



NATIONAL CONFERENCE *of* STATE LEGISLATURES

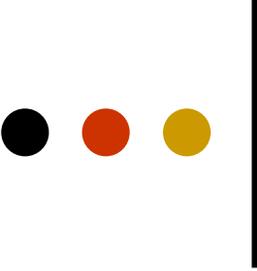
The Forum for America's Ideas



2007-2008 Federal Actions in Education: Where Are We and Where Do We Go From Here?

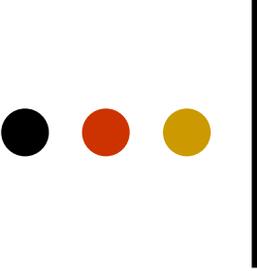
**New Mexico Legislative Education Study
Committee**

April 18, 2008



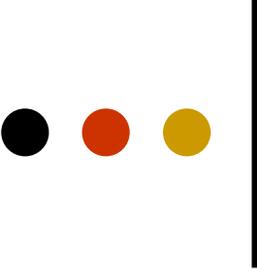
Where have we been? ESEA/NCLB

- **Feb. 2007**: The Department of Education's recommendations for the reauthorization of NCLB released: "Building on Results"
- Suggests changes based on an assumption that the 2002 iteration of the Elementary and Secondary Education Act (NCLB) is a highly effective standards-based reform whose success warrants an expansion of its current concepts and reach.



Where have we been? ESEA/NCLB

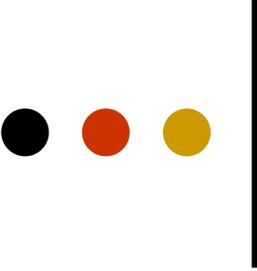
- **Feb. 2007 (2): Department's proposal, if enacted, would:**
 - Expand the standards setting requirement into high schools and require 2 additional years of testing.
 - Expand the testing regimen into new subject areas.
 - Expand AYP calculations to include performance on science assessments
 - Expand requirements on states to report to the Secretary of Education



Where have we been? ESEA/NCLB

Feb. 2007 (3): Department's proposal would preempt state laws regarding:

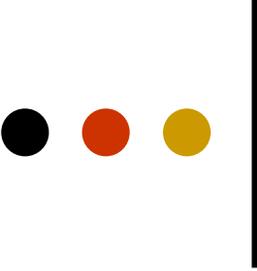
- the regulation of Charter Schools
- the regulation of voucher laws
- collective bargaining agreements with teachers



Where have we been? ESEA/NCLB

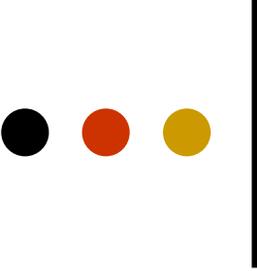
Feb. 2007 (4): Summary

- The Department's proposal promises greater flexibility and "waivers" to address widely acknowledged structural deficiencies in the law such as the insufficiencies of AYP as an accurate and meaningful measure of student performance and the discrepancies between the NCLB and IDEA.
- Prior efforts to address these issues through the waiver approval process have exposed a highly regulated, arbitrary and inconsistent process that has left states bewildered by the decisions of the Department. Comprehensive statutory NCLB reforms are preferable to piecemeal waiver and regulatory changes for most state and local officials. (See AASA article "Arbitrary and Capricious")



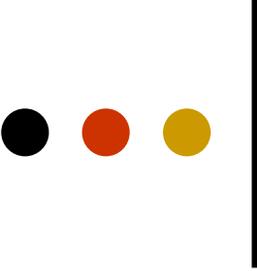
Where have we been? ESEA/NCLB

- **March - April 2007**: Two delegations of Task Force members meet with administration officials in White House (March) and then at NCSL offices (April).
- March meeting raises many issues, especially around consistency and fairness of implementation flexibility and conflict between NCLB and IDEA.
- Legislators participating include: Sen. Tom Gaffey-CT, Sen John Vratil-KS, Sen. Steve Saland-NY, Del. Nancy King-MD, Assm. Craig Stanley-NJ. Cordial, but general reaction of NCSL participants is frustration with lack of substantive response.



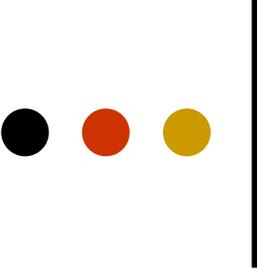
Where have we been? ESEA/NCLB

- o **June 2007**: Follow-up meeting of the NCSL Task Force, held in DC office. Ten members of Task Force attend to review February 2005 findings in light of findings of other study groups and changes made to the law through regulatory guidance. Reaction of attendees is that Task Force findings were on target, with other groups now coalescing on need for substantial overhaul.



