

An Interview with Neal McCluskey: Can Arne Do It Himself?

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1. Neal, apparently Arne Duncan believes that he can take the proverbial bull by the horns and pass his own version of No Child Left Behind. Is this bully pulpitting or is he serious and does he have the authority to bypass Congress?

Is it bully pulpitting? Maybe, but the administration has used waiver authority before to allow states to bypass some of NCLB. It has also coerced states into adopting administration-preferred policies through Race to the Top funding. All Duncan is really threatening to do is combine those things – grant waivers in exchange for states doing as the administration tells them to do – so such action would hardly be shocking.

As for authority, NCLB clearly grants the Secretary fairly broad waiver authority. Nowhere, though, does it appear to grant authority to issue waivers in exchange for states agreeing to adopt administration-dictated reforms.

2. Why is it that the people in Washington seem to ignore the Constitution vis a vis education?

Because they can. The recognition that the federal government can only do those things it is given explicit authority to act on by the Constitution was hugely eroded during the Progressive Era and New Deal. Moreover, the public generally feels anything done in the name of “education” is good. Combine those things, and it is little wonder that Washington politicians think they can ignore the Constitution, especially if doing so is “for the children.”

3. I know Andy Rotherham had a few words to say about this in TIME- can you summarize for our readers?

He generally noted that Duncan’s threat had elicited pretty broad agreement that the executive branch doesn’t have the Constitutional authority to, essentially, write laws itself. He also noted, however, that the executive branch has been issuing waivers and writing regulations for a long time, and he’s right — Congress has been giving away its exclusive jurisdiction to legislate for decades. But that doesn’t make it constitutional.

4. I have Rick’s Hess’ e-mail, so I may follow up with him later, but what seems to be his reaction?

He wrote quite possibly the quickest and most energetic constitutional condemnation of Duncan’s proposal. Unfortunately, he stopped short of saying the whole federal education enterprise is unconstitutional.

5. Has good old Barack Obama had anything to say about this, let me say usurpation of power? Or is Arne just trying to push things along?

I would be shocked if Secretary Duncan has gone all rogue warrior on this – I assume he got approval from his boss – but I am not aware of the President himself commenting on it.

6. Changing, modifying, tweaking, whatever phrase you want to use, seems to be imperative regarding NCLB. How much time does Congress in your mind, really need to get a handle on the issues?

The reality is probably as long as they want, but the “official” end of the line is 2014, when all students are supposed to be “proficient” in math and reading. Why as long as they want? Because while the law is on the books, if come 2014 all kids are not proficient – and they won’t be – the administration could simply not enforce the law. There would certainly be some hue and cry, but if the administration chose not to impose penalties on states and districts that failed to hit full proficiency no one could make them. Eventually cases would probably hit the courts, but that would be a long process.

7. What do you see as the main issues- what REALLY needs to be tweaked or deleted?

The law itself needs to be eliminated, and outside of enforcing civil rights protections and governing DC, the federal government should obey the Constitution and get out of education. Quite simply, federal education policy has been an abject failure and there is nothing you can do to tweak it that will make it better. It is doomed to serve special interests such as teachers’ unions and administrators’ associations – and not students – because those are the groups whose very livelihoods come from public schools and, hence, they are most motivated to be involved in education politics. And guess what? Like most people, teachers and administrators would prefer to get paid as much as possible and not have anyone hold them accountable for their performance.

8. Final question- are the Senators and Congressmen in Washington really aware of the problems that the average classroom teacher faces?

They probably are – it is hard to believe they really think you can force all kids to proficiency, especially if that is supposed to be a pretty high bar – but that doesn't matter. What matters for the politicians is that they appear to give voters what they want. So if voters think schools are underfunded, the politicians spend more. If voters think schools aren't doing well, the politicians pass an irrational law that appears to impose accountability but mainly imposes red tape. The politicians are simply following their political incentives, but that doesn't usually translate into better education.