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Pacts Americana:

Balancing National Interests, State Autonomy, and Education Accountability



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Introduction

Thirteen years ago, President George W. Bush signed the No Child Left Behind Act (NCLB), a revised and updated version of the Elementary and Secondary Education Act of 1965 (ESEA). With sweeping bipartisan majorities in both the House and Senate, the passage of NCLB appears in retrospect as an act of uncommon comity in an era of hyperpolarized politics. Indeed, the law's once near-unanimous support has since eroded, and Congress has been unable to reauthorize the law—now eight years past its expiration date.

Without question, today's partisan gridlock contributes significantly to congressional inaction across all issues. But strong differences of opinion on key education issues—such as the proper role of testing and accountability and the appropriate deference to local decision-making—are the most important factor in the longstanding ESEA deadlock. In other words, even if Congress were able to temporarily suspend partisanship, it would still find consensus to be elusive.

In 2011, responding to the congressional standstill and growing state and local frustration with NCLB, President Obama allowed states to request waivers from many of the federal law's core elements.

One of the benefits of NCLB was that it applied a single, though admittedly blunt, accountability system to all of the nation's public schools. Though some state variation existed, the terminology around assessments, supports, and interventions were similar across the country.

The waivers changed all of that, perhaps for good.

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States proposed their own, different approaches to measuring school performance, reporting results, rewarding success, and addressing failure. In exchange for flexibility from many of NCLB's rules, states adopted a suite of federally prescribed reforms on standards, assessments, and teacher policies. Though state waiver requests shared significant characteristics (per the U.S. Department of Education's explicit guidance), they varied in important ways.

These waivers served as a release valve for the pressure that had been building up in response to NCLB. In combination, they also acted as a kind of *de facto* ESEA reauthorization package, at least for the 43 states and D.C. that had requests approved: The text of the statute hasn't changed, but 83 percent of U.S. students—more than 41 million children—now attend schools in states operating as though it has.

We're now completing the third school year of the "Waiver Era," and while some states have already lost their waivers and others may follow suit, it appears extraordinarily unlikely that the nation as a whole will ever revert back to NCLB's provisions. In fact, the trend is clear: From NCLB's strict federal rules to the slightly less-standardized waiver rules to the most recent congressional proposals for reauthorizing the law, the next federal accountability law will most likely return to states a substantial amount of discretion.

Though there is passionate disagreement about the exact specifications of this devolvement of authority, we can learn from what's transpired over the last several years. Our decade of experience with NCLB, combined with the lessons of the Waiver Era, teach us a great deal about federal and state K-12 education policy and the politics associated with both.

It is important to underscore at the outset that ESEA itself is essentially a deal between the federal government and the states: Uncle Sam distributes billions of dollars in federal funds in exchange for a list of state activities.¹ If a state decides that the climb isn't worth the view, it is completely within its rights to go its own way on K-12 accountability policies and forgo the annual infusion of federal funds.

Our view is that states should consider this option if they believe the federal government's rules are too onerous. But we also believe that states choosing to continue receiving federal education dollars must be held accountable for producing results with those funds. We are opposed to money for nothing.

In the text that follows, we offer a new approach to the state-federal bargain (results in exchange for funding) at the heart of ESEA accountability. We begin by analyzing the history of K-12 accountability and the lessons we can learn from these previous federal policy initiatives. From these experiences we distill three overarching principles that we believe should shape the contours of NCLB's successor. At the end of the paper, we outline a new approach to the federal-state relationship that we call performance "compacts," agreements that would continue federal funding and grant states nearly total autonomy over school improvement *processes* while still holding states accountable for their *results*.

The Evolution of Federal Accountability

Understanding ESEA's evolution over time is critical to understanding what it might look like in the future.

Originally signed in 1965, ESEA was designed to improve the academic achievement of historically disadvantaged groups of students. In the 50 years since it was first enacted, ESEA's reauthorizations have followed two dominant trends. First, its focus has slowly shifted from being just about inputs (like funding levels) toward placing greater emphasis on outcomes. Second, implementation of the various iterations of the law has been inconsistent. These trends culminated in the 2002 passage of the No Child Left Behind Act (NCLB), which enacted even more prescriptive federal rules as a response.

Understanding ESEA's evolution over time is critical to understanding what it might look like in the future. Since enactment, ESEA has been the largest source of federal fiscal support for K-12 education. Although it gradually shifted toward a greater focus on academic outcomes, initially the law focused primarily on money, doling out—and prescribing how states and districts use—federal aid. In particular, Title I of the law provides financial resources to districts and schools with high percentages of low-income students to improve the educational opportunities available to these students.

