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Routing

No Child Left Behind *The Dangers of Centralized Education Policy*

by Lawrence A. Uzzell

Executive Summary

The No Child Left Behind Act (NCLB), which the Bush administration claims as its proudest achievement in domestic policy, directly contradicts the principles of an “ownership society,” which the administration is promoting in areas such as Social Security reform. The administration recognizes that the educational policies of the last four decades, a period of almost uninterrupted centralization, have failed, but its remedy is yet more centralization.

The NCLB statute is a reform strategy at war with itself. It virtually guarantees massive evasion of its own intent, ordering state education agencies to do things that they mostly don’t want to do. Washington will be forced either to allow the states great leeway in how they implement NCLB or to make NCLB more detailed, prescriptive, and top-heavy. If Washington chooses the former, the statute might as well not exist; if the latter, federal policymakers will increasingly resemble Soviet central planners trying to improve economic performance by micromanaging decisions from Moscow. NCLB may end up giving us the worst possible scenario: unconstitutional consolidation of power in Washington over the schools, with

that power being used to promote mediocrity rather than excellence.

It is too early to know for certain which scenario will prevail, but it is already clear that state and local education officials are skillfully protecting their interests in ways that undermine the intent of NCLB. Especially telling has been their widespread dishonest reporting in at least four areas: graduation rates, school violence, qualified teachers, and proficiency tests. As it becomes increasingly clear that the states can satisfy the requirements of NCLB by lowering their standards, there will likely be a “race to the bottom.”

Instead of using centralized decrees to turn mediocre institutions into excellent ones, as they have been trying but failing to do for the last several decades, the state and federal governments should be empowering individual families to “vote with their feet” by transferring to the schools of their own choice.

The key locus for such revolutionary reforms is the states. The best contribution the national government can make to educational improvement is to avoid educational policymaking and allow states to experiment with school choice programs.

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Introduction

In domestic policy, the No Child Left Behind (NCLB) education act is the Bush administration’s top claim to visionary leadership. The president and his aides have compared NCLB to landmark programs such as the Social Security Act or the Homestead Act. In his acceptance speech at the 2004 Republican convention, President Bush stated that NCLB is “the most important federal education reform in history.”¹ Both during and since the 2004 election campaign, President Bush’s speeches have depicted the 2002 act as an unqualified success; even before his second inauguration, the president proposed to extend its provisions from elementary schools to high schools.

Especially striking is the boast that Bush has increased federal spending on education faster than any president since Lyndon Johnson.² That is a reversal as profound as the Clinton administration’s embrace of sweeping welfare reform in 1996; in both cases the party in power accepted ideas long associated with its opponents. The Republican reversal is the more stunning of the two because most members of the president’s party on Capitol Hill changed course with him. During the Republican Party’s rise to majority status from the 1960s to the 1990s, by contrast, it usually opposed centralized federal programs in education as in other areas of governance. As recently as 1996, the party’s platform pledged to abolish the U.S. Department of Education.³

What ultimately matters is NCLB’s success not as a one-shot campaign tactic but as a long-term strategy for bringing genuine reform to the country’s dysfunctional public schools. With party loyalty keeping most congressional Republicans from criticizing the statute, its skeptics currently find themselves marginalized in Washington. But in the long run NCLB should and will be judged by its actual results.

Dangers of Centralization

No Child Left Behind was enacted in the form of a reauthorization of the 1965 Elemen-

tary and Secondary Education Act, one of the centerpieces of President Lyndon Johnson’s Great Society. Once it takes full effect, the statute will require states that receive ESEA subsidies annually to test third to eighth grade students in reading and mathematics. By 2014 the states must bring all of their students up to the “proficient” level on those tests. In the meantime the states must demonstrate “adequate yearly progress” (AYP) toward the goal of 100 percent proficiency—including progress toward eliminating achievement disparities between ethnic subgroups. Schools that receive subsidies under the ESEA Title I program for disadvantaged children and that repeatedly fall short of their AYP targets are subject to an escalating series of corrective measures: allowing their students to transfer to other public schools after two years,⁴ providing supplementary services such as private tutoring after three years, and possibly becoming subject to mandatory restructuring thereafter.

NCLB’s success will depend on whether it is possible to produce excellent educational performance through centralization. Its advocates are in a self-contradictory position. They recognize that the educational policies of the last four decades, a period of almost uninterrupted centralization, have failed, but their remedy for that failure is yet more centralization. While invoking the principles of an “ownership society” on issues such as Social Security reform, they are pursuing almost the exact opposite model in schools. In a period of growing social mobility and individual autonomy, they are promoting a top-down, Great Society model of reform—transferring power from individual parents, teachers, and principals to distant bureaucracies such as state education agencies.

Ironically, the Bush administration has made a key exception to its “ownership society” precisely in the area of social policy that by its very nature is *least* susceptible to centralization. Education is inherently personal and inherently value laden. The key relationships in schools are those between individual teachers and individual students: If the teachers are not committed and highly moti-

vated, no centralized rule books or formulas are going to inspire peak performance from their students. To use social science jargon, schools are “loosely coupled systems”; therefore, decrees from centralized administrators have little power to boost school performance but enormous power to impede progress. Indeed, before the mid-20th century such administrators were either nonexistent or mostly irrelevant; key decisions were made at the level of the individual school by principals and teachers.⁵

Moreover, schooling inescapably involves judgments about truth and virtue, about what kind of person a youngster should aspire to be. In an increasingly pluralistic society, Americans are inevitably going to disagree with each other about those judgments. Which historical figures should children be encouraged to revere as heroes? What should they be taught about ancient belief systems such as Christianity and Islam—and about modern ideologies such as feminism and environmentalism? Should “traditional values” such as piety, chastity, and asceticism be celebrated, ridiculed, or simply ignored? Americans in the 21st century have no more chance of reaching consensus on those questions than of agreeing on what church (if any) we should all attend. That is why we keep the state out of controlling churches, just as we keep it out of other value-forming institutions such as publishing and journalism. The more we entrust such decisions to centralized state agencies, the more conflicts we foment—conflicts that in a truly free society would be unnecessary. As legal scholar Stephen Arons observed in 1997: “One civic group after another attempts to impose its vision of good education, and all join in a struggle over the one true morality to be adopted by the public schools. The outcomes of the conflicts over curriculum, texts, tests, and teachers seem less and less like constructive compromises that knit communities together; more and more they resemble blood feuds, ideological wars, episodes of selfishness wrapped in the rhetoric of rectitude.”⁶

Zero-sum “culture wars” for control of coercive state monopolies thus make enemies of people who could otherwise be

friends. Perhaps in some bygone era each local public school reflected a local consensus. But in today’s ultra-mobile society, in which communities are less and less defined by geography, the only way to keep the culture wars from engulfing the schools is a comprehensive strategy of parental choice. The key to rescuing our children from the bureaucratized government schools is radical decentralization: tuition tax credits, tax deductions, and vouchers. Unfortunately, NCLB is taking us in precisely the opposite direction.

Granted, NCLB does not explicitly call for national curricula. The statute mandates standards for testing, not for curricula, and it leaves the specific content and design of the tests up to the states. But in the long run the tests will, at least to some degree, drive the curricula, and that will loom even larger if NCLB is extended to high school programs as well as to elementary-level reading and math. The statute is already promoting centralization within each state, to the detriment of pluralism and local control. It could become a force for national centralization as well if future administrations should exercise to its full potential their power to deny federal funding to states whose testing programs are deemed inadequate.

So far, the Bush administration has been cautious in exercising that power. During last year’s presidential election campaign, the administration wanted to avoid headlines about conflicts with state education agencies; it tried to perpetuate as best it could the congenial atmosphere of the bipartisan signing ceremony when NCLB became law in January 2002.⁷ Nevertheless, the states are restive. Many are complaining that NCLB is excessively intrusive; dozens of state legislatures have passed resolutions criticizing the statute.⁸ Such complaints are not necessarily unjustified. Any statute as long and complicated as NCLB inevitably requires that state and local school officials spend thousands of manhours filling out federal forms and complying with procedural requirements from Washington—even if that red tape produces little or nothing

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in the way of genuine academic improvement. It would be not at all surprising if NCLB turned out to be both meddlesome and impotent, as have many previous federal programs.

The Bush administration, and future administrations, will now face a dilemma. The NCLB statute virtually guarantees massive evasion of its own intent: It orders the state education agencies to do things that many of them don't want to do, such as institute detailed, rigorous testing programs that enable the public to distinguish successful from unsuccessful schools, and it gives those agencies broad discretion about just how to do those things. The U.S. Department of Education has little role in creating content standards and assessments under NCLB; it only decides whether to approve those created by the states. But as the states devise various tactics for evading both the letter and the spirit of the law, lawmakers will be forced either to let them get away with those tactics or to continuously amend NCLB's statutory text (already about 1,100 pages long) and associated regulations in order to keep up with the states' ever more inventive evasions.

If policymakers choose the former course, NCLB might as well not exist; it will just be one more drain on taxpayers, like scores of previous education programs, and one more source of special-interest group subsidy—in this case to the testing companies. But if Washington policymakers instead choose to amend the statute, they will end up making it steadily more detailed, prescriptive, and top-heavy. Washington's education officials will more and more resemble Soviet central planners trying to improve economic performance by micromanaging decisions from Moscow. Unlike Soviet bureaucrats, however, the federal government lacks a captive labor force; the more centralized the system becomes, the more likely those teachers and potential teachers with the greatest creativity and leadership ability will be to seek careers elsewhere rather than accept being mere pawns of the federal government. As a strategy for promoting "excellence," centralization will be inherently self-defeating.

Thus, NCLB is a reform strategy at war with itself: It can work only if federal officials ride tight herd on their state counterparts, overriding them whenever they sacrifice reform to special-interest pressures. The authors of NCLB have already said that they will do no such thing, rightly invoking principles such as states' rights and the absence of a constitutional warrant for federal control of local schools. But if they were serious about those principles, they would never have enacted NCLB to begin with.⁹ On the other hand, if they decide to use NCLB as a tool to muscle through fundamental reforms against the will of the entrenched special interests, they will find that they have to discard whatever remains of their constitutional scruples. They or their successors may even conclude that that is the best possible outcome: If the Constitution and the principles it embodies stand in the way of urgently needed reforms, then the devil take the Constitution. Many previous would-be reformers have made that judgment, from the advocates of centralized economic planning who created the short-lived National Recovery Administration in the 1930s to the Supreme Court in its 1972 ban (also short-lived) on all forms of capital punishment.

