



A REFORMER'S COURSE OF ACTION FOR THE NEXT GENERATION OF ESEA

DEFINING THE NEEDS OF SUBSTANTIVE EDUCATION REFORM IN FEDERAL PROGRAMS

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Despite the lack of consensus on just about every other issue, both sides of the aisle of the 113th Congress seem committed to get something done to reestablish the federal role in K-12 education in the U.S.

What's even more surprising is that two very different camps are approaching this reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) in seemingly very distinct ways, but may essentially end up at the same place.

With House action taking place in the immediate future, along with the likelihood that a new ESEA may actually get to conference subsequently, it's time for a real education reform perspective to guide the debate.

Numerous groups and organizations have surely filled the halls of Congress over the past several years and more immediately, the past several months to celebrate and herald those Members who seem most to espouse their own programs and points of view. Most, however, seem to be viewing the ESEA debate through a narrow lens.

This paper defines the proper role of federal programs to meet the needs of all education reform strands combined - not just charter schools OR accountability OR teacher quality but ALL - while putting the interests of parents and students first and ensuring the adults around our schools have the authority and freedom to defy the status quo.

THE NEW COURSE - BUILD ON BOTH VERSIONS

Five years overdue, we're in the midst of much debate on the Republican-controlled House version, H.R.5 Student Success Act, and the Democrat-controlled Senate version, S. 1094 Strengthening America's Schools Act. While neither version offer the right balance of incentive and consequence, its

important to look to the lessons of the past to shape the future. What's clear from much of the Committee debate in both chambers is that the best way to move forward on ESEA is to take a little from both sides and build on what there still seems to be a consensus on—that once upon a time, before waivers and broad use of the “safe harbor,” No Child Left Behind (NCLB) had pieces that once worked.

Performance-based accountability should be the goal of any federal funding that is allocated for the express purpose of supporting education, as well as being the basis upon which NCLB was created and the basis upon which all conflicts about that same program today revolve. There are two major and very opposite visions of the federal role and they are visions that were united for a short time when NCLB was first developed.

History is critical if we are to learn from where things went awry. The assumption is often that such history is known by most when in fact it is known by very few, even among those negotiating on Capitol Hill.

ORIGINAL VISION

There was once just one prevailing vision of federal program efforts. This vision was embraced mostly by the leaders of the education establishment who for the 30-plus years after ESEA was enacted in 1965 administered programs that they helped create with their advocacy and significant presence on Capitol Hill. These programs – from Title I and Bilingual Education to Special Education – were implemented largely free from real performance-based accountability. It was conventional wisdom that all the federal government needed to do was to create enough rules to ensure that kids would be served by

the programs, send enough money – and more each year – to states and communities, and the programs' role would be fulfilled. This vision of federal involvement in education supposed that the state and local communities and any special interests should be “trusted” to make decisions about how to teach and what to teach; who could and couldn't teach or administer was safe guarded not only by local and state policies but by strong lobbying at the federal level. By the time NCLB was debated, the federal role was simply that of regulator and check writer. While accountability for funding was often set and demanded, there were no consequences for success or failure.

Enter President George W. Bush, Senator Edward Kennedy and the reauthorization of ESEA in 2001. Hundreds of days and thousands of pages of negotiations, battles and collaboration resulted in a program with actually a simple premise – that federal funds should be deployed to help students succeed, and to determine success they must be measured, with data about their measurements disaggregated to better understand the landscape and challenges. Federal funds should only support improvement; to that end, schools would have to meet certain benchmarks and parents would have options to have their kids supported outside of that school, or given other choices if their assigned school did not live up to the set benchmarks.

What resulted initially was the first national effort to understand the real story in education. With mounds of data being collected and made fully available to the public eye for the first time, no more were ordinary people forced to accept education-speak when important questions were asked. Tests and data about schools would provide a bird's eye view

into communities that later would permit groups like Education Trust to discover and report out the widespread practice of school districts unevenly distributing funds to schools and assigning teachers without regard to where they'd add the most value.

How many recall that recognition of the very real "achievement gap" was a byproduct of NCLB? The public simply didn't know how bad it was until it was revealed by the data that NCLB mandated and was made the law of the land as a condition for federal funding.

