



Insight

A Mandate in Disguise

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President Obama and Secretary Duncan recently announced that the Department of Education will provide waivers to all 50 states from the burdensome requirements of the No Child Left Behind Act (NCLB). Many believe that the era of NCLB accountability is over and a return to laissez-faire education policy is in the air. However, upon closer examination, these waivers are really new federal mandates in disguise. What exactly is a waiver? According to the dictionary, a waiver is defined as “the voluntary surrender of a right or claim.” But the President’s NCLB waivers come with numerous new strings attached which require states to replace the current NCLB accountability provisions with unproven new federal education mandates in order to be approved. The President’s waivers are truly a mask for a federal takeover of elementary and secondary education without congressional input or approval. There is nothing voluntary about them.

President Obama and Secretary Duncan argue that these waivers are needed because Congress has not acted to amend NCLB. However, House Republicans have introduced several bills to reform NCLB that are awaiting the action of the full House of Representatives and Senate Republicans recently introduced an education reform legislative package that adopts many of the Obama Administration’s principles. Both Congressman Kline (R-MN) and Senator Alexander (R-TN) have introduced legislation that will provide true flexibility to states without requiring them to develop new federally mandated standards approved by the Department of Education. Sadly, though, the President and Secretary Duncan have chosen to play politics with our nation’s children rather than work with Republicans to craft an education reform bill that will increase student academic performance and narrow the achievement gap for disadvantaged students.

Changes need to be made to NCLB to make it less complicated and easier to implement while continuing to hold states and school districts accountable to parents and taxpayers for ensuring that our children are reaching their academic potential. In both the House and Senate Republican proposals, there are numerous provisions that are similar to President Obama’s blueprint for NCLB. Certainly, there will be disagreements, but that is what the legislative process is all about. In 2001, no one believed that a narrowly elected Republican President, George W. Bush, would successfully implement his education reform agenda with two of the most liberal members of the Congress, the late Senator Ted Kennedy (D-MA) and Congressman George Miller (D-CA). But with hard work and a common vision to ensure that disadvantaged children receive a quality education, they came together and changed how education policy is viewed today focusing on academic results, not bureaucratic inputs.

The elements to negotiate a bipartisan education reform package exist today as well. There is broad agreement that the law is too rigid and needs more flexibility. There is support to provide alternatives through public charter schools for parents whose child attends a persistently failing school. There is a mutual understanding that teachers should be recognized and rewarded based on their performance and that there should be a better way to remove unqualified teachers from the classroom. And there is a need to continue to hold states and schools accountable for how federal tax dollars are spent without federal micromanaging in the classroom.

However, this administration has made little effort to find common ground to accomplish these goals. When their party controlled the Congress and the White House for two years, education reform was not a priority.

Now, with a Republican majority in the House of Representatives, this administration has chosen to push an education reform agenda with new federal mandates rather than roll up their sleeves and do the hard work necessary to produce a bipartisan and effective piece of legislation.

These tactics should not be surprising. This administration has hidden behind the executive cloak in other instances such as the National Labor Relations Board's attempt to dictate where a private company can operate or the Health and Human Services Department's issuing of waivers from the highly unpopular Obamacare. When the President fails to get what he wants from Congress, he decides to legislate himself by executive fiat bypassing the legislative branch of government. In other countries, we would label this a dictatorship, not a democracy.

However, Congress has an opportunity to stop these Obama education mandates if only for a year which may be long enough to ensure that they are buried forever. Congress is currently negotiating a must pass continuing appropriations resolution to keep the government open through the next fiscal year. In the past, both parties have used legislative riders to stop federal agencies from implementing policies not authorized by the Congress. This is done by prohibiting funds to be used by a particular agency to carry out such policies. For example, one of the most long-standing bipartisan riders is the Hyde amendment prohibiting federal funds to be used to carry out abortions. Recently, House Republicans on the Labor-HHS-Education Appropriations Subcommittee proposed numerous legislative riders to prevent this Administration from implementing controversial policies, like the gainful employment regulations. Language should be added to the Labor-HHS-Education Appropriations bill and the final Continuing Appropriations resolution to prohibit the Department of Education from issuing waivers which require states to meet certain unauthorized criteria in order to receive the waiver. If Secretary Duncan wants to issue waivers to states he would still have the authority to do so, as he does now, without creating new unlawful federal mandates to do it.

This is not the way to legislate. Ideally, both sides would work together to find bipartisan resolutions to the truly complicated problem of increasing student academic achievement in this country while maintaining accountability for our tax dollars. However, it is quite clear that bipartisan education reform legislation is a dream that will not happen under the current political climate.

Once states read the fine print of President Obama's new waiver policy, though a majority of them have shown initial interest in the waivers, I suspect that few will be fooled into exchanging one federal burden for a new one. These new mandates disguised as waivers will create major uncertainties in states leaving the Department of Education as the sole arbitrator in any disputes that may arise in how the state is implementing the new requirements. Since there is no federal law in place for these new mandates, states will have no recourse if they find they cannot live up to the promises they made in order to receive a waiver from the current NCLB law. They are at the mercy of the Department of Education who will dictate what policies the state must develop and implement in order to continue to participate in the waiver program and receive federal education funds.

Members of Congress must stop the administration's experiments before it's too late. Only through the end of the year appropriations process can Congress exert their power to ensure that they are the ones who create any new laws, not the executive branch.