



**The Education Trust**

Closing the gaps in opportunity and achievement, pre-k through college.

**United States Senate  
Health, Education, Labor and Pensions Committee**

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**Written Testimony of  
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Chairman Harkin, Senator Alexander, and Members of the Committee, thank you for providing me with the opportunity to share with you some initial observations on the state-proposed, Department-approved No Child Left Behind (NCLB) waiver plans.

My name is Kati Haycock and I am President of The Education Trust. The Education Trust is a nonprofit advocacy organization that promotes high academic achievement for all students at all levels — pre-kindergarten through college. Our goal is to close the gaps in opportunity and achievement that consign far too many young people — especially low-income students and students of color — to lives on the margins of the American mainstream.

Whether the NCLB waivers represent progress on — or backsliding from — a national commitment to closing gaps and raising achievement is a critical question, and I appreciate this opportunity to provide The Education Trust's thoughts on that issue. Given time constraints, I will focus just on the accountability provisions.

**NO CHILD LEFT BEHIND AND WAIVERS**

First, a little context.

In 2002, NCLB ushered in sweeping changes to school accountability. Though accountability had previously been left largely to the states, broad dissatisfaction in Congress with the slow pace of educational improvement — especially for the groups of children for whom Congress provided states with supplemental funding — led you to step in with a new framework designed to set schools on a path to get all their students to “grade level” by 2014.

Moreover, instead of permitting them to measure progress as they always had — based on school-wide averages — you required states to report performance for all groups of children and to evaluate schools by the progress of every group they serve. That requirement — that schools are expected to teach all their students to the same state standards — is why NCLB is considered such a landmark law by the disability community, the civil rights community, and others whose children have, for so long, been compromised by lower expectations.

Virtually all observers — including critics of the law — applaud the new focus it brought on improving the achievement of the groups of children who had lagged behind, including low-income students and students of color, English Language learners, and students with disabilities. NCLB wasn't perfect, though, and over time, even the law's staunchest supporters acknowledged a growing number of perverse effects, especially in the years after it was scheduled to be reauthorized.

Like many other organizations, we'd hoped that reauthorization would provide an opportunity to strengthen certain provisions of the law, while also addressing its weaknesses. Both alone and in concert with civil rights, education reform, disabilities, and business organizations, we put forward a set of reauthorization recommendations to Congress.

But when, after multiple attempts, it was clear that Congress couldn't reach agreement on how best to renew the law, we supported Secretary of Education Duncan's decision to grant states waivers of some NCLB accountability provisions. The potential consequences to the equity movement of not granting more flexibility — including permanently marginalizing federal accountability requirements — were, in our estimation, more severe than the dangers inherent in a waiver process.

Along with many other organizations, we provided feedback on the waiver requirements and guidelines, including extensive data analyses that served as the underpinnings of the “cut the gaps in half” accountability option. Several Ed Trust staff members, myself included, also served as peer reviewers.

### **WAIVERS: SOME QUESTIONS, WORRIES**

Our support for the Secretary's decision to grant waivers should not, however, be conflated with enthusiasm about either the final waiver guidelines or the waiver plans that were actually approved. There were certainly areas of great strength in both the Department's guidance and in some states' plans, but there were also decisions that should trouble all those who understand — as you do — that our future as a nation depends on developing the minds of all our children.

In the end, what will matter — of course — is whether we speed progress in raising achievement and closing the long-standing gaps that have separated too many young Americans from their more advantaged peers.

But it's not too early to draw some lessons from this experience as you look forward to reauthorization. The essential question: When given more flexibility, do states preserve the focus of the law, while mitigating its growing problems?

As we look across the approved waiver plans, here is what we see.

## **1. Setting Achievement Goals.**

**Many educators and others decried the 100 percent-of-kids-proficient-by-2014 goal as unrealistic and “not based in real data.” So, in its waiver guidelines, the Department gave states two options that were based in real data, but also allowed them to pick something “equally ambitious.” This approach seems to have worked, and well.**

Close to half the states that received waivers chose some version of the cut the gap in half achievement goal, an idea that originated at Ed Trust after extensive analysis of data from multiple states to identify rates of improvement and gap-closing that meet the “ambitious and achievable” test.<sup>1</sup> This goal requires improvements for all groups of students, but promotes gap-closing by demanding faster improvement from those groups that start farthest behind.

