

## Requiem for a Failed Education Policy: The Long Slow Death of No Child Left Behind

By [Kevin Carey](#)

Eleven years ago, I moved to Washington, D.C. to work on education. The liberal think tank that hired me focused on state issues, so I had nothing to do with the project that was consuming D.C. wonks at the time: a once-a-decade reauthorization of the mammoth federal Elementary and Secondary Education Act that would become the No Child Left Behind Act of 2001. I didn't quite appreciate the scale of it until late September, when a refugee from the anthrax attack on the Hart Senate Office building decamped in our conference room and described the cabinets of notes, research, analysis, and draft legislation he had been forced to abandon until the building could be properly flooded with cleansing poison gas.



Somehow, they managed to finish the bill anyway. In hindsight, many gave credit to the brief post-9/11 spirit of proving that the people's work would not be halted by terrorists, foreign or domestic. But the NCLB was also the product of an historic and unlikely communion between President George W. Bush, who at the time still held a vestige of his "compassionate conservative" mantle, and Senator Edward Kennedy, whose family involvement with ESEA dated back to Robert Kennedy's role in writing the original bill in 1965. Both men genuinely believed in the idea of administering annual standardized tests to schoolchildren and holding schools accountable for the results. Schools would be judged by escalating performance targets that reached 100 percent proficiency in 2014, with serious consequences for those that fell short. NCLB passed Congress with 91 votes in the Senate and 384 in the House.

A year later, I went to work at the Education Trust, an advocacy organization that played a key role in writing NCLB. The organization's leaders were civil rights veterans who saw the law as the next step in a movement that began with *Brown v. Board*. There was still a lot of optimism in those early

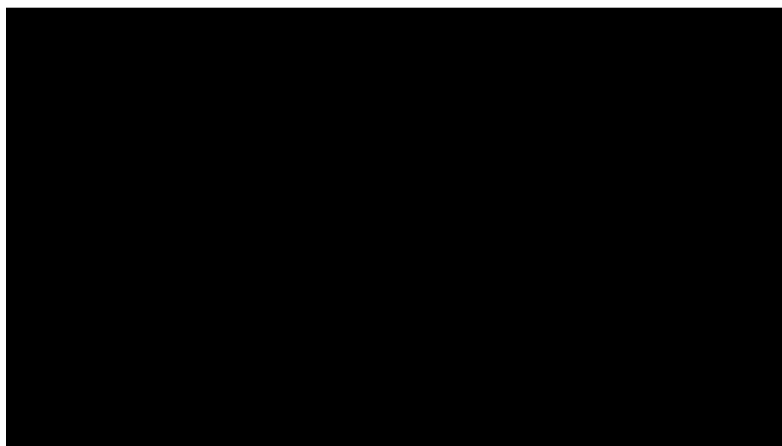
years; Bush hadn't reached the point of maximum polarization, and NCLB was still a few years away from becoming toxic shorthand for all educational grievances, large and small.

But when we dug into the details of NCLB implementation, there were already troubling signs. While the law marked a high water mark of federal control over K-12 education, it was still, relatively speaking, not far from the ocean floor. NCLB gave states vast discretion to set standards, choose tests, and decide what test scores would yield a passing grade. The technicalities of the law's accountability regime created openings for ruthlessly inventive state bureaucrats to excuse their low-performing schools from scrutiny and sanction. Teachers unions that had been excluded from the negotiating table began waging an increasingly public fight against the law. States-rights Republicans did the same.

Fast-forward to this month, when the New York Times [reported](http://www.nytimes.com/2012/07/06/education/no-child-left-behind-whittled-down-under-obama.html?_r=1&ref=education) - [http://www.nytimes.com/2012/07/06/education/no-child-left-behind-whittled-down-under-obama.html?\\_r=1&ref=education](http://www.nytimes.com/2012/07/06/education/no-child-left-behind-whittled-down-under-obama.html?_r=1&ref=education) - that a majority of states had received permission from the U.S. Department of Education to waive the law's accountability requirements. Support for NCLB in Congress has collapsed; a vote today would probably yield as many "No" votes as there were "Yeas" in 2001. But because Congress circa 2012 is historically inept at passing important legislation, and the politics of school reform remain knotted in larger debates about federalism, unionism, and money, the next version of ESEA is four years overdue. So the Obama administration has used its regulatory discretion to reauthorize the law by fiat, exempting states that sign on to its agenda from the requirement that all students be proficient in reading and math by 2014.

