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Executive Summary: University of the District of Columbia Law Review Article

Why The No Child Left Behind Act Needs To Be Restructured To Accomplish Its Goals and How To Do It

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I. Overview

As Congress prepares to debate the renewal of the Elementary and Secondary Education Act (ESEA), now known as the No Child Left Behind law, a new article published in *The University of the District of Columbia Law Review* exposes serious, inherent flaws in the law's accountability system which block progress toward raising student learning and proficiency nationwide. The article then offers concrete recommendations for restructuring the law to reduce the achievement gap and achieve results for all students.

No Child Left Behind: Its Promise and Successes: NCLB has dramatically committed the nation to the goal of academic proficiency for all students. It has heightened the public's awareness that millions of young people, particularly poor, black and Hispanic students, are getting academically short-changed and galvanized schools and districts nationwide to pay greater attention to this problem.

Little Improvement to Show in Student Learning: Yet after more than 10 years of intensive efforts, NCLB-style reforms have only raised an additional 3% of students nationwide to "proficiency" in reading and 10% in math, as measured by the National Assessment of Educational Progress (NAEP). More than 85% of both poor and minority students are still below proficiency, as are about 70% of all public school students. At the current rate, it would take 280 more years to raise the remaining 85% of poor and minority students to proficiency in reading and 85 years to do so in math.

II. Why NCLB Must Be Restructured to Meet Goals

Bridge to Nowhere: At the front end, NCLB establishes four pillars on which states and localities might build a bridge to meet the goal of academic proficiency for virtually all students: higher standards; periodic testing; disaggregating test results; and public reporting. But instead of helping schools by explaining what major structural changes they would need to make to build the bridge, the law leaps immediately to the back end, mandating that schools achieve "adequate yearly progress" (AYP) proficiency targets or face escalating sanctions.

Yet these AYP percentages, the non-compliance with which is the entire basis for imposing NCLB's sanctions, are themselves arbitrary and scientifically unfounded. In other words, AYP has never been shown to be achievable in practice. Moreover, NCLB's sanctions-based accountability system is based on false premises.

Four False Premises

1. Punishment Induces Major Educational Improvements: NCLB's accountability scheme implicitly assumes that failing Title I schools would make whatever educational improvements were necessary to dramatically improve learning to avoid embarrassment and escalating sanctions. Instead, the primary responses have been to manipulate test standards, scores, schedules and instruction to avoid sanctions, causing harms including:

- *Lowered academic standards and dumbed down curriculum:* States have severely lowered their achievement standards to boost the number of students with "passing" scores. NCLB has also generated a "drill and kill" approach to education where teachers focus on the lower-level thinking skills required to pass standardized tests instead of creatively engaging students to learn.
- *Exclusion of weak students:* Low-performing students are held back, pushed to drop out, or otherwise excluded from taking tests so their scores are not counted in the overall average.
- *Widespread climate of manipulation and cheating:* States have contrived schedules for achieving proficiency to produce artificial compliance with AYP. Hundreds of teachers and administrators have been accused of test-rigging, from changing students' answers to passing out tests and answers in advance.

2. Problems Are Local and Local Schools Have the Capacity to Deal With Them: NCLB presumes that the unique deficiencies in each failing Title I school predominate over systemic defects, and that each such school has the capacity to rectify them. In reality, the systemic defects far outweigh those unique to each school and local stakeholders currently lack the capacity to turn around their failing schools.

3. Escalating Sanctions Produce Necessary Changes: NCLB assumes that escalating sanctions, such as transfers, tutoring, new curriculum, and staff replacement, will cure failing schools. But this strategic-planning-based, mechanistic, piecemeal approach to school reform disregards the inherently organic nature of complex organizational improvement and does not work.

4. States Have the Capacity to Turn Around Failing Schools: NCLB presumes that states have the capacity to provide the critical technical assistance and support needed to help all their failing schools and districts turn around, and if, necessary, take them over. But states lack such capacity.

III. Recommendations for Restructuring NCLB for Success

Need to Convert from Two-Tier to One-Tier System: For seven decades, our public schools tracked students on a two-tiered system (college vs. general and vocational) that has subjected a disproportionate number of poor and minority youth to low level curriculum, teaching and family support for academic learning. If we are serious about bringing all students to a high level of academic proficiency, we must convert from a two-tier to a one-tier public school system nationwide.

Big Picture:

1. Shift the law's accountability system from sanctioning Title I funded schools and districts for failing test scores to holding them accountable for implementing the structural changes needed to dramatically improve student learning, as a condition of receiving Title I funding.
2. Replace use of arbitrary AYP targets as triggers for determining which Title I schools require improvement with recognition that all Title I schools need to make systemic improvements, except any which already has at least 85% of its students "proficient" on the NAEP or comparable test.
3. Require states and localities to plan for, adopt and publicly report on their implementation of the specific systemic changes needed to improve student learning, as well as on student achievement.

Examples of Specific Recommendations:

Specific systemic changes that Title I grantees would need to implement include:

1. Teach a curriculum that is at least at grade level in all classes, except for severely disabled students incapable of learning at that level regardless of the quality of teaching;

2. Replace “workshops” as the dominant form of staff development with extensive peer collaboration and mentoring;
3. Provide higher salary/differential pay to teachers and administrators in hard-to-staff schools;
4. Increase the teacher preparation time typically spent on supervised clinical placements from about ten weeks to at least 30 weeks, decreasing the time spent on traditional “methods” and “theory” courses, and emphasizing student teachers’ application of research to real-life problems facing them in their urban, and other, classrooms;
5. Replace existing post-graduate programs for principals and superintendents that emphasize how to manage stable “businesses” with intensive experiential programs in how to lead transformations of community expectations and student achievement.
6. Expand greatly programs to provide parenting skills and adult literacy to families of very low-achieving students, and, where infeasible, offer such students adult mentors as role models.

Conclusion

If these and the other recommended structural changes are made in NCLB/ESEA and related law, federal law can overcome decades of unequal education of poor and minority students and turn education into the new civil right of the 21st century. If, however, the law is allowed to remain on its current path of punishing schools for violating unfounded AYP objectives, it will not generate the fundamental changes necessary to improve learning. Without fundamental improvements in what happens in the classroom and at home, the number of failing schools will continue to escalate or standards will be lowered to avoid the appearance of failure.

About the Author

Gary M. Ratner is the founder and Executive Director of Citizens for Effective Schools (CES), a nonprofit education reform advocacy organization. Mr. Ratner has been a nationally recognized authority on school reform law and policy for over 20 years. He is a principal drafter of the Joint Organizational Statement on No Child Left Behind (NCLB) Act, the policy statement now endorsed by 100 national organizations, including NAACP, National School Boards Association, National Council of Churches, NEA and National Parent Teacher Association.

Mr. Ratner’s opinions have appeared in The New York Times, The Washington Post, BusinessWeek, The Boston Globe and other major publications. His upcoming article, “Why the No Child Left Behind Act Needs To Be Restructured To Accomplish Its Goals and How To Do It,” will appear in The University of the District of Columbia Law Review later this month. His law review article, "A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills", published in the Texas Law Review in 1985, is the seminal work that called for holding urban public schools legally accountable for effectively educating all students.

Gary won a Presidential Rank Award as a senior executive at the U.S. Department of Housing and Urban Development, was a top assistant to the Secretary of Health, Education and Welfare, and was characterized in an editorial in The Boston Globe as "one of Boston's prized lawyers," who "had more impact on city and state government...over the past decade [than all but a] few people in or out of the legal community."

He graduated from Williams College, Phi Beta Kappa, and Harvard Law School.

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