

**Better Late Than Never:
Flexibility, NCLB, and the Federal Role in Education**

Testimony before the Early Childhood, Elementary and Secondary
Education Subcommittee of the House Education and Labor Committee

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Chairman Kildee, Congressman Castle, members of the subcommittee: thank you for the opportunity to testify today. I am heartened to see you take up the issue of “Current and Prospective Flexibility Under No Child Left Behind,” though I am also aware that this is one of the last hearings currently scheduled before you start work on legislation. I hope it’s a case of saving the best for last, not some sort of afterthought.

That’s because “flexibility,” properly conceived, shouldn’t be considered an “add-on,” a separate program, or a sideshow. Rather, it is at the heart of the most important question the Congress must answer with respect to the next iteration of NCLB and ESEA. Namely: in elementary-secondary education, what should the federal government be “tight” about, and what should it be “loose” about. When should Uncle Sam be prescriptive, and when should he be flexible?

A few weeks ago, at a National Press Club panel, Hartford Superintendent Steve Adamowski commented that “high-achieving organizations eventually, in some way, get this right: what do you hold tight, what do you hold loose.” As a local superintendent, he wrestles with this question all the time. What should be done uniformly, with strong central office control? And what should be delegated to principals? Too much flexibility and schools can founder. Too much prescription and innovation is sunk.

In Washington, these debates about prescription versus flexibility and the proper federal role quickly become ideological. Conservatives tend to argue that states have constitutional authority for schooling and the federal government should simply leave them alone. (Never mind that plenty of states have an abysmal record of providing a decent education, especially for poor and minority kids.) Liberals are apt to insist that states can’t be trusted and that only strong federal enforcement of specific measures will lead to a narrowing of the achievement gap. (Never mind that plenty of states were making decent strides in raising achievement and narrowing gaps sans federal prodding.)

Neither view is right. Each leads to a bad outcome: Either “put the money on the stump,” let states and schools do whatever they want, and hope for the best; or micromanage fifty

states, 15,000 districts and tens of thousands of schools through miles of red tape. Neither approach works, not, at least, if stronger student achievement is the metric by which success is judged.

Is there a way to transcend these tired and predictable arguments? Let me propose three pragmatic rules to determine when Uncle Sam should be “tight” (i.e., prescriptive) and when he should be “loose” (i.e., flexible):

1. Whenever possible, the federal government should be tight about results and loose about process.
2. The federal government should figure out what it’s good at, where it’s most apt to be effective, and only do those things.
3. The federal government should encourage states, districts, and schools to “earn” even more autonomy on the basis of strong performance.

Let’s take a closer look and consider what these rules would mean for a revamped NCLB.

Rule #1: “Tight” as to Results, “Loose” as to Process

This principle comes straight from Management 101: excellent bosses give their employees clear direction and specify the results to be achieved. But then they cut their charges plenty of slack to use their own creativity, innovation, and resourcefulness to achieve those results as they see fit. In a corporate setting, CEOs are “tight” about the bottom line, but “loose” as to how a particular unit achieves it.

This idea is the driving force behind the past twenty years of standards-based reform. It’s related to former Vice President Gore’s efforts to “reinvent” government. It’s standard practice in large organizations around the globe. It’s also the essential theory behind site-managed schools and charter schools.

And yet in federal education policy, we usually get it backwards. We obsess about process and pay minimal attention to results.

NCLB's architects believed, I think sincerely believed, that they were straightening this out, that NCLB was, above all, about results, with plenty of interventions and sanctions for those states, districts, and schools that didn't produce them. But they didn't get it right. I would even say they made a fundamental mistake. Rather than setting a common standard for school performance across the land and then encouraging states, districts, and schools to meet that standard in the ways that each judges best, they instructed states to define "proficiency" in reading and math as they saw fit—and then got very prescriptive about timelines, calculations of progress, and year-by-year interventions.

Instead of regulating ends, in other words, Washington once again found itself regulating means, prescribing a hundred aspects of what states and districts should do when, by their own lights, their schools don't do an adequate job. That means way too much regulation on the one hand and, on the other, plenty of incentive for states to define "proficiency" downward and make Swiss cheese out of NCLB's accountability provisions. Already many states, in order to explain the discrepancy between their passing rates on state tests and their students' performance on NAEP, are claiming that observers should equate state "proficiency" with NAEP's "basic" level. In other words, they are satisfied to get their students to "basic," proficiency be damned. A system that allows such cheese-paring and redefining puts the entire enterprise of standards-based-reform in peril.

