

1

When Federal Power is Expanded: The Politics of Implementing the No Child Left Behind Act

The federal role in education has been an issue of great sensitivity in American politics. Traditionally, policymakers supported state and local control rather than federal directives and federal education legislation normally contained strong prohibitions against federal control. It was largely because of concern about a potential abuse of federal power that the United States lagged generations behind other nations in the development of a national department of education. As is often true in the American system, concerns about liberty and local autonomy far outweighed concerns about policy objective.

Part of the vigorous defense of local autonomy historically, of course, was rooted in the struggle to preserve local traditions of minority-group separation and subordination. Fear of racial integration, concern about subsidies to religious groups, and general support for state and local control of the schools delayed federal education legislation for many years after national surveys showed public support.

Conservatives were usually the most suspicious about federal power. They constantly warned against the danger of federal control of the

2 NCLB Meets School Realities

schools when liberals and moderates tried to create federal programs that supported the growth and improvement of American schools or that challenged state and local practices of exclusion and discrimination. Others were less opposed to a federal role in education. American civil rights supporters and researchers supported an extension of federal power to deal with local discrimination and exclusion from educational opportunity. Public education supporters have for many decades favored a larger federal role in equalizing funding of schools and providing programs for poor children in schools. This was the central impulse behind the creation of the Elementary and Secondary Education Act in 1965, which led to an important federal role in public education.

The No Child Left Behind Act of 2001 (NCLB), implemented in 2002, was a startling departure from this history, both in terms of its requirements and its sponsors. It required specific large changes in the basic assessment systems of states, set requirements for progress in education in two specific subjects, contained unusual and large sanctions, and commanded many forms of specific state action. It clearly moved to the very heart of the educational process. By linking the fate of schools and faculties to achieving a nationally specified rate of progress on two tests, those tests will drive curriculum and instruction in the schools that are clearly at risk, and, in this way, the federal mandates will control the center of the educational process.

The United States has 50 different state systems of education that vary enormously in size, expertise, capacity, beliefs, and traditions of state-local relationships. States are at the center of the history and finance of public education in the United States, and they have always been accorded wide autonomy. NCLB curtailed this autonomy. It created many new requirements that states must meet and assumed that state agencies have the capacity, skill, and desire to intervene very powerfully in local school districts. Though we have a generation of experience with state interventions in failing schools, state powers have generally been used sparingly and with only limited impact. In contrast, the new law required drastic state interventions on a huge scale. State officials were not used to federal mandates that changed their basic functions, particularly mandates that they believed ignored regional differences and undermined state policy priorities.

By expanding the federal role in education, NCLB affects the politics of education and raises fundamental issues about who controls education. First, it alters federal-state relationships by expanding the role of the federal government further into a primary function of state and local governments (Table 1.1). NCLB decides what constitutes a failing school and what should be done about it. It dictates the pace of change by setting timelines for implementation and school improvement and requires all states to participate in the National Assessment of Educational Progress (NAEP) as a separate measure of student performance.

Table 1.1 Implications of NCLB for Federalism and the Governance of Education

<i>Federalism and Governance Implications</i>
<ul style="list-style-type: none"> • Alters federal-state relationships by expanding the federal role in education
<ul style="list-style-type: none"> • Affects state-level governance arrangements
<ul style="list-style-type: none"> • Introduces competition as a remedy for poorly performing schools
<ul style="list-style-type: none"> • Seeks the reform of entire educational systems

Second, NCLB affects governance arrangements within states by favoring state education agencies and chief state school officers over the governor, legislature, and state and local boards. By directing federal funds to state education agencies, it gives them the authority to administer the federally funded programs without necessarily consulting with elected officials and to make commitments to the federal government without considering how their decisions might affect state policy and state budgets (Michelau & Shreve, 2002). By placing additional accountability responsibilities on state educational agencies, it gives them authority over local boards to define what counts for proficiency and to intervene in local schools and districts. While districts and schools are held accountable, there is comparatively little accountability at the state level.

Third, NCLB introduces the market principle that competition will create incentives for low-performing schools to improve. Within this framework of competition, it shifts the focus of Title I from programs designed to improve schools to programs aimed at individual students by requiring underperforming schools to offer transfers and supplemental educational services to eligible students. Finally, instead of reforms that target special populations, NCLB seeks to reform entire educational systems by focusing on individual student achievement. Evaluation is no longer about whether a particular program is being implemented, but whether districts, schools, and student achievement improves.

