

# EDUCATION DAILY

The education community's independent daily news service

## Budget 2006

### Lawmaker seeks to package all proposed program cuts

Committee chairman Nussle hopes approach will minimize political fallout

Hoping to avoid a fight over popular programs such as the Carl D. Perkins Vocational and Technical Education Act, a key lawmaker yesterday proposed that all of the 150-plus programs slated for elimination under the Bush administration's budget — nearly a third of which are in education — be considered in one lump package.

House Budget Committee Chairman Jim Nussle, R-Iowa, acknowledged it would be a difficult challenge. "I [have] found out there's a constituency for everything, every single thing," he said.

Some of those constituencies proved more vocal than others at the committee's hearing.

Members from both parties questioned Joshua Bolton, director of the Office of Management and Budget and the only administration official to testify on the budget, on increases in veterans' medical co-payments and cuts to vocational school programs.

Rep. Harold Ford, D-Tenn., said eliminating vocational education and the TRIO programs would affect millions of students in his state's three largest school districts, Memphis, Nashville and Knoxville.

Ford acknowledged the need for education programs to be evaluated. However, he disagreed with the administration's decision that the \$145 million TRIO Talent Search and the \$313 million TRIO Upward Bound programs, that support intensive academic instruction for low-income students, should be cut because they were deemed "results not demonstrated" by the federal Program Assessment Rating Tool.

"There seems to be a disconnect, because you're cutting programs that are working," he told Bolton.

#### Veto in the works?

Nussle said he already has heard criticism from members of Congress about the loss of

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## Today's Highlights

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## Legal watch

### NCLB lawsuit may be first of many court challenges

Judge could declare entire law invalid, but few things certain other than appeal

The first major challenge in a federal court to the No Child Left Behind Act, which was filed last week (ED, Feb. 7), may prove a harbinger of things to come as the law enters its fourth year, experts predict.

Whether other court challenges come in a flood or a trickle remains to be seen. But, either way, districts resistant to the law will monitor the challenge carefully to see how the lawsuit plays out, they said.

*Lawsuit hinges on two key provisions, see p. 2*

Ottawa (Ill.) High School District 140 filed a lawsuit in the U.S. District Court, Northern District of Illinois, Eastern Division, on Feb. 3, seeking the invalidation of two key NCLB accountability components, including the definition of "adequate yearly progress"

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## LAWSUIT (continued from page 1)

and the penalties for schools that do not reach it.

At issue is the district's belief that NCLB's special education subgroup goals conflict with the Individuals with Disabilities Education Improvement Act, which requires students to learn at their own pace under an individualized education program.

Ottawa, a single-school district about 75 miles southwest of Chicago, has been placed in "needs improvement" status under NCLB, along with co-plaintiff Ottawa Elementary School District 141, because their special education subgroups have failed to make AYP.

### Focused approach ... or PR move?

To make its case, attorneys have recruited four special education students and their parents to serve as co-plaintiffs.

"The systematic, categorical changes required by [NCLB] force the Plaintiff School Districts to reconvene IEP teams and amend, alter or change the IEP of a student with a disability ... without regard to the actual needs of the student in violation of the purpose and scope of the IDEA," the complaint said.

Tom Hutton, staff attorney for the National School Boards Association, said naming the students as plaintiffs keeps the lawsuit's focus

## AYP, sanctions at heart of lawsuit

The Ottawa (Ill.) High School District's lawsuit against the No Child Left Behind Act seeks a declaration that two key sections of the law are "invalid."

The two sections are:

- **Section 1111, State Plans.** Defines how states determine adequate yearly progress and requires test data to be broken into subgroups.
- **Section 1116, Academic Assessment and Local Education Agency and School Improvement.** Spells out the penalties for schools that fail to make adequate yearly progress, from public school choice and supplemental services to reconstitution.

on what is best for the child and deflects criticism that the aggrieved are simply superintendents who don't care about accountability.

But Frederick Hess, director of Education Policy Studies at the American Enterprise Institute, said naming students as co-plaintiffs is a "public relations move."

"And it certainly makes it harder for the court to deny standing," Hess added.

It is difficult to predict how the challenge will play out, Hutton said. Potentially, there could be a regulatory change to solve the problem before it reaches trial.

Or the judge could order a narrow fix, rather than invalidating both sections of the law, he added.

Hess said there are certainly judges who are not afraid to declare major laws such as NCLB invalid.