As NCLB slowly dies from a combination of Congressional inattention, regulatory whittling, and the sheer weight of public rejection, it's worth asking why so much of the optimism surrounding the law proved unfounded, and what those who still believe in federal intervention on behalf of disadvantaged students should do next.

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WHILE NCLB HAS obviously failed politically, its net effect on student learning is less clear. There is only one reliable measure of overall student achievement in the United States: the National Assessment of Educational Progress, administered biannually to a representative sample of students by the U.S. Department of Education. According to the NAEP, student learning progressed after NCLB much as it had been developing before: slow, steady gains in mathematics, particularly among elementary school students, but little improvement in reading at any grade.

Results on state tests have been substantially better, which was, importantly, the point: Schools are held accountable for how much they learn on state-created exams matched to state-developed standards, not the NAEP. But as Harvard professor Daniel Koretz has [written](http://www.amazon.com/Measuring-Up-Educational-Testing-Really/dp/0674028058) - <http://www.amazon.com/Measuring-Up-Educational-Testing-Really/dp/0674028058> - , that can create problems of its own. High-stakes tests that consistently focus on narrow slivers of a larger curriculum can yield inflated scores when schools devote large amounts of time to test prep exercises. Scores on New York state tests improved so quickly that the state had re-calibrate scores downward, causing school ratings to lurch from year to year.

To be sure, ongoing progress in the foundational subject of math is a real accomplishment. School improvement trajectories aren't like bodies in motion, coasting on momentum. They're more like the path up a mountain, each step harder than the last. But in the end, a fair look at American education over the last two decades doesn't suggest that anything momentous happened in 2001. And NCLB certainly failed spectacularly by the terms built into its system of continuous improvement: We will be nowhere close to having 100 percent of students proficient in 2014.

And in that wildly optimistic goal, the conceptual flaws of No Child Left Behind can be most easily found. It's crucial to remember that in 2001, one could fairly characterize the previous half-century of federal education intervention as a long winning streak. In *Brown v. Board*, the judicial and military might of the federal government was used to prevent racial discrimination against minority students. ESEA focused on financial inequities, providing federal dollars to high-poverty schools. While the 1973 school funding case *San Antonio v. Rodriguez* ultimately failed in the Supreme Court by a single vote, it provided a template for successful lawsuits in dozens of states that forced legislators to start equalizing funding among schools. When the law that became the Individuals With Disabilities Education Act passed in 1975, millions of vulnerable students were granted enforceable legal rights to a quality education.

In each case, national policymakers stepped in to help students who were ill-served by locally-run schools. The foundations of standards-based accountability were laid in 1994, during the previous reauthorization of ESEA. No Child Left Behind was designed to make those ideas meaningful by

building accountability incentives strong enough to push school schools and students to new heights of performance.

But if the previous laws were ideal precedents in spirit for NCLB, they weren't adequate precedents in design. Brown made reprehensible practices illegal; IDEA granted legal rights to a certain class of students. But neither suggested empirical solutions for improving the everyday classroom experience of America's millions of disadvantaged students.

You can't simply pass a law making bad schools illegal. Of course, you can, but the day after you do it, the schools will still be standing there, and the students in the neighborhood will need to go somewhere to learn. You can't redistribute inspiring, highly-trained teachers in the same way that a revenue stream can be redirected from one place to another. The legal apparatus surrounding students with disabilities can't be practically extended to the population as a whole. Even the problem itself is hard to define. A segregated school is pretty easy to spot. Funding levels can be counted and compared. But what, exactly, does it mean for a school to be "failing"? And how do you write a law that will make failing schools un-fail?

NCLB answered the first question with an awkward, static interpretation of test score results that was too harsh in some ways and too lenient in others. Schools were deemed to have not made "Adequate Yearly Progress" if too many students in any sub-group—a minority group of sufficient size, students with disabilities, English language learners, the poor—failed either of the state tests in reading or math, in any grade. Schools where all of the students were bombing all of the tests got the same label as schools where only sub-populations fell short by a small amount. Yet even the worst of the worst schools had to miss "AYP" for six consecutive years before severe sanctions and interventions kicked in.

