



The Heritage Foundation

Backgrounder

Executive Summary

No. 1454

July 3, 2001

STILL LEAVING CHILDREN BEHIND: THE HOUSE AND SENATE EDUCATION BILLS

KRISTA KAFER

Policy changes in the Better Education for Students and Teachers Act (S. 1) and the No Child Left Behind Act of 2001 (H.R. 1) fall far short of President George W. Bush's education reform package, *No Child Left Behind*. The President's plan sought to transform the Elementary and Secondary Education Act of 1965 (ESEA) into a results-oriented system. The bills reauthorizing the ESEA and now headed for conference committee contain only some of the elements of the Bush plan. While the House bill would be a limited, albeit costly, improvement over current law, the Senate bill poses an enormous cost without foreseeable benefits. Grafting minor changes onto old, unsuccessful programs and buttressing them with a massive increase in funding is not likely to reach the goal: to raise academic achievement.

Given the crisis in education, especially for disadvantaged children, these bills provide too little reform where the need is greatest. A stunning 60 percent of underprivileged 4th graders still cannot read at a basic level, according to the U.S. Department of Education's National Assessment of Educational Progress (NAEP). This has been the case for decades, despite the billions spent by the federal government since 1965 to close the achievement gap between rich and poor students.

Although national and international achievement test scores demand a profound shift from the status quo, the bills' policy changes will be profound only in their cost to the taxpayer. S. 1 nearly doubles authorized spending for existing programs in the first year and quadruples spending by 2008.

The President's Five-Star Plan. The President wisely sought to break with the past. His plan for the ESEA reauthorization emphasizes accountability, flexibility, opportunity, structural change, and quality improvements. Summing up his strategy, he stated during his campaign that

What I am proposing today is a fresh start for the federal role in education... Freedom in exchange for achievement. Latitude in return for results... [M]y second goal for the federal government is to increase the options and influence of

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parents.... The theory is simple. Public funds must be spent on things that work—on helping children, not sustaining failing schools that refuse to change.

Congress's Response. While S. 1 and H.R. 1 contain some needed modifications, the most powerful engines of reform—accountability to parents, choice, flexibility, and structural change—are watered down or eliminated. The bills substantially increase funding for the same old, ineffective programs. Congress took a bold five-star plan and weakened it.

- **Instead of increasing opportunity** and making schools accountable to parents by giving children in failing and unsafe schools the option to attend a successful public or private school, the legislation merely provides state-approved supplemental services and more intra-district choice. And some children will be denied even this.
- **Instead of making structural changes** to focus funds on a limited number of high-priority categories, the legislation continues to fund an array of highly specified programs, many of which are ineffective or duplicative.
- **To strengthen accountability**, the legislation requires states to raise achievement and stipulates either sanctions or rewards for results. The bills do not, however, make schools more accountable to parents by giving them sufficient options to help their children receive the best education. Without the choice to act, standards, tests, and reports are just pieces of paper.
- **To increase flexibility**, the bills offer some new options but retain many of the ESEA's burdensome regulations and paperwork requirements. They also fail to authorize charitable choice for after-school and drug and violence prevention programs.
- **To begin improving quality**, the legislation, primarily in the House, does include some programmatic improvements; but both bills continue to direct funding to unsuccessful programs.

H.R. 1 contains some accountability regulations, some flexibility, and several of the President's recommended programmatic improvements. However, it fails to make structural changes in ESEA or provide children in failing schools with choices beyond intra-district school choice and tutoring. Compared with the President's "Five Star" plan, H.R. 1 merits two and a half stars.

With a few exceptions, the Senate bill is devoid of reform. It is an expensive and expansive version of current law. During the legislative debate, the bidding war to drive up spending actually made a bad bill worse. The inclusion of the President's Charter States and Districts proposal and some accountability provisions earn it a single star.

The potential of the final bill that emerges from the conference committee can be measured by the degree to which it resembles the Bush plan rather than current law. If improvements are not made in conference, the cost of this legislation will be far greater than its price tag of some \$400 billion over six years. The cost to children in failing schools who could have been helped will be incalculable.

What Conferees Should Do. Though the President appears pleased that Congress agreed with some of his reforms, he should still insist that conferees strengthen the reform components of the legislation before it comes to his desk. They should eliminate extraneous programs and regulations, reduce paperwork burdens, and, above all, give children in failing schools a real opportunity to attend a good school.

Conclusion. As the President's *No Child Left Behind* plan explains, "The federal role in education is not to serve the system. It is to serve the children." Whether the reauthorization of the ESEA will, in fact, serve America's children is the question. With this paramount goal in mind, if real accountability, flexibility, consolidation, and opportunity for poor children are not strengthened in conference, the President should veto the bill and send Congress "back to school" to get it right.

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Background

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KRISTA KAUFER

Policy changes in the Better Education for Students and Teachers Act (S. 1) and the No Child Left Behind Act of 2001 (H.R. 1) fall far short of President George W. Bush's education reform package, *No Child Left Behind*. The President's plan sought to transform the 36-year-old Elementary and Secondary Education Act of 1965 (ESEA) into a results-oriented system.¹ Though each of the recently passed bills maintains some measures proposed by the President, neither does anything to reform the structure of the ESEA. Both the House and Senate bills offer, at best, a watered-down version of the most important elements of *No Child Left Behind*—new opportunities for children in failing schools, flexibility for states and schools to pursue their education goals, and accountability procedures that would promote success and effective innovation.

