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**The Never-Ending Story of ESEA Reauthorization**

## **The Never-Ending Story of ESEA Reauthorization**

*Barbara Michelman*

Since President Lyndon Johnson signed the Elementary and Secondary School Act (ESEA) in 1965, few Americans likely paid more than scant attention to the federal government's increasing role in education decision making. K–12 education was a longstanding state and local responsibility, with more than 90 percent of the cost of public school funding being provided by the states and districts. The federal government reserved most of its authority to ensuring that its resources helped disadvantaged children and those with special needs. Over the years, federal policymakers and presidents increasingly discussed education as a national priority, yet their conversations did not necessarily translate into policies because of the limited federal government funding and role in education decision making.

In 2002, President George W. Bush reauthorized ESEA and renamed it the No Child Left Behind Act (NCLB). Suddenly everyone had an interest in the government's expansive new role in education. NCLB required states to conduct annual testing in reading and math for students in grades 3–8 with the tests requiring alignment with state academic standards. Adequate yearly progress (AYP), the yardstick by which the law requires states to measure how every public school and school district in the country is performing academically according to results of the state's mandated tests, became a household word, and sanctions are imposed each year for those schools unable to demonstrate year-over-year gains in student proficiency. States are now required to furnish annual report cards showing a range of information, including student-achievement data broken down by subgroup and information on the performance of school districts. Districts publish similar information on their schools. In addition, all teachers in core academic subjects working in a public school must be highly qualified in the subject matter they teach.

NCLB was originally touted as a bipartisan success and lauded for highlighting the achievement gap between white and minority and disadvantaged students and the need for high standards and accountability measures. But as increasing numbers of schools were labeled as "failing" despite making gains in achievement, many educators and policymakers, even those who originally supported the law, questioned the feasibility and fairness of its goals and time frames.

"NCLB turned teachers and administrators against the law," said Jack Jennings, president and CEO of the Center on Education Policy, a national, independent advocate for public education and more effective public schools. "So many schools are designated as not meeting AYP and there are not adequate resources. States are cutting back on education funding. Teachers are being laid off. Class sizes are increasing; extra aides are being let go. It's harder to educate kids with less money, larger classes, fewer teachers; yet the demands of NCLB go up every year."

In 2007, ESEA was supposed to be reauthorized, and few supporters stand behind all the original tenets of NCLB.

But five years later Congress and the administration have made little headway on reauthorizing the law. Everyone, it seems, agrees on the provisions that need to be fixed, but no one can agree on the exact solutions. Conventional wisdom suggests that if President Obama is reelected, ESEA will not be reauthorized until at least 2013, more likely 2014 if a Republican is elected president. This article examines what happens to the nation's education law if ESEA is not reauthorized and NCLB continues to operate on autopilot.

## Current State of Affairs—or "Do-Nothing" Congress

When he campaigned for office, then-Senator Barack Obama called for "commonsense" changes to NCLB. As president, Obama's attention was immediately diverted by the dire economic situation. It was nearly 14 months into his administration before the president presented Congress with his Blueprint for ESEA Reauthorization. The president's proposal retained many aspects of NCLB, such as annual assessments and the need for schools to disaggregate their data by subgroups, but it also called for eliminating AYP in favor of multiple measures of student growth and creating a teacher evaluation system in each state that incorporated data on student growth.

The Republican-controlled House and its Education and the Workforce Committee opted to introduce five smaller bills versus one comprehensive proposal. The education committee has already approved three of the five House bills: one that expands education opportunities for students; another that eliminates or consolidates many federally funded programs; and a third that offers states increased funding flexibility. The third, certainly the most controversial, would allow 100 percent funding flexibility for states between federal formula programs under ESEA, such as Titles I and III. Currently, states cannot divert federal money from their Title I or Title III programs; they can only add money to these designated funding streams.

In October 2011, comprehensive reauthorization action occurred when the Senate Health, Education, Labor, and Pensions (HELP) Committee passed its version of ESEA reauthorization. Although it incorporated many aspects of the administration's Blueprint, it received tepid support from the White House over concerns that the bipartisan bill was watered down to the point of being ineffective.

Highlights of the Senate reauthorization bill include

- Maintaining annual testing of students in reading and math in grades 3–8 and once during high school.
- Requiring states to disaggregate student data by race/ethnicity, students with disabilities, and English-language learners.
- Eliminating AYP.
- Targeting school improvement interventions on the lowest-performing 5 percent of schools and schools with chronic achievement gaps.
- Requiring states to create common core "college- and career-ready standards."
- Consolidating more than 80 programs into approximately 40 categories of funding.

