Confessions of a "No Child
With the due date for the reauthorization of No Child Left Behind (NCLB) right around the corner, Education Next thought it apt to probe the lessons learned in the five years since the act’s passage. After all, as the cliché goes, if we don’t learn from history we are bound to repeat its mistakes. In that spirit, this past summer we conducted an e-mail interview with Sandy Kress, a lawyer and former school board member who, as a domestic policy advisor in the White House, served as President Bush’s chief negotiator during the original NCLB debate. We asked him about the genesis of key aspects of the federal law, whether its crafters foresaw any of its major glitches, and what he thinks of NCLB’s prospects going forward.

EdNext: How were the basic contours of the NCLB accountability system arrived at? Did the drafters of the law truly believe that getting 100 percent of students to proficiency by 2014 was realistic?
Sandy Kress: The accountability provisions were built on the foundation of the 1994 Improving America’s Schools Act. The goal was to build muscle where there was little or none, drawing on ideas in place in states like Texas. Education Trust was deeply involved, as were key members of Congress from both sides of the aisle. Reformers had come up with choice ideas and notions of flexibility in return for improvements in performance. There was healthy discussion on both sides.
As to the 2014 goal, the thinking was simple: if qualified teachers are teaching to standards set by the adults in a state, why shouldn’t all (cognitively able) students perform accordingly to those standards by 2014? The bar was not set too high. Indeed, some would argue it was set too low or that states have the flexibility to set it too low. Look at current math and reading standards in the states. Is it unreasonable to expect all students starting in kindergarten to get there by graduation? I don’t think so. I realize it doesn’t happen in enough places. But is that due to the viability of doing it? Or is it to a lack of will, reasonably sound policy, effective use of resources, or all of these factors?

**EdNext:** You ask, “Is it unreasonable to expect all students starting in kindergarten to get [to proficiency] by graduation?” But that’s not what NCLB requires. By 2014 it requires all students in every grade level to get to proficiency in every year—even 3rd graders who are born into poverty, or high-school students who moved to the United States two years prior. Should our focus be getting all students to proficiency by the time they graduate high school rather than by the end of each grade or by 2014?

**SK:** I believe strongly that virtually all youngsters ought to be performing at grade level each year. There are a small number of students, such as the severely cognitively disabled, who will not perform at such a level, and the law should recognize these challenges. But for the cognitively able who start school in our country (the vast majority of our students), there is no reason they can’t all be at grade level each year. There will be little improvement in getting students to the goal of proficiency by graduation if we don’t dramatically improve our ability to bring students to grade-level performance each year.

**EdNext:** Was there much concern about the law creating a “race to the bottom” among the states, or any steps taken to minimize that risk? Were national standards ever considered?

**SK:** The federal government wasn’t even close to ready (and still isn’t) to set standards for the states. So, little could be done to prevent states “racing to the bottom” with their standards, if they chose to do so. We did think about it. Our conclusion was that we needed to maintain expectations for low-income youngsters, with respect to proficiency, that are the same as those for middle- and upper-income youngsters. That was considered the role and mission of the federal government. And we thought that the parents of middle- and upper-income youngsters would take care of their interests politically in the states by insisting on appropriate standards.

Much has been made of states’ dumbing down their standards. I don’t believe this has actually happened. In some states, there’s actually been movement, though slow to be sure, to raise standards. The problem generally has been that the standards were and are still too low. This condition predates accountability and NCLB. Look at state standards in the mid-1980s.

Bottom line: We need to build greater awareness and support for high standards with rigorous accountability for youngsters learning at that level. It’s not one or the other. There’s no substitute.

**EdNext:** Would you now concede that “parents of middle- and upper-income youngsters” are not going to “take care of their interests politically in the states by insisting on appropriate standards”? What’s Plan B if we want to raise standards? Can the federal government do anything to help?

**SK:** I do believe that education standards for our youngsters depend heavily on the will of politically active parents. If they have low expectations, there will be low standards, and there’s nothing government can or will do to change it.

