

Chapter 3

The Elementary and Secondary Education Act at 40: Equity, Accountability, and the Evolving Federal Role in Public Education

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This year marks the 40th anniversary of the Elementary and Secondary Education Act (ESEA) of 1965. Enacted to offer equitable educational opportunities to the nation's disadvantaged, this legislation provides financial resources to schools to enhance the learning experiences of underprivileged children. Since its inception, ESEA has consistently remained the single largest fiscal source of federal support for educationally vulnerable schoolchildren. Although the mission of this legislation has remained the same, it has evolved over time to include the needs of more specialized at-risk groups, including English-language learners (the Bilingual Act; Title VII), female students (the Women's Educational Equity Act; Title IX), and Native American students (the Improvement of Educational Opportunities for Indian Students Act; Title X) (Lagemann, 2005). Provisions have also been added to ensure not only that schools receiving ESEA funds provide supplemental services but that children show improvement and are able to reach appropriate grade-level proficiencies.

In this chapter, we trace the legal, legislative, and political history of the ESEA. Focusing attention on the various related educational reform movements, we discuss the federal role in education policy in the context of its influence on ESEA and the legislation's related amendments. Also, we examine the complex issues involved in responding to the changing and more complex needs of underserved schoolchildren through federal policies and accountability provisions.

We make the case that the increased federal role in public education has pointed to serious limitations in our understanding of how to best address the educational challenges faced by traditionally disadvantaged schoolchildren. We argue that the current accountability requirements under ESEA and the No Child Left Behind Act (NCLB), although a step in the right direction, were developed from a theoretical perspective and lacked an understanding of the complex issues involved in serving disadvantaged schoolchildren. In addition, we contend that a thorough understanding

of the role of state and local educational contexts in serving disadvantaged schoolchildren is needed to guide policymakers, and we encourage educational researchers to develop more effective policy interventions.

ESEA'S EARLY LEGISLATIVE HISTORY: 1965–1980

In 1964, President Lyndon Johnson developed a new commission on education referred to as the Gardner Commission. This initiative was chaired by John W. Gardner, president of the Carnegie Corporation, who later became President Johnson's secretary of health, education, and welfare (the former Department of Health, Education, and Welfare is now the U.S. Department of Education). The primary task of the Gardner Commission was to formulate new and innovative thinking on the issue of federal education aid. The commission proposed the idea of linking education aid to President Johnson's War on Poverty policy programs. More specifically, the commission recommended that federal education aid be categorical, or targeted according to specific needs, including the education of poor children (Jennings, 2001).

On April 11, 1965, President Johnson adopted this approach and the ESEA was passed, with Title I representing the largest financial component of the legislation. The original legislative intent of Title I was "to provide financial assistance to local educational agencies serving areas with high concentrations of children from low-income families to expand and improve their educational programs by various means" (cited in Kirst & Jung, 1991, p. 45).

Although the basic general idea behind the ESEA was widely accepted, its expansion of the federal role in education had its share of critics. One of ESEA's most vocal opponents was the National Education Association, which strongly disagreed with the disbursement of federal dollars to private schools (Jennings, 2001). To directly address concerns regarding national control over education, the drafters of ESEA included a provision explicitly stating that the federal government could not "exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel, or over the selection of any instructional materials in any educational institution or school system" (Public Law 89-10, Section 604).

In 1965, ESEA channeled approximately \$1 billion in funds directly to school districts and schools. While distribution of ESEA federal funds was based largely on child poverty data, ESEA-related services were made available to children on the basis of educational need (Jennings, 2001). Therefore, a child who attended a school receiving ESEA federal aid (statistics indicate that, during the 1970s, approximately 94% of all school districts received some sort of ESEA aid) and whose parents were not poor could still receive ESEA-related services if he or she was not doing well academically.

