



January 7, 2008

Questions and Answers about *Pontiac v. Spellings*

What is this lawsuit about?

The plaintiffs, who include NEA, nine school districts, nine NEA state affiliates, and one local affiliate, want federal officials to keep the promise they made to states and school districts when they enacted the No Child Left Behind (NCLB) Act of 2001: states and local communities would not be forced to pay for new federal mandates.

The law clearly says this in Section 9527(a):

“Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local education agency, or school’s curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.” [20 U.S.C. § 7907(a).]

The federal government has not given local schools enough money to carry out the law. Instead, parents and other taxpayers are forced to use their own limited local tax dollars to meet requirements dictated from Washington, D.C., and their children’s schools get unfair federal “failing” labels.

What did the Appeals Court do?

The lawsuit was initially filed in April 2005 with the U.S. District Court for the Eastern District of Michigan. After oral arguments in October 2005, the District Court dismissed the complaint. NEA and the other plaintiffs subsequently appealed to the Sixth Circuit Court of Appeals. After oral arguments in November 2006, the Court on January 7th issued its [decision](#) overturning the district court’s decision, finding that, “...the Secretary’s interpretations of § 7907(a) violate the Spending Clause.”

Who else supports the lawsuit.

In addition to the plaintiffs, supporting amicus briefs were filed by the Attorneys General of six states and the District of Columbia, [the Governor of Pennsylvania](#), the [American Association of School Administrators](#), and a collection of [California](#) state officials, educators, and concerned citizens.

Is this lawsuit about stopping No Child Left Behind?

No, we are asking the Bush administration to follow the requirements of its own law and pay for the regulations it is imposing on children's classrooms.

The Bush administration claims it has increased education funding more than any other president - how can you say they haven't provided enough for schools?

Just take a look at the many [studies cited in our lawsuit](#). The truth is that the administration and Congress have NOT provided enough funding and support for schools to follow the testing regimen and other regulations in the law. So states and [local school districts are cutting arts, sports and academics](#) to make up the difference.

Indeed, based on the Fiscal Year 2008 education appropriations bill, the cumulative funding gap for NCLB program is now over \$70 billion:

<http://www.nea.org/lac/funding/images/fundinggap.pdf> and
<http://www.nea.org/lac/funding/images/percentchange.pdf>

Do local schools really have to follow so many of these regulations? Isn't the law quite flexible?

Any waivers or exceptions the administration might allow still don't change the fact that the law requires the federal government to pay for its education regulations.

Tell me about the school districts that are part of the lawsuit?

A visit to any of these districts will show the wide range of issues, concerns and struggles that local schools have with the one-size-fits-all education law:

Laredo's students include a very high percentage of English Language Learners.

Pontiac serves many low-income students and the districts in Vermont are rural.

But they all share the same difficulty in trying to meet the regulations imposed by the law: they simply can't afford it.

What will this lawsuit and the Appeals Court decision accomplish?

This lawsuit makes clear that it was not Congress' intent to force states and localities to spend their own money to comply with the many mandates of NCLB. Despite this intention, President Bush's budgets have never covered the costs of the law. It's time for the administration to stop asking states and local school districts to foot the bill for a law it claims to believe in, but has undermined by the refusal to fund its requirements. If states and districts cannot fully comply with all of the law's regulations and mandates due to a lack of federal funds, they now cannot be penalized by the Department of Education.

Did you expect to win?

The language of the law has always seemed clear to us, and we are glad the Court of Appeals for the 6th Circuit completely agreed.

How long will this lawsuit drag on?

That fully depends on the Department of Education and the judicial system. It's hard to say when a final decision will be made. The case will now go back to the District Court for further proceedings.

Isn't this just wasting taxpayer dollars that could be spent on schools?

Federal rules and regulations imposed on local school districts are expensive. When parents have to pay for what Washington will not, then it means their money is going toward

paperwork, bureaucracy and big testing companies - not to their children's education. Education is too important to let that continue.

Does this mean that states and local school districts no longer have to comply with NCLB?

No. It means that the U.S. Department of Education cannot require states and local school districts to comply with the requirements of NCLB that are not paid for by the federal government. So, states and schools—if they choose to continue accepting federal money—must still comply with the NCLB requirements for which there is federal funding. We have never argued that the goals of NCLB are flawed, nor have we argued that states should not attempt to comply with the law. We object to this administration's misinterpretation of the clear language of the law in a way that attempts to absolve the federal government of its responsibility to provide the promised resources.

What about the other things the government has to pay for?

If providing America's children with a high quality education is a priority for the administration, then that priority should be reflected in the President's budget. The goals of closing achievement gaps and providing great public schools for every child cannot be realized without a meaningful partnership between the federal government and states and local school districts. Over the last six years, the Bush Administration has submitted to Congress tin-cup budgets for education and yet required massive amounts of new paperwork, rules, and regulations. As Congress begins the debate about whether to reauthorize NCLB, we hope they will consider re-defining the federal role in education to one that supports equal access for all children to a 21st century, innovative education. Public school students deserve more creativity from Washington and less regulation and punishment.

Is there legislation in Congress that would provide some remedy?

Yes. While Congress works on overhauling the underlying problems with the NCLB law itself, two bills would provide a partial remedy to the problem identified in the lawsuit. The Keep Our Promises to America's Children and Teachers (PACT) Act (H.R. 627), introduced by Representative Van Hollen (D-MD), would require full funding of the Elementary and Secondary Education Act and the Individuals with Disabilities Education Act. It provides the financial amounts necessary to fully fund the ESEA/NCLB programs through the 2014 fiscal year, and provides mandatory full funding for IDEA. [See](#) which Representatives are cosponsors of **H.R. 627**. Further, the Keeping Our Promises to America's Children Act of 2007 (H.R. 684), introduced by Representative Moore (D-KS), would hold the Administration and Congress accountable for providing promised funding by allowing states or school districts to suspend, modify or defer any of the sanctions for failing to meet AYP in any year in which Title I is not funded at its authorized level. [See](#) which Representatives are cosponsors of **H.R. 684**.