



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 Originally enacted in 1965, the law established federal policy and authorized federal funding to assist states and local school districts to improve the academic performance of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 intended 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 proposed to shift in emphasis from being more punitive to more supportive, was indeed a more constructive shift. Furthermore, the renewed emphasis on all students graduating from high school and college and career readiness was welcomed.

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

Blueprint that would: 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 low-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 requirements on the part of states and local school districts.

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 had 23 members and the Democrats had 17 members. However, 13 of the Republicans were new members to the committee. The Senate Health, Education, Labor and Pensions Committee was 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 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 continued.

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) continued to voice their support for ESEA reauthorization during the 112th Congress.

UNITED STATES SENATE

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 came before the full Senate for a floor vote. Of major concerns to local school boards were new provisions that would broaden the

definition of comparability that would require all Title I schools to maintain a per pupil expenditure not less than the average per pupil expenditure of non-Title I school based on costs for personnel **and** non-personnel. The committee bills were never scheduled for floor vote.

UNITED STATES HOUSE OF REPRESENTATIVES

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 provide 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 details of the bills 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. On February 9, 2012 the House Committee formally introduced H.R. 3989 and H.R. 3990. The first, *Student Success Act*, H.R. 3989, focused 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 focused on teacher effectiveness by supporting the development and implementation of teacher evaluation systems. These two bills completed the House package. Although Chairman Kline talked with House Majority Leader Eric Cantor, who assigns floor time, to have the bills taken up in July 2012, the bills were never scheduled for floor vote.

The last two House bills established 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, of major concerns to local school boards were two provisions: 1) future K-12 education funding would be tied to the consumer price index which would fail to recognize the educational needs of students; and 2) Maintenance or Effort (MOE) requirements would be eliminated allowing states and local communities to reduce rather than maintain future funding without regard for the educational needs of the students. This limit in federal appropriations, combined with the proposal to eliminate Maintenance of Effort provisions by States, could converge to create a more difficult future resource climate for local school districts. In the final analysis, on February 27, 2012 – to keep legislative momentum moving, and in consideration of the significant overall improvements in the final House bills, NSBA determined that it was in the best interests of local school boards to formally support H.R. 3989 and H.R. 3990.

NSBA lobbyists continued to meet with members of Congress or their staffs regarding the urgency to move the bills to the full Senate and House floor for vote and remained actively engaged with the State and Local Governance Coalition comprised of ten state and local governance organizations to intensify our collective efforts for full floor action. Additionally, NSBA launched its ESEA NOW! Campaign to further engage local school board members in grassroots activities. However the committee bills were never scheduled for a floor vote.

U.S. SECRETARY OF EDUCATION ACTIONS

In response to NSBA and other major education stakeholders, on September 23, 2011, Secretary Duncan announced the release of the U.S. Department of Education's plan to provide states and locals 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 in 2011 that produced over 300 school district responses across 40 states.

The relief involves 10 specific waivers that were granted to 33 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:

1. Eliminated the 2013-2014 AYP Timeline and require new Annual Measureable Objectives (AMO) goals.
2. Eliminated 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. Eliminated the need for States to comply with sec. 1116(c) to take actions against LEAs.
4. Expanded 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. Eliminated the 40 percent poverty threshold for Title I schools if the SEA identifies the school as a **priority school** or a **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. Allowed SEAs to use their sec. 1003(a) funds to support their neediest **priority** or **focus schools**.
7. Allowed 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. Eliminated 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 Teacher (HQT) progress requirements.
9. Allowed 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. Expanded 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. Although the regulatory relief was welcomed by a majority of the states, local school boards remain concerned that while there is legislative authority for the U.S. Department of Education to grant waivers, none exists to authorize the conditions that were placed on states – and in turn on local school districts.

Additional concerns include:

- The waivers are conditioned with requirements that have placed unnecessary limits on the flexibility of local school boards to make on-the-ground decisions that serve the best interests, conditions, and needs in the local school district; and carry significant costs in dollars, staff time and program decisions that detract from currently limited resources.
- Eligibility requirements for ESEA flexibility waivers fail to recognize that many states and local school districts are not currently structured to meet many of the requirements including: 1) new teacher evaluation systems that require the states to assume policy direction that previously was at the discretion of local school boards; 2) implementation of college-and career-ready standards; and 3) differentiated accountability and recognition systems that would disrupt local decisions on the identification of high-need schools.
- Implementation requirements for new state accountability plans will be impacting school systems in the 2013-2014 school year. Therefore, a delay in legislative changes will cause unnecessary disruption/waste at the local level.
- The vacuum left by Congressional inaction will result in more unilateral decision-making by the U.S. Department of Education which means education policy will not be established by a representative process.
- Local school board governance will be eroded without local representative input in the local implementation.

NSBA POSITION IN THE 113th CONGRESS

NSBA will continue to lobby for a comprehensive, strategic framework for reauthorizing ESEA based on the formal actions taken by the 2012 NSBA Delegate Assembly and input received by local school boards across the nation. Such actions would improve the quality of educational services while ensuring maximum authority and flexibility to local school districts that provide such services.

Therefore, NSBA urges Congress to complete the reauthorization of ESEA during this First Session of the 113th Congress, incorporating the following priorities of local school boards to improve the quality and delivery of educational services to advance academic achievement by all students while restoring flexibility to local school boards in addressing their unique circumstances:

- (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.

Further, NSBA urges Congress to continue to monitor the implementation of the U.S. Department of Education's No Child Left Behind (NCLB) regulatory waiver process to ensure that the actions by the Executive Branch are within its authority.

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