Future historians, then, may look back on NCLB as simply one more phase in the gradual building of a national ministry of education—a ministry explicitly responsible not only for testing but for curriculum content and even for the administration of schools. Parents with complaints about their children's textbooks or teachers would have to take those complaints, not to their local school board, but to Washington. That scenario may seem far-fetched: There is no clear evidence that the proponents of NCLB consciously intend to create a national curriculum or a national, European-style ministry of education. But few members of Congress who voted for the 1965 Elementary and Secondary Education Act, which was only a few dozen pages long, consciously intended to start down a path leading to ever more detailed federal controls and culminating in

the 1,100-page NCLB. Once Washington sets up such regulatory and spending machines, they tend to acquire a life and logic of their own. Moreover, one should consider that it took only seven years from the congressional elections of 1994 for many of that year's "Republican revolutionaries" to reverse course and vote for the most centralizing education bill in American history. It seems not at all implausible that Congress may be willing to enact even more sweeping centralization within the next decade—especially if an increasingly comfortable Republican majority grows ever more accustomed to bloating the Department of Education's budget with "pork-barrel" earmarks for its political allies.¹⁰

Setting aside its difficulties from the standpoint of constitutionalism and the rule of law, would such hypercentralization actually bring genuine reform? Optimists might suggest that it could bring us back to the educational standards of 1901, when the College Entrance Examination Board published a list of specific literary classics that it recommended that every would-be college freshman should have read before matriculating.¹¹ The firm, exacting standards of those educators stand in striking contrast to the curricular relativism of the late 20th century, with its faddish lessons in popular culture. If education means requiring a youngster to learn things that he is unlikely to learn if left unsupervised, then perhaps centralized coercion is a good thing.

What that argument ignores is the crucial fact that in America, unlike much of Europe and Asia, curricular relativism and fragmentation have grown hand in hand with the growth of centralized power over education policy in both Washington and the state capitals. The people who control the key institutions in this country's government school establishment—the teachers' unions, the teacher-training institutions, the state education agencies, the career staff of the federal education colossus—are not Victorian-style elitists seeking to mold the masses according to lofty standards of classical learning. Quite

the opposite. In today's America, the masses are more elitist (in the desirable sense of demanding serious academic standards) than is the educational establishment with its focus on "self-esteem." When given a free hand, American working-class parents make sounder educational choices than the establishment tries to dictate to them. Consider, for example, the nearly total absence of destructive fads such as bilingual education in private schools, even when those schools have large minority enrollments.¹²

Judging from the experience of the last four decades, NCLB may end up giving us the worst possible scenario: unconstitutional consolidation in Washington of power over the schools, with that power being used to further mediocrity rather than excellence. Experience shows that centralized government agencies are especially prone to capture by ideological factions that want to shield children from unwelcome facts and opinions. In a 2001 study for the Cato Institute, Sheldon Richman cited the case of the proposed national history standards developed in the early 1990s by the National Center for History in the Schools at the University of California at Los Angeles under a grant from the U.S. Department of Education and the National Endowment for the Humanities. According to Richman, those draft standards "set off a firestorm of controversy led by Lynne V. Cheney, who had chaired the NEH when the National Center was commissioned to write the standards. . . . Cheney condemned the standards as an exercise that put Western-bashing political correctness ahead of good history. She feared that an 'official knowledge' would be adopted, 'with the result that much that is significant in our past will begin to disappear from our schools.' The irony is that, until the standards were released, she favored in principle the government's adoption of an 'official knowledge.'" ¹³

Richman rightly concluded that "we do not face a choice between government standards for education and no standards at all, no more than we face a choice between gov-

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ernment standards for computers and no standards at all.”¹⁴ Those who call for educational statism in the name of “standards” seem blind to the vital distinction between standards set by private institutions and standards set by government.

Covering Up Problems

More than any previous federal education law, NCLB is dependent on quantitative data about test scores, graduation rates, violence in schools, and teachers’ knowledge of the subjects they teach. In practice, that means it is dependent on state and local school officials’ telling the truth about matters about which fudging the truth is both rewarding and easy. As education researchers Chester Finn of the Thomas B. Fordham Institute and Frederick Hess of the American Enterprise Institute recently observed, the statute requires those officials “to execute policies that clash with their own financial and reputational interests.”¹⁵ As has been the case since the era of education reform began two decades ago, state and local officials have skillfully protected those interests. Especially telling has been their widespread dishonest reporting in at least four areas: graduation rates, school violence, qualified teachers, and proficiency tests.

Graduation Rates

To assess the seriousness of both the state education agencies and the U.S. Department of Education, a good place to begin is the states’ implementation of NCLB’s provisions on reporting high school graduation rates. Though counting the number of students who fail to finish school on time is trickier than many laymen realize, in principle this task should be less subject to honest disagreement than that of measuring academic “proficiency.” Moreover, NCLB does not mandate a nationwide goal for graduation rates, or ambitious year-by-year targets for increasing those rates, unlike its goals of universal proficiency in reading and math. The statute does not threaten penalties for

schools with low graduation rates; it merely requires that those rates be reported. Thus if the states are reporting those rates in ways that are manifestly inaccurate, we are entitled to be skeptical about their reports on matters that are inherently less precise and more subject to high-stakes consequences.

Sadly, dishonest reporting about graduation rates turns out to be widespread. For example, in late 2003 California’s state department of education formally announced a graduation rate of 86.9 percent—even while the state’s own specialists were admitting unofficially that the true figure was about 70 percent. Education researchers Jay Greene and Greg Forster of the Manhattan Institute found similar “phony numbers” in Indiana, Texas, and other states; they accused the U.S. Department of Education of “allowing states to use inflated figures to satisfy the [NCLB] requirements rather than demanding honest statistics and real improvements.” The only thing unusual about California was that before passage of NCLB it had been “one of the few honest exceptions” that reported its graduation rates truthfully, but “now it has the worst of both worlds: Its graduation rate is still atrociously low, but it no longer officially admits that it has a problem.”¹⁶

One method of making schools look more successful than they are is to look only at drop-out figures, not graduation figures. This method starts with the number of students who entered ninth grade, then subtracts only those individual students who are specifically, unmistakably known to have dropped out over the succeeding four years. Students transferring to another school are not counted as dropouts, even if they later fail to graduate. In Greene and Forster’s view, “This method is accurate when it’s carried out with precision, but in practice it has produced shoddy numbers because keeping track of every student who leaves school is a logistical nightmare.” They prefer a method based on enrollment data: comparing the number of students who began ninth grade with the number who graduate four years later, making adjustments for local popula-

tion changes such as mass departures caused by economic downturns.¹⁷

In a detailed study published in 2001 and revised in 2002, Greene concluded that the “estimated national public school graduation rate in 1998 was 71 percent, slightly lower than the 74 percent originally reported.” That conclusion stood in stark contrast with the figures published by the National Center of Education Statistics, which had found a “high school completion rate” of 86 percent.¹⁸ Thus, if Greene was right, the federal number crunchers were missing about half of the students who fail to graduate.

In December 2003 the Education Trust, which promotes high academic standards for disadvantaged students, published a study essentially agreeing with Greene’s methods—and using them to evaluate both the federal and the state governments’ implementation of NCLB. That study focused on the detailed reports that the states were required to begin submitting on their graduation rates in September 2003—nearly two years after the statute had been passed. Under NCLB the states were supposed to calculate graduation rates according to the percentage of students earning regular diplomas—not alternative credentials such as GEDs—within the standard number of years. The reports were supposed to include the graduation rates of specific subgroups, such as children with limited proficiency in English, as well as those from various ethnic groups. But the Education Trust found that many of the states failed to comply with those requirements: “Some states didn’t report any data at all, and many didn’t report it disaggregated by student group. Several cited an inability to collect this data. . . . Others have reported data that differs greatly from the minimum graduation rate calculation required by NCLB. Instead, their calculation methods portray a rosier picture in their states than external sources. . . .” Such foot-dragging, in the Education Trust’s view, was “inexcusable” in light of the fact that states had routinely been reporting enrollment data to the federal department for many years before NCLB.¹⁹

Those states that did provide data claimed graduation rates ranging from a high of 97 percent in South Dakota to a low of 63.7 percent in Nevada, with most states reporting rates significantly higher than Greene’s independent calculation. Some states showed huge differences: For example, North Carolina reported a graduation rate of 92.4 percent where Greene had estimated 63 percent. On investigation it turned out that North Carolina’s reported figures “were not based on the percentage of students who entered in the ninth grade and received a degree four years later, but on the percentage of diploma recipients who got their diploma in four years or less. In other words, students who drop out of high school are simply excluded from the calculations altogether. This means that, theoretically, if only 50 percent of students who enter ninth grade in North Carolina were to eventually obtain a high school diploma, but every one of those 50 percent did so in four years or less, then North Carolina would report a ‘graduation rate’ of 100 percent.”²⁰

The U.S. Department of Education has been less than rigorous in monitoring compliance with NCLB’s requirements. The Education Trust faulted the department for failing to provide enforcement of the law’s provisions on data reporting, which “thus far states have flouted . . . failing to report data or reporting misleading data with no consequence. The Department’s inaction is sending a strong message about priorities, one that is at odds with the priorities expressed in the law. . . . [Its] silence on the noncompliant reporting practices of states like North Carolina has been deafening.”²¹

The Washington, DC-based Urban Institute found similar flaws. The institute’s Christopher B. Swanson concluded that “a mere four states took the high road of requiring both a firm floor for graduation rates and also disaggregating results for subgroups when determining adequate yearly progress.”²²

A year after the detailed study by the Education Trust, the situation had not improved. The Center on Education Policy, a

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research and advocacy group committed to public schools, reported in a study published in the autumn of 2004 that the federal department was actually allowing states to lower their targets for high school graduation rates. “In Maryland, schools and subgroups can either meet the graduation rate target of 81 percent in 2004 or show an improvement over the previous year of 1/10th of 1 percent. Similarly, Pennsylvania schools and subgroups can either meet an 80 percent target for graduation or show progress toward that target.”²³

If school districts and individual schools can get away with fudging their graduation rates, they will find it all too easy to report misleadingly high test score averages. When a school’s test scores go up, it is vital to know whether that increase represents real improvement or merely an increase in the number of dropouts among youngsters who would have performed poorly if they had taken the tests and would thus have dragged down the schoolwide average. Detailed, accurate reports of graduation rates are thus crucial to NCLB’s overall strategy. By failing to insist on them, Washington policymakers are obeying the U.S. Constitution but violating the clear intent of the NCLB statute and undermining whatever chance that statute might have of succeeding on its own terms.