What the bills do provide is a vast increase in federal funding for a multitude of yesterday's programs, in spite of the fact that many of them have failed to improve the academic performance of students. In fact, the Senate bill nearly doubles

authorized spending for existing programs in the first year and quadruples spending by 2008.

Experience has shown that increased funding, if misdirected, offers little hope of improving the academic performance of America's children. Despite the over \$120 billion spent by the federal government to close the achievement gap between poor students and their more affluent peers, a shocking 60 percent of underprivileged 4th graders still cannot read at a basic level, according to the U.S. Department of Education's National Assessment of Educational Progress (NAEP).² While combined federal, state, local, and private spending for education reached an estimated \$389 billion during the 1999–2000 academic year,

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1. H.R. 1, the No Child Left Behind Act of 2001, sponsored by Representative John Boehner (R-OH), was passed on May 23, 2001. The Better Education for Students and Teachers Act, sponsored by Senator Jim Jeffords (I-VT), was passed on June 14. A conference committee of Members of each chamber will produce a combined bill to present to the President.
2. NAEP reading assessments for 1992–2000, at <http://nces.ed.gov/nationsreportcard/reading/>.

America's students continued to lag behind many of their peers in international comparisons.³

While some may urge the President to sign the bill that comes out of committee, reasoning that "something is better than nothing," this is not the case. Passing a bill that waters down a once-energetic plan to improve the nation's education system will be a setback, especially if it is touted as radical reform. Many years could pass before another opportunity arises for serious, substantial reform. It should be remembered, for example, that nearly a decade passed after the passage of a weakened "welfare reform" bill of 1988 before that issue could be revisited and put right. For a generation of the nation's children, it would be better to have no legislation than a colorless, expensive, and misleading "reform" law.

THE PRESIDENT'S FIVE-STAR PLAN

In January, President George Bush introduced his education reform plan to overhaul the federal education system with this declaration:

Over the years, Congress has created hundreds of programs intended to address problems in education without asking whether or not the programs produce results or knowing their impact on local needs. This "program for every problem" solution has begun to add up.... [T]here are hundreds of education programs spread across 39 federal agencies.... Yet, after spending billions of dollars on education, we have fallen short in meeting our goals for educational excellence. The academic achievement gap between rich and poor, Anglo and minority, is not only wide, but in some cases is growing wider still.⁴

Rather than suggest a host of new programs or propose large spending increases as his predecessors had done, President Bush outlined a series of

simple, commonsense reforms to bring accountability and innovation to a system that, for years, has promoted neither. His *No Child Left Behind* plan offered America a framework of reform for reauthorizing the Elementary and Secondary Education Act of 1965, the largest source of federal K-12 spending.

Specifically, the plan sought to restructure ESEA into a results-oriented system emphasizing accountability, opportunity, flexibility, and quality. This would allow ESEA programs to help raise academic achievement instead of generating layers of bureaucracy and educational mediocrity. The plan would have required states and schools receiving federal funds to demonstrate academic improvement. It would have granted children in failing schools the opportunity to receive a good education. Through consolidation and flexibility provisions, the Bush plan would have reduced onerous regulations and paperwork. It also would have improved the quality of programs by requiring research-based practices.

No Child Left Behind presented a major shift in federal education funding. By demanding results and providing new options, it would have made schools more accountable to taxpayers and parents. Through flexibility and consolidation, it would have granted states and local schools greater control over the day-to-day process of reaching high standards. This was a strong reform package, although it could have been improved by broadening its modest school choice provisions. The extra step would have increased opportunities for more children and encouraged greater competition for success.

President Bush took a bold step in choosing to overhaul the federal education system. Since its inception in the 1960s, ESEA participation has required an ever-increasing level of compliance paperwork, but not results. The 61 programs within the act require an estimated 48.6 million hours of paperwork per year. Yet the programs do

3. 1999 Third International Math and Science Study (TMSS). See *TMSS 1999 Benchmarking Highlights*, International Study Center, Lynch School of Education, Boston College, April 2001, p. 3.
4. White House, Executive Summary, *No Child Left Behind*, at <http://www.whitehouse.gov/news/reports/no-child-left-behind.html> (February 26, 2001).

not require academic progress: Funds continue to flow even if not a single child learns to read in a reading program or understands how to speak English in a bilingual class or resists peer pressure because of a Safe and Drug Free Schools lesson. The law requires standards, testing, and reporting, but failure does not guarantee consequences or new opportunities for children.

President Bush wanted to change this formula for funding mediocrity. The 23-page Bush plan describes a system of reforms to improve the federal education system. Emphasizing accountability, flexibility, opportunity, and quality, the plan offers a blueprint for the ESEA reauthorization. Specifically, it was designed to:

- **Strengthen accountability** by requiring academic progress and applying real consequences for failure;
- **Increase opportunity** and make schools accountable to parents by giving children in failing and unsafe schools the option to attend a successful public or private school;
- **Make structural reform in ESEA** to target funds to a smaller number of high priorities, intensifying the federal focus, while providing needed flexibility at the local level;
- **Increase flexibility** to eliminate burdensome regulations and paperwork through consolidation and other state and local flexibility options; and
- **Increase program quality** by directing funds to successful programs and institutions through choice, programmatic improvements, and an emphasis on research-based practices.

Each element of the President's plan is related to others and, thus, to its overall potential to produce reform. Without opportunity, accountability is just an administrative upgrade. Without flexibility and structural change, it is just the same old programs with new requirements. The pieces of the plan fit together such that one is not complete without the others. The legislation passed by Congress, however, contains only some pieces of reform grafted onto the same body of law that has failed to produce academic achievement over the past three decades.