A major debate ensued in Congress shortly after the passage of ESEA as to whether Title I services should be restricted to poor children who were educationally disadvantaged or should include all children at risk for school failure, regardless of socio-economic status (Stein, 2004). Shortly after implementation, legislative ambiguities in ESEA coupled with minimal congressional oversight led to abuses of ESEA funds,

including provision of general aid funds to all students instead of targeted resources for the special needs of educationally disadvantaged students (Murphy, 1973). Many of the early fiscal abuses of Title I of ESEA were detailed in the 1969 report *Title I of ESEA: Is It Helping Poor Children?* This critical report, authored by Ruby Martin of the Washington Research Project and Phyllis McClure of the Legal Defense and Education Fund of the National Association for the Advancement of Colored People, analyzed audits conducted by the U.S. Department of Health, Education, and Welfare and found more than 15% of Title I funds had been misappropriated (Murphy, 1991). Martin and McClure reached the following conclusions:

We found that although Title I is not general aid to education but categorical aid for children from poor families who have educational handicaps, funds appropriated under the Act are being used for general school purposes: to initiate system-wide programs, to buy books and supplies for all school children in the system, to pay general overhead and operating expenses, to meet new teacher contracts which call for higher salaries, to purchase all-purpose school facilities, and to equip superintendents' offices with paneling, wall-to-wall carpeting, and color televisions. (p. 57)

The Martin-McClure report brought considerable national attention to the early problems of fiscal abuse in ESEA. As a result, Congress amended ESEA four times between 1965 and 1980, in each instance reauthorizing the legislation with the goal of more precisely achieving the congressional intent of assisting educationally disadvantaged students from low-income families (McDonnell, 2005).

ESEA'S LEGISLATIVE RETRENCHMENT AND THE REDUCED FEDERAL ROLE: 1981–1987

The election of President Ronald Reagan in 1980 marked a significant reduction in federal education program funding as well as a presidential effort to reduce the role of the federal government in domestic policy areas, namely public education (McDonnell, 2005). Presidential and congressional support for ESEA waned sharply throughout the 1980s, with significantly fewer educationally disadvantaged children served under the law during this decade than in the 1970s (Jennings, 2001). For instance, the Education Consolidation and Improvement Act, passed in 1981 as part of President Reagan's Omnibus Budget Reconciliation Act, reduced federal funding across most domestic policy areas. Title I of ESEA was renamed Chapter 1 under this act. While Chapter 1 of ESEA retained its original legislative purpose of funding compensatory services for educationally disadvantaged students, significant reductions in federal aid and relaxed regulatory requirements led to fewer eligible students being served.

The Reagan administration also highlighted the overall poor academic performance in American public schools. Such criticisms reached a crescendo in 1983 with the publication of *A Nation at Risk* (National Commission on Excellence in Education, 1983). Among other issues, the report outlined the need for higher academic standards, increased student course requirements, a longer school day, and significant changes

in the training and retention of teachers. *A Nation at Risk* became a focal point for the states and localities to undertake these reforms, while the government played a less prominent role. The report had unquestionable policy significance. By the mid-1980s, 41 states had adopted increased academic requirements for high school graduation, and 29 states required teachers to pass a mandatory, standardized test to gain certification (McDonnell & Fuhrman, 1986).

REDEFINING FISCAL ACCOUNTABILITY IN FEDERAL AID TO DISADVANTAGED STUDENTS: 1988–2001

In 1988, Title I was amended and for the first time began requiring states to document and define levels of academic achievement for their disadvantaged children (Jennings, 2001). Public school districts across the nation were required to annually assess student academic progress on the basis of standardized test scores. Consequently, receipt of ESEA funds began to be based on the achievement of educationally deprived children.

In 1989, President George H. W. Bush and the state governors met at an “educational summit” held in Charlottesville, Virginia, with the objective of developing national goals for education to raise student academic achievement (Jennings, 2001). At the conclusion of the summit, a general consensus developed that the ESEA legislation, especially programs such as Title I, needed to incorporate greater levels of educational accountability based on higher academic standards and more fiscal flexibility in allocation of federal aid. In 1991, President Bush advanced a major legislative initiative, America 2000, calling for national academic standards and national testing of students. While the America 2000 legislation passed the House of Representatives, albeit with limited support, the bill failed in the Senate as a result of a filibuster by conservative Republicans opposed to any increase of the federal government’s role in public education (McDonnell, 2005). Nevertheless, the significance of America 2000 in relation to ESEA was that the legislation acted as a catalyst for education reform based on the activism of states and the development of academic standards common to all students.

