

# Background

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## No Child Left Behind: Where Do We Go From Here?

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Will Rogers once said, “If you ever injected truth into politics, you would have no politics.” This is especially true when it comes to education and the federal law known as the No Child Left Behind Act (NCLB). But truth—always a rare commodity—is growing rarer still as the nation approaches November, and discussion about this complex and bipartisan law is deteriorating into a partisan mud fight.

The misleading rhetoric does a disservice to the public and does nothing to address the fundamental problem: Too many students lack the knowledge and skills to succeed in school, and those left behind in school will likely remain behind as adults.

Two years ago, by a large majority, Congress enacted the NCLB to raise achievement for all students. Whether the law is improving student achievement is an important question. An honest discussion of the law’s merits and shortcomings may be hard to come by, but it is nonetheless essential to answer the most important question: “Where do we go from here?”

### Where We Have Been

The NCLB is the new name for an older body of law, the Elementary and Secondary Education Act of 1965 (ESEA). Signed by President Lyndon Johnson, the ESEA provided funds to local education agencies (school districts) to meet “the special educational needs of educationally deprived children.” It also provided funds for libraries, educa-

### Talking Points

- Two years after its enactment, NCLB implementation proceeds by trial and error. Its ultimate success or failure remains unclear.
- Adequate Yearly Progress (AYP) and teacher quality requirements are not always compatible with existing state systems. These difficulties call into question the efficacy of establishing a federal standard to govern 93,000 public schools.
- Congress missed the opportunity to enact significant programmatic flexibility for states.
- Some districts have not given students in underperforming schools adequate access to better performing schools or tutoring, frustrating parents and threatening to stall the only market-driven engine in the act.
- Congress should resist special interest demands for more funding (states have billions of unspent education funds), ensure effective implementation of parental choice and tutoring options, and enact greater flexibility in the next reauthorization.

This paper, in its entirety, can be found at:  
[www.heritage.org/research/education/bg1775.cfm](http://www.heritage.org/research/education/bg1775.cfm)

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tion research, and state education departments and programs. Signing the 34-page law, President Johnson proudly stated, “No law I have signed or will ever sign means more to the future of America.”

Like other Great Society programs, the ESEA sought to alleviate the effects of poverty. Then, as now, children from low-income and minority families did not do as well in school as their peers did. On national tests such the National Assessment of Educational Progress (NAEP), administered by the U.S. Department of Education, there are significant achievement gaps between black and white students and between low-income and higher-income students.

NAEP long-term trend tests have tracked achievement by race for three decades. In the early 1970s, there was a 53- and 54-point achievement gap between black and white 17-year-old students on reading and science tests and a 40-point gap in math. Despite a reduction in the gap in the late seventies and eighties, the gap grew during the nineties. On the most recent test, black and white scores were 31 points apart in reading and math and 52 points apart in science.

Similar NAEP tests that track achievement by income levels conducted in the past decade show an average 26-point gap in reading and math between low-income and higher-income eighth graders. This means that in 2003, 16 percent of low-income eighth graders were proficient in reading and 12 percent in math, while about three times as many higher-income students were at grade level.

Graduation rates for minorities and lower-income students are also lower. Anecdotal evidence suggests that black senior high school students are graduating with eighth-grade skills.

By the 1994 reauthorization, the law had grown to over 600 pages and more than sixty programs. The Improving America’s Schools Act of 1994 required significantly more testing and accountability than the 1988 reauthorization had. It required states to have academic standards, testing, and disaggregated reports to determine whether disadvantaged students were

making adequate yearly progress (AYP) toward meeting state content and performance standards. Schools accepting Title I funds that were not making AYP were subject to corrective actions as determined by state and local law. Among these corrective actions were the loss of funds, staff replacement, or allowing students to transfer to other public schools within the district. High-performing schools were eligible for rewards.

The growth of standards and accountability provisions from 1988 to 1994 to 2002 tracks the growth of the standards and achievement movement that began in the 1970s with minimum competency tests. In the past two decades, most states have adopted state-level standards in math, reading, history, science, and other subjects and tests to ensure that students are meeting these standards. Some have adopted “high-stakes” tests used to determine whether students may ascend to the next grade or graduate. Some give monetary rewards to high-performing schools. In Florida, high-performing schools receive awards while low-performing schools receive additional monetary aid and technical assistance. Students in the lowest-performing schools are permitted to transfer to other schools, public or private.

