

U.S. SENATE
COMMITTEE ON HEALTH, EDUCATION, LABOR, & PENSIONS

Testimony

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Thank you Mr. Chairman and members of the Committee for having me here today.

By way of brief introduction, my name is Andy Smarick, and I am a partner with Bellwether Education Partners, a national nonprofit organization dedicated to accelerating the achievement of low-income students by cultivating, advising, and placing a robust community of innovative, effective, and sustainable change agents in public education reform and improving the policy climate for their work.

I've worked for the Maryland state legislature, a Member of the U.S. House of Representatives, the White House Domestic Policy Council, as a Deputy Assistant Secretary at the U.S. Department of Education, and most recently as the Deputy Commissioner of the New Jersey Department of Education.

Let me begin with a quick summary of my recommendations, and then explain how I arrived at them and how they might be brought about.

First, I suggest that Congress delay further ESEA reauthorization proceedings until at least 2015.

Second, to inform the next iteration of ESEA, Congress should, for the next two to three years, invest significantly in the research arms of the U.S. Department of Education [and the Congressional Research Service (CRS) and the Government Accountability Office (GAO) if necessary] and task them with intensively studying the consequences of the waivers.

Third, to maximize the likelihood of successful implementation of State plans, Congress should, for the next two to three years, invest in expanding the capacity of State Education Agencies (SEAs) to build, maintain, and improve high-quality accountability systems.

Finally, Congress should consider strengthening the Administration's approach to addressing the needs of students in the nation's lowest-performing schools.

Background: NCLB and the Waivers

Analyzing the ESEA waivers and deciding how best to move forward, in my view, is as challenging as any education policy matter facing federal policymakers because it

inevitably forces us to make firm judgments about the proper place for the Federal Government in K-12 schooling.

And although ESEA is approaching its 50th birthday, I'm not sure we've reached clear conclusions about where Uncle Sam should be involved, and, when he is, what his precise role ought to be.

Accordingly, and because we are still so early in the implementation phase of the waivers, I'm encouraging, at least for the short-term, patience, study, and a focus on thoughtful execution of State proposals rather than sweeping assessments of these plans or swift action on ESEA reauthorization.

My approach to analyzing the waivers and determining what should come next begins by acknowledging two sets of competing truths.

I believe that decisions about K-12 policy should remain primarily in the hands of State leaders and those they designate to execute the day-to-day work of primary and secondary education, i.e. districts, other LEAs, and schools.

Moreover, the longer I'm involved in this work, the more I become convinced that the Federal Government is quite limited in what it is actually able to accomplish with regard to what matters most—student learning. Of course, Congress can create programs and appropriate funds, but neither translates so easily into improved achievement.

That lesson has been part of my maturation in this work; my default setting now reads something like: "When it comes to K-12 schooling, a modest Federal Government should be constrained and a wise Federal Government even more so."

This is largely why I strongly supported my State's efforts to earn an ESEA waiver about a year ago.

But there's significant weight on the other side of the scale—facts that my conservative ideology can't ignore. The decades of the 20th century when States were ascendant and the Federal Government cast a rather small shadow over schools—I'll call this "the pre-NCLB era"—were not an unmitigated success, especially for our most disadvantaged boys and girls.

It's hard to pinpoint a year when we became aware that our primary and secondary results were not what we hoped. President Lyndon Johnson, in a 1964 speech explained that helping urban schools would be a pillar of the Great Society. He said, "Poverty must not be a bar to learning, and learning must offer an escape from poverty."

Several years later, the famous Coleman Report showed that our schools weren't able to fully compensate for "out-of-school" forces, like poverty and parental education, meaning that demographics were all but tantamount to destiny.

Early in his term, President Nixon sent a similar message to Congress: "The outcome of schooling—what children learn—is profoundly different for different groups of children and different parts of the country... We do not have equal educational opportunity in America."

This thread continues to this day. Our two most recent presidents have spoken similarly, with the former lamenting the "soft bigotry of low expectations" for underserved students, and the latter, in his first inaugural, saying that "our schools fail too many."