SENATE AND HOUSE LEGISLATION

Unlike the President's bold plan, the Senate's Better Education for Students and Teachers Act and the House's No Child Left Behind Act of 2001 fail to provide substantial structural reform, flexibility, or opportunity for poor children. Given the crisis in education, especially for disadvantaged children, this legislation provides too little reform when the need is greatest.

National and international achievement test scores demand a profound shift from the status quo, yet the bills' policy changes are profound only in their potential cost to the taxpayer; the Senate bill, for example, calls for an additional \$15 billion over current spending levels. While the bills contain some needed modifications, the most powerful engines of reform—accountability to parents, choice, flexibility, and structural reforms—have been watered down or eliminated. Federal spending will be vastly increased while new programs will be funded. In the end, Congress took a bold plan and weakened it.

Though the President was pleased to see that Congress had agreed with some of his reforms, he should insist that conferees strengthen the reform components of the final bill and eliminate extraneous programs, regulations, and paperwork burdens. Above all, he should insist that they give children in failing schools a real opportunity to attend a better school and empower parents to make this decision, one of the most critical factors influencing their children's future.

The potential for reform of the final bill that emerges from the conference committee can be measured by the degree to which it is aligned with the Bush plan rather than current law. The projected costs of the new legislation could be over \$430 billion during the authorization period, but if it does not involve true reform, the real toll will be taken on the future of a generation of America's children.⁵

STRENGTHENING ACCOUNTABILITY

As President Bush strongly proclaims, "States, school districts, and schools must be accountable for ensuring that all students, including disadvan-

tagged students, meet high academic standards.”⁵ To accomplish this, his *No Child Left Behind* plan sought to change the requirements for testing, reporting, administrative procedures, and providing options for children in failing schools.

Current Law. Current law requires states to have academic standards, testing, and disaggregated reports primarily to determine whether disadvantaged students are making adequate yearly progress (AYP) toward meeting state content and performance standards. Schools accepting Title I funds that are not making AYP are subject to corrective actions as determined by state and local law. These corrective actions *may* include the loss of funds, staff replacement, or allowing students to transfer to other public schools within the district. High performing schools are eligible for rewards.

State education laws vary, as does their progress in implementing standards and assessments. All 50 states employ some form of testing; 40 test reading using standards-linked tests, and 34 test math.⁶ Only eight states employ report cards for schools, ratings, rewards, and sanctions.⁷ In many areas across the nation, state and local laws do not provide for appropriate corrective actions or enable students to take advantage of school choice provisions in current federal law.

The Bush Plan. Although testing is required by current law, under the Bush plan, testing and reporting systems would be better coordinated and universal. The plan would require states specifically to test students in 3rd through 8th grades in reading and math, using state-developed tests linked to state standards. Tests would have to be “comparable” year to year, which would enable parents and educators to ascertain how well children have learned over a year. Test results would be disaggregated by race, gender, English proficiency, disability, and socioeconomic status, and provided to the public.

In addition, students would be expected to make adequate yearly progress toward proficiency in state content and performance standards. Schools whose students failed to make progress would receive assistance but would also face corrective action for continued failure. States would also be required to give evidence of AYP for their students based on their state tests or face a loss of administrative funds. States and schools that have narrowed the achievement gaps between disadvantaged students and their more affluent peers would receive financial rewards. State achievement trends would be confirmed by state NAEP scores in 4th and 8th grades on math and reading.

The House Bill. Like the President’s plan, H.R. 1 requires annual testing in 3rd through 8th grades in reading and math. However, it does not specify that tests be comparable, requiring only “a system of high-quality, yearly student assessment.” Such a system would make year-to-year gains in academic achievement more difficult to assess. The legislation requires school report cards, disaggregation of scores, and corrective actions for failing schools. Corrective actions must be “consistent with state law” (i.e., the degree to which a district or state can compel a school to change is determined by state law).

However, states must make AYP with regard to an incremental plan that will bring all students into reading and math proficiency based on state standards within 12 years. The bill requires states to participate in the NAEP or use an alternative test to confirm state test result trends. Like the Bush plan, the legislation provides sanctions and bonuses for states and schools according to their success and failure. However, funds withheld from the state under sanction would have to be used for failing schools within the state. This contradicts the purpose of sanctions.

The Senate Bill. The Senate bill also mandates standards, tests, reporting, corrective action,

5. The total cost of the Senate bill programs between 2002–2008 is over \$430 billion. This includes both mandatory and discretionary spending.

6. Greg F. Orlofsky and Lynn Olson, “The State of States,” *Education Week*, January 11, 2001.

7. Ulrich Boser, “Pressure Without Support,” *Education Week*, January 11, 2001.

bonuses, and sanctions similar to the House bill. Like the Bush plan, the Senate bill requires states to participate in the NAEP. It differs with regard to AYP, requiring states to make at least a 1 percent improvement each year on average over the course of three years. The Senate bill's AYP formula for calculating whether disadvantaged or minority students are achieving is particularly complex.

The complexity could make it difficult for parents, educators, and policymakers to distinguish gains or losses for the disadvantaged and other groups. Clear goals and measurements are essential to ensuring fair rewards and sanctions. They ensure that the situation of disadvantaged and minority students is assessed accurately and improved.