When Congress enacted NCLB, it was unclear how the change in the distribution of power within the federal system might play itself out or the extent to which top-down reform could influence the educational change process. To be successful, these reforms will need to create strong political constituencies, develop professional support among those responsible for implementing them, and respond to a problem that is widely perceived by the American public. To fully understand the implications of NCLB requires examining these interactions as well as understanding the substantive educational issues the legislation raises.

4 NCLB Meets School Realities

Researchers who have examined the federal role vis-à-vis the states have found that policy implementation evolved as federally funded grant programs matured. In the early stages of implementing a new policy or program, there was often bureaucratic ineptitude, the misuse of resources, or concessions to special interests as well as conflicts between local priorities and federally initiated programs (Odden, 1991; Peterson, Rabe, & Wong, 1986). As programs matured, conflict was replaced with cooperation, and implementation was facilitated by the development of internal professional expertise and an external political support structure, which worked formally and informally to put a program in place (Odden, 1991). Conflict was greater when state and local officials were asked to carry out responsibilities that were different from what they might have initiated on their own, and cooperation was facilitated when policies reinforced local priorities (Peterson et al., 1986).

Developing this professional expertise and political support structure required collaboration between federal and state officials and federal deference to local priorities. A process of mutual accommodation evolved where policies from above were shaped to fit local circumstances, while at the same time, local conditions changed in response to reform (Amrein & Berliner, 2002; Kaestle & Smith, 1982; Knapp, Stearns, Turnbull, David, & Peterson, 1991; Loveless, 1999; Murphy, 1971; Odden, 1991; Peterson et al., 1986). Clearly, local context shaped local implementation. Even so, while collaboration and federal deference to states exemplify the operation of federalism when it works well, federal education policy has become more regulatory over time (Manna, 2003), with the national government increasingly determining policy priorities and giving state and local governments the responsibility for implementation (Cibulka, 1996). Under regulatory federalism, the state role changes from one of collaborative distribution of federal resources to one of regulating the implementation of federal requirements in local school districts. The important exception to this more cooperative federal-state relationship was the civil rights revolution of the 1960s and 1970s when the right to a desegregated education, access for handicapped students, and equal treatment for female students virtually ended practices of exclusion and discrimination in American schools. In the expansion of these educational rights, Congress, the executive branch, and the courts all played an active role in forcing change at the state and local level (Bailey & Mosher, 1968; Murphy, 1971; Orfield, 1969).

In this chapter, we argue that NCLB is testing the limits of the federal system with a fundamentally different model—one that assumes that by centralizing rules and educational policy, institutions and practice can be rapidly changed to accommodate new requirements. Our focus is on the status of federal-state relationships. In the following section, we trace how the Bush administration has approached federal-state relationships, the effect of the state fiscal crisis on shaping the political debate about NCLB, and the response of state and district officials to the expansion of federal

power into education. We then present some preliminary evidence about state capacity to implement the new requirements.

IMPLEMENTING NCLB

During the first year of NCLB, state compliance with the law's requirements was closely related to how far along states were in complying with the 1994 Improving America's Schools Act (IASA), the predecessor to NCLB. Few states had fully complied with IASA, and many were granted broad waivers through the Education Flexibility Partnership Program. When NCLB was enacted, only 19 states had fully approved standards and assessment systems mandated six years earlier under the 1994 law (Robelen, 2002). The U.S. Department of Education (ED) had granted timeline waivers to 28 states and entered into compliance agreements with five states. There was little serious enforcement of the federal requirements under IASA and no states lost federal money for noncompliance.

Under NCLB, state officials were required to submit a preliminary draft of the "Consolidated State Application Accountability Workbook" describing their standards, assessment, and accountability systems by January 31, 2003, and the completed application by May 1, 2003. The fact that state education officials met these deadlines seemed a remarkable accomplishment given that states varied in the degree to which their state accountability plans aligned with the NCLB requirements and the differences in their political structures and governance arrangements in education.¹ In June 2003, the president announced that all 50 state plans were "approved," even though ED was still reviewing many of them. Education Secretary Roderick Paige sent each state a letter declaring that ED had approved the basic elements of the state's accountability plan, although the letters noted that this was not an approval of a state's standards and assessment system or an acknowledgment that the plan complied with federal civil rights requirements. Underscoring the tentative nature of this approval was another letter from Under Secretary Eugene Hickok. These letters, sent to all the states shortly after Secretary Paige's letter, outlined aspects of the plans that needed further action or were not fully approved.²

