

Why Congress Must Act to Reauthorize No Child Left Behind



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It has been fourteen years since Congress last took a major stance on federal education policy by passing an updated *Elementary and Secondary Education Act* (ESEA), the most recent version of which was 2001's *No Child Left Behind* (NCLB). Despite the bill's expiration eight years ago—and multiple attempts to address its widely acknowledged flaws—Congress has yet to get a new law across the finish line. However, the passage of a new bipartisan conference report blending the House- and Senate-passed updates to NCLB offers the best opportunity in a decade and a half to bring about much needed changes to federal law around K-12 education in this country. Like any bipartisan compromise, no one side is getting exactly what they would want out of the *Every Student Succeeds Act* (ESSA). But frankly, the country needs a new law because the status quo is untenable. Here's why the past, the present, and the future necessitate an ESEA update.

The Past

Despite the many critiques of NCLB, very few dispute the fact that the law played a critical role in holding states and

districts accountable for educating *all* students for the very first time. Prior to NCLB, it was commonplace for schools to obscure data and systematically ignore the academic needs of vulnerable student populations, such as students of color, English language learners, and students with disabilities. Before NCLB required schools to test at least 95% of their students, only one state in the country was meeting that threshold for students with disabilities (while many of the others simply encouraged those students to stay home on test days).¹ Even worse, states did not have to release data showing how different groups of students were faring, making it easy for states to hide the progress (or lack thereof) among students of color, low-income students, or other groups that tended to slip through the cracks.

NCLB's requirements changed that, making it infinitely harder to hide the performance of certain high-needs groups of students who may be falling behind. NCLB required statewide standards and assessments, ensuring all students were held to the same expectations, regardless of their zip code. And the law's strong accountability provisions—including the goal of reaching 100% math and reading proficiency by 2014—forced schools to raise expectations and pay closer attention to the needs of all students. It is no wonder that after decades of stagnant scores, the last 15 years of accountability have brought measurable gains for students across the board, with the biggest gains during the NCLB era concentrated among the kids who needed them the most (see "[Did No Child Left Behind Work](#)" for the data).²

But while NCLB played a key role in pushing academic accountability in the right direction, many have critiqued the law for being too heavy-handed and one-size-fits-all in its approach. Concerns about states lowering the bar in terms of academic standards and "teaching to the test" and frustration with an unrealistic threshold that would label nearly 100,000 schools as "failing" have led to a significant backlash in public opinion. This animosity toward NCLB has been most prominently evident in the recent opt-out movement, which encourages kids to skip standardized

testing, threatening to once again obscure critical measures of achievement for students. In addition, the requirement that low-performing schools implement a federally-prescribed series of escalating interventions each year, regardless of which goals they missed, continues to chafe local and state decision makers. Unless Congress acts now to finally pass a more balanced law that properly restores some state flexibility while maintaining essential federal guardrails—which the ESSA does—it seems very likely that pressure to address the ills of NCLB will end up causing lawmakers to overcorrect and “throw the baby out with the bathwater” with future reauthorization attempts, ultimately rolling back the significant progress our country has made over the last decade and a half.

The Present

While many may dislike current law under NCLB, the reality is that since 2012, most states have been operating under a system of waivers which allow them to bypass the original process laid out in the law in exchange for meeting a set of goals outlined by the Obama Administration. This patchwork system was designed to provide states flexibility from overly prescriptive requirements of NCLB, while continuing to move forward on state-based reforms like higher standards. Yet the waiver system itself is viewed by many as being overly prescriptive, and it is a source of constant uncertainty for states. In order to receive a waiver right now from the Department of Education, states must demonstrate through a rigorous application that they are implementing a series of improvements, such as utilizing college- and career- ready standards and multi-measure teacher evaluation systems, as well as identifying 5% of their schools as “priority” and another 10% as “focus” and intervening to improve them.³

While many of these requirements may be substantively good ideas and are aimed at creating some flexibility in the face of an overly prescriptive NCLB, they offer no stability for states and districts, making it difficult for state and local policymakers to set long-term expectations or plan to meet

more ambitious multi-year goals. This is especially true given that the Obama Administration has chosen to give states different lengths of waivers based on how far along those states are in implementing certain incentivized reforms. For example, waivers were first given out only on a one- to two-year basis, but they have since been expanded to three years for some states, or even four, depending on if they are on-track to fully implement teacher and principal evaluations. Under a waiver system, how long a waiver lasts and what is required to obtain one is totally up to the will of the Department of Education.

