NEA Sues over NCLB

The Bucks Are Big, but the Case Is Weak

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Last April, in a move that generated many headlines but surprised almost no one, the National Education Association (NEA) and nine school districts filed a lawsuit against Secretary of Education Margaret Spellings, claiming that federal funding to meet the requirements of No Child Left Behind (NCLB) was inadequate. Although the claim of “unfunded mandate” has been asserted almost since the day NCLB was signed into law, School District of the City of Pontiac et al. v. Spellings constitutes the first major legal challenge to the historic education law to be filed in federal court. If the suit succeeds, the Department of Education (DOE) will be asked to stop enforcing NCLB regulations until sufficient federal funds are provided.

The federal law does have language stating, “Nothing in this Act shall be construed to … mandate a state or any subdivision thereof to … incur any costs not paid for under this Act.” While that seems clear enough, isn’t the mandate to teach all children what schools are supposed to do anyway? Or could Pontiac v. Spellings be the ultimate adequacy case, resulting in court-ordered multibillions of dollars? Although many school districts and union leaders would like to think so, a closer look suggests otherwise.

For one thing, the plaintiffs ignore the fact that any state can escape all regulation simply by refusing the money. If NCLB-induced costs actually surpassed the federal revenue flow, then states could simply refuse the money. Though Utah has made noises about such a move, significantly, no state has yet done so.

Further, the plaintiffs in this lawsuit would have to show a real dispute between the school district and the DOE. To prevent federal courts from premature intervention, plaintiffs are normally required to show that all administrative remedies have been pursued before a lawsuit was filed. In this case, there is no allegation that the DOE has refused a district request for a waiver of NCLB requirements. Without such a showing, the court may well refuse even to consider the case.

The NEA’s legal standing is even weaker. Only parties genuinely injured by government action are allowed to bring suit. Since the NEA does not assert that the DOE has acted in a manner that specifically injures the organization, it is hard to see what standing it has in court. While it claims that teachers are being stigmatized, it would be a real stretch to argue that any stigmatization that teachers suffered because their students were not learning constituted an injury that required a legal remedy.

What about the claim that NCLB causes school districts to spend money not provided by the act? The plaintiffs rely on a handful of studies claiming to prove the high cost of accountability, but presumably those studies could be refuted by other studies that would be at least equally convincing. Even if accountability does have some fiscal cost, it will be hard to show that the cost can be uniquely attributed to NCLB. By the time NCLB was signed, the trend toward emphasizing student assessment and accountability had already spread nationwide. Nor are the courts likely to overrule allocations made by the DOE under NCLB rules. Federal courts are generally loath to substitute their judgment for that of the agency entrusted by Congress with the task of administering a statutory program.

In the end, the NEA and the nine school districts that have taken this legal plunge face a difficult task to show that they are the right plaintiffs to bring this suit, at this time, against this agency. Even if they get past the procedural hurdles, substantial factual issues concerning accountability costs will impede their journey. Even if they overcome all these barriers, the plaintiffs must persuade a federal court to enjoin the DOE’s administration of NCLB simply because school districts say they need more money. That refrain, more money, is one that has been heard countless times before, by legislators, policymakers, and the courts. Without the proper legal basis, this particular version of the song is not likely to resonate.

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