

Background

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The Charter State Option: Charting a Course Toward Federalism in Education

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The 110th Congress (2007–2008) is scheduled to consider reauthorization of the No Child Left Behind Act (NCLB), which will be the ninth reauthorization of the original Elementary and Secondary Education Act of 1965 (ESEA). Yet after four decades and hundreds of billions of dollars, the federal government's involvement in K–12 education in America has failed to improve student achievement significantly.

Five years after its enactment, it is becoming clear that the NCLB, like previous versions of the ESEA, does not have the capacity to resolve the problems that plague American public education. Growing evidence suggests that the latest federal strategy for improving education is not accomplishing its objectives, again demonstrating the federal government's inability to improve local education.

As Congress considers a ninth reauthorization of the ESEA, it should break the pattern of increasing funding for expansive federal programs intended to steer education policy nationwide. This pattern has encouraged the proliferation of state bureaucracy and fostered a compliance mentality among state and local officials, leading them to focus primarily on following federal regulations.

Instead, Congress should take a step toward restoring better governance by returning policymaking authority to the state and local levels, thereby promoting an environment in which education policymakers would be more directly responsive to those who are primarily affected by their decisions: students, parents, and local taxpayers. Reducing the federal government's

Talking Points

- When considering reauthorization of No Child Left Behind, Congress should take into account the constitutional, financial, and practical limitations on federal involvement in education.
- Four decades, eight reauthorizations of the Elementary and Secondary Education Act of 1965, and hundreds of billions of dollars of federal spending have clearly demonstrated that federal policymaking cannot resolve the problems that plague American education.
- Congress should embrace a charter state option, allowing states to choose between the status quo and an alternative contractual arrangement with the federal government. Under a charter contract, elected state officials would have broad authority to consolidate and refocus their federal funds on state initiatives in exchange for monitoring and reporting academic progress.
- The charter state option would restore greater federalism in education, allowing state leaders to address local needs and priorities while making them more directly accountable to parents and taxpayers.

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role in education to a level commensurate with its 8 percent share of funding for local education would give states the opportunity to implement more appropriate and effective strategies.

Specifically, Congress should embrace a “charter state option.” This would allow every state to choose between the status quo and a simplified contractual arrangement in which the state would have broad authority to consolidate and refocus its federal funds on state-directed initiatives in exchange for monitoring and reporting academic progress. The charter state option would restore greater federalism in education, allowing state leaders to embrace innovative strategies according to their local needs, priorities, and reform philosophy while making them more directly responsible to parents and taxpayers for the results.

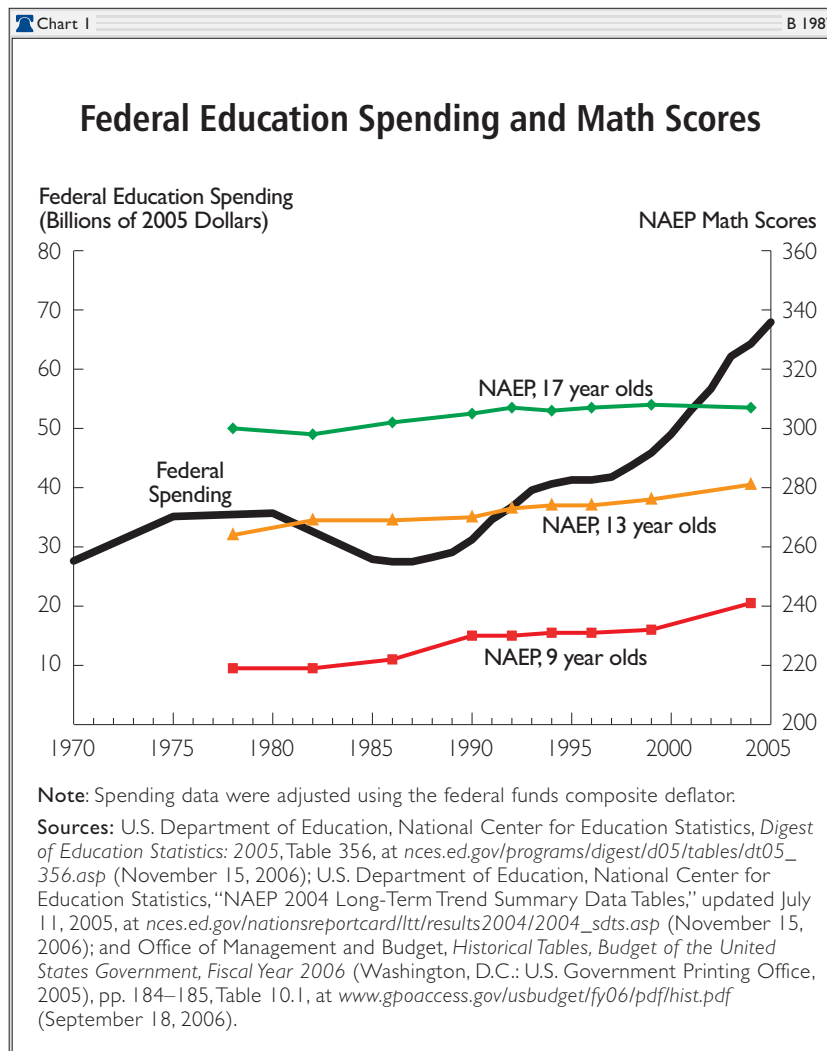
The Federal Education Track Record Since 1965

