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Locking Schools into more than they Bargained for: The Effects of the No Child Left Behind upon our Schools Ability to Control their own Education

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Abstract: This article finds the No Child Left Behind Act (NCLBA) has failed to provide states with the federal funding their schools were promised to receive, when they first accepted the mandated terms. Under the NCLBA, every state established accountability plans for their schools; and if they failed to meet required “adequate yearly progress” they would suffer penalties including a reduction in funding. Since federal funding has never been provided fully, schools have struggled to meet their established accountability plans. As a result, states would like to opt out of the NCLBA and regain their own control, but they can not afford to forgo the promised federal funding. As part of its conclusion, this article identifies six modifications to the NCLBA that would allow states to regain control and receive adequate funding to provide improved education for all students.

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I. Introduction

It has been seven years since President George W. Bush signed into law the momentous No Child Left Behind Act (NCLBA) in January 2002.\(^1\) Throughout this period of time we have seen an act, originally created to foster an improved education system for all students across the board,\(^2\) instead cause more harm and controversy than was intended.\(^3\) The fundamental concepts behind the NCLBA are not new ideas,\(^4\) as the act is a revision of the Elementary and Secondary Education Act (ESEA) of 1965.\(^5\) The ESEA formerly provided federal funding to help improve impoverished schools and combat the effects of discrimination.\(^6\) However, the reform measures of the NCLBA have shifted its focus, as federal funding is now provided based upon school districts meeting the established federally mandated standards for student test scores.\(^7\)

When the NCLBA was introduced, states were given the option to accept its guidelines\(^8\) and receive the federal funding that their schools had become dependent upon to run their programs;\(^9\) or decline the federal funding and institute their own accountability systems.\(^10\) The choice was clearly evident; all states accepted the terms of

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\(^4\) No Child Left Behind Act of 2001, supra note 1, at 1425.

\(^5\) id. at 1425.

\(^6\) Sch. Dist. of the City of Pontiac v. Sec’y of the United States Dep’t of Educ., 512 f.3d 252, 254-255 (6th Cir. 2008).

\(^7\) 20 U.S.C. §6311 (2007). Clearly our government has shifted its focus. When the ESEA was originally established, the intent was to help improve education and learning for students by providing additional funding. Now the focus has shifted to a limited modern view that identifies learning narrowly with proficiency on a standard exam, and forces students to learn just for these exams, while basing funding amounts upon these test scores. This will continue to have negative results on our education system, and if continued unmodified it will eventually spiral out of control.

\(^8\) id. §6311. Each state has its own accountability plan that establishes academic achievement standards students must demonstrate.

\(^9\) See Pontiac, supra note 6, at 267.

\(^10\) See id. at 255.
the NCLBA.\textsuperscript{11} Although the language of the NCLBA allowed states to voluntarily choose to participate in the NCLBA\textsuperscript{12} they were actually coerced into making such a decision by threatened loss of funds,\textsuperscript{13} as states could not cut certain longstanding programs that students rely on, or raise taxes at a local level, to make up for these lost federal funds.\textsuperscript{14} Furthermore, the NCLBA itself became legally binding once accepted and its mandates or requirements must be followed by states.\textsuperscript{15} All states finalized acceptance of the NCLBA by filing the required accountability plans, which are comprised of an acknowledgement of terms they intend to follow under the NCLBA.\textsuperscript{16}

Soon after accepting the mandated provisions of the NCLBA, schools were placed in difficult positions as the federal government failed to allocate the promised amount of funds originally budgeted.\textsuperscript{17} Without proper funding schools are not able to meet their established state accountability plans\textsuperscript{18} and students will fail to meet mandated academic assessment scores.\textsuperscript{19} This will result in a state’s failure to meet adequate yearly progress (AYP)\textsuperscript{20} for which it will eventually be penalized and lose even more federal funding.\textsuperscript{21} This leaves states with a desire to opt out from the NCLBA due to the federal

\begin{footnotes}
\item[14] see Bump, supra note 13, at 548.
\item[15] See No Child Left Behind Act of 2001, supra note 1, at 1425.
\item[16] See Decision Letters, supra note 11.
\item[18] see Pontiac, supra note 6, at 260.
\item[19] see 20 U.S.C. §6311.
\item[20] id. at §6311 (b)(2)(B). Adequate Yearly Progress is the minimum level of improvement that schools have to reach each year as they progress toward the goal of 100 percent proficiency.
\item[21] id. §6311 (g). Penalties are enacted when states fail to meet deadlines, which result in withholding funds.
\end{footnotes}
government’s failure to meet its obligation to provide federal funding.22 States would like to opt out also in order to regain local control over their student’s education.23 However, states cannot afford to forego federal funding and opt out of the NCLBA.24 This leaves states with limited options, as they will attempt to amend or modify the terms of their state accountability plans whenever they are unable to satisfy them.25 Any modification a state attempts to make to their previously agreed accountability plan must be applied for and accepted by the United States Department of Education.26 This is virtually an impossible task for states to achieve, as the federal government holds the unilateral power to reject or accept a state’s proposed modification. Furthermore, there is no incentive for the federal government to accept any modification to the agreed terms because it might undermine the goals of the NCLBA.

This paper explores the inability states have to opt out of the NCLBA and why they should be able to modify the mandated terms to which they are held, in a way that is fair to each state. First, Part II provides an in depth look at the purpose and goals behind the NCLBA. With a firm understanding of background knowledge, Part III will address the problems resulting from the NCLBA. Part IV will shift focus to the problems associated with state’s opt out abilities. Then, Part V will provide a comprehensive analysis suggesting improvements through modifications for the upcoming

22 Pontiac, supra note 6, at 257.
24 Pontiac, supra note 6, at 267 [see additionally 20 U.S.C. §7907 (a)].
reauthorization of the NCLBA, which is currently before Congress. Lastly, Part VI will be a conclusion.

