



A Policymaker's Guide to No Child Left Behind Reauthorization

This spring, Congress is considering the long-overdue reauthorization of the No Child Left Behind Act. In the 14 years since the law was passed, AEI Education has devoted extensive analysis to how it worked in practice. We have distilled our work into a series of brief chapters to provide a one-stop shop for understanding why the law was passed, what went wrong in its implementation, and what lessons we have learned. Some key takeaways:

- The No Child Left Behind Act (NCLB) resulted from decades of frustration that the federal government was spending billions of dollars on K–12 education without establishing an effective way to measure the impact.
- Although NCLB passed with a large majority, its passage required compromises that made the bill cumbersome and at odds with America's federalist system.
- As Congress considers reauthorizing NCLB, it should consider what the federal government can and cannot successfully do to improve K–12 education.



1. How We Got Here

Key Points

- NCLB is the most recent manifestation of the Elementary and Secondary Education Act of 1965 (ESEA), intended to raise student achievement by providing funds to schools serving disadvantaged kids.
- Lawmakers in the 1990s were frustrated that increasing education spending under ESEA didn't seem to be making a difference.
- NCLB attempted to remedy that shortcoming by mandating testing, transparency, and accountability, but it is now being used as a lever for the federal government to legislate state policy.

As some are quick to point out, the Constitution leaves education to the states. How, then, did we get to a place where the federal government not only funds schools but also prescribes standardized testing, imposes “remedies” on underperforming schools, and generally dictates state policy?

In 1965, as part of President Lyndon Johnson's War on Poverty initiative, Congress passed the Elementary and Secondary Education Act (ESEA). The Johnson administration made rather grand promises that ESEA would boost the achievement of disadvantaged kids and help break the cycle of poverty. At the end of the day, all the law really did was move federal money toward schools with higher concentrations of impoverished students.

This was, and is, generally accepted as a necessary and worthy function of the federal government. But there was one glaring problem from the start, and it was raised not by a conservative critic, but by Robert F. Kennedy: there was no way to know if the extra federal money allocated by Title I of the law actually helped kids. For several decades, ESEA remained essentially intact, but in the 1990s liberal lawmakers such as Senator Ted Kennedy and Representative George Miller grew frustrated that increasing education spending just didn't seem to be making a difference for kids. And they felt that state leaders and superintendents showed a lack of urgency when it came to digging into all this and doing something about it.

In 1994, President Bill Clinton pushed for some minimal transparency requirements around student outcomes. He wanted states to annually assess one elementary-school grade, one middle-school grade, and one high-school grade in reading and math and to issue a report card with the results. There were to be no consequences, and he offered new federal funds to support the effort. Yet when Clinton left office in 2001, only a handful of the states that had taken the money had actually done what they'd promised.

When George W. Bush campaigned for the presidency, he promised aggressive national action on education. At the very least, he asserted, the federal government could expect transparency in return for the money that it was spending on schools. His blueprint required states to test on reading and math in grades three through eight and report disaggregated results so the public could see the disparities in achievement between districts. It also included strong provisions for accountability and choice.

In the bipartisan legislative process that resulted in the No Child Left Behind Act (NCLB), Sen. Miller and Rep. Kennedy inserted the “remedy cascade” of federal sanctions for failing schools, and Congress declared that all schools needed to make adequate yearly progress (AYP) toward 100 percent proficiency in reading and math scores by 2014. Lawmakers assumed that the law would be reauthorized long before then, but it was not. So, under federal law, the majority of schools in America were defined as “failing” and subject to the remedy cascade.

The Department of Education offered states a deal: it would grant sanctions relief if states adopted the department's preferred policies, such as those on teacher evaluation and college- and career-ready standards. NCLB still mandates standardized testing in exchange for Title I dollars, but it also serves as carte blanche for the Department of Education to set state policy agendas. This has caused significant pushback against federal intrusion in education.

Source: Frederick M. Hess, *The Cage-Busting Teacher* (Boston, MA: Harvard Education Press, 2015).