Even prior to its enactment, ESEA's input-based focus had critics. Then-Senator Robert Kennedy feared that simply giving additional funds to districts and schools would not solve America's education issues, as the operations of the schools themselves were a large part of the problem. In 1965, in an exchange with Commissioner of Education Francis Keppel, Robert Kennedy wondered,

...if you are placing or putting money into a school system which itself creates this problem [of poverty and inequality] or helps create it, or does nothing, very little to alleviate it, are we not in fact wasting the money of the Federal Government and of the taxpayer and putting money into areas and investing money where it really is going to accomplish very little if any good?²

He went on to explain why simply giving schools more money was not the answer:

I think money can make a major difference and can be a big help. But I do not think money in and of itself is necessarily the answer. I have seen enough school districts where there has been a lack of imagination, lack of initiative and a lack of interest in the problems of some of the deprived children which causes me concern. My feeling is that even if we put money into those districts, then it will be wasted.³

Kennedy met with the chief drafters of the legislation and argued for strong federal oversight and evaluation of ESEA's activities, reasoning, "...unless there is a meaningful program developed at the local level, which is really tested and checked by you [Education Division, Department of Health, Education and Welfare], I don't think that this program is going to be effective."⁴

The law passed without meaningful accountability provisions, and four years later the Southern Center for Studies in Public Policy and the NAACP published a report criticizing how states were implementing the law. The authors argued that a number of states misused funds, using them as general aid funds rather than as funds targeted to specific groups of disadvantaged students and funneling them disproportionately to suburban districts.⁵ Further, they found the data collected by states was not sufficient to connect Title I's expenditures to the academic achievement of its recipients or to evaluate the program's effectiveness.⁶

Following this report, federal Commissioner of Education James E. Allen, Jr. and then-advisor to President Nixon and future Senator Daniel Patrick Moynihan proposed the creation of a National Institute of Education to study the link between federal funding and student academic achievement. Allen also asked Congress to authorize the National Assessment of Educational Progress (NAEP) to track student achievement across the country over time.⁷

Meanwhile, the dollar amounts flowing to districts and schools through ESEA continued to grow. Amendments passed in 1974 further expanded federal aid to schools in the form of funding for "compensatory" programs, including dropout-prevention projects, school health services, gifted programs, career education, arts education, ethnic heritage programs, and more.⁸ By the late 1970s, policymakers and critics were once again raising questions about the use of these funds and whether they were actually improving outcomes for disadvantaged students.

These concerns were further amplified in 1977 when experts at the College Board conducted an investigation into why SAT scores had been falling. The College Board asserted that the drop was a result of more minority and female students taking the test; others felt that, as a result of new programs and declining dropout rates, resources were being pulled away from high-achieving students and leading to a decline in scores.⁹ Whatever the cause, policymakers concluded that students needed to improve their proficiency in “basic skills,” and so states began mandating minimum competency exams to evaluate the overall effectiveness of schools.¹⁰ By 1978, 30 states had enacted laws establishing such minimum competency testing.¹¹

Beginning in 1981, the new Reagan administration ushered in an era that saw K-12 responsibility shift back to the states. That year, President Reagan signed the Educational Consolidation and Improvement Act (ECIA), which reauthorized ESEA and substantially altered the direction of the law. ECIA collapsed 29 small categorical programs into block grants for states and cut federal aid by more than \$1 billion—15 percent of the total—in its first year.¹² The amount of each state’s block grant was determined by a weighted formula accounting for the number of students in high-cost programs like those for low-income, special education and English language-learning students. But, importantly, each state had discretion over how they allocated funds *within* their state. Some states used this discretion to direct larger shares to wealthier areas and allocate less money to poorer inner-city neighborhoods.¹³

America’s education challenges persisted. In 1983, the National Commission on Excellence in Education published “A Nation at Risk,” a report warning that low standards and expectations had caused a “rising tide of mediocrity” in U.S. schools that threatened “the educational foundations of our society.”¹⁴ Following this report, “excellence” and “high standards” became the hallmarks of state and federal education policy.¹⁵

The basis of this approach would be high academic standards for what students should know and be able to do by the time they graduated from high school, paired with a system of assessments designed to evaluate students’ progress toward the standards.

This burgeoning testing and accountability movement gained traction when Congress passed the Hawkins-Stafford School Improvement Amendments in 1988. These amendments increased federal appropriations for Title I, but the new money came with new conditions, requiring school districts to annually assess student academic progress.¹⁶

Around the same time, governors began to adopt their own standards-based school reform measures on a statewide basis. These efforts coalesced with a bipartisan summit in 1989, hosted by the National Governors’ Association, between governors and President George H. W. Bush. The summit culminated in a set of education goals

that became the centerpiece of Bush’s “America 2000” proposal, recommending the creation of national standards and voluntary national tests.¹⁷ Although never enacted, this proposal laid the foundation for future federal education policy.

President Bill Clinton continued the standards-based reforms of his predecessor. In 1994, Congress passed Goals 2000: The Educate America Act, a precursor to a full reauthorization of ESEA. It included a grant program designed to support states in developing and implementing standards and assessments. Many states took advantage of the opportunity to implement standards-based reform; however, much of the money had to be spent at the district level, so there was relatively little available to build state capacity to support local implementation. Reliance on state-by-state initiatives also meant that the influence of Goals 2000 varied greatly depending on states’ willingness to implement ambitious targets, a problem that would persist.¹⁸

Also in 1994 and just a few months after the passage of Goals 2000, Congress passed the Improving America’s Schools Act (IASA), a full reauthorization of ESEA. Under previous versions of ESEA, Title I allowed states to use different achievement standards for their Title I and non-Title I students. IASA closed this loophole, requiring states to demonstrate that all students were being held to the same learning goals and standards.

IASA also mandated that states create assessments aligned to their standards in reading and math; these tests would be given to all students at least once in each of grades 3-5, 6-9, and 10-12. To ensure some level of accountability, states were required to define “Adequate Yearly Progress,” or AYP, for schools and districts, based on their performance on state tests.

