

MINUTES OF THE SENATE COMMITTEE ON EDUCATION.

The meeting was called to order by Chairperson Dwayne Umbarger at 1:40 p.m. on March 13, 2002 in Room 123-S of the Capitol.

All members were present except: Senator Hensley (excused)

Committee staff present: Ben Barrett, Legislative Research  
Theresa Kiernan, Revisor of Statutes  
Dale Dennis, Deputy Commissioner of Education  
Judy Steinlicht, Secretary

Conferees appearing before the committee: David Shreve, National Conference of State Legislatures

Others attending: See Attached List

**Elementary & Secondary Education Act (ESEA)/No Child Left Behind**

Chairman Umbarger introduced David Shreve from the National Conference of State Legislatures (NCSL) giving the Committee a background of his experience with NCSL and experience prior to joining NCSL. Mr. Shreve has been traveling the country to explain the "No Child Left Behind" program to state legislators. The program has been accepted by some as the best thing that ever happened and by others as a disaster. The House version of the bill was pushed by the Republican majority in the House and the bill moved along quickly. The Senate version of the bill moved a little slower, but was also passed.

Mr. Shreve provided a summary of what President Bush proposed for changes to ESEA and what actually emerged in the bill. Mr. Shreve explained the concerns of NCSL with the new program, "No Child Left Behind." These concerns were also expressed in a letter to the Chairman and Ranking Minority Leaders of both the House and the Senate in Washington. These concerns are listed in the attachment.  
(Attachment 1)

Dale Dennis, Deputy Commissioner, Department of Education, added that money for development of the test was provided, but the concern of the Board of Education is that the cost of administering the test was not provided. The other concern is for the loss of paras and teacher aids if they are required to go back to school two years. Kansas has over 8000 paras and if they were required to go back to school, Kansas could lose a lot of dedicated employees.

Mr. Shreve answered questions for the Committee as time permitted.

Meeting adjourned 2:30 p.m.

**SENATE EDUCATION COMMITTEE GUEST LIST**

DATE - 2-13-02

<u>NAME</u>	<u>REPRESENTING</u>
Graw Seymour-Hunter	SRS-HCP
Paula Jasso	SRS-CFP
Craig Grant	ITNEA
Cindy Kelly	KASB
(Amy Brunner	KASB
Mark Desetti	KNEA
Ray R. Henry	Olathe School Dist.
Val DeFene	St. Bd of Ed.
Dale Huffman	Families Together Inc.
Ron Ryan	Riv Valley USD 321
Don Hinkle	USA
Denise Apts	USA - USD 500
Bob Blank	Topeka, USD 501
Bob VanCrum	Blue Valley - USD 229



## H.R. 1 "NO CHILD LEFT BEHIND"

Testimony to the Kansas Senate Education Committee  
March 13, 2002

David L. Shreve; Senior Committee Director  
Committee on Education, Labor & Workforce Development  
Assembly on Federal Issues  
The National Conference of State Legislatures  
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*Senate Education*  
*3-13-02*  
*Attachment 1*

## SUMMARY

President Bush proposed sweeping changes to the Elementary & Secondary Education Act (ESEA) within days of taking office. The President's proposal, "No Child Left Behind" envisioned:

- an assessment system based on the Texas model of annual state tests in reading and math for every child in Grades 3-8
- the "significant" **consolidation** of multiple categorical programs into focused block grants
- broad **flexibility** for school districts and states in the use of federal monies
- the expansion of both **private and public school choice** as alternatives to "failing" schools
- a system of **rewards and sanctions** for schools, districts and states which are unable to raise the academic performance of all groups and sub-groups of students within a prescribed period of time.

The House was charged with putting the President's broad, descriptive proposal into legislative language. Christened H.R. 1 to indicate the importance of this legislation, the House voted overwhelmingly to approve its version late May 2001.

The Senate version moved a little more slowly (partly due to the shift in the leadership brought on by Senator James Jefford's falling out with the Senate leadership over IDEA funding), with approval by the full Senate a month later.

While differences were apparent in the two versions of the legislation, agreement appeared workable and obstructed primarily by appropriations issues for Title 1 and IDEA funding. It was not until mid-summer that a report by the Congressional Research Service indicated that the standards in each bill for increasing student achievement known as Adequate Yearly Progress (AYP) were in essence politically unacceptable.

In late September, NCSL's position was that both pieces of legislation were potentially "irreparably flawed". This position was based on the AYP issues, the significant unfunded mandate in the testing requirement, inadequate IDEA funding, and a top-down federal intrusion into traditional state policy areas with the potential for adverse financial impact on state budgets.