II. The Purpose and Goals of the No Child Left Behind Act

A. Original objectives of the Elementary and Secondary Education Act of 1965

In the aftermath of John F. Kennedy’s assassination, President Johnson undertook to champion social reforms under his program, the War on Poverty. Through his reform measures for education and civil rights he was able to create the original legislation now used to help provide federal funds to kindergarten through twelfth grade schools. This legislation, the Elementary and Secondary Education Act, had the principal purpose to achieve desegregation throughout schools and provide federal aid to schools with low-income students. The ESEA was able to accomplish this through the incorporated provisions of Title I. Title I, considered the most important federal program, allocated federal funds to high-poverty schools districts that need supplemental funds to help run their programs and meet educational standards. The original ESEA offered voluntary funding to schools in need, as a way of encouraging them to desegregate. Specifically the ESEA offered federal funding to improve schools in the south, which were historically comprised of disadvantaged African American students, unskilled teachers, and even fewer educational materials and programs than

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28 *id.*
29 *id.*
33 Hanna, *supra* note 27.
desegregated schools offered.\textsuperscript{34} However, schools were not dependent upon accepting ESEA funding in order to maintain their current substandard status.\textsuperscript{35} Rather, they could choose to gain new funds for the purpose of giving children the opportunity to, “receive the best possible education.”\textsuperscript{36} Furthermore there were no accountability standards or mandates that schools had to meet to receive funding.\textsuperscript{37} Over the years the ESEA has continually been reauthorized in an effort to solve lingering problems with education standards, raise accountability and each time shifting its focus to new objectives.\textsuperscript{38}

B. Objectives of the No Child Left Behind Act of 2001

The most recent reauthorization of the ESEA is our current NCLBA.\textsuperscript{39} It has continued to maintain many of the tenets developed throughout the previous eight versions;\textsuperscript{40} as its main purpose continues to be the closing of the achievement gap between the disadvantaged students and their more affluent peers.\textsuperscript{41} The NCLBA seeks to “ensure that all children have a fair, equal and significant opportunity to obtain high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.”\textsuperscript{42}

\textsuperscript{34} see id.
\textsuperscript{35} see id.
\textsuperscript{36} id. [quoting Harold ("Doc") Howe II, Commissioner of Education, Address at the Alabama State Advisory Committee’s Civil Rights Commission (1966)].
\textsuperscript{37} Bump, supra note 13, at 524.
\textsuperscript{39} No Child Left Behind Act of 2001, supra note 1, at 1425.
\textsuperscript{40} Bump, supra note 13, at 524.
\textsuperscript{41} id. at 523.
\textsuperscript{42} 20 U.S.C. §6301.
The purpose of the NCLBA is to help educate those lower achieving students society has historically forgotten about. It enacts mandated guidelines upon states that can only be met when school districts create programs that concentrate on helping to level the playing fields for those disadvantaged students. School districts that comply will receive supplemental funding to help run these necessary programs they are required to under the NCLBA mandates. Each school that demonstrates the greatest need for funding, based on factors of student poverty levels and educational testing scores, will be allotted larger amounts. Once a state receives federal funding it retains the power to properly distribute it, as they are held accountable for ensuring students attain NCLBA mandated levels of achievement.

C. State Accountability Plans

When the NCLBA was enacted it required all states who wanted to participate to submit their own application in the form of a state accountability plan to the Secretary of Education. All 50 states chose to develop their own plan, which the United States Department of Education had the power to approve. If it met approval, the state plan adequately represented a detailed outline complying with the mandates required by the NCLBA. However, after review, if the Secretary believed the accountability plan would not satisfy all NCLBA mandates it could be sent back for amending. 

\[43\] see id. §6301.
\[44\] id. §6311 (b)(1)(C).
\[45\] id. §6311 (b)(1)(C).
\[46\] id. §6301 (5).
\[47\] id. §6301 (4).
\[49\] see Decision Letters, supra note 11.
\[50\] see id.
\[51\] Simon, supra note 25.
process has led to increased federal government control over individual state’s education.

In accordance with the NCLBA guidelines, each state’s plan must contain challenging academic achievement standards that enable it to measure the each student’s level of achievement. Individual states could have a different plan as long as the same standards apply throughout every school within their respective state and the plan ensures performance goals for each student’s targeted subjects of mathematics, reading or language arts and science proficiency. The next step was for schools to develop a means of assessment to ensure that students meet the NCLBA required levels of achievement.

D. Assessments of schools

To ensure that students are receiving the best education, each state must administer annual assessments of the targeted subjects by way of standardized exams to review the progress of each student. These test score assessments will enable schools to track the progress of all disadvantaged students to ensure they are making progress. Academic assessments are exclusively carried out annually from grades 3 through 8 and throughout high school, by collecting each student’s test scores from the target subjects to determine the yearly performance of the state. Analysis of these academic assessments determines if adequate yearly progress (AYP) within each state’s

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53 Pontiac, supra note 6, at 255 [Referencing 20 U.S.C. §6311 (b)(1)(C)].
55 id. §6311 (b)(3).
56 id. §6311 (b)(2)(C)(v)(II). The students’ test scores will be broken down for each type of student; economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency to ensure that all children no matter their background receives academic achievement.
57 id. §6311 (b)(2)(C)(vii).
58 id. §6311 (b)(3)(A).
accountability plan has been met. AYP provides a yearly progress report card to schools, states, teachers, parents and the federal government alike, to ensure student academic achievement standards meet the goal of reducing the achievement gaps at the state level. Students’ academic success within each state is required to rise annually and after twelve years of compliance meet or exceed their state’s level of academic achievement. These expectations behind the NCLBA continue to foster the belief that schools will provide all students with the proper education through target subjects, allowing underachieving students to reach equivalent levels to their peers and become more competitive with the rest of the world.

Each state can individually develop its own measurable objectives through tests on target subjects, but they must be comprehensive and in alignment with the mandates and federal expectations of the NCLBA. However, if schools fail to meet any of the mandates, the Secretary of Education has the authority to withhold federal funding until she feels the state has adequately complied. Although entire federal funds are rarely revoked, specific amounts of funding used for different types of educational programs may be reduced. These types of threats are implemented to ensure that school districts comply with the NCLBA as they depend too heavily upon federal funding to risk losing it.