Implied or explicit in all of the above is our nation's concern that for at least half a century now, low-income and minority boys and girls have not been getting from their assigned public schools everything they need to succeed throughout life.

This "achievement gap" would be tragic in any country, but it's doubly so in a nation that rightfully prides itself on freedom, opportunity, egalitarianism, and social and economic mobility.

Many of us became increasingly averse to keeping Uncle Sam on the bench while, decade after decade, disadvantaged kids lagged behind their more affluent peers.

This, combined with the fact that during this period the Federal Government was spending tens of billions of dollars every year without seeing the return on investment taxpayers deserved and students needed, led me, more than a decade ago, while a young aide to a Member of the House of Representatives, to encourage my boss to vote for the No Child Left Behind Act.

Though in some corners, it is now verboten to mention the acronym "NCLB" unless it's followed by a laundry list of criticisms, I think President Bush and the Senators and Representatives who supported NCLB deserve credit. The law did a great deal of good. I hope that fact is never lost.

But the law made some important mistakes, for example focusing solely on attainment instead of student progress and dictating inputs like the "Highly Qualified Teacher" provisions and restructuring interventions. Others have also argued that NCLB identified entirely too many schools as underperforming.

The waivers provide relief on these fronts. And, more generally, they reflect the large and growing support for my first set of arguments—the seeming consensus that the Federal Government should, for philosophical and pragmatic reasons, be light-touch when it comes to our schools.

Accordingly, the waivers have significant appeal. I know from my time in a state department of education that there seemed to be a collective sigh of relief from the field when our flexibility application was approved.

And to be clear, you can count me among the ranks of those who support the flexibility exercise in concept.

However, I'm a bit concerned that we've been so focused on reestablishing an arms-length relationship between Uncle Sam and our schools, that we may have lost sight, of the second, countervailing set of facts.

That is, the pre-NCLB era was an age of yawning achievement gaps and inadequate accountability for federal funds. NCLB didn't appear, out-of-the-blue and uninvited, on the national scene; it was a response to conditions that many of us felt intolerable. Too many disadvantaged kids *were* being left behind.

Congress, State leaders, and the public may now believe that the pro-State-authority arguments outweigh the pro-NCLB arguments. But I want to argue that they don't make the pro-NCLB arguments disappear. I'd like to encourage you to keep those pro-NCLB arguments in mind as you assess the waivers and, more importantly, as you restart work on ESEA reauthorization

This leavening of the current "devolve-power" zeitgeist, I think, will put the Administration's actions into perspective, help us sort out the strengths and weaknesses of the waiver process and the waivers themselves, and suggest a path forward for reauthorization.

So the rest of my testimony, including the recommendations I ultimately offer, flow from the conclusions I draw when I consider the entire NCLB-waiver enterprise alongside the very good reasons Congress had for passing NCLB in the first place.

States Reclaiming K-12 Authority

First, Congress inserted the Federal Government into K-12 schooling the way it did back in 2001 because too many states lacked content standards, failed to sufficiently assess student performance, inadequately disseminated performance information to parents and the public, failed to identify the most underperforming schools, were unable to successfully close achievement gaps and improve performance in long-failing schools, and provided too few options to kids desperately in need of alternatives.

So, given these facts, is Uncle Sam's tactical withdrawal—as mapped out by this flexibility initiative—appropriate? Or put another way, can the Congress of 2013 trust the States to deliver results in ways the Congress of 2001 did not?

My answer to most of these questions is a cautious "yes."

NCLB required states to adopt content standards, develop and administer assessments, and disaggregate and publicize results. More so than a decade—but certainly not unanimously—these practices are considered important parts of a public education accountability system.

Moreover, nearly all States have signed on to the Common Core State Standards and one of the associated testing consortia. Though there is much difficult work between where we currently stand and full implementation of these standards and assessments, the States' work to date suggests fidelity to high standards, tough assessments, public reporting, and accountability.

The waiver application required states to continue along this path; and while many aspects of ESEA reauthorization are still undecided, Congress's recent actions suggest it intends to continue requirements related to standards, assessments, and disaggregated reporting.

So in these areas, I'm encouraged by what States might accomplish with their renewed authority.

