

Background

No. 2047
June 27, 2007



Published by The Heritage Foundation

Reauthorization of No Child Left Behind: Federal Management or Citizen Ownership of K–12 Education?

Eugene Hickok, Ph.D., and Matthew Ladner, Ph.D.

As Congress considers reauthorization of the No Child Left Behind (NCLB) Act of 2001,¹ a fundamental question in the debate is whether to continue to increase the federal government's management authority over education or to restore citizen ownership of America's schools.

The No Child Left Behind Act dramatically increased federal authority. While the federal government provides only 8.5 percent of the funding for public education, NCLB gave Congress and the U.S. Department of Education new powers to set policies governing America's public schools.² This increased power has resulted in unintended consequences and problems that need to be addressed in the reauthorization.

One significant problem is that NCLB testing policies have inadvertently weakened state-level testing and academic transparency. Under NCLB, states are required to test students annually and demonstrate continual progress toward a federal goal with all students reaching "proficiency" on state-level tests by 2014. Some states have responded to this pressure by changing how their tests are scored to allow more students to pass and to show more progress under NCLB.³

This problem, which researchers have called a "race to the bottom," threatens to erode academic transparency in America's schools. As states respond to the pressure of NCLB testing by lowering state standards, parents, citizens, and policymakers are denied basic information about student performance

Talking Points

- Testing requirements in No Child Left Behind (NCLB) are having unintended consequences. By requiring states to test students annually and make annual progress toward a national goal of all students scoring proficient by 2014, the law has created a strong incentive for states to lower standards so that more students will pass and show more academic "progress."
- Researchers have termed this problem a "race to the bottom," which threatens to eliminate academic transparency about student performance, denying parents, citizens, and policymakers needed information on school performance.
- To address this problem, Congress should end federal goals for student testing and allow states to opt out of NCLB and reassert their policymaking authority.
- Ultimately, education policy at all levels should equip Americans to take ownership of their public schools. When reauthorizing NCLB, Congress should avoid increasing federal management of education and instead restore citizen ownership of America's schools.

This paper, in its entirety, can be found at:
www.heritage.org/Research/Education/bg2047.cfm

Produced by the Domestic Policy Studies Department

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

in America's schools. The loss of academic transparency will hinder parents from knowing whether or not their children are learning and will prevent policymakers from judging how well public schools are performing.

To protect citizen ownership of American education, Congress must address the negative structural incentives of No Child Left Behind testing policies. This can best be accomplished by ending federal goals for student progress and returning control of state standards and accountability policies to the state level. This will maintain academic transparency in state testing and restore greater citizen ownership in American education, both of which are necessary conditions to enable future reforms to strengthen public education.

Past Federal Involvement in K–12 Education

Senator Barry Goldwater (R–AZ) opposed the National Defense Education Act of 1958, the first federal law that provided funding to K–12 schools, because it included 12 federal mandates. Congress passed the act in the hope of improving American math, science, and foreign language proficiency in the wake of the Soviet launch of Sputnik. Goldwater warned prophetically that “federal aid to education invariably means federal control of education.”⁴

Yet Goldwater's warnings proved no match for a national wave of Cold War education hysteria. Almost 50 years later, the federal government has enormously expanded its involvement in K–12 schooling. The total federal share of the K–12 education budget remains under 10 percent of total spending on elementary and high school education,

but it serves as a vehicle for a huge number of federal mandates on schools.⁵

The refashioning of the Elementary and Secondary Education Act (ESEA) into No Child Left Behind was a bipartisan effort to get better results from federal education spending. However, in reauthorizing NCLB, Congress faces an unsustainable status quo. Although fashioned with noble intentions, NCLB created a powerful perverse incentive for states to lower their academic standards, and that pressure to lower standards will grow stronger with each passing year unless Congress makes substantial changes.

As it currently stands, NCLB carries enormous costs, both in terms of federal taxpayer dollars and in terms of state and local revenues dedicated to its implementation. Moreover, its success as a public school reform strategy is still unproven. Most important, it has the potential to undermine the very purposes that it was created to promote: accountability and transparency. It may in fact provide neither.

NCLB embraces two powerful but contradictory approaches to education policy. On the one hand, it argues that Congress must increase its efforts at educational improvement. On the other, it asserts—as we do—that real reform will come about only when those closest to the student are empowered to make decisions and change.