The agreement that emerged from conference contains an untouched version of the state-testing requirement but nearly every other major provision is diluted, and in some cases, abandoned. The conference committee created a new and workable AYP standard, significantly increased funding to comply with the testing requirement, (while creating an appropriations "trigger" that would abrogate the testing requirement in years when appropriations were insufficient), and removed state sanctions from the mix. The end result is a bill far less egregious in impact on the states than would have been realized under the House or Senate bills.

**NCSL CONCERNS AS RELAYED  
IN CORRESPONDENCE DATED  
MARCH 14, 2001 & SEPTEMBER  
26, 2001**

**H.R. 1-"NO CHILD LEFT BEHIND"  
The Reauthorization of the  
Elementary & Secondary Education  
Act  
Effective FY 2002-2007**

**Consolidation:** "NCSL strongly endorses a reasonable consolidation of similarly focused programs such as those in teacher training and technology so long as that consolidation does not serve as a backdoor effort to reduce funding."

**Consolidation:** Limited consolidation, reducing number of individual programs from 55 to 45.(10% of budget)

1. Class size reduction and Eisenhower professional development funds. *Block grants go to state education agency (SEA) with passthrough to local education agency (LEA) (95% of grant for sub-state distribution)*
2. A handful of technology programs are combined into a state block grant.(same distribution)
3. Bilingual Education Act and Emergency Immigrant Education Program combined when appropriations trigger reaches \$650 million. *(Reached as of FY 2002 approps.)*

Not consolidated: Proposal to consolidate Safe & Drug Free Schools and 21<sup>st</sup> Century Community Learning Centers (after school) was rejected. However, funds now go to *SEAs* to make awards of after-school grants, which may go to schools or CBOs & non-profits. (Prior system was federal grants to schools only.)

**Annual testing/Accountability:** "The testing requirement at the heart of both bills is an egregious example of a top-down, one-size-fits-all federal reform. There is no compelling or convincing argument that an effective accountability system must include annual testing in multiple subjects. Evidence indicates otherwise. The most recent National Assessment of Educational Progress (NAEP) results rank the top ten states in reading and math in grades 4 and 8. In those four top ten listings, only one state appears that tests its students every year in grades 3-8. In other words, there is no correlation between annual testing and student performance on NAEP. A federal mandate for annual testing is a senseless preemption of successful state accountability systems that do not include annual testing."

**Annual testing/Accountability** Requires states to implement annual reading and math assessments in grades 3-8 and once in grades 10-12 by the 05-06 school year. By 07-08 school year science is added at certain grade levels. In 02-03, states must annually assess the English proficiency of ESL students. States will select/develop/design assessments of their choosing, but must be aligned with state academic standards and *must allow student achievement to be comparable from year to year.*

No waiver language included accommodating states with a combination of state and local testing or with high functioning state systems that fail to meet the letter of the law.

States with comprehensive testing systems whose assessment systems may comply with the "spirit" but not the letter of H.R. 1 testing requirement:

"The requirement to use a standardized statewide

<p>testing instrument ignores successful state accountability systems that use a <u>combination of state and local testing</u>. This combination model, suggested by the Improving America's Schools Act, is the standard used by many states complying with IASA since it passed in 1994. Currently 17 states require school districts to have local assessments as a part of their state assessment strategy. This allows local school districts to account for and assess local curriculum options in an overall state accountability system. Sacrificing a flexible but effective state system at the altar of this federal mandate is counterproductive."</p>	<p>Delaware, Rhode Island, Maryland, North Carolina, Texas, Missouri, Vermont, Louisiana, Kansas, Indiana, Massachusetts, Pennsylvania, Wyoming, Virginia, Oregon, Washington, Kentucky.</p> <p>It is unclear as to whether the regulatory process will grant the U.S. Secretary waiver authority in this area. Publicly, the administration is sticking to "annual testing in grades 3-8-no exceptions".</p>
<p><b>Implementation:</b> "The implementation of a sophisticated accountability system, even one that defers to existing states' practices, will take time. The 1994 federal mandate requiring the testing of all Title I eligible students was the first significant <u>federal</u> step toward widespread testing. The 1994 amendments give a good lesson in the time needed to implement compliance with federal law. In the six years since enactment, fewer than 20 states have completed enough of the accountability package application/negotiation to be <i>considered</i> compliant with the law. <u>A three-year phase in for the implementation of any significant federal accountability requirements is unrealistic and should be reconsidered.</u>"</p>	<p><b>Implementation:</b> States will have until the 2005-2006 school year to develop and administer the assessments required under H.R. 1.</p> <p>Fewer than 20 states fully complied with IASA within 6 years of its 1994 implementation. The remainder have a "negotiated compliance" with the U.S. Dept. of Ed.- a promissory that is now due. <i>See the 'State' portion of the "Sanctions" section.</i></p>
<p><b>Testing costs:</b> "Funding to assist states in the development and administration of the annual state testing requirements is inadequate to successfully implement this mandate. Although some estimates of the cost of testing are excessive, we also recognize that the appropriation request is inadequate. The Senate estimated that it would cost \$880 million per year for three years for states to comply. During committee debate, members indicated that <u>states would be expected to pick up half of those costs</u>. The committee authorization was reduced to \$370 million per year, leaving a <b>three year unfunded mandate in excess of \$1 billion dollars</b>. These initial and ongoing costs will be shifted to the states with the justification that they are merely a "condition of grant" rather than their accurate depiction as another costly federal mandate."</p>	<p><b>Testing costs:</b> After an initial offer of a one-time \$370 million testing appropriation, the Congress relented. Testing is <u>authorized</u> at \$490 million/year for the life of the new law with an appropriations "trigger" included to ensure sufficient federal resources are available to the states to comply with the annual reading and math testing requirement. <i>A state may defer the commencement or suspend the administration of the annual assessments for one year for each year that appropriations levels do not reach the set amount.</i> But, a state must continue to comply with current law (IASA) by testing in reading and math in one year of each period grades 3-5, 6-9 and 10-12.</p> <p><u>Appropriations</u> trigger points for compliance are as follows:</p> <ul style="list-style-type: none"> <li>• \$370 million for FY 2002</li> <li>• \$380 million for FY 2003</li> <li>• \$390 million for FY 2004</li> <li>• \$400 million for FY 2005-2007</li> </ul> <p>\$3 million distributed to each state off the top,</p>



	with remainder divided proportionately according to school age population <sup>1</sup> .
<p><b><u>Adequate yearly progress (AYP):</u></b> Both Senate and House bills indicate a level of <u>adequate yearly progress</u> that would, by Congressional Research Service estimates, classify over 90% of our nation's schools as "failing". We acknowledge that many of our schools need to improve, but we know in our hearts that more than 10% are currently doing a good job of educating our students. Neither version offers an acceptable alternative threshold for AYP.</p>	<p><b><u>Adequate yearly progress (AYP):</u></b> AYP was introduced in the 1994 Improving America's Schools ACT (IASA) but applied only to disadvantaged (Title I) eligible students. Under H.R. 1, a state's definition of AYP must be expanded to apply to all students. States must define AYP so that <u>all</u> students are expected to perform at the "proficient" level within 12 years, making progress in equal increments during that period.</p> <p>States establish starting point for proficiency goals but may set the "bar" based upon the lowest – achieving demographic sub-group or the lowest achieving schools in the state, whichever is higher. To avoid over-identification of schools as failing when students are making significant progress, a "safe-harbor" is allowed if student subgroups make a 10% reduction in the number not proficient. Example: Hispanic students are 30% proficient and achieve a 7% increase in number of proficient students within that group (a 10% reduction in the number –70%- not proficient) then they would be considered to have made adequate yearly progress. States must also include one additional indicator of success; graduation rates for secondary schools and one of the state's choosing for elementary schools. Additional indicators can not to be included in determining "success or failure" in complying with federal AYP.</p>
	<p><b><u>Sanctions: Schools</u></b></p> <p>Title I schools that do not meet federally defined AYP goals for <i>2 consecutive years</i> will be identified as needing improvement and will be eligible for technical assistance. LEAs must offer public school choice (unless prohibited by state law) to all students and must provide transportation for choice by using up to 5% of their Title 1, Part A funds.</p> <p>Failure to meet AYP goals for 3 consecutive years requires <i>adding supplemental tutoring services</i> for disadvantaged students in a failing school. <b>States would determine criteria for eligible providers.</b> LEAs must use up to 5% of Title 1 Part funds for supplemental educational services.</p> <p>Failure to meet AYP for 4 consecutive years, requires LEA to take corrective action by replacing staff and/or implementing a new curriculum, in</p>