"I suspect even the attorneys involved don't have a very clear-cut notion of where the [challenge] will take them," Hess said.

"My guess is, either way, it will be appealed," Hutton said.

Hess said, "I think we'll be seeing a lot of this going forward over the next five to 10 years. You get a law as complicated as this, and you've got 15,000 districts out there, the odds are some of them are going to take their chances [in court]."

—Stew Magnuson

## In the wings

Although the Ottawa (Ill.) High School District's lawsuit against the No Child Left Behind Act was the first to be filed in federal court, it may not be long before others join in.

The Coachella Valley (Calif.) Unified School District, currently in talks with the National Education Association, may launch a second federal challenge soon (ED, Feb. 2).

"The punitive consequences have to get intense enough to make people feel like it's worth [a legal challenge], because there are political risks to challenging something like this," Tom Hutton, staff attorney for the National School Boards Association, said.



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## Study finds abstinence-plus programs dilute message

Comprehensive sex education programs, or “abstinence plus” public school courses, merely pay lip service to abstinence, according to research highlighted yesterday by the Heritage Foundation, which compared abstinence-plus curricula with what the think tank called “authentic abstinence” programs.

“Abstinence is only mentioned randomly in the comprehensive sex ed courses — portrayed as one option among many and usually only in passing,” said study author Shannan Martin.

The findings contrast with other studies that have concluded abstinence-only education is having little effect on teenagers. This may be, because as Martin suggested, they dilute the message of pure “abstinence-only” programs (ED, Feb. 4).

### ‘Overruling emphasis’ on condoms

The Heritage Foundation examined nine comprehensive sex ed courses and nine traditional abstinence courses, all of which were supported by both the National Campaign to Prevent Teen Pregnancy and the Sexuality Information and the Education Council of the United States.

Where the goal in abstinence courses is to delay teen sex until marriage, the comprehensive sex ed approach aims to reduce the risk of sexually transmitted diseases (STDs) and unwanted pregnancies that result from unprotected sex.

Researchers examined the percentage of curricula text devoted to different topics or themes such as abstinence, healthy relationships and benefits of marriage, promoting contraception, HIV/STD awareness, biology and reproduction, and sexual behaviors and alternatives to sexual intercourse. Overall, comprehensive sex-ed curricula devoted 4.75 percent to abstinence encouragement, risk avoidance and related materials, whereas authentic abstinence courses devoted 53.7 percent.

“It’s a misnomer to call these comprehensive sex-ed courses. There’s nothing comprehensive about them at all,” senior study author Robert Rector said. “What they are is safe sex courses with a token reference to abstinence. The underlying theme is that teen sex is perfectly all right so long as contraception is used. It’s never depicted as being not OK. The overruling emphasis is on condom use.”

### At odds with parents’ values

A December 2003 survey from the polling firm Zogby International found a strong majority of parents (85 percent) favored seeing at

### White House wants more

In his fiscal 2006 budget request released Monday (ED, Feb. 8), President Bush is seeking \$143 million for community-based abstinence education — an increase of \$39 million over last year.

The president also is seeking \$50 million for abstinence education grants to states, the same amount as last year.

least an equal, if not greater, emphasis placed on teaching abstinence as on teaching contraception to teens in public schools.

Based on that poll, the Heritage Foundation study concluded that:

- Comprehensive sex-ed curricula focus almost exclusively on contraception and, in most cases, include little or no meaningful material on abstinence. However, only 2 percent of parents believe abstinence is not important, and only 7 percent believe teaching about contraception should receive more emphasis than teaching about abstinence.

- More than 90 percent of parents want sex-education programs to teach teens to abstain, at least until they have finished high school. Comprehensive sex-ed programs do not contain this message, and much of their material implicitly undermines it.

- Only 7 percent of parents agree with the message that teen sexual activity is acceptable as long as contraception is used.

- More than three-quarters of parents want students to be taught to abstain until they are married or close to marriage — values removed from the content of most “abstinence-plus” courses.

- While most parents want teens to be taught the basic biological facts about contraception, comprehensive sex-ed courses go far beyond that. They encourage contraceptive use, teach students how to obtain contraception and have students practice using condoms. Only one-quarter of parents support this type of aggressive contraceptive promotion.

But this puts them at odds with the federal government’s approach. The Heritage Foundation found that in 2002, \$12 of taxpayer funds were spent teaching contraception for every \$1 spent teaching abstinence.

