



The Policy and Politics of Rewriting the Nation's Main Education Law

The issues are difficult and politics tricky, which means that renewing the Elementary and Secondary Education Act next year will be particularly challenging.

By Jack Jennings

During 2011-12, Congress plans to rewrite the Elementary and Secondary Education Act, the baseline federal law that authorizes a broad range of programs and policies, from the \$13 billion Title I program for disadvantaged children to a \$2 million program for history and civics education. Most of the debate will focus on the comprehensive amendments made to ESEA in 2002 by the No Child Left Behind Act, which greatly expanded federal and state government influence in such areas as student testing and teacher qualifications.

In light of the controversy associated with NCLB — maybe “the most tainted brand in America” according to Rep. George Miller (D-Calif.), one of the law’s prime architects — the next set of ESEA amendments will drop the NCLB name. It will also probably include substantial policy revisions, long awaited by most educators after efforts to reauthorize ESEA stalled in the previous two Congresses. But the current political climate doesn’t bode well for



Thinkstock/Hemera

JACK JENNINGS is founder, president, and CEO of the Center on Education Policy, Washington, D.C. He was general counsel for the U.S. House of Representatives’ Committee on Education and Labor and has been involved in nearly every major national education debate over the last 40 years.

● **Accountability for improved student achievement lies at the heart of the ESEA debate.**

Thinkstock/Digital Vision



passage of a major ESEA reauthorization bill. With more Republican and conservative members in Congress, deadlock is as likely as consensus.

What forces could lead to deadlock on a much-anticipated bill of this magnitude? What will it take to surmount the obstacles?

MAJOR ISSUES

Although the rewrite of ESEA will be comprehensive, most of the attention will focus on a limited number of pressing issues. The starting point for congressional debate is likely to be the Obama Administration's plan, which is described in *A Blueprint for Reform*, released by the U.S. Department of Education in March 2010.

Goals and Accountability Measurements. Accountability for improved student achievement lies at the heart of the ESEA debate. Two fundamental questions will guide the reauthorization: How should student progress in English language arts and mathematics be measured? And what should the consequences be for schools that don't make sufficient progress?

NCLB set a goal that every student will be proficient in English language arts and mathematics by 2014. Each state has established its own standards for proficiency, along with periodically rising interim targets that lead to 100% proficiency by 2014. Every public school in the nation must test its students annually and publicly report the results for students as a whole and for various student subgroups. Schools that receive federal funds (the majority of schools) are subject to consequences if they don't demonstrate Adequate Yearly Progress (AYP) in meeting their state's targets for the percentages of students scoring proficient and other achievement indicators.

The Administration proposes replacing the NCLB goal of 100% proficiency with the goal that by 2020,

all students will graduate from high school, or be on track to graduate, ready for college and a career. The Administration also wants to replace AYP with a system that measures individual student growth over time, rather than measuring the aggregate performance of a whole group of students against a set of fixed achievement targets. Performance targets would be retained, as would the disaggregation of results by subgroups. As with many issues, the Obama *Blueprint* does not contain more specifics about accountability.

Controversies will develop in Congress over whether Obama's new goal of college and career readiness is concrete enough to replace proficiency, how to use growth models to measure individual student progress, and whether keeping performance targets is a backdoor way to retain an AYP-like system. Many Republican and conservative members are likely to question whether the federal govern-



Thinkstock/AbleStock

● **Should the federal government make the receipt of federal funds contingent on states adopting common academic standards?**

ment should require any type of accountability for schools or if accountability should be left to state or local control.

Common Standards. NCLB allowed each state to develop its own academic standards for English language arts and mathematics, an approach that has resulted in 50 different sets of state standards. Thus, a major issue for the ESEA debate is whether the federal government should make the receipt of federal funds contingent on states adopting common academic standards, such as the English language arts and mathematics standards developed by the National Governors Association and the Council of Chief State School Officers and adopted by a majority of states.



Deepen your understanding of this article with questions and activities on page PD 4 of this month's *Kappan Professional Development Discussion Guide* by Lois Brown Easton, free to members in the digital edition at kappanmagazine.org.