But with regard to a number of other matters that precipitated NCLB's passage, I have misgivings about the intersection of some States' paths and the Administration's road to flexibility.

To take a quick step back, some might be of the mind that the Administration's flexibility initiative amounted to a *de facto* reauthorization of ESEA. Two-thirds of states have overhauled their systems of reporting and accountability. Ten states are already approaching the one-year anniversary of their approvals. States have re-set AMOs using new formulas, they've jettisoned the core notion of AYP, they've stopped putting schools in improvement status, and many have brought Supplemental Educational Services, NCLB choice, and HQT to an end.

So the landscape created by the waivers is certainly different than the one conceptualized by NCLB. I suspect this is cause for more than a little consternation.

But if we're to focus on the future, I think we are well served by seeing the waivers as having provided an invaluable opportunity to learn lessons from America's "laboratories of democracy."

I am, therefore, persuaded to think of the waiver strategy as an information-gathering "pre-reauthorization" that will ultimately result in a sturdy ESEA that returns to States their rightful authority over K-12 schooling.

In other words, the lessons of NCLB seem to have convinced some in Congress that federal oversight of schools should be on the wane. This is an outline for

reauthorization. But the devil is in the details. The real question is, “What exactly should this look like in practice?”

What we learn from the State-based experiments generated by the waivers will help provide that answer.

My primary concerns about what comes next are: first, pre-NCLB, some States did not use their authority to significantly improve student achievement; second, some States continued to consistently lag behind even during the more centralized NCLB era, a problem that might be exacerbated under the waivers; third, a great number of schools deserving scrutiny are not captured by the three federal categories (Priority, Focus, and Reward); fourth, we cannot be sure that States’ proposed interventions for troubled schools will generate the improvements we need; and fifth, the nation’s very lowest-performing schools may continue to fail, and the boys and girls assigned to them will not have alternatives.

I am not suggesting that States will purposely be bad actors on any of these matters. In fact, I believe that we have more reason to be optimistic than ever before that States are positioned to do quite well.

We have a number of exceptional state superintendents who have the knowledge and backbone to advocate for and implement vital reforms. A new generation of enthusiastic reformers with a laser focus on improving student performance and closing the achievement gap populate our schools and school systems and the many nonprofits that support them. The demands of our changing economy and international competitiveness seem to have galvanized business leaders, governors, and state legislators.

But in the past, the best of intentions have not always led to the results we need. Moreover, some States’ track records and some State proposals on issues like closing achievement gaps should give us pause.

I’m cognizant that some might argue that States have the right to control their schools as they see fit. Period. And this means States’ identifying struggling schools as they choose, delivering interventions as they deem best, and using their own discretion to decide whether to provide other options to kids. These matters are simply not the Federal Government’s business, some might contend.

Though this roughly aligns with my political philosophy, I just can’t bring myself to agree with this articulation. My intellectual purity ends at the water’s edge of the best interest of disadvantaged kids. I couldn’t recommend a long-standing waiver policy much less an ESEA reauthorization that would allow student learning to slide backward, achievement gaps to grow, and/or the continued assignment of kids to failing schools.

I'm not saying that these things will necessarily happen in one or more states that receive a waiver. But we should be mindful that they could. Along these lines, I believe the Department made a wise decision by making the waivers time delimited, so it could pull the plug should problems emerge.

But it will be difficult to rescind flexibility once it has been granted; States will have put significant work into their new systems, and their LEAs and schools will have become accustomed to the new rules.

I hope that future waivers and the next version of ESEA will be constructed so that such steps backward are minimized. But at this point, given our lack of knowledge about how the waivers will play out, we simply don't know how to do that.

So that's why my first recommendation is to delay reconsideration of ESEA reauthorization until 2015 at the earliest and use the next 24-36 months to vigorously study the waivers and their effects.

The new state plans raise more questions than imaginable. They differ in countless ways, and after reviewing many of them, I can't tell you, at this point, which model is best. In fact, given that none of these plans have been fully implemented, much less brought about measurable results, we just have no idea which elements of which plans are going to serve kids well.