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59 id. §6311 (b)(2)(B).
61 20 U.S.C. §6311 (b)(2)(F) (2007); 20 U.S.C. §6311 (b)(2) (2007). It is expected that each school’s first student achievement increases occur within 2 years. Following increases should continue to occur in no more than 3 years. If a school’s students fail to meet increase objectives, but only decrease the previous years by 10 percent, this will satisfy the expected progress rates.
63 see 20 U.S.C. §6311 (g)(B)(2).
Under the NCLBA, states have been afforded the flexibility to allow school
districts to make decisions on how to meet NCLBA requirements. Sanctions have been
established by the NCLBA to start at these local levels, by placing schools that fail to
meet AYP for 2 years in a row on school improvement status for a whole year. An
element of school improvement is public school choice, which allows a student to
transfer to a different school within the district so they may be able to receive a better
education while forcing their previous school to pay for any expenses through their
federal funds. If a school once again fails to meet AYP, totaling three years in a row, it
will be placed on school improvement again and be forced to pay from their allotted
federal funds for an outside educational service to provide after school tutoring. If a
school continues to miss its AYP it will be required to take corrective actions in its fifth
year by making drastic changes. If a school fails to reach AYP for a fifth year in a row
it will be mandated to restructure its entire school so that it can finally provide adequately
for its students. Every failed AYP creates more and more penalties, which severely
limit a school’s ability to receive the necessary federal funding to maintain educational
programs and improve student’s educational achievement.

If states have difficulty developing or properly administering fair academic
achievement measures the federal government will step in to assist them, thus ensuring

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65 Desktop Reference, supra note 31, at 10-11.
66 ESEA Q & A, supra note 38, at 4 [referencing 20 U.S.C. §6316].
67 Desktop Reference, supra note 31, at 19.
68 ESEA Q & A, supra note 38, at 4.
69 Desktop Reference, supra note 31, at 19. Corrective action will include at least one of the following: replacing school staff, changing the entire school’s curriculum, appointing an outside expert, extending the school day or year, deferring program funds, or encouraging students to transfer to better proficient schools.
70 ESEA Q & A, supra note 38, at 4 [referencing 20 U.S.C. §6316 (2007)]. A school’s restructuring includes at least one of the following: reopening it as a charter school, replacing the principal and all staff that are associated with the failure, turning the school over to be run by a private management company, turn the school over to the control of the state or create other major restructuring reforms.
NCLBA goals can be reached by their schools.\textsuperscript{72} More recently states have been granted extensions to AYP compliance deadlines a way to avoid financial penalties and ensure adequate time to improve student achievement standards.\textsuperscript{73} Currently, any school districts struggling to meet certain programs can request a waiver, to allow them to increase their instruction for students and to improve their academic achievement.\textsuperscript{74} The Secretary of Education controls the power to grant these waivers for up to 4 years depending on the type of request made by a school district and if they continue to report beneficial effects from these waivers.\textsuperscript{75}

E. Overview of Federal Funding

Once a state’s plan is approved by the Secretary, the school districts must comply with the agreed terms to ensure they receive promised Title I federal funding.\textsuperscript{76} Throughout all of the numerous reauthorizations Title I still remains the central principle of NCLBA,\textsuperscript{77} as fully educating students would be impossible without some type of federal funding, due to years of dependence on federal resources. Title I continues to provide the supplemental funding resources schools depend upon to help pay for their teachers, target subjects, school improvements, and numerous other programs.\textsuperscript{78} The determination of which schools will receive more funding than others depends upon the

\textsuperscript{72} see Desktop Reference, supra note 31, at 8.
\textsuperscript{74} 20 U.S.C. §7861 (b) (2007).
\textsuperscript{75} id. §7861 (d); §7861 (e).
\textsuperscript{76} see 20 U.S.C. §6311 (a)(1).
\textsuperscript{77} Hanna, supra note 27.
\textsuperscript{78} \textit{Note: No Child Left Behind and the Political Safeguards of Federalism}, 119 HARV. L. REV. 885, 887 (2006) [hereinafter \textit{Political Safeguards}].
schools’ poverty levels thus allowing the poorer to make the greatest improvements.\textsuperscript{79} Federal funding is disbursed according to determinations from census poverty estimates and the costs of education in each state, in order to help schools raise their students’ academic standards.\textsuperscript{80} The greater the percentage of children coming from low-income families within a school district, the more federal funding each of its schools will receive. When a school is comprised of over forty-percent of children, whose families are at the poverty level or below, it will be eligible for funding to implement schoolwide programs for all its children.\textsuperscript{81} Those schools consisting of less than forty-percent poverty level students will receive federal funding based upon a targeted assistance program to help those individual students who are failing receive the needed education to meet NCLBA academic standards.\textsuperscript{82} When federal funds are disbursed they can only be used for student programs currently not receiving funding from other non-federal sources.\textsuperscript{83} The federal funds are not supposed to be used to help run non-target subject programs.\textsuperscript{84}

At the creation of the NCLBA the amounts of federal funding authorized for distribution to states was determined for up to six years.\textsuperscript{85} It was planned that each year’s appropriation would increase\textsuperscript{86} to ensure proper creation and maintenance of programs. The first year’s funds called for $13.5 billion to be distributed among all states, the District of Columbia, Puerto Rico, Indian Tribes, and other outlying areas, that would be

\textsuperscript{80} id. §611 (a)(1).
\textsuperscript{81} id. §611 (a)(1).
\textsuperscript{82} id. §611 (a)(1).
\textsuperscript{84} 20 U.S.C. §7907 (b).
\textsuperscript{85} 20 U.S.C. §6302 (a).
\textsuperscript{86} id. §6302 (a).
increased to $25 billion by year six.\textsuperscript{87} Creating a written plan to distribute such amounts in advance could only have served to entice states to decide to follow the NCLBA, as they were assured federal funding would be received.

III. Problems Resulting from the No Child Left Behind Act

Unlike the ESEA previously, the current NCLBA is does not offer voluntary funding to states,\textsuperscript{88} but places mandates upon states that must be complied with to receive Title I federal funding.\textsuperscript{89} The NCLBA efforts are not based on improving student’s education achievement in general, but specifically focusing on “the educational needs of low-achieving children in our Nation’s highest-poverty schools . . .”\textsuperscript{90} Although the NCLBA ideals are encouraging, the implementation has had mixed results.\textsuperscript{91} Many schools have difficulties reaching their goals as the federal government has not taken into account the numerous factors that truly influence student performance.\textsuperscript{92} States have become hampered, as they and the local school districts are required to focus on tracking the progress of low-income students, based on the results of teaching to the test, which undermines teachers’ underlying objective: to ‘educate’ students.\textsuperscript{93} The NCLBA binds teachers to educate students based on fixed exams with standards and educational content that change every year, defeating the intended purpose of being able to track a student’s