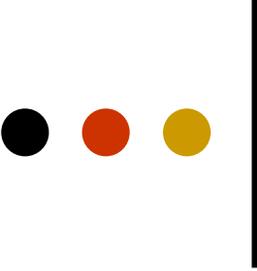
Where have we been? ESEA/NCLB

- **June 21, 2007**: Aspen Commission on NCLB
 - “NCLB on steroids”
 - More standards, testing, process and consequences.
 - More federal oversight.



Where have we been? ESEA/NCLB

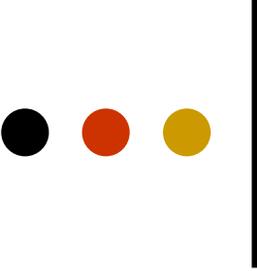
- August 27, 2007: the House Education & Workforce Committee released what was called a “staff draft” of a reauthorization plan for ESEA and requested comments by September 5, 2007, with mark-up anticipated within 2 weeks.
- The “staff draft” ran nearly 600 pages and covered Title I of the nine sections of ESEA.



Where have we been? House 'draft' vs. Task Force Findings

NCSL Task Force Issue: An appropriate federal role in K-12 education

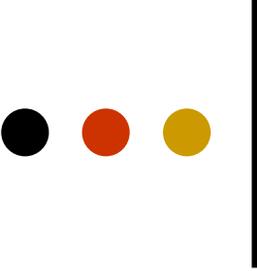
- o Reauth expands the federal role in education, adds college and work ready assessments
- o requires longitudinal data systems
- o adds non-academic “barriers” reports
- o new requirements for LEA reporting on suspensions and expulsions,
- o creates a mandate that states INOI provide teachers high-quality professional development
- o mandates states to establish a system of intensive technical assistance for troubled schools and districts and inserts the federal government into teacher assignments and state school finance formulas
- o requires states to develop language specific achievement tests and “appropriate” assessments for students with disabilities within two years of enactment or face the possibility of losing up to 25% of state administrative funds for either infraction



Where have we been? House 'draft' vs. Task Force Report

NCSL Task Force Issue: The validity of Adequate Yearly Progress (AYP) as a metric of student achievement:

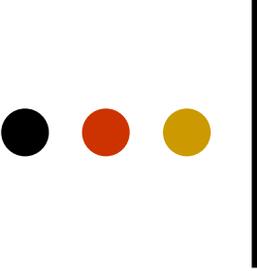
- Staff draft includes an encouraging list of AYP issues to be addressed, including the inclusion of multiple indicators, a “growth model” of student achievement, the recognition of levels of “failure” instead of an absolute pass/fail system and a differentiation and expansion of the consequences for failing to make AYP. *However, each of these proposals has serious shortcomings.*



Where have we been? House 'draft' vs. Task Force Report

NCSL Task Force Issue: The validity of AYP(2)

- The multiple indicators provision allows states to use measures other than standardized tests to determine AYP attainment but limits the impact of these other measures to 15% for elementary school achievement levels and 25% for high schools
- The “growth model” hybrid--considered by psychometricians to not rise to the definition of a true growth model--adds a growth *component* to the achievement equation but continues to require absolute attainment of proficiency by 2014 for all students in each subgroup--a goal that is admirable but unachievable according to the Task Force.
- The new designation of “Priority Schools” and “High Priority Schools” differentiate for levels of performance. However, it obscures additional process requirements that states must comply with such as “ensuring that no student in a school that misses AYP is taught for two consecutive years by a novice or out-of-field teacher.” This last provision, coupled with the “comparability” provisions, would greatly expand the reach of the federal government into state and local school financing and funding decisions related to teacher assignment.

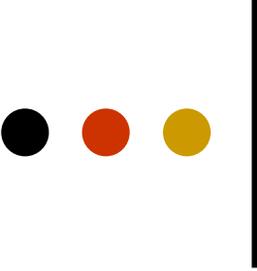


Where have we been? House 'draft' vs. Task Force Report

NCSL Task Force Issue: ELL & SWDs

Staff draft would codify a number of regulatory fixes. However,

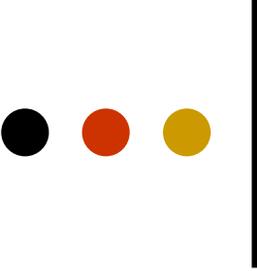
- special education students are taught at the level determined by the IEP and tested (with the above exemptions) at grade level
- The ELL changes similarly codify some of the existing flexibilities already granted and expand the options for states in addressing ELL needs.
- The inclusion of new mandates for states to develop native language assessment instruments within two years of enactment is expensive and unrealistic.
- According to the Task Force, IDEA provisions should always trump ESEA/NCLB and states should have the discretion to determine when to administer native language or English-only test



Where have we been? House 'draft' vs. Task Force Report

NCSL Task Force Issue: Summary

- Many of the fixes included in the staff draft are superficial and unnecessarily complex- a position that Secretary of Education Margaret Spellings articulated in response to the draft.
- What sense does it make to fix complex problems by generating new mandates and reporting requirements?
- The staff draft touches upon the problems of ESEA without solving the fundamental problems of the law.
- While commendable in its scope, the staff draft assumes that the ESEA iteration commonly referred to as No Child Left Behind is in need of minor amendments.
- NCSL urges the Committee to take a deliberative look at the findings of the NCSL Task Force and consider the inclusion of its recommendations in the draft put forth by the committee itself.