Research has bolstered the case for accountability by demonstrating how systems in Florida, Texas, Massachusetts, and other states have increased achievement. Expectations, rewards, and sanctions focus the energies of students and educators on agreed-upon outcomes. Testing information enables teachers to know whether students are mastering the material. The data are useful for school leaders in making management decisions and for parents in choosing schools and monitoring their children’s progress.

Despite all the talk about accountability, the accountability provisions in the 1994 act were not strongly enforced. While most states had some level of standards and testing, school sanctions were rare. State sanctions were nonexistent. By the end of the Clinton Administration, only seventeen states were in full compliance—even though all were receiving funds.

In 1999, reformers conceived of a new idea that would give states complete freedom in administering their ESEA funds in exchange for accountability for performance. The intention was to reduce the red tape associated with federal aid provided to states. The federal government supplies less than 10 percent of the over \$454 billion the nation spends on its schools. For this, it demands a disproportionate amount of paperwork and bureaucracy. Reformers proposed to bring the federal bureaucratic burden into balance with the level of federal funding supplied by Washington for local education. In return, states would have provided baseline data on their students' educational achievement levels and would have tracked these levels for the term of the federal grant. States that showed improved educational attainment for their students would have qualified to continue under the agreement. The bill would have brought an end to the myriad of rules, regulations, and paperwork and the beginning of accountability based on performance. A pilot version of this plan, called the Academic Achievement for All Act (or "Straight As"), was passed by the House of Representatives in 1999. As the 2000 election season progressed, however, the ESEA reauthorization stalled.

The idea gained new life in then-candidate George W. Bush's education platform. He advocated greater accountability, flexibility, parental choice, and consolidation of the act's numerous special-interest programs. He said, "I don't want to tinker with the machinery of the federal role in education. I want to redefine that role entirely." After the election, these proposals would become the framework for the administration's ESEA reauthorization.

### **The Making of the NCLB Act**

The new administration sought to toughen the ESEA's accountability provisions. The proposal required states to test all students annually in grades 3-8 in reading and mathematics; to disaggregate the scores by race, gender, English-language proficiency, disability, and socioeconomic status; and then to publish the data. The disaggregation was meant to ensure that minority pop-

ulations were improving. Aggregate school performance can conceal disparities in achievement among students.

President Bush spoke eloquently about the "soft bigotry of low expectations" that allowed so many young men and women to fall behind and never reach their potential. In the beginning of his proposal, he made the case: "Too many children in America are segregated by low expectations, illiteracy, and self-doubt. In a constantly changing world that is demanding increasingly complex skills from its workforce, children are literally being left behind. It doesn't have to be this way."

Under his plan, schools that did not make adequate yearly progress toward meeting the state standards would receive additional assistance, but continued failure would bring sanctions. After two years of making inadequate progress, students would be allowed to transfer to another public school. After three years, the students who remained at the school would be eligible to receive free tutoring or transfer to another public or private school. States that failed to make progress could lose a portion of their administrative funds. The President called upon Congress to eliminate special-interest programs and focus the act on a few national priorities. His proposal included the House's Straight As plan to give states and districts the option of entering a five-year performance "charter agreement" that would allow them complete freedom over their ESEA funds.

Congress received the President's plan and began to work on the reauthorization. The original bill, as introduced in the House of Representatives, strongly resembled the President's plan. It even bore the inspiring title "No Child Left Behind." By the time the legislative process was through, however, private school choice, consolidation, and program flexibility lay on the cutting room floor.

Before it got to the House floor, the private school choice provision was eliminated. Individual legislators added back nearly all of the small, special-interest programs such as Ready-to-Learn

Television, Star Schools, the National Writing Project, Arts in Education, Education for Native Hawaiians, and others.

On the House floor, members reattached the Women's Educational Equity Act, which had been eliminated in the committee's initial draft. This seventies-era program, enacted to promote "equity" in educational policies and programs, is based on the premise that "teaching and learning practices in the United States are frequently inequitable as such practices relate to women and girls." The problem is that the inequity that the act was designed to rectify no longer exists. According to statistics, boys, not girls, are falling behind. Girls equal or outperform boys on almost every indicator of academic success, and their success continues into adulthood. Onlookers in the House gallery witnessed how the influence of special interests can trump the facts. The program spends \$3 million a year to help those who do not need it.