What Conferees Should Do. Conferees should provide a clear, consistent means of determining AYP sanctions and rewards with challenging yet achievable goals. The AYP formula should include specific goals for all groups for which the state collects information. Funds withheld from sanctioned states should not be given to their failing schools: Funds should follow success.

INCREASING OPPORTUNITY AND CHOICE

Current Law. A school district must apply corrective action, consistent with state and local law, to those of its Title I schools that have been in "school improvement" for three or more years. Schools "in school improvement" have failed to make AYP for two consecutive years. These corrective actions may include public school choice and transportation for students to attend another public school within the district.

The Bush Plan. The blueprint presented real opportunities for poor children trapped in failing schools. School districts that failed to make AYP would have been not only allowed, but required,

to offer students public school choice. If the school continued to fail, the disadvantaged students would have been able to take their portion of Title I funds and transfer to another public or private school or use it to purchase supplemental services.

Additionally, the President's plan contained a school choice demonstration program. The Secretary of Education would have administered the program to implement, evaluate, and disseminate information on a targeted school choice project.⁸ The plan followed the recommendation of the National Research Council (NRC) study. Commissioned by the former Administration in 1999, the study recommended the establishment of a "large and ambitious" research experiment to determine whether school choice programs improve student performance.⁹ The demonstration program would have allowed policymakers to study school choice.

The school choice provisions provided stronger incentives for schools to improve by making them accountable to parents, who could choose to move their children to other schools. The real accountability mechanism is choice. Last year, President Bush explained the importance of this concept:

The greatest benefit of testing—with the power to transform a school or system—is the information it gives to parents.... Armed with that information, parents will have the leverage to force reform.... But reform also requires options. Monopolies seldom change on their own—no matter how good the intentions of those who lead them. Competition is required to jolt a bureaucracy out of its lethargy.¹⁰

Choice is integral to accountability. Under the Bush plan, all states would have to enable students in poor-performing schools to attend a better school, public or private. In districts where most public schools are mired in failure, the opportu-

8. For more information on the rationale for this provision, see Thomas Dawson, "Why Congress Should Foster Research on School Choice," Heritage Foundation *Executive Memorandum* No. 738, April 13, 2001.

9. Helen F. Ladd and Janet S. Hansen, eds., *Making Money Matter: Financing America's Schools* (Washington, D.C.: National Academy Press, 1999), at <http://www.nap.edu/books/0309065283/html>.

10. President George W. Bush, "George W. Bush for President Official Site: Issues," p. 6, at <http://www.georgewbush.com/issues/education.html>.

nity to attend a quality private school is essential. Since a majority of private schools charge annual tuitions of less than \$2,500, the Title I per-pupil portion, although modest, would open the opportunity to many students.¹¹ Likewise, the option to receive supplemental services is important, especially where Title I services have been poorly delivered.

Linking Title I funding directly to students and allowing students to take funding to an institution that meets their needs represented a significant shift in the program. The persistence of the learning gap between disadvantaged students and their wealthier peers over the past 30 years demands that such a shift occur. Longitudinal studies of Title I showing a lack of sustained improvement among Title I recipients confirm this.¹² Private schools, however, have narrowed the achievement gap to a greater degree than their public school counterparts.¹³ Enabling Title I students to enroll in private schools makes sense.

Moreover, school choice inspires excellence. The increased competition resulting from choice spurs traditional public schools to reform to improve achievement.¹⁴ Florida's "A-Plus" program, for example, puts schools on a "failing" list if they do not succeed in educating their students. If the school continues to receive a failing grade, students can leave, making use of the state's voucher program. Failing schools have responded to this pressure; according to Manhattan Institute Senior Fellow Jay P. Greene, "Failing schools that faced the prospect of vouchers made improvements that were nearly twice as large as the gains displayed by other schools in the state."¹⁵

The House Bill. The greatest difference between the *No Child Left Behind* blueprint and the legislation is the degree to which children in failing schools are afforded the opportunity to attend a successful school. The Bush plan requires school choice, public or private, for disadvantaged students in persistently failing or unsafe schools. The House bill mandates intra-district public school choice for students in failing and unsafe schools unless prohibited by state law. If schools continue to fail, the district must provide access to supplemental services by a state-approved provider. This is a slight improvement over current law, which allows intra-district public school choice for students in schools under corrective action at the behest of the district and state. However, intra-district choice is insufficient in places where most of the districts' schools are failing to educate. Because this provision does not give students access to successful out-of-district and private schools, it limits both the opportunities for children and the incentive for schools to improve.

Spending on Title I programs for disadvantaged children, the largest K–12 program, has amounted to over \$120 billion during the past three decades, yet achievement levels for poor children remain far behind their middle-class peers, and minorities trail their white counterparts. The lack of progress in narrowing, much less eliminating, the achievement gap calls for a new vision for Title I. Choice not only would enable children to attend schools where the gap has been narrowed, but also would provide the competition necessary to revitalize public schools.

The Senate Bill. The Senate bill mandates intra-district public school choice for disadvantaged

11. Center for Education Reform, "Nine Lies About School Choice: Answering the Critics," September 2000, at <http://www.edreform.com/pubs/ninelies2000.htm>.

12. David Hoff, "Tracking Title I," *Education Week*, October 22, 1997.

13. NAEP reading assessments for 1992–2000, at <http://nces.ed.gov/nationsreportcard/reading/>.

14. Caroline Hoxby, "Do Private Schools Provide Competition for Public Schools?" National Bureau of Economic Research, NBER *Working Paper* No. 4978, 1994, and Michael Marlow, "Spending, School Structure, and Public Education Quality: Evidence from California," *Economics of Education Review*, Vol. 19 (February 2000), pp. 89–106.