Who else has weighed in?

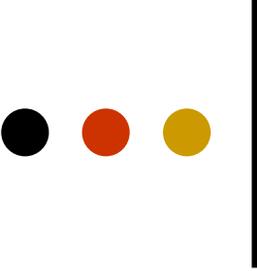
More than 100 bills introduced thus far (1):

Broad reforms, esp AYP:	22
Teacher related:	20
Early ed, extended day:	10
Graduation rates:	9
Literacy/ELL:	9
P.E., mental health/nutrition:	9
Other, incl. breakfast, environment:	9
Safe schools, bullying:	7
Rural:	6
Construction, admin, tech:	3 each



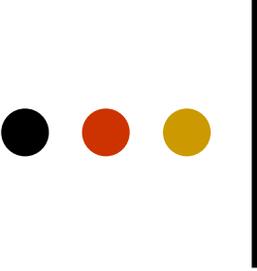
Who else has weighed in?

Class size:	2
Funding, mandate relief:	2
Data systems:	2
Opportunity to learn mandates:	2
Community schools:	2
Parental involvement:	2



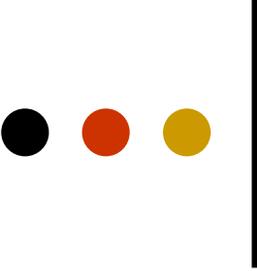
WHERE DO WE GO FROM HERE?

- In a speech in late September, Chairman George Miller announced that he had the votes to move a mark-up through Committee, even though a mark-up document had not been released.
- Presumably, his vote count included only Democrats, as Committee Republicans had their own version of NCLB reforms (with 57 co-sponsors, including the Minority Whip) among reports that the ranking member, Rep. Buck McKeon, is surreptitiously lobbying education interest groups to kill the majority version



WHERE DO WE GO FROM HERE?

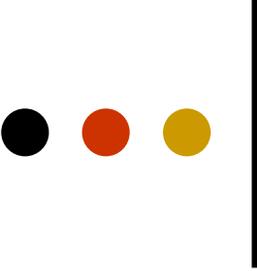
- The few groups that continue to support NCLB are in opposition to many of the Chairman's changes, saying they go too far and will water down the law. The White House and administration are in general agreement with these groups.
- Secretary Spellings argued that the House version would make NCLB "complicated and less transparent"- a position that is remarkably similar to the findings of the Task Force that "ESEA remains an admirable goal so wrapped in process and compliance that it fails to focus on outcomes and achievement."
- Technically the law expired September 30, 2007 but it contains an automatic one year extension. Congressional action (in Committee) may continue with an outside chance of an attempt to move the re-auth. But the presidential primaries make action unlikely.



Is uneven flexibility & waiver authority a *symptom* or a *solution*?

Flexibility granted in calculating AYP

- confidence intervals (17 states)
- safe harbor provisions (17 states)
- standard errors of measurement (4 states)
- uniform AYP averaging (4 states)
- rounding rules (5 states)
- indexing (13 states)

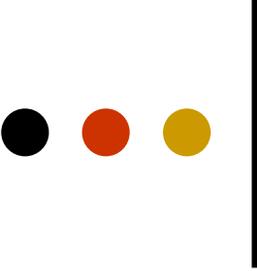


Is uneven flexibility & waiver authority a *symptom* or a *solution*?

- “....what once seemed a clear if highly controversial policy has now become a set of bargains and treaties with various states.” - *The Unraveling of No Child Left Behind: How Negotiated Changes Transform the Law* By: Gail L. Sunderman, Harvard Civil Rights Project. Foreword by Gary Orfield. February 2006, Harvard Civil Rights Project
- “**Adjustments to AYP are all about looking better rather than doing better.**” - Ron Cowell, President, Education Policy and Leadership Center

	SWDs Option I	SWDs Option II	SWDs Option III	Participation/uniform averaging	Katrina subgroup	Minimum subgroup size	Extra time to graduate	Identifying districts for improvement	Confidence intervals	Indexing	Rating	AMOs	Delays or changes due to new tests	Delays due to contractor problems
Alabama	06			05, 06	06			05	04	05		05	05	
Alaska				04		04, 06			04			05	05	
Arizona	05			04		05		05				06	06	
Arkansas				04	06	04	06	04	04			06		
California	06			04				05	05					
Colorado	05		06											
Connecticut				04				04, 06	06					06
Delaware	05			05				04	05		06			
District of Columbia													06	
Florida	05					05						05		
Georgia	05			04	06	05	05	04				05	05	
Hawaii	06			04		05			05					
Idaho	05			04, 06			04	06						
Illinois	05			04		05		05	06					
Indiana	05			04				05	05					
Iowa	05			06			05	06						
Kansas		06		04		04, 06	04		04			06	06	
Kentucky				04, 06		04	04						06	
Louisiana		06		04	06			04, 06	04, 05				06	
Maine				04				04	04					
Maryland	05		06	05				04			06		05	
Massachusetts	05		06	04		04		06					06	
Michigan	06			05		05			05	06		06	06	
Minnesota				04		05						04	04, 06	
Mississippi	05				06			05	05	05				
Missouri				04		04		04, 06	04			05, 06	06	
Montana	05			05		05			05			06		