	<p>addition to the consequences indicated above. (Vouchers for private school choice were dropped early on in the legislative process.)</p> <p>For schools already identified as failing under current law (IASA), H.R. 1 requires the individual schools to retain their current classification and face consequences in the next school year, (SY 2002-2003). Schools in "school improvement" status would have to offer public school choice while schools in the 2<sup>nd</sup> year of school improvement or corrective action would have to offer supplemental services no later than the beginning of SY (School Year) 2002-2003. <i>The above applies to Title I schools only. However as a condition of receipt of federal grants, each state must also develop a "parallel" system of rewards and sanctions to hold all public (non-Title I schools) and districts accountable for AYP</i></p> <p><b>State Sanctions:</b> In apparent retaliation for states' failure to meet the requirements of IASA (see Implementation above) the consequences for <i>failure to meet absolute deadlines in IASA or to meet deadlines negotiated in a compliance agreement are severe.</i> The Secretary <b>must withhold 25% of the offending state's federal administrative money until compliance is achieved.</b> (See GAO attachment for an estimate of your state's federal admin budgets.) Any negotiated agreement for IASA compliance <b>must be entered into by April 8, 2002- 90 days after enactment of "No Child".</b></p> <p>For non-compliance with the new provisions, the Secretary <u>may</u> withhold administrative money.</p>
<p><b>Data collection and reporting:</b> "This requirement would compel states to collect longitudinal data on students beginning in the third grade and to report on the performance of all students and sub-groups of students annually. The provision ignores the price of hardware, software and maintenance by again shifting the costs to the states. As we reported in previous correspondence, the costs of complying are substantial. For example, in the late 1980s, Texas appropriated \$12 million for hardware costs for its Public Education Information Management System (PEIMS) and has subsequently appropriated about \$3 million/year for maintenance of its education data system. <u>The majority of states (38 or more) do not have a sophisticated statewide data system with the</u></p>	<p><b>Data collection and reporting:</b> No change in conference and no funds set-aside for hardware/software costs. There may be flexibility in applying federal testing funds to the development and administration of data systems. The testing of students and the reporting of student data is considered a "condition of grant" for receiving Title I funds. States must comply in order to continue to receive federal compensatory education funds.</p>



<p><u>capacity to process and store this enormous amount of information.</u> Our members are also concerned about the use and potential misuse of sensitive data collected about our children.”</p>	
<p><b>Teacher quality:</b> “Legislators recognize and support the importance of having qualified teachers in every classroom and to that end have initiated efforts to address teacher preparation, licensure, induction and professional development. Requiring states to have a certified teacher in every classroom within three years ignores the logistics of hiring over 2.2 million new teachers needed in the next decade. Pressuring states to comply before they are able could lead to policymakers diluting the certification process. We could end up with more teachers who are “certified” but not necessarily more who are qualified. A state’s performance toward this goal should be measured against its own progress and states should retain authority to establish specific criteria for teacher licensing and alternative certification.”</p>	<p><b>Teacher quality:</b> LEAs must ensure that all teachers hired with Title 1 (federal compensatory education program) funds must meet the teaching requirements of the state in which they are teaching.</p> <p>Each SEA must develop and submit a plan to the U.S. Secretary of Education to ensure that all teachers teaching within the state are “highly qualified by the end of the 2005-2006 school year. The plan must establish measurable annual objectives for each LEA and school for increasing the percentage of “highly qualified” teachers and for increasing the availability of quality professional development.</p> <p>No explicit sanctions for failure to comply.</p> <p>Secretary may establish panel to study strategies for increasing <i>mobility</i> and employment opportunities for high quality teachers.</p>
	<p><b>Teacher aides:</b> No later than 3 years after enactment all teacher aides (those hired under Title I compensatory education funds) must have completed at least 2 years of post-secondary education, obtained an associates degree or met a “rigorous” standard of quality established at the local level.</p>
<p><b>Governance:</b> “ This legislation continues the tradition of federal meddling in the governance of state K-12 education systems. ESEA remains the only major federal program in which a sub-state agency is specifically identified as the recipient of federal funds. Both pieces of legislation directly endow state education agencies with unprecedented authority to receive federal funds directly, to administer federally funded programs without consultation with elected state officials and to make commitments that will, in both the short and long terms, impact overall state policy and state budgets. As but one example, the Senate bill mandates that the state education agency will administer the 21<sup>st</sup> Century Community Learning Centers. But many states with afterschool programs have put state resources (as well as TANF resources) for afterschool programs in human service agencies,</p>	<p><b>Governance:</b> H.R.1 continues federal tradition of using “SEA” and “state” interchangeably. Tremendous authority, including the receipt of federal funds, is accorded the state education agencies in this legislation.</p> <p>Legislators may want to investigate the state constitutional and statutory treatment of federal funds designated to be received by a “state” or state agency.</p> <p><b>Consider conducting oversight of your SEA’s implementation of “No Child Left Behind”.</b></p>