15. Jay P. Greene, "An Evaluation of the Florida A-Plus Accountability and School Choice Program," *The School Choice Advocate: The Newsletter of the Milton & Rose D. Friedman Foundation*, May 2001, p. 3. For the full report, see http://www.manhattan-institute.org/cr_aplus.pdf.

children in failing schools unless prohibited by state or local law. This is not much different from current law. It will not give students access to successful out-of-district and private schools, and may even deny them access to other schools within the district. It will give states and local governments the option to deny students in failing schools the opportunity to attend a better school in the district. The Senate bill also authorizes supplemental services for students in schools that continue to fail.

Concerning unsafe schools, the Senate bill allows victims of violence to attend another school within the state but establishes only that states *may* allow students attending violent schools the option to attend another school.

Like the House bill, the Senate bill fails to include the President's school choice demonstration program. Ironically, although Congress authorized numerous new, unstudied programs, it voted down two amendments to allow a demonstration program on this promising innovation. It is telling that many of the Members of Congress who voted against these proposals send their own children to private schools.

What Conferees Should Do. Conferees should adopt the choice provisions in the Bush plan to ensure that all children have the educational opportunities they will need for a fulfilling, successful future. In addition to initiating administrative accountability, the final bill needs to provide true accountability to parents. Such accountability is possible only when parents have options. *Without the choice to act, standards, assessments, and reports are just pieces of paper.* These options should go beyond intra-district school choice for students in failing and unsafe schools. At the very least, a choice demonstration program should be authorized. If Congress needs proof, beyond the large body of research available, to know whether school choice works, the demonstration project will provide that opportunity.

MAKING STRUCTURAL REFORMS TO ESEA

Current Law. ESEA does not focus on critical national priorities, yet it provides funds for questionable and unproven education fads. It appears that some programs are funded more on the basis of political concerns than with regard to children's needs. The absence of a coordinating mission has resulted in scattershot funding and a failure to succeed.

The Bush Plan. When detailing his reform plans during the campaign, President Bush pledged,

I don't want to tinker with the machinery of the federal role in education. I want to redefine that role entirely. . . . I will begin by taking most of the 60 different categories of federal education grants and paring them down to five. . . . Within these divisions, states will have maximum flexibility to determine their priorities.¹⁶

The Bush plan set a limited number of funding categories, thereby enabling states and districts to implement programs within basic categories which best met their student's needs. To achieve goals within those categories, schools could rely on existing programs or design an innovative approach.

Under the President's plan, the days were numbered for the plethora of Washington-directed programs. Duplicative, highly regulated, often ineffective programs would be replaced with performance-based categories such as improving the academic performance of disadvantaged children, promoting literacy, increasing teacher quality, enhancing technology, boosting English fluency, improving math and science education, and strengthening school safety.

The House and Senate Bills. Congress reauthorized most of the array of existing programs and even added a few new ones. The House bill contains 50 programs, and the Senate bill contains

16. George W. Bush, "A Culture of Achievement," speech delivered in New York, New York, October 5, 1999, p. 4, at http://www.georgewbush.com/News/speeches/100599_culture.html (June 11, 2001).

over 75. They authorize new programs including funding for such specific items as principal recruitment, mental health, library books, rural priorities, economic education, loan forgiveness for early childhood educators, mentoring, history lessons, and community service for expelled students.

Instead of defined national priorities, these bills (particularly the Senate bill) offer a fractured system that funds a vast range of in-vogue notions, regardless of whether such programs have the proven capacity to improve student achievement. For example, regardless of any value that it may have locally, the \$10 million “Alaska Native and Native Hawaiian Education Through Cultural and Historical Organizations Act” does not have national significance or application. This type of program should not be included in a bill to raise to national academic achievement.

The legislation produced by the Senate and House devotes funding to programs that are controversial.

- **Punishing success.** Section 1125A of the Senate bill would create the Education Finance Incentive Program, which would provide grants to states that Washington considers to have a better education financing system. The complicated formula is rigged to reward states that spend more money with no regard for how those resources are spent. Presumably, states with high achievement and low expenditures—those that get more for their dollars—would not be eligible. States with high funding and low achievement, however, would be eligible.
- **Providing grants to combat hate crimes.** S. 1 authorizes funding for training, curricula, and instructional materials for the prevention of “crime and conflicts motivated by hate” through a Hate Crimes Prevention program. The House bill allows districts to fund hate crimes programs but does not create a separate grant program. This controversial measure was left out of the House version of the ESEA reauthorization during the 106th Congress because of concerns that it infringed First Amendment rights. Many Americans who are proponents of

the traditional American principle of equal justice under law oppose funding programs that teach children that thoughts and beliefs can make some crimes more grievous than others.

- **A discourse on Hawaiian history.** For reasons unknown, Section 7201 of S. 1 includes a 13-page lesson on Hawaiian history. It serves as an introduction to a program that is not included in either the President’s plan or H.R. 1.
- **Weighing in on gender.** H.R. 1 reauthorizes the Women’s Education Equity Act, which authorizes \$5,000,000 to promote equity policies, programs, activities, and initiatives because, according to the legislation, “teaching and learning practices in the United States are frequently inequitable as such practices relate to women and girls.” Academic achievement belies this assertion. On the recently released National Assessment of Educational Progress 4th grade reading test, girls outscored boys. In fact, girls outscore boys on all three grade levels for which the NAEP tests reading. The 1998 NAEP Writing Report Card for the Nation reveals that boys have lower average test scores at all three grade levels and are half as likely to score in the proficient and advanced categories. Boys are over-represented in Special Education. They are less likely than girls to achieve the honor roll, graduate from high school, or go to college.