Having said that, I think that the business community and education reformers must do everything they can to educate citizens, opinion shapers, and civic and political leaders about the urgent need to set higher standards. Our young people will have a limited future if we fail at this challenge. Indeed, the very future of our country and our way of life depend upon our success.

**EdNext:** How did science wind up becoming a “kind-of” content area for NCLB, while history did not? Were there concerns that curricula might be narrowed or other subjects might be squeezed out by the focus on math and reading?

**SK:** We thought that getting reading and math right was a good first step, so we started with the idea that enhanced accountability ought to be geared to reading and math. There was support in the Congress for going further with respect to science, at least as to the testing. That extension passed in the House and was retained in the bill. There wasn’t comparable advocacy for history. Also, conservatives watched any extension with an eagle eye. So NCLB went as far as it could. Curricula only narrow when poor teachers and/or administrators allow that to happen. It’s pathetic. Poor practitioners
do this and then blame it on NCLB. Ridiculous. If math and reading are professionally and effectively taught, there’s plenty of time for other courses. Indeed, science, history, poetry, and so much other material can be utilized significantly in the effective teaching of reading. And, guess what, a student who can read can study history! A student who is proficient in math can better study science. I’m still looking for the student who can’t read but who is great in history or poetry or biology.

That some engage in goofy practice should never be the basis for policy. The goofy practice should simply be avoided.

EdNext: How was it decided to have public choice precede supplemental services—and are you surprised by current interest in reversing that order?

SK: Public-school choice comes before supplemental services in NCLB for a very interesting reason. Conservatives pointed to a legal requirement in an earlier appropriations law that created public-school choice after schools failed to make adequate yearly progress (AYP) for two years. While conservatives liked supplemental services, they weren’t going to “lose a year” in getting to public-school choice in NCLB.

I’m not surprised that many want to get to supplemental services first. It seems a more natural next step. The key point for me, however, is that these parental choices need to be given life! They need to be enforced.

EdNext: How do you respond to the criticism that states were given too much leeway to do things as they wish? That the law didn’t create serious sanctions for states that misbehave?

SK: I think NCLB was as muscular as it could be politically and still pass. The feds are a “7 percent investor” after all, and the states and districts are at 93 percent. Many states vigorously resisted what was done, and I believe they would have stopped any bill that was more aggressive.

EdNext: Observers have noted that many states appear to be complying with NCLB’s highly qualified teacher (HQT) provision mostly through creative bookkeeping, and are doing no more than they must when it comes to public-school choice or supplemental services. What can be done about states that may be abiding by the letter but not the spirit of the law on important provisions?

SK: I believe the Teacher Quality State Grants (Title II) should be made more results oriented. States and districts currently get $3 billion to improve teacher quality. There’s no measure anywhere of the value of that investment. The states should begin to measure teacher effectiveness and implement consequences to improve teacher effectiveness. This approach would go way beyond the highly qualified teacher provision.

As to the failure to implement choice and supplemental services, I believe there must be better enforcement. My own favorite idea is, “either give Mom and Dad the choices in the
law or, as a last resort, assign their per capita amount to the school of their choice!”

**EdNext:** What would you do differently next time? What policies might be achievable in 2009, say, that weren’t in 2001?

**SK:** We built a formidable coalition that we’d be very fortunate to replicate in the upcoming reauthorization.

The next effort will have its own challenges and opportunities. While some on the left will resist further reform, protecting certain special interests, and some on the right will resist “federal involvement,” we now feel the pressure of global competition in ways that were only hinted at in 2001. The Chinese and the Indians would get a big boost just as they’re muscling their K–12 and higher education systems if the U.S. lightens up on standards and accountability.

A few major areas I hope will receive attention during reauthorization are college/workplace readiness, including the promotion of more rigorous standards; greater accountability at the secondary level; more sophisticated policy and greater accountability for improving teacher effectiveness, particularly at the late elementary and secondary levels; a broadening of attention to math and science as well as to history; and refinements in AYP to focus greater attention and improvement on the persistently failing schools by offering real choices to parents of students stuck in such schools.

