

Comments on the No Child Left Behind (NCLB) Discussion Draft

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Thank you for this opportunity to comment on this important piece of legislation.

Adequate Yearly Progress (AYP)

Most of the proposed changes to NCLB in this draft revolve around changing and giving flexibility or perceived flexibility in AYP. AYP, however, is the key flaw with No Child Left Behind, and no number of changes will alter its fundamental problem. Although well intentioned, AYP does not improve academic achievement for all children. Instead of increasing the number of students who reach higher levels of academic achievement, it brings all children to one arbitrarily set level of achievement. Because states and LEAs want to avoid federal sanctions, they have great incentive to set that level of achievement quite low. In fact, it is often set so low, that it is academically meaningless.

Sadly, universal proficiency is utopian. Attempts to comply forces academic outcomes to a meaninglessly low level and a “teaching to the test.” Political mandates are not magic wands. Numerous national experts and several state evaluations have admitted that the vast majority of schools will fail to make AYP by 2014:

- “Even if Minnesota students’ math and reading test scores improve significantly in coming years, there will likely be large increases in the number of schools failing to make ‘adequate yearly progress’ (AYP), as defined by NCLB. More than 80 percent of Minnesota elementary schools would not make AYP by 2014... and many of these schools would face the prospect of restructuring or other serious sanctions prescribed by NCLB.” (Minnesota Legislative Auditor, 2004)
- “In critical ways, today’s NCLB amounts to a civil rights manifesto dressed up as an accountability system. That’s an untenable basis for serious reform, rather as if Congress declared that every last molecule of water or air pollution would vanish by 2014 or that all American cities would then be crime-free.” (“Held Back: No Child Left Behind Needs Some Work,” by Frederick M. Hess and Chester E. Finn, Jr. Policy Review, August & September 2007.)
- Susan Neuman, former assistant secretary for elementary and secondary education at the Department of Education, said “This notion that by 2014 all children will be proficient is a fantasy, and it’s rhetoric and it’s unfortunate, and it’s turning people against and afraid of our schools.” (CNS News 3/19/07)

However, these changes will make a complicated and impossible to achieve system even more onerous to states, LEAs, students, and tax payers while greatly increasing the costs and the extent of federal control over education, which was designed by our Constitution to be strictly a state and local function. Legislators on both sides of the aisle recognize this:

- “NCLB may violate the Tenth Amendment of the United States Constitution, which restricts the power of the federal government to those so delegated by the United States Constitution and reserves powers not delegated to the federal government, such as education, to the states and the people” (From a resolution authored by Minnesota Senator (Chuck Wiger (D-South St. Paul), chairman of the Education Committee)

- “We encourage the Administration to work with Congress to ensure that a reauthorized Elementary and Secondary Education Act returns the decision-making power regarding testing systems and school interventions to teachers, principals, school administrators, and state education officials, as they are the professionals closest to our schools and best equipped to make these decisions.” (Letter from 6 Democrat US Senators to Secretary Spellings – 6/22/07)

Of particular concern from a constitutional point of view is that the entire concept of AYP and of the larger NCLB legislation itself comes from US involvement in international agreements that were never ratified by the US Congress. As explained by Professor Allen Quist:

On October 3, 2003, then-U.S. Secretary of Education, Rod Paige, presented a speech to UNESCO. (UNESCO is the United Nations Educational, Scientific and Cultural Organization, an arm of the United Nations.) In that speech Secretary Paige said:

UNESCO [is] coordinating the *Education for All* initiative. *Education for All* is consistent with our recent education legislation, the *No Child Left Behind Act*. UNESCO is a powerful forum for sharing our views, developing a common strategy, and implementing joint action. [Emphasis added.]

As recognized above by Rod Paige, No Child Left Behind (NCLB) law is a joint action and a common strategy between the United States and the UN. To be more explicit, NCLB is the vehicle by which the United States is complying with two UN sponsored international education agreements: the World Declaration on Education for All (1990), as noted by Paige, signed by President George Bush Sr., and the update of that treaty, known as the Dakar Framework for Action (2000), signed by President Bill Clinton...the goals of the UN are in many respects at odds with the goals of the United States. This is clearly true for NCLB

Why is NCLB bad policy for the United States? There are many reasons. In the first place, NCLB is designed to close the gaps in student scores. It is not designed to benefit all students, nor is it designed to benefit the majority. Specifically, NCLB requires states to eliminate the learning gaps based on ethnicity, race and economic circumstances by 2014 (as required by the international agreements). If the achievement of average and advanced students improves, that makes closing the learning gaps more difficult. For that reason NCLB is a disincentive for schools to raise the achievement of all students. (Closing the gaps, as opposed to helping everyone, is a Marxist concept and is typical of the UN.)