Bill Clinton’s election to the presidency in 1992 reflected a continuance of the standards-based education reforms of the Bush administration. The Clinton administration’s major education reform initiative was the Goals 2000: Educate America Act, which was passed by Congress in 1994. Goals 2000 was characterized by four primary legislative elements: (a) a primary focus on student achievement levels; (b) an emphasis on challenging academic standards specifying knowledge and skill levels at which students should demonstrate mastery; (c) the application of academic standards to all students, including those students for whom academic expectations had traditionally been low; and (d) a reliance on student achievement testing as a means to monitor the effects of reforms (McDonnell, McLaughlin, & Morison, 1997).

Also in 1994, ESEA was reauthorized with the passage of the Improving America’s Schools Act (IASA). The purpose of IASA was “to enable schools to provide opportunities for children served to acquire the knowledge and skills contained in challeng-

ing State content standards and to meet the challenging State performance standards developed for all children” (Public Law 103-328, Section 1001[d]). Under IASA, all school districts were required to identify schools not making “adequate yearly progress” (AYP) and take formal steps to improve them. As a precondition of receiving Title I funds, states were mandated to demonstrate that learning goals, academic expectations, and curricular opportunities were the same for students eligible for these funds as they were for all other students (McDonnell, 2005).

NCLB: A BRIEF HISTORY AND OVERVIEW

The major educational reform objectives of ESEA, including greater academic accountability for students, increased local control, better teaching methods, and expanded options for parents, are still in existence today through NCLB, which was signed into law on January 8, 2002. Similar to ESEA, NCLB is grounded in the practice of standards-based education reform. In 2000, Congress reexamined the mission and goals of ESEA. Particular attention was focused on the elimination of racial and socioeconomic inequalities in public schools and the lack of quality educational opportunities available for disadvantaged populations.

The findings of national studies in education indicated very little success in closing the achievement gaps. The 1998 National Assessment of Educational Progress reported these disparities among high school seniors. For example, according to this study, 43% of African Americans, 36% of Hispanics, 35% of American Indians/Alaska Natives, and 25% of Asian Americans/Pacific Islanders were below the basic level of competency in reading, in comparison with 17% of Whites (U.S. Department of Education, 1998). More disturbing was that schools with large populations of minority students had higher numbers of unqualified teachers, particularly in the areas of math and science (Darling-Hammond, 2001; SRI International, 1999). Although the federal government was less involved in shaping state education policy, billions of dollars had already been allocated to ESEA programs without the goals of the policy being met. Congress wanted more accountability and results for the federal funds spent on ESEA programs, particularly in Title I districts.

On January 8, 2002, President George W. Bush reauthorized and renamed ESEA as the No Child Left Behind Act of 2001. This new landmark education policy reflected unprecedented and bipartisan commitment to providing a quality education to all American students, regardless of racial, ethnic, or socioeconomic background. NCLB reflects the original intent of the ESEA by focusing on helping disadvantaged children reach grade-level proficiency and strengthening basic and advanced skills. The major objectives of NCLB are increasing accountability for results, focusing on researched-based practices (i.e., “what works”), providing better-quality instruction, and empowering parents with choice options.

Although very similar to ESEA, NCLB takes the commitment to improving the educational experiences of historically disadvantaged populations a step further. Provisions were added to raise the bar of academic standards and hold state and local educational agencies accountable for student achievement. More drastically, the new

policy links federal funding to student performance outcomes and imposes sanctions for low student performance.

Title I, “Improving the Academic Achievement of the Disadvantaged,” ensures “that all children have a fair, equal, and significant opportunity to obtain a high quality education” (Public Law 107-110, Section 1111). Focusing special attention on the needs of students in low-performing districts, this provision requires state boards of education to redesign their testing and assessment systems. In addition, new state achievement benchmarks should reflect rigorous content, advanced skills, and challenging academic achievement standards. States were given discretion in developing performance standards in reading and math for Grades 3–8. Three years are allowed for the initial development and implementation of new testing, assessment, and data reporting systems. Student progress is analyzed and reported with scores from the 2001–2002 school year as the baseline for assessment.