School Violence

With a handful of exceptions, states are not providing honest reports about which government schools are unsafe for students. NCLB ostensibly requires the state education agencies to identify those schools that are “persistently dangerous.” It also requires the states to give students who attend such schools the right to transfer to other government schools within the same school district. But the statute never defines the term “persistently dangerous” (just as it never defines the even more crucial term “proficiency”). Instead, NCLB’s Section 9532 leaves that definition up to the states, “in consultation with a representative sample of local educational agencies.” The states need not even consult with the

police—or with any other outside experts. Thus the NCLB statute puts the federal officials charged with implementing it into a contradictory position. Either they insist on forcing the states to tell uncomfortable truths and do uncomfortable things—in which case they are violating the Constitution, which leaves education policy to the states—or they let the states get away with perpetuating the status quo of mediocrity and deceit, in which case NCLB might as well not exist.

The NCLB law invites self-serving duplicity, and state school officials are accepting that invitation. According to their NCLB reports, only three states have any persistently dangerous schools at all. One of the three is South Dakota, which admits to having two such schools, although South Dakota does not stand high on any objective observer’s list of places with the most severe crime or juvenile delinquency. The other two states are Pennsylvania, which acknowledges 14 persistently dangerous schools, and New Jersey, which admits to having 10 such schools.²⁴ State school officials elsewhere insist that even the most dysfunctional, crime-ridden parts of cities such as Cleveland, Detroit, Los Angeles, New York, and Washington do not have even one unsafe school. Whether or not state bureaucrats actually believe that claim, so far their federal counterparts have not publicly challenged it.

Some states avoid telling the truth by counting students charged with violent incidents as a percentage of a school’s total student body and setting the percentage required for the persistently dangerous category so high that even the scariest schools will pass muster. Colorado, for example, adopted rules in 2003 requiring that 45 violent incidents must be officially reported for each of two consecutive years in a school with fewer than 299 students, or 360 incidents in one with 2,100 students. The new rules excluded fights not leading to serious bodily injuries.²⁵ “The key word here is persistent, which means a school is dangerous on a daily basis,” said an official of the state education department.²⁶ By that standard Colorado is easily able to

announce that it does not have any persistently dangerous schools.

In 2003 six states admitted to a total of 52 such schools. But within months, two of those states, Nevada and Texas, claimed to have found that they really had no persistently dangerous schools after reviewing their data.²⁷ That reclassification reduced the official nationwide total of unsafe schools to 38; in 2004, as noted above, the total dropped further to 26.

The NCLB reports have thus been growing more and more detached from reality, and states are learning from experience that they face no adverse consequences for hiding the truth. Though NCLB cannot work even on its own terms unless federal lawmakers impose penalties for dishonest reporting, they lack the will to do so. They also lack constitutional authority to do so—but as noted earlier, if Washington took the Constitution and its principles of decentralized government seriously, NCLB would not exist.

Qualified Teachers

Everyone agrees that raising graduation rates and reducing violence in schools would be good, even if those improvements are difficult to measure. More controversial is NCLB's goal of ensuring that all schoolchildren have "highly qualified" teachers. In both spirit and letter, the statute challenges longstanding assumptions about what a teacher needs to know in order to be "qualified"—assumptions deeply entrenched in powerful institutions such as teachers' unions, schools of education, and state education agencies.

How much emphasis should teacher-training and certification programs place on "how to teach"—as in the courses in pedagogy offered to education majors—and how much on "what to teach"—specific academic subjects such as biology or American history? NCLB reflects the view that the current system gives too much weight to the former and too little to the latter.²⁸ It requires that by 2006 all teachers demonstrate competence in the subjects they teach. A teacher can meet that requirement either by having a bachelor's

degree in the relevant subject or by meeting some other standard set by the state and accepted by the U.S. Department of Education. For example, states might require a rigorous, advanced test in content knowledge of the subject. But for teachers who are already on the job, as distinct from new hires, NCLB gives the states great leeway—and many states have taken advantage of that leeway to adopt standards so lax as to be meaningless.

For example, the standards issued last year by the Maine Department of Education allow teachers to substitute a huge range of supposed credentials for passing an objective test or university coursework equivalent to a major. They can earn "points" for attending a conference or workshop, serving as a mentor teacher or after-school tutor, being a "participant in a state or national stakeholders group" or a member of a professional organization—or even just for writing a grant proposal.²⁹ The Florida Department of Education grants 30 points (of 100 needed) simply for satisfactory performance in a single in-class evaluation by a supervisor—even though those evaluations were originally intended for purposes far broader than measuring content knowledge. In open-ended fashion, Florida also awards points for "other appropriate related activity as determined by the school district."³⁰

In December the National Council on Teacher Quality, an independent research center that advocates more rigorous subject matter training for teachers, published a state-by-state study of the response to NCLB's teacher quality provisions. NCTQ found that "even with the 2006 deadline looming, only a handful of states appear willing to comply with the spirit of that portion of the law that seeks to correct the long-tolerated, widespread and inadequate preparation of American teachers in their subject areas. Some states are indifferent or even antagonistic about the prospect of declaring significant numbers of their active teachers unqualified." The think tank's president Kate Walsh concluded: "In the short term, the prospects are dim for making genuine strides in improving teacher quality. The

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law's clarity on the academic preparation required of new teachers bodes a more promising future, but where veteran teachers are concerned the law is doomed to disappointment, save in a minority of states."³¹

Only one state, Colorado, has earned an "A" rating from NCTQ for demanding that all teachers either provide proof of academic content courses nearly equivalent to an undergraduate major or passing a test of subject matter knowledge. Oregon has a similar requirement for new teachers only. Four other states allow an academic minor rather than the major favored by NCLB. The remaining states fall far short of the NCLB standard.

Most states are allowing teachers already on the job to bypass testing of content knowledge by granting them points for an absurdly wide array of "professional development" activities that may be only tenuously related to real competence, such as attendance at short-term workshops or state conventions, participation on bureaucratic committees, heading school clubs, or taking courses outside the subjects they are now teaching. The NCTQ study invoked the image of "teachers scrambling up the stairs and into their attics to dig out antiquated proof" of points earned decades ago.

During the nine years that remain before NCLB's target of 100 percent proficiency by 2014, the majority of the country's most influential teachers will be those who are already on the job. Even as they are joined by young recruits who (one hopes) will have stronger qualifications, it is the senior teachers who will hold most decisionmaking positions such as departmental chairs; it is on them that NCLB's success will largely depend. At the current rate of progress, it seems unlikely that those teachers will be much closer to being "highly qualified" in 2014 than they are today.

All the senior teachers, both qualified and unqualified, will retire eventually. By then, let us hope, most schools will have adopted genuinely demanding standards for hiring their successors. But NCLB leaves plenty of room to continue avoiding such standards. The

states can adopt tests of content knowledge as easy as they choose—and they will continue to be under pressure from teachers' unions, schools of education, and other interest groups to avoid letting those tests become serious filters. According to the most recent available nationwide data, most of the states that test for content knowledge "have set the minimum passing score—or cut score—so low as to screen out only the very lowest performing individuals."³²

Some states have responded to NCLB by actually lowering their testing requirements for teachers. Since the law's enactment, Pennsylvania has dropped a test after finding that too many middle school teachers failed it. Maryland, New Hampshire, and Virginia have made their basic skills tests for teachers easier to pass.³³ Florida, Georgia, Illinois, Missouri, Nevada, and West Virginia have lowered their requirements for teachers trained out of state.³⁴

Thus, on teacher training we are seeing a clear test: Will the federal government use NCLB to inspire, coax, or pressure state and local school officials to adopt reforms that are contrary to those officials' self-interest, or will it allow states to evade the intent of the law by lowering standards? To date, the prevailing practice has been to allow flexibility, which in some states has resulted in lowering rather than raising standards.

Proficiency Tests

Test scores that measure academic achievement are the most important of all the areas in which states are supposed to produce progress under NCLB. Unfortunately, those scores are also the easiest to manipulate through a variety of statistical gimmicks that make schools seem more successful than they are. For NCLB to achieve its objectives, the state departments of education would have to act with a degree of rigorous candor that would be unprecedented in their history.³⁵

In this, as in other areas, the NCLB statute is schizophrenic. It gives the federal government a sweeping new role in promoting academic excellence, but at the same time it

leaves most of the key decisions, and the work of implementing them, in the hands of the state education agencies. For example, the word “proficiency” (including variants such as “proficient”) appears literally hundreds of times in the NCLB statute. It is at the heart of the legislation’s basic purpose as expressed in its opening sentence. (“The purpose of this title is 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.”) But strikingly, this crucial term is never defined. While spending increased amounts of money in the name of academic proficiency and building up new federal powers, all of which would horrify the original designers of our limited central government, NCLB leaves it entirely up to the states to decide just what “proficiency” means and how to measure it.

Under NCLB the states have manifold opportunities to “game the system” of testing and reporting. They can use tests with questions that are too easy. They can lower the “cut score”: the number of questions that must be answered correctly to establish a test taker’s proficiency. They can switch tests every few years, muddying long-term comparisons and creating the artificial appearance of short-term gains. They can abuse statistical techniques by treating the most wildly optimistic interpretation of a subgroup’s test results as definitive even if there is only a microscopic possibility that that interpretation is correct. They can concentrate extra tutoring and other resources on students who are just slightly below the cut-score thresholds, neglecting those who are well below or well above. They can fail to adopt rigorous procedures to prevent or detect cheating. In hopes that future lawmakers will relax NCLB, they can set their targets for “adequate yearly progress” in such a way that they commit themselves to only modest annual advances at the outset but to much faster progress as they near the 2014 deadline. As Frederick Hess put it in a recent interview, “The whole

process invites gamesmanship.” He predicted that the watering down of tests by the states would be “inevitable.”³⁶

The decades-old National Assessment of Educational Progress provides the most consistent available benchmark against which to measure the states’ testing programs. Since it is uniform from one state to another and does not trigger any adverse consequences (other than bad publicity) for states that do poorly, it is far less vulnerable than the states’ tests to self-serving manipulation. It also is clearly more demanding than most of those tests, though many people believe it is not demanding enough.³⁷

NAEP’s reading test for fourth graders found that in 2003 only 30 percent of those children nationwide were achieving at a level at or above “proficient.” Not one state had as many as half of its fourth graders reaching that level in the NAEP test; the highest-achieving state was Connecticut at 43 percent. But in reporting the results from the tests that they had designed and administered themselves, all but eight states claimed proficiency levels above 50 percent. The proficiency figure that Mississippi reported from its state test was 87 percent—even higher than Connecticut’s self-reported 69 percent and absurdly higher than Mississippi’s NAEP score of 18 percent.³⁸ Virginia, often praised for its leadership in education reforms such as its statewide “Standards of Learning,” reported that 73 percent were at or above “proficiency” in reading—compared with the NAEP figure of 35 percent.³⁹ Such astronomical gaps make one wonder whether the coming torrent of state reports on proficiency will mean anything at all.