With NCLB, Congress initially attempted to finesse these competing sentiments, but the effort has proven futile. With NCLB reauthorization, Congress must now choose whether the education that America needs can be achieved through increased

1. Public Law 107–110.
2. U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, *Digest of Education Statistics 2005*, Table 152, at www.nces.ed.gov/programs/digest/d05/tables/dt05_152.asp (June 4, 2007).
3. Bruce Fuller, Kathryn Gesicki, Erin Kang, and Joseph Wright, “Is the No Child Left Behind Act Working? The Reliability of How States Track Achievement,” University of California, Berkeley, Policy Analysis for California Education *Working Paper* No. 06–1, 2006, at <http://pace.berkeley.edu/reports/WP.06-1.pdf> (June 5, 2007).
4. Barry Goldwater, “Some Notes on Education,” in *Conscience of a Conservative* (Shepherdsville, Ky.: Victor Publishing Company, 1960), pp. 77–81.
5. See Dan Lips and Evan Feinberg, “The Administrative Burden of No Child Left Behind,” Heritage Foundation *WebMemo* No. 1406, March 23, 2007, at www.heritage.org/Research/Education/wm1406.cfm, and U.S. General Accounting Office, *Education Finance: Extent of Federal Funding in State Education Agencies*, GAO/HEHS–95–3, October 1994, p. 2, at <http://archive.gao.gov/f0902a/152626.pdf> (June 19, 2007).

federal intervention or by restoring parent and citizen ownership of education. To be effective, American education can no longer serve both masters.

Policymakers should embrace transparency as the primary goal in this round of debate over federal education policy. Transparency is one of several necessary steps in education policy reform. It is essential to inform the decisions of parents and taxpayers. Ultimately, education policy at all levels should equip Americans to take ownership of their public schools.

NCLB and the Race to the Bottom

Over the past two decades, standards and testing regimes have been created to provide better information about educational results, not just inputs. This information about results serves different purposes for different audiences, but broadly speaking, users can be divided into two major categories according to interest.

First, there are those who are interested in the long-term actual achievements of particular students. Parents are foremost among this group of information users because they have the longest-term and greatest interest in the real achievement of their children, but it also includes all citizens interested in the social welfare and future of the United States.

Second, there are users whose interest is short-term and whose personal performance will be judged by the results (e.g., politicians, principals, and teachers unions). Particularly in the post-NCLB accountability regime, funding decisions and consequences for schools are based on results. For politicians, the ability to claim progress during their tenure in office has become a crucial criterion of their success. Those in charge of the nation's schools do not want to be seen as failing to deliver; therefore, they have every incentive to devise strategies that evade true accountability rather than promote it. As Adam Urbanski, president of the Rochester Teachers Union once said, "Nobody is better at creative insubordination than school people."⁶

Both of these user groups are often described as having a "stake" in educational outcomes, but the

public discussion often does not distinguish between the different stakes of each group.

The first group—parents and citizens—have an interest in the real achievement of individual students. When results obfuscate or portray higher-than-actual student performance, it does parents and citizens no good.

The second group—politicians, school leaders, and teachers unions—have a self-interest in the results. This group does not need real achievement to benefit. They stand to gain from relative gains (e.g., a slight narrowing of the achievement gap between low-income or minority students and their peers) or even apparent gains that do not really exist. This is not to say that many in this second group are not earnestly interested in real student achievement. It merely says that the system's incentives are constructed in such a way that they do not have to be.

Ultimately, America needs fundamental education reform that will prioritize the information needs of parents and citizens and at the same time reconcile the incentives of the second group of stakeholders with that objective. Educational excellence is not served by regimes that confuse multiple interests and distort the primary goal of real student achievement. Accountability and transparency policy should be formulated accordingly. The goal should be accountability to parents, families, and taxpayers. Public school reporting should be first and foremost for them, not primarily to public school and government officials.

NCLB vs. Transparency

NCLB requires states to test all students in grade 3 through grade 8 annually. Each year, states must demonstrate an ever increasing percentage of proficient students, with a requirement of 100 percent proficiency on all exams by 2014.