Progress under IASA was uneven, and the Clinton administration demurred from withholding funds from states that were slow to implement the law.

Progress under IASA was uneven, and the Clinton administration demurred from withholding funds from states that were slow to implement the law. By 2000-01, just 11 states had implemented systems of standards, assessments, and accountability that fully complied with the law. The Department of Education granted “partial approval” to an additional 20 states.¹⁹ Importantly, by 1999, five years after IASA’s passage, only 17 states disaggregated assessment results for all six required subgroups of students –gender, race/ethnicity, migrant status, English language proficiency, and income, and only half the states reported results by income level.²⁰

In many ways, NCLB was the federal government’s attempt at correcting these deficiencies. Under this 2002 reauthorization of ESEA, Congress expanded assessment requirements, mandating annual statewide testing in math and reading in grades 3-8 and once in grades 10-12, grade-span testing in science (once in grades 3-5, 6-9 and 10-12), annual testing of students with limited English proficiency, and state participation in NAEP testing in math and reading in fourth and eighth grades.²¹

NCLB's highly detailed, inflexible rules would later fuel a backlash and spur interest in going back to a much more limited federal role.

NCLB also created new specificity around the existing AYP provision. It required states both to identify annual performance targets (building to 100 percent proficiency in math and reading by 2014) and to develop a process for identifying schools and districts in need of improvement. States had to disaggregate assessment data by 10 (up from six) key student subgroups, such as race/ethnicity, English-language learners, and low-income students, and create accountability targets for all of these subgroups. The law prescribed specific consequences for Title I schools identified “in need of improvement,” and schools faced escalating sanctions for each additional year they failed to meet AYP.

NCLB’s highly detailed, inflexible rules would later fuel a backlash and spur interest in going back to a much more limited federal role, similar to the block grant approach originally championed by Ronald Reagan. In the next section, we turn to other lessons from 50 years of ESEA and education accountability and how they might apply for future directions in federal K-12 policy.

Lessons Learned

NCLB marked the most significant alteration to ESEA since its passage in 1965. Its emphasis on accountability-related testing, a uniform national approach to identifying low-performing schools, and prescriptive supports and interventions for persistent low performance caused consternation that grew as the country approached the 100 percent proficiency goal date of 2014.

Though its flaws are now widely understood, there hasn't been consensus on the solutions, which has caused the major delay in the law's reauthorization. But one thing the Obama administration's waiver strategy and many current congressional proposals now share is the belief that NCLB's most prescriptive elements should be rolled back. Though the impulse to hand authority back to states is sensible, it should be understood in the context of NCLB's strengths as well as its weaknesses. If NCLB went too far, today's legislators should be careful to not overcorrect.

In this section, we lay out three key lessons that should be considered as policymakers chart ESEA's future.

Lesson 1: Test-based accountability has produced positive academic outcomes

Establishing exactly when a certain policy deserves credit for any effects is a messy and somewhat elusive task. Yet given that billions of federal dollars are at stake, assessing the success or failure of NCLB is crucial to understanding what works, what doesn't and where we should go next.

Though NCLB's flaws are now widely understood, there hasn't been consensus on solutions.

Researchers have employed various techniques to determine the influence of NCLB. Despite the varying methodologies, the research shares an important finding: NCLB and other accountability policies have led to positive academic outcomes for students.

One way of assessing NCLB's impact is to compare the growth of student achievement using NAEP Long-Term Trend data before and after the passage of NCLB. For example, in the 28 years between 1971 and 1999, the scores of 13-year-olds on the NAEP Long-Term Trend reading assessment increased just four percentage points. In contrast, in just the eight years between 2004 (the first set of tests after NCLB passed) and 2012, scores for 13-year-olds jumped six points. In math, the scores of 13-year-olds rose 10 points in the 26 years between 1973 and 1999, and they rose six more points in just the eight years between 2004 and 2012.²²

NAEP math scores rose faster for states that had stronger accountability systems.

Researchers have also used more advanced techniques to demonstrate that some states began to see improvements during the mid- and late 1990s as state accountability systems were beginning to take hold. Martin Carnoy and Susanna Loeb of Stanford University created an index to measure the strength of states' pre-NCLB accountability systems. They measured each state's use of high-stakes testing to reward or sanction schools, and developed a zero-to-five scale to rank each state's system. They found that NAEP math scores rose faster for states that had stronger accountability systems between 1996 and 2000.²³

Other researchers have exploited the differences among states to identify the influence of various accountability systems. Between 1993 and 2002, 43 states adopted some form of accountability system. Fourteen required schools and districts only to report their performance information ("report-card states"). Another 29 states ("consequential" also included sanctions for poor performance) in addition to providing public information.²⁴ Researchers Eric Hanushek and Margaret Raymond used fourth- and eighth-grade NAEP math data to compare student performance growth across states by type of accountability system (none, report card, or consequential). After controlling for key variables, including parental education, race/ethnicity, poverty, and state spending on education, they found that the consequential accountability systems implemented during the 1990s had a positive impact on student math performance on NAEP.²⁵ They also found that non-consequential accountability systems (those that publish report cards but do not attach any rewards or consequences to the performance results) have no significant influence on student performance. In other words, transparency alone is not sufficient to prompt schools to take dramatic action to improve their results.²⁶

In another paper, Hanushek and Raymond found that schools alter their practices at least somewhat in response to all forms of accountability. In some cases, schools responded in unintended and unfortunate ways (i.e., by "gaming" the system); but in others, schools appeared to respond in ways that led to improved achievement outcomes.²⁷ Because they found students' academic gains not only on lower-quality fill-in-the-blank tests but also on the more rigorous and less-prone-to-cheating NAEP, Hanushek and Raymond argued that accountability systems improve general learning and not merely test-taking skills.