But like all federal programs, good intentions are not enough and human nature is a stronger force than even law. Those for whom NCLB meant a completely different way of doing business would rebel and begin to respond to the new mandates by creating unforeseen rules of their own - requiring teachers and schools to become test prep entities rather than leaders of education, and creating a public backlash that is at the heart of today's debate over how best to move forward with a new ESEA. It's not the fault of one political party or another.

TUNNEL VISION

The backlash is evenly distributed among ideologies and political parties:

Local Control Camp

Those who lead state or local school boards and who long for the nostalgia of local control that existed before NCLB have welcomed the waivers that the Obama Administration provided from meeting pre-determined benchmarks but insist that they know best how to spend money. These "local controllers" want simply for the new ESEA to give them structure

but few rules on school improvement, on teacher quality, on programs in general. This camp tends to be represented by the Republicans, with a focus in the House, whose Members seem to want ESEA to be all carrot and no stick. What they fail to realize is that their idea of local control was never really a reality, and that the school boards have become almost as oppositional to consequences for failing as the teachers unions are to education reform in general. Local control isn't really local anymore - it's been replaced by interest group politics that dictate who is local and what is control.

Federal Control Camp

The other camp is led by the leaders of organized labor, the leaders of associations of certain segments of teachers (National Council of Teachers of Math, of English, etc.) of traditional education school pundits and their representatives in Washington. This group includes conventional civil rights organizations that believe money is the root of all problems and that good programs with money will take care of the kids. This camp tends to be most represented by the Democrats in Congress, who argue that the federal government must clearly define how federal funds are spent so as to protect the programs in which members of their camp are fully vested. Their ideas for ESEA require prescriptive spending on programs, so they are protected from people locally who may have other ideas about how to spend it. They have advocated for specific regulations that protect their ideas of how best to do education, while also arguing, like their local control colleagues, that carrots are enough and sticks need not be applied. They, too, like waivers, as they remove an obligation to meet NCLB's 2014 benchmarks for proficiency that the U.S. education system is far from meeting.

While the conventional media punditry – aided by a willing public – dismiss Congressional inaction as incompetency or ideological rigidity, the reality is that these two visions of the way education should be funded, managed and expected to perform are at the heart of every policy battle on education in the Nation today. From board rooms to state halls to associations to charter school research, there are fundamental disagreements about how best to govern education funding when results are so very lacking and the nation's achievement gap remains wide and bleak – even more so than our economic gap.

More importantly, the two visions pay homage to some education reform efforts, but at their core increase federal oversight of reform while loosening accountability on the establishment and status quo. It's the law of unintended consequences but a reality that must be addressed.

A REFORMER'S VISION

To minimize the damage, a new ESEA should include parental choice as well as performance driven evaluations of students, teachers and schools. A new vision must be forged that unites the majorities of the two camps. That of course requires their own constituencies to pressure and to speak up around some very simple, proven methods for ensuring progress in American education and ensuring that federal funds follow and not impede that progress.

Standards and Testing

Consider that rather than setting Common Core as a bar or ignoring it altogether, why not ensure that every state has standards that meet or exceed those of the Common Core, while not imposing the notion of the Common Core on every state? As a condition

for Title I, it's not okay to simply submit to those standards but instead, like a charter contract, states must outline a way to close their achievement gap that includes things like standards, testing, school improvement and turnaround models, online learning and more. Unlike Race to the Top (RTT), such a model doesn't prescribe specific reforms or methods for doing so (such as requiring states to have teacher union buy-in or charters to have to comply with certain rules for participating in RTT grants). Instead the state plan is just that – a plan, and is public and informed by demonstrating a certain percentage of progress on state tests over a three to five year period of time.

This direction addresses the concerns of the local control camp who recognize that the federal government has set in motion a testing regime that is now focused not on results but on test preparation and permits wide latitude in how states might set out to achieve clear goals. It addresses the interests of the federal control camp that wishes to see Common Core all but-mandated as a condition for certain funding pools but permits latitude for states to submit plans that uniquely recognize their own political conditions while still ensuring monies flow to fund those plans.

