

Toward a Healthy Federal-State Relationship

Testimony before the House Education and Labor Committee

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Chairman Miller, Congressman McKeon, members of the committee: thank you for the opportunity to testify today. I am honored to represent the Thomas B. Fordham Institute, an independent education-policy think tank located here in Washington.

As a think tank guy, and not a representative of an interest group, I enjoy a certain amount of freedom to call things as I see them. So let me state an obvious truth—one that you clearly wrestled with in the development of your discussion draft:

When it comes to accountability, it is impossible to offer meaningful flexibility to the states while at the same time foreclosing any possibility of chicanery.

If you were 100 percent committed to ensuring that nation's schools operated under a rock-solid, tamper-proof set of accountability rules, you would build it yourself, from Washington. You would create a watertight national accountability system, complete with national academic standards, national tests, and national school ratings. You would ask an independent commission to determine what students needed to learn in order to compete with the rest of the world, have them build top-notch tests, design sophisticated growth models, decide appropriate “n” sizes and confidence intervals, and develop a rating system with a range of well-designed school labels. Every school in the country would be judged in exactly the same way.

This isn't a crazy idea. I and my Fordham colleagues would support “going national” with such an accountability system—so long as we also “went flexible” with everything else: how schools spend their federal dollars, what kinds of teachers they can hire, how states and districts intervene in schools that aren't making the grade, how many choices families have among schools, and on and on.

It's pretty clear, though, that you aren't willing to call for such a national accountability system—and, to be fair, neither are the so-called “accountability hawks” in the civil rights and business communities. So you're left with a delicate balancing act. Give too much flexibility and certain states and districts will make Swiss cheese out of NCLB

version 2.0. (Especially with the wonderfully misnamed Forum on Educational Accountability already licking its chops, waiting to instruct states on how to play games.) Give too little flexibility, and well-meaning states will continue to chafe against the federal dictates, unable to implement world-class accountability systems that, left to themselves, they would (or have already) put in place.

The horns of a true dilemma, with no right answer. No matter what you do, some states and districts will resist true accountability. No matter what you do, some other states and districts will be hobbled in their earnest efforts to implement true accountability. The best you can achieve is to provide political cover and enough flexibility for states that want to do the right thing, while removing perverse incentives for states to do the wrong thing. Let's consider how the discussion draft measures up on those counts.

Be Flexible, Be Principled

Your task with regard to well-meaning states—those that have been in the vanguard of the accountability movement for years, whose leaders remain committed to the tough job of raising achievement and closing gaps—is to provide enough flexibility so that they can continuously improve their accountability systems. What they need from you is a set of design *principles* for such a system—but not a rigid system imposed on them. By all means, be clear about the objectives you want state accountability systems to achieve—but don't prescribe every nuance and rule. Because you'll never get it 100 percent right, Uncle Sam will never be as inventive as five or ten or twenty states, and if you over-prescribe, they will be frozen in place until the next reauthorization.

You seem to be open to this approach to some degree. Your proposal for growth models—based on the Administration's pilot program—relies on design principles, rather than dictates. (Sometimes the wrong design principles, but more on that later.) Yet in other cases you lapse into over-prescription:

- You open the door, for example, to multiple indicators, but limit their weight to 15 percent and 25 percent for elementary schools and high schools respectively. Why not 20 percent and 30 percent? Or 25 percent and 35 percent? Is this just arbitrary? It will surely be hobbling.
- You allow states to move from the current system of labeling schools in one of two ways (makes AYP/ does not make AYP) to a new system of labeling schools in one of three ways (makes AYP/ priority school/ high priority school). Why not allow four types of labels? Or five (A, B, C, D, F)?
- On special education, you embrace the “one percent rule” and the “two percent rule.” Why not the “four percent rule” or the “five percent rule”?

I’m not necessarily arguing for greater leniency. If you must pick numbers, your numbers are generally fine. But no matter what numbers you pick, they are going to constrain some states in some unforeseen and undesirable ways.