The Senate bill encourages, in separate provisions, men to teach in elementary schools and women to pursue post-secondary degrees in math, science, engineering, and technology. These should be personal career decisions, not the focus of national legislation.

What Conferees Should Do. Conferees should focus the federal role on academic achievement by consolidating programs into a small number of funding streams and allow states and schools maximum flexibility in administration. They should eliminate duplicative and controversial programs. This paradigm is in accord with the President’s admonition that “No federal education program [should] be reauthorized merely because it has existed for years. It is more important to do good

than to feel good.”¹⁷ Programs should be funded because they work, not because they find patronage in Washington.

INCREASING FLEXIBILITY

Current Law. Over the years, the federal education system has demanded an ever-increasing level of compliance paperwork, but not results. Currently, under the Elementary and Secondary Education Act, states must fill out more than 20,000 pages of applications in order to receive funding (and this does not include the reams of paperwork levied on school districts, schools, and other providers). In all, an estimated 48.6 million hours are lost to paperwork every year.¹⁸ In many states, nearly 40 percent of state education administrative staff is required to administer the funding received from the federal government—which is a mere 7 percent of their total education dollars.¹⁹ It should not be surprising that as little as 65 cents of every federal education dollar makes it into the classroom.²⁰

The Bush Plan. Cutting needless regulations and paperwork was a priority for the President. Explaining his commitment to increased flexibility, the President stated last year that schools under his watch should “only be asked to certify that their funds are being used for the specific purposes intended—and the federal red tape ends there. This will spread authority to levels of government that people can touch. And it will reduce paperwork—allowing schools to spend less on filing forms and more on what matters: teachers’ salaries and children themselves.”²¹

In addition to simplifying programs through consolidation, the Bush plan would have provided additional flexibility provisions. These changes

included a Charter States and Districts measure, which would have enabled states and local school districts to enter into an agreement with the U.S. Secretary of Education to establish specific, rigorous goals for student achievement in exchange for full flexibility. Under the five-year performance agreement in the President’s plan, a charter state would have to reach specific academic achievement goals for its students or be subject to the loss of funding and charter status. Education improvements would be expected to occur across the socioeconomic spectrum.

During the 106th Congress, the House passed a similar proposal, called the Straight A’s Act (H.R. 2300), that relied on this approach to reform, and the Senate Health, Education, Labor, and Pensions Committee included it in its ESEA reauthorization bill. Performance agreements already exist for other programs in other agencies, including the Environmental Protection Agency and the Substance Abuse and Mental Health Services Administration.

The Bush plan would also enable more schools to operate Title I schoolwide programs and combine federal funds with local and state funds to improve the quality of the entire school. The proposal lowered the poverty percentage threshold for participation from 50 percent to 40 percent.

Additionally, the plan granted states and school districts freedom to award grants to faith-based and community-based organizations for after-school and drug and violence prevention programs. The National Longitudinal Study of Adolescent Health, a comprehensive, multimillion-dollar study commissioned by the 103rd Congress, found religiosity a strong protective factor against drug and alcohol use as well as other

17. George W. Bush, “No Child Left Behind,” speech delivered in Los Angeles, California, September 2, 1999, p. 4, at http://www.georgewbush.com/News/speeches/090299_child.html (June 11, 2001).

18. *Education at a Crossroads: What Works and What’s Wasted in Education Today*, Subcommittee on Oversight and Investigations, Committee on Education and the Workforce, U.S. House of Representatives, 105th Cong., 2nd Sess., July 1998, p. 7.

19. Education Leaders Council, “From Good Intentions to Results: Transforming Federal Education Policy,” Washington, D.C., Winter 2000.

20. *Education at a Crossroads*, p. 8.

21. George W. Bush, “A Culture of Achievement,” p. 5.

destructive behavior.²² President Bush stated last year that

The federal government already funds after-school programs. But charities and faith-based organizations are prevented from participating. In my administration they will be invited to participate. Big Brothers/Big Sisters, the YMCA and local churches and synagogues and mosques should be a central part of voluntary, after-school programs.²³

The House Bill. The House bill is several hundred pages longer than the current law and comprised of numerous regulations, guidelines, and paperwork requirements. The words “shall,” “will,” and “must” occur over 1,500 times. Words such as “require,” “provide,” “describe,” “identify,” “submit,” and “assure” are also used repeatedly.

The bill retains the old system of accountability through overly prescriptive regulations and paperwork requirements. Moreover, it fails to include the President’s Charter States and Districts initiative. House Members did not include charitable choice provisions for after-school and drug and violence prevention programs. While the legislation mentions the importance of research on the “protective factors, buffers or assets or other scientifically based research variables in the school and community,”²⁴ it does not allow states or districts to take action in accord with that research.

The bill does, however, contain several notable flexibility provisions. It would allow up to 100 districts to enter into performance agreements that would give districts flexibility in administering four federal programs in exchange for greater accountability. Additionally, most districts could transfer up to 50 percent of their federal education dollars throughout a number of specified programs. The district would still have to abide by the

respective regulation and paperwork requirements. Nevertheless, these state and local flexibility provisions would provide reform-minded administrators with opportunities to innovate and meet their students’ needs. The bill grants considerable flexibility to rural and Bureau of Indian Affairs schools. It also lowers the poverty threshold to 40 percent for participation in schoolwide programs.