Reinforcing such concerns is the mounting evidence that states are relaxing already established standards to make it easier to reach the NCLB target of universal math and reading “proficiency” by the year 2014. Some have openly adopted lower standards for NCLB than for their own internal state assessments. Education researcher Denis Doyle observed in November 2002 that, “cynical as I am, I was surprised at the speed and brazenness of states

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and localities lowering standards to comply with NCLB.”⁴⁰ It is now possible for Louisiana students to be classified as “proficient” in the state’s NCLB reports even if their scores are only at the lower, “basic” level on the scale that the state adopted in 1999. A Colorado student can now be “partially proficient” by state standards but “fully proficient” by federal standards. Connecticut has also embraced such a double standard.⁴¹ Georgia has lowered the number of correct answers required to pass its third grade reading test.⁴² That NCLB would actually cause the lowering of standards was not what the White House and Congress promised the nation when the statute was triumphantly enacted, but that is what we are getting.

The states seem to have learned from the painful example of Michigan, a pioneer in the state-level testing and accountability that helped lay the groundwork for NCLB. Precisely because Michigan had gone further than almost any other state in adopting high standards for academic outcomes, measured by stringent tests, by the beginning of the 2002–03 school year it found itself with more “failing” schools than any other state. NCLB was making Michigan look worse than other states that had set the bar lower.⁴³ Michigan responded to this embarrassment by lowering the passing rate on its high school English test from 75 percent to 42 percent—which helped reduce its reported number of failing schools from 1,500 to 216.⁴⁴

A more subtle method of boosting apparent performance is the misuse of “confidence intervals.” In its proper place, a confidence interval is an accepted statistical technique for taking into account the fact that quantitative measuring tools are inevitably subject to some degree of error. Most of us are familiar with opinion polls that include margins of error. For example, a pollster might report that 55 percent of his sample of voters are for candidate Jones and 40 percent for candidate Smith. Depending on matters such as sample size, the pollster might add that he has 90 percent confidence that those figures are accurate within five percentage points—or 95

percent confidence that they are accurate within 10 percentage points. The higher the level of confidence demanded, the wider the range around the reported result; thus in this hypothetical example the number of Jones supporters would range from 50 to 60 percent if one demanded 90 percent confidence but from 45 to 65 percent if one demanded 95 percent confidence.

Richard Innes, a Kentucky education researcher who has worked on this issue with the Bluegrass Institute, said in a telephone interview that state education officials in Kentucky at first “panicked when NCLB came out, but somebody came up with a brilliant solution: Insist on a very high degree of certainty.” Kentucky chose 99.5 percent confidence, which according to Innes is “a degree of certainty which nobody uses except for matters such as equipment on airplanes; usually educational statisticians settle for around 90 percent.” Naturally, the resulting error range, the “confidence interval,” is extremely wide. As Kentucky interprets the NCLB rules—an interpretation accepted by the federal regulators—it is only necessary for the top edge of that range to be at or above the passing threshold for a school to pronounce that it is meeting its target number of students achieving proficiency. Innes said that in some smaller schools the confidence interval has turned out to be as wide as 3 percent to 97 percent, with the school needing an average score of only 50 percent to meet its proficiency target. “They are guaranteed to meet that standard,” he said. “It’s a con game.”⁴⁵

More measured in its language than Innes, but essentially supporting his analysis, was a September 2004 study of NCLB implementation by the congressional oversight agency, the U.S. Government Accountability Office. GAO found that

some states used statistical methods, such as confidence intervals, which may result in more of their schools reaching proficiency goals than states that do not. For instance, Tennessee—a state that initially did not use confidence intervals but

later received approval to do so—re-analyzed its data from 2002–03, applying confidence intervals. The application of confidence intervals substantially decreased the number of schools not meeting state goals. The number of elementary and middle schools not making state goals was reduced by over half—47 percent to 22 percent. The application of confidence intervals can produce such differences because the computed ranges can be large, especially when small numbers of students make up groups or when scores vary significantly among students. For example, in a Kentucky high school, 16 percent of students with disabilities scored at the proficient level on a state test in 2004, and the goal was 19 percent. However, when the state applied confidence intervals, the computed interval associated with 16 percent was 0 to 33 percent. Because the state goal—19 percent—was within the confidence interval, the state considered this group to have met the goal.⁴⁶

Yet another method the states use to evade NCLB’s intent is what former assistant secretary of education Chester Finn has called the “balloon mortgage” tactic. In theory, states are supposed to achieve “adequate yearly progress” at a steady pace between now and 2014, the target year for 100 percent “proficiency.” They are not supposed to “backload” their accountability plans by setting goals of only tiny annual improvements for the next few years and then much larger gains later.⁴⁷ But in January 2003 Finn reported that federal officials had approved NCLB plans from Ohio and Indiana in which those two states claimed that they would “squeeze half of the necessary achievement growth into the final quarter of the twelve-year period”—like a homeowner agreeing to a low interest rate during the first few years of a mortgage and a higher rate later. As Finn put it, the state officials’ strategy is apparently to “deliver a little in the next few years, and quite a lot down the road—but with any luck

somebody else will be on duty when the ‘quite a lot’ time hits.”⁴⁸

Finn suggested that

to believe that this approach is plausible, you have to believe that academic gains will be made in U.S. schools at an accelerating pace, indeed that as the going gets hardest—moving those last, toughest kids over the hump to proficiency—the rate of improvement will speed up. . . . What I think is going on, cynic though you may call me, is that clever folks in at least two states figured out that, by the time 2011 rolls around, none of them will be responsible any longer. They’ll all have moved on to new jobs, retired to their ranchettes, taken high-level posts in Washington, whatever. Nor will anybody from the Bush Administration still be in office after January 20, 2009. Hence the immense achievement gains being promised for those last three years of the NCLB timetable will be somebody else’s problem to deliver. The incumbents will, in effect, have sold the property before the balloon part of the mortgage hits.⁴⁹

A study published in July 2004 by the Public Affairs Research Council of Louisiana found that as many as 20 states have now submitted NCLB plans with similar backloaded approaches. Some 17 of those states backloaded their projections for adequate yearly progress to “just after the 2007 ESEA re-authorization, apparently assuming that the goals will be modified substantially.”⁵⁰

As state officials have become more familiar with the NCLB statute and with the U.S. Department of Education’s interpretation of it, more of the states have joined the rush to relax standards. By September 2004, 47 states had filed requests for the U.S. Department of Education to approve changes to their NCLB plans that would in many cases make it easier for them to show adequate yearly progress.⁵¹ *Education Week* reported of the encouraging figures announced by many states that “while

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NCLB subtly encourages schools to neglect the gifted and talented.

state press releases have largely attributed the gains to hard work and better test scores, at least part of the reason stems from changes in state accountability plans and the additional flexibility granted by the federal government.” For example, the number of schools claiming to have met the annual progress targets in North Carolina jumped from 47 percent of all schools statewide in the 2002–03 school year to 70 percent in 2003–04. The rise in Pennsylvania was from 62 percent to 81 percent. While officials in both states insisted that part of those gains represented real improvement, they admitted to *Education Week* that many of the numerical differences reflected the use of confidence intervals.⁵²

Jack Jennings, head of the Center on Education Policy, said in a December 8, 2004, interview that he thought that the federal department had been “too rigid” during the first year and part of the second year after NCLB was enacted but “became more flexible after state legislatures started to rebel.” He also suggested that the upcoming 2004 presidential election caused the Bush administration to “go easy.” In his view, the U.S. Department of Education has now been trying to accommodate appeals from individual states—but, he said, “without understanding the impact of this on all the states as a whole.”⁵³

In October 2004 the Center on Education Policy published a detailed analysis of requests by states for changes in their NCLB accountability plans and of the U.S. Department of Education’s responses to those requests. While cautioning that “to make an informed statement on any state’s plan requires not only a knowledge of what target of student proficiency a state has set, but also all the other features of the plan,” the analysis found that “the changes, in total, give states and school districts more ‘wiggle room’ . . . [and] might be seen as allowing for short-term flexibility in implementation while maintaining the law’s long-term overall direction.”⁵⁴ All the changes specifically cited had the effect of making it easier for the states to report that they were meeting the NCLB targets.

The effect of such concessions is not only

to encourage other states to seek similar concessions but also to make year-by-year comparisons dubious. Parents and taxpayers may think that schools are on track in meeting NCLB’s increasingly strict criteria for adequate yearly progress, when in fact the criteria are simply being applied more leniently. For example, some state school officials initially feared that nearly all their school districts would be classified as needing improvement by the end of the 2003–04 school year, when for the first time they would be at risk of having fallen short of their adequate yearly progress targets for two consecutive years. But the federal regulators reduced that risk by allowing states to put school districts in the “needing improvement” category only if they failed to meet their targets at all three levels—elementary, middle, and high school—not just one or two of them. A North Carolina official told *Education Week* that nearly 85 or 90 percent of that state’s districts would have been in that category if it had not been for the U.S. Department of Education’s new flexibility.⁵⁵

Another problem with NCLB is the way it seems to encourage schools to neglect the most promising students. As a high-stakes system that threatens concrete, painful consequences for falling short, the statute gives educators a perverse incentive to concentrate only on those students whose performance will make the biggest difference in meeting the stated threshold. Educators have no incentive under NCLB to improve further the performance of students who are already well above the level of “proficiency.” Instead of working to turn superior students into outstanding students, schools that want to avoid unpleasant consequences would be well advised to concentrate on turning inferior students into barely adequate students. NCLB thus subtly encourages them to neglect the gifted and talented.⁵⁶

Cheating

More serious than “gaming the system” is outright cheating: not just publicly bending the rules but secretly breaking them outright.