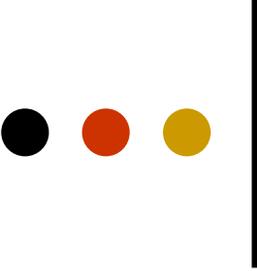
	SWDs Option I	SWDs Option II	SWDs Option III	Participation/ uniform averaging	Katrina subgroup	Minimum subgroup size	Extra time to graduate	Identifying districts for improvement	Confidence intervals	Indexing	Retesting	AMOs	Days or changes due to new tests	Days due to contractor problems
Nebraska				04		04	05	04	04					
Nevada	05							05				04, 06	04, 06	
New Hampshire	05							04				06	06	
New Jersey						04	05	04	06		05			
New Mexico	05			05		05	05	05	05	05		05	05	
New York	05					04			04		06	06	06	
North Carolina		06		04		04		04, 06	04			05, 06	05, 06	
North Dakota		06		04, 06			04							
Ohio				04				04						
Oklahoma	05			04				04	05, 06	04				
Oregon	05							05			04	06	06	
Pennsylvania	05			04				05	04	05				
Puerto Rico		06		06		06			06			06	06	
Rhode Island				04, 06					06					
South Carolina				04		04	05	05	04	05				06
South Dakota	05							04	05			05, 06	05	
Tennessee	05			04	06	04	04	04, 06	04, 06		04		05	
Texas				04	06						04			
Utah								06						
Vermont						06						06	06	
Virginia	05			04, 06		05	05	05			05, 06	05		
Washington				04, 06		04	04, 05		04		05, 06	04, 06	06	
West Virginia	05			04			06	04				06		
Wisconsin				04, 06				05	05	06				
Wyoming				04, 06			04	04	04		05	06	05	
Total # of states	28	5	3	40	7	25	16	35	31	8	10	24	25	2*



THE NCSL TASK FORCE ON NO CHILD LEFT BEHIND

Is uneven flexibility & waiver authority a *symptom* or a *solution*?

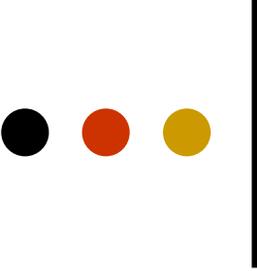
- Allowable “adjustments” so alter the impact of AYP that we consider them to be prima facie evidence of a failed metric.
- Try an experiment: Ask 100 parents to explain the impact of indexing and the application of standard errors of measurement on Johnnie or Jillian’s school’s AYP rating.
- A roomful of psychometricians pleaded with Congress to not use AYP as a metric with consequences and were thoroughly and utterly ignored.



THE NCSL TASK FORCE ON NO CHILD LEFT BEHIND

Lessons from NCLB implementation:

- Our system of government is predicated on a distrust of centralized power exercised arbitrarily from afar.
- Feds are not very good at micromanaging processes- they do not have the capacity or the self control to avoid heavy-handedness.
- Despite the admirable and articulate goals of NCLB, it has become a process oriented exercise in bureaucracy that could be made worse, and certainly will not be made substantially better, by the expansion of the federal role in K-12 education.



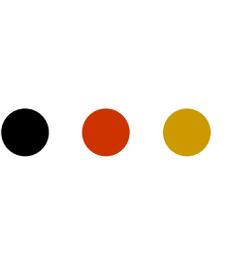
WHERE DO WE GO FROM HERE?

Funding

Funding ? Sharp declines in many districts and states continues!

For SY 06-07:

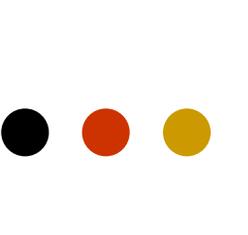
- **38% of LEAs gained Title I funds**
- **62% of LEAs lost Title I funds**
- **BUT, states are now required to reserve 4% of funds for school improvement activities, so...**
 - **10% of LEAs gained funds, 90% lost, and**
 - **25 states lost Title I funding compared to previous year**