2. Three Inconsistent Theories of Government

Key Points

- There are three reform models embedded in NCLB: one focused on promoting transparency, one focused on imposing sanctions, and one focused on setting ambitious performance goals.
- While each of these models is plausible on its own terms, they use different mechanisms to promote different levels of federal involvement.
- Because little attention was paid to reconciling the inconsistencies within the final bill, NCLB is not internally coherent and has not functioned as intended.

When President George W. Bush first proposed the legislation that would become 2001's No Child Left Behind Act, he envisioned a national model of education reform similar to the program he had implemented in Texas. Texas had a standards-based accountability program that included charter schools and other school choice options. Within days of taking office, Bush dispatched a 26-page legislative blueprint, which drew heavily on this model, to promote a forceful federal role.

From the outset, Bush insisted on gathering bipartisan support. While politically expedient, the process of reaching a compromise made the final result rather incoherent in its vision of what the federal government could do. The final version awkwardly welded together three inconsistent theories of educational change.

The first theory was that change would occur by making student performance more transparent. NCLB required states to break down student performance based on subgroups: racial and ethnic minorities, students with disabilities, low-income students, and students whose first language is not English. All subgroups had to make AYP, which was central to the law's rhetoric: because no child would be hidden by a school's average test scores, the law would ensure that no child was left behind. Achievement gaps would no longer be hidden, but put on full public display.

The second model of educational change sought to use behavior-modification accountability methods, popularly known as sanctions, to force low-performing schools and districts to set goals, assess effectiveness, and do better. If a school fails to make AYP two years in a row, it is labeled "in need of improvement," which is the first stage in the federal government's remedy cascade for fixing failing schools. Each year, the sanctions get progressively tougher until ultimately, the school may be forced to restructure itself into a charter school, replace the majority of its staff, or submit to state control. These sanctions are the teeth of NCLB.

The final model of educational change set shoot-for-the-moon targets and used the federal bully pulpit to exhort state and district leaders to improve. NCLB's charge was that states ensure that, by 2014, all students are performing at or above proficiency. In creating this universal proficiency mandate, NCLB assumes that states and districts that long permitted schools to fail to educate children would display the fortitude, ingenuity, and capacity to turn them around. No educator believes that; only politicians promise such things. The inevitable result is weary cynicism among school practitioners and a compliance mentality among state and local officials.

These models may be independently plausible, but they use different mechanisms to promote different levels of federal involvement. NCLB's grand aspirations were saddled with sputtering machinery and weak sanctions, overlooking the fact that effective behavior-changing regimens are rooted in realistic expectations and joined to palpable incentives and punishments. Because NCLB nevertheless chose to link the three models together, the system is not internally coherent. Through a well-intentioned attempt at compromise, NCLB became a Rube Goldberg-like assemblage of ideas that don't fit together and don't function as intended.

Sources: Frederick M. Hess and Chester E. Finn Jr., "Crash Course: NCLB Is Driven by Education Politics," *Education Next* (Fall 2007), http://educationnext.org/files/ednext_20074_40.pdf; and Chester E. Finn Jr. and Frederick M. Hess, "On Leaving No Child Behind," *The Public Interest* (2004), www.nationalaffairs.com/doclib/20080710_20041573onleavingnochildbehindchesterefinn.pdf.



3. Broken Promises and Counterproductive Initiatives

Key Points

- NCLB had the capacity to provide greater transparency on student performance, but the accountability system undermined the credibility of information provided by the standardized tests.
- NCLB's "highly qualified teacher" provision sought to direct better teachers to poorer districts, but ended up obscuring the indicators of well-qualified and poorly qualified teachers.
- Supplemental educational services (SES) were intended to give students in failing districts money to buy tutoring, but by constructing a poorly designed market, SES failed to serve kids as intended.

Several of NCLB's provisions led to un-kept promises and counterproductive initiatives. NCLB imposed blunt, uniform remedies on a diverse set of schools and communities, and charged the federal government with managing programs and efforts that were beyond its control.