Teachers who leak specific test questions to students in advance, or coach them while they are being tested, or doctor the students' answer sheets before sending them off for scoring are manifestly violating the stated policies of their own school systems. Are the state education agencies and local districts doing enough to detect and deter such cheating?

In December 2004 and January 2005, the *Dallas Morning News* published a devastating series of articles about Texas schools with suspicious anomalies, where "scores swung wildly from year to year. Schools made test-score leaps from mediocre to stellar in a year's time." The scores then often "came crashing down" when those seemingly stellar students left their elementary schools and went on to middle schools.⁵⁷ In June 2003 one teacher told the Houston School Board that she had been encouraged to cheat and instructed on how to do so, but apparently neither the school board nor the state education authorities responded seriously to her charges until the Dallas newspaper blew the whistle. That teacher was from Wesley Elementary School—one of the most famous schools in Texas, lauded repeatedly by former Houston school superintendent (and former U.S. secretary of education) Rod Paige as an example for others.⁵⁸

Overall, the *Morning News* found such suspicious test score anomalies at as many as 400 schools statewide. It should be stressed that this figure represents only about 5 percent of the state's 7,700 schools.⁵⁹ But it also should be noted that Texas state education officials do not regularly monitor test results to seek such anomalies, though they do conduct specific investigations in response to specific complaints. For the most part they let the local school districts police themselves—a pattern that seems to be widespread among other states.⁶⁰ The state education agencies cannot have it both ways: if they are going to mandate centralized, statewide testing programs and use the results of those tests to make centralized policy decisions, then they should take elementary steps to help ensure that the tests are honestly administered.

On the one hand, NCLB requires the states to put test score data on the public record, which makes it easier for journalists like those of the Dallas newspaper to study them. But on the other hand, it does not require state plans to include any specific safeguards against cheating. Since the statute obviously increases the incentives for cheating, there will probably be more of it in the future—both detected and undetected.

On balance, however, clandestine cheating by individual teachers and principals will be less of a threat than systematic, statewide dumbing down of standards and tests and the widespread dishonest reporting about the supposed rigor of those standards. Education researcher John Chubb of Edison Schools predicts that "as states find that it's acceptable to satisfy NCLB by lowering their standards, there will be a race to the bottom."⁶¹

Prospects

As the years go by, the incentives for evading the truth will continue to grow (as the adequate yearly progress targets get more ambitious). No future administration will have the same stake in NCLB as the one that launched it. If the Bush administration has not been willing so far to take the heat for withholding NCLB grants from states that fudge their numbers, why should future administrations be any bolder? Future presidents and secretaries of education may even decide that they share the states' interest in covering up the truth; the beginnings of such a trend are already visible in the Bush administration's publicity campaign exaggerating NCLB's successes.⁶²

The supporters of NCLB are not blind to those dangers, and they have ideas about countering them. One is that the U.S. Department of Education should publish an annual rating of the states' accountability systems, ranking them from best to worst.⁶³ The department could also fine-tune its handling of issues such as graduation rates and confidence intervals. But such fine-tuning will

With the passage of time, federal programs tend to become even more complicated, internally contradictory, and captive to various lobbies with their own inconsistent objectives.

In the 1980s every one of the states was found to be claiming that its students' scores on standardized achievement tests were above the average for all 50 states—a mathematical impossibility.

work only if the department is willing to exercise to the full extent its powers under NCLB to reject state plans and deny state funding. To make the states implement the schizophrenic statute seriously, federal education officials may even need to acquire additional powers—bringing still more centralization to a system already dysfunctionally overcentralized. Moreover, a reform strategy based on such strong control by Washington ultimately depends on the assumption that somehow the federal department will be immune to the interest-group pressures that warp decisionmaking within the state education agencies. As Matthew Ladner of the Goldwater Institute has observed, that idea “is based on unrealistic political assumptions. The teachers unions are the 800-pound gorilla; they are able to influence the accountability process itself.” He concludes that “so far the public schools have been able to get away with distorting measurement of their results, and they will continue to get away with it.”⁶⁴

If Ladner’s view seems too pessimistic, one should consider the experience of the two decades since education reform emerged as a major issue. Self-styled reformers, such as the federal commission that published *A Nation at Risk*, the influential 1983 report in which the education establishment belatedly acknowledged the mediocrity of America’s schools, claimed to be opposed to “more of the same”—to merely spending more on the status quo. Nevertheless, “more of the same” is exactly what happened. Harvard economist Caroline M. Hoxby explains: “Powerful interest groups were able to use the climate of urgency created by the report to get their own preferred policies enacted, even when the policies were not recommended by *Risk*. For instance, per-pupil spending has risen sharply while class size has fallen significantly. . . . The same interest groups were able to block some *Risk* recommendations that would have required real changes, such as lengthening the school year and assigning more homework.”⁶⁵

In some ways NCLB is less radical than *A Nation at Risk*. To win the support of congressional allies of the public school establish-

ment, such as Sen. Edward Kennedy (D-MA), the Bush administration dropped the most far-reaching elements of its original proposal in areas such as parental choice and block grants. Amy Wilkins of the Education Trust, which promotes accountability through systematic testing, accurately predicted in 2001, as she observed the legislation being watered down on Capitol Hill, that “we’re going to get a status quo bill at the end of the day.”⁶⁶ The 1,100-page statute did little to trim the tangle of education programs inherited from decades of federal empire building; it merely imposed new provisions and requirements on top of those programs.⁶⁷ Far from being a coherent reform plan, the bill left in place the structures of the 1960s and 1970s, when the federal government’s virtually exclusive emphasis in education policy was on “equality” rather than excellence—leaving future administrations free to revive that emphasis.

Some observers hope that the statute can be fixed by further amendments, but experience with most other large federal programs, from health care subsidies to the tax code, suggests the opposite. With the passage of time, such programs tend to become even more complicated, internally contradictory, and captive to various lobbies with their own inconsistent objectives.

Before NCLB, several states imposed accountability systems on schools with statewide testing, reporting, and (supposedly) clear consequences for failure. Frederick Hess found that over time those state systems have tended to drift from “tough” to “soft,” with standards and penalties being relaxed as interest groups mobilize against them. As summarized by Martin West and Paul Peterson of Harvard University’s Program on Education Policy and Governance, the findings of Hess and other researchers suggest that

keeping intact the necessary political will over the long run is likely to be highly problematic. . . . If authentic accountability is to be established, presidents, governors, and mayors, backed by a well-organized business community,

need to remain committed to the effort. Yet such leaders, with their numerous responsibilities, are easily distracted. Fighting wars, preventing terrorism, maintaining economic growth, balancing budgets, and many other issues, too unpredictable to anticipate, can easily shift educational accountability to the back burner. When that happens, well-organized, narrow interests gain the upper hand. All in all, there is every reason to believe that tough, coercive accountability will gradually evolve into something softer, nicer, more acceptable to those directly affected.⁶⁸

Even if national leaders remain undistracted, they will have to deal with school officials who are endlessly ingenious at finding their way around unwelcome standards. One thinks not only of the current maneuvers with confidence intervals and the like but also of the “Lake Wobegon effect” of the 1980s in which every one of the states was found to be claiming that its students’ scores on standardized achievement tests were above the average for all 50 states—a mathematical impossibility. That fraud was uncovered not by government education experts but by an amateur activist, West Virginia pediatrician John Jacob Cannell.⁶⁹

Conclusion and Recommendations

NCLB reflects an ideological strain that is novel for Republican presidents: utopianism. As did the older, left-wing forms of utopianism, the Bush administration emphasizes collective action rather than individual responsibility: NCLB implicitly treats students not as individuals but as passive commodities mass-produced by state programs. In its plans for extending NCLB to the high school level, the Bush administration has yet to signal that it will even try to revive the parental choice provisions that were part of its original proposal in early 2001—and that it utterly failed

to defend against the implacable statist among Capitol Hill Democrats. As individuals who respond to incentives, both parents and students are for the most part curiously absent from NCLB; its focus, like that of nearly all federal education programs for the last four decades, is on administrative units such as schools and school districts.

Utopianism usually ends up transforming rhetoric more than reality. In the real world, the chance that not one child in America will fall short of academic “proficiency” within a decade is the same as the chance that not one child will be a juvenile delinquent: zero. By 2014, if not before, NCLB will be seen to have failed, just as the centralized education programs enacted from the 1960s through the 1990s have failed.⁷⁰ But like those programs, NCLB may be so deeply entrenched by then that it will be difficult to repeal. In any case, it will have absorbed time, money, and energy that could otherwise have been spent on more promising measures. Like the so-called reform measures of the 1980s and 1990s, NCLB has not destroyed the chances of genuine, radical reforms in America’s profoundly dysfunctional school system, but it has almost certainly postponed them.

It will always be true that some of America’s tens of thousands of schools are excellent and some mediocre (or worse). Rather than continue to use centralized government decrees (both state and federal) to turn mediocre institutions into excellent ones, as they have been trying but failing to do for the last several decades, the state and federal governments should empower individual families to “vote with their feet” by transferring to the schools of their own choice. That strategy would bring three advantages that are absent from the monopolistic command-and-control model embodied in NCLB. First, it would allow parents to rescue their children from dysfunctional schools immediately rather than continue to wait for the public school establishment’s endless tinkering with the status quo to produce the glorious results that have long been promised but never arrive. Second, it would

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The key locus for such revolutionary reforms is the states. Under the Constitution it is the states that have legal responsibility for education.

allow families to pick schools that are compatible with their own philosophical and religious beliefs instead of locking them into poisonous, zero-sum conflicts to determine which groups will win the power to impose their beliefs on other groups within the coercive, one-size-fits-all government schools.