In 1965, President Lyndon Johnson signed the Elementary and Secondary Education Act as a part of his War on Poverty initiative. At the signing ceremony, he said, “I believe deeply no law I have signed or will ever sign will mean more to the future of America.”¹ The 34-page ESEA provided for approximately \$2 billion in federal funding to improve educational opportunities for the disadvantaged.²

Over the next four decades, the ESEA was reauthorized eight times, and the federal government’s involvement in education grew. By 2002, the law

had ballooned into the 1,100-page No Child Left Behind Act of 2001, funded at \$22 billion.³ Despite significant increases in federal funding for K–12 education over the past three decades, little evidence indicates any improvement in academic achievement over this period.

Chart 1 and Chart 2 compare student performance on the long-term National Assessment of



1. Lyndon B. Johnson, “Remarks in Johnson City, Texas, Upon Signing the Elementary and Secondary Education Bill,” April 11, 1965, at www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650411.asp (November 22, 2006).
2. Krista Kafer, “No Child Left Behind: Where Do We Go from Here?” Heritage Foundation *Backgrounder* No. 1775, July 6, 2004, at www.heritage.org/Research/Education/bg1775.cfm, and National Conference of State Legislatures, “No Child Left Behind Act of 2001,” at www.ncsl.org/programs/educ/NCLBHistory.htm (October 20, 2006).
3. U.S. Department of Education, “Summary of Discretionary Funds, Fiscal Years 2001–2007,” August 2, 2006, at www.ed.gov/about/overview/budget/budget07/07bylevel.pdf (November 2, 2006).

Educational Progress (NAEP) since the 1970s with federal spending. Federal spending has increased dramatically (146 percent between 1970 and 2005), but test scores have generally remained flat in reading and have improved only slightly in math.