Federal Actions-Funding Title I

Table 4. Top Ten Losing States Ranked by Dollar Loss of Title I Funds

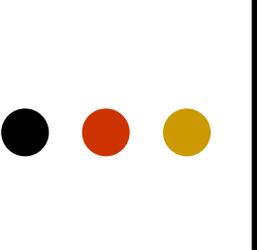
State	Dollar Reduction	Percentage Reduction
California	\$46.1 million	2.60%
Puerto Rico	\$26.5 million	5.68%
Massachusetts	\$22.4 million	9.74%
New York	\$20.4 million	1.67%
Missouri	\$ 9.2 million	4.67%
Virginia	\$ 8.8 million	4.06%
Michigan	\$ 7.5 million	1.72%
Connecticut	\$ 7.1 million	6.60%
Wisconsin	\$ 6.9 million	14.24%
New Jersey	\$ 6.4 million	2.35%



Federal Actions-Funding Title I

Table 5. Top Ten Gaining States Ranked by Dollar Increase in Title I, Part A Funds

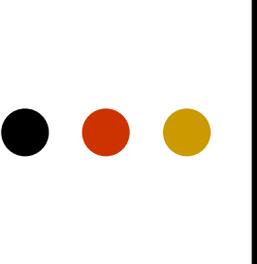
State	Amount of Increase	Percentage Increase
Florida	\$39.6 million	6.51%
Ohio	\$24.1 million	6.23%
Arizona	\$12.5 million	5.04%
Texas	\$12.0 million	1.02%
Indiana	\$ 9.8 million	5.61%
Nevada	\$ 7.4 million	10.63%
Pennsylvania	\$ 6.5 million	1.36%
Oregon	\$ 6.4 million	5.15%
Louisiana	\$ 6.1 million	2.21%
Colorado	\$ 5.7 million	4.60%



Federal Actions-Funding Title I

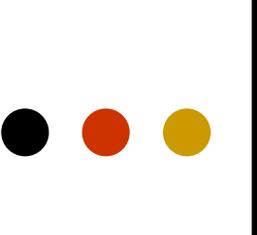
**Table 3. Comparison of School Year 2005-06 and School Year 2006-07
State Title I, Part A Allocations**

	2005-06 Total Title I, Part A Allocation	2006-07 Total Title I, Part A Allocation	Dollar Difference SY 2006-07 and SY 2005-06	Percentage Difference SY 2006-07 and SY 2005-05
United States	\$12,608,772,785	\$12,582,591,130	\$ -26,181,655	-0.21%
Alabama	\$ 195,054,363	\$ 198,973,598	\$ 3,919,325	2.01%
Alaska	\$ 33,685,281	\$ 33,198,364	\$ -486,917	-1.45%
Arizona	\$ 248,947,463	\$ 261,504,161	\$ 12,556,698	5.04%
Arkansas	\$ 124,833,439	\$ 125,428,167	\$ 594,728	0.48%
California	\$ 1,776,542,957	\$ 1,730,432,867	\$ -46,110,090	-2.60%
Colorado	\$ 123,503,053	\$ 129,180,467	\$ 5,677,414	1.00%
Connecticut	\$ 107,510,828	\$ 100,417,791	\$ -7,093,037	-6.60%
Delaware	\$ 33,822,100	\$ 33,814,011	\$ -8,089	-0.02%
District of Columbia	\$ 50,359,380	\$ 48,910,085	\$ -1,449,296	-2.88%
Florida	\$ 607,927,184	\$ 647,491,426	\$ 39,564,242	6.51%
Georgia	\$ 406,582,073	\$ 410,368,994	\$ 3,786,921	0.93%
Hawaii	\$ 47,544,186	\$ 46,178,981	\$ -1,365,205	-2.87%
Idaho	\$ 42,239,388	\$ 42,446,498	\$ 207,110	0.49%
Illinois	\$ 538,322,669	\$ 540,227,659	\$ 1,904,990	0.35%
Indiana	\$ 174,453,721	\$ 184,238,900	\$ 9,785,179	5.61%
Iowa	\$ 64,154,574	\$ 65,012,345	\$ 857,771	1.34%
Kansas	\$ 80,552,079	\$ 81,753,892	\$ 1,201,813	1.49%
Kentucky	\$ 187,312,943	\$ 183,955,830	\$ -3,357,113	-1.79%
Louisiana	\$ 277,695,043	\$ 283,841,634	\$ 6,146,591	2.21%
Maine	\$ 48,565,017	\$ 45,553,124	\$ -3,011,893	-6.20%
Maryland	\$ 170,956,601	\$ 171,873,921	\$ 917,320	0.54%
Massachusetts	\$ 230,006,730	\$ 207,609,645	\$ -22,397,085	-9.74%
Michigan	\$ 433,983,135	\$ 426,534,626	\$ -7,448,509	-1.72%
Minnesota	\$ 108,585,254	\$ 109,437,238	\$ 851,964	0.78%