The Senate version of the bill gained a host of new programs during debate, leading one observer to dub it the "No Lobbyist Left Behind Act." Nobody seemed willing to question how "educational, cultural, apprenticeship, and exchange programs for Alaska natives, Native Hawaiians, and their historical whaling and trading partners in Massachusetts" were central to federal efforts to raise achievement. Reformers had hoped that the Republicans' first opportunity to oversee the reauthorization would result in a departure from the old model, but it was still just business as usual. The final 1,100-page bill that emerged was much like the old ESEA: the same old programs, only with significantly higher authorization levels. Congress basically grafted additional accountability measures onto the old law.

As for flexibility, the Straight A's "charter state" provision was reduced to a pilot program that allows states limited flexibility with their administration and state-level activities—a far cry from being able to control the entire pool of state and local funds. States' earlier eagerness to participate waned. Local districts have more flexibility to transfer funds between categorical grants. They

can also participate in a demonstration program to combine federal funding for specific programs. These limited flexibility options were not what reformers had envisioned.

In the end, the final bill contained a close variant of the Bush accountability plan but with a twist: The law expected all students to reach proficiency in twelve years. Proponents believed that anything less than 100 percent proficiency signaled a retreat from high expectations for every student. After all, who doesn't deserve to read and do math at grade level?

Specifically, the law requires states to test students and report on their progress, with results disaggregated by student subgroups. States must submit a plan that shows how student performance will improve each year, with the goal of full proficiency in math and reading in twelve years. Districts must allow students in Title I-eligible schools that are in "school improvement" status (meaning they did not make adequate yearly progress for two years) to enroll in a better public school in the district. Students in schools deemed "unsafe" may also exercise choice. If the school does not meet AYP standards in the third year, the district must provide low-income students in the school access to free tutoring. In the fourth year, the district must implement a corrective action plan that could include new curricula or bringing new teachers on board. In the fifth year, the district is required to significantly restructure the school. Tutoring and public school choice must continue while the school is in "corrective action" and restructuring.

It is important to note that states, not the federal government, determine the standards, design the tests, and set the bar for proficiency. States and schools do not lose funds for poor performance.

The bill was passed by a vote of 381 to 41 in the House and 87 to 10 in the Senate. The chairmen and ranking members of each chamber's education committee, Representatives John Boehner (R-OH) and George Miller (D-CA) and Senators Judd Gregg (R-NH) and Edward Kennedy (D-MA), joined the President for the signing of the

bill. The President concluded his speech by saying: "Signing this bill is the end of a long, long time of people sitting in rooms trying to hammer out differences. It's a great symbol of what is possible in Washington when good people come together to do what's right. But it's just the beginning of change. And now it's up to you, the local citizens of our great land, the compassionate, decent citizens of America, to stand up and demand high standards, and to demand that no child—not one single child in America—is left behind."

Indeed, it was just the beginning.

### The Hard Part: Implementation

Two years have passed, and it is too early to tell whether the law is working. State plan negotiations were not finished before June 2003. States and districts are still working out the kinks regarding accountability programs, teacher quality, public school choice, supplemental services, and other aspects of the law by trial and error. There are both positive signs and complications, but it is still too early to declare victory or defeat.

Although the federal law gives states the freedom to set standards and create tests, it is highly prescriptive about how AYP is determined, and these requirements are not always compatible with preexisting state systems. As a result, schools rated highly on the state system can fail to make AYP according to the NCLB. Differences in how each system treats subgroups or standards governing the percentage of students that must be tested cause discrepancies in the ratings. In 2003 an "excellent" rated school in Colorado did not make AYP while others with unsatisfactory ratings cleared the AYP bar. Florida saw three out of four of its "A" rated schools underperforming, according to the NCLB.<sup>1</sup>

The problem is that inconsistency between state and federal systems threatens to undermine people's confidence in both. Who should the public believe? One of the strengths of the NCLB

is that it puts information in the hands of teachers, parents, and the public, energizing them for change and improvement. If, however, information is confusing or inconsistent, cynicism and apathy could result.

Another problem exists: Some states have set lower standards or created easier tests. Others have used creative statistical strategies to increase their proficiency scores. Still others have back-loaded their accountability plans, so that little is expected in the short term while large increases are "planned" for the final years. For reasons that are quite arbitrary, some states look rosy while others appear to be dropping the ball.