Because NCLB allows the states to determine the content of these tests and what constitutes proficiency, researchers have already noted a pattern whereby states lower passing thresholds and otherwise "dumb down" state tests to achieve increased

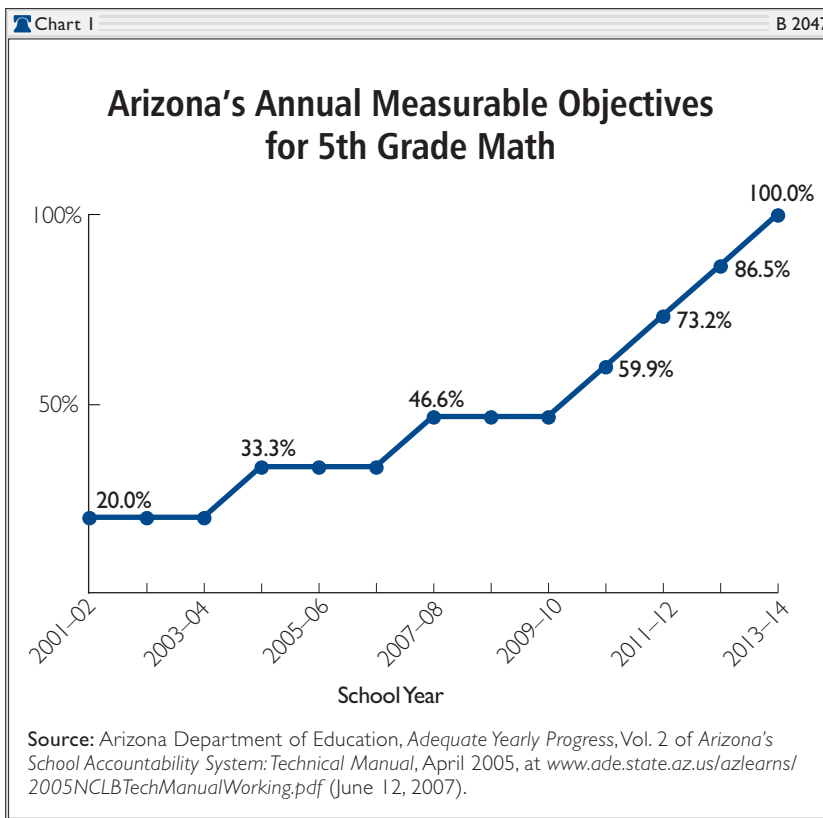
6. Adam Urbanski, quoted in Matthew Miller, *The Two Percent Solution* (Cambridge, Mass.: Perseus Book Group, 2003), p. 132.

“proficiency” and avoid federal sanctions. Absent a change in NCLB, the pressure on states to lower their standards will grow dramatically. In the process, citizens, parents, and policymakers stand to lose vital information concerning the academic output of public schools.

When NCLB was enacted in 2002, schools were required to report testing results to the federal government, which in turn would rank schools according to their students’ performance. Schools failing to make “adequate yearly progress” (AYP) over time must provide expanded student transfer rights and academic assistance and tutoring for children. The authors of NCLB hoped that the combination of the glare of transparency and the threat of federal sanctions would compel public schools to improve.

NCLB also requires states to set Annual Measurable Objectives (AMOs) that would serve as yearly targets for the percentage of students passing state tests. Schools must meet AMOs for each applicable subgroup of students, including white, black, Asian or Pacific Islander, American Indian, and Hispanic, as well as English language learner, special education, and low-income.⁷ Chart 1 shows an example of Annual Measurable Objectives for 5th Grade Mathematics in Arizona.

Despite all of the reporting requirements and the goal of 100 percent proficiency by the 2013–2014 school year, many states are actually lowering their academic standards. To date, federal passing requirements have taken only the first steps toward the 100 percent requirement, but observers have already noted the lowering of academic standards in many states. (See Chart 2.) Because states retain control over the content of the exams and decide



what constitutes proficiency on the exams, several states have begun lowering their testing standards in the face of federal sanctions—a problem that creators of the bill recognized could happen.⁸

Scholars have referred to this scenario as “the race to the bottom.” Congress hoped to challenge states to provide a proficient level of education to all students. A far more likely scenario is that states will simply lower passing thresholds to absurdly low levels to avoid federal sanctions. The race to the bottom will not only doom NCLB as a reform strategy, but also wreck public school transparency in the process.

Texas: Leader in the Race to the Bottom

Education reforms in Texas stretching back to the 1980s inspired and informed the construction of NCLB. Texas developed a set of academic standards and exams—the Texas Assessment of Knowl-

7. Arizona Department of Education, *Adequate Yearly Progress*, Vol. 2 of *Arizona’s School Accountability System: Technical Manual*, April 2005, at www.ade.state.az.us/azlearns/2005NCLBTechManualWorking.pdf (June 12, 2007).