Teacher Quality and Performance

We know that teacher quality is the bedrock of good schools. Why then would the federal government not impose requirements on states to receive federal money to support teachers? Good teachers deserve a boost up and those who fail to achieve student-learning gains during their tenure need a boost down. There are dozens of ways to do this and all may be equally valid in accomplishing the goal. The local control camp wants no prescriptions on

teacher funding programs and the federal control camp wants money prescribed for teachers and their development but with no real performance evaluation required. The middle road here is easy -- incentives for states to use funds for performance pay and to support any state program that is already based on evaluations -- and the consequence for failing to use these monies to improve student learning should be termination of funding when the state plans are renewed.

In 2004, Bryan Hassel wrote similarly of the middle road: "I think we need to consider a hybrid approach that harnesses market dynamics but also retains a key state role in ensuring quality. We call this model a portfolio of providers model or a multiple-providers model, and the basic idea is that the state's role is to authorize providers of teacher preparation that meet certain criteria."¹

Race to the Top, the federal competition offering winning states a share of over four billion dollars, placed a huge emphasis on teacher quality, developing teacher evaluations that were really appraising a teacher's effectiveness in the classroom and performance pay. When all was said and done, RTT didn't move the ball forward on teacher quality issues, largely because winning states had to receive full support from teachers unions, not known for their willingness to change. The 'Race' was rendered meaningless from the start because no federal law could mandate against the teacher collective bargaining agreements by which local districts are held hostage to. That said, the combination of NCLB and RTT did bring teacher quality to the fore of the reform debate. States and the federal government

recognized that states and districts who took teacher quality seriously -- by creating evaluations that measured academic effectiveness, and by offering real merit pay programs -- were actually making significant academic gains.

Charter Schools and School Choice

The earliest role of the federal government in the charter school program worked well once upon a time in 1997 and gave life to the Public Charter Grant Program under then President Bill Clinton. Bipartisan efforts by Republican Frank Riggs in the House and then Democrat Joe Lieberman in the Senate accomplished unprecedented support for this early and controversial reform from their respective chambers. That original vision, provided much needed start up funds, and incentivized states to adopt charter laws that had high or no caps, operational flexibility and were not limited to school board authorizing. The program was that simple.

It is not so anymore. Today a wide variety of strings have grown attached to the program, and there is less focus on whether state charter laws are strong and more on whether states have shown certain benchmarks--benchmarks that the federal government is ill-equipped to evaluate--for qualifying for funds.

Today's debate on charters seems unified -- at least at the national level. The leaders of the charter school movement's associations argue for more money and more programs aimed at specific kinds of school networks and needs. Such prescriptions drive not accountability but paperwork, and add strings to state education agencies which is problematic as most state laws do not cede authority for chartering to SEAs but to other authorizers, including

¹ Hess, Frederick; Rotherham, Andrew and Walsh, Kate. "A Quality Teacher in Every Classroom: Appraising Old Answer and New Ideas," 2004. <http://www.nctq.org/nctq/research/1109818629821.pdf>

universities, independent boards, mayors or other elected municipal governing authorities, non-profit organizations and local school boards.

NCLB was supposed to affect charter schools like all other traditional public schools, with the key difference being that charters were first held accountable to their authorizer, as defined by state law. Charter schools were supposed to continue to report to their authorizers and simply add AYP to the list of things to be monitored. Charters were not, therefore, to start reporting on their progress to anyone else. Today's recommendations on both sides changes all that and it is cause for concern among real rank and file advocates leading and managing schools.

This was a concern in the earliest discussions of federal support for charter schools. There was debate around NCLB in the early stages on how best to protect charter schools' independence with this federal law to require schools to show yearly academic progress or face sanctions. Language was urged to be included to ensure that charter schools' compliance with this act was overseen by their "authorized chartering agencies" and not the state education agency. Steps were taken in the beginning to ensure their autonomy.

As time has gone on, it's become much more regulated and unnecessarily so. There are now complicated formulas, more money and attempts to regulate charters and charter authorizers from the federal government when no such attempt to regulate traditional public schools and their districts is happening in the same legislation.

When Race to the Top was introduced in 2009, policymakers across the country were declaring it a success for reform. In truth, the impact on reform was minimal, but what it did do was require states to sign off on certain guidelines, such as common core, teacher quality, and various charter law components.

Both the House and Senate versions of the new ESEA will keep the charter schools grant program intact, but each propose changes that state education agencies will interpret as license to directly oversee charter schools regardless of their state law's provisions:

HR 5 (Republicans) proposes to expand eligibility for entities for funding to include statewide entities to foster greater charter school growth. It encourages greater expansion and replication of proven, high-quality charter school models at the state level, and requires states to set aside funding to focus on charter school authorizer quality. The question is how is high quality defined? Those words themselves invite federal officials to make determinations in concert with state education entities that remain hostile to charter schools to this day.