Although the Obama administration and education secretary Arne Duncan have applauded the Senate's bipartisan work toward reauthorization, objections have been voiced over the bill's handling of two key issues: accountability and teacher evaluation. The administration is concerned that the bill does not demonstrate a strong commitment to accountability (from the classroom all the way up to the federal government), and that it lacks a comprehensive teacher evaluation and support system to help educators continue to improve their practice. Civil rights and business leaders have claimed that the Senate bill's jettisoning of AYP and a more focused attention on the bottom 5 percent of schools is a step backward on student and school accountability. In addition, a majority of Republican lawmakers and policy conservatives don't feel the bill does enough to diminish the federal role in education.

Before the federal government required states to hold schools and districts accountable for results, few were, said Achieve president Michael Cohen. Achieve is an independent, bipartisan, nonprofit education reform organization. Cohen agreed that the accountability requirements in the Senate bill are "much less prescriptive than those in NCLB, to the point where they place few real demands for improvement on schools—which is why supporters of NCLB, particularly those who are concerned about equity, view the Senate bill as too much of a retreat."

Frederick "Rick" Hess, resident scholar and director of education policy studies at the American Enterprise Institute, said that the administration and the "reform left are trying to ensure that states do the right thing" while Hill Republicans are "skeptical of federal overreach and dubious that federal efforts will yield the desired results."

David Hoff, deputy assistant secretary for communication development at the U.S. Department of Education, said Secretary Duncan is focused on working "across the aisle to find common ground and rally around commonsense ideas" and that the secretary's "greatest desire for reauthorization is to get something more workable that rewards success, student growth and progress."

In statements and interviews, Senate HELP Committee chairman Tom Harkin (D-IA) has said that the bill voted out of his committee was the result of the need for bipartisan compromise with ranking member Sen. Mike Enzi (R-WY). Although much of the debate has been centered on the Senate ESEA bill, both houses of Congress must reach consensus on reauthorization before legislation can proceed. Two House committee bills are expected to be

introduced and moved in committee in 2012. One is an accountability bill that would keep annual testing, eliminate AYP, and defer to states on school quality and improvement determinations. The second bill would require states and districts to develop teacher evaluation systems with multiple measures.

## Washington, We Have a Problem

Most educators and policy experts will agree that NCLB has deep, structural flaws; that it continues to frustrate state leaders and local educators with its one-size-fits-all approach to accountability, prescriptive solutions, punitive sanctions, and unreachable goal of 100 percent proficiency for all students; and that it actually creates barriers to reform and student progress.

"NCLB brought false comparability," said Hess. "Oklahoma reported 90 percent of its schools making AYP and Massachusetts half of that, when the evidence suggested that Massachusetts was doing substantially better than Oklahoma. NCLB was deceptive."

Hess added that the legislation was "not thoughtful about the limits of what the federal government is equipped to do well. The emphasis on level-based performance accountability created huge perverse incentives when driving accountability. The 2014 target [100 percent proficiency] was just an inappropriate effort to legislate good intentions into a statute. And the high-quality teacher provision created a vast new layer of paperwork while doing nothing to improve the quality of teachers. If anything it was a distraction. It focused superintendents and principals on paperwork rather than the things that mattered."

NCLB created "unfair and continued labeling" of schools as failing, said Tom Kimbrell, Arkansas Commissioner of Education. "We deal with it every year: Schools that miss [AYP] by one or two students. [NCLB has] created an environment of high-stakes testing as the measure of [student] success. One single indicator. We know as educators that there are many indicators that need to be assessed for success."

So if educators and policymakers, both Republican and Democrat, agree that NCLB needs to be reauthorized, why can't Congress and the White House seem to get it done?

According to Hess, there's a "good faith disagreement about how expansive a footprint the federal government should have when it comes to school improvement and teacher quality. A huge swath of conservatives on the Hill ... have been, for the past 10 years, looking for ways to dramatically dial back the federal role in education."

Jennings agrees that Republicans are divided. "There are some who want to move on the reauthorization bill and others who won't agree to any reauthorization that doesn't repeal the federal role."

Adam Ezring, senior policy associate for the Council for Chief State School Officers, said there's a debate across both houses of Congress on the appropriate state/federal role in decision making. "It's necessary for a shift to occur. Not away from accountability, but in shifting accountability to the states."