The surest way to end this such questionable practices—and keep Washington from playing a cat-and-mouse game with recalcitrant states—is to move to a system of national standards and tests, while simultaneously freeing states, districts, and schools to achieve those standards as they see fit.

To be very clear, federal officials do not themselves need to, and in my view should not, create such national standards and tests themselves. But the federal government could require or encourage their use.

What does this have to do with flexibility? Perhaps counter-intuitively, I see national standards and tests as an opportunity to *rein in* Uncle Sam's more dictatorial and bureaucratic impulses. For forty years, Washington has sought to improve schools by regulating what they do. NCLB's mandated cascade of interventions into low-performing schools, for example—a different one each year for seven consecutive years—illustrates this pattern of behavior. (As for the parallel cascade of state interventions into low-performing districts, the less said the better. It's a complex mandate that may best be described today as “ignored”.) Another example: by requiring testing in just two subjects and resting its entire intervention-and-accountability edifice on those results, No Child Left Behind has exerted definite pressure on schools to restructure their curricula, emphasizing math and reading skills to the detriment of other subjects. To date, we can find scant evidence that this strategy works—and some hints that it's backfiring. Schools are narrowing their curricula, neglecting already-proficient kids, lowering standards, and finagling test results. Common standards and tests would allow Uncle Sam to back away from his top-down, regulatory approach and settle instead for clarifying the objectives to be achieved, then measuring (and publicizing) whether states, schools, and students are in fact meeting them.

If states were in fact willing to sign up for tougher national standards and tests, what process-type regulations would I be willing to trade? Here are three categories:

- **Spending restrictions.** School principals rightfully want control over their budgets. Yet current federal policy sends dollars into a myriad of silos, categorical programs that may or may not meet the needs of individual communities. NCLB's “**transferability**” provision began to address this problem by allowing states or school districts to shift funds from one silo to another, or into Title I. But it set a cap at 50 percent. President Bush and Congressman McKeon have it right when they call for expanding transferability to 100 percent, allowing states or districts to send all of their dollars into the Title I program and then ignore all rules and regulations for the other programs. This will cut red tape while also driving more federal dollars toward the needy students who need them the most. (I also favor

Mr. McKeon's call to expand eligibility for "schoolwide" programs within Title I.)

- **Staffing restrictions.** The impulse behind No Child Left Behind's "highly qualified teachers" provision is understandable. Teacher quality matters a lot, and most states have set miserably low standards for incoming teachers. Still, the mandate has created oodles of unintended consequences that need addressing. Fundamentally, it's worth asking whether the federal government should concern itself with teacher credentials or should stay focused laser-like on student learning. I prefer the latter. (For a compromise idea, see below.)
- **The "School Improvement" Timeline.** Sure, states should take action when low-performing schools fail to improve year after year. What's not clear is whether NCLB's rigid sequence of prescribed annual interventions (including choice and tutoring, corrective action and restructuring) is any better than those that states might devise. In my view, such actions are far likelier to succeed if decided as close as possible to the problem and on timetables that make sense to those who will be responsible for implementing them. Moreover, ample sunlight shining down on school/district/state performance vis-à-vis clearly specified national standards will give state and local officials (and voters, taxpayers, parents, etc) good information by which to repair their own schools.

Rule #2: The federal government should figure out what it's good at, where it's most apt to be effective, and only do those things.

Another key pragmatic question is whether Washington itself has the capacity, the infrastructure, and the know-how to implement NCLB's lofty expectations and detailed plans in an effective manner. Regrettably, the evidence is overwhelming that it does not. Nor will a change in Administration make much difference. That's because of a structural flaw in U.S. education federalism that NCLB inherited from earlier rounds of ESEA.

Back in 1965, when lawmakers' main goal was to disburse federal dollars to schools for

additional instructional services for poor kids, it made sense, indeed was practically inevitable, to hand those dollars down the familiar institutional ladder from Washington to state education agencies to local education agencies. That was how state and local monies already flowed and there was no reason to create another mechanism to move federal funds. While SEAs and LEAs weren't always diligent in following Uncle Sam's rules, it was in their interest to comply, if only because they and their schools then got the money, which came without so many strings as to disrupt what they were already doing.