Pursuant to the stipulations of NCLB, schools receiving Title I funds should demonstrate AYP on state achievement assessments. All children are expected to reach grade-level proficiency by the 2013–2014 school year. NCLB differs from the earlier AYP requirements of ESEA by requiring schools to also demonstrate progress within student subgroups. Yearly progress is expected for all students, including students of limited English proficiency, racial/ethnic minority students, and students with disabilities. Ninety-five percent of all students within each subgroup must be tested if the school is to make AYP, including students who have been enrolled for only 1 year.

Acknowledging that quality instruction is necessary to meet AYP requirements, Title II, “Preparing, Training and Recruiting High Quality Teachers and Principals,” requires that students receive the highest quality of instruction possible (Section 2121). Each state is responsible for developing a highly qualified teaching force, and districts were required to place highly qualified teachers in every classroom by the 2005–2006 school year. The law stipulates that teachers working in Title I schools must have at least a bachelor’s degree and be certified by the state or pass a state subject-knowledge test. Elementary teachers must demonstrate competencies in reading and math instruction, and teachers in advanced grades must demonstrate knowledge in the subject areas they teach.

Paraprofessionals are equally accountable for demonstrating competencies under NCLB. The law requires that all instructional assistants complete 2 years of college or pass a test demonstrating their ability to assist in reading and math instruction. NCLB entitles parents to information about the qualifications of teachers, teacher aides, and other school personnel. Districts must also provide aggregated achievement information for all student subgroups, including LEP students and students with disabilities.

As a demonstration of commitment to high-quality instruction and support of schools making AYP, the use of evidence-based practices is encouraged under NCLB. In line with the notion that scientifically based strategies are best suited to foster student learning, the U.S. Department of Education advocates incorporating evidence-based interventions in schools. Such practices must be proven effective by methodically rigorous investigations. Comparing education with other professions, the Department

of Education contends that educators must begin to produce reliable evidence that interventions or practices have been tested through systematic, objective procedures:

The field of K–12 education contains a vast array of educational interventions—such as reading and math curricula, schoolwide reform programs, after-school programs, and new educational technologies—that claim to be able to improve educational outcomes and in many cases to be supported by evidence. This evidence often consists of poorly designed and/or advocacy-driven studies. (Institute of Education Sciences, 2003, p. 5)

According to NCLB, scientifically based research relies on sound measurements and observational methods that produce reliable and valid conclusions. Advocates of scientifically based research contend that appropriate interventions tested via rigorous methods have

been found . . . to significantly improve the academic achievement of students participating in such programs as compared to students in schools who have not participated in such programs, or [have] been found to have strong evidence that such a program will significantly improve the academic achievement of participating children. (Section 1606[a]11[a–b])

States and local education agencies are encouraged to use funds to support research-based interventions (i.e., Reading First, Early Reading First, and language instruction for LEP students) in elementary schools and establish partnerships with institutions of higher education to assist in improving math and science instruction.

NCLB focuses particular attention on the language barriers of immigrant students. Title III, “Language Instruction for Limited English Proficient and Immigrant Students,” requires states and local districts to move limited-English-proficient (LEP) students toward English fluency (Section 3102). Districts are given more flexibility in using funds to help LEP students make the transition to English fluency and improve their achievement. States are required to set performance objectives to ensure that LEP students reach English fluency and to meet rigorous core content standards in the 3-year time period.

For the first time, corrective sanctions are imposed on districts and schools that fail to demonstrate AYP. Assistance is available for districts needing more support in meeting the guidelines of NCLB. Schools not making progress after 2 years are labeled “in need of improvement.” These schools are then required to develop a plan for improvement, and students are given the option of transferring to a higher-performing school. If a school fails to make AYP in the third year, students continue to have the option of using Title I funds to transfer to a higher-performing public school, to transfer to a private school, or to receive supplemental educational services. Districts that do not comply with NCLB regulations face reductions in administrative expenses, school reorganizations, replacement of staff members, or state takeovers.

