

The Long Path to ESSA

An excerpt from *The Every Student Succeeds Act: What It Means for Schools, Systems, and States* by Frederick M. Hess and Max Eden



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Rick Hess joined EdNext Editor-in-chief Marty West on [the EdNext Podcast](#) to discuss the Every Student Succeeds Act and what it could mean for students.

Why did it take Congress nearly a decade to pass the Every Student Succeeds Act? In the following excerpt from their new book [The Every Student Succeeds Act: What It Means for Schools, Systems, and States](#), Frederick M. Hess and Max Eden explain how what might appear to be a story of Congress “not working” can actually be seen as a story of Congress working exactly as it is supposed to, finding agreement on a major issue in a big, diverse, and complicated nation.

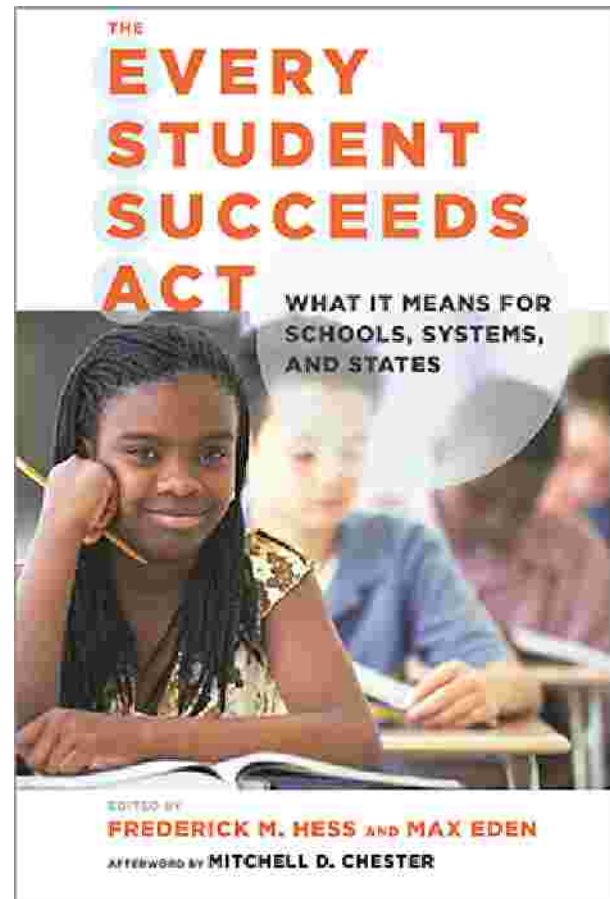
When President Barack Obama signed the Every Student Succeeds Act (ESSA) into law on December 10, 2015, he joked that it was “a Christmas miracle.” Miracle or not, it was striking to see majorities in both political parties support a major piece of legislation in an era marked by gridlock and government shutdowns. Most experts thought that ESSA was a long shot, even just a few months before it passed.

For our part, we recall walking out of a meeting with Republican Senate Education Committee staffers, convinced that there wasn’t a chance. We were both struck by their exasperation with the Obama administration’s education agenda. Substance aside, they thought that the administration had played fast and loose with the traditional policymaking process. Rather than press Congress to pass a law to replace No Child Left Behind (NCLB), the Obama administration used federal stimulus money to encourage states to accept its policy preferences and waivers from NCLB’s penalties to ensure those policies were implemented. This wasn’t the way separation of powers was supposed to work. Republicans had little faith that the Obama administration would abandon its strong-arm tactics and let Congress settle these questions by legislation.

Staffers at the Department of Education, however, saw things quite differently. They insisted that they’d love to see Congress replace NCLB but believed that unprecedented Republican obstructionism made that a distant prospect. So, until then, they had a duty to use the levers they had to try to improve American education.

While this level of polarization has become increasingly common in Washington, DC, until recently education had always been a bipartisan issue, in part because it was traditionally the preserve of the states. But in an effort to rectify long-standing inequalities, federal involvement expanded slowly during the second half of the twentieth century, culminating in 2001 with the bipartisan passage of NCLB.