The federal government's call for greater data transparency, highly qualified teachers, and supplemental educational services (SES) are just a few examples of how NCLB fell short. The common denominator is that each of these seemed like a simple and sensible idea to congressional staffers but each became counterproductive when it hit the complexities of governance in the federal system.

NCLB intended to provide transparency on school achievement. But the pressure on schools, applied by NCLB's results-based accountability system, undermined the credibility of the sought-after transparency. NCLB's accountability system was driven by schools' ability to make AYP, determined by states' annual reports of their students' test results in reading and math. In effect, states began to game the system, either through outright fraudulent reporting or by gaming the system by keeping the AYP bar low to minimize the number of schools that would be deemed as failing. Therefore, the information the reporting revealed became questionable as states and schools skirted the punishments tied to test results.

A second unfulfilled NCLB promise was the "highly qualified teacher" (HQT) provision. Lawmakers identified a disparity in teacher quality across schools: the teachers in the poorest schools were often the least qualified. Then, they identified the alleged qualifications of a HQT—a bachelor's degree, demonstrated knowledge of his or her subject area, and either a state teaching certification or a passing grade on the state teacher licensing examination—and exhorted and pressured states to direct HQTs to underperforming schools. States reacted by lowering the bar, resulting in a generation of teachers becoming "highly qualified," at best making the initiative little more than words on paper, and at worst obscuring human capital disparities.

SES was an NCLB provision that gave students money to buy extra tutoring if they were in a failing district. But districts were tasked with playing the role of both regulator and provider. SES claimed 20 percent of a district's Title 1 budget, so districts had little incentive to let that budget leave their system, and the federal government did little to ensure that high-quality providers would enter to meet market demand. There were not enough providers to serve students, the providers that entered clustered in urban areas, and the program lost political support.

Source: Finn and Hess, "On Leaving No Child Behind."



4. NCLB Was Inconsistent with Federalism

Key Points

- NCLB was the culmination of the federal government exerting greater and greater power over time.
- Because NCLB's mandates surpassed the limits of a federal system by acting on precincts rather than states, NCLB cracked under pressure.
- NCLB's architects evinced little comprehension that they were breaking with the traditional structures of government, yet were surprised when the law proved extremely difficult to implement.

In 2001, NCLB carved out a newly aggressive role for the federal government in education, with the goal of having every student proficient in reading and math by 2014. Despite a strong tradition of state and local control of education, NCLB allowed the federal government to police the quality of K–12 education, enforce punishments, and provide incentives for improvement. This development was at odds with the federal structure of American government.

To be sure, NCLB was not the first example of an American president dreaming big. Picture John F. Kennedy pledging in 1961 that “America will get 75 percent of the way to the moon by decade’s end.” But dreams such as these differ from the dream of NCLB in one crucial respect: NCLB sought to change precinct-level, rather than state-level, behaviors. That distinction makes NCLB inconsistent with the spirit of federalism, and therefore much less likely to succeed.

NCLB pushed Uncle Sam’s hand down harder and harder with ever-more-elaborate provisions to keep states, districts, and schools in line. President Bush superimposed a hodgepodge of proposals on top of the pragmatic architecture that had existed since Johnson’s Great Society programs. The result was an incoherent bill that exceeded the bounds of federalism and did not produce the intended results.

As NCLB implementation proceeded, the federal government imposed its will more and more, and federalism began to break down. Federalism’s foundation is a hierarchy of responsibility extending from Washington, to state education agencies, to local school systems, to schools, and, finally, to classrooms. This foundation has been the basis of federal education policy since the initial passage of the ESEA in 1965. But it was never designed to support a results-based accountability system or to repair schools and districts, as NCLB charges it to do, and so it cracked under the pressure of delivering results via mechanisms it was unequipped to handle.