Comprehensive Sex Education vs. Authentic Abstinence: A Study of Competing Curricula is available online at [www.heritage.org/Research/Welfare/abstincereport.cfm](http://www.heritage.org/Research/Welfare/abstincereport.cfm).

—Steve Brown

## Daily Briefing

### Capitol Hill

#### House Education panel finds states have more than \$6 billion in unused federal funds

Some \$66 million in unused education funds was returned to the U.S. Treasury in 2004, according to a statement from the House Committee on Education and the Workforce.

Nevertheless, the statement added, the states still have more than \$6 billion in unspent funds, some of which dates back to the Clinton administration.

The statement — based on an analysis of Education Department data — noted that “much of the returned money could have been used to support federal laws such as the No Child Left Behind Act and the Individuals with Disabilities Education Act.”

The analysis also found that noncompetitive formula funds for initiatives such as Title I and IDEA accounted for some \$42 million of the returned money and that the total amount of federal money not being spent is increasing, not decreasing. In the past two months, unused funding has risen \$295 million, from \$5.75 billion to \$6.05 billion.

#### Senators launch math, science caucus

Sens. Norm Coleman, R-Minn., and Richard Durbin, D-Ill., have formed a bipartisan Science, Technology, Engineering and Math Education (STEM) Caucus in the Senate to promote and improve K-12 education in these fields.

The House formed a similar caucus last year, led by Reps. Vernon Ehlers, R-Mich., and Mark Udall, D-Colo. (ED, July 8, 2004). The National Science Teachers Association is encouraging its members to ask their congressional representatives to join the caucus and has set up a Web site to promote its goals.

*For more information, see [www.stemedcaucus.org](http://www.stemedcaucus.org).*

### Education Department

#### Spellings swears in research advisory panel

Education Secretary Margaret Spellings yesterday swore in a 15-member advisory committee for ED's three-year-old Institute of Education Sciences, underscoring the importance of research to education reform.

The role of the National Board for Education Sciences (ED, Sept. 21, 2004) “could not be more significant,” she said, noting that the No Child Left Behind Act is “all about data” to advance teaching and learning.

That's a “sea change” from her school days, she added. “I went to open classrooms ... a little bit of this, a little bit of that. ... A lot of goodwill, but not much science.”

Congress created the panel to help ED's science wing plot the research agenda (ED, Nov. 11, 2002). One sure priority is to advance knowledge about K-12 math education and make it the same “success story” as reading, Spellings said.

“You are the crème de la crème in your fields,” she told advisers. “I'm going to count on you a lot to inform policymaking.”

### Across the Nation

#### California

#### English-language learners continue strides

Preliminary results from the annual California English Language Development Test released yesterday show that 47 percent of the 1.3 million English-language learners who took the test scored at early advanced or advanced overall in English proficiency.

The results cap four years of significant increases, in which the percentage of students scoring proficient increased 22 percentage points.

“These results are a clear indication that statewide efforts to help all students learn English as quickly as possible are working,” Superintendent of Instruction Jack O'Connell said. “This is so important because as English learners achieve greater proficiency in English, they are more likely to reach higher academic levels in all their subjects.”

*Full results are available at <http://celdt.cde.ca.gov>.*

#### Connecticut

#### Poll shows support for more charter schools

The newly formed Connecticut Alliance for Great Schools (CAGS) on Monday released a statewide poll showing support for the expansion of public charter schools.

The group hired Republican pollsters Public Opinion Strategies of Washington, D.C., to survey 600 registered voters across the state.

The state's 14 charter schools have an average waiting list of 200 students, according to CAGS, and the survey reported 57 percent supported a plan to create up to 30 new public charter schools during the next five years in urban areas such as Hartford and Bridgeport. In particular, 67 percent supported taking over traditional public schools that fail for several years and converting them to charter schools.

*For more information on Connecticut charter schools, see [www.state.ct.us/sde/charter/charter.htm](http://www.state.ct.us/sde/charter/charter.htm).*

### Study Hall

#### New Mexico Kindergarten-Plus program shows promising gains, study concludes

The first evaluation of the Kindergarten-Plus pilot program in New Mexico has demonstrated that the extra school time the program provides helps children flourish both socially and academically and increases parental involvement in their children's education.

