



ISSUE BRIEF

REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

BACKGROUND

The *Elementary and Secondary Education Act* (ESEA), last reauthorized on January 8, 2002 as the *No Child Left Behind* (NCLB) Act, is the major federal law supporting K–12 public education in America. Originally enacted in 1965, the law established federal policy and authorized federal funding to assist states and local school districts to improve the academic performance of all students enrolled in public schools regardless of economic status, race, ethnicity, proficiency in English or disability. NCLB was scheduled to be reauthorized in 2008. However, the provisions of the law continue to be extended through the congressional appropriations process—including the many flaws.

NCLB requires states to:

- Establish rigorous academic standards.
- Conduct annual assessments at specific grade levels with at least a 95 percent participation rate.
- Implement a comprehensive accountability system that includes extensive data collection and public reporting on student and school performance.
- Direct formal sanctions against Title I schools and their school districts for failing to meet proficiency targets in reading and math.
- Establish new qualification requirements for teachers and paraprofessionals beyond the standards previously established by many states.

Although the intent of Congress was to improve academic achievement by all students, with particular emphasis on English language learners (ELL), students in poverty, and students with disabilities, the design of the current accountability framework is seriously flawed. Unfortunately, what has evolved is a measurement framework that bases its assessment of school quality on a student's performance only on a *single assessment* (an invalid standard for measuring student progress), and mandates a series of overbroad sanctions that have not proven to have significant impact on improving student or school performance compared to other options.

THE OBAMA ADMINISTRATION AND THE 111th CONGRESS

On March 29, 2010, U.S. Secretary of Education Arne Duncan released the U.S. Department of Education's *Blueprint for the Reauthorization of ESEA*, outlining in very broad terms, proposed changes to the current law. The *Blueprint* provided a comprehensive set of initiatives by which the federal government intends to support local school districts to raise student performance and close the achievement gap for academically-struggling students in our public schools. Additionally the *Blueprint*, which would shift in emphasis from being more punitive to more supportive, is indeed a more constructive shift. Furthermore, the renewed emphasis on all students graduating from high school and college career-ready is welcomed.

NSBA voiced support for the overall concept and recognition of the need to overhaul the current law but opposes some of the more specific recommendations. For example, NSBA opposes recommendations in the

Blueprint that: 1) place greater emphasis on competitive grants while level funding Title I formula-based grants; 2) condition Title I funding (or any major federal funding) to the adoption of state common core standards; 3) mandate specific models to turnaround performing schools that are not evidenced-based; 4) expand the overemphasis on charter schools; and 5) continue the overemphasis on standardized tests.

In our view, these White House and Congressional actions have resulted in unprecedented federal investments in public education, but also have resulted in new and proposed federal eligibility requirements that create new expectations on the part of states and local school districts.

ESEA in the 112th CONGRESS

With the convening of the 112th Congress, there was a shift in the House leadership given the Republican majority following the November 2010 elections. Representative John Kline (R-MN) became the new Chairman of the House Education and the Workforce Committee, and Representative George Miller (D-CA) became the new Ranking Member. Republicans have 23 members and the Democrats have 17 members. However, 13 of the Republicans are new members to the committee. The Senate Health, Education, Labor and Pensions Committee is chaired by Senator Tom Harkin (D-IA), with Senator Michael Enzi (R-WY) continuing as Ranking Member.

In recognition of the new 112th Congress, on January 7, 2011, NSBA forwarded a letter to the respective Chairmen and Ranking Members reaffirming our urgency in reauthorizing the Elementary and Secondary Education Act (ESEA). NSBA specifically urged Congress to:

- Complete the reauthorization before the 112th Congress adjourns incorporating local school board priorities identified in this document, ensuring maximum flexibility to local school districts in the design, development and implementation of strategies to improve academic achievement as well as in the use of federal funds.
- Conduct formal oversight hearings regarding the implementation of new federal regulations and administration policies impacting K–12 education to ensure that actions by the executive branch do not overreach into the authority vested in the legislative branch of government.

On February 28, 2011, NSBA forwarded to each member of Congress its publication, *Public Education and the 112th Congress: A New Framework to Support Local School Boards in Achieving Academic Excellence for All Students*, which focuses on a broad range of local school board concerns, including the reauthorization of ESEA. This document was well received by members of Congress and their staffs as NSBA's lobbying efforts continue.