<p>not state education agencies. Picking winners and losers in internal state affairs is not an appropriate role for the federal government.</p> <p>Current federal legislation for education programs specifically identifies <i>state education agencies</i> as the recipient of federal dollars sent to the states. No other federal program circumvents the states budgetary process by sending funds directly to a state or sub-state <i>agency</i>. All federal funds, even those targeted for specific purposes, should go to the states for legislative appropriation. <u>If Congress wants to hold <i>states</i> more accountable for the funds spent within the states, it should stop endowing sub-states entities with an independent source of revenue.</u>"</p>	
<p><b><u>The National Education Goals Panel:</u></b> "NCSL policy explicitly supports continuation of the Goals Panel. Neither piece of legislation addresses the continuation of this effective intergovernmental effort."</p>	<p><b><u>The National Education Goals Panel:</u></b> The National Education Goals Panel is now defunct.</p>
<p><b><u>IDEA Funding:</u></b> "Meeting the 25-year-old federal commitment to fund 40% of average per-pupil expenditures (APPE) remains the most important legislative priority for the nation's legislatures. For the current fiscal year, this \$10 billion unfunded federal mandate remains the <u>single most intractable education issue we face as we attempt to improve the performance of our state systems.</u>"</p>	<p><b><u>IDEA Funding:</u></b> The Harkin-Hagel Amendment, which would have gradually (over 8 years) increased federal special education appropriations to 40% of APPE, was rejected by the House Conferees. <b>Those voting against the proposal:</b> Petri (Wisconsin), Hilleary (Tennessee), Boehner (Ohio), Graham (South Carolina), Roukema (New Jersey), Castle (Delaware), McKeon (California), Isakson (Georgia) <sup>ii</sup>.</p>
<p><b><u>School Construction:</u></b> "The nation's legislators see federal involvement in the financing of school facilities as one of the least intrusive ways of providing federal help for states and localities. NCSL policy identifies school facilities as a part of the "nation's infrastructure" and asks for <i>federal assistance in a form that respects states constitutional authority over education policy</i>. NCSL has supported changing the tax code to relax arbitrage restrictions and to expand the definition of private activity bonds. We also endorse the concept of using federal appropriations to seed fund a state revolving loan program, as has been done for drinking water and wastewater treatment facilities. Each of these approaches will address differing fiscal conditions in different state while protecting all states' constitutional and statutory authority."</p>	<p><b><u>School Construction:</u></b> No new programs for federal assistance for school construction/renovation.</p> <p>The Qualified Zone Academy Bond (QZAB), a federal tax credit for investors in public school construction, will expire as of December 31, 2001.</p> <p>This past spring, tax legislation (Economic Growth and Tax Relief Reconciliation Act of 2001, EGTRRA- H.R. 1836) relaxed provisions regulating arbitrage for public school construction and contained provisions to expand the definition of Private Activity Bonds to include public schools and to create a new category of bond caps specifically for schools. The impact of these changes is yet to be evaluated. (See Heritage Foundation publication by Ronald Utt at</p>

	<p><a href="http://www.heritage.org/library/backgrounder/bg1463.html">http://www.heritage.org/library/backgrounder/bg1463.html</a>)</p> <p>H.R. 1 does include language to assist state and localities that support facilities financing of charter schools. The Secretary may award matching incentive grants to states that support charter facilities with per-pupil expenditure funds <sup>iii</sup>.</p>
<p><b><u>Other FY 2002 appropriations notes:</u></b></p> <p><b>Overall funding for U.S. Department of Education:</b> FY 2002: \$49 billion-an increases of \$6.7 billion or +16%</p> <p><b>Title I- Compensatory education programs:</b> FY 2002: \$11.2 billion –an increase of \$2.6 billion or +30%</p>	<p><sup>i</sup> Trigger for FY 2002 was exceeded in FY 2002 Labor/HHS appropriation bill.</p> <p><sup>ii</sup> FY 2002 appropriations include an increase of \$896 million to bring federal approps in IDEA to \$8.3 billion-an increase of 12% but significantly less than 20% of APPE-or in other words-less than half of the 40% APPE federal commitment.</p> <p><sup>iii</sup> FY 2002 Labor/HHS approps zeros out the Emergency School Construction grant program begun in FY 2001.</p>

### FISCAL IMPLICATIONS FOR LEGISLATURES

1. Testing requirement-ongoing cost of administering, scoring tests
2. Longitudinal data- no specific allocation of funds and ongoing costs for hardware, software and storage
3. Carrots & sticks- drain on federal dollars in Title I schools (busing, supplemental services), drain on state dollars for non-Title I schools, potential drain on state for actions of the SEA.