The No Child Left Behind Act of 2001

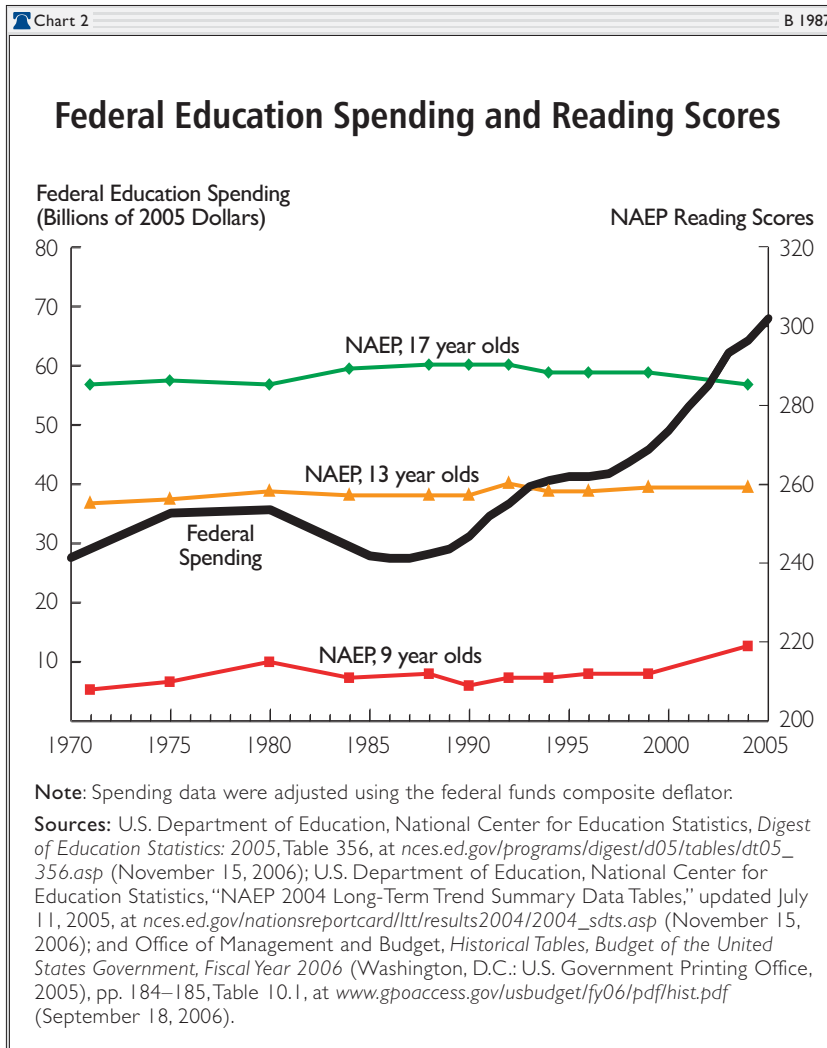
President George W. Bush arrived in Washington promising to transform the federal role in education. During the 2000 campaign, he had said, “I don’t want to tinker with the machinery of the federal role in education. I want to redefine that role entirely.”⁴ He also expressed a belief in a limited federal role in education: “I do not want to be the federal superintendent of schools,” Bush explained in 2000. “I don’t want to be the national principal. I believe in local control of schools.”⁵

Shortly after the President entered the White House, the Bush Administration unveiled a 31-page blueprint for reforming the ESEA.⁶ The plan, known as No Child Left Behind, sought to accomplish four objectives: increase accountability for student performance, focus on what works, reduce bureaucracy and increase flexibility for states and school districts, and empower parents with school choice.⁷ The Administration also sought to build bipartisan support for fundamental reforms by proposing a significant increase in federal spending.⁸

As the NCLB proposal was developed on Capitol Hill, leading Democrats, including Senator Edward

Kennedy (D-MA) and Representative George Miller (D-CA), played an important role in shaping the legislation. During negotiations, key components of the original Bush Administration package, such as private school choice and a charter state option to allow greater flexibility, were stripped from the bill.

After a year of congressional negotiations, the NCLB emerged as a 1,100-page bill that established



4. Kafer, “No Child Left Behind,” and National Conference of State Legislatures, “No Child Left Behind Act of 2001.”

5. “Bush Promises ‘A Better Way,’” *The Baltimore Sun*, October 9, 2000, p. A2.

6. George W. Bush, “No Child Left Behind,” U.S. Department of Education, at www.ed.gov/nclb/overview/intro/presidentplan/proposal.pdf (October 20, 2006).

7. *Ibid.*

8. Dana Milbank, “Bush Says He’ll Seek \$4.6 Billion Boost in Education,” *The Washington Post*, February 21, 2001.

substantial new requirements on states and schools and expanded funding for ESEA programs by approximately 26 percent.⁹ On January 8, 2002, President Bush signed the NCLB into law.

Assessing the NCLB After Five Years

After five years and a spending increase of nearly \$6 billion, the NCLB highlights the limits and challenges of federal involvement in education.¹⁰ American students are not on track to meet the law's proficiency goals, and the NCLB has failed to accomplish two of the core objectives of President Bush's original blueprint for education reform: significantly increasing state and local flexibility and substantially expanding parental choice options.

The centerpiece of the NCLB is a set of student testing and accountability requirements that were designed to put all students on course to achieve proficiency on state examinations by 2014. To meet that objective, the NCLB extended the Department of Education's reach into new aspects of American education. The law requires states to test students annually in grades 3–8 and once in grades 10–12 and to report student performance (including disaggregated scores for student subgroups) and progress toward proficiency, which is known as adequate yearly progress (AYP). Schools that fail to meet AYP are subject to a timeline of school improvement reforms, including public school choice, after-school tutoring, or school restructuring.