There is also evidence that NCLB in particular produced positive outcomes for students. Thomas Dee and Brian Jacob found that the accountability provisions in NCLB generated large and significant increases in the math achievement of fourth graders.²⁸ John Chubb and Constance Clark found that student achievement on NAEP improved for all students during the first 10 years of NCLB. They found that the composite gain in NAEP average scale scores post-NCLB was nearly three times that of the eight years preceding NCLB. The average annual NAEP gains during NCLB years equated to approximately a half-year of achievement gains in fourth and eighth grade math and reading.²⁹

Just as important as overall improvement are the gains experienced by traditionally low-performing student subgroups. Dee and Jacob found that gains in fourth-grade math were concentrated among African-American and Hispanic students and among those eligible for free or reduced-price lunch.³⁰ Chubb and Clark found that black students, Hispanic students and those eligible for subsidized lunch gained even more than national averages.³¹

In addition to mandating specific testing and accountability requirements, the law served to shine a light on persistently low-performing schools. Research has found positive effects behind the mere act of notifying schools in need of improvement that they faced the *potential* of sanctions. For example, Thomas Ahn of the University of Kentucky and Jacob Vigdor of Duke University analyzed the impact of NCLB's accountability sanctions on school performance in North Carolina. They found that the "strongest association between failure to make AYP and subsequent test score performance occurs among those schools not yet exposed to any actual sanctions."³² In this case, the failure to meet AYP and the threat of imminent sanctions was a catalyst for schools to improve. For those schools that failed to make AYP for multiple years and entered NCLB sanctions, researchers found that the threat of the "ultimate penalty"—implementation of a restructuring plan—also had a strong positive impact on test scores.

In a report on the effect of Florida's accountability system on school performance, researcher Jay P. Greene found similar results. Florida assigns each school an A-F letter grade based on its student proficiency and growth on its statewide assessments. Students attending a school that receives an "F" grade for two out of four years are eligible to either transfer to another public school or receive a voucher to attend a private school. Schools that received a failing grade in 1999 and whose students would have been eligible for transfers if they failed a second time achieved test score gains more than twice as large as those achieved by other schools.³³

There's no question that NCLB-style accountability systems have drawbacks as well. Concerns about over-testing, curriculum narrowing, and prescriptive policy interventions have been well documented by researchers. But these unquestionably legitimate concerns also have the potential to cause policymakers to overlook an important fact: Student performance did improve in important ways during NCLB's tenure.

Research has found positive effects behind the mere act of notifying schools in need of improvement that they faced the potential of sanctions.

Lesson 2: States vary in their implementation of and success under NCLB

Despite overall improvements under test-based accountability, individual states varied significantly in their results. In large part this variation was a function of the law’s flexibility for state-level implementation (see Figure 1 below).

Figure 1 State Requirements and State Flexibility under NCLB

Provision	NCLB Requirement	State and Local Flexibility
Standards and assessments	<ul style="list-style-type: none"> States must implement annual testing in math and reading in grades 3-8 and once in 10-12, and grade-span testing in science Assessments must be aligned with rigorous content and achievement standards 	<ul style="list-style-type: none"> States were free to design their own content standards and aligned assessments
AYP	<ul style="list-style-type: none"> States must set annual targets in reading and math that lead to 100 percent proficiency by 2014 For each measure of performance, states must include targets for 10 key subgroups To make AYP, schools must meet annual targets for each subgroup 	<ul style="list-style-type: none"> States had flexibility to determine their own annual targets and the trajectory of those targets, provided they culminated in 100 percent proficiency by 2014 States had flexibility to adopt statistical policies on minimum subgroup size and confidence intervals for making accountability determinations
Persistently low-performing schools	<ul style="list-style-type: none"> Schools that miss AYP for two consecutive years are identified for improvement Sanctions escalate each consecutive year a school misses AYP Sanctions include providing school choice, providing supplementary education services, implementing corrective actions and restructuring Districts must set aside 20 percent of their Title I allocation to provide supplemental education services and transportation for public school choice 	<ul style="list-style-type: none"> Parents had choice over supplemental educational service providers, but districts and states chose how to inform parents of their options Schools facing corrective actions had a choice among replacing staff members, implementing a new curriculum, appointing an outside expert to advise the school, extending the school day or year or restructuring the internal organization of the school Schools facing restructuring had a choice among replacing all or most of school staff, reopening as a charter school, turning over operation to the state or “any other major restructuring of the school’s governance”

One area in which state flexibility led to wide variation was AYP calculations. States had the authority to make decisions related to minimum subgroup sizes, confidence intervals, the size of the annual steps toward 100 percent proficiency, and more. One study found that “Discrepancies in AYP formulae ... reveal that, purposefully or not, some states used loopholes that made it much easier for schools to meet targets.”³⁴

NCLB also outlined a series of “corrective actions” and “restructuring” steps for persistently underperforming schools that included replacing all or most staff, closing the school, and reopening it as a charter or turning the operations of the school over to another entity. But, crucially, the law allowed schools to pick “any other major restructuring of the school’s governance arrangement that makes fundamental reforms.”