High-school reform should include setting higher standards that lead students to graduate ready for college and good jobs. That was the idea behind the newly created Academic Competitiveness Grants, which provide larger Pell grants for eligible college students who have completed a rigorous program in high school. There should be at least one assessment near graduation that measures readiness for college and the workplace. Appropriate consequences should be established.

Particular attention must be paid to dramatically improving education in the late elementary and middle grades. Math and science education in those grades is thoroughly inadequate. Youngsters are showing up in huge numbers at high school, totally unprepared for the rigor of the current curriculum, not to mention the even more rigorous curriculum that must be put in place to meet our graduates’ needs.

We must go much further in improving teacher quality. The highly qualified teacher provisions have been helpful but are primitive. The next round must get to measuring teacher effectiveness based on student achievement, promoting professional development that is based on research and effective practice and improves performance, providing incentives for teachers who are effective, and requiring removal of teachers who, even with solid professional development, can’t or don’t improve. States must do something about the pathetic state of affairs in too many colleges of education, and proven alternative sources of teachers must be encouraged.

States and districts are currently given billions of dollars each year in Title II funding to improve teacher and principal quality without any accountability at all. Changing this should be a major feature of reauthorization.

Further, I’d be willing to reserve the tougher consequences (choice and supplemental services) for the worst 15 percent or so of schools in the state. The states could define which schools these are as long as improving performance of low-income youngsters is central to the criteria. Other schools not making AYP would face other consequences. But, in return for this flexibility, states and districts would be required to give all parents of students in the 15 percent schools the choices we intended, including private school options as a last resort. Failure to provide these choices to youngsters in pervasively failing schools should be subject to severe sanction.

**EdNext:** So you propose limiting the “tougher consequences” to the bottom 15 percent of schools. Was there any consideration of such a triage approach in 2001?

**SK:** Yes. Sandy Feldman [then president of the American Federation of Teachers] stepped forward with the notion of designating a bottom tier of schools, schools that were generally poor-performing. We tried the idea out on some of the players. Many states were comfortable with this general idea, though, of course, none had gone as far with the sort of consequences we were discussing. It also fit the notion in business of “a bottom X percent.”

We discussed several such alternatives, including the idea of using AYP as the bill laid it out but letting states have a role
in subdividing the list, so that a bottom group would be subject to the most serious consequences.

We spent a considerable amount of time examining such alternatives. We couldn’t get a consensus largely because of widespread fear that taking such a course would weaken the initiative, create gaming opportunities, and nullify the promise of “No Child Left Behind.”

EdNext: Meanwhile, many schools that are not making adequate yearly progress have failed to do so because their special-education or English Language Learner subgroups are not making the grade (see Figure 1). The decision to include these groups has been criticized by many. How was that decision made? Were problems foreseen during the 2001 negotiations?

SK: We, the administration and congressional staff, spent a lot of time considering the ramifications of adding these subgroups. It was clear that this would significantly increase the number of schools identified as needing improvement. There was general concern about that, and some wanted to limit the subgroups. Yet it was very hard to say that these students deserved less protection than others.

There was talk of permitting an index system as part of the AYP language to deal with the effects of the larger number of subgroups. Try after try, the group failed to draft a system that would ensure that districts and schools wouldn’t return to judging schools principally or totally on the basis of aggregated results.

An improved system could be devised during reauthorization. But I assure you that the parents of disabled students, for example, will watch such deliberations with an eagle eye. They believe correctly that

The parents of disabled students will watch such deliberations (on AYP) with an eagle eye. They believe correctly that NCLB has been a huge advance in increasing accountability and improving education for disabled children.
NCLB has been a huge advance in increasing accountability and improving education for disabled children.

**EdNext:** What one compromise would you most like to have back? Were you all aware at the time that the absence of vouchers might weaken support for the law among conservatives?

**SK:** Yes, we knew quite well the importance of choice to conservatives. Our choice provisions were very important to us. Your question assumes we compromised on vouchers. This is not true. We fought for our proposal and found insufficient support for it or anything like it to pass. There were far more than a majority firmly against us in each and every congressional forum than there were for us and the undecided combined. That lack of basic support made it impossible to pass all we proposed. We never compromised on choice. There were votes on a variety of choice proposals. Other than public-school choice and supplemental services, they all went down by significant margins. The lesson here is simple: we advocates of choice need to build far greater political support.

