

FairTest

National Center for Fair & Open Testing

Key Assessment and Accountability Issues Facing the ESEA Reauthorization Conference Committee

Overall, FairTest supports the Senate's bill to reauthorize the Elementary and Secondary Education Act (ESEA), regarding assessment and accountability, though the House bill contains stronger provisions on some important points. Both bills include several steps toward reversing the damage caused by No Child Left Behind (NCLB, the current name for ESEA): an end to federally mandated accountability and sanctions for schools, an end to the waiver requirement to judge teachers by student test scores, and a provision allowing parents to opt their children out of federally-required tests. Both will create some good options for states and districts to improve assessment as well as the space to overhaul accountability. Both contain limitations on the power of the U.S. Secretary of Education to force states to make changes to their standards, assessment and accountability provisions, or to offer waivers that add new requirements to states (as Education Secretary Arne Duncan did).

Unfortunately, neither chamber even voted on whether to reduce mandated testing; there appears to be no likelihood this provision will make it into the conference bill. ESEA is likely to remain woefully underfunded. The House also version takes damaging steps toward privatization via its "portability" provision. Neither bill points the way toward equitable, high-quality education, though the Senate bill does focus attention on some areas important for high quality education and school improvement.

If the Senate bill becomes law in close to its current form, the testing resistance and reform movement can use the gains to organize for greater victories. The practical alternative to supporting the Senate bill is to keep NCLB and the waivers for at least two more years, but with very uncertain prospects as to what would happen in 2017 or beyond. But there are serious dangers ahead.

FairTest's goals for the conference committee are:

- 1) Block any reintroduction of NCLB-style accountability provisions;
- 2) Retain as strong an opt out provision as possible;
- 3) Retain both the Senate section authorizing states to develop "innovative" assessment programs and the House section authorizing local assessments;
- 4) Retain state power to determine and weight accountability provisions;
- 5) Retain the prohibitions placed on the power of the Education Department to manipulate state policies on standards, assessments and accountability, as well as bar the Department from granting waivers that require state actions that are not already mandated by federal law.
- 6) Block "portability" which is not a testing issue but is vital to many of our allies as it would undermine funding for low income communities and schools.

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The conference committee now must negotiate a compromise that both chambers and President Obama will approve. Work is expected over the Congressional August recess, and Senate Education Committee chair Lamar Alexander hopes it will complete its work this fall. However, NCLB took six months in 2001 to go through reconciliation due to intense disagreements and was only finalized in the wake of 9-11. Activists have to act quickly enough to influence decisions, while recognizing the process may be slow. This article analyzes key components of the two bills; FairTest will separately offer recommendations for effective actions.

The Senate bill is available at <https://www.congress.gov/114/bills/s1177/BILLS-114s1177es.pdf>. The House bill is at <http://www.gpo.gov/fdsys/pkg/BILLS-114hr5eh/pdf/BILLS-114hr5eh.pdf>. (At various points we reference page numbers of these pdfs.)

Here is what we at FairTest see as the major issues and what we hope will be done:

1. Issue: whether the conference committee re-introduces elements of NCLB-style accountability – making the bill “NCLB-lite” – in order to gain support from more Democrats.

FairTest recommendation: Oppose NCLB-lite, but a very limited compromise might be acceptable if it enables a bill to become law.

Discussion: This is the most contentious accountability issue. The Senate rejected a Democratic amendment that would have significantly restored NCLB-style accountability. Proponents of the amendment argued that a strong Democratic vote for it would signal that if it is not inserted into the conference version, Democrats would then be able to block final passage of the bill. However, while 42 Democrats voted for the amendment, all but three supported the final bill that did not include it. This signals that most Democratic Senators do not want to be seen as the obstacle to ending the widely-hated NCLB law, dealing a serious blow to NCLB-lite proponents.

The same issue arises in the House: a compromise bill likely will need Democratic support to pass the House. (The House bill received no Democratic votes.) Many House Democrats continue to support test-and-punish provisions. However, Republicans strongly oppose re-introducing these NCLB requirements, largely because they see it as federal intrusion, though some also understand it would reinstall, as Alexander said, the worst of NCLB. Including NCLB-lite will likely cause many Republican defections.

One compromise could be to include the Senate amendment’s requirement that states intervene in at least the lowest-performing five percent of its schools and high schools with a graduation rate lower than 67 percent for two consecutive years. Interestingly, Alexander supported the five-percent provision in a 2011 Republican bill.

