



Can This Law Be Fixed? A Hard Look at the No Child Left Behind Remedies

Frederick M. Hess and Chester E. Finn Jr.

After five years of experience with the No Child Left Behind Act (NCLB), and with reauthorization looming, it is time to draw some conclusions about how the act has actually unfolded—and how it ought to be changed. A new book from the AEI Press by Frederick M. Hess and Chester E. Finn Jr., No Remedy Left Behind: Lessons from A Half-Decade of NCLB, does just that, while also providing a roadmap for how to improve the act. This article highlights key recommendations made in the book.

Passed by Congress in late 2001 and signed by President George W. Bush one year after his inauguration, NCLB is the most ambitious federal education statute ever. It overhauled and expanded Washington's role in education; rewrote the rules; and set out to boost pupil achievement, narrow a host of "learning gaps," and assure every student a "highly qualified teacher." Its hallmark is an historic attempt to impose a results-based accountability regime on schools nationwide.

Under NCLB's Hood

NCLB's accountability engine is driven by two pistons: an insistence that states adopt systematic standards and testing for schools and districts; and intervention in schools and districts that do not meet those standards, while also providing immediate relief for pupils. Aiming to produce "universal proficiency" by 2014 (in math and reading, primarily in grades 3–8), Congress charged states

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with defining and adopting those standards and tests, but it spelled out in considerable detail the remedies that states and districts are responsible for providing.

NCLB's standards and testing issues have received extensive attention. Confronted with the law's prime directive that schools will be judged by whether their pupils make adequate yearly progress (AYP), state and federal officials and platoons of academics have spent the last five years debating proficiency targets, confidence intervals, and a host of other issues related to testing and measurement.

Receiving far less attention, however, have been the remedies for *not* achieving AYP, a cascade of stiffening interventions designed to force performance improvements and offer new options to students in failing schools.

Unfortunately, what we find when we inspect NCLB's remedies is a truly mixed bag: engine parts from Prius to Mustang and Taurus to Yugo, with a little Mack Truck and Maserati thrown in for good measure. As a vehicle for catalyzing change to boost student achievement, NCLB's accountability measures provide an extremely rough ride. In fact, they may even impede school effectiveness, confound promising practices and

functioning reform programs, and ask for such unrealistic actions as to foster both compliance and cynicism.

Here is what is supposed to happen:

- If a federally aided school fails to make AYP for two consecutive years, its students are supposed to be offered “public school choice,” enabling them to attend other public schools in their district. The district is supposed to provide each child with a choice of alternative public schools (including charter schools) that *are* making suitable progress. Meanwhile, schools identified for improvement are supposed to draft or update a multiyear improvement plan and receive technical assistance that addresses the problems that led them to fail to make AYP.
- If a school falters for a third straight year, its district is supposed to provide pupils with the opportunity to receive “supplemental educational services” (SES)—essentially free after-school tutoring—from diverse providers, including private firms. This tutoring is to be paid for with a portion of the school’s federal dollars—a sort of mini-voucher. In addition, because the remedies are cumulative, qualifying students continue to be eligible for NCLB school choice.
- If a school fails to make AYP for a fourth year running, its district is supposed to take “corrective action” by replacing school staff, implementing a new curriculum, reducing the school’s management authority, extending the school day or year, appointing an outside expert to advise the school, or reorganizing the school. Pupils in such a school also remain eligible for NCLB school choice and SES, and continue to so as long as their school fails to make AYP.
- If the school fails to make AYP for a fifth consecutive year, its district must—during the sixth year—prepare a restructuring plan. This may include reopening it as a charter school, replacing its principal and staff, contracting with a private management company to run it, turning it over to the state, or any other “major restructuring” of school governance.
- If the school fails to make AYP for a sixth year, the restructuring plan is to be implemented by the beginning of the following school year.

On paper, this all proceeds in an orderly and familiar top-down sequence, with federal rules outlining what states are to do, states telling districts what to do, and then districts working with their individual schools. State education departments are charged with setting standards, creating tests, intervening in faltering districts, and generally supervising.

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That hierarchy of responsibility—from Washington to state capital to local school system to school—has been the basic architecture of federal education policy for decades. Yet it was never designed to support a results-based accountability system, to make effective repairs to faltering schools, or to function in an environment peppered with novelties like charter schools, home schooling, and distance learning.

The result is a Christmas tree of programs, incentives, and interventions that are more an assemblage of reform ideas than a coherent scheme. NCLB’s remedy provisions bear all the marks of concessions to various ideologies, advocates, and interest groups, with scant attention paid to how they fit together, the resources or authority they require, or whether they could be sensibly deployed through the available machinery.