The compromise I’d like to take back was the final arrangement on AYP. We thought at the time that there should have been greater differentiation among schools that did not make AYP—that is, schools that failed pervasively ought to be treated differently than schools that missed by a little. We worked hard with Congress to do this right, but in the end the deal did not really succeed. This is another area that can be improved in reauthorization—perhaps greater differentiation in return for real choice and consequences for pervasively failing schools.

---

**Stumbling Blocks** (Figure 1)

Of the schools that failed to make adequate yearly progress (AYP) in 2003–04, only one-third failed because of the test score performance of all students. A higher proportion of the schools did not make AYP because of the performance of one or more subgroups.

![Reasons Schools Failed to Make Adequate Yearly Progress in 2003-04](image)

- **All students, 33%**
- **More than one subgroup, 18%**
- **One subgroup, 23%**
- **Low test participation or other academic indicator, 26%**
- **Students with disabilities, 13%**
- **LEP students, 4%**
- **Low-income students, 3%**
- **Single racial/ethnic group, 3%**

*Note: Figure is based on data from 33 states. Source: Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, “National Assessment of Title I: Interim Report”*
EdNext: On highly qualified teachers, what problems did you anticipate? Was the White House more concerned that the law might stifle nontraditional teacher recruitment and licensure or that the arrangements gave states too much room to game the provisions for veteran teachers?

SK: We initially wanted to work on teacher quality from a somewhat different angle. We were more interested in whether teachers were effective in improving student performance than in whether teachers had certain credentials. Yet we agreed with the promoters of HQT that its overall provisions were a step in the right direction, so we gave them general support. We had some concerns including the two to which you allude, but we thought HQT was a good start.

A lot of work has been done since 2000 in the policy area of measuring teacher effectiveness. Models are developing in Denver, Minnesota, Texas, and among the Teacher Advancement Program (TAP) schools, for example. Reauthorization will be a good time to bring some of those lessons to bear.

EdNext: What was your understanding of the deal on funding? Democrats claim that the president promised them full funding of NCLB. True?

SK: I was right in the middle of the “deal” on funding. Margaret Spellings and I worked on it daily. The president was thoroughly involved, as were the secretary, [budget director] Mitch Daniels, and other key officials in the White House.

The negotiation was rather simple. The Democrats wanted a significant increase in actual spending on ESEA, the Elementary and Secondary Education Act, along with reform. We had a lengthy back-and-forth on appropriations. We got to $4 billion. The administration stuck by the deal and negotiated hard with its allies on the appropriations committees, and this very large initial increase was agreed to. We all had expectations for the future. There is no doubt that Democrats wanted more each year. I wanted the beneficiaries of the increased spending to embrace the reforms, or support even greater reforms. But the actual “deal” was for the additional $4 billion (see Figure 2).

EdNext: So there was no deal on out-year spending? Even in the president’s FY 2003 budget proposal, which was released less than a month after he signed NCLB (and which flatlined funding for the law)?

SK: The deal was for the one-year increase during FY 2002. You’ll recall that beginning with FY 2003 there were terrible fiscal pressures due in part to the economic downturn and to the cost of the war on terror. Notwithstanding that change in circumstances, the Congress did proceed with a further increase in spending for education in that subsequent fiscal year.

EdNext: Some critics have suggested that the administration’s embrace of allies like the Education Trust has allowed liberal advocates to define the aims and shape the future of the NCLB reform agenda. What’s your take on such concerns?

SK: Education Trust and the civil rights groups have been great allies. They have been tough and true and courageous. Their support has helped sustain NCLB through attacks by defenders of the status quo. And their support is critical to extending and strengthening the act in reauthorization. There are differences, to be sure, between these groups and conservatives on many issues. But, given the power of the status quo, education reformers across the political spectrum must join forces where they can for there to be any chance of success.