Approximately 40 percent of schools implementing restructuring in 2005-06 picked this “other” option and implemented plans of their own design.³⁵ These interventions were often less intensive than other restructuring options. Approximately 44 percent of schools choosing the “other” option created smaller learning communities and 37 percent expanded or narrowed the grade range they served. Just 18 percent of schools chose more invasive options: 12 percent reopened as a “theme” school and 6 percent closed. Further, fully 40 percent of schools that were in restructuring did not take any of the five options prescribed in the law. Some continued to implement improvement efforts begun under corrective action, while others implemented no interventions at all.³⁶

Schools and districts rarely chose the most intensive “restructuring” options outlined under NCLB.

More difficult restructuring options were rarely implemented. In some cases, particular state contexts made certain restructuring options impossible. For example, California, Colorado, Georgia, Michigan, and Nebraska ruled out state takeovers “because either state law does not permit it or the state department of education lacks the capacity to manage a significant number of schools.”³⁷ In other cases, converting the school to a public charter was not an option because the state lacked a charter school law.

For these reasons and others, state results under NCLB varied widely. Chubb and Clark found that state-by-state composite scores on NAEP ranged from a nearly 50-point gain in the District of Columbia and Maryland to a two-point loss in West Virginia over the period 2003 to 2011.³⁸ The composite score gap between states among low-income students was even wider. For example, the range in achievement gains between Maryland and West Virginia’s low-income students was the equivalent of a year and a half in achievement. In other words, the average low-income student at the end of eighth grade in West Virginia scored roughly at the same level as the average low-income student halfway through seventh grade in a Maryland school.

In sum, these findings show that even with a strong federal role (as under NCLB), the positive influence of accountability can be dulled. One natural response would be making federal accountability rules even tighter. But we think such attempts would be counterproductive. Another approach would be to re-empower states to design their own accountability systems, supports and interventions while requiring them to set and aspire to clear performance targets.

Lesson 3: State flexibility is essential

The federal government should not—cannot—implement a one-size-fits-all model across widely varying contexts.

One final, critical lesson from NCLB is that state flexibility is essential. States differ widely due to their unique histories, demographics, traditions, politics, and more. The federal government should not—cannot—implement a one-size-fits-all model across such widely varying contexts. But in exchange for billions in funds, the federal government should hold states accountable for student outcomes while leaving the details (e.g., content standards, assessments, curricula, designations, interventions, calendars, and more) to the discretion of each state. This is crucial for at least four reasons.

First and foremost, since the nation’s founding, education has been understood to be a state- and local-level function. Indeed, the U.S. Constitution never mentions education, and per the 10th Amendment and the concept of “dual sovereignty,” it falls to the states to make education-related decisions. As noted above, a state is completely within its rights to forswear ESEA funding and to go its own way.

Second, state contexts vary significantly. The best solutions to the problems facing North Dakota schools may look very different from those best suited to North Carolina. What works in New Hampshire may not fit New Mexico. Any federal education policy ought to honor these differences by allowing states to shape policies that best meet the needs of their contexts. This promises not only short-term, localized benefits for the states exercising their freedom but also long-term, national benefits: As “laboratories of democracy,” states can experiment with a variety of approaches, finding and sharing successes.

Third, any prescriptive policy foisted upon states runs the risk of ongoing local resentment and poor implementation. As the adage goes, “the federal government can make states to do things, but it can’t make them do it well.” A federal policy framework that focuses on ends and enables state and local leaders to make decisions on the means not only holds the promise of producing the desired outcomes but also fosters a sense of ownership among practitioners.

Finally, there is no one-size-fits-all model for school improvement that will guarantee results. Models that prove successful in particular contexts often lose effectiveness when exported to new locales. From charter schools to professional development for teachers to early childhood education, researchers have been unable to identify any single intervention that leads to dramatic improvements all by itself or in all conditions. Federal policymakers should be humble about the efficacy of centralized answers.

Ultimately, states should be free to choose the combination of reform strategies that best meets their needs rather than have a narrow set of options forced upon them. Given the starting point of NCLB, the Obama administration’s waivers were a step in the right direction; however, many now agree that they did not go far enough.



A Path Forward: Federal-State Performance Compacts

Based on the evidence and lessons above, we propose a structure for what the federal-state relationship could look like under a reauthorized ESEA. We call this structure “federal-state performance compacts.”

The compacts would be built on three principles: First, the federal government should get out of the business of prescribing specific education policies and interventions to states and return to states the flexibility to tailor their education strategies to their own unique contexts.

Second, accountability should focus on the state’s results rather than on its inputs. Some states may pursue a more advanced chartering strategy, while others may invest in re-envisioning the school day for teachers and students. What should matter is the state’s destination, not how it got there.

Finally, a performance compact system would embed in federal policy the notion of continuous improvement. We don’t know, for example, what kinds of indicators will be possible for states to track five years from now or what new research will say about the utility of current approaches. Therefore, we must create a system that allows for change over time—ensuring that states are able to alter their systems to incorporate the best available strategies.

A system of federal-state performance compacts diverges from NCLB and the waiver system in a number of ways. Figure 2 below summarizes these key differences.