Even this degree of compromise presents dangers because states have used the NCLB waivers in harmful ways – as they require – and the provision could encourage states to continue on this course. (http://ourfuture.org/20150723/get-ready-for-the-next-wave-of-educationreform?utm_source=progressive_breakfast&utm_medium=email&utm_campaign=pbreak). However, as no one is calling for any specified federally-mandated sanctions (unlike NCLB and the waivers), as states are likely to have much greater leeway in how they identify schools (with tests potentially a minority component), and as states could design educationally helpful rather than harmful interventions, this provision could be livable. There are schools and districts that could use additional

assistance, including extra federal funds. And if a state wants to act in punitive fashion, federal education law is not going to block them. This may therefore be an acceptable compromise, but is not anything to promote.

The rest of the amendment, however, was unequivocally harmful. It included: setting annual goals (a variant of “adequate yearly progress”); intervening in every school in which any category of students did not make sufficient progress for two consecutive years (a variant of NCLB sanctions - and beyond what the waivers require); requiring states to give clear priority to tests in accountability structures (as NCLB and waivers do); and allowing the U.S. Department of Education to intervene in state assessment and accountability systems, which both bills prohibit.

2. Issue: How much flexibility will states have for deciding components and weighting for accountability?

FairTest recommendation: Maximize state flexibility in order to reduce the weight given to standardized tests and increase the weight given to other factors. The Senate bill has the advantage of identifying areas of great importance for improving schools that have support from community organizations and activists.

Discussion: Both bills go a long way in this direction, though are differences. Both House and Senate Democrats may push to limit state flexibility as they seek to introduce the NCLB-lite provisions that the Senate rejected. (Senate bill addresses assessment starting on p 31, accountability on p. 55, interventions on p. 163. House bill discusses assessment on p.26 , accountability starting on p. 37.)

The Senate bill said test results would have to be a “substantial factor” in evaluating school performance – but that states would decide the weighting it gives any components. It requires states to use at least one other factor, and listed non-test categories that states “may” include, such as rates of student attendance, suspension and expulsion, teacher satisfaction and absence, safety and climate (see Ratner, http://www.huffingtonpost.com/gary-m-ratner/senates-esea-challenge-st_b_7739906.html). Similarly, the Senate bill “focuses schools in need of intervention and support on making improvements in the very areas supported by research and experience. These include leadership, instruction, curriculum, school climate, parent and community engagement and wrap-around services.” The Senate also “holds districts accountable for helping schools improve by requiring annual public reporting for every public school of information on indicators of: school quality, climate, safety, discipline, distribution of inexperienced teachers and principals, teacher retention rates, per pupil expenditures, and other school-related factors relevant to improving schools” (Ratner). States have latitude to select and weight the indicators. These provisions are similar to what a wide array of national education, civil rights, parent, and other organizations, including FairTest, have sought for years as a replacement to the test and punish approach. (See FEA recommendations at http://www.edaccountability.org/FEA_2_Page_Summary_Recommendations_2011_final.pdf.)

The House bill tells states they must use assessment results “and other measures” and is silent on what other measures to use (not even naming graduation rates) or how components could be weighted, thus leaving all that up to the states.

Both bills require states to, in effect, rank schools based on their accountability indices. The Senate says “differentiate” while the House says “annually evaluate and identify the academic performance of each public school.” Both require states to identify schools in need of intervention and support (Senate) or improvement (House), without specifying any proportion of schools to select.

3. Issue: Will a final bill include either House or Senate versions of the right to opt out?

FairTest recommendation: We prefer the House bill (p.32) as it establishes a federal right and protects schools from being punished by parent decisions (thereby essentially voiding the requirement to test 95% of all students). The Senate (p.52) says the federal government will recognize a state right or district-determined right to opt out and is less forthright on protecting schools (on this, see <https://deutsch29.wordpress.com/2015/07/17/both-house-and-senate-esea-bills-allow-for-opt-out-without-penalty/>). It also includes a requirement that states notify parents regarding their opt-out rights (p. 124).

Discussion: A Senate amendment similar to the House version lost handily; it was opposed by Sen. Alexander and the ranking Democrat on the Education Committee, Sen. Murray, both of whom will be on the conference committee. The Senate version is more likely to remain, though it is possible the provision will disappear entirely. Activists should fight for the House version, recognizing the Senate bill represents a significant step forward

4. Issue: Will a final bill retain the ‘innovative assessment’ option in Senate bill, or the House provision allowing local assessments, or both?