In the years after NCLB, the center of gravity in education policy shifted from the states to Washington. This made education more of a national political issue and hence a more polarizing one. The divisions were stark, but they didn't quite hew to traditional partisan lines. An alliance between civil rights groups on the left and the business community on the right pushed for aggressive federal involvement to drive policies designed to aid disadvantaged students. But under the Obama administration, another left-right alliance—between teachers unions and small-government conservatives—became ascendant. The unions argued that high-stakes standardized testing and teacher evaluation were harming teacher morale and undermining the quality of public education; conservatives argued that the administration had far exceeded its authority and was pushing policies without the consent of the governed. The latter alliance held sway in Congress, and the Every Student Succeeds Act was deemed by the Wall Street Journal as “the largest devolution of federal control to the states in a quarter century.” These political trends had real consequences for schools, teachers, and students, and ESSA was a response to all of that.



So, what exactly is ESSA and what does it do? ESSA is the latest reauthorization of the Elementary and Secondary Education Act (ESEA), passed by Lyndon B. Johnson in 1965. ESSA has ten “Titles” dealing with matters ranging from teacher quality to Native American education. The most important of these is Title I, which is devoted to “improving basic programs operated by state and local education agencies.” Today, Title I distributes about \$16 billion annually to schools with high concentrations of low-income students. The question at the heart of federal education policy is what the federal government ought to require to ensure that the money is well spent.

In the 2001 reauthorization of ESEA as the No Child Left Behind Act, states were required to test students in grades 3–8 and disaggregate results based on student characteristics to make achievement gaps visible. Schools that failed to make “Adequate Yearly Progress” toward mandated proficiency levels would face a standard set of school interventions. Under the Obama administration, the federal government used carrots and sticks to encourage states to adopt new academic standards and test-based teacher evaluation systems.

ESSA maintained the broad contours of NCLB but gave states more flexibility within them. It maintained the basic federal testing requirement but gave states leeway to help address concerns about “overtesting.” ESSA removed NCLB’s across-the-board school accountability system, allowing states the flexibility to identify and remedy low performing schools. ESSA also gave state leaders significantly more autonomy to set policy on other questions, such as teacher evaluation, diminishing the federal government’s influence

over state policy.

The Tension Between Local Control and Equal Protection

All the talk about federal versus state power in education strikes a lot of people as beside the point. After all, shouldn't education policy just be about the kids? At best, debates about the federal role can sound like abstruse technical arguments among Washington insiders. At worst, they can sound like politicians using thinly veiled partisan rhetoric to jockey for more power. But the truth is that this debate actually gets to the core of who we are as a nation. An easy shorthand is to think of this debate as the tension between the Tenth and Fourteenth Amendments to the US Constitution.

There is no mention of public schooling in the Constitution. But it's not as though the Founding Fathers didn't think an educated citizenry was essential. In fact, they saw it as a foundational responsibility of any government and determined that it was best left to the states under the Tenth Amendment, which says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Tenth Amendment intuition is that education cannot be exclusively provided by the government; it must begin with families and spread outward to neighborhoods, religious communities, civic associations, schools, and towns. Adherents of the Tenth Amendment are skeptical that the federal government, so far removed from the fundamental acts of teaching and learning, is well suited to write laws and regulations governing how one hundred thousand schools educate more than fifty million students. More to the point, they worry that well-intentioned policies may, in practice, crowd out and erode the fundamental elements of a quality school.

At the same time, there is the very real concern that, left to their own devices, districts and states might not serve all students equally well. In fact, for generations states did little to rectify palpable, basic inequalities in education. Many people believe that the federal government ought to play a strong role to make good on the promise of the Fourteenth Amendment, that the government shall not "deny to any person within its jurisdiction the equal protection of the laws." Adherents of the Fourteenth Amendment believe that the federal government has a duty to ensure fairness by directing funds to underresourced communities and holding states accountable for the performance of all students.

Though they are often in tension, both intuitions are deeply rooted in the American experience. The balance between liberty and opportunity is at the core of who we are as a nation and comes up in many, if not all, political issues. In education policy, it's been at the forefront of debates for the past half-century.

From ESEA to NCLB

In 1965, nearly one hundred years after the conclusion of the Civil War, Congress passed ESEA in an effort to break the cycle of intergenerational poverty by directing federal funds to schools that served high concentrations of low-income children. President Johnson had high hopes, declaring that "by passing this bill, we bridge the gap between helplessness and hope."

Unfortunately, it wasn't that easy. ESEA faced an extraordinary challenge: attempting to reform a system that had been carefully designed to impede centralized power. The tradition of local governance was deeply rooted, and pumping federal funding into the system was no guarantee that anything would change. Indeed, four years after ESEA was passed, a landmark study found that Title I had often "not reached the eligible [students], and has been little used to meet their needs." Federal policymakers were disappointed that districts often used Title I funds for their own purposes rather than for the betterment of low-income students. However, they had few useful levers to change that.

