is required to have "challenging standards" in reading and mathematics and to test students in grades 3-8 in these subjects every year. Students must also be tested at least once between grades 10-12, starting in the 2005-2006 school year. And in 2007, science will be added to the subject areas that are tested. The results of these tests must be broken down by poverty, race, ethnicity, disability, and limited English proficiency.
- School districts and schools that fail to make adequate yearly progress (AYP) toward the state goals across all demographic groups will, over time, be subject to corrective action. Schools that meet or exceed AYP objectives will be eligible for awards.
- Local education agencies (LEAs; i.e., school districts) must give students attending schools identified for improvement, corrective action, or restructuring the opportunity to attend a better public school, including public chartered school. For low-income students attending persistently failing schools, LEAs must provide funds to obtain supplemental educational services.
- Schools are required to have "highly qualified" teachers and trained para-professionals in each classroom.
- States and LEAs have greater flexibility to move Federal funds across programs, such as those that would otherwise be dedicated for teacher training, educational technology, and school safety.

- The Act provides funding for “scientifically based” reading instruction programs in early grades.
- Military recruiters are guaranteed access to high schools and must be provided with names, addresses, and phone numbers of students unless parents specifically opt out at the beginning of the school year.

*Analysis and Shortcomings of NCLB.* The PDA supports the goal of NCLB to “ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and State academic assessments”. However, there are several serious deficiencies in the Act that actually work against this goal, particularly to the detriment of high poverty neighborhoods, schools, families, and students. In response to these shortcomings of the Act, the National Education Association (NEA) along with school districts in Michigan, Texas, and Vermont recently (*Education Week*, April 27, 2005) filed a law suite in Federal court against the Secretary of Education. Separately, the State of Connecticut has announced that it plans to sue the Federal Government over the Act. And the Republican-controlled legislature of Utah recently passed a law that the Republican Governor promised to sign rejecting parts of the NCLB. Among the identified shortcomings of the Act are:

- States often use “standardized tests” to assess students, in response to NCLB requirements. These tests are engineered to force a distribution such that a few students will score high and score low and many will score somewhere in the middle. Consequently, there is a high probability that some students *will* be left behind. Furthermore, these traditional standardized tests correlate highly with socio-economic status. As a result, the students left behind are likely to be from high poverty neighborhoods and families.
- Scientific research does not support the connection between the use of high-stakes testing and improved student achievement (Nichols & Berliner, 2005, [www.asu.edu/educ/epsl/EPRU/documents/EPSSL-0503-101-EPRU.pdf](http://www.asu.edu/educ/epsl/EPRU/documents/EPSSL-0503-101-EPRU.pdf)). Indeed, its use has resulted in many severe and unintended negative effects, such as excluding low-performing students, under-reporting dropouts, and administrators, teachers, and students cheating on test scores, as was the case in Houston, the school district of former Education Secretary Rod Paige.
- The assessment of a school’s AYP does not take into account factors that influence educational achievement that are not school-related, such a parent’s education, resources at home, and so on. Consequently, schools are held accountable in their AYP for factors over which they have no control. This affects high-poverty schools most of all.
- At the same time, the Act is most punitive to those schools that are in the most challenging situations. Schools that fail to make AYP for three years are faced with restructuring measures that may include turning it over to the State or a private company, or even closure.
- The Act requires that all disabled students, except for the 1% with the most severe cognitive disabilities, be tested as measured by grade-level assessments, in order to show AYP. The Department recently provided states with opportunities to apply for waivers to this requirement (*Education Week*, May 18, 2005), at the discretion of the Secretary of Education, and 47 states have asked for such waivers (*Education Week*, July 13, 2005). If granted states would be allowed to exclude a maximum of 3% of their most disabled students, regardless of the number of such students in the system. The likelihood is that school districts with a high percentage of students with various disabilities will be judged as failing and be subject to the Act’s punitive requirements. Again, such disabilities are

unevenly distributed among school districts and this will negatively affect schools from high poverty areas.

- At the same time, students in under-performing schools in high-poverty areas must be given the option to transfer to other public schools. This transfer option has three negative effects that work against the high principles of the law: 1) it removes the per capita funds from the underperforming school that could be used for improvement; 2) it increases the likelihood that performing schools will become over-crowded and thus reduces their ability to continue to perform well; and 3) it opens up the possibility of undermining court-ordered desegregation plans.
- Supplemental services prescribed by the law for students in high-poverty, under-performing schools are diverted from school programs that could be used to address the needs of these students and go to outside resources, including private companies or faith-based groups. Furthermore, these outside groups are not subject to same anti-discrimination laws to which public schools are held nor are their teachers held to the same “highly qualified” standards that are public schools.
- It has been documented that in order to meet quotas military recruiters have used unethical tactics with students, such as telling them how to cheat on drug tests and obtain fake diplomas (*Education Week*, June 22, 2005).
- The reading programs promoted by the Department of Education for hundreds of millions of dollars have only the narrowest scientific backing, while alternative reading programs with proven records of accomplishment are not supported. This has led to calls for a Federal probe (*Education Week*, June 22 and August 10, 2005).
- However, NCLB has received the most fire over funding. The testing and other implementation requirements of the Act are very expensive and these requirements are not fully covered by the Federal funding. Indeed, the State of Connecticut, NEA, et al, law suite cites the clause in the Act that stipulates that forbids Federal officials to require States to spend their own money to carry out Federal policies. Connecticut’s Attorney General claims that the State \$440 million in unfunded mandates by 2008 (*Record Journal.com*, August 19, 2005). This funding shortfall for many financially-hard pressed States and districts means that testing competes for funds that could otherwise go to attract highly qualified teachers or support instructional programs that could improve school performance.

Despite NCLB’s shortcomings and funding shortfall, President Bush has promised to introduce legislation during his second term that extends the Act to include annual testing in grades 9-11. At the same time, the proposed Federal budget for 2006 would eliminate 48 education programs that address the goals specified in our policy vision. These include: Comprehensive School Reform, Educational Technology State Grants, Vocational Education State Grants, Safe and Drug Free Schools State Grants, Dropout Prevention Program, Alcohol Abuse Reduction, Community Technology Centers, Foreign Language Assistance, Women’s Educational Equity, Elementary and Secondary School Counseling, Literacy Programs for Prisoners, Vocational Rehabilitation for Migrant and Seasonal Workers, Projects with Industry, and the Teacher Quality Enhancement Program.

*Recommendation:* We do not recommend that this law be repealed. Unfortunately, it is the fundamental law that supports primary and secondary education in the country.

We do, however, recommend that it be drastically changed. We are particularly opposed to punitive nature of NCLB, the use of high-stakes testing, and the under funding of special

programs to support school programs in low income communities. The Democrats on Capitol Hill are putting together their own "Strengthen Our Schools" plan that emphasized teacher-quality measures, expanded access to preschool, and far higher spending on some federal programs (*Education Week*, June 22, 2005). The details of this plan have not yet been worked out. We tentatively recommend support for this effort but suggest that it be monitored to assure that the final version provides needed resources and reduces the emphasis on high stakes testing.

We urge opposition for Bush's planned expansion of testing and accountability to the high school level. In fact, we think opposition to this planned proposal would be very popular among both middle Americans and progressives and a big win for the PDA. Despite the fact that this expansion was a major plank in the President's State of the Union Address, NCLB and its expansion is very unpopular even among congressional Republicans. They have refused to take this up on their 2005 agenda and have refused to eliminate popular programs that the President is trying to kill.