President Obama, who favors the movement toward common standards, seeks to amend ESEA to require states to either adopt these common standards or develop their own college- and career-ready standards in cooperation with their public university systems. Furthermore, the *Blueprint* proposes that, for states to receive federal formula grants to improve assessments, they must adopt standards “common to a significant number of states” by 2015.

- **Should the federal government encourage or eliminate school choice and tutoring mandates?**

Some conservatives will argue that federal encouragement of common standards will lead to federal control of curriculum. In addition, several organizations representing public school educators may oppose linking federal aid to the adoption of common standards.

School Improvement. The consequences for schools that don’t show progress are also integral to an accountability system. Under NCLB, the consequences for schools that don’t make AYP become more dramatic over time. Initially, these schools must offer parents the option to transfer their child to another public school; they next must offer low-income parents federally funded tutoring provided by a private vendor or other provider of the parents’ choice; and eventually they must replace staff and undergo other types of major restructuring.

The Obama Administration wants to move from the failure-based NCLB accountability system to a system that rewards success, targets a smaller subset of schools for consequences, and gives greater flexibility to states. School districts and high-poverty schools that demonstrate progress would receive cash rewards and additional flexibility in administering federal programs. The lowest-performing 5% of a state’s schools would have to follow four prescribed reform models, the next 5% of schools would be on a warning list, and schools that don’t show progress in closing persistent achievement gaps between subgroups would be subject to district interventions. In dealing with schools in the middle of the performance spectrum, states would have greater flexibility than at present; for example, school choice and tutoring would no longer be mandated for any school.

Congressional Republicans, who tend to favor greater choice and privatization in education, are likely to oppose the elimination of the school choice and tutoring mandates. Obama’s four reform models for low-performing schools are also controversial because evidence about their effectiveness is weak and because they often aren’t feasible in rural

areas or other situations. Critics of the Obama proposal may also note that the lowest-performing 5% of schools in one state may still be doing better than the lowest 5% in another state, and they may question whether schools that aren’t among the highest- or lowest-performing will escape consequences.

Teacher Evaluations and Pay. The Administration’s criteria for competitive Race to the Top grants under the economic stimulus legislation awards points to states that evaluate and compensate teachers based partly on student test results. Despite strong opposition from teacher unions, many states changed their teacher policies accordingly to improve their chances of receiving these grants. This issue will arise again during the ESEA reauthorization, as the Congress debates whether the federal government should further encourage states to link teacher evaluation and compensation policies to student test scores.



Thinkstock/iStockphoto

- **Should the federal government further encourage states to link teacher evaluation and compensation policies to student test scores?**

The Obama *Blueprint* would require states receiving federal funds to develop statewide definitions of “effective” and “highly effective” teachers and principals that are based in significant part on student growth measured by test results. States must develop data systems that link teacher and principal preparation programs to student growth, and districts must develop evaluation systems that incorporate their state’s definitions of effectiveness. Furthermore, the *Blueprint* would continue the Teacher Incentive Fund, a competitive grant program that differentiates teachers and principals according to student growth and supports changes in compensation

● Should federal education funding shift away from formula grants and toward competitive grants?

systems that vary pay and career advancement based on increases in student achievement.

The controversies in Congress will center on the fairness of these proposals. The teacher unions and other opponents will contend that test results are not a fair way to measure student progress because tests aren't always sensitive to good instruction, teachers are assigned classes of students with greatly varying abilities, and multiple teachers often deal with a particular class. Proponents will contend that student academic growth is the basic objective of schooling and that tests are the best tool available to measure that growth.

Competitive Grants. Most federal aid for elementary and secondary education is distributed to states and school districts based on formulas that incorporate such factors as numbers of poor students. Generally, the flow of formula grant funding is predictable from year to year. The Obama Administration would like to shift a greater share of federal funds away from formula grants and toward competitive grants. This shift was evident in the President's budget for school year 2011-12, which requested level funding for Title I and the Individuals with Disabilities Education Act, the two largest education formula grant programs, and additional dollars for such competitive grant programs as Race to the Top and the Teacher Incentive Fund.

Thus a key question for the ESEA reauthorization is the following: Should federal education funding shift away from formula grants, which are allocated on a regular basis to almost every school district for such priorities as educating students with special needs, and toward competitive grants, which are awarded only to states and school districts with policies that reflect federal reform priorities?