Third, a reform model based on free markets rather than state monopolies would unleash the dynamic force of competition. When schools know that they cannot take their customers for granted, they face a whole new incentive structure: They have to concentrate on producing solid results rather than on paper compliance with top-down regulations. Nothing concentrates the mind as effectively as the threat of having to go out of business. Real, ongoing accountability to customers who are free at any moment to take their children (and dollars) elsewhere is qualitatively different from imitation accountability to centralized government structures that can almost always be coaxed or pressured into keeping the money flowing to schools that are manifestly failing. The latter model, as practiced by so-called reform strategies such as NCLB, simply adds one more layer of bureaucracy to a system that is far too bureaucratized already. As education researchers John Chubb and Terry Moe observed 15 years ago in a now-classic study for the Brookings Institution, parental choice is a “revolutionary reform” rather than a “system-preserving” one: “The whole point of a thoroughgoing system of choice is to free the schools from these disabling constraints by sweeping away the old institutions and replacing them with new ones.”⁷¹

The key locus for such revolutionary reforms is the states. Under the Constitution it is the states that have legal responsibility for education. Even after decades of unconstitutional federal education programs, more than 90 percent of government financing for elementary and secondary schools still comes from state and local taxes. Education is thus one of the most promising areas for taking advantage of the flexibility and diversity that the nation’s Founders gave us: Let some

states try tuition tax credits or tax deductions, let others try vouchers, and let all learn from each other’s experience.

This process has of course begun with the parental choice programs already enacted in Wisconsin, Ohio, Florida, and elsewhere. In education as in other areas, the 18th-century principles built into the country’s federalist design are better adapted to the challenges of the fast-moving, down-sizing, open-ended 21st century than are the static, top-heavy, homogeneous structures left over from the mid-20th century.

Notes

1. Transcript of Bush’s speech, *Washington Post*, September 2, 2004, p. A01.
2. As the 2004 national Republican platform put it: “President Bush and Congressional Republicans have provided the largest increase in federal education funding in history and the highest percentage gain since the 1960s. Support for elementary and secondary education has had the largest increase in any single Presidential term since the 1960s—an increase of nearly 50 percent since 2001.” See www.gop.com/media/2004platform.pdf.
3. The 1996 Republican Party platform stated: “The federal government has no constitutional authority to be involved in school curricula or to control jobs in the work place. That is why we will abolish the Department of Education, end federal meddling in our schools, and promote family choice at all levels of learning. We therefore call for prompt repeal of the Goals 2000 program and the School-to-Work Act of 1994, which put new federal controls, as well as unfunded mandates, on the States. We further urge that federal attempts to impose outcome- or performance-based education on local schools be ended.” See <http://www.presidency.ucsb.edu/showplatforms.php?platindex=R1996>.
4. The school choice provisions fail to include private schools, and even the ostensible right to transfer to another public school has mostly proved to be hollow in practice. See Lisa Snell, “No Way Out: The No Child Left Behind Act Provides Only the Illusion of School Choice,” *Reason*, October 2004, <http://reason.com/0410/fe.is.no.shtml>: “A February 2004 report by the Civil Rights Project at Harvard found that in 10 urban school districts with large concentrations of children eligible to exercise school choice under NCLB, less than three percent of eligible students requested a transfer. Even with the small num-

ber of requests, no district in the study was able to approve all or even most of the transfer requests. . . . A federally funded survey of Buffalo parents by the Brighter Choice Public School Project found that 75 percent of the parents surveyed did not realize their children attended a school designated as in need of improvement, which means it did not make adequate yearly progress in reading or math for two consecutive years. A full 92 percent said they would like to switch schools. A comparable percentage of parents in Albany also were unaware of the transfer option.”

5. For a more detailed discussion of these points, see Lawrence A. Uzzell, “Contradictions of Centralized Education,” Cato Institute Policy Analysis no. 53, May 30, 1985.

6. Stephen Arons, *Short Route to Chaos: Conscience, Community and the Re-constitution of American Schooling* (Amherst: University of Massachusetts Press, 1997), p. 3.

7. At that January 8, 2002, ceremony Bush praised Sen. Edward Kennedy, Rep. George Miller, and other congressional leaders who, in Bush’s words, “decided to set partisan politics aside and focus on what was right for America.” See transcript of Bush’s remarks, <http://www.whitehouse.gov/news/releases/2002/01/20020108-1.html>.

8. See Michael Dobbs, “New Rules for ‘No Child’ Law Planned,” *Washington Post*, April 7, 2005, p. A13.

9. See James Madison, *Federalist* 45: “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. . . . The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties and properties of the people, and the internal order, improvement, and prosperity of the State.” The Tenth Amendment to the Constitution underscores this doctrine of enumerated powers: A claim of federal power not specifically authorized by Article I, Section 8, of the Constitution is illegitimate. The word “education” does not once appear either in the original Constitution or in any of its amendments.

10. See George Archibald, “Education Earmarks Clog Budget Bill,” *Washington Times*, January 9, 2005, <http://washingtontimes.com/national/20050109-120809-9076r.htm>: “The U.S. Department of Education is choking on congressional pork, struggling with mandates to spend about \$400

million on 1,175 specified local projects as earmarked by lawmakers in the omnibus appropriations bill enacted Dec. 8.” An official of the department’s Office for Innovation and Improvement told Archibald that Congress had increased that office’s number of mandated spending items from 450 in 2004 to 700 in the new fiscal year. According to the *Washington Times* article: “The projects range from school district teacher training and curriculum development in specified areas to after-school programs. Money also was mandated for groups pushing everything from the teaching of Jewish history and specific arts disciplines to weekend programs for children with disabilities.” One of the mandates provided \$9.7 million for the Education Leaders Council, a school reform group that has been a federal contractor since 2002.

11. See E. D. Hirsch, “Cultural Literacy,” *American Scholar*, Spring 1983.

12. On March 21, 2005, the website of the National Association for Bilingual Education, <http://www.forcefinder.com/JobSeeker/JobList.aspx?abbr=NABE>, listed only one private school opening for elementary teachers in its section for jobseekers—and that one opening was in a preschool Spanish-immersion program aimed at native speakers of English. For a description of the many flawed and faddish methods introduced in public schools, see Andrew Coulson, *Market Education: The Unknown History* (New Brunswick: Transaction, 1990), chap. 5. Diane Ravitch describes efforts to use public schools for social engineering and other causes against parents’ wishes. See Diane Ravitch, *Left Back: A Century of Battles over School Reform* (New York: Touchstone, 2000). See also James Coleman, “Public Schools, Private Schools, and the Public Interest,” *Public Interest*, no. 64 (Summer 1981).

13. Sheldon Richman, “Parent Power: Why National Standards Won’t Improve Education,” Cato Institute Policy Analysis no. 396, April 26, 2001, p. 14. Others disagree. Retired University of Virginia professor E. D. Hirsch, whose Core Knowledge Foundation promotes the study of specific classic texts, would like to see the states mandate such reading lists for all their schools. Hirsch worries, as he put it in “No Child Left Behind: How to Ace Those Tests,” Hoover Institution Weekly Essay, May 12, 2004, that the states are putting too much emphasis on “trivial tales and on constantly repeated content-poor exercises in ‘classifying’ and ‘finding the main idea.’ The desperate response of the schools to test pressure has been to excise history, science, and the arts and replace them with still more such exercises in reading.” For this he blames not NCLB itself, which he supports, but the states’ response to it. He predicts that “the small initial

rise in reading scores yielded by these intense, misguided efforts will level off to everyone's disappointment."

14. Richman, p. 14.

15. Chester E. Finn Jr. and Frederick M. Hess, "On Leaving No Child Behind," *Public Interest*, Fall 2004, p. 42.

16. Jay P. Greene and Greg Forster, "Cooking the Graduation Numbers," *Los Angeles Times*, December 11, 2003, p. B17.

17. Ibid. See also Jay P. Greene and Marcus A. Winters, "Pushed Out or Pulled Up? Exit Exams and Dropout Rates in Public High Schools," Manhattan Institute, May 2004.

18. Jay P. Greene, "High School Graduation Rates in the United States," prepared for the Black Alliance for Educational Options, 2001, revised April 2002. "The discrepancy," wrote Greene, "is largely caused by NCES' counting of General Educational Development (GED) graduates and others with alternative credentials as high school graduates, and by its reliance on a methodology that is likely to undercount dropouts." For Greene's arguments against treating the GED as the equivalent of a conventional high school diploma, see his article "GEDs Aren't Worth the Paper They're Printed On," *City Journal*, Winter 2002, http://www.city-journal.org/html/12_1_geds_arent.html. He cites studies finding that GED recipients perform only slightly better than dropouts in later earnings and other measures of success; for example, "almost three-quarters of GED holders who enroll in community colleges fail to finish their degrees, compared with 44 percent of high school graduates." He also finds that "jumping the GED hurdle . . . requires scant knowledge of the academic content that even our knowledge-lite high schools manage to get across."

19. Education Trust, "Telling the Whole Truth (or Not) about High School Graduation: New State Data," December 2003, p. 3, <http://www2.edtrust.org/NR/rdonlyres/4DE8F2E0-4D08-4640-B3B0-013F6DC3865D/0/tellingthetruthgradrates.pdf>. "These reports provide information about the number of students enrolled at each grade level disaggregated by student group. At the very least, states should be able to produce a reasonable graduation snapshot by using the data they already have to compare enrollments at the beginning of high school to graduates four years later. Of those states that did report data, we found a significant range in the reported graduation rates. . . . We question to what extent these differences are a function of reality, and to what extent they are a function of the ways states have chosen to represent reality."

20. Greene, "High School Graduation Rates in the United States."

21. Ibid. As of January 2005, the www.schoolresults.org website funded by the U.S. Department of Education was reporting that North Carolina had a graduation rate of 97 percent. See <http://www.schoolresults.org/App/SIP/SPSServlet/MenuRequest?StateID=34&LocLevelID=111&StateLocLevelID=178&LocationID=34&CatIndex=1&SecIndex=0&CompIndex=0&>. The Education Trust also found overly rosy reporting of the much-discussed gap between white and nonwhite students: "In the majority of states that reported disaggregated data, the difference between the self-reported graduation rate data and Greene's calculations was even wider for Latino and African American students than for the overall student population." Especially glaring was the discrepancy in Indiana, which reported a graduation rate of 88 percent for blacks. Greene's figure was 53 percent. For Connecticut the corresponding figures were 78.6 percent and 56 percent; for Illinois, 74.5 percent and 53 percent. Moreover, the NCLB forms sent to the states asked that they calculate high school graduates only as a percentage of those enrolled at "the beginning of the school year," not those enrolled at the beginning of ninth grade as specifically stated in the NCLB statute. The Education Trust's analysis found that "the Department's sloppiness has caused a great deal of confusion about defining graduation rates and has opened a loophole big enough for states to hide thousands of kids. States that strictly follow the language of the application form could technically be in compliance by reporting graduation rates based only on 12th graders, ignoring the fate of students who drop out in the ninth, 10th, or 11th grades" (p. 3).

