Finance and the No Child Left Behind Act

By Charles J. Russo, J.D., Ed.D.

Enacted in 2002 as the cornerstone of President Bush's educational policy, the No Child Left Behind Act has been controversial since it became law. At its heart, NCLB is designed to have students perform at grade level by the year 2014. Yet as debate rages on an array of issues surrounding NCLB, the reauthorization process has slowed and may not take place as scheduled in 2010.

The almost 400-page codified version of NCLB is the latest iteration of the 1965 Elementary and Secondary Education Act, an extensive federal statute that was designed in part to implement the Civil Rights Act of 1964. Drafted largely under the guidance of the late Senator Ted Kennedy and signed into law by President George W. Bush, politicians who agreed on little else, NCLB had strong bipartisan support in Congress, passing 91–8 in the Senate and 384–45 in the House. President Bush signed NCLB into law on January 8, 2002.

Even so, it remains to be seen whether NLCB is the appropriate law to bring about school improvement due to its far-reaching but essentially unfocused scope.

Paying for NCLB

The first of two fiscal matters of interest to school business officials and other educational leaders who are responsible for the finances of their districts involves how to pay for NCLB.

To date, litigation challenging NCLB as an unfunded federal mandate has been unsuccessful. Consequently, since the courts are unresponsive to claims that the federal government failed to live up to its promise to help pay for NCLB's implementation, states must meet its mandates absent adequate financial support.

Unfortunately, since low-performing students who are arguably most at risk have the most to lose if their schools do not receive needed resources, the federal government must provide funding for a law that it is imposing on the states.

Another significant issue for school business officials concerns budgeting for federal funding for education, which grew from $17.4 billion in fiscal year 2001 to $24.9 billion in fiscal year 2009. However, since inadequate controls are in place regulating extra expenses associated with testing and hiring highly qualified teachers, federal involvement may cost local boards more than they can save.

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Two final controversial issues relate to staff. The first potential conflict arises over provisions in NCLB that allow for the dismissal of teachers and principals in schools that fail to achieve adequate yearly progress for two consecutive years. In states where teachers, and in some places, administrators serve with tenure, it is unlikely that such a draconian provision can survive litigation. More specifically, in light of tenure and state laws granting individuals due process protection when faced with the threat of what must be individualized grounds for dismissal, boards that seek to implement this provision are likely to face costly and potentially lengthy litigation.

The second possible pratfall arises with regard to the fact that both Secretary of Education Arne Duncan and President Obama support performance pay for teachers, also known as merit pay—an issue that unions have long opposed and are certain to fight should it be included in any NCLB revisions.

Looking Ahead

If lawmakers hope to maximize NCLB's chance of helping students succeed, they must provide adequate resources to states while modifying its provisions to address areas in need of improvement. It should be interesting to observe how these issues play out as NCLB heads toward the reauthorization process.

References

Code of Federal Regulations, 34 C.F.R. § 200.55(c).

No Child Left Behind Act, 20 U.S.C.A. §§ 6301 et seq.

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