Both Chairman Kline of the House Committee on Education and the Workforce and Chairman Harkin of the Senate Committee on Health, Education, Labor, and Pensions (HELP) continue to voice their support for ESEA reauthorization during the 112th Congress.

The Senate HELP Committee released its Chairman's Mark on October 11, 2011, Manager's Amendment on October 14, 2011, and held the Senate HELP Committee mark-up on October 19-20, 2011 – to reauthorize ESEA. NSBA reviewed the language, conducted an analysis of the bill, formally submitted comments on October 17, 2011, and lobbied extensively with HELP committee member offices seeking support for local school board priorities and recommendations.

The Senate bill was reported out of committee on October 20, 2011 by a vote of 15-7. Republican Senators Enzi, Alexander and Kirk joined with the Democrats to support committee adoption. However, many committee members voiced their intent to introduce amendments when the bill comes before the full Senate for a floor vote.

The House Committee on Education and the Workforce held several hearings to provide an opportunity for its new members to hear first hand the concerns and challenges facing local schools and school districts on the implementation of the current law.

The House committee initially passed three bills: 1) Setting New Priorities in Education Spending Act, H.R. 1891, which would eliminate more than 40 federal education programs; 2) Empowering Parents through Quality Charter Schools, H.R. 2218, which would significantly expand charter schools; and 3) State and Local Funding Flexibility Act, H.R. 2445, which would expand greater flexibility to state and local educational agencies in re-directing federal funding to achieve greater success.

NSBA opposed H.R. 1891 because of the proposed significant reductions in federal funding to public education programs. NSBA also opposed H.R. 2218 because it would foster the expansion of charter schools outside the traditional school board authority, potentially reducing federal support to traditional public schools. NSBA supported H.R. 2445 and worked with key congressional staff on the bills' details to enable local school boards to have greater authority in re-directing federal funding among education programs to be better aligned to address their unique circumstances. H.R.1891 was reported out of committee on June 14, 2011 by 23-16. H.R. 2445 was reported out of committee on July 25, 2011 by 23-17. Although NSBA launched a strong grassroots campaign to oppose the legislation, H.R. 2218 passed the full House on September 13, 2011 with strong bipartisan support by 365-54.

On January 6, 2012, Chairman Kline released two additional House discussion drafts that were subsequently fine-tuned based on the recommendations of NSBA and others. The first, *Student Success Act*, H.R. 3989, focuses on Title I and a comprehensive accountability system to be developed and implemented by States and local school districts; and a second, *Encouraging Innovation and Effective Teachers Act*, H.R. 3990, primarily focuses on teacher effectiveness by supporting the development and implementation of teacher evaluation systems. These two bills complete the House package. Most recently Chairman Kline reiterated that he has talked with House Majority Leader Eric Cantor, who assigns floor time, to have the bills taken up as early as this summer.

The last two House bills establish a welcomed framework for accountability by expanding authority and flexibility to States and local school districts in determining how districts and schools will be held accountable for improved student achievement and in closing the achievement gap between various subgroups. NSBA successfully worked with committee staff to craft language to enhance local school district capacity building in the *Student Success Act*. However, NSBA is concerned with proposals that would restrict future federal funding for K-12 education programs by limiting future growth to percentages in the CPI index using the FY2012 appropriations as the base. This limit in federal appropriations, combined with the proposals to eliminate Maintenance of Effort provisions by States, could converge to create a more difficult future resource climate for local school districts.

U.S. SECRETARY OF EDUCATION ACTIONS

On September 23, 2011, Secretary Duncan announced the release of the U.S. Department of Education's plan to provide states and local school districts relief from the many requirements under NCLB. To a great extent, the plan mirrored those areas identified by NSBA as most in need of relief following a survey conducted last summer that produced over 300 school district responses across 40 states.

The relief involves 10 specific waivers that are being given to 11 states and the District of Columbia in exchange for agreeing to implement Department-directed reform principles: 1) adopt college and career-ready standards in at least math and language arts/reading together with aligned assessments; 2) focus accountability and support on the state's lowest-achieving schools; and 3) provide support for effective teachers and principals, including guidance for developing local evaluation systems. The state educational agencies (SEA)

must also pursue reducing duplicative and burdensome state reporting requirements that have little or no impact on student learning.