Increased accountability, highly qualified teachers, research-based practices, and school choice initially won the support of stakeholders as serious efforts toward transforming the educational system. In keeping with the original mission of ESEA and

Title I programs, raising the bar in terms of academic standards and requiring that educators take responsibility for student performance outcomes had particular advantages for traditionally disadvantaged students. However, enforcing the related mandates resulted in unintended consequences for states and local education agencies, making NCLB one of the most controversial and debated educational policies.¹

Implementing NCLB: From Theory to Practice

Insufficient resources to support the reform, misunderstandings about the state context of education, and lack of knowledge about the challenges of educating disadvantaged students represented obstacles to meeting the regulations of NCLB (Center on Education Policy, 2003; Driscoll & Fleeter, 2003; Mathis, 2003; Sunderman & Kim, 2004). States had to enforce these new federally imposed mandates, but they lacked the capacity to put the reforms into action as required by the law. Federal funds supporting implementation were allocated for only 1 year and were not substantial enough to cover testing and assessment mandates and other related costs (Center on Education Policy, 2003; Driscoll & Fleeter, 2003; Mathis, 2003; Sunderman & Kim, 2004). States were left with the burden of financing the NCLB reforms. As a consequence, budget cuts were made to other essential state-supported educational services, creating financial concerns in many districts (Center on Education Policy, 2003; Driscoll & Fleeter, 2003; Mathis, 2003; Sunderman & Kim, 2004).

Researchers at the Harvard Civil Rights Project conducted a study of the implementation of NCLB and how the policy worked in different educational systems (Sunderman & Kim, 2004). They found that developing new testing and assessment systems “was a disruptive and costly process” for many states (p. 5). Many continued with the system they already had in place and incorporated some of the new regulations.² Also, a number of states found it impossible to comply with many of the testing provisions that required assessments measuring what students had actually been taught (Sunderman & Kim, 2004). Furthermore, allowing states to set their own proficiency levels created serious unforeseen problems and led to greater disparities in public education. For example, researchers found that underperforming states could use lower-stakes assessments to avoid having high numbers of schools labeled as in need of improvement (Cronin, Kingsbury, McCall, & Bove, 2005; Sunderman & Kim, 2004), thus defeating the purpose of providing high-quality education for all students and closing the achievement gap.

An equal amount of concern emerged about performance requirements and the LEP population. States found the NCLB testing and assessment mandates to be inappropriate and too rigid for this subgroup (Batt, Kim, & Sunderman, 2005). For example, it has been shown that children need at least 2–7 years to become proficient in a second language, and assessing a student in English or a first language during this transition period will not provide a valid measure of progress. Districts argued that the 3-year time limit imposed by NCLB will result in schools serving large populations of LEP students being labeled as failing even when they are making significant progress (Abedi, 2004; Novak & Fuller, 2003; Sterba, 2004).

Research on LEP students demonstrates why states and districts are concerned about AYP and accountability requirements. In a study involving middle schools in North Carolina, Batt et al. (2005) reported on AYP and school subgroups. Results showed that that 98% of schools with large LEP subgroups failed to make AYP. For this reason, along with other issues—the mobility of the LEP population, inconsistencies in classification definitions across states, differences in cultural backgrounds, lack of appropriate testing accommodations for LEP students, and the shortage of teachers for this group—it is inappropriate to include these students in AYP calculations.

Similar questions have been raised in regard to calculating AYP in the case of students with disabilities. States and local education officials have pointed out that many students with persistent and more challenging learning disabilities are now enrolled in schools. Research shows that some of these children have disabilities that are not yet understood and have not been thoroughly studied (Thomas, 2004). In addition, studies on research-based practices and students with disabilities demonstrate that, even with the highest-quality instruction, many of these students fail to reach grade-level benchmarks (Foorman, Francis, Winikates, Mehta, Schatschneider, & Fletcher, 1997; Klingner, Vaughn, Hughes, Schumm, & Elbaum, 1998; Torgesen et al., 1999, 2001). These children need more time to show academic improvement. Therefore, the AYP requirement, as stipulated under NCLB, is inappropriate and will leave many schools unfairly labeled as failing.