ATTACHMENT A

September 26, 2001 NCSL Letter to Conferees



NATIONAL CONFERENCE of STATE LEGISLATURES

*The Forum for America's Ideas*

**Stephen Saland**  
State Senator  
New York  
President, NCSL

**Ramona Kenady**  
Chief Clerk of the House  
Oregon  
Staff Chair, NCSL

**William T. Pound**  
Executive Director

September 26, 2001

The Honorable John A. Boehner  
Chairman  
House Education and the Workforce Committee  
1011 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Edward M. Kennedy  
Chairman  
Senate Health, Education, Labor, and Pensions  
Committee  
315 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable George Miller  
Ranking Minority Member  
House Education and the Workforce Committee  
2205 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Judd Gregg  
Ranking Minority Member  
Senate Health, Education, Labor, and Pensions  
Committee  
393 Russell Senate Office Building  
Washington, D.C. 20510

**Reference: Conference deliberations on HR 1 and S. 1.**

Dear Chairman Boehner, Representative Miller, Chairman Kennedy, and Senator Gregg:

We write to express the concerns of America's state legislatures regarding both the House and Senate versions of the re-authorization of the Elementary and Secondary Education Act (ESEA). After careful review, we have reluctantly come to the conclusion that critical parts of both S.1 and H.R.1 are seriously and perhaps irreparably flawed.

Our concerns are as follows:

1. Annual testing: The testing requirement at the heart of both bills is an egregious example of a top-down, one-size-fits-all federal reform. There is no compelling or convincing argument that an effective accountability system must include annual testing in multiple subjects. Evidence indicates otherwise. The most recent National Assessment of Educational Progress (NAEP) results rank the top ten states in reading and math in grades 4 and 8. In those four top ten listings, only one state appears that tests its students every year in grades 3-8. In other words, there is no correlation between annual testing and student performance on NAEP. A federal mandate for annual testing is a senseless preemption of successful state accountability systems that do not include annual testing.
2. Accountability: The requirement to use a standardized statewide testing instrument ignores successful state accountability systems that use a combination of state and local testing. This combination model, suggested by the Improving America's Schools Act, is the standard used by many states

complying with IASA since it passed in 1994. Currently 17 states require school districts to have local assessments as a part of their state assessment strategy. This allows local school districts to account for and assess local curriculum options in an overall state accountability system. Sacrificing a flexible but effective state system at the altar of this federal mandate is counterproductive.

3. Testing costs: Funding to assist states in the development and administration of the annual state testing requirements is inadequate to successfully implement this mandate. Although some estimates of the cost of testing are excessive, we also recognize that the appropriation request is inadequate. The Senate estimated that it would cost \$880 million per year for three years for states to comply. During committee debate, members indicated that states would be expected to pick up half of those costs. The committee authorization was reduced to \$370 million per year, leaving a **three year unfunded mandate in excess of \$1 billion dollars**. These initial and ongoing costs will be shifted to the states with the justification that they are merely a “condition of grant” rather than their accurate depiction as another costly federal mandate.
4. Adequate yearly progress (AYP): Both bills indicate a level of adequate yearly progress that would, by Congressional Research Service estimates, classify over 90% of our nation’s schools as “failing”. We acknowledge that many of our schools need to improve, but we know in our hearts that more than 10% are currently doing a good job of educating our students. Neither version offers an acceptable alternative threshold for AYP.
5. Data collection and reporting: This requirement would compel states to collect longitudinal data on students beginning in the third grade and to report on the performance of all students and sub-groups of students annually. The provision ignores the price of hardware, software and maintenance by again shifting the costs to the states. As we reported in previous correspondence, the costs of complying are substantial. For example, in the late 1980s, Texas appropriated \$12 million for hardware costs for its Public Education Information Management System (PEIMS) and has subsequently appropriated about \$3 million/year for maintenance of its education data system. The majority of states (38) do not have a sophisticated statewide data system with the capacity to process and store this enormous amount of information. Our members are also concerned about the use and potential misuse of sensitive data collected about our children.
6. Teacher quality: Legislators recognize and support the importance of having qualified teachers in every classroom and to that end have initiated efforts to address teacher preparation, licensure, induction and professional development. Requiring states to have a certified teacher in every classroom within three years ignores the logistics of hiring over 2.2 million new teachers needed in the next decade. Pressuring states to comply before they are able could lead to policymakers diluting the certification process. We could end up with more teachers who are “certified” but not necessarily more who are qualified. A state’s performance toward this goal should be measured against its own progress and states should retain authority to establish specific criteria for teacher licensing and alternative certification.
7. Governance: This legislation continues the tradition of federal meddling in the governance of state K-12 education systems. ESEA remains the only major federal program in which a sub-state agency is specifically identified as the recipient of federal funds. Both pieces of legislation directly endow state education agencies with unprecedented authority to receive federal funds directly, to administer federally funded programs without consultation with elected state officials and to make commitments that will, in both the short and long terms, impact overall state policy and state budgets. As but one example, the Senate bill mandates that the state education agency will administer the 21<sup>st</sup> Century Community Learning Centers. But many states with afterschool programs have put state resources (as well as TANF resources) for afterschool programs in human service agencies, not state education



agencies. Picking winners and losers in internal state affairs is not an appropriate role for the federal government.