8. Sandy Kress, “Confessions of a ‘No Child Left Behind’ Supporter,” *Education Next*, 2007 No. 2 (Spring 2007), at www.hoover.org/publications/ednext/6017586.html (June 12, 2007).

edge and Skills (TAKS), formerly Texas Assessment of Academic Skills (TAAS)—to test those skills. The state broke down student performance by ethnicity and socioeconomic status, setting the template for NCLB. The reform strategy theory was to implement a system of testing and to create consequences for failure and social pressure for improvement.

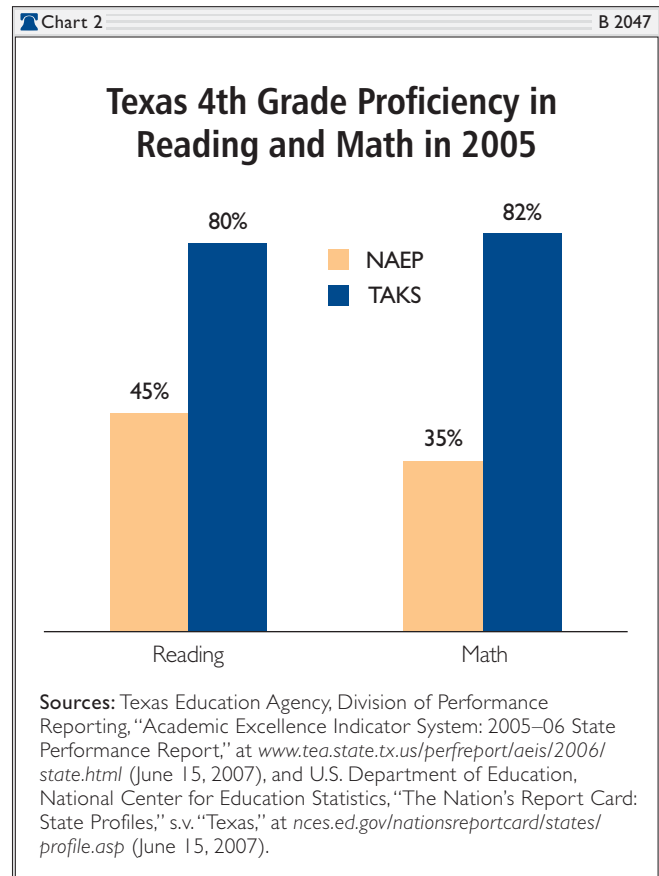
This Texas system became the model for the nation when Bush Administration officials crafted No Child Left Behind. However, the law that emerged has created incentives to hide problems, not to solve them—including in Texas.

Texas has shown limited improvement on reliable indicators, such as the National Assessment of Educational Progress (NAEP). The state has seen slow progress toward lowering racial achievement gaps in 4th grade reading. Between 1992 and 2005, the percentage of white students in Texas scoring “below basic” in reading dropped from 29 percent to 21 percent. During the same period, African-American students scoring below basic dropped from 61 percent to 51 percent.

On its face, this appears to show progress, but Texas academic standards have dropped at the same time. Future progress in Texas may be even more gradual than that achieved during the past 15 years.

Harvard professor Paul Peterson and American Enterprise Institute scholar Rick Hess have graded state academic standards used for accountability exams. Petersen and Hess compared the percentages of children scoring proficient on the NAEP to the percentages scoring proficient on state exams used under No Child Left Behind. They performed this analysis for both 2003 and 2005 to rank each state and to see which states had toughened their standards and which states had simplified their tests in one way or another.⁹

Petersen ranked Texas standards in both 2003 and 2005, giving them scores of F and D+, respectively. Chart 2 illustrates the weakness of the Texas standards by comparing proficiency on NAEP and the state TAKS exam in 2005. Although Texas improved from an F to a D+, looking at a broader



period shows that the disparity between state exam results and NAEP scores has grown since the early 1990s.

In short, the state exam in Texas has been made very easy to pass, and the lowering of cut scores (passing thresholds) is the prime suspect. For example, students needed to answer only 29 of 60 questions correctly to pass the mathematics section of the accountability exam.

Current NCLB proficiency requirements are a fraction of what they will be in a few years. In short, this problem will become worse.