States have also reported barriers in complying with requirements regarding highly qualified teachers. Research in the field supports that focusing on teacher certification and content-area knowledge is essential in improving overall teacher quality (Darling-Hammond, 2002; Laczko-Kerr & Berliner, 2002; Monk, 1994). However, states are having difficulty placing highly qualified teachers in every classroom in line with the NCLB regulations. This is a particular problem in historically underperforming districts that serve large minority populations, as well as in rural districts (Center on Education Policy, 2003; Hanushek, Kain, & Rivkin, 2004; Ingersoll, 2001; Johnson, Berg, & Donaldson, 2005; Watson, 2003). It has been shown that teachers are more likely to transfer out of schools identified by NCLB as needing improvement (Sunderman & Kim, 2004). The U.S. Department of Education (2003a) reported that, according to data from the 1999–2000 school year, more than half of teachers do not meet the NCLB definition of *highly qualified* and would need to meet credentialing requirements. States have also had difficulty developing adequate systems for tracking classroom teachers' certification and subject-area competency (Sunderman & Kim, 2004).

Administrators pointed out that NCLB did not allow the necessary time or provide the necessary resources to overcome problems in recruiting, training, and retaining highly qualified teachers by the 2005–2006 deadline. This problem was even more complicated in the case of teachers in special education programs (Billingsley & McLeskey, 2004; Brownell, Hirsch, & Seo, 2004; Tyler, Yzquierdo, Lopez-Reyna, & Saunders Flippin, 2004). Many schools require special education teachers to teach a combination of subjects, often between three and five (Gasiorowski, 2004). States were concerned about not being able to retain special education teachers if the law required

multiple certifications, and teachers expressed concern about not being able to fulfill the requirements (Gasiorowski, 2004).

In August 2002, the Department of Education awarded \$18.5 million to the Campbell Collaboration of Philadelphia and the American Institutes of Research in Washington, D.C., to establish the What Works Clearinghouse, which supports the use of evidenced-based interventions in schools (U.S. Department of Education, 2002; Viadero, 2004). The purpose of this online database is to provide evidence-based reviews of effective programs and practices in education (U.S. Department of Education, 2002; Viadero, 2004). Although the idea of focusing on educational interventions proven to work has been widely embraced, some educational professionals have questioned whether the scientifically based research approach is appropriate for addressing the complex issues in education (Camilli, Vargas, & Yurecko, 2003; Kreider, 2003). Some scholars have pointed out that it is difficult to randomize schools and classrooms in the same context as the scientific medical paradigm and have questioned the ethics and appropriateness of using scientific experiments over other methodologies in educational research (Raudenbush, 2002; Shavelson & Towne, 2002).

Even when the idea of evidence-based practices is embraced, there is little information available for working with vulnerable students such as the LEP population and students with disabilities. Information on effective instructional practices is limited for these subgroups (Browder & Cooper-Duffy, 2003; Klingner, Ahwee, Pilonieta, & Melendez, 2003). For example, Gersten, Chard, and Baker (2000) conducted a study on research-based instructional practices for students with disabilities. These investigators found only one empirical study examining approaches to reading instruction (Klingner, Vaughn, Hughes, & Arguelles, 1999). Another analysis addressing curricular research and students with disabilities showed that the research literature focused more on cultivating social skills and gave little attention to cognitive development (Browder & Cooper-Duffy, 2003; Nietupski, Hamre-Nietupski, Curtin, & Shrikanth, 1997). Research in this field is sparse, lacks appropriate reading comprehension measures, and does not offer an understanding of effective teaching among this population (Browder & Cooper-Duffy, 2003).

A meta-analysis of dropout prevention programs further demonstrates the limitations in the evidence-based intervention literature. This is a major problem for high schools in districts serving educationally vulnerable populations and students with disabilities (Children's Defense Fund, 2001; Orfield, 2004; U.S. Department of Education, 2001; Wagner et al., 1991). However, the research literature does not provide the information necessary to make evidence-based conclusions about program effectiveness. For instance, Lehr, Hansen, Sinclair, and Christenson (2003) conducted a review of data-based dropout intervention programs. Very few studies focused attention on the high school population. More surprisingly, none of the studies involved a randomized selection process, which is deemed necessary for examining program effectiveness. In some studies, participants were assigned to control groups without the use of randomized procedures, and only four studies involved pretest/posttest research designs.