22. Christopher B. Swanson, "Graduation Rates: Real Kids, Real Numbers," *Principal Leadership* magazine (Urban Institute), December 2004, p. 3.

23. Center on Education Policy, "Rule Change Could Help More Schools Meet Test Score Targets for the No Child Left Behind Act," October 22, 2004. Similarly, the Government Accountability Office, the congressional oversight agency, noted in a September 2004 analysis that the U.S. Department of Education had given conditional approval to state NCLB plans that were still missing elements needed to comply with the law such as provision of performance targets, including graduation rates, and examples of their required "state report cards." According to the GAO, "Some states provided [the U.S. Department of] Education with definitions for how they would calculate their goals and targets and assurances that the information would be forthcoming, but did not include the rates and percentages required by the law. Education officials said that some of these

states did not have enough data to report graduation rates, but that the states defined how they would do so once they began collecting such data. Education approved these state plans with the condition that states collect data on graduation rates and define them in a manner consistent with their plans. . . . However, the department did not have a written process to track interim steps and document that states meet the identified conditions within a specified time frame. In the follow-up letters Education sent to most states, it did not indicate specific time frames for when it expected states to demonstrate that they had met all NCLBA requirements. Education officials told us that they did not have a written process to ensure states are taking steps toward meeting the conditions set for full approval or what actions the department would take if states do not meet them.” U.S. Government Accountability Office, “No Child Left Behind Act: Improvements Needed in Education’s Process for Tracking States’ Implementation of Key Provisions,” September 2004, p. 33.

24. “Persistently Dangerous Schools,” *Education Week*, December 8, 2004, p. S7.

25. Colorado Department of Education, “Safe School Choice Option,” May 13, 2003, http://www.cde.state.co.us/cdeprevention/download/pdf/Safe_School_Choice_Policy.pdf.

26. “Colorado Reports No Dangerous Schools,” Associated Press, September 18, 2003.

27. Greg Toppo, “States Label Fewer Schools Dangerous,” *USA Today*, October 21, 2003, http://www.usatoday.com/news/nation/2003-10-21-schools-usat_x.htm.

28. For a detailed argument in favor of this view, see Andrew J. Rotherham and Sara Mead, “Teacher Quality: Beyond No Child Left Behind. A Response to Kaplan and Owings,” *NASSP Bulletin* (National Association of Secondary School Principals), June 2003, pp. 75–76. Rotherham and Mead conclude that “requiring all teachers to possess strong content knowledge in the subject or subjects they teach is an important step that is grounded in research demonstrating the importance of teacher content knowledge for student achievement, particularly at the secondary school level. . . . For example, researchers using data from the National Educational Longitudinal Study (NELS) of 1988 found a benefit of about one-third of a grade level of progress in mathematics for students whose teachers had both a bachelor of arts and a master of arts in mathematics and almost three-quarters of a grade level of growth for those students whose teachers had certification in mathematics (which included a significant core of mathematics courses). Likewise, an analysis using data from the

National Assessment of Educational Progress (NAEP) found that in math and science, students whose teachers majored or minored in the subject they teach outperform their peers by 40% of a grade level. These are powerful indications of the positive effect of rigorous subject-area training and pedagogical training that is specifically designed for teaching a particular academic subject.” They also find that “even though there are many candidates to teach in some disciplines, certain subjects suffer from acute shortages, particularly math, science, and special education. . . . USDOE figures show that about one in four high school math teachers and one in five high school science teachers lack a major or minor in their field. . . .” Moreover, they conclude that “teachers who demonstrate strong verbal skills or score highly on tests of these skills generate better student achievement than those with lower scores. For example, a study of students and teachers in Alabama found that teachers’ ACT scores accounted for 15% of the predicted achievement of their pupils, more than double the effect of class size, two-and-one-half times the effect of teachers’ possession of a master’s degree, and more than five times the effect of teacher experience. . . . A national study involving more than 300 high schools demonstrated that teachers educated at selective colleges with stiff entrance and graduation requirements had a positive effect on student learning that exceeded class size reduction or general increase in per pupil expenditure. According to USDOE statistics, teachers are drawn disproportionately from students with low scores on tests such as the SAT and ACT. . . . Moreover, students with high SAT or ACT scores are more likely to be among those who leave teaching within the first few years. This evidence, uncomfortable as it may be, cannot be ignored because it is indicative of a serious adverse selection problem.”

29. Maine Department of Education, *The Maine HOUSSE (High Objective Uniform State Standard of Evaluation) Content Knowledge Rubrics*, April 2004, pp. 9–10, <http://mainegov-images.informe.org/education/HQTP/HOUSSE%20Rubric%20Presentation.pdf>.

30. Florida Department of Education, *Florida NCLB Highly Qualified “Experienced” Teachers High, Objective, Uniform State Standard of Evaluation (HOUSSE) Plan, Teachers of Academic Core Content Courses*, n.d., p. 2, <http://info.fldoe.org/dscgi/ds.py/Get/File-2439/Forms.pdf>.

31. National Council on Teacher Quality, “Education Think Tank Evaluates Standards for America’s Veteran Teachers; Questions Effectiveness of State Plans,” news release, December 21, 2004. The full report, “Searching the Attic: How States are Responding to the Nation’s Goal of Placing a Highly Qualified Teacher in Every Classroom,” December

2004, is available via the NCTQ website, <http://www.nctq.org/>. "Searching the Attic," p. 1, noted that NCLB contains a "glaring ambiguity: the notable absence of a federal definition for the amount of coursework that constitutes a college major or minor. A number of states accept 24 credit hours as a college major, while most of the nation's more selective colleges view 30 credit hours as the norm."

32. U.S. Department of Education, Office of Postsecondary Education, "Meeting the Highly Qualified Teacher Challenge: The Secretary's Third Annual Report on Teacher Quality," July 2004. This report also found that only nine of the state agencies viewed any of their accredited teacher-training programs as being low performing or at risk of being low performing, for a total of only 25 programs out of about 1,200 in the entire country. Only half the states are even willing to let the general public know the percentage of would-be teachers from specific programs who fail state teacher-licensing tests—even though they are required to report those figures to Washington.

33. These actions lowering standards go unmentioned on the U.S. Department of Education's website on how "NCLB Is Making a Difference," <http://www.ed.gov/nclb/overview/importance/difference/index.html>. The brief, state-by-state reports published there make the federal department look more like a cheerleader than a stern taskmaster insisting on high standards.

34. George A. Clowes, "States Lower Standards for 'Highly Qualified' Teachers," *School Reform News* (Heartland Institute), September 1, 2004.

35. See, for example, Caroline M. Hoxby, "Reforms for Whom?" *Education Next* (Hoover Institution), Spring 2003, <http://www.educationnext.org/20032/47.html>.

36. Telephone interview with Frederick Hess, December 16, 2004.

37. See *2004 Brown Center Report on American Education* (Washington: Brookings Institution Press, November 2004), p. 3: "The NAEP has publicly released more than 500 items from its mathematics tests. In the first section of this report, after reviewing test data released in 2004, we analyze a sample of NAEP items and discover that the mathematics required to solve many of the problems is extraordinarily easy. Most of the arithmetic one would need to know to solve the average item on the eighth grade NAEP is taught by the end of third grade."

38. "Test Mismatch," *Education Week*, January 6,

2005. Only two states, South Carolina and Missouri, had point spreads smaller than 10 between the NAEP scores on fourth grade reading proficiency and the scores from their own tests. In Missouri the two figures were identical.

39. "State Data Tables" accompanying Ronald A. Skinner, "State of the States," *Education Week*, January 6, 2005, pp. 77–80. That discrepancy casts grave doubt on Virginia's claim on its "state report card" that 79 percent of all students were meeting the state performance target in English. See "Commonwealth of Virginia Achievement Results, Percentage of Students Passing for 2003–2004," http://pen2.vak12ed.edu/cgi-bin/broker?_service=doe_prod&_program=prod_code.st_report_select_page.sas.

40. Denis Doyle, "Lowering the Bar," *The Doyle Report*, SchoolNet, November 2, 2002, http://www.thedoylereport.com/default_article.aspx?pa_ge_id=viewpoint&id=664&archive=1.

41. See David J. Hoff, "States Revise the Meaning of 'Proficient,'" *Education Week*, October 9, 2002, p. 1, where Hoff notes: "When Louisiana established its accountability system in 1999, it set as a goal that all students would reach the 'basic' achievement level by 2009, and that all students would score at the proficient mark 10 years after that. The state purposely set its achievement levels to match the high standards of the federally sponsored National Assessment of Educational Progress, or NAEP, said Rodney R. Watson, the state's assistant superintendent for student and school performance. The state decided to make the basic level its goal under the No Child Left Behind Act, he said, because it was aligned with the state's target for 2009 and still represents solid academic achievement. On last spring's state tests, 17 percent of Louisiana 8th graders scored at either the proficient or 'advanced' level on an English/language arts test, while 31 percent rated in the basic category. In mathematics, 1 percent of 8th graders were advanced, 4 percent were proficient, and 37 percent were basic. By comparison, the state's 7th and 9th graders rated just below the national average on the composite score of the Iowa Tests of Basic Skills. While the state decided that its basic achievement level would be good enough for proficiency under the federal law, it decided against changing the name of the achievement level. 'It would have looked like we were dumbing down the standards,' Mr. Watson said. Instead, the state board of education changed the name of the state's proficient category to 'mastery.'"

42. Matthew Ladner, "States Lower Accountability Bar to Boost Pass Rates," *School Reform News* (Heartland Institute), September 1, 2004.

43. David A. DeSchryver, “NCLB a Dramatic Change for Title I Testing, But Too Much So?” *The Doyle Report*, November 5, 2002.

44. Ladner.

45. Telephone interview with Richard Innes, December 21, 2004. Innes added that he fears the misuse of confidence intervals might create an incentive for organizing deliberately small schools—smaller than the optimum size needed for rigorous courses in specialized subjects such as physics. His November 3, 2003, testimony on this subject to the Kentucky state legislature is available at <http://www.bipps.org/pubs/perspectives/pdf/gradrates.pdf>.