Figure 2 Key Differences between NCLB, Waivers, and Compacts

	NCLB	Waivers	Compacts
Who determines the goals of the system?	<ul style="list-style-type: none"> • Congress 	<ul style="list-style-type: none"> • States, with the secretary of education's approval 	<ul style="list-style-type: none"> • States, with approval from the secretary, a peer review process, or a review board
What are the goals of the system?	<ul style="list-style-type: none"> • To hold states, districts and schools accountable for the academic performance of all students, including 10 particular subgroups of students • To reach 100 percent student proficiency in math and reading within 12 years 	<ul style="list-style-type: none"> • Ambitious and achievable annual measurable objectives for districts, schools and subgroups (such as by setting the goal of reducing by half within six years the percentage of students not proficient, or setting annual targets to result in 100 percent proficiency by 2019-20) • To identify and improve the bottom five percent of the lowest-performing schools (priority schools) and another 10 percent of schools with the largest achievement gaps (focus schools) 	<ul style="list-style-type: none"> • At state's discretion, but must include student growth and proficiency in reading and math as well as graduation rates • Must ensure that historically disadvantaged groups of students are closing achievement and graduation rate gaps
What outcomes are emphasized?	<ul style="list-style-type: none"> • Math and reading proficiency rates • Meeting AYP • Performance of student subgroups 	<ul style="list-style-type: none"> • Math and reading proficiency rates • Performance of student subgroups • Other measures at a state's discretion 	<ul style="list-style-type: none"> • Math and reading proficiency and growth rates • Performance of student subgroups • Other measures at a state's discretion
How are outcomes measured?	<ul style="list-style-type: none"> • Federally prescribed AYP process • State-developed assessments in reading and math • State-developed cut-points for "proficiency" 	<ul style="list-style-type: none"> • State-developed assessments in reading and math • Standards and assessments must be certified as "college and career ready" 	<ul style="list-style-type: none"> • State-developed assessments in reading and math • Standards and assessments must be certified by states as "college and career ready"

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Figure 2 Key Differences between NCLB, Waivers, and Compacts (*continued*)

	NCLB	Waivers	Compacts
How must states deal with low-performing schools?	<ul style="list-style-type: none"> Schools failing to meet AYP for two or more years are subject to increasingly tough, federally prescribed sanctions 	<ul style="list-style-type: none"> States are required to identify priority and focus schools Priority schools must follow federally prescribed “turnaround principles” Focus schools must develop plans tailored to the reason for their identification States must outline criteria for when schools can exit priority and focus status 	<ul style="list-style-type: none"> At state’s discretion, but emphasis would be on improving student outcomes, not on particular schools
What rewards and sanctions are schools subject to?	<ul style="list-style-type: none"> Each consecutive year a school misses AYP it is subject to increasing sanctions ranging from allowing students to transfer to a school that met AYP to replacing staff to restructuring the school. 	<ul style="list-style-type: none"> States must develop methodology for identifying reward, priority and focus schools States must develop a process and timeline for identifying and supporting the specific needs of priority and focus schools 	<ul style="list-style-type: none"> States would be required to develop an intervention strategy; however, the specific interventions would be at the discretion of the state
What is required in the way of academic standards?	<ul style="list-style-type: none"> States must develop academic standards in math and reading that apply to all students in the state 	<ul style="list-style-type: none"> States must develop academic standards in math and reading that apply to all students in the state Standards must be college- and career-ready standards “common to a significant number of states” or that have been approved by a state institute of higher education 	<ul style="list-style-type: none"> States must develop academic standards in math and reading that apply to all students in the state Standards must be college- and career-ready standards that have been approved by a state institute of higher education
What is required in the way of assessment?	<ul style="list-style-type: none"> States must assess students annually in grades 3-8 and once in grades 10-12 in both math and reading Students must be grade-span tested in science Assessments must be aligned to state standards 	<ul style="list-style-type: none"> States must assess students annually in grades 3-8 and once in grades 10-12 in both math and reading Students must be grade-span tested in science Assessments must be aligned to state standards 	<ul style="list-style-type: none"> States must assess students annually in grades 3-8 and once in grades 10-12 in both math and reading Students must be grade-span tested in science Assessments must be aligned to state standards

continued on next page

Figure 2 Key Differences between NCLB, Waivers, and Compacts (*continued*)

	NCLB	Waivers	Compacts
What data must be reported to the public?	<ul style="list-style-type: none"> Student assessment data must be reported at the school and district levels Data must be disaggregated by key student subgroups (low-income, ELL, sped, etc.) 	<ul style="list-style-type: none"> Student assessment data must be reported at the school and district levels Data must be disaggregated by key student subgroups (low-income, ELL, sped, etc.) 	<ul style="list-style-type: none"> Student assessment data must be reported at the school and district levels Data must be disaggregated by key student subgroups (low-income, ELL, sped, etc.)
How can states update their plans?	<ul style="list-style-type: none"> States can, but are not explicitly required, to update their plans at any time Plan changes must be approved by the secretary 	<ul style="list-style-type: none"> Secretary approves waiver requests for short-term durations States must submit a new request when their waiver expires 	<ul style="list-style-type: none"> Secretary, peer reviewers, or review board approves state plans for a term ranging from one to five years States can revise their plans at any time, but plan changes must be approved At a minimum, states must re-submit their plans every four years as a way to encourage continuous improvement
What is the role of the federal Department of Education in overseeing state policies and programs?	<ul style="list-style-type: none"> The U.S. Department of Education has final say in approving state accountability systems Consequences for low-performing schools are federally mandated 	<ul style="list-style-type: none"> The U.S. Department of Education develops the waiver application and criteria and the rubrics for evaluating applications The secretary must approve states' waiver plans The secretary may but is not required to use a peer review process 	<ul style="list-style-type: none"> States submit materials outlining their results and a plan for future improvements State plans would be approved by the secretary, a peer review process, a review board or some combination of these