Instead, why not focus on design principles? You could say:

- When determining school ratings, state accountability systems must focus predominantly on student performance in reading and math, and on schools’ progress in ensuring that their lowest achieving students make significant gains in these subjects. But, in order to encourage schools to teach a full and proper curriculum, and to pay attention to all of their students across the achievement spectrum, such systems may also take into account pupil performance in other subjects, as well as schools’ progress in raising all of their students to higher levels of achievement.
- States may develop a school-rating system with multiple gradations. The most severe should be reserved for schools where the vast majority of students are failing to meet state expectations, and are not on a trajectory to meet state expectations by the time they reach twelfth grade. These schools must be subject to intensive sanctions. The most laudatory label should be reserved for schools where all subgroups of students are performing at high levels or are making rapid

progress toward state expectations. Regardless of the label, schools with a significant proportion of low-income students who are not on track to be proficient by twelfth grade must offer those students supplemental services.

- States must develop policies for including students with disabilities in their accountability system in a manner that maintains the highest expectations that these students, on an individual level, can possibly meet.

Let the states figure out the best ways to live by these principles and meet these objectives; you don't have to do it for them. Moving from prescription to design principles will give well-meaning states some much-needed breathing room. Will it also open the door to abuse? Of course it will, but here's how you can mitigate the risk.

Eliminate Perverse Incentives

In your discussion draft, you show praiseworthy awareness of NCLB's unintended consequences. Worried about the "narrowing of the curriculum," you allow states to include subjects beyond reading and math in a school's accountability rating. Concerned about an obsession with the "bubble kids" just below the proficiency line, you allow states to move to growth models. This is all to the good.

Still, the draft maintains some policies that could encourage states to behave badly. You should take a red pen and slash these provisions at once!

The worst offender is your requirement that state accountability systems continue to aim for 100 percent proficiency by 2014 (or get all students on a trajectory to be proficient within three years). The evidence is in: this provision is doing measurable harm. It creates an environment that punishes states with high standards, incentivizes them to lower the bar, and actually rewards states with miserably low expectations. But there's more; low standards have a cascading effect, as schools peg their instruction to low-level skills, creating a diminished vision of education that's bad for children and bad for the nation. Your discussion draft's "incentives" for states to adopt "college and work-ready

standards and assessments” can’t outweigh this demand for “universal proficiency.” (And, with all due respect, its weak-kneed provision to “compare” state standards certainly won’t do the trick.) However, there are a few obvious fixes:

- As recommended by the Education Trust, allow states that move to rigorous standards and tests to aim for less-than-universal proficiency (so that “proficiency” maintains some meaning and rigor).
- Clarify that the goal of state accountability systems should be getting a sizable proportion of students to proficiency *by the end of the twelfth grade* (not by 2014, or 2020, or any particular year). And that “proficiency” at the end of high school should mean readiness for work and college. In grades 3-11, or maybe K-11, the goal should be accelerating the progress of students—especially those far behind—so that they meet the proficiency target by grade 12—not necessarily getting there by grade 5 or 7 or any other place in between.

The other perverse incentive still lurking in your draft arises from your decision not to require “priority” schools to offer Supplemental Educational Services to their low-income students. Consider what this means for Palmetto Elementary School in suburban Miami—a real school, not a fictional one. Its low-income students--about 20 percent of its population--fell short of the state's proficiency target in mathematics, causing the school to miss AYP under current rules.

Your discussion draft would no longer label Palmetto "in need of improvement" because the school as a whole and its other student sub-groups hit their objectives. Instead, it would be called a "priority" school. As a result, its low-income students would no longer gain access to free tutoring. You are literally taking away services from needy children who are still below “proficient” in math. What sense does that make?

For states that loathe the supplemental services requirement, this provision provides even more incentives to play games and label as few schools as possible as “high priority.”

You could fix this by:

- At the very least, requiring “priority” schools to offer supplemental services, too.
- Even better, requiring all Title I schools with a significant proportion of poor students below the proficient level (and not on a trajectory to achieve proficiency) to offer supplemental services, regardless of their school rating. View supplemental services as a benefit for students, not as a sanction for schools.
- Even better yet, offer significant financial resources to states that want to create bona fide school choice options (including private ones) for low-income students with lagging achievement.

Conclusion

You deserve credit for developing a serious reauthorization proposal for NCLB 2.0, one that attempts to address some of version 1.0’s most critical problems while maintaining its historic focus on closing the achievement gap. It’s a reasonable draft. Still, you should aim higher. As you work on final bill language, focus your attention on getting the design principles right, rather than trying to prescribe every element of an ideal accountability system. At the same time, remove the perverse incentives that are likely to push states do act badly. You will produce a law that is less than perfect but better than good. And that would be an important step in the right direction.