Imposing Penalties

The U.S. Department of Education kept to its word of imposing sanctions on states not complying with NCLB regulations. Administrative funds were reduced in several states that did not follow through with the required stipulations and implementation guidelines. Georgia had its funding reduced by \$718,300 for failing to align its high school test with state content standards (Hoff, 2005a). That same year, Minnesota's administrative budget was cut because it used attendance records rather than the required test scores to report AYP (Hoff, 2005a). In 2005, Texas lost almost half a million dollars in administrative support for failing to notify parents that their children had the right to transfer from failing schools (Hoff, 2005a). The District of Columbia is facing a 25% decrease in aid for failing to match standardized testing to academic performance standards (Hoff, 2005a).

State administrators have argued that punishing districts with financial sanctions defeats the purpose of NCLB. According to Scott Young of the National Conference of State Legislatures in Denver, "In a way, they [the Department of Education] are shooting themselves in the foot" (Hoff, 2005b). Congress has been encouraged to rethink this idea and initiate more efforts to reward states that are meeting their obligations under the law.

Changing the Rules: Amending NCLB

School administrators, civil rights organizations, and education advocacy groups have called on Congress to amend and adequately fund NCLB (Hoff, 2005b; Keller, 2003; National Education Association, 2005). Groups such as the American Federation of Teachers, the National Education Association, the National School Boards Association, and the National Conference of State Legislators have outlined their concerns regarding the implementation of NCLB and advocated for changes in the law. States have requested more funding to assist in meeting the regulations, more flexibility in calculating AYP, realistic expectations for LEP students and students with learning disabilities, and a revised definition of highly qualified teachers.

The U.S. Department of Education has consistently worked toward making NCLB more practical for states and local education agencies. In December 2003 Rod Paige, then secretary of education, made the first change in the law regarding testing of students with severe cognitive disabilities (U.S. Department of Education, 2003b, 2004a). The initial policy allowed for alternative testing of only 0.5% of this subgroup. States now have the discretion to determine which children will be classified under the "significant cognitive disability" category and are permitted to use alternative assessments for this population. The new regulation, which became effective in January 2004, allows states to include 1% of scores from this subgroup in AYP calculations.

Additional modifications have been made regarding testing of LEP and immigrant students. On February 19, 2004, the Department of Education announced that schools have the option but are not required to test LEP students in reading if they have been enrolled for less than 1 year (U.S. Department of Education, 2004b). States may also

include LEP students who become proficient in English in calculations of AYP for up to 2 years. This will allow states to demonstrate progress when students master the English language and move out of the LEP subgroup (U.S. Department of Education, 2004b).

On March 15, 2004, the policy was again amended to address concerns regarding the credentialing of highly qualified teachers under NCLB regulations. Changes were made in three specific areas, giving states more flexibility in meeting the requirements. First, rural teachers who are highly qualified in one subject are allowed 3 years to become competent in additional subjects (U.S. Department of Education, 2004c). States must provide the professional development and supervision necessary for teachers to become proficient in multiple areas. Teachers already in classrooms will have until the 2006–2007 school year to acquire certifications, and new teachers are given 3 years from their start date. Second, states now have the option to permit science teachers to demonstrate proficiency in either the broad discipline of science or individual subject-matter areas (e.g., chemistry, biology) (U.S. Department of Education, 2004c). Finally, states are now able to use a single evaluation assessment to allow current teachers of multiple disciplines to demonstrate content knowledge in their fields of instruction (U.S. Department of Education, 2004c).

Secretary Paige also made changes in the 95% participation rate requirement for all subgroups in March 2004. Whereas previously NCLB had required schools to test 95% of subgroup students to make AYP, the new policy allows states to average participation rates over a 3-year period and exempts students unable to take the test as a result of medical reasons (or other justifiable reasons) from inclusion in participation rate calculations (U.S. Department of Education, 2004d).