Principle 1: States must have flexibility to tailor their education policies to their unique local contexts

As the NCLB era made clear, a one-size-fits-all federal accountability system has serious drawbacks. Moreover, states are taking different approaches to school improvement. Some have embraced non-district chartering; others are adopting private school choice programs and others still have created statewide “extraordinary authority” entities like Louisiana’s Recovery School District. Such innovations reflect

evolving notions of “schools” and “districts,” concepts that were once thought to be straightforward and immutable. More changes along these lines—those that take dramatically new approaches to longstanding challenges—are likely, even desirable. This future is incompatible with an inflexible federal policy environment.

A performance compact system would continue to require states to focus on improving the outcomes of all students, including historically underserved students. It would require states to set goals for student achievement (the specifics of these goals are described in more detail under Principle 2 below) and have in place similar elements to those that were required under both NCLB and the waiver system. These include standards, assessments, performance targets, and public transparency.

In terms of standards and assessments, states would be required to meet certain procedural requirements prior to being eligible for a compact. These include developing college- and career-ready academic standards (as determined by each state’s colleges and universities) in reading and math that apply to all students in the state; continuing annual assessments of students in grades 3-8 and once in grades 10-12; and grade-span testing in science. States would have complete discretion over the content of the standards, assessments, and accountability rules, however.

States would also need to have in place a system for identifying and addressing chronic low performance. This could be aimed at particular schools or districts, or states could develop strategies targeted at particular groups of low-performing students. States would need to articulate a coherent theory of action for how their plans would lead to performance improvements, but they would have complete discretion over developing these systems, including their methodological composition and how to reward high performers and improve the outcomes of persistently low-performing schools, districts, or groups of students.

States should articulate a coherent theory of action for how their plans will lead to performance improvements.

One very real drawback to this system lies with our findings in Lesson 2 above—even within a very prescriptive system, state outcomes vary because some states will find ways to implement the easiest and least-invasive policies. In a system like the one we propose here, states have incredible amounts of freedom to design their educational plans. Some states will take this opportunity to embrace high-quality and innovative practices, but others will likely lack either the will or capacity to design and carry out a high-quality plan.

There are three potential approaches for dealing with this possibility. They all entail an approval process to help ensure that states’ plans are rigorous. The first option is to require secretary approval of states’ plans. In this framework, the secretary could have broad authority to approve or deny a state’s plan. Legislation could be written to specify the terms under which the secretary could approve or deny a state’s plan.

Placing such responsibility with the secretary does have a number of potential downsides, however. It places significant authority over states' education policies in the hands of a single federal authority, the unelected secretary of education. Further, as the federal government changes hands between presidents and political parties, cabinet secretaries change as well. This subjects states' plans to constantly changing political priorities. Finally, secretaries, historically, have been unwilling to withhold states' Title I money. The same political pressures would likely disincline the secretary to actually reject a state's proposed compact.

A second option would be an expanded role for "peer review," a system that's already in place. When granting waivers under NCLB, both the Obama and Bush administrations used an ad hoc peer review process to evaluate and provide recommendations on state plans. The peer reviews were merely advisory, but Congress could make peer reviews part of the state plan review process and make the peer recommendations binding. Under this framework, states would submit their plans to a team of federally appointed peer reviewers who would evaluate the strength of each state's plan. This process would include evaluating existing evidence on the strategies that a state is pursuing and assessing whether or not the various pieces of a state's plan fit together in a way that would promote success. It would also ensure that a state's goals are rigorous and that an adequate plan is in place to collect data and measure success. But, importantly, it would stop short of prescribing or mandating certain components. Such decisions would be left to the states.

A peer review process also has some drawbacks. Although legislators could attempt to set clear definitions of "rigor" and guidelines for peer approval or rejection, it would be difficult to clearly articulate those criteria without limiting state flexibility. Setting numeric targets for proficiency rates, for example, would begin to undermine state flexibility if the same set of approval requirements were used to assess widely differing state plans. Ultimately, a peer review process could substitute the judgment of one unelected official—the secretary—for a larger group of peers.

A final option would be the creation of a panel of experts singularly tasked with reviewing and approving state plans. This body could be modeled on the National Assessment Governing Board (NAGB), an independent, bipartisan board that oversees NAEP. A governing board that oversees federal-state performance compacts would be charged with assessing state plans, reviewing relevant research, making recommendations to states for improvement, and ultimately approving (or denying) state plans. This option would remove the secretary from the approval process, and board members could be appointed by Congress and the president to serve limited terms.

Principle 2: State accountability should focus on outcomes, not inputs

States must be held accountable for the federal dollars they receive, and this accountability should focus on outcomes, not inputs.