46. See U.S. Government Accountability Office, *No Child Left Behind Act: Improvements Needed in Education’s Process for Tracking States’ Implementation of Key Provisions*, September 2004, p. 21. Also worth noting on this point is the analysis of Derek Redelman, director of education policy for the Hudson Institute, in “Using Statistics to Subvert NCLB,” *School Reform News* (Heartland Institute), November 1, 2003, p. 1. Redelman found that “the passing rates being promised to the U.S. Department of Education are not in fact the benchmarks being enforced in many states. In Indiana, for example, state education officials lauded two schools in the town of Marion for having shown sufficient improvement that they were removed this year from the ‘needs improvement’ list. But a quick review of the data reveals one of the schools, Center Elementary, had actually declined in performance—falling from 55 percent passing in 2001–2002 to 43 percent passing in 2002–2003.” Redelman also noted that “some observers have also suggested the flexibility is being applied in the wrong place. If individual test scores are where variability occurs, then states ought to consider that when they set individual pass rates—not use that variability as a reason for lowering the number of students required to exceed the passing bar. Still others point out that using confidence limits is appropriate only for sampling data, not for hard counts like those used in determining pass rates.”

47. Secretary of Education Rod Paige even sent a letter to state school officers on July 24, 2002, stating that “a State’s definition of AYP is based on expectations for growth in student achievement that is continuous and substantial. . . . Accountability systems must establish proficiency goals statewide . . . that progressively increase to reflect 100 percent proficiency for all students by 2013–14. These goals must increase at steady and consistent increments during the 12-year timeline, although not necessarily annually throughout the 12 years (i.e., States cannot estab-

lish goals that will require the most substantial progress toward the end of the 12-year timeline).”

48. Chester E. Finn Jr., “Adequate Yearly Progress or Balloon Mortgage?” *Education Gadfly* (Thomas B. Fordham Institute), January 30, 2003, <http://www.edexcellence.net/foundation/gadfly/issue.cfm?id=9#367>.

49. Ibid.: “Ohio and Indiana each opted to set 5 intermediate goals, which effectively creates six achievement targets (since 100% proficiency comes in the period between goal #5 and 2014). And guess what? The first three of those targets each spans a three-year period (i.e. they’re to be attained in 2005, 2008 and 2011). But the final three are just a single year apart. In other words, these states are promising to make as much academic growth in the one year from 2011 to 2012 as in the three-year period 2002–5; they say they expect as sizable achievement gains between 2012 and 2013 as between 2005 and 2008; and they claim that their students will make as much progress from 2013 to 2014 as from 2008 to 2011. . . . [Thus] half the total gain to be made by Ohio and Indiana students will—if you believe it—be made in the last three years of the NCLB timetable, from 2011 to 2014.”

50. Stephanie Franks, *NCLB: A Steep Climb Ahead*, Public Affairs Research Council of Louisiana, July 2004, pp. 6–7. In Louisiana itself, this study found that the state’s annual targets for improvement in mathematics proficiency assume “that gains in student achievement within the last three years of the growth plan can be equal to gains throughout the first nine years.”

51. Lynn Olson, “Data Show Schools Making Progress on Federal Goals,” *Education Week*, September 8, 2004, p. 1.

52. Ibid.

53. Interview with Jack Jennings, December 5, 2004.

54. “Rule Change Could Help More Schools Meet Test Score Targets for the No Child Left Behind Act,” Center on Education Policy, October 22, 2004, p. 8. Among those changes were the following: (1) Amending their NCLB accountability plans to make more use of confidence intervals. In their original accountability plans, “about half the states” had used confidence intervals. Other states then seemed to learn from their example; another 12 states have now “either introduced the use of confidence intervals or changed the way they plan to use them to determine Adequate Yearly Progress.” (2) Identifying schools as needing improvement only if they have missed targets

in the same subject, math or reading, for two consecutive years—rather than in either of those two subjects. (3) Allowing states to average two or three years of test score data, rather than use just one year, in calculating the percentage of students who have reached “proficiency”—a change “intended to minimize the effect of fluctuations in group test scores that occur due to measurement error or changes in the composition of a school’s student body.” (4) Similarly allowing states to average two or three years of data on participation rates in testing for the purpose of meeting the rule that 95 percent of all students (both within each school and within certain ethnic or economic subgroups in a school) must take the required tests for measuring adequate yearly progress. Thus, for example, “a 94% participation rate one year could be balanced by a 96% participation rate the following or previous year”—a procedure that, as the analysis correctly noted, would “bring only temporary relief.” One could make a good case that some of those changes, such as the last two above, are reasonable accommodations to school systems trying to meet complicated new rules. Nevertheless, one must also be struck by the fact that all of the changes are in the direction of making the system more lenient—not in the direction of making it more stringent.

55. Lynn Olson.

56. Allan Olson of the Northwest Evaluation Association, which provides test development and test analysis services for public school systems, said in a December 22, 2004, telephone interview that he sees some evidence that this has indeed been happening. His researchers have frequently found schools where students near the cut-score level have been making disproportionately fast academic progress. Students who are just slightly below that level turn out to be progressing faster than would ordinarily be expected, while those who are far above or far below it are progressing more slowly than would ordinarily be expected. He has asked a research team to study this phenomenon in more detail and expects its findings to be complete in the spring of 2005. Olson said that he worries that NCLB’s accountability model is too simplistic; he would prefer “a model rich with information from across the full spectrum of abilities, not just about children clustered around the cut-score point.” In his view, the current rules force states to use tests that are just at grade level, which makes it harder for them “to do a good job of testing children who are well above or well below grade level.” He would like to see more detailed measuring systems, including measures of individual children’s academic growth: “Simply moving children above the line is not an adequate indicator.” A useful discussion of the problem may be found in John Cronin, *How*

Strong Is the Incentive for Educators to Game the Adequate Yearly Progress Requirements of the No Child Left Behind Act? Northwest Evaluation Association, September 2003. See especially p. 4: “Imagine a track coach is assigned a group of 100 athletes who will compete in the high jump. The high jumping ability of each of these athletes is widely varied but known. Forty-five of the athletes can currently jump proficiently; which is defined as high jumping five feet. The coach is told that she will receive \$1,000 for every additional student that jumps five feet after a four-week training period (if coaches only lived in such a world). The coach will also be docked \$1,000 for every student currently jumping five feet who fails to jump five feet on the test. If coaches wanted to manage or ‘game’ this system to maximize their income, what would they do? First they would find all the athletes who jump near five feet, either just above five feet or just below. Then they would coach those athletes feverishly to assure as many of them as possible jump above five feet at the end of the training period. In the meantime, rational coaches would give the seven-foot high jumpers in this group four weeks off because they are more likely to get injured practicing than they are to lose two feet on their jump. They would also spend little time with the three-foot high jumpers because their prospects for jumping five feet within four weeks are poor. In short, the best strategies for our coaches is to game the system by focusing their energies on the small number of high jumpers who have the best immediate prospects for improving to five feet. We can only hope that coaches are more altruistic than rational, because only an altruist would put her full energies into ensuring all these athletes receive the coaching they deserve.”

57. Joshua Benton and Holly K. Hacker, “Celebrated School Accused of Cheating,” *Dallas Morning News*, January 12, 2005.

58. Joshua Benton, “Cheating Allegations Go Back to 2003,” *Dallas Morning News*, December 30, 2004, <http://www.educationnext.org/20041/68.html>.

59. Brian A. Jacob and Steven D. Levitt found a similar proportion (3 to 6 percent of classrooms in Chicago’s public schools) in their study “To Catch a Cheat,” *Education Next*, Winter 2004.

60. Kathleen Kennedy Manzo, “Texas Takes Aim at Tainted Testing Program,” *Education Week*, January 19, 2005, p. 1.

61. Telephone interview with John Chubb, January 5, 2005. At the same time, Chubb stressed that he thinks NCLB “has the *potential* [his emphasis] to be the most important new educa-

tion policy in the United States since *Brown v. Board of Education*.”

62. For example, see the section of the Department of Education’s website “NCLB Is Making a Difference,” which provides about a page of carefully selected reports from each state, designed to convey the impression that the statute is an unmixed success. The first item listed is the amount by which federal education funding for that state has increased under the Bush administration. No critical comment is provided on the states’ distortions of information about matters such as graduation rates, unsafe schools, and confidence intervals. See <http://www.ed.gov/nclb/overview/importance/difference/index.html>.

63. Telephone interview with John Chubb.

64. Interview with Matthew Ladner, December 14, 2004. Ladner also noted that parents don’t like to hear that their own school or school district is failing, even if they have a low opinion of government schools in general; for one thing they often have an investment in a house the resale value of which is partly dependent on the local schools’ reputation.

65. Hoxby.

66. Quoted in Paul A. Gigot, “Teddy Takes George to School: Bush’s Education Plan Is Potemkin Reform,” *Wall Street Journal*, May 4, 2001, A14.

67. Erik W. Robelen, “ESEA to Boost Federal Role

in Education,” *Education Week*, January 9, 2002, p. 1.

68. Martin R. West, and Paul E. Peterson, “The Politics and Practice of Accountability,” in *No Child Left Behind? The Politics and Practice of Accountability* (Washington: Brookings Institution Press, 2003), p. 12.

69. For examples of how state departments of education have traditionally misused or misrepresented test data, see “Education Official Says Achievement Tests Paint Unrealistic Picture,” Associated Press, February 9, 1988. In the mid-1980s, a number of states succeeded in creating the false impression that they had actually enacted merit pay for teachers; see Lawrence A. Uzzell, “Where Is the ‘Merit’ in New Merit-Pay Plans?” *Education Week*, September 14, 1983.

70. See, for example, *Cato Handbook for Congress: Policy Recommendations for the 108th Congress* (Washington: Cato Institute, January 2003), pp. 295–303; Paul E. Peterson, “Little Gain in Student Achievement,” in *Our Schools and Our Future: Are We Still at Risk?* (Palo Alto: Hoover Institution, 2003); Uzzell, “Contradictions of Centralized Education”; Frank Armbruster, *Our Children’s Crippled Future* (New York: Quadrangle/New York Times, 1977); and Paul Copperman, *The Literacy Hoax: The Decline of Reading, Writing and Learning in the Public Schools and What We Can Do about It* (New York: William Morrow, 1978).

71. John E. Chubb and Terry M. Moe, *Politics, Markets, and America’s Schools* (Washington: Brookings Institution Press, 1990), p. 217.

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