Early evidence suggests that the NCLB has not substantially changed American students' academic achievement. Moreover, some researchers have found that the law may be distorting preexisting state assessments by creating dual accountability systems and watered-down testing measures.¹¹

In addition, the NCLB has demonstrated the federal government's limited ability to ensure that states and local school systems offer greater parental choice in education. Participation in both the public school choice and the after-school tutoring provisions of the NCLB has been low. Specifically:

- Less than 1 percent of the 3.9 million eligible students used the public school choice options during the 2003–2004 school year.¹²
- Participation in the limited option of subsidized after-school tutoring program is higher but still low. Only 17 percent of eligible students participated in Supplemental Education Services during the 2004–2005 school year.¹³

One reason for low participation in public school choice under NCLB is the limited capacity in high-quality schools in some school districts. One remedy in such cases would be to allow students to choose to attend private schools as an alternative, but federal law does not permit that option.¹⁴

The Charter State Approach

When the 110th Congress considers reauthorization of the No Child Left Behind Act, it should

9. Author's calculations based on budget figures in U.S. Department of Education, "Summary of Discretionary Funds."

10. *Ibid.*

11. For examples on dual accountability, see Krista Kafer, "No Child Left Behind and Arizona: Making State and Federal K–12 Accountability Systems Work," Goldwater Institute *Policy Report* No. 212, October 17, 2006, at www.goldwaterinstitute.org/Common/Files/Multimedia/1136.pdf (November 28, 2006), and Paul Peterson and Martin West, "Is Your Child's School Effective? Don't Rely on NCLB to Tell You," *Education Next*, No. 4 (Fall 2006), at http://media.hoover.org/documents/ednext20064_76.pdf (November 28, 2006). On watered-down testing, see press release, "Has a 'Race to the Bottom' Begun? Gains on State Reading Tests Evaporate on NAEP," Thomas B. Fordham Foundation, October 19, 2005, at www.edexcellence.net/foundation/about/press_release.cfm?id=19 (November 28, 2006).

12. Stephanie Stullich, Elizabeth Eisner, Joseph McCrary, and Collette Roney, *Implementation*, Vol. I of *National Assessment of Title I: Interim Report*, February 2006, NCEE 2006–4001, U.S. Department of Education, Institute of Education Sciences, February 2006, pp. 42–43, at www.ed.gov/rschstat/eval/disadv/title1interimreport/vol1.pdf (May 18, 2006).

13. *Ibid.*

14. The Bush Administration has sought to make private school options available to children in chronically failing schools through its Opportunity Scholarships for Kids proposal. See Dan Lips, "America's Opportunity Scholarships for Kids: School Choice for Students in Underperforming Public Schools," Heritage Foundation *Background* No. 1939, May 30, 2006, at www.heritage.org/Research/Education/upload/98394_1.pdf.

consider the constitutional, financial, and practical limitations on federal involvement in education. Federal efforts to steer education policy and ever-increasing funding have not led to improved student achievement. To the contrary, they have created a convoluted reporting system that has encouraged the proliferation of state bureaucracy and a compliance mentality among many state and local officials.

In 1994, the General Accounting Office reported that 13,400 federally funded full-time employees in state education agencies were tasked with federal education program implementation—three times the number working in the U.S. Department of Education.¹⁵ The House Committee on Education and the Workforce reported in 1999 that in Georgia, 29 percent of Georgia Department of Education employees (93 out of 322) worked full-time on paperwork and administration of federal programs in 1996–1997, even though these federal programs provided only 6.4 percent of total education funding in the state.¹⁶

In this reauthorization, Congress should take a first step toward restoring coherence to state and local education policymaking by offering states an alternative status that is free of distortions and the distractions of complying with extensive federal program processes and regulations. State and local policymakers have the authority to effect change throughout state school systems and are more directly accountable to parents and taxpayers.

Specifically, Congress should create a charter state option in which a state could opt for a contractual relationship that would allow state and local authorities to make decisions based on how best to help students with the available resources. The contract would free state and local authorities from federal regulations and red tape, reducing the federal government's role to a level commensurate with its 8 percent funding share in local education.

Under the contract, state elected officials would have the discretion to consolidate and refocus their federal education funding on state-directed initiatives—from phonics to class-size reduction—in exchange for monitoring and reporting academic results.