The subject of quality teachers raises still other questions. Under the NCLB, "qualified" teachers must have a bachelor's degree, be state certified, and demonstrate subject-area mastery by having their college degree in the subject they teach or passing a state test on the subject. These provisions may end up labeling some good teachers as unqualified, while those who meet the letter of the law but do not teach well get the stamp of approval. The problem could be particularly acute in rural areas, where teachers teach multiple subjects.

The difficulties with AYP and teacher quality call into question the efficacy of establishing a federal standard to govern 93,000 public schools.

At the local level, implementation of the public school choice and supplemental services provisions has been uneven. Although participation in choice and tutoring is growing, only a small percentage of eligible students are participating. Nationwide, over one thousand supplemental service (tutoring) providers have been state approved. While some rural areas have only online providers to offer, some urban and suburban areas have a diverse mix of providers, including faith- and community-based organizations. Districts also provide supplemental services. In some cases, districts advantage their own pro-

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1. See papers submitted at the conference "Leaving No Child Behind? Options for Kids in Failing Schools" held by the American Enterprise Institute and the Thomas B. Fordham Foundation, January 15–16, 2004, at [www.aei.org/events/fil-ter.all,eventID.684/transcript.asp](http://www.aei.org/events/fil-ter.all,eventID.684/transcript.asp) (June 24, 2004)

grams by denying competitors space to tutor and opportunities to notify parents of their services.

Public school choice implementation also has not gone well, partly because of inadequate capacity and a pattern of bureaucratic resistance. Rural districts and urban districts with a majority of under-achieving schools have few or no high-quality alternatives for students who want to transfer. Most states effectively eliminated the option to transfer from a dangerous school by declaring that there are no unsafe schools in the state. While some districts are going to great lengths to give students several options, others subtly or not-so-subtly discourage parents from seeking transfer options.

Researchers have discovered districts that did not inform parents, gave parents a small window of time to decide between their options, or only offered them schools that were performing as poorly as or worse than the school their child was trying to escape. They also found examples of subtle dissuasion or obfuscation in letters to parents that are unclear about the school's status and the options available. In her paper "No Child Left Behind Mandates School Choice: Colorado's First Year,"<sup>2</sup> Colorado Independence Institute researcher Pam Benigno includes the following from such a letter sent by an unnamed district: "I believe that the high marks made during the 2001-2002 school year prove that [name omitted in report] is a successful school and moving to another school to get a quality education just isn't necessary. But the federal government did not ask my opinion. ... I hope that you as parents will keep your children in [name omitted]. ..."

Another district letter said: "All schools in District [name omitted] are committed to excellence through continuous improvement. [Name omitted] Elementary is no exception. Our school has been identified for 'School Improvement' by the Federal Title I guidelines. We are excited by this opportunity to focus on increasing student achievement on the CSAP assessments."

As long as those who have the least to gain from granting transfers and tutoring—the dis-

tricts—control information and options, it is likely that this education shell game will continue. Some districts will do what they can to undermine the law, frustrate the will of parents, and ultimately prevent students from gaining access to safe and effective schools. The only market-driven engine in the act will stall.

While much of the NCLB emphasizes accountability to the state or federal government, the choice provision is all that makes schools accountable to parents. The NCLB requires states, districts, and schools to issue annual report cards on academic achievement, teacher qualifications, and school AYP status. This information is useless unless parents can act on it. If there is insufficient capacity or will to provide families with quality options, then Congress should broaden the pool of providers. The federal government routinely uses private providers to deliver services under Medicare, the food stamp program, welfare and social services, higher education, and other education programs such as the Individuals with Disabilities Education Act. There is no reason why it should not use them to boost student achievement.

## Second Thoughts

As any reader of a daily newspaper can attest, No Child Left Behind has not been without opposition. States have complained of inadequate flexibility and guidance from the department, some even going so far as to pass resolutions criticizing the act or asking for waivers. The term unfunded mandate has been tossed around despite the fact that the act is both funded and voluntary. So far, no state has refused to participate, although a few isolated districts have pulled out; apparently the money is too good to pass up. The Utah House of Representatives amended its strongly worded resolution against NCLB to allow the state to continue to receive federal funding.

Despite substantial yearly increases, Democrats and their union allies criticize the level of funding. They claim that the NCLB is underfunded because Congress has not met the fund-

2. Independence Institute Issue Paper No. 9-2003 (June 2003) at <http://i2i.org/articles/9-2003.pdf> (June 24, 2003).

ing limits established in the bill. In response, the administration revealed that states have \$5.75 billion in unspent federal ESEA funds in the bank. Some of the funds have languished there for more than three and a half years. Representative John Boehner, chairman of the House Committee on Education and the Workforce, questioned whether the large yearly increases in spending were more than states and districts could spend, likening the situation to “pumping gas into a flooded engine.”