\textsuperscript{87} id. §6302 (a).
\textsuperscript{88} see Hanna, supra note 27; Pontiac, supra note 6, at 267.
\textsuperscript{89} see 20 U.S.C. §6311 (a)(1).
\textsuperscript{90} id. §6301 (2).
\textsuperscript{91} Nicole Liguori, Note: Leaving No Child Behind (Except in States That Don’t Do as we Say): Conn.‘s Challenge to the Fed. Gov’t’s Power to Control State Educ. Policy Through the Spending Clause, 46 B.C. L. Rev. 1033, 1049 (2006).
\textsuperscript{93} Nash, supra note 60, at 240-241.
progress and failing to account for each student’s individual educational needs.94 Even though teachers disagree with these educational methods, reluctantly they have to comply, since under the standards of the NCLBA they have no other choice but to implement them.95 Teachers consider that the educational methods used in their classrooms promote a negative perception about low-achieving students, because students are “labeled” throughout their educational track.96 The NCLBA also directs resources away from its primary goal of actually enhancing every student’s academic performance by focusing on standardized tests rather than ensuring students learn the required material.97

States have the ability to create their own accountability plans, which allows them to retain some control over school performance.98 But states can only accomplish these tasks by complying with the established guidelines of the NCLBA.99 Thus state accountability plans are deceiving. Accountability plans appear to provide states with the freedom to allow their schools to create terms for their own curriculum; however all programs that are instituted must be taught for the purposes of meeting expected NCLBA mandates. Thus applying for a state accountability plan places a burden upon a state’s education system to meet standards developed from a federal office.100 States no longer allow their school districts to maintain the control they once had in developing local

94 see id. at 261.
95 Issue Brief, supra note 92.
96 see id.
97 id.
98 Bump, supra note 13, at 525.
99 see id. at 525.
100 see Growing Chorus, supra note 3.
individualized curriculum for their students.\textsuperscript{101} Now there is one nationally developed standardized plan that all school districts must abide by to receive Title I funding.\textsuperscript{102}

States’ schools continue to fail AYP requirements established within their accountability plans.\textsuperscript{103} For every failed AYP states face more penalties,\textsuperscript{104} which severely limit a school’s ability to place federal funding into its own programs and improve the educational achievement of its students. Overall this entire process becomes a downward cycle as the NCLBA requires that student test scores improve each year.\textsuperscript{105} But when scores fail to improve, a state’s resources become more restricted, which further limits the ability to improve their circumstances.\textsuperscript{106} Every step forward becomes a step backwards.\textsuperscript{107} In practice however, the Secretary of Education’s goal is not to implement the application of these penalties, but rather to encourage schools to meet the mandates.\textsuperscript{108}

Numerous problems occur between states and the federal government, when a school is not receiving enough funding to fully implement the programs it needs to in order to improve student achievement.\textsuperscript{109} However, states can do nothing to avoid this as they are bound to the NCLBA for the same reasons they were compelled to comply with it in the first place; they could not afford to forego the federal funding.\textsuperscript{110} Furthermore, a

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{101} \textit{see} Nash, supra note 60, at 240-241.
\item \textit{see id.}
\item Dillon, supra note 73.
\item \textit{see 20 U.S.C. §6311 (g)(B)(2).}
\item \textit{id.}
\item \textit{id.}
\item \textit{see Simon, supra note 25. States are able to apply for amendments to their accountability plans to help them reach their AYP and avoid penalties.}
\item \textit{see Pontiac, supra note 6, at 257-258.}
\item \textit{Pontiac, supra note 6, at 267.}
\end{enumerate}
\end{footnotesize}
large amount of the funding promised to states has never been appropriated, as it continues to be shifted to cover other areas in the federal budget. This under-funding places states in a position where they are not able to fully fund the programs their schools are mandated to comply with under the NCLBA.\footnote{see Bump, supra note 13, at 548.}

IV. School’s Opt Out Capabilities from the No Child Left Behind Act

A. Why States Want to Opt Out

After the Secretary of the Department of Education accepted a state’s accountability plan, each school district became virtually locked into following the mandates of the NCLBA.\footnote{see Leah A. Rinfret, Comment: No Child Left Behind for the Teachers Left Behind: Returning Education to the Educators, 35 Cap. U.L. Rev. 281, 299 (2006).} At first it seemed like a great opportunity for every state. States were enthusiastic and hopeful that allocating proper funding to the lower tiered schools would help improve the education of their most underachieving students.\footnote{Deborah White, Pros & Cons of the No Child Left Behind Act, About.com: Us Liberal Politics, http://usliberals.about.com/od/education/i/NCLBProsCons.HTM (last visited Mar. 18, 2008).} However, when it came to the actual implementation unforeseen issues began to emerge. With the passing of time, administrators, teachers, parents and students alike started to realize the goals they had set in each state were too lofty.\footnote{Growing Chorus, supra note 3.} It became very difficult for most schools to meet the established AYP that states had created in compliance with the NCLBA, and as a result most schools’ status changed.\footnote{see Secondary Level Accountability Status, New York State Education Department, http://www.emsc.nysed.gov/irts/press-release/20080325/home.htm. (last visited Mar. 30 2008). Contains a list identifying of every school’s AYP status throughout New York State.} These schools were then designated as needing improvement.\footnote{Id.} New York State alone currently has 44 high
schools and 34 districts outside of New York City identified as needing improvement.\textsuperscript{117} The funding sanctions schools face for failing to meet AYP places them in positions where they see a great deal of promised federal funds funneled out of the required programs they use for educating lower-achieving students.\textsuperscript{118} The loss of these federal funding allotments is a prevalent problem, as it becomes nearly impossible for schools to afford necessary programs to educate their students.\textsuperscript{119} This results in a common downward spiral effect, as schools that cannot provide adequate programs will not be able to meet mandated test scores and only face further sanctions. Given funding problems like these, states have been left with a limited capability to successfully comply with the NCLBA mandates. Add the need for educational flexibility and desire for local educational control, and they may look to opt out.