Secondly, NCLB requires that schools raise all students to proficiency levels in reading and mathematics by 2014, again, as required by the international agreements. Since all students must be proficient, schools understandably are inclined to define proficiency at a low level. At the same time, resources that should be focused on all students will be directed to the lowest achievers instead.

Examples of proposals in this draft for allowing flexibility in and or improving compliance with AYP include allowing alternative standards and assessments for students with disabilities, requiring a longitudinal data system, and allowing English language learners to take their tests in their home language. Because of the misguided notion of AYP, as discussed above, none of these will work and all of them raise grave concerns:

Special Education – The proposed changes in special education will only increase the incentive for schools desperate to avoid sanctions to over-identify students with high incidence disabilities that are subjective and too easily applied, such as emotional disturbances and learning disabilities. According to 2002 report of the President’s Commission on Special Education:

“In contrast, children with developmental disorders cannot be identified on the basis of acuity, physical or neurological findings. These disabilities are widely regarded as variations on normal development that are disabling when they interfere significantly with school performance and adaptive functions. Accounting for 90 percent of all students served under IDEA, these ‘high-incidence’ disabilities are closely linked with teacher referral, but make heavy use of psychometric tests for identification, often in ways that are not linked with instruction.”

Sadly, the burden of this over-identification falls most heavily on poor and minority students as confirmed by the 2002 National Academy of Sciences Report *Minority Students in Special and Gifted Education*:

- “The composition index for the racial/ethnic groups suggests that whites constitute approximately 54 percent of the total MR [mentally retarded] enrollments (compared with 63 percent of the student population), while blacks account for 33 percent of the MR enrollments but only 17 percent of the student population.”
- “Odds ratios confirm the higher risk for black students (OCR and OSEP OR = 1.59), indicating they are half again as likely as white students to be classified as ED [emotionally disturbed]. As would be expected from the above data on risk, Asian/ Pacific Islander are far less likely than whites (OCR OR = 0.29; OSEP OR = 0.27) to be classified as ED, and to a slightly lesser degree this is true for Hispanics (OCR OR = 0.60; OSEP OR = 0.69).”

Medication Coercion - The high incidence of emotional disabilities that will be increased if the above mentioned changes pass will also increase the already high incidence of over labeling and over drugging of children even as young as preschool age with powerful and dangerous psychotropic drugs that is sadly and all too often becoming coerced by schools. Concern about the this situation is widespread at both the state and federal levels as evidenced by numerous state laws that have passed prohibiting the coercion by schools of children to take psychiatric medication and the passage of the Child Medication Safety Act by over 400 votes in the US House during the last two sessions of Congress. It is deeply concerning that not only is there no protection for students from coerced drugging in this draft, but that attempts to do so would be diluted to cover coercion only by the drugs on the Controlled Substances list that cover a mere fraction of the psychotropic drugs that are being used in younger and younger children at increasingly alarming rates.

- 2.5 million children are on antipsychotic medications (not controlled substances), some as young as 18 months old, a five-fold increase between 1995 and 2002. (Vanderbilt 2006)
- Journalist Rob Waters of Bloomberg News reported on 9/5/07 that the number of antipsychotic prescriptions for children doubled to 4.4 million between 2003 and 2006, citing data provided to Bloomberg News by Wolters Kluwer NV, a drug-tracking firm with 20,280 prescriptions written for kids aged 4 and younger, a five-fold increase over 2003.

- 40 fold increase in bipolar diagnosis of children (Archives of General Psychiatry, 9/07)
- Antipsychotic medications are not safe or effective for children (Eur Child Adolesc Psychiatry. 2006;15:141-148)
- A 2006 review of the FDA's Medwatch adverse event reporting system found 45 deaths in children due to antipsychotic toxicity, the youngest being 4 years old and that probably only representing 1-10% of the total deaths from these drugs
- The antidepressants (*not controlled substances*) are under the FDA's most stringent Black Box Warnings due to increased suicidal thoughts in children and adolescents
- During the FDA hearings prior to the Black Box Warning, antidepressants were found not to be effective in children in 19 out of 22 studies, but the negative studies were never published.
- The FDA increased its warnings on the stimulant drugs (*most, but not all of which are controlled substances*) in children due to increased incidence of hallucinations, psychosis, and cardiac sudden death.
- A 2006 University of Oregon review of 2,287 studies involving ADHD drugs found no long term safety or effectiveness of those drugs in children
- 9 out of 10 children referred to child psychiatrist received psychotropic drugs (JAACAP 2002)
- 1 of 10 teenage boys who visits a doctor leaves with a psychotropic drug prescription (Brandeis 2006)