In January 2005, the National School Boards Association unveiled a legislative proposal offering recommendations for amending NCLB: the No Child Left Behind Improvements Act of 2005. It was the contention of this organization that although Secretary Paige had made significant progress in improving NCLB, more significant and detailed changes were needed. The suggestions proposed, supported by the National Education Association (2005), reflected the concerns of professionals actively involved in carrying out the law. Several changes were proposed, including the following:

- Using a “growth factor” to calculate AYP
- Allowing states to use alternative methods to calculate AYP
- Linking required NCLB assessments to individual education plans under the Individuals with Disabilities in Education Act
- Targeting choice and supplemental services to students in the particular subgroups that fail to make AYP rather than labeling the entire school as failing
- Requiring that private school students receiving ESEA Title I benefits be held to the same standards as public school students—and holding private schools to the same accountability standards as public schools

In April 2005, Margaret Spellings, the current secretary of education, announced another wave of changes to NCLB. Focusing on concerns about children with more

complex educational challenges, Secretary Spellings added flexibility in calculating AYP and reporting the progress of children with special needs. States had previously been permitted to use alternative assessments with only 1% of students—those with the most severe cognitive disabilities. Secretary Spellings acknowledged that some students with developmental challenges who do not fall under the severe cognitive disabilities category may not reach grade-level milestones (U.S. Department of Education, 2005a), thus preventing schools from making AYP even when some level of gain is achieved. States are now permitted to also use alternative assessments with 2% of students who have persistent academic disabilities and are served under the Individuals with Disabilities in Education Act. This provision was expanded to “allow students with persistent academic disabilities to take academic assessments that are more sensitive to measuring progress in their learning and that recognize their individual needs” (U.S. Department of Education, 2005a).

In some instances, state departments of education are also permitted to adjust their 2004–2005 AYP calculations if they (a) failed to demonstrate AYP as a result of the subgroup of students with disabilities or (b) currently use modified achievement standards to assess student progress (U.S. Department of Education, 2005b). This option is available only to states planning to develop an alternative assessment based on modified achievement standards (U.S. Department of Education, 2005b).

The U.S. Department of Education has focused on making a stronger financial commitment to states, with special attention given to students who have persistent developmental disabilities. Thus far, \$14 million has been allocated to assist states in improving assessments of, instruction for, and research on students with persistent disabilities (U.S. Department of Education, 2005a, 2005b).

CONCLUSION

Data studied across four decades suggest that ESEA suffered during its early legislative history from both a lack of specific policy guidelines and a weak accountability system (Borman & D’Agostino, 2001). A strong accountability system is needed to improve the quality of American public education in general and opportunities for disadvantaged students in particular. NCLB has taken bold steps to hold educational systems responsible for failing to adequately serve socioeconomically disadvantaged children, thus raising the bar of accountability. However, schools and districts cannot be held accountable under a policy with underfunded initiatives and unrealistic objectives. The initial rigid mandates, coupled with misunderstanding regarding the actual challenges of educating children from underprivileged backgrounds and the state-level contexts involved in serving these children (hiring and retaining highly qualified teachers, testing and accountability requirements), led to unintended consequences and weakened support for accountability in education.

The focus on moving children toward grade-level proficiency has provided insights into the complexities of serving disadvantaged children, forcing policymakers to re-examine their approaches to improving academic performance and closing achievement gaps. The U.S. Department of Education is responding to these issues from a policy

standpoint. However, a stronger understanding of the obstacles to educational achievement within disadvantaged groups is needed. The hope is that Congress will maintain its bipartisan commitment to “leaving no child behind” and support the allocation of adequate resources to school districts serving disadvantaged populations, provide more support for educational research, and continue to make the law more workable for school systems and the children they serve. Such factors are critical to closing the achievement gap, strengthening support for the accountability movement in American public education, and, most important, sustaining ESEA’s original mission of enhancing the educational experiences of disadvantaged children.

NOTES

¹ This chapter focuses attention on specific areas of NCLB. However, other aspects of the law, although not the focus of the present discussion, are equally essential to strengthening the educational experiences of disadvantaged students, including Title IV (“21st Century Schools/Safe and Drug Free Schools and Communities”), Title V (“Parental Choice”), Title VI (“Flexibility and Accountability”), Title VII (“Indian, Native Hawaiian, and Alaska Native Education”), and Title VIII (“Impact Aid”).

² See also Christopher Edley Jr.’s testimony before the U.S. House of Representatives Committee on Education and the Workforce oversight hearing on the implementation of the No Child Left Behind Act (July 24, 2002) (www.law.harvard.edu/civilrights).

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