In addition, relying on a system of executive waivers sets up a situation in which the requirements could dramatically change depending on who is in charge—a reality that will become all too real if Congress fails to pass a reauthorized bill before 2016. Given that the Obama administration has only one year left in office, maintaining the status quo would leave both the fate and preconditions of the waivers in the hands of whoever comes into office next. And while some may welcome having a President or Education Secretary from their own party in full control of what waivers will entail, a change in leadership and possible direction of waiver preconditions could complicate things even further for states trying to implement long-term strategies and reforms to tackle major problems in their schools. Lastly, the waiver application process itself costs states (and the federal government) both time and money to complete—resources that could be better focused if there were more permanent guidance laid out in federal law. ESSA has made it further than any reauthorization attempt since NCLB's expiration, giving Congress its best chance yet to end the unpredictability the waiver system has imposed on states.

The Future

In the last 14 years since NCLB was passed, there have been significant advancements in classroom technology, school choice, testing, and many more areas of K-12 education—largely positive innovations that should be encouraged, not

thwarted, by federal law. For example, the ESSA would allow states to use computer adaptive testing to measure students where they are, not just paper and pencil tests that measure only proficiency at their own grade level. Such an improvement would provide parents, students, and teachers with personalized information, shedding light on whether a fifth grade student is reading at a first grade level or fourth grade level, rather than just labeling the student as “not proficient.”⁴ It would also allow states to use federal funds to do a wholesale review of their testing requirements from the district level on up, encouraging them to ditch outdated, duplicative, or ineffective tests in favor of better and fewer ones. Most importantly, however, it would give states the ability to experiment with innovative assessments including those that might more effectively measure the skills needed to succeed in a 21st century economy and reduce testing anxiety, including breaking up testing throughout the year to allow for less high-stakes stress and quicker results for parents, teachers, and students.

The new bill would also permit states to invest in early education and specifically target funding towards the development of STEM (science, technology, engineering, and math) programming and partnerships, a critical area of study that fails to garner enough attention under current law.⁵ In addition, the ESSA would enshrine into law the Teacher and School Leader Incentive Fund Grants (formerly known as “TIF”), providing states with the resources to build out much-needed teacher and principal pipelines. Overall, the bill would emphasize an evidence-based approach, ensuring that taxpayer dollars are spent on educational strategies that have a proven track record in helping students. These are just a few examples of the many ways in which a new bill could incorporate and encourage innovation (see "[How the ESSA Addresses NCLB Complaints](#)" for a longer list), rather than cementing policy based on what might have been common wisdom at the turn of the century, like the status quo.

Conclusion

A reauthorization of NCLB through the *Every Student Succeeds Act* gives Congress the opportunity to strike a more thoughtful balance between giving states the flexibility they desperately need to support their students through tailored accountability systems and interventions and maintaining the crucial federal guardrails that have proven successful in the post-NCLB era. This bill maintains the spirit of *No Child Left Behind*, making sure our country's most vulnerable students do not fall through the cracks, while removing many of the unintended consequences that teachers, parents, and policymakers have grown to hate over the last decade and a half. The legislation may not be perfect, but members of both the House and Senate have worked in good faith over the last year to strike a much-needed bipartisan and balanced chord. And with a vote to pass the bill, lawmakers have their best chance yet to right the wrongs of NCLB—past, address present concerns, and move toward a future where every child in the U.S. is equipped with the education he or she needs to succeed in college, a career, and in life.

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END NOTES

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