Kindergarten-Plus is based on an idea put forth by former American Federation of Teachers President Sandra Feldman to extend the school year by adding instructional

## Daily Briefing

days in the summer, before and after the regular kindergarten year (ED, Oct. 1, 2002).

States including Connecticut, Louisiana, Rhode Island, Texas and Virginia are considering Kindergarten-Plus programs.

Antonia Cortese, AFT executive vice president, said, "This report is the first step in providing proof that Kindergarten-Plus can be an effective way to close the achievement gap."

*The complete report can be found at [www.state.nm.us/clients/dfa/Files/OEA/Kindergarten%20Plus%20Year%20One%20Report.pdf](http://www.state.nm.us/clients/dfa/Files/OEA/Kindergarten%20Plus%20Year%20One%20Report.pdf).*

### Few students from D.C.'s poorly performing schools accept voucher offer, report finds

Only 75 of the 1,300 students who took the federal government's voucher offer in the District of Columbia came from schools designated as "in need of improvement," according to a People for the American Way report.

The report, based on Education Department materials obtained under the Freedom of Information Act, found 200 of the 1,300 students who obtained vouchers in the program's first year already were enrolled in private schools. Many of these private schools' admission policies remain the same, allowing them "to pick and choose which students to accept," the report said.

The federally funded D.C. School Choice Incentive program provides scholarships of up to \$7,500 to enable about 2,000 low-income-district students to attend private schools (ED, March 24, 2004).

In a response to the report, Washington Scholarship Fund president and CEO Sally Sachar wrote, "It is important to note that only 15 D.C. public schools were classified as [needing improvement] during the program's first year, and fewer than 75 students from these public schools applied for scholarships in 2004-05."

*Flaws & Failings: A Preliminary Look at the Problems Already Encountered in the Implementation of D.C.'s New Federally Mandated School Voucher Program can be found at [www.pfaw.org](http://www.pfaw.org). A response is available at [www.washingtonscholarshipfund.org](http://www.washingtonscholarshipfund.org).*

### Legal Briefs

#### Resource officer has autonomy in detaining students suspected of fighting, court rules

**Case name:** *In the Matters of J.F.M. and T.J.B.*, No. COA04-183 (Ct. of Appeals, N.C., 01/18/05).

**Ruling:** A school resource officer had the right to detain a student after school hours, even though he was not working in conjunction with a school administrator.

**Background:** School Resource Officer S. L. Barr saw 13-year-old female defendant T.B. at a municipal bus stop on school property after school hours. Barr knew school administrators wanted to speak with the student about a fight that had occurred earlier in the day, although he was not working directly with the administrators on the case. Barr

asked T.B. to accompany him to the office, but she and her 15-year-old sister, J.M., resisted Barr, biting him on the arm and attacking him with an umbrella. The pair had to be placed in cuffs and leg chains. They were convicted in juvenile court of assaulting an officer. They appealed, claiming Barr had conducted an unlawful arrest. The North Carolina Court of Appeals found Barr's actions were reasonable because the fight may have carried over to the next day. "Practicality demands that a school administrator must be able to rely on some autonomy by a resource officer," the court found.

#### Surveillance lawsuit denied class-action status

**Case name:** *Keppley v. School District of Twin Valley*, No. 882 C.D.2004 (Commonwealth Ct. of Pa. 01/25/05).

**Ruling:** The court denied class-action status to a student who sued the school for illegal wiretapping, because other potential claimants lacked common questions of fact.

**Background:** High school student Morgan Keppley filed suit against the School District of Twin Valley, Pa., after school administrators attempted to discipline her after listening in to a conversation picked up by a microphone and camera placed in the front of a school bus. While the district ultimately did not punish her, she filed suit claiming the surveillance camera violated state laws prohibiting wiretapping. Students were informed of the potential presence of a camera, but were not informed of the eavesdropping microphones, the lawsuit claimed. Her motion for class-action status on behalf of all district students was denied. The Commonwealth Court of Pennsylvania, in a split decision, upheld the lower court's ruling, agreeing on several counts, including the lack of commonality of potential claimants.

### Funding Alert

#### Vocational Rehabilitation Services Projects for American Indians with Disabilities (ED)

**Scope:** The Education Department's Office of Special Education and Rehabilitative Services seeks applications to provide vocational rehabilitation services to Native Americans with disabilities who live on or near federal or state reservations (*Federal Register*, Jan. 19).