Today, however, getting Washington's dollars to the right places is the lesser mission of ESEA/NCLB. The law now deploys its funds and their attendant conditions, regulations, state plans, and oversight mechanisms to *transform* the system in fundamental ways, above all to boost student achievement and hold schools (and districts and states) to account for whether or not they accomplish this.

Thus arises a great paradox: Washington still relies primarily on SEAs and LEAs to do its bidding, yet now the point of federal programs is not to "help" them do more but to change what they do, often in ways they don't much want to be changed. In ways they judge contrary to their own interests. Ways that include admitting failure. And ways they may not be competent to handle, albeit ways that the public interest demands.

Why do federal policy makers assume that the very agencies that caused the system's problems (or, at least, allowed them to fester) now possess the will and capacity to solve them? The truth is, Congress and the White House never gave this any thought. At least I don't think you did. When crafting NCLB, I believe the craftspeople simply clung to the assumption that has ruled ESEA for four decades: that working down the familiar food chain is how Washington does business in the K-12 sector.

Thus NCLB proceeds in the accustomed sequence, with Uncle Sam telling states what to do, states telling districts, and districts doing most of the work. That hierarchy remains the basic architecture of federal education policy today as in LBJ's time. But its engineers never pictured it supporting a results-based accountability system, making repairs to

faltering schools, or functioning in an education environment peppered with such disruptive, non-hierarchical creations as charter schooling, home schooling, and distance learning. It's as if a high-tech firm was officed in an old foundry without anyone bothering to re-wire, re-plumb, or even fumigate the structure.

This problem begins in Washington. Let's consider what NCLB has taught us about federal capacity:

1. **The federal government is not good at nuance.** Consider the law's complicated accountability and AYP provisions, for instance. The various design problems are legion, but they exist because of the principle that states must all be treated the same. Because some states were considered to be untrustworthy and unwilling to hold their schools accountable, especially for the performance of poor and minority students, all states were treated with suspicion. Thus the decision to mandate required elements of AYP, rather than setting broad parameters, which has led to constant cries for more flexibility. When laggard states complain about these prescriptive requirements, it's easy to label it "whining." But when leading states with well-developed accountability systems complain too, it's a sign that the federal hammer might be breaking some things that weren't previously broken.
2. **The federal government can force recalcitrant states and districts to do some things they don't want to do, but it can't force them to do those things well.** Yes, Uncle Sam has had plenty of practice at the compliance game and, on issues that are black or white (are states testing all students as required, for example), it can intervene and even take away dollars from misbehaving jurisdictions. But most of the important parts of NCLB are gray zones. Take "highly qualified teachers" or "public school choice" or "restructuring." In each of these areas, we've seen states and districts go through the motions without actually living up to the spirit of the law. Yet Washington is toothless to do much about it. That's not a legislative failure, it's a fact of organizational life. The federal government doesn't run the

schools or employ their teachers; it has limited ability to make these complicated functions go well. But “going through the motions” isn’t enough if we actually want to transform schools, and it fosters more cynicism.

3. **States and districts do respond to carrots.** What the federal government is actually good at—beyond distributing money, collecting statistics, investigating specific wrong-doing, and doing research—is funding promising reforms via competitive grant programs. Consider the Teacher Incentive Fund, for example. While controversial in some eyes, it has spurred several large school districts to experiment with merit pay for teachers. Something that would not have happened, in all likelihood, without federal dollars. Or look at the decade-old federal Charter School Program, whose funds are targeted to states with decent charter school laws. There’s little doubt that federal leadership (first from President Clinton) played a key role in the charter movement’s development. (That the charter program needs a makeover doesn’t detract from the difference it has already made.)

What lessons should Congress take from NCLB’s experience with federal capacity?

First, even if you choose to continue to prescribe specific policies (such as AYP or Highly Qualified Teachers), aim for being clear about the ends and loose about the means. Take accountability, for example. If you don’t accept the virtues of national standards, at least be more flexible about states’ accountability systems. Rather than prescribing the exact nature of AYP, offer key design principles instead.

Let states prove that their systems measure up. Secretary Spellings’ growth model pilot is a good example here. While she published a clear set of design principles and made states engage in a rigorous screening process, she didn’t mandate a single uniform approach to measuring growth. Not doing so makes a lot of sense.

