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The successor to No Child Left Behind has, it turns out, big problems of its own

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U.S. lawmakers always have reasons for what they do, so there must be one for why they didn't make public the 1,059-page rewrite of the 2002 No Child Left Behind until a few days before Congress began voting on the compromise legislation last week. Could it be that they didn't want critics to take too close a look?

The Every Student Succeeds Act is now expected to replace NCLB as the newest version of the 1965 Elementary and Secondary Education Act, an overarching law that defines federal involvement in K-12 education. The House passed it last week and the Senate is expected to pass it this week, with President Obama promising to sign it.

Finally, the No Child Left Behind era — which in fact left many children behind — will be over, and its successor is being hailed by some in the worlds of education, business, and public policy as a big step toward increasing educational opportunities for the nation's students.

But anybody expecting the Every Student Succeeds Act to be a fix-all will be disappointed.

There are major problems with this legislation; anybody who thinks federal dictates have disappeared are in for a surprise, and anybody who would like to see the federal government exercise its power to fix systemic school funding problems and seriously broaden the scope of reform are in for a letdown, too.

Among the concerns that have been raised:

- Use of federal funds for “Pay for Success” programs allow wealthy investors to make profits from education investments, an issue that has concerned some special education advocates.
- States will be required to fund “equitable services” for children in private and religious schools who are deemed eligible, and they must appoint an “ombudsman” to make sure the schools get their money.

- Provisions in the legislation for the establishment of teacher preparation academies are written to primarily support non-traditional, non-university programs such as those funded by venture philanthropists, and they lower standards for teacher education programs that prepare teachers for high-poverty schools.
- The federal government still will have a say in some areas, such as mandating standardized tests and requiring states to intercede in schools where student test scores are in the lowest 5 percent and then approving the state plans for academic progress.

The ESSA is a compromise bill among Republicans and Democrats who were intent on ending not just No Child Left Behind, the chief education initiative of former president George W. Bush, but also the Obama administration's micro-managing of education policymaking. Rep. John Kline (R-Minn.), chairman of the House Committee on Education and the Workforce, made that evident when he said, as quoted by my colleague Lyndsey Layton:

“Now, let me be clear: This is not a perfect bill. To make progress, you find common ground. But make no mistake: We compromised on the details, and we did not compromise our principles.”

Local education decisions traditionally have been the provenance of states and local districts, but Bush led the way for more federal involvement — requiring students in grades 3 through 8 and once in high school to take standardized tests for school “accountability” purposes. The tests were only in math and reading, leading schools to focus on those subjects and giving short shrift to history, science, physical education and the arts.

Many Obama supporters thought he would de-emphasize test scores, but instead his administration made them even more important for “accountability” purposes, and teachers found themselves in the crosshairs of unreasonable evaluation systems, sometimes being assessed by the scores of students they didn't have and/or subjects they didn't teach. (Really.)

Obama's Education Department used its federal power to coerce states to adopt the Common Core State Standards, expand charter schools and use student test scores to evaluate teachers, an assessment method that experts warned against. The department was accused of being a “national school board,” and, finally, eight years after NCLB was supposed to be rewritten, it has been — with some of it a direct rebuke to Education Secretary Arne Duncan, as seen in legislative language such as this:

“(ii) FEDERAL CONTROL.—The Secretary shall not have the authority to mandate, direct, control, coerce, or exercise any direction or supervision over any of the challenging State academic standards adopted or implemented by a State.

The new legislation was crafted over months through efforts led by Republican Sen. Lamar Alexander of Tennessee and Democratic Sen. Patty Murray of Washington, as well as Kline. A chief concern among the negotiators was to walk a line between those constituencies that wanted to continue a federal mandate on standardized testing for “accountability” purposes and those that didn’t want any federal involvement in local education decisions.

Indeed, some people involved in the negotiations said that a key reason the compromise legislation wasn’t made public until shortly before the House voted was to appease conservatives in the House who might have staged a revolt over continued federal involvement and persuaded some moderates to go along with them in a bid to torpedo the new law. The idea was to keep the bill from being finalized until the very end so that all legislators could feel that they had been heard.

The tactic worked, and new House Speaker Paul Ryan, a Republican from Wisconsin, claimed a victory with the vote last week. But as more folks now get a look at the details, big concerns are emerging on various fronts.

The new law is more expansive than NCLB, providing for broader curriculum and early childhood education, for example, though the Preschool Development Grants program would reside not in the Education Department but in the Department of Health and Human Services. It also renders moot a series of controversial waivers from the most burdensome parts of NCLB awarded by the U.S. Education Department to states that promised to enact specific reforms favored by the administration.