**Deadline:** May 19.

**Funds:** \$11 million for 23 awards, most in the range of \$350,000 to \$425,000 each for up to five years.

**Eligibility:** Governing bodies of American Indian tribes and consortia located on federal and state reservations. ED will give priority to continuing (previously funded) programs.

**Areas:** Vocational services should be consistent with individual's strengths, resources, priorities, concerns, abilities, capabilities and informed choices and help them prepare for and engage in gainful employment, including self-employment, telecommuting or business ownership.

**Contact:** Joyce Libby, (202) 245-7432, or Alfreda Reeves, (202) 245-7485, CFDA No. 84.250F.

**Web:** [www.ed.gov/news/fedregister/index.html](http://www.ed.gov/news/fedregister/index.html).

## Budget 2006

# President's budget to slow BIA school construction

The pace of repairing the Bureau of Indian Affairs' (BIA) crumbling schools will slow under President Bush's 2006 budget proposal, released Monday.

The administration's proposal would cut BIA's education construction budget by \$89 million, from \$263 million appropriated in fiscal 2005 to \$174 million.

The BIA funds 171 schools and 14 dormitories in 23 states. A 2001 BIA survey showed that 65 percent were in "poor" condition. By the end of this year, the number will be down to 35 percent, according to the bureau.

In March 2004, the BIA published a list of 14 schools in dire need of replacement "due to significant health and safety concerns." The 2005 appropriation allowed for only one replacement, the Dilcon Boarding School in Arizona.

The 2006 proposal would add the Porcupine Day School in South Dakota and the Crownpoint Community School in New Mexico.

This year's proposal touted the administration's accomplishments in rehabilitating the BIA infrastructure. Between 2001

and 2005, appropriators funded 34 replacement schools. Nine of these have been completed, and 25 are in design or construction phases. Critics, however, have said the pace is too slow.

### Leadership academy unscathed

Despite the cuts, the 2006 proposal includes \$2 million to support four schools in a "Leadership Academy" pilot program first proposed by Assistant Secretary Dave Anderson (ED, Sept. 10, 2004).

Anderson, who came from the private sector and took a strong interest in reforming BIA schools, resigned last week after one year in office and will serve his last day Friday (ED, Feb. 2). His replacement has not been named.

The Leadership Academies will focus on teaching academics and life skills and will encourage students to pursue postsecondary education. The location of the academies has not been decided.

*The BIA's budget proposal can be found at [www.doi.gov](http://www.doi.gov).*

—Stew Magnuson

## BUDGET (continued from page 1)

such programs, and he pressed Bolton for more support. "What are you willing to recommend to the president in order to enforce the top line of this budget?" he asked.

Bolton said he was confident members of Congress would cooperate but, when pressed, acknowledged that Bush "won't hesitate to use a veto" if appropriations don't match the proposal.

That would mark Bush's first veto against a Congress dominated by his own party — something education lobbyists believe could be in the cards.

"This creates a lot of angst on the Hill," said Michael Carr, spokesman for the National Association of Secondary School Principals. "If programs are cut at the grassroots level because of cuts in federal funding, the voters are going to look at the folks coming up for reelection in two years, rather than at the president, who isn't."

"On the whole, I think [the budget process] is going to be very difficult for the president," he said.

### Deficit politics

Nussle said the president's budget proposal (ED, Feb. 8) helped "eliminate some of the wasteful spending we've accumulated, and

largely neglected." The nation must focus on homeland security, defense and social security and sharply check domestic spending, he said.

Nevertheless, Nussle said the budget must "honor our commitment to domestic priorities, such as education."

Democrats argued the proposal fails to take into account \$2 trillion over the next decade in war costs, debt service, transition costs to privatize social security and costs to revamp the Alternative Minimum Tax.

*For more information, see the House Budget Committee Web site at [www.house.gov/budget](http://www.house.gov/budget).*

—Sarah Sparks

### Partisan pleasantries

Budget Committee Chairman Jim Nussle, R-Iowa, pointedly told committee Republicans at the start of the hearing that Democrats had become "a party of 'no' this year," and he would not hear members reject part of the budget proposal unless they produced an alternative proposal at the same time.

"It's the easiest thing in Washington to criticize something you haven't read yet," Nussle said.

One Democrat fired back, "If we haven't had time to read it to criticize it, how did you have time to read it to praise it?"