

EDUCATION NEWS

Better Than NCLB? That's Not Saying Much

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So is the Every Student Succeeds Act better than No Child Left Behind? Probably. But that isn't saying much.

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. And there are some potential problems that could make the ESSA just as dangerous as the law it would supplant.

To be fair, the ESSA is, overall, probably better than NCLB, and it may well have been the best compromise possible given political reality. Most notably, it eliminates NCLB's uber-intrusive requirement that numerous groups of students make "adequate yearly progress" on state tests lest schools be subject to a cascade of punishments. It also tries to keep the Secretary of Education from requiring the use of specific curriculum standards such as the Common Core, though it should be noted that the Core was pushed not by the letter of NCLB, but funding from the 2009 "stimulus" and Obama administration NCLB waivers that were almost certainly illegal.

It is in responding to the power grabs of the current administration that the ESSA may fall, in practice, very short of actually eliminating executive – much less federal – control over the public schools. The bill would keep federal requirements that states have curriculum standards – indeed, "challenging" standards – and tests, and hold schools accountable for performance on them. Moreover, while the bill says the Secretary shall not "mandate, direct, control, coerce, or exercise any direction or supervision" over state standards, it also says that the Secretary must approve state accountability plans. In other words, as I've written before, it does not appear that the Secretary can state specifically what a plan must have, but the Ed Sec could potentially veto plans that he deems inadequate until – wink, wink – he gets what he wants.

The bill, it appears, tries to square the circle of demanding challenging standards without empowering the Secretary to define "challenging" by stating that "the Secretary shall not, through regulation or as a condition of approval of the State plan or revisions or amendments to the State plan, promulgate a definition of any term used in this part, or otherwise prescribe any specification for any such term," if doing so is inconsistent with prohibitions against prescribing specific standard or accountability elements.

Now, I'm no expert in legislative language, but that strikes me as a flimsy – and confusing – defense against overreach, given both that the bill seems to demand that Washington decide if a state's standards are challenging, and because the current administration, in taking an NCLB waiver provision and simply asserting that it could attach conditions to waivers, has shown how easily legislative language can be stretched.

The second dangerous ambiguity, as pointed out by the deft reporters at *Education Week's* Politics K-12 blog, involves the elements in state accountability systems. Basically, there is potentially a huge problem determining what must be the breakdown of academic and non-academic factors in evaluating schools. What percentage of the evaluation should be standardized test scores, graduation rates, school climate, etc.? This problem appears to create especially fertile ground for continued regulatory micromanagement.

Of course, there are other major problems. For instance, the ESSA would enshrine in the flagship K-12 law a preschool program that had previously been created by appropriators. It is not germane to the *Elementary and Secondary Education Act* – of which NCLB and ESSA are just reauthorizations – nor is spending money on preschool logical given the dearth of empirical evidence such programs actually help. Speaking of non-germane, the bill also features an utter non sequitur: a “posthumous pardon” for boxer John “Jack” Johnson. The pardon may well be deserved, I don’t know, but it has nothing to do with elementary and secondary education. Then there is the bill’s sheer size: 1,061 pages of legislative lingo, a huge amount for anyone to digest. (Indeed, if I messed anything up here I blame that!) Yet the House, as of the most recent report I’ve seen, plans to vote on the bill in the next few days. And, of course, there’s this: the federal government has no constitutional authority to do almost any of this, and the federal government’s woeful education track record reveals just how wise the Framers were.

So is the ESSA better than No Child Left Behind? Probably. But that isn’t saying a whole lot.

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