The Senate Bill. Like the House bill, the Senate bill contains a host of old and new regulations and paperwork requirements. It also does not permit charitable choice for after-school and drug and violence prevention programs. The Senate bill does, however, contain a Charter States and Districts initiative. Weaker than the proposal passed by the House during the last Congress, the bill allows only seven states and 25 districts to participate. There are additional paperwork requirements and limitations. The bill contains flexibility measures that are similar to those of the House legislation with regard to rural and Native American schools and schoolwide programs.

What Conferees Should Do. Conferees should provide needed flexibility to enable states and districts to meet high academic standards. The final bill should retain the President’s Charter Schools and Districts provision as well as the House’s local flexibility legislation. The bills’ numerous regulations and paperwork requirements should be substantially reduced. Demanding results through actual gains in academic achievement makes most regulations redundant and counterproductive. Additionally, conferees should adopt the President’s proposal to enable faith-based institutions to compete for after-school and drug and violence prevention grants, tapping the proven power of value-based organizations to counter destructive cultural influences.

22. *The Non-School Hours: Mobilizing School and Community Resources*, Committee on Labor and Human Resources, U.S. Senate, 105th Cong., 2nd Sess., February 25, 1998.

23. George W. Bush, “The True Goal of Education,” speech delivered in Gorham, New Hampshire, November 2, 1999, p. 5, at http://www.georgewbush.com/News/speeches/110299_education.html (June 11, 2001).

24. No Child Left Behind Act of 2001, Title V, Part A, “Supporting Violence and Drug Prevention and Academic Enrichment,” Section 5113(d).

INCREASING QUALITY

Current Law. The ESEA is filled with programs that do not work. In the words of President Bush, “For decades, fashionable ideas have been turned into programs, with little knowledge of their benefits for students and teachers. And even the obvious failures seldom disappear.”²⁵

The Bush Plan. The President’s plan eliminates the duplicative, ineffective programs while promising reforms to improve those that remain.

- **Helping children learn English.** The President’s plan to reform bilingual programs would give English-as-a-second-language learners a better opportunity to learn English and join their peers in regular classes. Currently, many federal bilingual programs do not facilitate the mainstreaming of their students. In general, children in bilingual courses learn English more slowly and less effectively than do children in other programs. Such problems have led several states to end or limit their participation in bilingual education. In California, where a bilingual education program was replaced by English immersion classes, test scores have increased dramatically statewide.²⁶

The Bush plan would refocus bilingual education on the acquisition of English, consolidating bilingual education programs administered by the Office of Bilingual Education and Minority Language Affairs into performance-based grants to states and school districts. States would be held accountable for annual increases in English proficiency and required to teach children in English after three consecutive years in school. States would lose up to 10 percent of the administrative portion of

their ESEA state-administered formula grant programs if they failed to make yearly gains. The President’s plan would also lift restrictions that prevent teachers from using methods of instruction that have been proven to help students learn English, such as English immersion programs.

- **Increasing literacy.** The Bush plan contained a comprehensive reading program emphasizing scientific research for grades kindergarten through 2nd grade. States participating in the Reading First Initiative would have had the option to receive funding from the Early Reading First program to implement research-based pre-reading methods in pre-school programs, including Head Start centers. Many schools and Head Start centers do not currently use research-based reading instruction. The effect on disadvantaged children is profound: 60 percent of disadvantaged 4th graders cannot read at a basic level—i.e., they are functionally illiterate.²⁷ According to Dr. G. Reid Lyon at the National Institutes of Health,

by putting in place well designed evidence-based early identification, prevention, and early intervention programs in our public schools... 20 million children today suffering from reading failure could be reduced by approximately two-thirds.... Thus, not only can the President’s proposal lead to tremendous savings in human capital, but the cost savings will also be significant—savings that can be applied to other pressing educational issues within States and local districts.²⁸

25. George W. Bush, “A Culture of Achievement,” p. 4.

26. Jorge Amselle and Amy C. Allison, “Two Years of Success: An Analysis of California Test Scores After Proposition 227,” Institute for Research in English Acquisition and Development, August 2000.

27. Students scoring “Below Basic” on the 4th grade reading assessment cannot “demonstrate an understanding of the overall meaning of what they read,” according to the NAEP. See <http://nces.ed.gov/nationsreportcard/pdf/main2000/2001499.pdf>.

28. *Measuring Success: Using Assessments and Accountability to Raise Student Achievement*, Committee on Education and the Workforce, U.S. House of Representatives, 107th Cong., 1st Sess., March 8, 2001, at <http://edworkforce.house.gov/hearings/107th/edr/account3801/wl3801.htm>. Dr. Lyon is Chief of the Child Development and Behavior Branch of the National Institute of Child Health and Human Development at NIH.

Teaching reading the right way from the beginning will enable millions of children to master reading and excel in other subjects.