Lowering academic standards not only undermines NCLB’s chance to succeed as an education reform, but also destroys basic public school data transparency. A review of the top 200 performing Dallas area elementary schools, ranked by their performance on the TAKS 4th grade mathematics

9. Paul E. Peterson and Fredrick Hess, “Keeping an Eye on State Standards,” *Education Next*, 2006 No. 3 (Summer 2006), at www.hoover.org/publications/ednext/3211601.html (June 12, 2007).

exams by GreatSchools, shows that the *lowest* math passing rate is 93 percent, with 28 schools with 100 percent of students scoring proficient.¹⁰ Meanwhile, these impressive scores conceal the achievement gap, which appears to have been eliminated.

As a practical matter, suburban Dallas public schools no longer have academic transparency. We do not really know much about academic performance in these schools, other than that they can pass a very easy exam. Specifically:

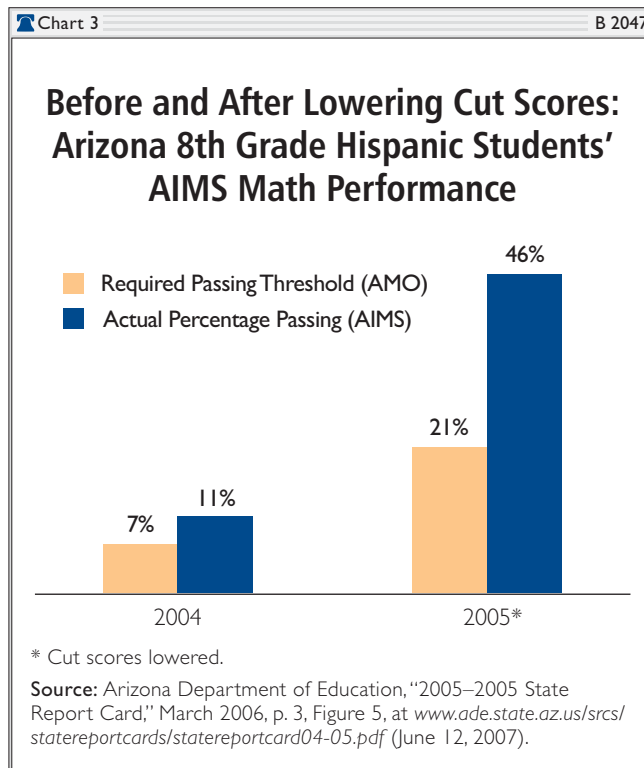
- A parent choosing among suburban Dallas schools cannot make a truly informed judgment because these schools are all “perfect” or “near perfect” according to state tests;
- A school administrator seeking to judge the effectiveness of a new tutoring or after-school program has little data available on which to make a judgment; and
- A voter seeking to judge school board candidates based on academic outcomes will be left in the dark.

Ironically, NCLB has compromised transparency in the state that led the way to the federal program intended to provide public school transparency.

Arizona in Hot Pursuit

According to Petersen and Hess, Arizona standards suffered the biggest decline between 2003 and 2005, dropping from a B– to a D+. The Arizona Board of Education dramatically lowered cut scores during this period.

For example, in 2003, a student was required to answer 73 percent of Arizona’s Instrument to Measure Standards (AIMS) reading questions correctly to pass the 8th grade reading exam, but in 2005, the student was required to answer only 59 percent correctly.¹¹ By lowering cut scores, Arizona kept schools out of the NCLB failing category by increasing the percentage of Hispanic students that passed, as Chart 3 demonstrates.



The left columns for each year represent Annual Measurable Objectives, the NCLB-mandated goal for percentage of students in each student subgroup that must pass AIMS. The right columns represent the percent of Hispanic students who the state defines as proficient in the subject by virtue of having passed AIMS. The percentage of proficient Hispanic students in 8th grade math more than quadrupled between 2004 and 2005.

The key to understanding this chart is to compare the right (AIMS) column for 2004 to the left (AMO) column for 2005. The vast majority of Arizona public schools would have had trouble meeting the 2005 standard for their Hispanic students.

In 2004, only 11 percent of Hispanic students passed, and the minimum passing threshold was scheduled to move to 21 percent the next year. Rather than improving student learning, Arizona

10. Mathematics TAKS Scores for the 2005–2006 school year for 200 elementary schools within 30 miles of Zip code 75201 from Great Schools, Web site, at www.greatschools.net (June 20, 2007).