Numerous states have considered opting out of the NCLBA for different reasons,\textsuperscript{120} but Utah in particular has been one of the Act’s most avid opponents.\textsuperscript{121} Utah, an extremely conservative state,\textsuperscript{122} even made an attempt originally to opt out of the NCLBA as they believed it intruded upon the state right, that schools should be controlled locally.\textsuperscript{123} At the last minute Utah’s legislature changed its views and decided to follow the NCLBA.\textsuperscript{124} If a state were to opt out for political reasons, or to increase independent control over their educational system, that state would lose Title I federal

\textsuperscript{118} see ESEA Q & A, supra note 38, at 4.
\textsuperscript{119} see Nash, supra note 60, at 253 [Referencing 20 U.S.C. 6311 (b)(2)(B)].
\textsuperscript{121} Brunelle, supra note 23, at 430.
\textsuperscript{122} id. at 430.
\textsuperscript{123} id. at 431.
\textsuperscript{124} id. at 429.
funding. However, for those states that have either reached high achievement testing scores or have smaller schools systems and therefore are already receiving a limited amount of federal funding, opting out seems to be a viable option. Even those school districts whose long-standing programs would not be able to function without federal funding are weighing the loss of these funds against the restrictions the NCLBA creates. The question then arises: if a state is that dissatisfied with its educational restrictions and desires to regain local control, is it willing to forego all federal funding and opt out of the NCLBA? Currently, Virginia is adopting a bill within its legislature to opt out of the NCLBA and setting a draft proposal deadline by June 30, 2009. If the legislation passes, Virginia would be forfeiting $300 million a year to become the first state to opt out of the NCLBA. This would leave Virginia with educational funding of $6 billion in the state government’s budget allocated among its school districts for the 2008 fiscal year, and other funding from each school district’s local tax sources.

Virginia’s proposed legislation has already had a positive ripple effect upon other states that have been less reluctant to opt out of federal funding, such as Arizona. Arizona is currently struggling over a decision to create a bill that would force the state to forego $600 million a year in exchange for the ability to opt into a federal funding program that

125 Rinfret, supra note 112, at 299.
128 id.
131 H.R. 2392, 48th Leg., 2nd Reg. Sess. (Ariz. 2008). The bill requests that Arizona allow for a joint study between the Arizona Department of Education and the State Board of Education and the School Facilities Board to determine what the costs would be if the state chose to opt out of the NCLBA.
allows for more local control.\textsuperscript{132} If Arizona were to opt out it would have to rely on a state budget of nearly $4.4 billion to fund its education.\textsuperscript{133} Larger states, who receive more state educational funding, are still fiscally reluctant to give up their federal funding by opting out of the NCLBA. California, for example, would lose $28 billion in federal funding\textsuperscript{134} while continuing to rely only on its state’s education budget of approximately $45.5 billion.\textsuperscript{135}

The significant federal funding problems every state currently faces has led to numerous opt out discussions. These federal funding problems can be traced back to the original yearly authorized amounts that the NCLBA promised each state.\textsuperscript{136} Disappointingly the actual appropriations each state has received is nowhere near the amounts promised.\textsuperscript{137} In the five-year period from 2002 to 2006 a total of only $60.5 billion was appropriated out of the $91 billion originally allocated – a rate of 66.5\%.\textsuperscript{138} The $31 billion in federal funding that states did not receive,\textsuperscript{139} was allocated instead into other non-educational programs. Each state’s loss of funds is a direct neglect by the federal government to comply with its own NCLBA mandates and a failure to support the children it has promised to educate.\textsuperscript{140} When the ESEA was reauthorized in 2002 as the NCLBA, Title I federal funding was increased, which encourage states to adopt its terms.\textsuperscript{141} The NCLBA promised $13.5 billion in federal funding within its first year

\begin{itemize}
  \item \textsuperscript{132} Pitzl, \textit{supra} note 130.
  \item \textsuperscript{133} \textit{see} H.R. 2620, 48th Leg., 2nd Reg. Sess. (Arz. 2008).
  \item \textsuperscript{134} \textit{see} \textit{Appropriations VS Authorization, supra} note 17.
  \item \textsuperscript{135} California Governors Budget 2007-2008, Enacted Budget Detail, K Thru 12 Education, (last visited Apr. 18 2008).
  \item \textsuperscript{136} \textit{see} \textit{20 U.S.C. §6302 (a)}.
  \item \textsuperscript{137} \textit{Appropriations VS Authorization, supra} note 17.
  \item \textsuperscript{138} \textit{id}.
  \item \textsuperscript{139} \textit{id}.
  \item \textsuperscript{140} \textit{see Pontiac, supra} note 6, at 257.
  \item \textsuperscript{141} Bump, \textit{supra} note 13, at 522.
\end{itemize}
alone,\textsuperscript{142} an increase from the $7.7 billion Title I funding provided in 1999 under the previous program.\textsuperscript{143} However, a classic ‘bait and switch’ occurred as states were locked into complying with the NCLBA mandates, while it only appropriated $10.35 billion in 2002.\textsuperscript{144}

However, if a school district chose to opt out of the NCLBA despite the loss of funding, they would no longer face limited curriculum choices currently available due to the federal government\textsuperscript{145} and once again they could return to traditional local control over their own education. The job status of administrators and teachers is evaluated based upon a student’s arbitrary test results, rather than their experience, knowledge and skills.\textsuperscript{146} This leads to corruption as school districts may manipulate test scores or find ways to cheat the system to ensure they meet the NCLBA mandated guidelines, and negate the purpose of the act.\textsuperscript{147} Students suffer the most as teachers are no longer able to focus on teaching as the primary goal of learning; they must prepare students for a low educating standardized exam.\textsuperscript{148} Within the classroom minority student’s scores have actually declined as teachers are not afforded the proper ability to assist them.\textsuperscript{149} Also by forcing all students, no matter what their capacities, to be lumped together in the same classes, higher achieving students are held back and lower achieving students are pushed beyond their abilities. States experience these problems as a result of their participation

\textsuperscript{142} Appropriations VS Authorization, supra note 17.
\textsuperscript{144} Appropriations VS Authorization, supra note 17.
\textsuperscript{145} see 20 U.S.C. 6311 (b)(1)(C).
\textsuperscript{146} see id. §6316(b)(7)(c)(iv).
\textsuperscript{147} see Liguori, supra note 91, at 1049-50.
\textsuperscript{148} White, supra note 113.
in the NCLBA; it strengthens their urge to opt out, but forces them to face the practical consequences of doing so.

B. Why States Cannot Opt Out

If it were that easy for states to opt out of the NCLBA, why have they not done so? The reason is that opting out is a costly choice. Although nothing clearly expresses that a state is bound to the NCLBA, once it decides to submit an accountability plan and accept the NCLBA terms, a state often cannot afford to lose the federal funding it has become dependent upon. States have been relying on federal funding to help create and run numerous programs and improvements since the original ESEA. To relinquish the amount of federal funding a state receives would devastate its educational system. Even though the federal funding that states currently receive can be spent only on target subjects, the loss of this funding would end necessary programs. This would leave schools with no other option than to rely on state and local budgets for all of their funds. However, this would be impossible as most states can not afford to pay these extra funds nor do they have the ability to raise their taxes any higher. Therefore, states have no other choice than to adhere to the agreed mandates of the NCLBA.