Only Arizona chose the 100 percent proficiency by 2020 goal, while Louisiana is maintaining the NCLB goal of 100 percent by 2014.

Among states that selected to develop their own, “equally ambitious” goals, some chose to benchmark against achievement in their top-performing schools. For example, Colorado and Wisconsin have identified performance in the schools currently in the top 10 percent of achievement statewide and set a goal that all schools, and all groups, would get to that level of performance within six years. In those states, getting all schools to the level of the current top performers would represent improvement overall and meaningful gap-closing. This is a practice worth consideration by other states, especially when they make the transition to new assessments.

In the end, though, I think you can feel good about this approach: states mostly set goals you can be proud of — in some cases, depending on the rigor of their assessments, these are even more ambitious than those in NCLB. And they set goals for every student group that you asked them to worry about when you passed NCLB.<sup>2</sup>

## **2. Making Goals for All Groups of Students Matter, or Not.**

**When it came to building their school ratings systems, however, some states made performance against these goals matter, but most didn’t.**

Minnesota, for example, adopted ambitious goals — overall and for every group of children — and is taking performance against those goals seriously. The percentage of students overall and

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<sup>1</sup> For more information on the rationale and data supporting the cut the gap in half goal framework, see The Education Trust, *Getting it Right: Crafting Federal Accountability for Higher Student Performance and a Stronger America*, September 2011.

<sup>2</sup> For graduation rate goals, however, the picture is murkier. The Department of Education didn’t explicitly ask states to identify their graduation-rate goals for students overall or groups of students. Fortunately, some states did articulate goals. For example, Arkansas, Connecticut, Delaware, Georgia, and Maryland used versions of the cut the gap in half framework to set graduation-rate goals for students overall and for student groups. Many states, however, didn’t clearly articulate their graduation-rate goals.

In response to concerns about the lack of graduation-rate accountability raised by advocates, particularly advocates for students with disabilities, the Department recently clarified that, for those states that were not expressly approved for new grad-rate goals in their waiver application, the original Adequate Yearly Progress (AYP) goals imposed under NCLB still hold. This was an important, if overdue, step.

student groups making their cut the gap in half achievement goals is a meaningful component of the “Multiple Measure Rating” at the center of the state’s new accountability system. Tennessee, too, holds districts accountable for meeting gap-closing goals.

But many states created systems in which the goals for raising achievement and closing gaps exist “on the side.” Progress may be reported — somewhere — but it doesn’t count as a core part of the accountability system. This means that, in a state like New Mexico, a school can get an “A” grade even if it consistently misses goals for, say, its students with disabilities, its Native-American students, or its English-language learners.

This latter set-up sends a terrible message for teachers and parents about what, or who, matters and makes gap-closing goals next to meaningless. This is very definitely a step backward from the civil rights commitment embedded in NCLB.

### **3. Replacing Sub-groups with Super Sub-groups.**

**Some States took what could be a “tweener” approach, by creating a “super sub-group,” then “baking” the performance of the super sub-group into their school ratings systems. There are some advantages to this approach, but there are also risks. And, once again, some states undercut the potential advantages of using super sub-groups by either how they constructed those groups or by how they weighed their results in the system.**

There are two criticisms of NCLB accountability to which super sub-groups might be an answer. First is that schools with small numbers of students in any group often escaped responsibility for that group of students. Second is a perception among some educators that the law brought about a “check-box” approach to accountability, where a red mark in only one of 40-odd boxes could result in a “failing” label. By creating a larger super sub-group, generally composed of either the lowest performing students in the school or a combination of some or all NCLB-subgroups, states could address both concerns.

Certainly, there are risks inherent in the use of super sub-groups. When the super sub-group is composed of low-performers, educators could lose sight of the fact — as they often did, frankly, with NCLB — that we will never close achievement gaps if we focus only on moving the bottom performers up. When the super sub-group is composed of some or all of the NCLB-named groups, the risk is that improvement of the whole will mask flat or declining results for one or more constituent groups.<sup>3</sup>

But there are also advantages in going the super sub-group route, including simplicity. And in most states, the number of schools now subject to accountability for special populations has increased, as has the number of students “counted” in these systems.

