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More States Are Fighting 'No Child Left Behind' Law

Complex Provisions, Funding Gaps In Bush Education Initiative Cited

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Two years after President Bush proclaimed a "new era" in American public education with the passage of his No Child Left Behind initiative, a growing number of state legislators and school administrators are looking for ways to opt out of requirements they view as intrusive and underfunded.

Resistance that began in New England last year over the implementation of the broadest education reforms in a generation has spread to several southern and western states, with Republicans joining Democrats in criticizing a plan that once enjoyed bipartisan support.

Utah's Republican-dominated House voted last week to refuse to implement No Child Left Behind "except where there is adequate federal funding." The bill, now before the state Senate, closely parallels a move last year by the Vermont legislature to bar any state funding for the Bush education reforms.

Over the past few days, Republican legislators in Arizona and Minnesota have introduced bills that would allow the states to reject parts of No Child Left Behind or opt out of its provisions. The legislatures of at least 10 other states, from Virginia to Washington, have adopted resolutions critical of the law or requested waivers from the Education Department.

While the protests have yet to become a nationwide rebellion, some analysts predict that the movement to opt out of the program will gather momentum as more and more schools are put on watch lists required by the law that designate them "in need of improvement." As many as half the schools in some states have failed to meet the law's complicated definition of "adequate yearly progress" in student test scores, triggering a range of costly remedial measures and sanctions.

No Child Left Behind, enacted in 2002, requires annual testing of students in grades three through eight and forces schools whose students do not improve at a steady rate to take remedial action. The remedies include professional help for teachers, extra tutoring for students and transfers of students to higher-achieving schools. Schools that continue to underperform could ultimately be forced to replace their staffs or even reopen as charter schools.

The unhappiness with No Child Left Behind could develop into a major election-year issue, said John F. "Jack" Jennings, director of the Center on Education Policy, an independent think tank that has studied the implementation of the law. He noted that states are due to publish updated watch lists of failing schools in August or September, and that "there are bound to be more schools that don't make the grade.

"We will know in the heat of the election battle how many schools are on the lists, and it is likely to add

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oil to the fire," Jennings said, noting that Democratic presidential candidates have begun to criticize the Bush education reforms. "States do not have the resources to deal with it."

In an interview Friday, Education Secretary Roderick R. Paige said many of the protests against the No Child Left Behind law are the result of its very complexity -- it is more than 1,000 pages long -- and a failure to understand its provisions. He said that much of the opposition is coming from a Washington-based "union establishment" that has mounted "a deliberate and highly financed effort to distort information" about the law.

"For every person out there who is criticizing this law, there are tens out there who are supporting it," Paige said.

In an attempt to defuse resistance to the plan, Paige has dispatched senior officials to states challenging the law. Ron Tomalis, a senior Paige adviser, met with Utah lawmakers earlier this month and told them that they would lose \$106 million in federal money if they refused to cooperate with Washington.

After the meeting, Utah Republicans softened their opposition to the law, replacing their threat to opt out of the program with a demand that it be fully funded by the federal government. Margaret Dayton, chairwoman of the Utah House's Education Committee, said she was torn between "the idea of turning away \$106 million" and concern that the federal reforms would be costly and undermine "state sovereignty."

Public opinion surveys have shown that most parents and school administrators support the goals of No Child Left Behind, which is designed to bring all children in the nation up to proficiency, as defined by the states themselves, in reading and math by 2014. But doubts are increasingly being raised about how the reforms will be funded and the extension of federal authority into an area that has traditionally been reserved for states and school districts.

Opposition to the law is now coming equally from both political parties, said Scott Young, an analyst with the National Conference of State Legislatures, which represents 7,500 elected officials nationwide. "Republicans tend to see this as federal intrusion into state rights, while Democrats complain more about insufficient funding. But the two concerns overlap," he said.

Bush administration officials note that federal spending on education has increased by 35 percent, or \$15 billion, since Bush took office. Much of the money is earmarked for underprivileged groups, such as poor children or students with limited knowledge of English.

Paige said he is eager to work with the nation's 15,000 school districts in implementing No Child Left Behind, and is ready "to examine every regulation letter by letter to see how much help we can provide them." But he said he "emphatically" opposes any legislative changes that would water down the emphasis on bringing student subgroups -- including ethnic minorities and special education students -- up to proficiency by 2014.

Nevertheless, Paige is scheduled to hold a news conference today at which he will announce new, more flexible testing requirements for students with limited knowledge of English, department officials said. The changes are likely to make it easier for schools to meet the yearly progress goals of No Child Left Behind, defusing some of the criticism that has been leveled at the law over the past few months.

Until now, no state has been prepared to reject No Child Left Behind altogether, which would mean relinquishing federal subsidies, which account for about 11 percent of total expenditures on education.

Instead, they are looking for ways to escape the most onerous parts of the legislation.

In an early example of this trend, Vermont passed a law in 2003 refusing to implement unfunded federal mandates. William Mathis, who supervises a group of school districts in central Vermont, said the No Child Left Behind law will force him to divert money from several of his neediest public schools to support student transfers and supplemental tutoring. It is tantamount, he said, to a "death sentence" for several small rural schools.

If Mathis accepted the federal money (about \$500,000 in his case) for schools in low-income areas, he would also have to implement a slew of federal regulations and sanctions. Instead, he is channeling the same money into other programs, such as early education, that have fewer strings attached.

It is unclear whether this tactic, which has been implemented in other Vermont school districts, will pass muster with the federal government. Mathis and other opponents of No Child Left Behind cite a clause in the law that stipulates that states cannot be compelled by the federal government "to incur any costs not paid for under this act."

In Utah, meanwhile, the superintendent of the state's largest school district has calculated that he will have to spend \$182 million over the next 10 years to implement all the provisions of No Child Left Behind. The Jordan school district currently receives about \$2.2 million a year in federal Title I funding.

"Imagine that you are building a new home, and you have reached agreement with the contractor on when the home will be finished and what the price will be," superintendent Barry Newbold said. "Then someone comes along and says they want the house to be completed much more quickly, and with a spectacular new addition. You would say, 'I can accomplish that, but I will need more money, more resources.' " A similar study estimated that Ohio will have to spend nearly \$1.5 billion over the next 10 years to implement No Child Left Behind. While some extra money will be required for student testing, most of it will go to raising student achievement through tutoring, longer school days and summer school.

Federal officials strongly contest the Ohio and Utah cost estimates, noting that they do not separate the costs of existing state and federal programs and assume a perfect world, in which every goal of No Child Left Behind is achieved. In fact, they say, the law is much less rigid than critics acknowledge, and is designed to raise the overall level of academic achievement rather than dictate how school districts spend their money.

"Right now, between 40 and 50 percent of children are reading on grade level," said Tomalis, the Paige adviser who was dispatched to Utah. "Say we don't get to 100 percent, we only get to 85 or 90 percent, we will still be in a much stronger position than we are now."

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