FairTest recommendation: include both provisions, improve them if possible.

Discussion: The Senate allows up to seven states to implement an “innovative” state assessment system that could include school-based assessments such as the New York Performance Standards Consortium (p. 242). It would allow more states to take this step after three years if the initial state efforts are developing well under specified criteria. The provision is too narrowly crafted in some regards that could be improved, and too few states are initially allowed. It provides a clear opportunity for states to overhaul assessment in very positive ways, just as changes to accountability sections in both bills allow states to fundamentally revise the accountability systems.

The House allows for states to approve “locally designed” assessment systems (p. 37) that produce data “comparable among all local educational agencies within the State” and meet the requirements imposed on the state tests specified in (B) (p. 26). The Senate provision allows states to build up from pilot districts. This House section could allow performance assessment systems, though the issue of comparability of scores will have to be resolved (as it will in the Senate section) in ways that foster rather than undermine the benefits of performance assessments. Allowing both provisions could take the form of authorizing states to develop new assessment systems or allow districts to do so, emphasizing performance assessments.

5. Issue: Restrictions on the Secretary of Education’s ability to intervene on standards, assessment or accountability, and ability to issue waivers that require state actions not required under the law.

FairTest recommendation: The new law should include these provisions. The Education Department should not be able to coerce states into whatever the Secretary happens to prefer regarding standards, assessments and accountability, while ensuring transparency and reporting. Nor should the Department be able to impose new policies or programs in exchange for waiving existing provisions. The Department otherwise could still grant waivers (Senate p.899; House p.547).

Discussion: The Senate prohibits interventions in state standards (p. 37). It’s “Prohibition on Federal Interference with State and Local Decisions” (p 66) goes into substantial detail on aspects of

assessment and accountability that the Department cannot interfere with (more on pp.110 and 163). The prohibition on interference with accountability processes starts on p. 173 (see also p. 228). On p. 336, the Senate prohibits interference in state teacher evaluation systems (though, as in the House, if a state uses ESEA funds for a teacher evaluation system, then it must include student test scores as a factor in the evaluation.)

The House has prohibitions on Department interventions on accountability (p. 40) and a general “Prohibition against Federal Mandates” (p 572), and several other prohibitions. The general prohibition blocks the federal government from intervening in “instructional content, academic standards and assessments, curricula, or program of instruction.” Nor can they use grants or incentives to achieve those ends (thus blocking future efforts akin to Sec Duncan’s waivers). Several sections then further detail the prohibitions.

It seems likely these limitations will remain in law. However, as noted at (1) above, there will be a push to allow the Department to intervene in accountability. This should be rejected along with the other “NCLB-lite” provisions some members of Congress will attempt to introduce into the compromise bill.

6. Issue: ‘Portability,’ in which ESEA Title I funds become attached to a student and can follow the student to a different school, which is in the House bill and not in the Senate bill.

FairTest recommendation: While this is not an accountability issue, we oppose portability for two reasons: Pragmatically, it would very likely bring a presidential veto, which we oppose if the final bill ends NCLB and waiver “accountability,” and substantively because this shifts funding from schools and communities to individuals with likely long-term harmful consequences. (The section titled “Portability” starts on p. 112; it makes no reference to private schools.)

Discussion: Most pundits think the main reason the White House threatened a veto of the House bill but not the Senate’s is portability. In that scenario, to avoid a veto most Republicans would agree to ditch portability in order to reduce federally-mandated accountability, while Democrats would agree to not re-insert federal accountability mandates in exchange for winning on portability. The danger is the reverse: accepting some version of portability in exchange for intensified accountability. That would be an educational disaster, merging the worst of Republican and Democrat desires.

Since its inception, ESEA authorized funding to flow primarily to low-income school districts that in turn distributed the funds to schools with the largest shares of low-performing students. Under portability, a student identified as deserving a share of this federal funding to support her/his schooling could take that money to another school, possibly even a wealthier district. Not only does this upend the law’s core funding concept, it means that schools with less wealth and greater need could end up with less federal money. [Note, I found the bill text not clear on all of this; there may be additional provisions; this description of portability is derived from various news sources, including Education Week.]

Note: Both bills include provisions pertaining to English language learners and students with disabilities in regard to standards, assessment and accountability that this paper does not address.