I want to emphasize here, however, that the details of these approaches matter, because states can appear to be emphasizing performance of a super sub-group, while actually undercutting it.

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<sup>3</sup> Interestingly, Nevada and Wisconsin have a promising approach to balancing the benefits and risks of super sub-groups. These states employ a super sub-group comprised of low-income students, students with disabilities, and English learners only as a “backup” when there are fewer than 10 students in one of these groups in a school.

Florida and Indiana, for example, each has a super sub-group based on the lowest performing 25 percent of students in a school. In Florida, super sub-group learning gains count for a quarter of an elementary school's letter grade. And, as an additional safeguard, schools that would otherwise get an A, B, or C can lose a full letter grade if not enough students in the super sub-group make learning gains.

In Indiana, on the other hand, super sub-group performance can get washed out. Super sub-group growth counts for "bonus points" towards a school's A-F grade, and schools can also earn an equal number of "bonus points" for growth among the top-performing 75 percent of students, even if their low performers don't grow. This means that schools can accomplish what they need to under the state's accountability system — raise their grades by two letters by 2019-20 — even if the students in the lower performing super sub-group don't make their growth target and gaps between low and high performers widen.

So will super sub-groups advance or harm the effort to close longstanding gaps between groups? In truth, only time — and data — will tell. Certainly, it can be argued that more students from the NCLB-named groups are now included, and more schools are subject to special accountability for the students in those groups. That said, the eagerness of states to embrace this innovation — though almost unheard of outside of Florida pre-waivers, the practice has spread like wildfire since — has clearly not been accompanied by parallel enthusiasm to adopt any of the innovative ways a few states put protections in place on their super sub-group system to assure that all groups benefit. Nor, frankly, was there much enthusiasm for weighting results from the super sub-group anywhere near as strongly as groups were weighted in NCLB. Both of these trends say a lot.

#### **4. Getting Serious About Low-Performing and Big-Gap Schools.**

**Most state plans for improving their lowest performing schools — now called "Priority Schools" — are steps forward. They are serious and detailed, and the criteria for exiting priority status are serious, too. Some states also put forth thoughtful plans for improving "Focus Schools," or schools with especially large gaps or especially low performance by subgroups.**

The plans for improving Priority Schools stand in stark contrast to those required under NCLB, which labeled schools that missed one goal for one group the same as schools that failed to serve all their groups every year, sending all of them down the same, formulaic "improvement path."

Saying the plans are better, though, doesn't mean they are as good as they should be. There are at least three aspects of the work on Priority Schools that warrant attention.

First, while the Department's required turnaround principles rightly include ensuring that Priority Schools have effective teachers and leaders — who, after all, can imagine successful improvement efforts without them— few approved state plans actually tackle this issue head on. Florida is one exception, with very explicit criteria that could be a model for other states. For example, districts in Florida can only employ teachers in Priority Schools if they meet

several criteria, including at least a satisfactory evaluation rating. To work at a Priority School in Florida, principals must have a record of increasing student achievement in similar schools. But again, some state plans were approved without serious attention to this issue.

Second, despite our long track record as a country of investing money and energy into low-performing schools but not acting when results don't change for students,<sup>4</sup> many state plans don't spell out a clear course of action for Priority Schools that, even after receiving resources and support, prove unwilling or unable to improve. In Maryland and Georgia, for example, not meeting priority exit criteria only brings more improvement planning. Fortunately, a few states stepped up and took this on. Michigan and Tennessee, for example, are following Louisiana's lead and developing state-run turnaround zones for Priority Schools that, after receiving support and intervention, still don't improve. Others, like Colorado, have set explicit timeframes for Priority Schools to undergo significant governance changes or, in some cases, to close altogether.