In response, policymakers attached more strings to Title I money to try to ensure effective implementation.

But those rules and regulations came at a cost. They inhibited district and school flexibility and increasingly transformed local school governance into a compliance exercise. The financial and educational costs were difficult to gauge, but stories bubbled up about teachers who were afraid to use Title I staplers on essays by non–Title I students and Title I staff who wouldn't break up playground fights between Title I and non–Title I students due to liability concerns. Perhaps the most significant consequence of ESEA in the latter half of the twentieth century was the bureaucratization and centralization of education policy.

Meanwhile, one glaring problem lingered for decades. It was first raised publicly not by a conservative, but by liberal firebrand Robert F. Kennedy, then a Democratic senator from New York: how could we know whether the federal funding was making a difference? By and large, the state-level testing not only failed to report results disaggregated by race and class but often wasn't even administered to low performing students. State testing reports often resembled dispatches from Garrison Keillor's fabled Lake Wobegon, where all the children are above average.

While it wasn't clear where federal efforts were making significant headway, a handful of states launched initiatives to try to raise achievement and address inequities. In what became known as the "excellence movement," states like Massachusetts, North Carolina, and Virginia took steps to raise and refine academic standards and introduce more reliable standardized testing. One of the most notable "laboratories of democracy" was Texas, where governors on both sides of the aisle pursued a reform agenda, starting in the early 1980s, centered on higher academic standards, standardized testing, school accountability, competition, and choice. One Republican governor, George W. Bush, went on to run for president in 2001 while promising to be an "education president" and take the "Texas model" national. His signature domestic policy initiative would have made LBJ smile, as NCLB extended ESEA and infused it with an even grander ambition.

No Child Left Behind put the federal government firmly in the driver's seat to expand and enforce state education reform. As mentioned previously, it mandated that states test students in grades 3–8 in reading and math and report disaggregated results. It also required that all schools make Adequate Yearly Progress (AYP) to 100 percent proficiency in reading and math by 2014 and prescribed specific interventions for schools that failed to make AYP.

NCLB's aspirations made for good politics, and the law passed by overwhelming bipartisan margins. After all, no one wanted to argue that some children should be left behind. But its complex reality proved to be less appealing. The emphasis on reporting disaggregated data and closing racial achievement gaps earned plaudits from the civil rights and business communities, but the school accountability system fostered friction and discontent. Scores on the National Assessment of Educational Progress, the gold standard in measuring educational achievement, inched up slightly through the Bush administration, but NCLB was far from a magic bullet.

In fact, the more parents learned about NCLB, the less they liked it. In 2003, about a third of Americans said that they knew enough to form an opinion of NCLB, and almost two-thirds expressed a favorable opinion. By 2007, three-quarters of Americans said that they knew enough to form an opinion, but only about 40 percent approved of the law. Parents worried that the drive to increase performance on state tests came at the cost of an ever-narrowing curriculum and that the focus on getting the "bubble kids" from slightly below proficient to slightly above proficient came at the cost of teaching kids who were way behind or ahead. By the time Bush left office in January 2009, NCLB had turned from a shining bipartisan achievement to a tarnished bipartisan albatross; Republicans and Democrats were both discontented, but they couldn't agree on how to fix it.

The Path to ESSA

Bush's successor, former Illinois senator Barack Obama, campaigned for president on the promise to be a pragmatic "postpartisan" who would change business as usual and focus on doing "what works." The Obama administration earmarked a portion of money from the American Recovery and Reinvestment Act for an initiative called Race to the Top. States submitted policy plans to the Department of Education, promising to adopt the priorities set by the secretary of education around college- and career-ready standards, test-based teacher evaluation, charter schooling, and more. At first, this approach received bipartisan approbation. David Brooks, a right-leaning columnist at the New York Times, wrote, "Obama's activism isn't overbearing. It's catalytic. The administration hasn't defeated the forces of the status quo, but in state after state, you're seeing reformers moving forward."

But the applause eventually gave way to grumbling. The stimulus money ran out and, as 2014 drew closer, more and more schools became subject to federal sanctions for failing to meet NCLB's goal of 100 percent proficiency. So the Obama administration offered states a deal: it would grant states "waiver" relief from NCLB sanctions if they stuck with the program on education policy.