The controversies in Congress will revolve around whether the President's reform priorities are the proper ones, whether competitive grants give too much control to the federal government and the Administration currently in office, whether competitive grants are weighted toward better grantwriters or states and districts with more resources, and whether the federal government is abandoning its ongoing responsibilities by level-funding the major programs serving disadvantaged students and those with disabilities. The Administration and its allies will counter that the \$4 billion Race to the Top competition brought more change more quickly than the ESEA formula grant programs, which together received roughly \$32 billion dollars in fiscal year 2010.

Proper Federal Role. During the 2010 election campaign, many Republican candidates contended that

the federal government was asserting too much control of education. Mainline public education organizations have also expressed concern about the Obama Administration imposing on schools its agenda of charter schools, teacher evaluations tied to student test scores, and competitive grants focused on specific reforms.



Thinkstock/Stockphoto

● Should the federal government have a significant role in education and, if so, what limits should exist for that role?

With the federal government a more forceful player in education than ever before, the new Congress is likely to see a vociferous debate about a fundamental issue that transcends specific programs: namely, whether the federal government should have a significant role in education and, if so, what the limits on that role should be. This debate may include proposals to eliminate federal aid to education or to remove most federal requirements and let states use federal funds for their own priorities.

POLITICAL FACTORS

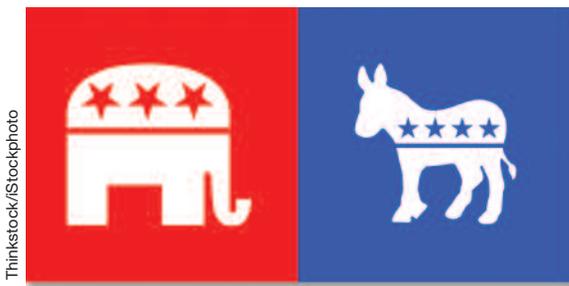
Hundreds of groups — far too many to mention here — are clamoring for a voice in reshaping this significant piece of legislation. The discussion below describes the major political factors and some key players that will influence the Congressional debate on ESEA.

The New Dynamic. During the first two years of

the Obama Administration, the Democrats controlled the Congress, which gave the President an advantage in moving on his policy agenda. The problem, though, was that he faced a long agenda — averting an economic depression and dealing with a recession, strengthening oversight of the financial sector, scaling back the Iraq war, increasing military action in Afghanistan, reforming health care, and curtailing illegal immigration. With the focus on these urgent issues, the Administration and Congress turned their attention to ESEA too late in 2010 to write and pass a bill.

Will the prospects for rewriting ESEA be any better in 2011 and 2012? The Republicans have gained control of the House and increased their numbers in the Senate. They did this by opposing President Obama and the Democrats almost unanimously on most domestic issues during the past two years. Now, as they seek to defeat the President's reelection in 2012, they have little incentive to change this strategy of opposition.

The only hope for bipartisan agreement is if the Republicans find it expedient to make an exception for education. Although many Republicans agree with several of the President's education proposals, such as expanding charter schools and linking teacher evaluations to test scores, there are two problems. First, many new Republican members of Con-



- **The only hope for bipartisan agreement is if the Republicans find it expedient to make an exception for education.**

gress ran against Washington and federal influence and may be unwilling to support a strong federal education law in exchange for limited federal aid to increase charter schools. Second, many Democratic members of Congress survived the Republican tide with robust support from public school teachers and their unions, and they are unlikely to support such proposals as tying teacher evaluations to test scores.

In short, the political climate for an ESEA reauthorization during the next two years is not favorable. Deadlock can be avoided only if President Obama makes revising ESEA an extremely high pri-

ority and persuades enough Democratic members to support a renewal. In addition, enough Republicans must decide that more is to be gained than lost by cooperating with Obama and the Democrats on education. This could occur, for example, if some Republicans want to exert leadership on education instead of merely obstructing the Democrats or if the number of schools failing to make AYP increases dramatically, thus intensifying pressure for changing NCLB. All sides must find the political will and the right balance of legislative changes to create consensus among the President and congressional Democrats and Republicans. These political and policy challenges will be formidable.

Influential Groups. In our system of government, citizens' opinions on policy issues greatly influence Congress as it considers legislation. These opinions are formalized in the positions of representative groups.