11. For a discussion of the recent cut score changes, see TUSDStats, “Spring 2003–04 AIMS to Spring 2004–05 AIMS Percentage Comparison,” Tucson (Arizona) Unified School District, Department of Accountability and Research, at http://tusdstats.tusd.k12.az.us/planning/resources/aims/05changes/rawscoreaimscuts_04_vs_05.htm (June 12, 2007).

simply lowered the proficiency standard by reducing the number of questions that a student must answer correctly to achieve “proficiency” in order to comply with federal policy requirements. By dropping the passing threshold, the percentage of Hispanic students passing the test jumped from 11 percent to 46 percent in one year.

In short, states do not seem to be living up to the goals of NCLB because it created incentives to lower cut scores rather than to address fundamental problems in the public education system.

Other States in the Race to the Bottom

There is good reason to believe that this problem will soon become apparent in other states. In 2006, researchers from the University of California compared state-level test score data to NAEP scores from 1992 through 2005 for a dozen diverse states. The researchers found that proficiency rates on state tests have traditionally exceeded proficiency rates on the NAEP exam. They also reported that the gap between state test scores and states’ performance on the NAEP has widened in 10 of 12 states since No Child Left Behind was passed in 2002.¹²

Professor Bruce Fuller, lead author of the report, explained why No Child Left Behind could be a factor: “State leaders are under enormous pressure to show that students are making progress. So they are finding inventive ways of showing higher test scores.”¹³

As proficiency goals continue to increase with the approach of the federal goal of all students scoring proficient by 2014, it is likely that this problem will only worsen. The prospect of a full-scale nationwide race to the bottom in state testing should be a serious cause for concern among Members of Congress and a compelling reason to address this problem in the upcoming reauthorization debate.

Federal Management or Citizen Ownership of Education?

In his 2007 State of the Union address, President George W. Bush said:

Now the task is to build on the success, without watering down standards, without taking control from local communities, and without backsliding and calling it reform... The No Child Left Behind Act has worked for America’s children—and I ask Congress to reauthorize this good law.¹⁴

NCLB has placed a long-overdue emphasis on academic results and reducing achievement gaps, moving the conversation forward in terms of emphasizing outputs rather than just inputs. However, NCLB has created an incentive structure that does not reconcile various stakeholders’ interests. As a result, the force of the political interests pressing for apparent short-term gains is greater than that for improving real long-term student achievement.

The resulting race to the bottom fundamentally threatens NCLB as a reform strategy by compromising the key element: transparency of results. As reauthorization approaches, two strategies have emerged to address this problem: increasing federal power over education or restoring state and local authority over education.

The Federal Strategy. Some say it is time for national standards and national assessments. A bill introduced by Senator Christopher Dodd (D-CT) and Representative Vernon Ehlers (R-MI), the Standards to Provide Educational Achievement for All Kids (SPEAK) Act (S. 224 and H.R. 325), would create voluntary national standards and grant states up to \$4 million each to adopt national math and science standards.¹⁵

Supporters argue that this would end the gaming and race to the bottom, but national standards represent not only a constitutionally inappropriate

12. Fuller *et al.*, “Is the No Child Left Behind Act Working?” esp. p. 12, Table 2.

13. Jay Matthews, “Study Shows More Discrepancies Between State, National Assessments of Student Proficiency,” *The Washington Post*, April 16, 2007, p. B2, at www.washingtonpost.com/wp-dyn/content/article/2007/04/15/AR2007041501099.html (June 5, 2007).

14. George W. Bush, “State of the Union,” The White House, January 23, 2007, at www.whitehouse.gov/news/releases/2007/01/20070123-2.html (June 19, 2007).

course, but most likely an ineffective one. There is no reason to believe that federal officials would write solid standards or that they would be immune to the political pressures decried in the states.

Any attempt to erect national standards and assessments will only serve to aggravate further the growing gap between the American people and their public schools, contributing to the sense that these are *government* schools. In other words, we would risk sacrificing responsibility for educating our children on the altar of accountability.

In the end, accountability and transparency in education should empower parents and taxpayers to take greater ownership of education in America. They should be vehicles to reinvigorate the relationship of the American people with their schools rather than merely mechanisms employed by government officials to oversee and hold government schools accountable.