8. The National Education Goals Panel: NCSL policy explicitly supports continuation of the Goals Panel. Neither piece of legislation addresses the continuation of this effective intergovernmental effort.
9. IDEA: Meeting the 25-year-old federal commitment to fund 40% of average per-pupil expenditures (APPE) remains the most important legislative priority for the nation's legislatures. For the current fiscal year, this \$16 billion unfunded federal mandate remains the single most intractable education issue we face as we attempt to improve the performance of our state systems.

We commend the spirit and dedication of the President and members and leaders of Congress who worked diligently to pass H.R. 1 and S.1. Your leadership, words and actions helped to quickly move this legislation through Congress. The goals, concepts and issues raised in the legislation are inarguably important and have been discussed and addressed in many of the states. However, in this case we feel that expediency has triumphed over good policy. The proposals were not researched thoroughly and their ramifications were not thought through adequately. Ideas were not properly vetted and principles of federalism were ignored. The end result is a conference committee faced with two proposals that have numerous seriously flawed provisions.

State budgets, particularly those dependent on sales taxes, are reeling from the recent economic downturn. A similar impact is likely on federal receipts and appropriations, decreasing the likelihood that appropriation levels in the federal education legislation will offset the financial burdens imposed by its mandates. We fear that compliance with the federal mandates may be undercut unless states severely reduce other vital areas of their budgets. These cutbacks could very well imperil the progress we have made at the state level in accountability systems, pre-school programs, teacher preparation and certification, class size reduction, facilities upgrades and other critical areas. Many of the concepts promoted in this legislation could be structured as goals rather than mandates. This would enable policymakers at all levels to work cooperatively toward the admirable goals of this legislation with less risk of creating unintended consequences. Improvements to ESEA should not be made at the expense of our state priorities and initiatives.

The attacks on our country lead all of us to reflect and reevaluate our priorities, commitments and responsibilities. As a nation we face tough decisions. We should make those decisions deliberately and expeditiously without making them hastily. As the only elected officials who have a constitutional duty to provide a system of public education, state legislators must consider efforts to reform federal education programs in light of our responsibilities to the entire public education system. As a result, our conundrum is as difficult as yours. Do we support flawed federal legislation because others have supported it? Or do we voice our honest opinion that this 'reform' stops us in our tracks and sends us off on a new and not necessarily successful course? We choose to do our duty by withholding our support for this legislation.

Any of us would be happy to discuss our positions with you or you may contact us through our NCSL staff, David Shreve at 202-624-8187 or at [david.shreve@ncsl.org](mailto:david.shreve@ncsl.org).  
Sincerely,



Senator Stephen Saland  
New York State Senate  
President  
National Conference of State Legislatures



Senator Jane Krentz  
Minnesota Senate  
Chair, NCSL Education, Labor  
and Workforce Development Committee



Representative Ralph Tanner  
Chair, Kansas House Education Committee  
Vice Chair, NCSL Assembly on Federal Issues



Delegate James Dillard  
Co-Chair, Virginia House of Delegates  
Education Committee  
Vice Chair, NCSL Assembly on Federal  
Issues

