

The 1, 2, 3's of NCLB

Testimony for the Commission on No Child Left Behind

Michael J. Petrilli

Vice President for National Programs and Policy

Thomas B. Fordham Foundation, and

Research Fellow, Hoover Institution

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Chairmen Barnes and Thompson, distinguished commissioners: thank you for the opportunity to testify before you today.

I am here as a representative of the Thomas B. Fordham Foundation, a think tank in Washington dedicated to education reform, but also as a supporter (and sometimes critic) of No Child Left Behind. One of the greatest honors of my life to date was serving in the U.S. Department of Education for four years helping to implement this historic act. I enjoyed nothing more than traveling the nation, meeting with educators and citizens and trying to help them understand the law and the opportunity it provided for America's children. Those were often humbling days, as I listened to myriad concerns—many of the same concerns that witnesses have brought before you. In some cases, I came to share them. I also saw, from the inside, how ill-suited the executive branch was for many of the roles assigned to it by Congress. But mostly the experience renewed my faith in the democratic process.

Today I want to discuss the 1, 2, 3's of NCLB: The **one** big decision you as a commission face, **two** big lessons that I take from the law's implementation, and **three** big ideas for the future of federal education policy, ideas that I hope you will come to share and perhaps incorporate into your own report to the nation.

One Big Decision

You have a choice. On the one hand, when drafting your commission report to Congress and to the American people, you could play it safe and provide a list of nips and tucks to the current law—a suggested NCLB, version 2.0. Surely this would be helpful to Congressional staff, as it could serve as a first draft for the reauthorization.

But it would represent an enormous opportunity squandered. For you and only you are in a position to do something much more important—and potentially much more influential. You have the chance to “shoot the moon” and lay out a bold vision—not just for a slightly modified No Child Left Behind, but another big step ahead, a successor to NCLB that is at least as historic as the original. The key question is not how can we fix No Child Left Behind, but instead, what federal education policy does the nation need now—and what policy is possible now, thanks to NCLB? Such an approach could shape the national conversation about education in the years to come in a way that merely listing recommended changes to current law would not.

You are well prepared for this task, thanks to the commission’s many hearings and dozens of witnesses. The ideas are out there—your task is to seize them, and make the case to the American people that our education system must continue to move ahead. In fact, as I’ve watched the commission’s work over these past months, your interest in big ideas has been clear—clearer, it often seemed, than that of some of the people addressing you.

Two Big Lessons from NCLB

Being bold does not necessarily mean asking the federal government to do more. In fact, it is critical to acknowledge Uncle Sam’s strengths and weaknesses, and to give him jobs that he can do well. What can we learn from No Child Left Behind? Here are two big lessons:

1. When given the opportunity, many states and districts will set the bar low.
2. In a cat-and-mouse game with states, the feds almost always lose.

Let's look at the first lesson. Take the foundation of the entire law—the state standards and tests upon which its accountability system rests. As we've heard from many witnesses, rather than set clear, rigorous standards and implement fair, challenging tests, too many states have settled on low expectations and lowest-common-denominator assessments. And many have openly (or covertly) gamed the law's definition of "adequate yearly progress" in order to keep as many schools as possible off the "needs improvement" list.

Or consider the "highly qualified teachers" provision. While born of an admirable impulse—that all children deserve an effective teacher, since teacher effectiveness is the school factor most related to student success—the law settled for clumsy proxies of "effectiveness." Effectiveness, after all, is hard to measure, but paper credentials are not. (Even Teachers College's former president, Arthur Levine, admits the folly of paper credentials.) Little surprise, then, that some states and districts considered the provision as nothing more than a symbolic gesture, and a waste of time. These states and districts have thus retaliated by following the letter, but not the spirit, of the law, finding ways to declare virtually every teacher "highly qualified."

Or study the implementation of the law's "restructuring" provision. While NCLB's authors intended for persistently failing schools to be overhauled, most districts are using a loophole in the law to opt instead for minor tweaks. The impact on the ground is that bad schools seem to endure forever. And to stay bad.

Couldn't the federal government just "get tough" and "crack down" on these laggards? Unfortunately it's not so easy. In a federal system, it is hard to get recalcitrant states and school districts to do something they don't want to do; it's impossible to get recalcitrant states and school districts to do those things well. And many pieces of NCLB can only work if done right. Which few seem to have both the will and capacity to do.

This brings us to the second lesson from NCLB: even when the U.S. Department of Education has tried to play the role of enforcer, it has struggled to get states to comply.

Go back to the AYP example. Early in the law’s implementation, some states figured out that adding a “confidence interval”—basically a margin of error—to their calculations would result in lots of schools getting off the hook. Soon virtually every state was using this methodology, with the effect of lowering the bar dramatically. Only now is the Department of Education working to close that loophole; yet we can be confident that determined states will find another way to shield their schools from the law’s sunshine.

What are the implications? If many states and districts are not on board with the NCLB agenda, and the Department of Education lacks the capacity and tools to force them into compliance, what should federal policymakers do? In my view, they should be rigid about the ends—whether students are learning—and flexible about the means. In practice, this would mean nationalizing a measure of student achievement, while localizing everything else. Such a modest approach is not in conflict with a bold vision; in fact, the two are in concert.