The situation has made for strange bedfellows, with Kennedy and Utah’s Republican legislature lambasting the law and President Bush and the Education Trust, a left-leaning pro-accountability group, defending it. Dueling studies by think tanks, member organizations, and state agencies support one side or the other. Based on different and sometimes methodologically creative assumptions, each study “proves” that the NCLB is adequately or inadequately funded. Some of the studies have padded their estimates by including costs not required by the NCLB in their expense totals. In response, Accountability-Works added up only the costs of goods and services required by the law and compared the total to the amount appropriated by Congress. It found that the act has been overfunded and states have more than enough money to meet the requirements of the NCLB.

Meanwhile, interest groups have commissioned polls that seem designed to elicit the responses they want to hear. Is anyone surprised that proponents found people love the NCLB or that the union-backed poll discovered that people think the government should spend more on education?

Near the end of February 2004, the mounting criticism of the NCLB led the Bush Administration itself to put forth some remedies. Testing requirements for students with limited knowledge of English were relaxed. In addition, Education Secretary Rod Paige announced that he was planning more changes, including a new interpretation of the teacher quality requirements. He also allowed the most severely disabled students to be tested separately from other students, thus

changing the way disabled students are treated under the law. These moves seem to presage even more future changes.

The rhetoric, perhaps inevitably, is likely to get louder and more rancorous as the election approaches. Like it or not, when politicians create education policy, education policy is influenced by politics. Partisan bickering, one-size-fits-all policies, special interest influence, facile explanations, and political expediency are all part and parcel of federal involvement in education. Even well-meaning politicians are concerned about public perception and self-preservation. Politics necessarily inflates the debate even when a thoughtful conversation would be more beneficial. Ambiguity muddles the message, particularly when explanations require more time than a sound bite allows. When the audience has neither the time nor perhaps the desire to truly understand the issue, it is easier to stick to the script. A thoughtful discussion about funding or flexibility may not be possible in an election year.

However, the discussion cannot be put off indefinitely. In a few years, Congress will face another ESEA reauthorization. “Where do we go from here” is a question that can be answered only when other questions are satisfied. All policies have merits and shortcomings. Even good policies have costs, and even bad policies benefit some people. The question is, on balance, whether the benefits outweigh the costs. Nearly four decades and billions of dollars later, there is little empirical evidence to show that the ESEA has worked. Will the changes in the NCLB succeed in increasing student achievement, particularly for minority and low-income students? Will the results justify the loss of state and local control or the financial cost to taxpayers?

And then there are the bigger questions—questions that should have been asked last time around. To whom should schools be accountable? The federal government? States? School boards? Parents? What should the federal role be in raising achievement? If the ESEA model of the past didn’t help and the tough accountability model of today doesn’t work, where do we go

from here? Should we revisit parental choice? Local control? If the primary purpose of schools is to teach students to read and do math presumably at grade level, why does the federal government need to compel them with either carrots or sticks to fulfill their mission? In the words of Sec-

retary Paige, "Is it too much to ask that a third-grade child read at a third-grade level?"

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### Some Next Steps

As the article above points out, it will take some time to assess whether the No Child Left Behind law is helping to improve student achievement. It is already apparent, however, that some things need attention. By taking the following steps, policymakers will be better able to answer the question, "Where do we go from here?"

**Honest Discussion.** Elected officials, special interest groups, grassroots organizations, and the think tank community should commit to an honest discussion of the benefits and costs of NCLB. Exaggerated claims and partisan accusations obscure the issues and detract from the hard work of improving academic achievement for all students.

**Choice and Tutoring Options.** Congress and the federal Department of Education should

ensure that students in underperforming schools receive the public school choice options and free tutoring to which they are entitled.

**Funding.** Congress should resist demands for greater funding. According to several studies, the act is adequately funded. In fact, states have billions of unspent funds, some of it left over from the Clinton Administration. It is important to note that NCLB is also a voluntary program. Since it is both funded and voluntary, it is not an unfunded mandate, as some critics charge.

**Red Tape.** Congress should enact greater flexibility similar to the Academic Achievement for All (Straight A's) provision that was not included in the final NCLB. States that can show results should be given substantial flexibility in the administration of federal education funds.