The interventions themselves were an odd mix of broadly-defined strategies—e.g. "replace the principal and the bad teachers with better ones," "shut down and reorganize as a charter school"—whose efficacy depended entirely on the talent and hard work of the people who implement them. But there was the rub: The people in charge of implementing them were the same state and local leaders whose actions had led to the schools failing in the first place. And you can't send the 101st Airborne Division to improve classroom teaching. Battalions of Justice Department lawyers can't make state education officials good at their jobs.

The law decreed that all teachers must be certified as "highly qualified" before entering the classroom—essentially, an attempt to make bad teachers illegal. That didn't work, because states and unions resisted, and teaching is the kind of complex profession where you can't know how good people will be until they actually start teaching. It gave students in low-performing schools the right to transfer to a better school within their district, but did little to ensure that such better schools would exist, or have room for new students. Funding for high-poverty school districts was bumped up by several billion dollars—a worthy step, but nowhere near enough money to make up

for the fact that schools in the poorest states receive about half as much state and local funding as schools in the richest, and state and local funds comprise 90 percent of the average school budget.

As time wore on, the 2014 deadline loomed larger, seeming to more and more people as plain evidence that NCLB was absurd and rigged to fail. The conviction that all students can learn is essential to running an effective school, particularly a school filled with children who are often written off by society due to their race, income, or family background. But translating that conviction into a number that controls a vast federal accountability regime isn't necessarily a good idea. The moral urgency of giving a poor students a decent education may be just as powerful as ending de jure racial segregation, but only one of those things is a crime that can be eradicated. Too often, the authors of NCLB mistook the righteousness of their cause for policies that would actually result in better schools.

IN THE END, No Child Left Behind didn't usher in a new era of educational opportunity for disadvantaged children. But the law still has a legacy. It has exposed truths about the illogic and injustice of American public education that can't be ignored.

The simple act of publishing annual test scores "disaggregated" by race, ethnicity, language and disability status has proved that discrimination remains deeply embedded in our public education system, and not just in dysfunctional urban schools. So-called "good" school districts still warehouse their "difficult" students in unchallenging courses taught by indifferent teachers. We won't go back to the time when that kind of malpractice could be plausibly denied.

NCLB's concessions to federalism—giving states total discretion to set academic standards—exposed the idiocy of allowing 50 state bureaucracies to make independent judgments about the essential math and reading skills all children must learn. The result was a system where far more students were "passing" state tests in Mississippi than in Massachusetts, even though the the NAEP ranks those states last and first, respectively, in student achievement. The body politic has a high but not infinite tolerance for ridiculousness, and so the vast majority of states are now in the process of adopting a single set of Common Core Standards.

The information generated by NCLB's annual testing regime has also created an empirical foundation for education research that never existed before. New curricula, better teacher training, smaller class sizes, increased funding, revised teacher tenure policies, technology-enabled learning, charter schools—all of these ideas and many others can be evaluated in a way that was never possible before. NCLB's flawed accountability system didn't work very well, but the data it created may help identify something better to take its place.

The policies the Obama administration has advanced in exchange for NCLB waivers are sensible, if less ambitious than those that came before. The administration has focused on better methods of

evaluating and improving teacher quality, expanding high-performing charter schools, building better data systems, and turning around the lowest-performing schools. It's a good start, albeit one that leaves the vast majority of students in schools that are exempt from any meaningful federal attention.

That's the dilemma of federal education policy. American K-12 schools are highly decentralized in governance, finance, and tradition. Wrestling with such an unruly system can seem Sisyphean. Public education is itself an act of optimism, based on a belief in universal human potential that has been absent from nearly all other places and times. Yet we try to make it better anyway, because of children like Quentin, a student in Highland Park, Michigan who, according to an ACLU [lawsuit](http://www.washingtonpost.com/local/education/aclu-alleges-michigan-school-district-violated-students-right-to-learn-to-read/2012/07/11/gJQArfljeW_story.html) - [http://www.washingtonpost.com/local/education/aclu-alleges-michigan-school-district-violated-students-right-to-learn-to-read/2012/07/11/gJQArfljeW\\_story.html](http://www.washingtonpost.com/local/education/aclu-alleges-michigan-school-district-violated-students-right-to-learn-to-read/2012/07/11/gJQArfljeW_story.html) - filed earlier this week, has been promoted to the 7th grade despite the fact that he can't even spell his own name.

Quentin's entire public education has occurred since Democrats and Republicans came together 11 years ago to proclaim that such injustices would no longer be tolerated. It didn't work, and finding a better approach will be damnably hard. But in any society that aspires to decency, there's no other choice.

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