- **Enhancing teacher quality.** The President's plan provided greater flexibility in the use of federal funds for teacher quality, along with high standards for professional development to ensure that federal funds promote research-based, effective practice in the classroom. Funds could have been used for certification or licensure requirements; alternative certification; tenure reform and merit-based teacher performance systems; differential and bonus pay for teachers in high-need subject areas such as reading, math and science, and in high-poverty schools and districts; and mentoring programs. Parents would have received information about the quality of their child's teacher upon request.
- **Focusing on math and science.** The plan funded math and science partnerships for states to work with higher education institutions to improve instruction and curricula. These partnerships would foster such activities as making math and science curricula more rigorous, improving math and science professional development, attracting math and science majors to teaching, and aligning high school math and science standards to foster college placement.
- **Protecting teachers and students.** The plan would have empowered teachers to remove violent and persistently disruptive students. It shielded teachers, principals, and school board members from federal liability arising from their efforts to maintain discipline in the classroom. Additionally, educators would have been able to remove violent students. Currently, schools are prohibited from adopting consistent disciplinary rules with regard to disabled students, even when their misbehavior has nothing to do with their disability. The plan also would have required states to define unsafe schools and provide students with a safe alternative.
- **Miscellaneous provisions.** The plan would have promoted character education through

grants to states and districts to incorporate character-building lessons and activities into the classroom. It would have maintained home-school and private school protections in current law and would have made improvements in schools administered by the Bureau of Indian Affairs.

The House Bill. The House bill contains the Bush plan's reforms for bilingual education, literacy, teacher quality, math and science, Native American education, character education, and home-school and private schools. It surpasses the Bush plan by having tougher sanctions on states that fail to teach English-as-a-second-language students.

The Senate Bill. The Senate bill includes the Bush proposals for literacy, teacher quality, math and science, Native American education, character education, and home-school and private school protections. However, it fails to include the President's bilingual reforms that would help the 3 million non-English-proficient children learn English.

The Senate bill reauthorizes existing bilingual programs. While the bill would increase funding for these programs, it would do little to ensure that the funding is spent to prepare children for academic success. It more than doubles funding for bilingual programs in the first year. By 2008, the program could spend as much as \$2.8 billion. If funding meets a \$700 million threshold, states and districts could use some of the funding in a manner consistent with the Bush plan. However, there is no three-year limit on participation by students with an expectation that they could achieve proficiency in English.

What Conferees Should Do. Conferees should focus the bilingual program on English acquisition as it is in the Bush plan and House bill. Polls show that nearly 80 percent of Americans support requiring schools to instruct students primarily in English.²⁹ The legislation should streamline existing programs into a results-oriented fund for states and districts. It should institute a three-year limitation on participation to ensure that students are learning English and are being mainstreamed into regular classes. The sanctions on states that do not

succeed in enabling students to learn English should be retained in the final bill.

HOW THE HOUSE AND SENATE BILLS MEASURE UP

The House Bill (H.R. 1): ★ ★ ★

The House contains some accountability regulations, some flexibility, and many of the programmatic improvements of the President's plan. However, it fails to make structural changes in ESEA or provide children in failing schools with choices beyond intra-district school choice and tutoring. Compared with the President's "five-star" plan, the bill merits only two and half stars.

The Senate Bill (S. 1):★

With a few exceptions, the Senate bill is devoid of reform. It is an expensive and expansive version of current law. The inclusion of the Charter States and Districts proposal and some accountability provisions merits a single star. During the legislative debate, the bidding war to drive up spending succeeded in making a bad bill worse. Research has shown that increased spending does not guarantee success. Without reform, it merely makes failure more expensive.

CONCLUSION

Upon signing the Elementary and Secondary Education Act on April 11, 1965, Lyndon Johnson said, "No law I have signed or will ever sign means more to the future of America." Thirty-six years and several billion dollars later, poor children remain substantially behind their more affluent peers.

Throughout the years, subsequent authorizations of the ESEA have also elicited great optimism and eloquent promises. In reality however, they have merely added new regulations and programs to old ones. The proposals in President Bush's

Leave No Child Behind plan do not add extraneous programs and regulations. The plan focuses on freedom, flexibility, and accountability—which can produce results—and opportunity.

A sharp turn from the Washington-knows-best focus of the current ESEA, the plan gives states and schools the opportunity cut red tape and focus on results. More important, it introduces true accountability and frees children from failing school systems that are not meeting their needs. In President Bush's words:

Federal funds will no longer flow to failure. Schools that do not teach and will not change must have some final point of accountability—A moment of truth, when their Title I funds are divided up and given to parents, for tutoring or a charter school or some other hopeful option. In the best case, schools that are failing will rise to the challenge and regain the confidence of parents. In the worst case, we will offer scholarships to America's neediest children.³⁰

The most profound reform in the Bush plan is empowering parents to decide whether the other reforms have worked and to take action if they have not. Although S. 1 and H.R. 1 contain some of the Bush reforms, they continue to cling to much of the old, failed system. While some of the provisions are well crafted, the lack of meaningful structural change means that this legislation is unlikely to inspire higher achievement, especially for the disadvantaged.

Over the years, the increasing burden on taxpayers has not resulted in improved academic achievement. Future increases should not be made until Congress can show that the system it has designed works. Increased spending on government programs that do not work shows a commitment not to education, but to the system.

At the beginning of the *No Child Left Behind* plan, these words appear: "The federal role in edu-

29. "Issue Summary," Committee on Education and the Workforce, U.S. House of Representatives, at <http://edworkforce.house.gov/issues/107th/education/nclb/sumbilingual.pdf> (June 21, 2001).

30. George W. Bush, "A Culture of Achievement," p.5.

cation is not to serve the system. It is to serve the children.” Whether the debate and subsequent legislation will, in fact, serve children is the ultimate question. With this paramount goal in mind, if real accountability, flexibility, consolidation, and opportunity for poor children are not strength-

ened in conference, the President should veto the bill and send Congress “back to school” to get it right.

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