Third, while NCLB provided students attending schools that failed to meet their performance targets for two consecutive years with a right to transfer to another school, the Department of Education's waiver guidelines did not require states to guarantee that right even for students in the lowest performing schools. Consequently, most didn't. Regardless of where you sit on the importance of school choice for students in general, it is hard to conclude that this decision shouldn't be revisited.

Thus, while approved plans for our lowest performing schools represent marked improvements from what occurred in most states under NCLB, we are still not where we need to be.

One final point about accountability.

## **5. Including Non-Test Measures in Accountability Systems.**

**Though states were invited to include in their waiver systems measures beyond tests and graduation rates, very few did so.**

This is surprising, because there is near universal agreement on the need to look at multiple measures of college and career readiness, especially at the high school level. Moreover, this was also an opportunity — though, admittedly, one fraught with danger — for states to begin to broaden beyond the state-administered tests that have inspired so much opposition.

The good news here is that the states that took advantage of this opportunity did so in ways that should mollify those who worried that they would water down the purposes of the law with non-academic indicators.

In Idaho, for example, schools are held accountable for student participation and success in advanced coursework such as AP, IB, or dual enrollment, as well as their performance on the ACT, SAT, COMPASS, or ACCUPLACER college-placement tests. Kentucky is holding schools

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<sup>4</sup> The Education Trust-West, *Learning Denied: The Case for Equitable Access to Effective Teaching in California's Largest School District*, January 2012.

accountable for the percent of students who are college or career ready, as measured by EXPLORE in middle school and ACT, Work Keys, ASVAB, several Kentucky assessments, and industry certification in high school. Nevada is looking at a number of college- and career-ready indicators, including remediation rates in state colleges.

These are all good measures, and worthy of consideration by other states.

But even when these important college- and career-ready indicators have been included, too often state systems look only at overall performance, ignoring wide gaps between groups.

## **6. Taking Care of Transition Issues.**

**Though states were asked to address certain key transitions in their waiver plans, they generally did not do so in detail.**

The Department of Education's waiver guidance asked states to explain how they were transitioning to college- and career-ready standards and assessments. Although many states have lengthy plans, two elements were often missing: how states will ensure all teachers have access to aligned instructional support materials, and how states will communicate with the public about the new standards.

Further, although they were invited to do so, few states proposed plans for transitioning their accountability systems once the new college- and career-ready assessments come online. Nor did most provide any details on their plans—required by the waiver guidelines—to transition students with disabilities being assessed on modified achievement standards using the alternate assessment to the general assessment.

## **WAIVERS AND ESEA REAUTHORIZATION**

As is evident in this testimony, we have questions about some of the Department's decisions — both in issuing its waiver guidance and in approving waivers. We also have questions about why states made some of the decisions they made; about why, when given the chance, they so often built accountability systems that didn't make progress against goals really matter for all schools.

However, when you step back from the details and look at the big messages from these new systems, you may wonder: How did we move the ball forward around our lowest performing schools, but arguably step backward in our messages to the other 85 percent of our schools that they had to serve all groups of children well? Largely for two reasons:

- First, because the Department of Education's waiver guidelines demanded the former and invited the latter, and states did basically what they were asked to, and no more; and,
- Second, because ideas about how to *weaken* the focus of accountability systems on underserved students spread rapidly across states during the waiver application process,

while the very interesting proposals some states made to *strengthen* such a focus failed to go viral in nearly the same way.

As data develop in future years, we'll know a lot more about the impact of these new systems. But should you reauthorize before that happens, we ignore these two lessons at our collective peril.

Before I conclude, I want to reiterate: The questions we have raised today should not be taken to mean we think the Secretary was wrong — given the congressional deadlock and mounting potential marginalization of NCLB's accountability system he faced — to undertake the waiver process. Nor do we think that the bills reported out of this Committee and the House Education and Workforce Committee, lacking as they did accountability systems with goals, progress targets, consequences, and serious turnaround requirements, would have been better.

We do think that the innovations launched through the waivers will teach us a lot about what is important in accountability systems. But we hope that as soon as data suggest glaring problems in any state for any of the groups named in NCLB, state leaders will step up and make necessary changes. And if they don't, we hope that the Secretary of Education will live up to his promise to step in and demand changes.

Thank you.