The charter option would allow different states to pursue differing methods to enhance student learning. For example, one state could choose to build on promising school choice reforms and increase parental options by expanding access to charter schools or by implementing tuition scholarships or education tax credits. Another state could pursue reforms designed to improve teacher quality in low-performing public schools. Federalism would give each state the freedom to implement its reform strategies while learning from the successes and failures of other states' reforms.

A charter state option would work in much the same way as a charter school contract. States choosing a charter status with the federal government would operate with greater freedom in exchange for results. Any state could choose the charter alternative by the decision of its legislative and executive branches. The state would specify which of its federal K–12 education programs would be part of the contract. The charter state would then be exempt from the program mandates, processes, and paperwork associated with the programs included in its contract, and the federal government would provide the money for these programs to the state in a single funding stream.

In the initial contract, state officials would also describe and establish a clear plan for measuring student performance, including the state's system for testing all public school students, monitoring annual progress relative to proficiency, and reporting the results to parents and taxpayers.

In summary, the contract would consist of a designation of federal programs to be included in the

15. U.S. General Accounting Office, *Education Finance: The Extent of Federal Funding in State Education Agencies*, GAO/HEHS–95–3, October 1994, at archive.gao.gov/f0902a/152626.pdf (November 28, 2006). The GAO is now known as the Government Accountability Office.

16. House Report 106–386, *Academic Achievement for All Act (Straight A's Act)*, Committee on Education and the Workforce, 106th Cong., 1st Sess., October 15, 1999, p. 10.

flexibility agreement and a description of the state's academic testing, monitoring, and public reporting system. If Title I is included, the contract would also describe the state's plan for providing compensatory education to eligible students.

The charter option would change the relationship between the federal government and the states. Acknowledging states and localities as the appropriate formulators of education *policy*, the federal government would simply provide *aid* for education while verifying that states are accountable to their citizens for the expenditure of those funds and the results they yield.

Background of the Charter State Option

The charter state option is based on a proposal that gained considerable support on Capitol Hill and among state policymakers during the late 1990s. In 1999, Chairman Bill Goodling (R-PA) introduced the Academic Achievement for All Act (H.R. 2300 and S. 1266), commonly called the Straight A's Act, which offered all states the opportunity to enter into contractual agreements with the federal government similar to the charter state option. Many of the Members of the incoming 110th Congress either sponsored or voted for the original Straight A's proposal, including 112 Representatives and 22 Senators.

Among state lawmakers and organizations, 13 governors—including Jeb Bush (R-FL), Bill Owens

(R-CO), and George Pataki (R-NY)—endorsed the Straight A's proposal, and several state and local school leaders testified before Congress on its behalf.¹⁷ The National Council of State Legislators and the American Legislative Exchange Council endorsed the Straight A's proposal.¹⁸ Paul Vallas, former chief executive officer of the Chicago public schools and now CEO of the District of Philadelphia, testified before a House subcommittee field hearing in Chicago: “[W]e support the concept of combining as many federal programs as possible into one or two grants, tied to contracts for agreed-upon results.”¹⁹

On September 23, 1999, Governor Bush testified before a House committee on behalf of the measure:

Though the federal contribution to education in Florida is small, only about 7 percent of total spending, it takes more than 40 percent of the state's education staff to oversee and administer federal dollars. In fact, in Florida, six times as many people are required to administer a federal education dollar as are required by a state dollar. And how much learning has the federal government achieved through these expenditures? No one knows.

Imagine what our states could do if we could spend more of our time and energy working to improve student achievement, rather than

17. Letter from former Governor Jane Dee Hull (R-AZ), October 18, 1999; letter from Governor Bill Owens (R-CO), October 14, 1999; letter from Governor Jeb Bush (R-FL), July 16 1999; letter from former Governor Dirk Kempthorne (R-ID), October 15, 1999; letter from former Governor George H. Ryan (R-IL), July 22, 2006; letter from former Governor A. Paul Cellucci (R-MA), October 20, 1999; letter from former Governor John Engler (R-MI), July 17, 1999; letter from Governor Kenny Guinn (R-NV), October 19, 1999; letter from former Governor Edward T. Schafer (R-ND), October 19, 1999; letter from Governor George Pataki (R-NY), October 19, 1999; letter from former Governor Frank Keating (R-OK), October 19, 1999; letter from former Governor James S. Gilmore (R-VA), July 9, 1999; letter from Rita C. Meyer on behalf of former Governor Jim Geringer (R-WY), October 19, 1999; and House Report 106-386, pp. 8-15.