In fact, though routinely labeled a “Bush law”—in no small part because the White House has claimed it a great domestic achievement, while prominent Democrats have been far more equivocal—NCLB’s provisions are a Rube Goldberg–like assemblage of administration proposals, “New Democrat” schemes, liberal nostrums, and proposals and cautions introduced by countless other constituencies. These provisions all have been superimposed upon programmatic habits, architecture, and rules that have accumulated like reefs in federal education policy since President Lyndon B. Johnson’s administration. Indeed, from the outset, it was clear that implementing this mishmash would recall the phrase “maximum feasible misunderstanding,” which the late senator Daniel P. Moynihan used to describe Johnson’s multifaceted community action program.

An Overhaul Checklist

The political compromises that produced NCLB meant that its soaring aspirations were freighted with outdated machinery, weak sanctions, and uncertain interventions. Since unrealistic goals make failure inevitable, they have the perverse effect of focusing employees on complying and on keeping out of trouble. We sense—and fear—that NCLB’s aspirational framework has created a system in which the prospect of likely failure by many schools gives educators more reason to focus on obeying rules and following procedures than on delivering results.

There is now enough mileage on NCLB’s odometer to require a full inspection. Based on the research conducted for our book, *No Remedy Left Behind: Lessons from A Half-Decade of NCLB*, we found eight major defects in the current law’s remedy scheme—and eight ways to fix it:

1. Get Real. With the gift of hindsight, educational accountability under NCLB turns out to be less about any conventional notion of school improvement or reinvention of government and more about fealty to a noble, even millennial aspiration. Rather than simply seeking to ensure that schools and districts effectively serve their students, NCLB’s authors set the extraordinarily ambitious goal that every American child would be proficient in reading and math by 2014. In so doing, they took the language and mechanisms of standards-based education reform and married them to a policy agenda that owes more to Great Society dreams and the civil rights initiatives of the ’60s than to any contemporary vision of disciplined education governance. In short, educational accountability à la NCLB is more a form of moral advocacy than a sensibly designed set of institutional improvement mechanisms and incentives.

Federal policymakers ought to be more realistic about what they cause to happen in K–12 education, acknowledging that Uncle Sam is not adept at finely calibrated, escalating sanctions of the kind that NCLB expects states and districts to execute. Rather than imposing an incremental cascade of remedies, the feds should insist that states label schools that need help; act to strengthen those schools; and shut down, replace, or turn inside-out schools that resist improvement. That kind of mission is better attuned to Washington’s strengths and more closely resembles the recipe that Uncle Sam has used to an excellent effect in reforming welfare. Simultaneously, choice programs should provide decent options to students—but for the sake of the

children, not with an expectation that they will improve malfunctioning schools.

2. Create a National Standard. Almost everywhere, compliance-style activity is underway as state and local officials attempt, sometimes cynically and sometimes in good faith, to fulfill NCLB’s formal requirements and keep the money flowing. NCLB’s remedies do not actually require states, districts, or schools to do better; they only require that states and districts comply with the statutory interventions. The law is frequently misunderstood as demanding student academic proficiency. In fact, it only requires compliance with the guidelines regarding reporting of data, spending, planning, and adoption of interventions. So long as officials do this, whatever their progress or non-progress in reading and math achievement, they are in compliance.

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Washington should trust states to turn around their own schools, but all schools should be measured against a single set of national standards and uniform national tests, at least in the core subjects of math and reading. (This presupposes that such standards and tests can be competently and coherently designed—and not by politicians.) This would permit parents, educators, and officials to see clearly how their schools or states are doing. That strategy has the great merit of sorting out roles and responsibilities in the school reform domain, though we recognize that “national testing” will prove unpalatable to many Republicans and that “trusting states” will appall many Democrats. It is urgent, however, to distinguish the actions that the federal government can do well from those that must be entrusted to others.

3. Retain State Autonomy, but Implement Early, Authentic Intervention. NCLB’s remedies are not, in fact, being used much (especially school choice and SES), or are being deployed in their mildest forms. Little NCLB-inspired choice is occurring, SES participation rates remain laughably low in most places, and there is scant evidence of systematic school restructuring. Nor do

states and districts appear to have the capacity to restructure more than a handful of schools, and certainly not the hundreds—soon to be thousands—that the law has flagged as warranting such interventions.