The *second* big lesson is that, if you want to see movement in a particular area, consider offering dollars to willing states and districts rather than mandating a course of action for the entire country. When it comes to school choice, for example, adopt a version of

President Bush's recommendation for a grant program for cities interested in expanding choice options, rather than forcing all 16,000 districts to go through the motions of offering choice when it's perfectly obvious that many of them lack the capacity as well as the will. Or when it comes to "Highly Qualified and Effective Teachers," look to Education Trust's recommendation to offer willing states extra cash to experiment with a "value added" system for measuring teacher quality, rather than adopting the No Child Left Behind Commission's suggestion of a nationwide mandate.

Rule #3: The federal government should encourage states, districts, and schools to "earn" even more autonomy on the basis of strong performance.

"Earned autonomy" is an idea whose time has come. Increasingly superintendents (in Chicago, Las Vegas, New York City, etc.) are allowing schools to apply for greater freedom from central office. Those with a track record of improving student achievement qualify.

This same idea has made inroads in the charter-school domain. While charters have always been about "accountability in return for autonomy," increasingly their sponsors (including my own Fordham Foundation) understand that autonomy is something to be granted carefully. Once upon a time, some of us in the charter movement thought we should plant as many seeds as possible as quickly as possible and let a thousand flowers bloom; after all, we could always close them down. It turns out that closing schools is far harder than we thought. And we've witnessed many charter schools founder (or worse) because their leaders weren't prepared to work with the autonomy they had been given. So now conscientious sponsors screen applicants very carefully, just as venture capital firms screen prospective business start-ups. And only when a founding team proves that it is worthy of a charter and the concomitant autonomy is the green light given. We also reward charter schools for good performance by granting longer charters, hassling them less, and encouraging their replication. (The leash is shorter for low-performing schools.)

The appeal of this idea is obvious: It encourages good behavior (especially improved achievement), it recognizes that some entities are more capable of handling autonomy better than others, and it minimizes risk.

How could this principle be imported into federal policy? Here's what it might look like:

- **Grant greater flexibility to states that sign up for rigorous national standards and tests, or put their own rigorous system in place.** As explained above, this flexibility could include expanding the funding “transferability” provision, waiving the school improvement timeline, etc.
- **Allow states with vigorous interventions greater AYP flexibility.** Rather than trying to prescribe the exact sort of overhaul that states should serve up for failing schools, reward states that are engaging in effective reforms by giving them more leeway in defining their accountability metrics as they see fit. For instance, states that energetically provide school choice options to kids stuck in failing schools—by creating new charter schools for them to attend, or mandating inter-district transfers, or in other ways—might be allowed more discretion to differentiate sanctions for truly abysmal schools versus merely mediocre ones.
- **Allow schools that make AYP to ignore HQT.** This is a particularly powerful idea. Improving teacher quality is necessary condition for boosting student achievement. But even the supporters of the “highly qualified teachers” provision admit that it's a poor proxy for school quality and classroom effectiveness, and that it's overly focused on paper credentials. So reward schools for getting great results by allowing them greater flexibility around staffing. To continue making AYP, schools will continue to make good decisions around teachers, but with less red tape from Washington. (This is especially important for high-performing charter schools, which are supposed to be freed from regulations in return for results, but are wrapped in the law's subject matter and certification requirements just like everyone else.)

Conclusion

You may have entered this hearing room contemplating some kind of new “flexibility program” for NCLB. I’m here to urge you to think more broadly, to ponder just where the federal government should be prescriptive and where it should be flexible. I hope you consider some of my specific proposals. I believe four of these have particular merit:

1. Encouraging states to adopt rigorous national standards and tests, and in return granting them greater flexibility around spending (by expanding “transferability”) and staffing (by waiving “highly qualified teachers”).
2. Moving federal requirements for state accountability plans away from prescriptive and pre-determined actions to more open-ended design principles. Be clear about the end-result you want, accountability-wise, but flexible in terms of the specifics.
3. Reducing the number of mandates on states, districts, and schools, and instead offering competitive grants to entities willing to experiment with promising practices. In this category I would even include the law’s “public school choice” provisions.
4. Allowing schools that make AYP to ignore HQT. At the end of the day you care about results, and good schools will ensure high-quality teachers. This show of goodwill and flexibility might go a long way.

Thank you once again for the opportunity to testify. I look forward to your questions.