18. The American Legislative Exchange Council adopted a model resolution urging Congress to support the Straight A's proposal on May 20, 1999. See American Legislative Exchange Council, Web site, at www.ALEC.org (November 29, 2006; subscription required). On May 20, 1999, Representative Ralph M. Tanner (R-KS) testified on behalf of the National Conference of State Legislatures before the House Committee on Education and the Workforce. Hearing, *Academic Achievement for All: Increasing Flexibility and Improving Student Performance and Accountability*, Committee on Education and the Workforce, U.S. House of Representatives, 106th Cong., 1st Sess., May 20, 1999, at commdocs.house.gov/committees/edu/hedcew6-41.000/hedcew6-41.htm (November 28, 2006).

19. Paul Vallas, “Flexibility in Education Funding,” testimony before the Subcommittee on Oversight and Investigation, Committee on Education and the Workforce, U.S. House of Representatives, April 19, 1999, at www.house.gov/ed_workforce/hearings/106th/oi/edreform41999/vallas.htm (November 20, 2006).

tediously complying with a dizzying array of federal rules. At the very least, the federal government should stop creating barriers for states that are taking new educational approaches.²⁰

On October 21, 1999, by a vote of 213 to 208, the House of Representatives passed a version of Straight A's that would have created a pilot project for 10 states.²¹ However, the measure stalled in the Senate and never became law.

When President Bush entered the White House in 2001, a provision similar to the House version of the Straight A's plan was included in the Administration's original No Child Left Behind proposal:

A charter option for states and districts committed to accountability and reform will be created. Under this program, charter states and districts would be freed from categorical program requirements in return for submitting a five-year performance agreement to the Secretary of Education and being subject to especially rigorous standards of accountability.²²

However, the charter option was stripped from the bill during the NCLB debate. In its place, the law included a modest provision to allow states limited flexibility to consolidate and redirect certain funding within federal programs, which was a far cry from allowing states the flexibility to consolidate all federal funds.²³

The NCLB has not delivered on the promised flexibility in directing education policy and instead has produced the largest expansion of federal involvement in state and local education policy since 1965. As a result, more state and local officials have recognized negative aspects of the federal government's role in education.²⁴

Reviving the Straight A's idea through the charter state option may have even more appeal now than it did in the 1990s. Moreover, the NCLB has created a greater nationwide focus on results. In this environment, it makes sense to move away from highly prescriptive and cumbersome federal program management to an alternative arrangement that allows states to exercise full authority over the means (educational policy and strategy for improving student achievement) as they take responsibility for results.

Creating a Successful Charter State Option

In the face of mounting criticism of the NCLB, Congress may be tempted to increase funding for the status quo or to return to the pre-NCLB federal role in education. Neither course is advisable. Instead, Congress should create a charter state option, an idea that gained considerable support among state and federal policymakers during the 1990s and was regrettably left behind in the negotiations over the No Child Left Behind Act.

To create a successful charter state option, Congress should follow five principles:

Principle #1: All states should be given the charter option.

All states should have the choice to take advantage of the charter state option. Each state should be free to decide whether local students and schools would be better served by state-directed education reforms or by the existing system of federal rules and regulations.

Principle #2: States should be given maximum freedom and flexibility to control funds and consolidate programs.

Under the charter state option, a state should have maximum freedom and control over its fed-

20. Governor Jeb Bush (R-FL), testimony before the Committee on the Budget, U.S. House of Representatives, September 23, 1999.

21. "House Passes 'Straight A's' Decentralized Reform Plan," *Human Events*, January 28, 2000.

22. Bush, "No Child Left Behind."

23. Kafer, "No Child Left Behind."

24. According to the National Conference of State Legislatures (NCSL), 21 states have considered resolutions that are critical of No Child Left Behind. Seven states—Colorado, Connecticut, Hawaii, Maine, New Mexico, Utah, and Virginia—have passed resolutions critical of NCLB. National Conference of State Legislatures, "No Child Left Behind: Quick Facts 2004–2005," June 20, 2005, at www.ncsl.org/programs/educ/NCLB2005LegActivity.htm (November 2, 2006).

eral education funding and policy decisions. In its contract with the U.S. Department of Education, it should be allowed to include all federal K–12 education funding—including earmarks and categorical and competitive grants—with the freedom to allocate the funds toward any education activity authorized under state law.