## Waivers: Increased State Flexibility or More Can-Kicking?

Another factor in ESEA reauthorization is the president's announcement last fall that he would offer states waivers from specific provisions of NCLB/ESEA in return for their agreement to implement certain reform measures. States were required to detail their reform measures in an application by mid-October, and the DOE announced in November that 11 states (Colorado, Florida, Georgia, Indiana, Kentucky, Massachusetts, Minnesota, New Jersey, New Mexico, Oklahoma, and Tennessee) had been granted waivers. These states received approval from the administration to waive the 2014 proficiency deadline. They also have been approved to set their own student-achievement goals and design their own interventions for underperforming schools.

In exchange for NCLB flexibility, the administration requires states to adopt common core standards for college and career readiness, focus improvement efforts on the lowest 15 percent of their most troubled schools, and create guidelines for teacher evaluations based in part on student performance. States will also have more freedom to use Title I money for disadvantaged students.

A second application deadline for the remaining states to apply for waivers is February 21, although the department will accept proposals on a rolling basis throughout 2013. A majority of states have said they intend to apply for waivers.

Congressional inaction on ESEA reauthorization prompted its decision to grant states waivers, according to statements made by the administration.

"Our first priority is to get the law reauthorized. Waivers have always been plan B to reauthorization," said Hoff.

Hess sees the waivers as a "troubling precedent. [The waivers] dramatically expanded what is now kosher for the executive branch to insist upon in exchange for a waiver." Hess added his prediction that in 2014–15, when the current waivers expire, the administration in power would use waiver authority to push its preferred set of reforms.

"Waivers are not the best way to set policy; it's better to set policy through law," said Jennings. "That's the way the

system should work: We elect people to establish policy. In this situation the secretary felt that he had no choice. In the short-term, waivers are needed."

Given the stalemate in Congress, regulatory relief in the form of waivers may become the new norm for establishing federal education policy.

"It's always better to have the law right than to have it as unworkable provisions and go around them by waivers," Cohen said. "You erode respect for the law. That's not helpful under any circumstances."

## Common Core Standards

The Common Core State Standards Initiative (CCSSI) is a state-led effort coordinated by the National Governors Association Center for Best Practices (NGA Center) and the Council of Chief State School Officers (CCSSO). The standards were developed in collaboration with teachers, school administrators, and experts to provide "a clear and consistent framework to prepare our children for college and the workforce" according to the CCSSI website.

These standards have been described as defining the knowledge and skills students should have within their K–12 education careers so that they will graduate "college- and career-ready." They are intended to provide teachers and parents with an understanding of what students are expected to learn and provide appropriate benchmarks for all students, regardless of where they live.

To date, 45 states and the District of Columbia have adopted a set of common standards for reading/English language arts and mathematics. Minnesota has adopted the standards for ELA but not math.

Although a state's adoption of the common standards is only the beginning (teacher education programs need changing; new curriculum materials need developing, new tests need designing, etc.), Ezring said that Common Core implementation is moving forward very well. "There is a great sense of engagement among the states and state teams, everything from professional development to communications plans to working with diverse set of stakeholders."

Ezring reminded that implementation is a multiyear process. "Two years ago no one would have said that 46 states would have joined the Common Core."

## Why Reauthorize ESEA?

With Common Core moving forward and the administration offering states the flexibility they have been seeking on NCLB, what rationale exists for reauthorizing ESEA?

Kimbrell summed up the effect of reauthorization limbo on states. "Without a smart rewrite of ESEA and getting the flexibility that needs to be put into law, [NCLB] continues to hamper progress of students and hinders the perception that students are failing when the data show students are doing much better than ever before. The system was set up to identify failure, not success. [It also creates] greater restrictions and sanctions—when in reality, schools need greater flexibility and opportunity for innovation to meet the challenges schools face. The [federal government] is hamstringing struggling schools and there is no driving force for good schools to become great schools."

Jennings said the main reason Congress and the administration should reauthorize ESEA "is to set in law national [education] policy that will be known for five or so years. [Reauthorization] would bring greater stability. Educators would know the rules for a specific period of time. It's also how the system should work. Congress has proven unable to do that. Congress is shirking its responsibility."

"There has always been the opportunity in education to find common ground. It's good for school leaders, for our children, for the country," concluded Hoff. "We hope the Senate work will build momentum toward a bill we all can agree to. One with ultimate solutions."

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