And it sends back to the states and local districts major policy-making authority on issues such as standards and teacher evaluation. This has been hailed as a major achievement of the new legislation, but, as education activist Jeff Bryant noted: “It’s a sign of dysfunction, rather than a triumph of bipartisanship, to see officials in Washington, D.C. celebrating legislation that significantly curtails the influence of officials in Washington, D.C.”

But all federal power is not gone in education policy-making. The new legislation maintains the NCLB mandate that standardized tests in math and reading be given annually in grades 3 through 8 and once in high school, and, in an effort to make other subjects as important, science tests

three times between grades 3 and 12. Now, though, the states — not the federal government — can decide what to do with schools that consistently have the lowest scores. The data on test scores, by subgroup, still must be turned over to the federal government.

The legislation also, as Layton reported, “require states to intervene with ‘evidence-based’ programs in schools where student test scores are in the lowest 5 percent, where achievement gaps are greatest, and in high schools where fewer than two-thirds of students graduate on time.” States would determine which actions to take in those struggling schools but the U.S. Education Department would have to approve the plans.

This might be seen as good news for those who worry that some states will — based on their history — do nothing to create meaningful accountability systems to raise the performance of minorities.

Other concerns that have been raised include:

- The legislation provides for the use of federal funds by states and districts for a program known as “Pay for Success” in which investors put money into programs and make profits when a specific goal is reached. Special education activist Beverly Holden Jobs says this could be disastrous for the special education community given the track record of Pay for Success programs. For example, she cites a Pay for Success program in Utah funded by Goldman Sachs. The global investment banking makes a profit for every student who goes through an early childhood program who is not — repeat not — referred for special education. According to the *New York Times*: “Goldman said its investment had helped almost 99 percent of the Utah children it was tracking avoid special education in kindergarten. The bank received a payment for each of those children.” But the *Times* said that a number of early childhood education experts who reviewed the program questioned its metrics.
- Kenneth Zeichner, a professor of teacher education at the University of Washington at Seattle, wrote in this post arguing that provisions in the legislation for the establishment of teacher preparation academies are written primarily to support non-traditional, non-university programs such as those funded by venture philanthropists. He also wrote that the legislation “oversteps the authority of the federal government” in several ways, including by declaring that “the completion of a program in an academy run by an organization other than a university results in a certificate of completion that may be recognized by states as ‘at least the equivalent of a master’s degree in education for the purpose of hiring, retention, compensation, and promotion in the state.’” He also wrote that the new education act seeks to mandate definitions of the content of teacher education programs and methods of program approval that are state responsibilities. It ends up, he wrote, lowering “standards for teacher education programs that prepare teachers for high-poverty schools ... by exempting teacher preparation academies from what are referred to as ‘unnecessary restrictions on the methods of the academy.’”
- States will now be required to fund “equitable services” for children in private and religious schools who are deemed eligible, and they must appoint an “ombudsman”

to make sure the schools get their money in “a timely manner.” In many places states don’t adequately fund services to eligible students in public schools — and now they will have to spend public money on students in private and religious schools.

NCLB supporters argue that the law had its virtues: Its insistence on looking at how all subgroups of students performed on standardized tests forced schools to pay attention to minorities and other groups of students traditionally ignored. And some credit NCLB with rising high school graduation rates.

What is missing from these arguments is that the scores of the tests that students were given were very narrow measures of what kids could do, and imbuing them with such importance is an insult to authentic assessment. As for rising graduation rates, school reform supporters, of course, credit NCLB and Obama’s initiatives, though an NRP investigation this year revealed that the current high school graduation rate of 81 percent — a historic high — “should be taken with a big grain of salt.” Why? “Some are mislabeling students or finding ways of moving them off the books,” and in some places, such as in Detroit and Camden, N.J., districts are making it easier to get a diploma at the very same time officials talk about making school more rigorous.

In high-poverty areas where progress has been made in closing achievement gaps, such as in Union City, N.J., and Clarke County, Ga., it wasn’t a focus on standardized testing that worked. It was a focus on kids’ actual needs, strong relationships among the teachers and administration and slow, high expectations and a realization that real progress is slow.

True educational equity comes from comprehensive school reform, which incorporates academic improvements along with health care, housing policy, funding changes, family support and other policies that allow students to go to class safely and actually focus on their work, and that provides teachers with a work environment and enough support to operate creatively, not like infantilized robots. The act does provide for community schools, which provide full services to students and their families, but not in a truly significant way.

Ultimately, the question is whether the Every Student Succeeds Act is an improvement over No Child Left Behind. (Where *do* they get these names?) As Neal McCluskey, director of the Center for Educational Freedom at the libertarian Cato Institute, wrote:

“The Every Student Succeeds Act, the intended successor to the No Child Left Behind Act, is better than the law it would replace. That is what many analysts are saying as they hail the legislation as a good step in the right direction. But let’s be honest: you couldn’t set a bar much lower than NCLB.”