S. 1094 (Democrats) asserts it will create a "successful charter program" where grants will be available for "successful" charter models so that they can create, expand or replicate charter models including through conversion of a public school. Eighty-five percent of federal charter funds would go to this program. In this arena too, someone has to take charge of what "success" means. That assuredly will not be people who understand data and conditions for

success, even with verifiable tests and assessments that are still subject to varying cut off scores and interpretations.

The federal role in charter schools should look a lot more like the Clinton-era program that incentivized states to create a healthy and strong charter school environment for themselves by passing strong laws. It's not up to the feds to dictate or make judgments on which charter school models should be replicated or expanded. That's the role of authorizers and each state's charter marketplace.

On more general school choice efforts, NCLB afforded parents a newfound freedom to leave a school that was failing their child and pick another public school or get tutoring services. Despite foot dragging and bureaucracy and attempts to discredit this opportunity by districts, millions of parents made a choice. They credit that law with having given their children real opportunities but now the consequence of bad schools is removed and supplementary education services (SES) are simply another federal pool of funds that districts draw down. Most districts administer their own SES programs, some still contract with private providers, but few demonstrate the progress seen in the early days of NCLB.

Choice belongs at the state level, and it's unlikely any Congressional Republican or Democrat will ever truly reinstate the ability of parents to vote with their feet. We'd prefer no more damage be done to choice and recommend that the feds stick with ensuring accountability for funds over traditional schools, use a stick when they don't meet their proposed goals and let the states grapple with the finer details of choice and charters.

That said, the federal government could benefit from taking a page out of the recent Supreme Court decision striking down DOMA. Regardless of one's view of that decision, the reality is we now have precedent for a program where federal law is predicated on state law. States that do permit school choice should be permitted to use federal funds to follow students to the schools they attend. This simple prescription, offered repeatedly by U.S. Senator Lamar Alexander over the years, is always rejected as folly for education but perhaps it's time we recognize that state education efforts are often more bold and more innovative and more closely aligned with their needs and federal law that contradicts or impedes that progress should and can be challenged.

CONCLUSION

Despite reformers' best intentions, it is not clear whether or not many have looked at how the language in laws gives people far away from the final signed laws license to create new requirements or stall progress. A Reformer's vision ensures that the federal government be held accountable for its role in education but not seek to control programs and services that are often not even provided for in federal law. We know and agree that the federal government can't dictate what goes on in a classroom it actually has no control over, but the federal role in education must be one that ensures every child's civil right to learn is protected.

As AEI's Frederick Hess said, "A decision to focus NCLB reauthorization on promoting transparency, honest measurements of spending and achievement, and on ensuring that constitutional protections are respected ought not be seen as a retreat from NCLB but as an attempt to have the feds do what they can do sensibly and well."²

The ability of the federal government to ensure that the public's interest is protected, and that education is well managed, is best left to those closest to our families and communities. The federal role should be one of assessment and data gathering, conducting nonpartisan, objective research to support policymaking, and ensuring that the most needy are supported and helped, provided that such support is predicated on success, and not the status quo. It needs to find that right balance of incentive and consequence necessary to ensure that money spent on education actually makes a difference.

Republicans need to take another hard look at their Student Success Act with potential future interpretations in mind and consider talking to local actors more vigorously before taking steps to implement charter and choice provisions. They should also revisit their assumption that local control means what it used to mean - and ensure that accountability for federal spending be restored with clear benchmarks set including the option for the feds to penalize states that fail. The Democrats should similarly reevaluate their instincts on charter funding and remove prescriptive language that reflects certain opinions of what "successful" models should look like and limits innovation as well as a more diverse charter marketplace.

As both laws move toward further national debate and potential conference, it's critical to put these issues on the table with all due speed.



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² "NCLB Reauthorization: Here We Go Again," June 3, 2013, http://blogs.edweek.org/edweek/rick_hess_straight_up/2013/06/NCLB%20Reauthorization:%20Here%20We%20Go%20Again%20.html?cmp=ENL-EU-VIEWS2