The NAACP also supports the Child Medication Safety Act, as evidenced by their legislative priorities for the 109th Congress, because they recognize the problems with coerced drugging in minority students:

“PROTECT CHILDREN FROM OVER-MEDICATION: Each year, eight million American children, or about 10% of the school-age population, are prescribed drugs, such as Ritalin, for learning and attention difficulties. Children of color, especially African American boys, are much more likely to have these behavior- and mind-altering drugs prescribed for them. In fact, a recent study in the state of New York showed that ‘minority boys’ are 11 times more likely to be on mind-altering medicines than is the general student body.

In response to these issues, the US House of Representatives passed the Child Medication Safety Act on May 21, 2003, by a vote of 425 to 1. Unfortunately this legislation was stalled in the Senate and thus must be reintroduced, and go through the entire process again, in the 109th Congress. Specifically, this bill required that each state establish policies and procedures which prohibit school personnel from demanding a child take any psychiatric/psychotropic medication as a condition for attending and remaining in school. While the bill does specifically allow teachers and school counselors to discuss behavioral problems with a child's parent, a school cannot ban a child from coming simply because a parent does not wish to put his or her son or daughter on mind-altering drugs.”

Besides EdWatch and the NAACP, there are numerous other national professional and grassroots groups that support this legislation. **We strongly urge the Committee to include the Child Medication Safety Act as introduced in the Senate in this session of Congress (S. 891) in whatever form the reauthorization takes.**

Longitudinal Database - Within four years of the reauthorization of NCLB, states must develop a comprehensive database of every aspect of a student's academic life starting from preschool onward through college or risk losing 25% of their Title I funds. Among the many required data elements are –

- Unique individual student and teacher identification numbers that track every aspect of a student's performance and hold teachers accountable for teaching the national standards that masquerade as locally derived standards;
- Enrollment and demographic data on every student including the NCLB category into which they fall, attendance, and program participation data;
- Individual statewide assessment scores required by NCLB;
- The reason a student may not have taken the state NCLB assessment;
- Transcript data, including grades and courses taken;
- Graduation and dropout rates, college entrance test data.

We've seen this type of invasive federal data collection system before. It is analogous to the kind of data collection that has resulted from HIPAA (Health Insurance Portability and Accountability Act), that has resulted in drug companies and all manner of other researchers and government agencies having access to citizens' private medical data without consent, while spouses and family members have trouble accessing that same data without going through complicated bureaucratic hoops. The privacy protections in HIPAA are laughable, and we have no evidence to suggest that the federal government having this amount of data on each individual child would be handled any better. Far from improving educational achievement, this data collection system will give government bureaucrats, especially those of the federal variety, further reason to meddle in and control the education, family life, and raising of children. It is also extremely unreasonable to have the federal government have this amount of and control over private data when the ESEA only provides less than 10% of state education funds. **We absolutely oppose this kind of system.**

Reading and Math Assessments in Foreign Languages – This is very concerning as it will be a disincentive for immigrants to learn the English language. It will perpetuate the balkanization that is occurring in America due to too many immigrants entering the US too quickly without assimilating to the US language and culture and we strongly oppose it.

Early Childhood Issues – Many programs within Title I and in other titles involve early childhood and preschool programs. All of these programs require alignment to the Head Start Performance Standards, which include the Head Start Child Outcomes Framework. This Framework requires that very young children be taught attitudinal issues that are highly subjective, controversial, non-academic, absolutely not the purview of the federal government and have nothing to do with closing the achievement gap, even if that were possible. These outcomes are tied to very radical curriculum sponsored by the National Association for the Education of Young Children (NAEYC). Some examples include:

- “Shows progress in expressing feelings, needs and opinions in difficult situations and conflicts without harming themselves, others, or property.”
- “Progresses in responding sympathetically to peers who are in need, upset, hurt, or angry; and in expressing empathy or caring for others.”