NCLB’s architects seem to never have anticipated this response. They never paused to ask whether a hierarchy decently suited to distribute money via formulas could manage a very different and much more aggressive federal role in school improvement. In a federal system, federal officials must legislate and act with an eye to what they can and cannot constructively do. The Great Society programs focused entirely on forcing recalcitrant states to adopt specific changes. They dreamed big but had clear goals and stayed within their bounds. This is the kind of role in which federal leadership has a reasonable record of success, because it is consistent with the governmental structures in place. Figuring out where to draw the line is not terribly complicated but does require at least a modicum of critical thinking.

Source: Hess and Finn, “Crash Course: NCLB Is Driven by Education Politics.”



5. The Proper Role of the Federal Government

Key Points

- NCLB has made education reformers wary of future federal involvement in education, but the federal government can empower state and local governments by providing them with uniform measures of school performance.
- Washington can invest in basic research that will yield better teaching strategies.
- Federal actors should lower barriers to entry to weaken education monopolies.

NCLB has made education reformers wary of future federal involvement in education, but the often-heard refrain of “getting Washington out of education” is not necessarily productive. So what is the proper federal role?

Since Ronald Reagan’s administration, Republicans have vowed to eliminate the Department of Education, yet it persists. The federal government has recognized a compelling national interest in the quality of American education. A fruitful approach would be to limit Washington’s involvement to tasks for which it is uniquely suited and that respect and embrace the basic tenets of federalism and America’s constitutional design. Four such roles fit this mold.

The first deals with the public good of providing accurate, comparable measures and information needed to help empower parents, voters, and other stakeholders. Requiring that these data be uniformly collected and reported is a sensible role for the federal government. Indeed, the federal government already accomplishes something similar in the realm of interstate commerce by requiring a standard of weights and measures in all 50 states, a power specifically enumerated in the Constitution.

The second is to support high-quality, basic education research. Breakthroughs in basic research often require substantial investments with uncertain payoffs, making it likely that the private sector would underprovide this valuable public good. If pursued sensibly, initial federal investments would yield early findings that could then be harnessed by the private sector to produce new, more-effective teaching methods.

The third enlists the federal government to break up education monopolies. Many have criticized the public-education monopoly, yet little has been done to encourage competition. Future reformers should consider deregulating schools by eliminating teacher certification schemes and similar barriers to entry to challenge the status quo.

Finally, the federal government can help lift the burden of bad past decisions and policies that block state and local actors’ reform efforts. Imprudent decisions are not easily undone, as there are political risks and self-interested actors who prefer the status quo. The federal government could intervene by supporting state leaders who wish to undo old regulations, similar to *Race to the Top*.

Source: Frederick M. Hess and Andrew P. Kelly, “A Federal Education Agenda,” *National Affairs*, no. 13 (2012).



6. Steps in the Right Direction

Key Points

- Reauthorization should retain NCLB's requirement and require states to disaggregate student outcomes and report them in a manner that meets NCLB's requirements.
- The federal government should not punish schools, but rather encourage states to annually report their policies around identifying and aiding schools in need of improvement.
- Switching to a neutrality test in which states document how they allocate resources to schools would allow the consolidation of federal funds in school-wide Title I programs, permitting schools and districts to creatively rethink their use of resources.

Reshaping NCLB work better for American schools and students requires an honest survey of its most problematic requirements, and proposing concrete recommendations.

While NCLB's accountability system receives the lion's share of the attention, other provisions are equally significant when it comes to what occurs in American schools on a daily basis. These include the important but often overlooked Title I provisions, which determine how schools are able to use Title I funds for purchasing goods and services. For NCLB to work, it must align incentives with objectives and provide enough flexibility so that Washington is not routinely asked to make nuanced decisions on district or state practices.

First, reauthorization should retain NCLB's requirement of annual assessments in reading, language arts, and mathematics for students in grades 3 through 8 and 10 through 12, and of assessments in science one time between grades 3 and 5, 6 and 9, and 10 and 12, respectively. It is critical that state stakeholders can make informed decisions when it comes to their schools. States should disaggregate student outcomes and report results in a manner that meets current NCLB requirements.