During the last Congress, the National Education Association, the American Federation of Teachers, the National School Boards Association, the American Association of School Administrators, and the principals' organizations pressed for renewal because they wanted greater flexibility in the NCLB accountability provisions and were troubled about projections that a majority of schools would not make AYP in the next few years. But their pleas for action went unheeded amid the year's congressional backlog.

The major national education organizations generally have concerns about President Obama's emphasis on charter schools, teacher evaluations linked to student test scores, and a shift to competitive grant programs. However, many other parts of the Administration's *Blueprint*, such as eliminating the 100% proficiency goal, scrapping AYP, and basing accountability on individual student growth, are consistent with these groups' major recommendations for changing NCLB. Consequently, the mainline education organizations support congressional action on ESEA and hope to influence the outcome through pressure from their memberships.

The National Governors Association and the Council of Chief State School Officers, which generally support renewal of ESEA but would like more flexibility in administering the law, have an interest in maintaining state leadership over their new common standards and will be wary of attempts to tie receipt of federal aid to common standards. The National Conference of State Legislatures is very concerned that greater federal influence in education will come at the expense of state control.

Scores of other organizations — including national civil rights groups, organizations representing Latinos and students with disabilities, and academic

subject-matter advocates — also have ESEA policy positions and lobbyists ready to fight for their changes. The diverse interests of these organizations will complicate efforts by Congress to reach agreement on a new law.

Several newly influential organizations demonstrate how policy and politics can become intertwined. These include Teach for America, New Leaders for New Schools, the New Teacher Project, New Schools Venture Fund, Democrats for Education Reform, and the KIPP Academies. The Education Trust, which had considerable influence on Congress when NCLB was written, is similar to these newer groups in ideology and a reliance on charitable foundation funding as their main source of support.

- **The newer reform-oriented groups will use their influence to counter the impact of the teacher unions and other national education organizations.**

All of these organizations were formed within the last 20 years, principally to spur improvements in urban school districts. They generally share a common agenda of promoting charter schools, tying teacher evaluations to student test scores, supporting alternative paths to teacher certification, and promoting higher academic standards, and they support several of the Administration's more controversial proposals. Despite their liberal and Democratic ties, these groups often find themselves aligned with the Business Roundtable and conservative organizations that support greater competition in public education and oppose the influence of teacher unions.

Although these newer groups don't have the large memberships of the major education organizations, they have considerable influence with the national news media, charitable foundations, and the Obama Administration. Their influence is also seen in the growing numbers of new teachers, principals, and superintendents who have undergone their training programs or are otherwise involved in their work.

One way to view the influence of these groups is to look at their financial assets, mostly derived from foundations. Teach for America, for instance, reported net assets in 2008 of \$261.5 million on its tax form 990, and this was before receiving a \$50 million grant from the Obama Administration in 2010. By contrast, the National Education Association and the American Federation of Teachers, which together have 4.6 million members, reported assets in 2008 of \$87 million for both organizations. Clearly, Teach for America is no lightweight on the policy scene.

The newer reform-oriented groups will use their

influence to counter the impact of the teacher unions and other national education organizations on the controversial issues mentioned above. One might see the Obama Administration, the reformers, some Democrats, and the Republicans aligning against the teacher unions, other mainline national education associations, and many Democrats.

As President Obama prepares to run for reelection in 2012, it remains to be seen whether he would sign a bill supported by many Republicans and some Democrats but opposed by many Democrats and mainline public education organizations. Or, if the proposals on the controversial issues are watered down to secure greater support from Democrats and the mainline groups, the Republicans — already reluctant to give Obama a victory — might walk away from what they see as a weakened set of reforms.

CONCLUSION

Renewing the Elementary and Secondary Education Act in 2011 will be particularly challenging. The issues are difficult and the politics tricky. To succeed, the President will have to make ESEA a high-priority issue, Republicans will have to make an exception to their general policy of opposing President Obama, and national education organizations and newer reform groups will have to support compromises.

The nation needs a new education law. In the eight years since NCLB was enacted, we have learned a lot, and new issues have arisen. We simply cannot tolerate two years of political deadlock before we again address the country's need to improve its schools. ■



“Why is it always about teacher lay-offs? Why can't they ever have student lay-offs?”