The above two outcomes are heavily involved with the social and emotional (or mental health) aspects of early childhood. Even experts admit that this is highly subjective in both diagnosis and treatment for young children. For example, The

National Center for Infant and Early Childhood Health Policy stated in their briefing paper on infant and toddler mental health that there were problems in the field because of:

- “Lack of baseline”
- “Lack of agreement about diagnosis”
- “Criteria for referrals/acceptance into services are not always well defined”
- “Lack of longitudinal outcome studies”
- “Broad parameters for determining socioemotional outcomes are not clearly defined”

If expert opinion mentions so many problems, how can the federal government and individual programs that are not experts in mental health administer these kinds of outcomes accurately or fairly? In addition, diagnosis of mental illness and treatment with powerful and dangerous medications is rapidly and alarmingly increasing in very young children. According to the September, 2007 issues of Archives of General Psychiatry, there has been 40-fold increase in bipolar diagnosis of children. According to the January 2000 issue of the Journal of the American Medical Association, psychotropic drug prescriptions for two to four year old children increased 300% from 1991 to 1995. Bloomberg News reported on September 5, 2007 that there has been a five-fold increase in antipsychotic prescriptions in children under four years of age. These drugs are not safe or effective, especially for very young children. This is unconscionable and standards and outcomes such as these only feed this growing problem.

- “Develops ability to identify personal characteristics including gender, and family composition.”
- “Progresses in understanding similarities and respecting differences among people, such as genders, race, special needs, culture, language, and family structures.”

The above two outcomes deal with socially controversial issues like gender and gender identity, as well as family structure and composition that are absolutely not the role of any government entity, much less the federal government, to be setting norms in these areas. Rather, no matter what one’s views are on these issues, it it’s the purview of parents and families to inculcate their young children with the attitudes and values that they see fit. Here are a couple of examples of how these issues are handled by NAEYC, which produces much curriculum and teacher training that is frequently referenced by the Head Start Bureau:

- “This NAEYC credentialing system which is used by Head Start centers includes the NAEYC Code of Ethical Conduct that defines the word “culture” as, “...ethnicity, racial identity, economic level, *family structure*, language, and religious and political beliefs, which profoundly influence each child’s development and relationship to the world.” [Emphasis added.]
- It is clear from this definition and from their articles and curriculum that family structure clearly includes homosexual families and that they emphasize making homosexual behavior normative even for very young children: ““In recent years publishers have presented gay-friendly picture books with clever illustrations and engaging stories, including board books for toddlers, leveled materials for beginning readers, bilingual stories, and chapter books.” (*Missing! Picture Books Reflecting Gay and Lesbian Families - Make the Curriculum Inclusive for All Children – NAEYC Journal 5/07*)

As described above, in order comply with unratified international agreements that involve the impossible to close achievement gap, the federal government is extending its scope, reach, interference, and curriculum into every aspect of a child's life including before they start school. Sadly, "ready to learn" does not mean that children are ready to learn academic subjects, but rather all sorts of controversial and non-academic indoctrination. Both sets of outcomes quoted above constitute further examples of the federal government inserting itself into curricular, attitudinal, mental health and family issues for which they have no authority. **NCLB should not be extending its reach into the preschool years by correlation with the Head Start Program that has established a federal preschool curriculum.**

Full Service Community Schools – This program is another example of the issues described above affecting preschool and mental health, as well as parent training according to government standards instead of family beliefs and attitudes, and vocational training. None of this is the role of the federal government, but sadly, it seems to have been the goal for a long time. Back in 1946, Edwin Broome, a disciple of government education architect John Dewey, said in the Montgomery County (MD) blueprint for schools, "The end results are that the school makes itself indispensable to all phases of community life. In the future development of school programs, the service program will receive increasing emphasis until the school becomes in fact the agency to which all people in the community turn for assistance." And mental health advocate and author Edna Copeland said in a 1995 book, "I truly believe that schools will become our mental health agencies of the future, especially for children." **Both predictions are unfortunately coming to pass with this proposed program and the draft in general.**

Environmental Education – Despite claims and prohibitions against the federal government setting curriculum, this draft seeks to incentivize states to not only develop state standards and assessments in a whole new subject area from kindergarten to twelfth grade, that of environmental education, but actually to integrate this subject into every other academic subject. One of the purposes of this education is to prevent "nature deficit disorder," when this term is not an actual scientific disorder, but a euphemism coined by an environmental advocate and activist. With considerable controversy among credible scientists about the status of various environmental issues, with the recent admission in a June, 2007 study funded by the Department of Energy that man-made carbon dioxide is largely irrelevant to the earth's temperature, with the admission by Swedish environmentalists that recycling is "a waste of time and money," and with the poor performance of American students on international tests, **the last thing the American education system needs is a takeover of every academic subject by another controversial subject.**

Conclusion: Because of all of these issues and numerous others not even mentioned due to time and space considerations, EdWatch opposes this NCLB discussion draft and instead vigorously supports the A-Plus legislation (HR 1539) authored by Representative Pete Hoekstra and 63 co-sponsors.