Currently, a typical state receives its share of federal funding for K–12 through dozens of programs, each with its own paperwork and administrative requirements that impose a heavy burden on states. More important, the federal programs and requirements distort state and local governance of education by encouraging a compliance mentality among administrators instead of a spirit of leadership in implementing strategic plans to meet the specific needs of their students.

State policymakers and administrators are in a better position than Congress or the U.S. Department of Education to assess student needs and implement meaningful strategies to meet those needs. They can also make adjustments promptly when circumstances require rather than just once every five or more years when reauthorizing the federal program. Under a flexible charter agreement, state officials would be able to decide what combination of resources and strategies will best serve their students.

Principle #3: States should be allowed to manage their student assessment systems with transparency about the process and results.

Under the charter state agreement, states would maintain the freedom to create and direct their assessment systems. Such systems should contain essential elements of current law: systematically measuring the progress of all students relative to proficiency levels, establishing a baseline for monitoring progress over time, and maintaining uniformity of testing procedures throughout the course of the charter agreement. States would report scores by student subgroup and chart progress over time to allow for year-to-year comparisons. They would provide for the broad dissemination of this information to parents and taxpayers.

States should have the freedom to develop more meaningful and appropriate means of measuring

adequate yearly progress than provided under current law, including measures that allow for comparison of the same cohort over time rather than comparing one cohort to the next.

Principle #4: States should be allowed freedom to improve Title I delivery.

Giving states real autonomy should also include allowing for freedom of delivery of Title I funds to assist disadvantaged students. Currently, the Title I program is administered through a set of complex and cumbersome formulas that substantially deplete funds before they reach eligible students. Congress should first simplify Title I and then allow states the freedom to deliver funds more effectively based on their own strategies, consistent with the goals of compensatory education. States should be free to include Title I in their charter agreement if they guarantee to refocus those funds in a manner that advances that goal. This strategy should be stated explicitly in the contractual agreement.

Some states may choose to keep the existing Title I system in place. Others may opt for a new method of funding compensatory education and assisting disadvantaged students and their schools. For example, a state could choose to distribute its share of Title I funding to eligible students through a portable funding mechanism.

Principle #5: Congress should clearly define the criteria for contract approval.

If a state meets the clear, congressionally defined contract guidelines, its contract should be approved by the U.S. Department of Education. The Secretary of Education should simply have the authority to verify whether or not the state has met legislative requirements for the charter agreement. The contract elements should not be subject to negotiation. Rather, the contract is an opportunity to establish formally how the state proposes to proceed for the purpose of later verification. This provision should be stipulated legislatively.

The contract agreement would cover a five-year period. If the state abides by the terms of the contract, it would be free to extend its contract for another time period.

Conclusion

Across the United States, nearly 50 million students are served by 96,000 public schools.²⁵ Policymakers in Washington, D.C., cannot be expected to diagnose the diverse learning needs of these students and to craft solutions adequate to meet all of them. As the record of the past 40 years shows, federal involvement in education has not succeeded in improving student achievement in any meaningful way.

As Congress prepares for the ninth reauthorization of the Elementary and Secondary Education Act, policymakers from across the political spectrum should recognize the limits of formulating education policy at the federal level. Federal reporting and regulatory requirements create a counterproductive force in state and local education governance by encouraging a compliance mentality rather than visionary, strategic leadership and a sense of responsibility for results. Congress

should seek to restore federalism in education governance in order to encourage state and local leadership that is directly accountable to parents and taxpayers.

Beginning in 2007, policymakers should steer a course toward restoring state control of education by enacting a charter state option. Congress should allow all states to enter into an alternative contractual arrangement with the federal government in which they would be freed from federal program mandates while taking responsibility for results. Such federalism would create an environment in which promising state and local education strategies can flourish.

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25. U.S. Department of Education, Institute of Education Sciences, *Digest of Education Statistics: 2005*, Table 33 and Table 84, at nces.ed.gov/programs/digest/d05/lt2.asp#c2 (November 2, 2006).