Instead of mandating “one step per annum” over a seven-year sequence, NCLB should offer states and districts the option of interventions that span several years. For example, if a school fails to make AYP (properly calculated) even for a single year, it would go into corrective action *and* its students would have access to SES *and* they would have the right to leave for other schools. This phase would last four or five years, during which time the state or district could do whatever it preferred to improve the school’s effectiveness, and any federal rules, mandates, or spending restrictions that get in the way could be waived. The goal is to empower hard-charging superintendents and principals—and to encourage others to charge harder, knowing that Washington and their states would abet, rather than impede, them. For example, collective bargaining contracts that obstruct the reform of faltering schools should be set aside. (The Bush administration recently made a similar proposal.)

By the same token, if the school does not begin to make AYP during that four- or five-year period of corrective action, the hammer would come down—no loopholes. After a certain point, when schools have gone several years without showing sufficient improvement, the interventions would be truly draconian. Such schools would be closed (with their buildings recycled to house new schools). In other words, a presumption of good intention in the initial years is appropriate, with the law providing essential political cover and local muscle to cleareyed reformers. NCLB should therefore be designed to *replace* persistently ineffective schools.

4. Adopt Credible, Enforceable, and Fair Remedies.

Education scholars David Plank and Christopher Dunbar suggest that the imagined threat of NCLB restructuring in Michigan has fostered a sense of urgency at low-performing schools. In some locales, it has brought an urgency and focus that had previously been lacking. It is possible that the actual design and operation of the remedies are not as important as their mere existence—and the mythology that envelops them. The problem is that this “Wizard of Oz” phenomenon—in which NCLB matters not for what it actually does, but because it creates a scary presence “behind the curtain” that can be used to prompt otherwise painful changes and be blamed for difficult decisions—may not last.

For any of this to work as intended, both parents and educators need to have confidence in the reliability of AYP as an identifying mechanism; any version of this scheme goes to pieces if states or districts are ordered to shutter schools that fair-minded observers regard as reasonably effective. AYP determinations must be better attuned to schools’ effectiveness (i.e., “growth” or “value-added” as well as absolute performance) and better at distinguishing between schools in serious trouble and those that succeed with most of their students. (The administration’s 2007 recommendations point toward the possibility of AYP “growth models” for all states; several states are piloting them today.) Right now, the law identifies hundreds of generally competent schools as failing, and pushes states either to set unrealistic targets that ensure that this designation will apply to many more schools or else to dumb down their standards. As long as NCLB ensnares relatively effective schools in a confusing web of remedies, it will prove difficult for even the best-intentioned implementers to make work.

In addition, the annual identification of school status needs to happen far faster than it does currently so educators, policymakers, and parents know a school’s status well before the next school year begins. The incapacities of the testing industry must not be allowed to perpetuate the dysfunctional practice of delaying such information until August or October. *All* NCLB remedies require that a school’s status be determined annually. Ensuring the accuracy of such determinations has combined with the failings of overburdened, underaccountable testing firms and balky data systems to produce an unworkable timetable. After the 2005–06 school year, sixteen states were unable to finish identifying their “needs improvement” schools before September—after the 2006–07 school year had already begun. For the interventions to work, states must radically alter their testing and data processes so that school identification is made—and publicly reported—in weeks instead of months.

5. Improve Information Flow and Compliance Monitoring.

NCLB works very differently from state to state. In some states, its prescriptiveness impedes the state’s own approach to standards-based reform, as in Florida, where NCLB mandates the restructuring of some schools that simultaneously earn honors grades from the state’s accountability system. Certainly the federal law sows confusion where, as in California, there are discrepancies in school ratings between state and federal models. In particular, NCLB’s crude pass-fail grading system and its

mandated restructuring are complicating homegrown improvement strategies in such leading reform states as Florida and Massachusetts.

Parents, in particular, need better, faster, and clearer information about their SES and school-choice options. These remedies also demand the monitoring of SES providers, focusing on actual delivery of services, creating better templates for communication and evaluation, and supporting districts that do their best to make them work. States should conduct regular audits to encourage districts and schools to pay attention to customer service. It also makes sense to provide both SES and school choice simultaneously to students whose schools need improvement. A longstanding concern is the conflicted role that districts play as both SES providers and the “gatekeepers” charged with negotiating agreements with private providers. This arrangement asks districts to do unnatural things, work against their own interests, manage responsibilities for which they are not equipped, and engage in activities they regard as peripheral. The cleanest solution is for districts to stop controlling access to SES. Instead, states should explore how they could provide for other public or private entities to assume those responsibilities. Meanwhile, states must be required to monitor and report on the effectiveness of providers.

6. Promote More Choice More Often. Choice poses a particular challenge to school districts: they do not like losing money (which happens when parents send their children elsewhere or choose outside providers to deliver SES), yet they do not mind their teachers earning extra dollars on the side. Private tutoring providers are loath to be regulated by hostile state authorities and may not teach in ways aligned to district curricula or state tests, but they definitely want to maximize enrollment. Parents get their choice and SES information through the school, however, which has little reason to steer them to outsiders who would take district funds and not necessarily help schools make AYP. In the end, there has not been much competition, demonstrably effective remediation, or evidence of innovation.