Second, lawmakers should recognize that NCLB's experiment in identifying schools in need of improvement and prescribing a remedy cascade for those schools has failed. Washington does not know how to make schools improve to increase academic progress, and its past efforts to do so have yielded little more than red-tape procedural compliance. Instead of the federal government setting mandates around school improvement, states should clarify and annually report their policies around identifying schools in need of improvement, their strategies for making the improvements, and the consequences for failing to make improvements.

Third, NCLB's funding provisions are also in need of repair. This is made obvious under the "supplement, not supplant" (SNS) provision. SNS says that districts must use additional funds to add new services for students rather than as a tool to reorganize the services that they do provide in a way that detracts from their existing programs. This sounds good in theory, but in practice it prevents schools from creatively rethinking what they offer students.

If districts are able to document that the manner in which they allocate state and local resources to schools is "Title I neutral," they should be clear of suspicion around supplanting nonfederal funds with Title I dollars. This would promote the consolidation of federal funds in school-wide Title I programs, and allowing districts to annually report to the Department of Education their school-level expenditures would allow for spending comparability across schools to ensure that districts strategically and equitably allocate resources.

Sources: Raegen T. Miller, Frederick M. Hess, and Cynthia G. Brown, *Reauthorization of the Elementary and Secondary Education Act Offers a New Chance to Improve Education: Joint Recommendations on Needed Changes to Title I* (AEI and the Center for American Progress, 2012), https://cdn.americanprogress.org/wp-content/uploads/issues/2012/03/pdf/titleI_rec.pdf.



7. Some Bold (but Modest) Reforms

Key Points

- Policymakers should develop a bankruptcy procedure for underperforming Title I schools to shed their obligations to unions and other rent-seeking bodies.
- The federal government should strive to correct the failure of the basic education research market by allocating federal funds away from programs that micromanage state and local governments and toward the Institute of Educational Sciences.

NCLB was an ambitious, well-meaning education policy that nonetheless fell short of its lofty goals. Future reformers should remember NCLB's legacy and consider that it's better to judge policies by their results than their intentions. We conclude our series on NCLB by offering two modest policies that fall within the proper scope of the federal government and could resuscitate American public schools and provide a brighter future for America's young minds.

Our first suggestion is to allow certain school districts to file for bankruptcy. The Constitution vests Congress with the authority to set a bankruptcy code. Private firms have embraced bankruptcy as a last resort to get their fiscal houses in order. Yet in the mid-1990s, revisions to the code allowed states to block municipalities from filing for bankruptcy. As a result, not even a handful of the nation's 14,000 districts have successfully applied since that time. Policymakers can help roll back counterproductive policy regimes by devising a bankruptcy code that would allow schools to break free from their prior obligations.

School districts receiving Title I funds that are deemed by their states to be performing poorly could petition for relief from their contractual obligations to unions and others that prevent them from improving schooling. By pursuing solvency through bankruptcy, districts could spend federal funds in ways that would put children's education first. Such a bankruptcy program may also encourage teachers unions to moderate their demands and align their interests with schools' fiscal health.

Second, we suggest a sustained, scientific approach to school reform. The federal government should promote high-quality basic education research that will help identify new and improved methods of instruction. The federal role here is crucial, since the private market may not reap rewards from basic research and hence not make the required financial contributions.

Thanks to the establishment of the Institute of Education Sciences in 2002, scientists have pursued rigorous education research. With a relatively small budget of \$250 million a year, however, breakthroughs are not occurring quickly enough. Policymakers ought to consider diverting funds away from federal programs that dictate state and local practices and toward the broader public good of basic research in fields such as cognitive science and human learning. Findings could then be harnessed by the private sector for profitable ventures, as is currently the case with the National Institutes of Health and the pharmaceutical industry.

Sources: Hess and Kelly, "A Federal Education Agenda."