An argument can be made that when the NCLBA was authorized in 2002 no state was mandated to accept the terms, as they could voluntarily choose to participate. This is unlike most written federal laws that are passed, which are usually binding upon all

150 No Child Left Behind Act, supra note 1, at 1425.
151 Pontiac, supra note 6, at 267.
152 see Desktop Reference, supra note 31, at 8.
155 see Pontiac, supra note 6, at 266-267; 20 U.S.C. §7907 (a).
states.\textsuperscript{156} However, voluntary choice was never a viable option.\textsuperscript{157} States in effect were coerced into accepting the NCLBA terms to keep the federal funds they depend upon.\textsuperscript{158} Furthermore, once a state agreed to comply, they became locked into following the mandates under the NCLBA guidelines and could not opt out.\textsuperscript{159} From another perspective, it seems at first as if a contract was being created, as both parties agreed to follow each other’s terms.\textsuperscript{160} In actuality it became a requirement for each state to comply with the guidelines under the NCLBA. States ended up being forced to propose accountability plans modeled after the NCLBA mandates and hoped to receive the full funding amounts they were promised for the implementation of their necessary programs.\textsuperscript{161} This has left states with no other choice, as the inadequate funding they receive is still better than choosing to opt out – thus losing it all.\textsuperscript{162}

If a state were to forego federal funding, opting out would be such a drastic step it could result in upsetting and causing disunity between state and federal government officials.\textsuperscript{163} Like it or not, every state has agreed to join this program to help educate their underachieving students.\textsuperscript{164} They choose to accept the terms to create one unified system to track and evaluate the progress of their students.\textsuperscript{165} By leaving the program now a state is not only abandoning the ideals of the program, but potentially harming students. Although school districts have set lofty goals and find it difficult to achieve

\textsuperscript{156} see No Child Left Behind Act, supra note 1, at 1425.
\textsuperscript{157} Pontiac, supra note 6, at 267.
\textsuperscript{158} id.\textsuperscript{159} see id. at 267; 20 U.S.C. §7907 (a).
\textsuperscript{161} Bump, supra note 13, at 548.
\textsuperscript{162} Political Safeguards, supra note 78, at 897-898.
\textsuperscript{163} see id. at 902.
\textsuperscript{164} See Decision Letters, supra note 11.
\textsuperscript{165} see 20 U.S.C. 6311 (b)(2)(A).
their AYP, having states opt out of the NCLBA will not solve the NCLBA’s objective of improving student’s education. Also if a state or a school district opts out more funding will be diverted to another state or district only creating even more problems. Even if a state chooses to opt out to establish its own local control, outside the reaches of federal political coercion, they could end up “committing political suicide.” Lack of local educational control is not enough of a reason to opt out of a program that offers ideals many people agree with.

States will never be able to position themselves into a situation that enables them to opt out of the NCLBA. Therefore, a state’s only option is to look to alternative means of correcting the problems they face. They must try to amend or modify the mandates of the NCLBA, so that both parties can continue to work together and accomplish their true goal of improving every student’s educational achievements.

V. Analysis of the Modification Alternatives Available to Schools
A. Current Modification Capabilities

Currently states have been provided with limited abilities to modify their accountability plans. States may submit written proposed amendments to their accountability plans each year to create more beneficial terms and still enable them to fully comply with the NCLBA. This seems like a positive step in the process of providing states with the freedom to make changes in their programs to adequately

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166 Bump, supra note 13, at 557.
167 id. at 552.
168 id. at 552-53.
169 Simon, supra note 25.
provide improvement for student’s educational achievement.\textsuperscript{170} States that have difficulties reaching AYP or other achievement standards can apply for extensions or to change terms to avoid sanctions.\textsuperscript{171} New York State alone has amended their accountability plan six different times.\textsuperscript{172} However in actuality this process can be limited as states may have difficulty obtaining their desired modifications.\textsuperscript{173} Once the Secretary of Education receives a state’s amended request they have the power to review and ensure that it complies with all the requirements of the NCLBA.\textsuperscript{174} If the Secretary of Education believes the amendment would be contrary to the NCLBA they have the discretion to reject it and request a state to provide a more acceptable modification.\textsuperscript{175} This process creates numerous problems that can only be resolved by creating equal chances for states to make modifications. Right now the process is very one sided; states are limited in the modifications they can even propose because they already believe any changes to their accountability plans will be considered unfavorable and rejected by the Department of Education. States must be able to have their input in the mandates of the NCLBA that they must follow.

B. Federal Funding Modifications

Schools districts continue to fail the NCLBA mandates because they are not receiving the amount of Title I federal funding they have been promised.\textsuperscript{176} To make up

\textsuperscript{170} see id.
\textsuperscript{171} Kerri L. Briggs, , The Assistant Secretary, United States Department of Education Office of Elementary and Secondary Education, to Chief State School Officers (Nov. 19, 2007) (on file with the U.S. Department of Education).
\textsuperscript{172} see Decision Letters, supra note 11.
\textsuperscript{173} Liguori, supra note 91, at 1034.
\textsuperscript{174} see Simon, supra note 25.
\textsuperscript{175} id.
\textsuperscript{176} see 20 U.S.C. §6302 (a).
for this loss in funding schools are forced to cut programs, fire teachers, and delay needed improvements, which inevitably effects student’s educational achievement. The only way to improve this imposed situation is to create modifications to the current federal funding terms. In *Sch. Dist. of the City of Pontiac v. Sec’y of the United States Dep’t of Educ.* (hereinafter *Pontiac*), a recent decision of the U.S. Court of appeals for the 6th Circuit, suggests – based on the language of the unfunded mandates provision – that states should not be forced to comply with the NCLBA mandates until modifications occur to provide schools with the proper funding needed for compliance. When states accepted the terms of the NCLBA, Congress had the power under the Spending Clause of the U.S. Constitution to determine how federal funds would be dispersed. This creates an obligation on Congress to set out the conditions for states accepting the federal funding of the NCLBA as ‘unambiguously’ as possible. The question arises, did states truly understand the terms behind NCLBA to which they were committing themselves? The federal government clearly has failed to meet its side of the mandates under the NCLBA. It did not provide the original funding levels it promised, nor did it take into consideration the additional unanticipated expenses schools would incur to meet these standards. Therefore when states accepted the terms of NCLBA, they were not aware of the funding problems that would ensue, such as receiving less funding than

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177 *see Pontiac, supra* note 6, at 260.
178 *see id.* at 257; 20 U.S.C. §7907.
179 *see U.S. Const. art. I, § 8, Cl. 1.
180 *Pontiac, supra* note 6, at 261.
181 *id.* at 261 [quoting Pennhurst, *supra* note 160, at 17].
182 *id.* at 261.
183 *see id.* at 269.
anticipated, or no funding at all. As a result, they felt justified in wanting to modify NCLBA mandates.