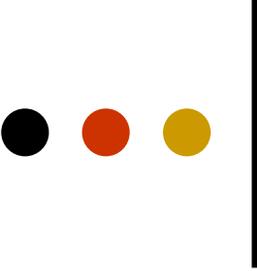
Federal Actions-Funding Title I

Minnesota	\$ 108,585,254	\$ 109,437,238	\$ 851,964	0.78%
Mississippi	\$ 167,138,754	\$ 170,465,550	\$ 3,325,796	1.99%
Missouri	\$ 196,404,362	\$ 187,237,599	\$ -9,166,763	-4.67%
Montana	\$ 41,674,992	\$ 41,019,595	\$ -655,397	-1.57%
Nebraska	\$ 51,488,249	\$ 50,696,205	\$ -792,044	-1.54%
Nevada	\$ 69,528,057	\$ 76,917,847	\$ 7,389,790	10.63%
New Hampshire	\$ 32,329,034	\$ 30,974,490	\$ -1,354,544	-4.19%
New Jersey	\$ 271,634,000	\$ 265,252,139	\$ -6,381,861	-2.35%
New Mexico	\$ 109,532,365	\$ 112,602,036	\$ 3,069,671	2.80%
New York	\$ 1,226,676,199	\$ 1,206,243,796	\$ -20,432,403	-1.67%
North Carolina	\$ 287,644,435	\$ 292,401,975	\$ 4,757,540	1.65%
North Dakota	\$ 32,197,096	\$ 30,110,050	\$ -2,087,046	-6.48%



Federal Actions-Funding Title I

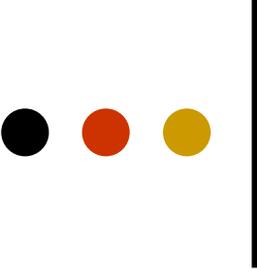
Ohio	\$ 386,302,092	\$ 410,371,501	\$ 24,069,409	6.23%
Oklahoma	\$ 40,102,281	\$ 140,632,283	\$ 530,002	0.38%
Oregon	\$ 124,395,311	\$ 130,799,719	\$ 6,404,408	5.15%
Pennsylvania	\$ 477,866,518	\$ 484,370,084	\$ 6,503,566	1.36%
Rhode Island	\$ 47,968,924	\$ 47,231,106	\$ -737,818	-1.54%
South Carolina	\$ 177,392,857	\$ 177,378,171	\$ -14,686	-0.01%
South Dakota	\$ 36,186,438	\$ 36,431,453	\$ 245,015	0.68%
Tennessee	\$ 202,692,962	\$ 204,529,915	\$ 1,836,953	0.91%
Texas	\$ 1,176,358,242	\$ 1,188,391,708	\$ 12,033,466	1.02%
Utah	\$ 55,472,286	\$ 54,383,177	\$ -1,089,109	-1.96%
Vermont	\$ 29,138,015	\$ 28,332,015	\$ -806,000	-2.77%
Virginia	\$ 216,517,554	\$ 207,716,947	\$ -8,800,607	-4.06%
Washington	\$ 177,054,534	\$ 176,459,185	\$ -595,349	-0.34%
West Virginia	\$ 103,625,567	\$ 99,331,338	\$ -4,294,229	-4.14%
Wisconsin	\$ 161,967,152	\$ 156,101,360	\$ -6,865,792	-4.24%
Wyoming	\$ 29,848,543	\$ 28,824,326	\$ -1,024,217	-3.43%
Puerto Rico	\$ 466,496,506	\$ 440,001,336	\$ -26,495,170	-5.68%



NCLB COURT ACTIONS

TWO DECISIONS:

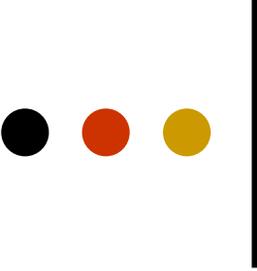
1. U.S. Court of Appeals for 7th Circuit (Chicago) regarding conflict between NCLB and IDEA, and
2. U.S. Court of Appeals for 6th Circuit (Detroit) regarding the “unfunded mandate” provision of NCLB.



NCLB COURT ACTIONS

U.S. Court of Appeals for 7th Circuit (Chicago)
regarding conflict between NCLB and
IDEA:

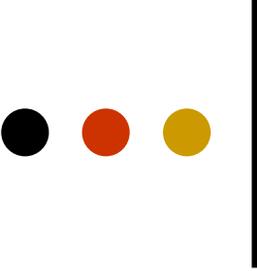
- February 2005: Two Illinois school districts and four families claim that the accountability measures of NCLB are in direct conflict with IDEA.
- Defendants: U. S. Department & Illinois State Board



NCLB COURT ACTIONS

U.S. Court of Appeals for 7th Circuit (Chicago)
regarding conflict between NCLB and IDEA:

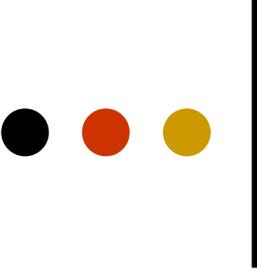
- Plaintiffs: IDEA requires all to have IEPs, which is contrary to NCLB's requirement that SPED students are tested as a sub-group and held to nearly same standards for accountability.