So my second recommendation is to turbo-charge for at least the next two years, the research arms of the U.S. Department of Education, namely the Institute for Education Sciences (IES) and the Policy and Program Studies Service (PPSS). They should be directed—and further funded if needed—to study the waivers and their effects and help Congress draw conclusions about what the information gleaned means for an improved ESEA. If our research needs exceed the Department's capacity, I'd recommend that Congress engage the Government Accountability Office and/or the Congressional Research Service, as well.

Consider just a few of the different tacks States are taking:

- States are using a wide array of methods to measure school performance and assess whether achievement gaps are closing. This is a more complicated exercise than it might appear. One researcher, for example, has found that how a state weights growth and attainment influences which level of school (i.e. elementary, middle) is primarily identified as the lowest performing.
- There appear to be cases where a State has one method for identifying low-performing schools for the purposes of the waiver and another method for generating school-level grades.

- Some states, like Tennessee, believe the best state approach is to work through districts; New Jersey, where I worked, on the other hand decided that school-based reforms were likelier to influence achievement
- A number of states have created “A-F” grading systems, with Florida’s system most well known. Connecticut and Massachusetts are creating new performance indices.
- Some states are giving scoring bonuses in school rating systems for making gains with the lowest-performing students. Indiana and Massachusetts are also giving weight to improvements made with *high*-performing students.
- There are different ways of deciding which schools are most troubled—how do you combine overall achievement scores with achievement gaps, subgroup performance, growth scores, graduation rates, and so on?
- Maybe the biggest deviation from NLCB is several States’ decision to create a so-called “super subgroup,” which considers all low-performing kids together instead of categorizing them, for reporting and accountability purposes, by race or parental income.
- There are different ways of addressing persistently failing districts: some State plans contemplate putting such districts in state receivership; other States intend to take over individual schools within these districts
- States vary significantly in how they will work with schools that don’t fit into Priority, Focus, or Reward status—what some call “unidentified schools.” How closely are they monitored? When will states intervene?
- Though I’m opposed to requiring educator evaluation reforms via ESEA, the lessons from the States’ responses to the waivers will have much to teach us about Title II and the Teacher Incentive Fund.
- And then there is the laundry list of questions related to interventions. What do States plan to do when schools develop huge achievement gaps, fall into the bottom five percent of all schools, or have too few advanced students? Some like Kentucky promise to develop regional support offices. Others plan to offer resources through the central state office. And there are countless other permutations

Two or three years from now, we will know much more. I believe these real-world lessons should inform the next reauthorization.

- We may find that every state plan approved by the Department produced terrific results. But it’s likelier that some plans will yield remarkable

improvements, some plans will be good or fair, and a few will produce outcomes that we regret. It's almost certain that in every State plan some elements will work better than others.

- The super-subgroup approach may lift our most underperforming kids. Or it may prove to mask the low performance of some groups.
- "A-F" systems may produce the kind of information policymakers and parents need. But it's also possible that they inevitably produce oversimplified answers to an inherently complex question: How is this school performing?

Some might say that decisions on these matters should be left wholly to State leaders. I do think that Uncle Sam needs to hand back to the States much of the power he accumulated during the NCLB era.

But I suggest that our operating philosophy be more along the lines of President Reagan's adage "trust but verify" and less like "declare victory and go home." That is, we should divest Uncle Sam, but we should do so prudently.

I think we should be humble enough to admit that as a nation we were unsatisfied with the student achievement results of the pre-NCLB era. We have to guard against a reflexive return to the policies and conditions that produced those results.

Precipitate action on reauthorization could lead to similarly distressing results for kids, and then we'd find ourselves back here in a decade discussing another round of expanded federal K-12 powers because—critics will charge—the States couldn't deliver. That's to be avoided if at all possible.

If we embrace a "measure twice, cut once" mentality over the next two to three years, we can learn a great deal from the States and build a smart, robust ESEA that stands the test of time.