States could not avoid these problems as they have a longstanding dependency upon Title I federal funding and were coerced into accepting NCLBA for fear of losing funding. However, when federal funds that states believed they were promised were not provided, school districts were forced to spend their own extra funds to make up for the money they failed to receive. If schools cannot afford to provide supplemental money on target subjects they would fail to meet the NCLBA mandates and would be penalized even more for failing to meet their AYP. In Pontiac, Michigan school districts challenged the NCLBA mandates that forced compliance even though promised federal funding was not provided. The court agreed with the plaintiff and held that when states and school districts are not provided with adequate federal funding they do not have to comply with the act’s requirements.

Currently school districts’ non-federal funding comes primarily from property taxes and are used to fund non-target subjects such as foreign languages, art, music, computer classes and other extracurricular activities. This creates a domino effect: unanticipated cuts in federal funding have to be made up by states, and then shifted all or in part to local school districts, which harms communities and school programs alike. An area that collects fewer taxes or is poverty stricken receives less money for its schools

184 id. at 269.
185 Bump, supra note 13, at 527-528.
186 Pontiac, supra note 6, at 269.
187 id. at 258.
188 id. at 254.
189 id. at 272.
190 Webb, supra note 154, at 198.
191 Pontiac, supra note 6, at 259.
and the students’ education suffers even more.\footnote{See Webb, \textit{supra} note 154, at 198.} For example, New York State’s total education allotment for funding from residents’ taxes for the calendar year of 2006-07 was $30 billion.\footnote{Division of the Budget, Education, New York State, \url{http://www.budget.state.ny.us/cashData/stateOperatingFunds/education/index.html} (last visited Apr. 3, 2008).} Can New York actually afford to raise residents’ taxes even higher by taking on the expenses our federal government fails to provide under NCLBA? This could be corrected if states could modify the NCLBA terms to fairly represent their interests, such as allowing schools to use Title I federal funds for any program they chose to be in their students’ interest, and not have it limited to target subjects only.

C. Where Do We Go From Here

States, school districts, teachers, and even student’s parents have been expressing criticism towards the NCLBA for some time now. In 2005 alone, over twenty-one different states proposed and implemented legislation that criticizes the NCLBA.\footnote{Growing Chorus, \textit{supra} note 3.} When the NCLBA is reauthorized the states hope to address issues of greater local control, increased funding, while exploring the possibility of lawsuits to reach these goals.

1. Local Control

One goal of these states is to create modifications where teachers, administrators and others are able to provide input into the NCLBA they follow.\footnote{id.} This would allow the teachers, who educate the children, to regain local control over the curriculum they follow rather than being limited to the strict terms of the NCLBA. Since the implementation of the NCLBA, schools have continually struggled to meet their
mandated AYP. More and more schools are failing and are too burdened to turn their
student’s performance around. If states were able to modify AYP requirements and
keep them at a set level until students could fully attain required test scores instead of
continuously increasing the scores every year, it could make a drastic difference.
Modifications over student’s education requirements would be a positive step towards
regaining local control for school districts and could avoid federal governmental
interference. Although controversial, school districts would be able to create their own
measures to track student progress and not be limited to standardized tests. By
creating such modifications teachers could return to assisting individually those students
who need more help rather than lumping all students together regardless of their
capabilities. The goal would be to modify ineffective standardized testing into a proven
form of teaching that can improve lower achieving students’ knowledge over time and
allow for proper evaluation.

2. A PLUS Bill

The Academic Partnerships Lead Us to Success (A PLUS) bill currently before
the US Senate is an example of an effort to modify the NCLBA. The A PLUS bill
would be a reauthorization of the NCLBA. It will still maintain the NCLBA goals of

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197 Dillon, supra note 73.
198 see id.
199 Eye View, supra note 105.
201 ‘A PLUS’ plan would permit states to opt out of NCLBA, Other groups wrangle over ways to make law more flexible, Michigan Education Report, www.mackinac.org/pubs/mer/article.aspx?ID=8813 (last visited Apr. 2, 2008) [hereafter Michigan Education Report]. A PLUS legislation has been sponsored by U.S. Congressman Pete Hoekstra of Michigan, as he looks to opt out or modify the NCLBA. The expectation is to allow for states to determine how they want to spend their Federal funding for education.
improving student academic achievement and narrowing the achievement gaps,\textsuperscript{203} and additionally require all states to submit their accountability plan to the Secretary of Education for approval.\textsuperscript{204} A state’s accountability plan will be for a 5 year period, and list how federal funding is allocated and which courses received funding.\textsuperscript{205} However, it will modify the NCLBA by allowing states to create and develop their own local education curriculum that will best serve to improve students’ academic achievement.\textsuperscript{206} States would no longer be restricted by having to comply with the current NCLBA mandates, and would still receive the promised federal funding.\textsuperscript{207} States would be able to spend federal funds for the necessary programs they believe will best help their students and not be forced into spending funds solely for targeted subjects.\textsuperscript{208} School districts would still be required to report yearly assessment progress of students and allocations of funding, but this differs from the strict approach of AYP.\textsuperscript{209} A modified program like this would have a dynamic effect, solving numerous NCLBA problems while still maintaining NCLBA goals. Recently even the Secretary of Education has recognized that the NCLBA provisions are too strict and is in the process of implementing a program to modify 10 chosen state’s penalty systems, with the hope of decreasing the number of failing schools.\textsuperscript{210} If a Department of Education modification like this can occur, then states should look to create further favorable modifications, especially as the NCLBA is due for reauthorization.\textsuperscript{211}