Supporters credited Secretary of Education Arne Duncan with advancing good policies in the face of congressional inaction. But detractors saw NCLB waivers as an executive overreach without any statutory basis. For example, Senator Lamar Alexander (R-TN), chairman of the Senate Education Committee and a former secretary of education himself, decried the transformation of the Department of Education into a "national school board." On the right, the Common Core, or "Obamacore" as it was often called, became a bête noire to conservative activists. On the left, teacher unions fretted that the teacher evaluation systems the federal government was pushing weren't ready for primetime and would lead to perverse consequences in the classroom.

This bipartisan backlash created a window of opportunity for major legislation. For all the noble aspirations that fueled the decades-long drive toward greater federal involvement, the friction and frustration created as Fourteenth Amendment hopes crashed into Tenth Amendment realities paved the way for the Every Student Succeeds Act.

Some critics worried that ESSA was an unfortunate retreat from the ideals of equal protection and educational equity. Others fretted that it didn't go far enough in returning authority to states and communities. But ultimately, American education will always be a balancing act between the principles of the Tenth Amendment and the Fourteenth Amendment, and ESSA's supporters argued that it struck a healthy and stable balance. Senator Alexander declared, "We've got a law that will govern the federal role in K-12 education for ten or twenty years" and "unleash a whole flood of innovation and ingenuity, classroom by classroom, state by state, that will benefit children."

What Does ESSA Mean For Schools And States?

Does ESSA get the federal role right? It will take years before the dust settles and we can get a handle on its impact, and it's highly unlikely that everyone will be satisfied for long. But, for now, we feel prepared to offer three takeaways to help educators and policymakers navigate the law.

First, you don't have to dive into ESSA's fine print to understand it. The text itself is confusing and sprawling, and people working in schools and systems generally have better things to do than read federal statute. But you should have an understanding of the basics—of what's settled and what's open for input. There will be plenty of enthusiastic policy wonks saying that ESSA means you have to do this or that. If you come to the table with the basics in mind, you'll be prepared to engage in the conversation rather than be overwhelmed by it.

Second, what you as a teacher, administrator, or policymaker bring to that conversation should be of a distinctly different character than what you might be accustomed to. More often than not, in the era of No

Child Left Behind and its waivers, education policy became an exercise in compliance. You did what you were told; if you wanted to try something new, you had to ask, “May I?” The theory behind ESSA is that schools and systems can be better governed from the bottom up than from the top down. So the sooner you shift your mentality from asking, “May I?” to asking, “How can we?” the sooner you’ll stop being shaped by your environment and start actually shaping it.

Third, much is up in the air and nothing is guaranteed. ESSA has the potential to foster significant improvements in schooling, but only where and when educators and administrators take advantage of it. Some states and schools will leap forward; others will lag behind. Ultimately, it will work only as well as the people in schools, communities, and states manage to make it work.

Concluding Thoughts

We began by talking about politics rather than education—and frustrating, gridlocked politics, at that. NCLB was supposed to be reauthorized in 2007, but it took almost another decade for Congress to pass ESSA. It’s easy to think that Congress was doing nothing and that partisan posturing and bickering was preventing real policy change, but beneath the surface there was a whole lot more going on. Schools, districts, and states were wrestling with conflicting policies and priorities; the right path forward wasn’t always clear. But over time, a bottom-up consensus emerged that federal policy should move toward a more restrained approach, and that approach was eventually enacted into law as ESSA.

What might appear to be a story of Congress “not working” can actually be seen as a story of Congress working exactly as it is supposed to, finding agreement on a major issue in a big, diverse, and complicated nation.

The tension that Congress was trying to navigate was no small issue. It’s easy for those who view the federal role as indispensable to protecting disadvantaged students to dismiss the concerns of those who think education should be a local endeavor, and vice versa. But both views have their virtues and drawbacks. The intuition that schools are best governed as close as possible to the students they serve is well grounded. So, too, is the fear that without strong federal oversight, local communities will leave the most vulnerable students behind. Both principles are essential, even if they are often in tension.

The Every Student Succeeds Act is the latest attempt to find a balance between the principles of the Tenth and Fourteenth Amendments. We hope that this book will help relate how these lofty, abstract arguments will play out as this new federal law filters its way down through states and districts to the schoolhouse. And it’s our humble hope that by helping to equip educators, school leaders, and students of education policy with a firm understanding of what’s possible under ESSA, we might be doing our small part to help make good on its promise.

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