Inputs versus Outcomes

The second set of conclusions I draw when considering the waiver enterprise in the context of NCLB relates to federally required "inputs" versus "outcomes." I think the Federal Government generally erred the most under NCLB when, rather than telling States what was expected and allowing them to determine how best to get there, prescribed precisely what the States ought to do. In this area, I think of the HQT provisions, the interventions prescribed under restructuring, and the rules for how to determine if a school is "in need of improvement."

I think the waiver application process veered in this direction on occasion. For example, I'm a very strong advocate for State-level reform of educator evaluation

policy. But this is an input—a strategy we suspect will lead to better student outcomes—not a result. I think including educator evaluation reform in the waiver application may have been a bridge too far.

I think the Administration did an exceptional job on this policy with Race to the Top. Thanks to its inclusion in that application, we've seen more changes in educator evaluation policy in the last several years than I frankly thought possible.

But that was a voluntary competitive grant program—Congress's way of encouraging States to pursue a particular suite of reforms in exchange for potential funding. That strikes me as wise federal policymaking. If Congress believes strongly enough in a reform that it is willing to allocate scarce federal resources to a voluntary competitive grant program, that can have the effect of changing state policy and practice without forcing the hand of State leaders.

I think the Administration may have also gone too far in the direction of input-management during its negotiations with States over their final waiver submissions. To me at least, it doesn't feel exactly right when State officials need to seek the permission of federal officials to construct a Common Core-implementation timeline or a rollout strategy for the various components of a new educator evaluation system.

To be fair, a reasonable response from the Administration on this score would be that they were simply playing on the field constructed by NCLB. They were adhering to the law's principles on the achievement gap and federal oversight of State activities related to troubled schools.

They might say that had they *not* conducted such negotiations they would've been left with the binary option of simply voting up or down applications, which would've infuriated States in the down column. Or the Department could have simply rubber stamped all applications that came over the transom and then been susceptible to charges of giving too much leeway to States whose activities still needed to be monitored assiduously during the transition from NCLB to the next ESEA era.

My preference during both this waiver period and the subsequent new-ESEA era is to have the Federal Government focus almost exclusively on outcomes—meaning both that States would have significant flexibility for accomplishing agreed-upon goals and that the Federal Government would act swiftly and forcefully when results are not achieved. In the latter case, this would include an increased willingness by the Federal Government to withhold formula-based federal funds from persistently poor-performing States, LEAs, and schools, and to make these entities ineligible for competitive grant programs.

SEA Capacity

My third conclusion is that the Federal Government, even absent a reauthorization in the near-term, should provide financial support to States during the waiver era to ensure that the States have the capacity to fill the vacuum caused by the removal of federal oversight. There is a stark difference between the NCLB era and the seemingly imminent State-ascendant era, and a smart transition phase is necessary.

It is important to remember that most States are currently overwhelmed with education reform implementation. I can't emphasize strongly enough just how much new and difficult work has been heaped on SEAs over the last five years.

In addition to their historical responsibilities over distributing state and federal funds, monitoring Title I and IDEA compliance, credentialing educators, and more, they've now been placed in charge of the most important new initiatives of this era: Common Core implementation, transitioning to the new common assessments, overhauling educator evaluations, improving educator preparation programs, expanding and improving choice options, and on and on.

While they've been tasked with more and more, many SEAs have seen their budgets shrink because of this lingering period of fiscal austerity. State chiefs were already struggling to triage, with each initiative demanding more attention and resources than are available.

The waivers have only increased the demands on SEAs. As the Federal Government pulls back from accountability, SEAs will need to fill the void—but many State leaders will find themselves asking, "Fill it with whom?"

Policy implementation is not the most glamorous subject. But if we want this era's reforms to succeed, we have to remember that someone has to carry them out. My concern is that if we don't take this seriously, we'll look back ten years from now and marvel at the huge delta between the aspirations of the laws we passed and the results they achieved.

So my third recommendation is to establish a short-term "ESEA Transition" fund that will help states staff up to pick up the slack as Uncle Sam looses his grip on the reins. States will ultimately need to take full financial responsibility for their new accountability systems. But over the next 24 months, while they budget for the future, they will need help building and disseminating their new school report cards, staffing their new regional offices, delivering interventions, and much more.