The specific waivers to the States would:

1. Eliminate the 2013-2014 AYP Timeline and require new Annual Measureable Objectives (AMO) goals.
2. Eliminate the need to comply with sec. 1116 (b) to identify schools for improvement, corrective action, or restructuring or take the required actions, and would eliminate the administrative/reporting requirements.
3. Eliminate the need for States to comply with sec. 1116(c) to take actions against LEAs.
4. Expand flexibility to rural school districts to use the Small, Rural School Achievement Program (REAP) and rural and low-income school funds for any authorized purpose regardless of its AYP status.
5. Eliminate the 40 percent poverty threshold for Title I schools if the SEA identifies the school as a **priority school** or **focus school** and the LEA is implementing interventions consistent with the turn-around principles or a plan based on the needs of students and is designed to enhance the whole school program.
6. Allow SEAs to use their sec. 1003(a) funds to support their neediest **priority** or **focus schools**.
7. Allow States to use their sec. 1117(c) (2) (A) funds to reward Title I schools that have high achievement levels or high gap-closing levels.
8. Eliminate the need for LEAs to develop an improvement plan (sec. 2141) and it would also allow flexibility in how the LEA uses Title I and Title II funds if the LEA does not meet its Highly Qualified (HQT) progress requirements.
9. Allow LEAs to transfer 100 percent of funds allocated from state-level ESEA programs involving teacher quality and technology grants (involving non-state administrative funds) among those activities and/or into Title I, Part A with no requirement for the LEA to notify the SEA.
10. Expand flexibility to SEAs in awarding School Improvement Grants (SIG) under sec. 1003(g) to LEAs to implement one of the four SIG models to any priority school, including schools not in improvement status.

NSBA lobbyists conducted a comprehensive analysis of the plan and released a formal statement generally welcoming the relief but cautioning that the waiver process should not be viewed as an acceptable substitute for ESEA reauthorization. The first application deadline was November 14, 2011 with eleven states applying. The second deadline was February 21, 2012 which resulted in 26 new state applications. Final decisions are pending.

LOCAL SCHOOL BOARD ESEA PRIORITIES

NSBA has developed a comprehensive, strategic framework for reauthorizing ESEA based on the input received by local school boards across the nation and the formal actions taken by the NSBA Delegate Assembly. Such actions would improve the quality of educational services while ensuring maximum authority and flexibility to local school districts that provide such services:

- (1) Ensure states and local school districts have greater flexibility to make educationally sound decisions, and be free of mandates that unnecessarily or counterproductively hinder school districts from achieving their goals (i.e., mandating the expansion of charter schools and standardized tests as a measure of accountability, and conditioning federal funding on the adoption of state-led common core standards).
- (2) Replace the current accountability system which does not accurately or fairly report student, school, or school district performance.

- (3) Ensure high-quality, valid, and reliable assessments for all students, including English language learners and students with disabilities.
- (4) Support the use of multiple measures of academic achievement that will more accurately determine students' knowledge and performance that reflect the kind of well-rounded education necessary to be successful in the 21st Century economy, as opposed to judging success on their performance on a single assessment.
- (5) Permit the use of growth models and other measures of student achievement that more accurately reflect student and school performance.
- (6) Facilitate strategic interventions that are designed at the local or state level and are targeted to students and schools most in need, rather than impose ineffective and costly sanctions.
- (7) Provide support to states and school districts and ensure their flexibility to establish programs to enhance teacher/principal quality focusing on preparation, recruitment, retention, and evaluation.
- (8) Support efforts by school districts, through a separate funding stream, to develop, expand, coordinate, and enhance the quality and availability of voluntary preschool programs for all 3- and 4-year old children.
- (9) Fully fund the law, along with other federal assistance programs that are critical to successfully achieving the goals of the new law, and limit the expansion of competitive grants where such expansion would result in level funding of formula-based grants so critical to students in poverty.

NSBA will continue its persistent lobbying efforts for ESEA reauthorization with the strong engagement of our local school board members in their respective states and congressional districts, and maintain our presence at House and Senate congressional hearings on various components of ESEA.

NSBA POSITION

Therefore, NSBA urges Congress to:

- Reauthorize ESEA during this second session of the 112th Congress, incorporating the priorities and recommendations offered by local school board members that would improve the quality and delivery of educational services to advance academic achievement by all students while expanding flexibility to school districts and schools in addressing their unique circumstances.
- Monitor the implementation of the U.S. Department of Education NCLB Regulatory Waiver Process to provide temporary relief to local school districts and schools from the current flawed accountability system pending ESEA reauthorization and to ensure that the actions by the Executive Branch are within its authority.

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