\textsuperscript{203} \textit{id.} at §4.
\textsuperscript{204} \textit{id.} at §4.
\textsuperscript{205} \textit{Id.} at §4.
\textsuperscript{206} Michigan Education Report, \textit{supra} note 1999.
\textsuperscript{207} \textit{id.}
\textsuperscript{208} \textit{id.}
\textsuperscript{209} S. 893, \textit{supra} note 202.
\textsuperscript{210} Dillon, \textit{supra} note 73.
\textsuperscript{211} see White, \textit{supra} note 113.
3. **Pilot Program**

Recently the U.S. Department of Education has implemented a pilot program modifying the mandated terms of the NCLBA. Only six states have been the beneficiaries of this pilot program, which seeks to reduce the sanctions schools face when failing to meet required AYP and to assist those low-performing schools in raising their progress scores. The pilot program deviates from the NCLBA’s established mandates by finally recognizing that each individual student has different learning needs and each school is different. The pilot program allows states to provide their own schools with the flexibility needed to establish their own educational goals, while extending the time lines schools have to meet NCLBA AYP mandates. Allowing states to modify their AYP it serves as an admission that the NCLBA has failed to be properly administered. Although the modifications this pilot program provides will improve schools’ scores and protect schools from funding sanctions, the program does not mandate the increases required to provide crucial state finding.

4. **Reauthorization**

The NCLBA expired in 2007 and to continue it must be introduced for reauthorization, but neither the House nor the Senate could come to an agreement over

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215 *id.*

216 *see* Backman, *supra* note 212.

217 *see* White, *supra* note 113.
Currently states, unions, lobbyists, and the federal government are scrambling to get the NCLBA reauthorized as all sides want to fix its flaws while protecting their interests. However, due to the numerous disagreements everyone has with the NCLBA as it stands, it may take longer than expected to reauthorize. The United States President holds the power to veto any changes he finds unacceptable. As a new administration takes over after this year’s election the entire NCLBA will face even more uncertainty.

President Barack Obama intends to focus on improving education as an administration priority and he specifically plans to reform the NCLBA. One of Obama’s goals is to provide the necessary resources schools have been lacking due to broken promises that resulted in inadequately funding the NCLBA. It is expected that once sufficient funding is provided to states, schools can afford to pay teachers suitably, which can increase teacher enthusiasm and encourage more highly qualified teachers to enter the class rooms. Another administrative goal is to change assessments of students by properly teaching them the material rather than focusing on learning for the test. Lastly changes in school accountability systems have been suggested to ensure that schools are not penalized for failing to improve their students test scores.

Obama has already begun to take steps in changing the education system by nominating Arne

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218 Issue Brief, supra note 92.
219 Eye View, supra note 105.
220 id.
224 see President-Elect, note 222.
225 id.
Duncan as Secretary of Education.\textsuperscript{226} After being confirmed by the senate, Duncan plans to greatly improve the NCLBA and increase the number of qualified teachers.\textsuperscript{227} Duncan’s goals mimic those of Obama’s, particularly as he looks to reduce penalties assessed against schools because of a few struggling students.\textsuperscript{228} The Obama administration’s proposals for the NCLBA aside, there are numerous modifications being proposed that must be considered and then adopted to achieve the desired improvements of the NCLBA.

5. Proposals for legislative amendments to the NCLBA

Federal funding, first of all, is the most important issue that needs to be addressed. School districts must receive the proper funds to educate each and every student, and be able to distribute them in the manner they determine is best. No matter the abilities and determination of a student, he or she will face learning limits if schools are not provided with adequate funding. Schools will not be able to afford trained teachers, educational resources, programs, or even modern school buildings for that matter.

Second, sanctions placed on schools for failed AYP must be discontinued. Penalizing schools by suspending funding is counterproductive and will not achieve student academic improvement goals.

Third, states must be able to amend or modify AYP requirements, for the NCLBA to truly benefit students. AYP compliance and testing standards must be restructured to allow states realistic time to improve, which in return will lead to students achieving

\textsuperscript{227} see Education Candidate Eyes Fixing No Child Left Behind, Chicago Triune, http://www.chicagotribune.com/topic/ny-usdunc145998202jan14,0,6660278.story.
\textsuperscript{228} see id.
higher pass rates. Many schools have already begun this process of revising their assessments by changing their testing standards for target subjects.\textsuperscript{229} This trend needs to continue by returning control to individual local schools, and by allowing the teachers themselves to assess students in their classrooms. Once school districts regain local control, within each state, they can focus on educating students, rather than focusing on meeting NCLBA standardized test scoring requirements.

\textbf{Fourth,} the current classroom structure must be modified since it focuses on teaching to the lower achieving students and neglects the higher achieving students. Grouping all students together causes more harm than good. More capable students are held back and less capable students are pushed too hard. Placing a mix of students with different backgrounds together can be socially positive; however, the creation of a curriculum and educational process that focuses on a student’s individual needs would vastly improve educational achievement.

\textbf{Fifth,} the best way to determine if both the schools’ and states’ interests, on the one hand, and the federal government’s interests, on the other, are met would be to have independent educational agencies involved. These experts could visit a wide range of schools to generate suggestions and innovations that are needed to improve student education. Having a third party collect information and data will also avoid bias in evaluations. States and schools should discuss the results of third party analysis directly with the federal government to determine which suggestions will provide the best teaching methods of intervention by teachers and programs to reach both individuals and

\textsuperscript{229} see Human Resources Research Organization (HumRRO), \textit{Behind the Numbers, Interviews in 22 States about Achievement Data and No Child Left Behind Act Policies}, Oct. 2007, at 10.
groups of students. These changes should be incorporated in the terms of a reauthorized NCLBA.

Sixth, states must have the ultimate power over the development and control of their accountability plans. The current discretion the Secretary of Education has to accept or reject any amendments to a state’s accountability plan is ineffective, and restricts the states’ control of their own education. Rather than federal government control, what is needed is a dialogue between the federal and state governments and a shift to the individual states having a final say based upon their schools’ needs.

VI. Conclusion

These six modifications, if made to a reauthorized NCLBA, would improve its ability to provide for quality education to all students. It is unclear if any of these modifications will ever be adopted, as dissention and disagreement from those involved in decision making about the NCLBA may lead to the entire bill being discarded. Yet enhanced federal funding still remains vitally important to help schools afford the local programs they need to educate American students. Without the ability to modify or opt out of the NCLBA, each state’s education system will continue to suffer under current Federal control. Therefore, the question remains: what will be acceptable terms under a future reauthorization of the NCLBA?

\footnote{230 see Simon, supra note 25.}