If choice is to be a serious element of NCLB, as we believe it should be, the law’s unworkable SES provisions need to be overhauled, and other choice options—including interdistrict choice, greater capacity via a flood of high-performing charter schools, and the inclusion of academically effective private schools—need to be seriously considered. The Department of Education must

abide by its position that a lack of capacity is no excuse for failing to provide choices. Washington might require that districts find ways to offer more options—i.e., introducing virtual schooling, expanding the capacity of effective schools, or raising state charter-school caps—or lose federal dollars. It should, at the very least, make clear that states need to get out of the way and allow entrepreneurs to try to meet existing needs.

7. Provide Competent Help. Many states and districts need expert assistance to fix their troubled schools. Most lack such skill capacity. This is not just an education problem, of course. Yet we know of no sector, public or private, in which thousands of entities are each capable of assembling the know-how, talent, and organizational machinery to turn around troubled operations. Instead, such capabilities tend to be concentrated in a handful of organizations such as turnaround specialists and niche consultants.

If revitalizing low-performing schools is to occur with any consistency at scale, the nation will need to develop a set of effective operators capable of contracting with multiple districts or states to provide the oversight, leadership, knowledge, and personnel to drive restructuring. Operating on that scale will permit specialization and cooperation, and allow providers to build deep expertise. Washington cannot create this capacity, but it can provide resources, underwrite research, and encourage states to embrace nonprofit and for-profit entities that show a record of success.

8. Insist Upon Real Consequences for Failure. The challenges posed by remedies raise fundamental issues of federalism as well as doubts as to whether the 1960s architecture, so reliant on state education agencies and local school districts for implementation, is even suitable for a reform regimen in which the behavior of those very agencies requires changing. Such steps require somebody to drop the hammer. Today, that somebody is the district, in the case of schools, and the state, in the case of districts. Yet neither hammer-wielder has shown much inclination to take politically tough action. Meanwhile, colleges of education have done an abysmal job of providing school or district leaders with the skills to turn around troubled schools, while licensure arrangements ensure that nearly all principals and superintendents are trained in those institutions. The threat of federal dollars being withheld is all but toothless, mainly because Congress restricted this penalty to “administrative dollars,” and applied it only to

failure to submit acceptable “plans” to Washington, not to weak academic performance.

In reauthorizing NCLB, Congress should introduce real consequences for failure and incentives for success. The law’s current interventions create little urgency for individual educators or school or district leaders. Federal policymakers should encourage states and districts to adopt personal consequences for inadequate performance and failure to improve. Superintendents and principals should be held responsible for their schools’ outcomes—rewarded when those outcomes are good, penalized when they are not. While many of today’s calls for performance pay focus on rewarding teachers for test score results, the most fruitful place to begin is by ensuring that the executives have skin in the game.

A Looming Wreck?

NCLB began with the noble yet naïve promise that every American student will attain proficiency in reading and math by 2014. While there is no doubt that the percentage of proficient students can and should increase dramatically from today’s approximately 30 percent level, no educator believes that universal proficiency in seven years is a serious goal; only politicians promise such things. The inevitable result is cynicism among educators and a compliance mentality among public officials.

In critical ways, NCLB amounts to a civil rights manifesto dressed up as an accountability system. This provides an untenable basis for serious reform, as if Congress had declared that all American cities would be crime-free by 2014. The law is also pushing states to move aggressively in too many schools at once, ensuring that

capacity will not match the challenges at hand. In this light, revamping the remedies begins with the need to refashion the statute as a clear-minded accountability system rather than an aspirational one. The failure to do so portends an eventual public backlash that will not only threaten NCLB, but may also discredit the years of clear thinking and coalition-building that have characterized educational accountability since the release of *A Nation at Risk* nearly twenty-five years ago.

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Whatever the political value of promising to “leave no child behind,” the results thus far threaten to undermine two decades of hard-won gains in educational accountability. NCLB’s dogmatic aspirations and fractured design are producing a compliance-driven regimen that recreates the very pathologies it was intended to solve. It is time to relearn the lessons of the Great Society, when ambitious programs designed to promote justice and opportunity were undone by utopian formulations, unworkable implementation structures, and the stubborn unwillingness of supporters to acknowledge the limitations of federal action in the American system.

AEI editorial associate Nicole Passan worked with Messrs. Hess and Finn to edit and produce this Education Outlook.