Three Big Ideas

The power of No Child Left Behind came from a couple of powerful ideas. First, that narrowing our nation’s racial and economic achievement gaps should be the top priority of federal education policy. And second, that despite all the challenges posed by poverty and other societal ills, schools could be expected to help all of their students attain proficiency in reading and mathematics.

These simple ideas—while still plenty controversial—have captured the attention of the nation’s schools. Educators are focused as never before on raising expectations for all children, identifying strategies to help the neediest among them and creating schools of which we can be proud.

What big ideas should drive the next historic piece of federal education legislation? I suggest three:

1. Create a new compact between the federal government and the states by implementing rigorous national standards and a workable national test. In this age of fierce global economic competition, we can no longer afford our anachronistic system of fifty sets of standards and assessments. States cannot be expected both to set standards and to hold themselves to account; the time has come for a common benchmark from sea to shining sea. We need world-class standards and a world-class test, one that assesses student proficiency in key areas of the curriculum. (We suggest reading, writing, math, science, and history.) The federal government need not develop the standards and test; a private organization or compact of states could do this. What Washington should do is provide states with incentives to participate in this rigorous testing regime, such as greater resources and flexibility, as described below. The schools in states that participate would be judged according to a national metric of “adequate yearly progress,” which would include a measure of student growth so schools would be encouraged to help all of their students achieve full potential.

This would entail a dramatic shift from the system we have now. It would replace our patchwork of state standards and tests with one common set of expectations. Economies of scale would permit the development of a top-of-the-line assessment, one that measures higher-order thinking skills, includes student writing, and is broad-gauged enough to erase most concerns about “teaching to the test.” By including science and history in its accountability system, this approach would widen the focus of our nation’s schools. By measuring student growth as well as proficiency, it would encourage schools to pay attention to all of their students, including those at the middle and top of the class. And it would make a new federal role possible—one with less micro-management from Washington, fewer cat-and-mouse games between Uncle Sam and the states, and more power for local educators to decide how best to meet the new, rigorous standards. National standards may be the only way to ensure that NCLB realizes its ambition that schools nationwide be infused with high expectations—not watered down ones.

2. In return for higher standards and accountability, give states, districts, and schools greater autonomy and flexibility. The federal government’s focus should rest squarely on results—on student learning. It should be agnostic about how states and local schools attain those results. Thus, federal funds should become fungible; NCLB’s “transferability” provision be expanded to allow states or districts to put all of their federal education dollars into their Title I formulas. Rules and regulations for all other programs would then be waived. States willing to be held to this more rigorous national standard should also be able to opt their schools out of the “highly qualified teachers” provision, since there is little relationship between its paper requirements and teacher effectiveness, which will, in any case, be gauged by student and school performance. School leaders, now accountable for student performance, should gain control over all of the key ingredients of school success—budgets, staff, etc. In this territory, Uncle Sam can help most by getting out of the way.

This, too, would signal a major change. Currently states and school districts receive funding from Washington through dozens of formulas and discrete programs, each with its own rules, regulations, and overhead. Simplifying this funding system would drive more dollars to the classroom; using the Title I formula would target resources most effectively to the neediest students. Giving principals control over whom they hire would also allow them to make critical decisions that are in the best interests of their students. Right now, a crackerjack physics instructor at a community college has to jump through many hoops in order to teach physics in the local high school; accountable principals should be able to use their own best judgment to bring that teacher on staff without hassles from Washington. Such a new approach would also better align NCLB with the accountability-in-return-for-flexibility model of charter schools.

3. Invest billions in creating new high-performing schools. No Child Left Behind helped the nation identify its schools most in need of improvement. The law's accountability system is spurring some of these schools to respond effectively. But thousands of others, predominantly in large urban centers and fringe suburbs, have proven themselves resistant to reform. Federal law should require such schools to be shuttered (no excuses) and their pupils given better alternatives, including an ample supply of new schools. These new institutions must be protected from the dysfunctions that infected today's failing schools: systemic breakdowns like inequity in teacher quality, work rules that impede progress, and unfair funding mechanisms. They should be schools of choice operating under new governance arrangements, outside of traditional school systems, including though not necessarily limited to charter schools. Municipalities should be encouraged to apply for these funds and take the lead in creating the new schools and holding them accountable. Innovative local approaches, such as contracting with high-performing private schools, should be allowed too.

No Child Left Behind intended such a “fresh start” approach with its “restructuring” provision for persistently low-performing schools. But it erred in expecting school districts to have the political drive and organizational capacity to close down and replace failing schools; instead, using a loophole in the law, most have merely tinkered around their edges. Meanwhile, millions of parents have been denied their “public school choice” options under NCLB because in many cities there aren't enough good public schools to go around. While we should do everything we can to turn around failing schools, eventually we must recognize reality, close them down, and start over. In that way we can turn failure into renewal. It is worth recalling that the interests of children are ill-served by continuing to confine them in failing schools—and that the interests of children are what this is all supposed to be about.

Conclusion

I hope that you will embrace these three big ideas—national testing, greater local autonomy, and a massive new schools effort. I also hope you will heed the two big lessons of NCLB—that undeterred, many states and districts will set the bar low, and that Uncle Sam will lose most cat-and-mouse games with the states. Above all, I hope you will make the critical decision to issue a clarion call in your report, rather than just provide a laundry list of technical changes. After all, even if NCLB is so pure that it floats, now is not the time for federal education policy to tread water. When making your recommendations, go ahead and make a splash. Thank you.