We believe strongly that states must be held accountable for the federal dollars they receive and that this accountability should focus on outcomes—whether or not a state succeeds in raising the achievement of all students and of particular subgroups—rather than inputs.

To ensure that accountability is focused on outputs, states must set clear targets for their student achievement results. Goals and measures could vary by state, and the standards, curriculum and improvement strategies states use to achieve these goals would be left to each state’s discretion.

But there would need to be guidance for the creation of goals. For example, goals should include clear measures of educational achievement, in particular for low-income and historically underserved populations of students. States might be required to create goals related to graduation rates but states could also develop other goals. For example, states could decide to measure the development of noncognitive skills, the percentage of fourth graders reporting a challenging and supportive school environment or the percent of high school students taking AP or IB classes.

Principle 3: A federal accountability system should focus on continuous improvement

As part of the compact’s focus on continuous improvement, Congress should recognize that today’s tools to assess performance are likely to appear unsophisticated in just a few years. As compacts come up for renewal, states might adjust their plans, including their goals and measures.

If states fail to meet their goals at the end of their compact term, they would be required to design strategies and reapply for flexibility. Ultimately, states that continue to make little to no progress may, in order to continue receiving annual Title I allotments, be required to return to an accountability structure with standardized rules on performance targets, school categorizations, and interventions. For example, the default model could set an all-students proficiency target of 2024. States would then continue to identify for improvement all schools in which groups of students failed to meet academic targets. Although most states would not choose this default option, it would offer states an alternative to revocation of federal funding and provide taxpayers a degree of confidence that federal funds were being well spent.

The compact approach represents an important departure from current practice. Instead of a rules-based system like NCLB, a performance compact system would focus on states’ outcomes—are low-income students, for example, making gains in

State plans should not be rejected simply because they are original.

reading—as opposed to what reading program schools will be required to implement. Certainly the approval process will assess the strength of the state’s plan to ensure that the state has chosen a program with a high likelihood of success. But the federal government would be prohibited from mandating a specific reading program or even a specific set of reading programs from which a state can choose. States wishing to implement new or innovative strategies may need to provide a lengthier rationale for their choices; however, their plan should not be rejected simply because it is original.

As states demonstrate consistent improvement over time, they will earn even more flexibility. Initially, states with a history of strong student performance will be eligible for extended compacts of up to five years. All other states will be eligible for contract lengths of up to three years. States that implement truly innovative or untried interventions may be given shorter compacts to ensure that any problems are addressed sooner rather than later. As compacts come up for renewal, states that demonstrate improvement will become eligible for longer compacts.

Conclusion

While the lessons of the waiver initiative are still written in pencil, one element that deserves more attention is the *process* behind the waiver initiative. Congress might learn from it as it considers reauthorization.

One of the strongest rationales for NCLB was that, for decades, states had received billions in federal Title I funds by formula and were doing virtually nothing by way of proving results to receive another huge federal check each year. NCLB tried to address this problem by ratcheting up federal requirements. If states wanted federal funds, they had to follow Uncle Sam's rules related to administering assessments, identifying low-performing schools and districts, delivering interventions, and more.

The waiver process was an attempt to dial back some of NCLB's most onerous provisions while maintaining accountability for federal funds. The federal government would preserve certain requirements for states seeking federal dollars, but each state would have greater flexibility in shaping comprehensive reform plans. The goal was to strike a balance: Have all states address a set of key issues (in exchange for federal funds) while empowering each state to craft a plan that fit its particular circumstances.

Admittedly, the Obama administration's execution of this new approach generated opposition on both ends of the political spectrum. Some argued the administration still had too tight a grip on the reins, either because states still had to adhere to any federally mandated rules or because the specific rules developed by the Department of Education (such as requirements related to educator evaluations) felt too

State demand for waivers suggests a new kind of federal-state relationship would appeal to state leaders.

heavy-handed. Others believed that returning such wide discretion to the states would inevitably return the nation to pre-NCLB results, meaning stagnant overall performance and huge achievement gaps.

While these concerns should be taken seriously, it is important to note that 45 states, the District of Columbia, Puerto Rico, and the Bureau of Indiana Affairs submitted waiver requests. Their revealed preference was “waivers over NCLB.” This strongly suggests a new kind of federal-state relationship would appeal to state leaders.

Putting aside the question of how the current waivers are affecting student learning—a question we can’t answer fairly for at least several more years—the waiver process offers a way to transition from NCLB to a federal accountability framework more deferential to states and a new, more permanent partnership between Uncle Sam and the states. That is, we could build on the “trust but verify” approach tentatively explored under waivers. The federal government would work with each state to establish ambitious student performance goals (outcomes, not inputs); each state would develop a comprehensive, contextualized plan for reaching those goals; each state with an approved plan would be freed from federal rules on school and district ratings and interventions; and the federal government would monitor state results, extending the length of compacts with those states making progress and revisiting compacts with states where performance lost ground.

Performance compacts would automatically embed continuous improvement into federal K-12 policy. They would enable an evolutionary process to occur naturally as states regularly reviewed and improved their plans in response to feedback and data.

Ultimately, we believe performance compacts could offer a new, bipartisan path forward on federal K-12 policy. They would strike a balance among the urgency to improve outcomes for disadvantaged students, the practicality of preserving state autonomy, and the need to hold states accountable for results.

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