With so many competing priorities, state chiefs, without additional support, will find themselves constantly robbing Peter to pay Paul. A short-term financial investment in SEA human capital could play a powerful role in ensuring that waiver plans succeed and that States have the ability to advance student learning and close achievement gaps while the Federal Government stands down in this area.

Addressing the Lowest-performing Schools

My final conclusion related to the intersection of NCLB and the waivers relates to the nation's lowest performing schools. NCLB placed a priority on addressing the needs of students in these schools by requiring that the schools undergo "restructuring" after persistent low performance and by providing their students with additional education options.

Restructuring, however, did not accomplish its goal of bringing dramatic change to these struggling schools. In hindsight, however, this should not have come as a surprise.

A large and growing body of evidence shows that the nation's lowest performing schools remain low-performing despite a wide array of interventions. In just the last few years, Tom Loveless of Brookings found that over the course of 20 years only 1.4 percent of the schools he studied from the bottom quartile of performance made it to the top quartile.

In a study for the Thomas B. Fordham Institute, David Stuit found that only 1 percent of schools made it from the bottom quartile to the top half of performance.

Just last week, a newly released report from Stanford University found that even among charters—which should have more degrees of freedom than other public schools—89 percent of schools in the lowest quintile of performance after three years in existence would remain in the bottom quintile thereafter.

Because major improvements of our lowest-performing schools are so rare, it is virtually impossible to say with any degree of certainty which strategies are the right ones to employ. In fact several years ago the U.S. Department of Education released a study on school turnaround efforts and found that it couldn't firmly recommend one or more approaches because it could not identify any sufficiently rigorous studies finding that "specific turnaround practices produce significantly better academic outcomes."

Add to this the Administration's release, late last year, of a graph showing depressing initial results from the multi-billion dollar School Improvement Grant (SIG) program. After a year of using the Department's preferred turnaround models, nearly 40 percent of schools receiving SIG funding had *lower* reading scores. Another 49 percent saw only "single-digit" reading gains.

I firmly believe that a reasonable inference from this evidence, and the many similar studies that came before, is that the Federal Government cannot depend on "turnarounds" of our most troubled schools to provide the number of high-quality seats our disadvantaged students so desperately need.

This lesson is especially relevant to the waiver's approach to "Priority" schools, the nation's most persistently underperforming schools. States are required to

intervene in these schools using strategies aligned with the Federal Government’s “turnaround principles.”

Said simply: with enormous evidence that school turnarounds are not a scalable strategy for meeting the needs of our most at-risk students and data showing that the Department’s four preferred SIG strategies backed by \$5 billion produced discouraging results, I find it hard to make the case that a waiver application ought to require States to use another set of federally approved “turnaround principles” with their other low-performing schools.

A new approach is warranted.

So my fourth recommendation is for Congress to give the Department new authority in this area. The Department should continue to require waiver-seeking States to identify their lowest-performing schools; but it should not tell States what to do with them. States should have full discretion in crafting and administering such interventions.

Instead, following the outcomes-not-inputs approach, Congress should empower the Department to withhold all federal funding, including Title I, from any such school that remains persistently underperforming after the application of State-determined interventions.

Withheld funds should then be aggregated and made available to States on a competitive basis to support the creation of new schools—under new operators and governance conditions—serving the affected communities.

This would facilitate the replacement of the nation’s chronically failing schools via a “new-schools strategy.” My preference would be for these federal funds to be administered through the federal Charter School Program, subject to all of its current rules and priorities.

If, however, Congress chooses to require no alterations to the Department’s waiver application until a full ESEA reauthorization is complete, I would encourage exhaustive research on SIG results, including the timely release of school-level data, and the effectiveness of State interventions in Priority schools.

Conclusion

I believe that the Administration’s ESEA waiver initiative has given Congress the opportunity to vigorously study State accountability plans and their influence on student learning. This will hopefully lead to a new ESEA that generates improved student results and finds the right balance between State authority and federal oversight.

By delaying reauthorization and providing a short-term boost to both federal research and SEA capacity, Congress has the opportunity to return K-12 authority to the States while ensuring that the progress made during the NCLB era is continued.