NCLB COURT ACTIONS

U.S. Court of Appeals for 7th Circuit (Chicago)
regarding conflict between NCLB and IDEA:

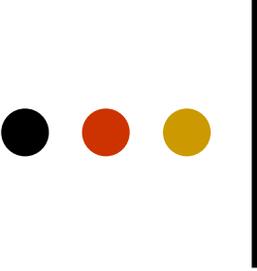
- Suit initially dismissed for lack of standing of plaintiffs, subsequently reversed and then dismissed by the 7th— “even if NCLB was in conflict with IDEA, the newer law (NCLB) takes precedence.”



NCLB COURT ACTIONS

U.S. Court of Appeals for 6th Circuit (Detroit) regarding the “unfunded mandate” provision of NCLB.

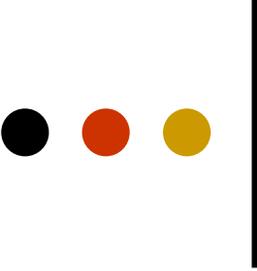
- Section 9527(a) of NCLB = 20 U.S.C. Section 7907(a)= Feds cannot force states to “spend any funds or incur any costs not paid for under this Act”.
- Plaintiffs: many school districts and teachers unions, including NEA



NCLB COURT ACTIONS

U.S. Court of Appeals for 6th Circuit (Detroit) regarding the “unfunded mandate” provision of NCLB.

- Secretary Spellings has “consistently maintained that school districts must comply with NCLB requirements even if they must spend non-federal funds to do so.” This is in direct conflict with public statements of her predecessor. Sec. Spellings referred to Sec. Paige’s comments as “stray comments.”

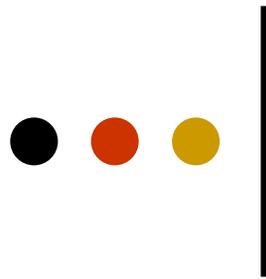


Conclusion

- The No Child Left Behind Act rests on the most laudable of goals: to “ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education.” 20 U.S.C. § 6301. Nobody challenges that aim. But a state official deciding to participate in NCLB could reasonably read § 7907(a) to mean that her State need not comply with requirements that are “not paid for under the Act” through federal funds. Thus, Congress has not “spoke[n] so clearly that we can fairly say that the State[s] could make an informed choice” to participate in the Act with the knowledge that they would have to comply with the Act’s requirements regardless of federal funding. See *Pennhurst*, 451 U.S. at 25. Of course, if that ultimately is what Congress intended, the ball is properly left in its court to make that clear. See *Arlington*, 126 S. Ct. at 2465 (Ginsburg, J., concurring) (“The ball, I conclude, is properly left in Congress’ court to provide, if it so elects, for consultant fees and testing expenses beyond those IDEA and its implementing regulations already authorize, along with any specifications, conditions, or limitations geared to those fees and expenses Congress may deem appropriate.”)
- Accordingly, we **REVERSE** the district court’s judgment dismissing Plaintiffs’ complaint and **REMAND** for further proceedings consistent with this opinion.

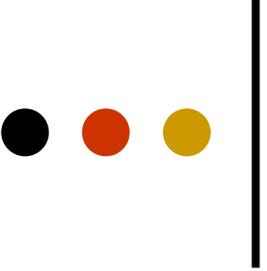


Higher Education Act Reauthorization



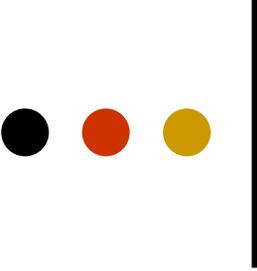
S. 1642

- Senate version of HEA reauthorization.
- Passed the Senate unanimously 95-0 on July 24, 2007.