cc: Members of the House-Senate Education  
Conference Committee

cc: J. Dennis Hastert  
Speaker, U.S. House of Representatives

cc: Richard A. Gephardt  
Minority Leader, U.S. House of  
Representatives

cc: Thomas A. Daschle  
Majority Leader  
U.S. Senate

cc: Trent Lott  
Minority Leader, U.S. Senate

## ATTACHMENT B

### DEPARTMENT OF EDUCATION Funds for State Formula-Allocated and Selected Student Aid Programs for Kansas

	2001	2002	2003	Change from 2002 Appro.
	Appropriation	Appropriation	Request	
✓ ESEA Title I--Grants to Local Educational Agencies	62,890,292	74,091,566	80,202,960	6,111,394
ESEA Title I--Reading First State Grants	0	6,399,468	7,110,020	710,552
ESEA Title I--Even Start	1,600,558	1,599,732	1,266,855	(332,877)
ESEA Title I--Migrant	10,973,355	11,402,670	11,402,670	0
ESEA Title I--Neglected and Delinquent	345,265	363,371	363,371	0
ESEA Title I--Comprehensive School Reform	1,499,809	1,673,634	1,748,229	74,595
ESEA Title I--Capital Expenses for Private School Children	40,586	0	0	0
Subtotal, Education for the Disadvantaged	<u>77,349,865</u>	<u>95,530,441</u>	<u>102,094,105</u>	<u>6,563,664</u>
Impact Aid--Basic Support Payments	15,973,541	17,425,909	18,175,210	749,301
Impact Aid--Payments for Children with Disabilities	659,288	661,224	661,224	0
Impact Aid--Construction	179,461	740,725	740,725	0
Impact Aid--Payments for Federal Property	208,029	642,310	642,310	0
Subtotal, Impact Aid	<u>17,020,319</u>	<u>19,470,168</u>	<u>20,219,469</u>	<u>749,301</u>
✓ Improving Teacher Quality State Grants	0	22,598,694	22,598,694	0
Class Size Reduction	12,961,775	0	0	0
Eisenhower Professional Development State Grants	3,962,823	0	0	0
Safe and Drug-Free Schools and Communities State Grants	3,540,027	3,730,235	3,727,996	(2,239)
State Grants for Community Service for Expelled or Suspended Students	0	406,576	0	(406,576)
✓ 21st Century Community Learning Centers	0	2,178,601	3,955,430	1,776,829
Educational Technology State Grants	3,041,404	4,367,796	4,509,936	142,140
State Grants for Innovative Programs	3,679,416	3,679,416	3,679,416	0
Fund for the Improvement of Education--Comprehensive School Reform	484,133	726,199	0	(726,199)
✓ State Assessments and Enhanced Assessment Instruments	0	5,077,820	5,175,634	97,814
Education for Homeless Children and Youth	254,747	359,597	359,597	0

Rural and Low-Income Schools Program	0	568,087	0	(568,087)
✓ School Renovation Grants	7,535,437	0	0	0
Indian Education--Grants to Local Educational Agencies	698,019	733,444	733,444	0
Language Acquisition State Grants	0	1,423,634	1,617,724	194,090
Immigrant Education	1,324,555	0	0	0
✓ Special Education--Grants to States	60,170,732	70,916,463	80,242,382	9,325,919
Special Education--Preschool Grants	4,426,665	4,426,665	4,426,665	0
Special Education--Grants for Infants and Families	3,511,726	3,884,393	4,071,468	187,075
Subtotal, Special Education	68,109,123	79,227,521	88,740,515	9,512,994
✓ Vocational Rehabilitation State Grants	23,459,628	24,101,168	25,268,427	1,167,259
Client Assistance State Grants	118,241	120,724	120,724	0
Protection and Advocacy of Individual Rights	138,633	147,782	147,782	0
Supported Employment State Grants	333,182	327,437	0	(327,437)
Independent Living State Grants	297,581	297,581	297,581	0
Services for Older Blind Individuals	225,000	225,000	225,000	0
Protection and Advocacy for Assistive Technology	50,000	50,000	50,000	0
Subtotal, Rehabilitation Services and Disability Research	24,622,265	25,269,692	26,109,514	839,822
✓ Vocational Education State Grants	11,370,063	12,221,750	12,221,750	0
Vocational Education--Tech-Prep Education State Grants	1,120,100	1,146,711	1,146,711	0
Adult Education State Grants	3,452,210	3,699,422	3,699,422	0
English Literacy and Civics Education State Grants	269,922	269,922	269,922	0
State Grants for Incarcerated Youth Offenders	142,919	142,919	0	(142,919)
Subtotal, Vocational and Adult Education	16,355,214	17,480,724	17,337,805	(142,919)
Federal Pell Grants	91,900,000	99,900,000	100,800,000	900,000
Federal Supplemental Educational Opportunity Grants	5,452,741	5,721,038	5,721,038	0
Federal Work-Study	8,584,661	8,584,661	8,584,661	0
Federal Perkins Loans--Capital Contributions	1,326,072	1,326,072	1,326,072	0
Leveraging Educational Assistance Partnership	609,081	742,782	0	(742,782)
Byrd Honors Scholarships	400,500	396,000	396,000	0
Total	349,212,177	399,499,198	417,687,050	18,187,852

1/ Prior to fiscal year 2002 funds for 21st Century Community Learning Centers were not allocated by formula.