The State-Level Strategy. The alternative strategy is to end the trend toward greater federal power by restoring greater state and local control of American education. Senator Jim DeMint (R-SC), Senator John Cornyn (R-TX), and Representative Pete Hoekstra (R-MI) have proposed the Academic Partnerships Lead Us to Success (A-PLUS) Act (S. 893 and H.R. 1539) based on this approach. Under the A-PLUS Act, states would have the opportunity to opt out of NCLB and reassert their policymaking authority in public education. States would continue state-level academic assessments and public reporting free from the testing and accountability requirements of No Child Left Behind.¹⁶

Restoring state control of state testing policies could protect the academic transparency that is needed to hold public schools accountable for performance to parents, taxpayers, and policymakers. Without this transparency, school administrators cannot judge the effectiveness of changes in school practices. Citizens and policymakers cannot judge

the direction of public schools and therefore cannot make informed decisions about school reforms. Most important, parents need transparency to determine whether or not their children are receiving a quality education and to choose schools that match their children's needs.

Freeing states from the burden of complying with NCLB testing requirements will not fix all of the problems in American education, but little evidence suggests that NCLB as currently constituted will fix them either. Yet freeing states from this burden would help to end the race to the bottom that threatens to destroy transparency in public education. Because the National Assessment of Educational Progress would continue to be administered to a sample of students across the nation, providing a low-stakes audit of academic performance in the states, advocates of strong state standards and testing policies would be able to make their case for reforms on a state-by-state basis through the process of federalism.

Canceling the Race to the Bottom. Such an approach may not appeal to those who would like to impose a single national solution, such as national standards, on states. However, policymakers need to recognize the danger of further centralizing American education. The states' experiences have shown the challenges that policymakers face in creating quality state standards and testing systems. Congress and the Department of Education would face the same challenges in creating national standards, but the stakes would be much greater.

Leaders in the standards movement should recognize that the federal government cannot and will not maintain academic rigor in state accountability systems. Because of NCLB, states have begun the process of lowering standards, and the path is clear for more states to join the race to the bottom as NCLB's passing requirements increase. In fact, NCLB may inadvertently have played a role in setting back the standards movement, creating a false

15. Press release, "Dodd, Ehlens Announce Legislation Establishing Voluntary Core Standards in Math and Science," Office of Senator Christopher Dodd, January 8, 2007, at <http://dodd.senate.gov/index.php?q=node/3698> (June 12, 2007).

16. For more on the A-PLUS Act, see Dan Lips, "Reforming No Child Left Behind by Allowing States to Opt Out: An A-PLUS for Federalism," Heritage Foundation *Background* No. 2044, June 19, 2007, at www.heritage.org/Research/Education/bg2044.cfm.

sense of security. While standards and accountability regimes can play a productive role in improving public schools, the integrity of such systems must be fiercely defended state by state and on an ongoing basis.

The race to the bottom represents a threat to the existence of the standards strategy. If allowed to play out fully, the race will destroy the credibility of top-down accountability. The only effective and constitutionally appropriate way to preserve accountability is, first, to ensure that the federal government does no harm by eliminating federal pressure for lower state standards and, second, for advocates of standards and accountability to avoid the mirage of federal fixes, such as national standards, and roll up their sleeves and fight for what they believe at the state level.

Great progress is possible through state-level efforts. If the charter school movement had waited for the federal government to achieve its goals, there would not be 4,000 charter schools operating in 40 states. The standards movement achieved a great deal state by state before NCLB passed and must again take the lead to maintain the credibility of the strategy.

Conclusion

When Congress considers reauthorization of No Child Left Behind, it should address a fundamental problem in the law's design. Specifically, federal requirements have led to a race to the bottom in state testing that threatens to destroy transparency of results in American education. Congress can solve this problem by ending No Child Left Behind's high-stakes testing policies and allowing states to opt out of NCLB's requirements.

Shifting greater policymaking authority back to the state level would protect academic transparency in American education. Parents, citizens, and policymakers would continue to receive the information about students' and schools' performance through state testing. Maintaining this transparency would ensure that all stakeholders have the needed information about how best to educate children. This would begin to restore citizen ownership of American education—a necessary step for future efforts to strengthen American public schools.

—Eugene Hickok, Ph.D., is a Bradley Education Fellow at The Heritage Foundation and has served as U.S. Deputy Secretary of Education and Pennsylvania's Secretary of Education. Matthew Ladner, Ph.D., is Vice President of Research at the Goldwater Institute.