H.R. 4137

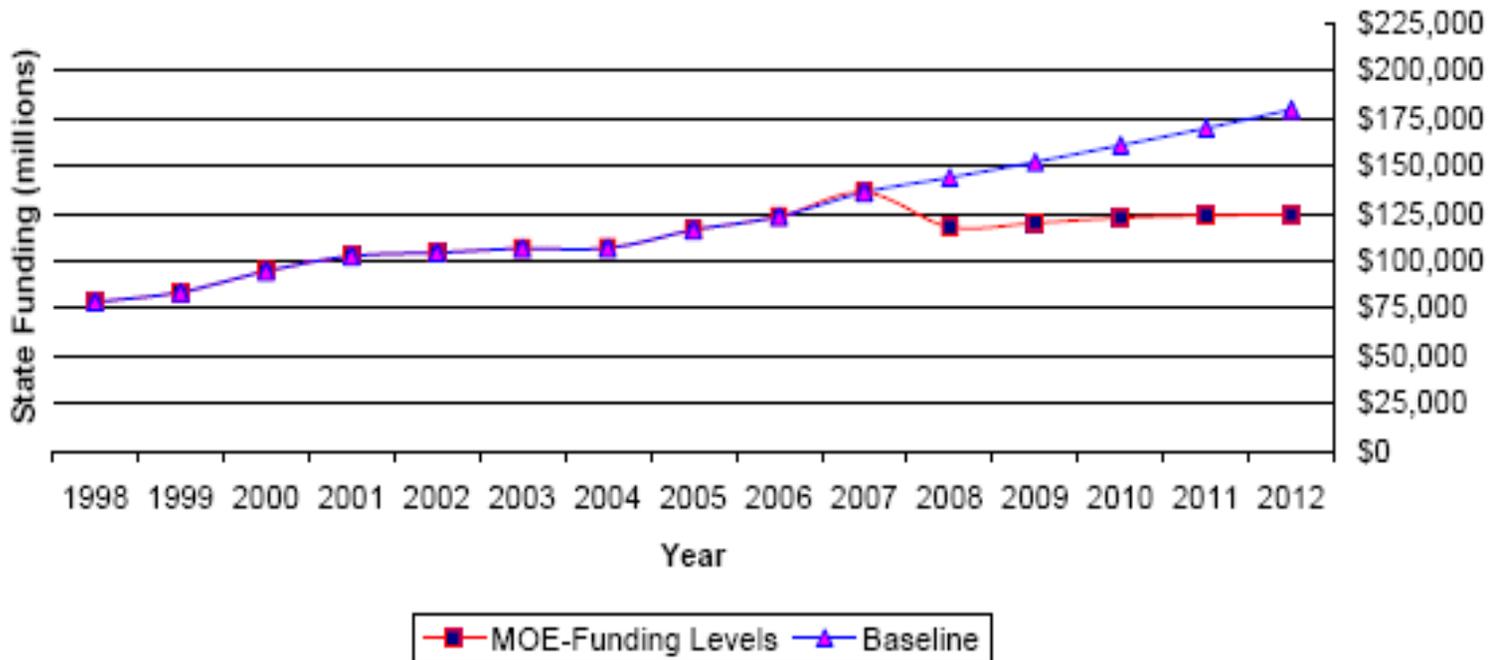
- House version of HEA reauthorization.
- Passed House on February 2, 2008 by a vote of 354-58.
- Section 108 would require states to maintain higher education appropriations at or above the rolling average rate of the previous five years or lose federal education funds-LEAP.

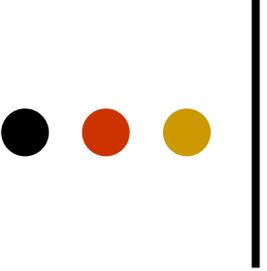


Maintenance of Effort (MOE)

- Section 108 would require states to maintain higher education appropriations at or above the rolling average rate of the previous five years or lose federal education funds as determined by the U.S. Secretary of Education.
- Well-intended attempt by Congress to control rising college tuition costs and increase college affordability.
- There is no evidence to support this and
- It would punish low-income students by taking Leveraging Educational Assistance Partnerships (LEAP) money away from states who do not maintain higher ed appropriations in tough budget years.
- In New Mexico for FY 2007, LEAP = \$413,000
- The MOE also preempts state budgeting authority in clear violation of all principles of federalism.

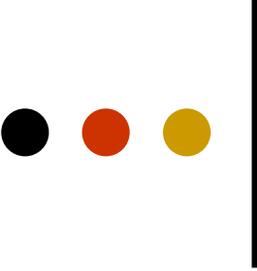
State Higher Education Spending Under MOE Scenario (in millions)





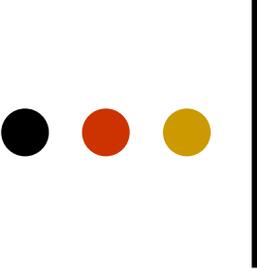
State Actions

- Contact Congressional Delegation
- Send letter/pass resolution from Higher Ed Chair, Leadership, etc. to Congressional Delegation urging the removal of Section 108.
- Letter from New Mexico LESC sent February 13, 2008.



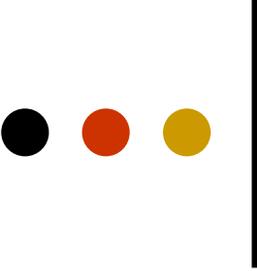
Misc. state/federal issues: Medicaid & National Standards

- Medicaid administration and transportation costs to be disallowed under regulatory fix by CMS
- Fix through statutory action? Maybe.



Misc. state/federal issues: Medicaid & National Standards

- National curriculum standards, whether voluntary or not, which at one time seemed to NCLB supporters to be a way to “fix” the law, are suddenly becoming less and less likely.
- NCSL opposition
- National School Boards Assn. opposes federal legislation that:
 - (a) mandates or coerces states to adopt specific standards or assessments; and/or,
 - (b) penalizes states that do not wish to adopt specific standards or assessments



Misc. state & federal action.

- States go further than ever before with actions circumscribing federal education law—Virginia, Arizona, Minnesota, Utah.
- Feds have an epiphany regarding flexibility and waivers with announcement of growth model and articulated consequences pilot programs— for a handful of states.
- Will feds backtrack with mandated graduation calculation?



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