In reality, only 11 states (21.6%) had state plans that were fully approved by ED in June 2003 when President Bush declared that all plans were approved (Table 1.2). States that had complied with the 1994 IASA requirements were only slightly more likely than states with timeline waivers to have a completed accountability plan (28.6% of states with an approved 1994 plan versus 20% of states with timeline waivers). None of the states that had entered into compliance agreements with ED had fully approved plans. Clearly, meeting the deadlines and gaining ED approval of the plans reflected a *compliance* orientation rather than real progress in implementing NCLB.

6 NCLB Meets School Realities

Table 1.2 Number and Percentage of States With Fully Approved NCLB Accountability Plans Based on Compliance With 1994 IASA, June 2003

<i>State Status</i>	<i>Approved June 2003</i>		<i>Incomplete June 2003</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
IASA Compliant (N = 21)	6	28.6	15	71.4
IASA Timeline Waiver (N = 25)	5	20.0	20	80.0
IASA Compliance Agreement (N = 5)	0	0.0	5	100.0
Total (N = 51) ^a	11	21.6	40	78.4

SOURCE: *Education Week*, August 6, 2003. Retrieved on August 1, 2003, from www.edweek.org/ew/vol-22/43account.pdf

^aIncludes District of Columbia.

Bush Administration and Federalism: An Activist Administration

Traditional views of federalism see the federal government stepping in when state and local governments would not otherwise provide a public service at sufficient levels (Peterson et al., 1986). Thus, for example, categorical programs targeted funds to disadvantaged students and students with disabilities that were not adequately served by local educational agencies. On the other hand, conservative views of federalism emphasize the prerogatives of state and local governments as the legitimate sources of policy and support the devolution of social programs to the states (Nathan, Gais, & Fossett, 2003). This view supports local decision making without interference from the federal government and assumes that states will invest funds in ways that will achieve particular policy goals. At times, Republicans have used the federal bully pulpit to change the education agenda or to meet international and economic goals, which was the case during both the Eisenhower and Reagan administrations.

With NCLB, the objectives of Republican reformers shifted from limiting the federal bureaucracy and decentralizing decision making to the states toward an activist bureaucracy that assertively promotes particular political and policy goals. However, the rationale of the Bush administration for reversing long-held Republican doctrines and expanding the role of the federal bureaucracy in education was not fully stated. The administration dodged the issue of local control by asserting that the law gave local school districts greater flexibility in the use of federal funds and by

arguing that the new testing requirements did not dictate what is taught or how it is taught (Godwin & Sheard, 2001).

The Bush administration's approach to federal-state relationships was to ignore the traditional protocol of federalism and the role of state and local governments in policy making and implementation. Early on, the administration indicated that it would strictly enforce the new requirements, particularly the implementation timelines. The presumption here was that unless the administration took a firm stand, states would "game the system." However, the administration's rhetoric alienated the very groups whose cooperation was necessary to facilitate implementation. When states began to redefine what it meant to be proficient in reading and mathematics, Secretary Paige sent a sharply worded letter to the chief state school officers, in which he accused some states of "trying to 'game' the system for short-term benefits" and of lowering "the bar of expectations to hide the low performance of their schools" (Paige, 2002). He went on to say, "Thus, it is nothing less than shameful that some defenders of the status quo are trying to hide the performance of under-achieving schools in order to shield parents from reality."

In a similar vein, when an article in the *New York Times* (Winerip, 2003) criticized the NCLB transfer provisions, Nina Rees 2003, deputy under secretary of education, responded in a letter to the editor, stating,

The concept behind the [transfer] provisions is to prompt states and districts to think strategically of ways to provide all students with a high-quality learning environment. That Chicago, Los Angeles and other districts may be limiting students' choice to transfer has more to do with their reluctance to move their systems forward and provide an equitable education for their students than it does with flaws in the federal law.

The administration also acted assertively to advance its preferred educational policies. In keeping with the administration's priorities, ED strictly interpreted the testing requirements. The lack of flexibility stemming from narrow interpretations of the law, especially as it pertained to testing, so concerned Virginia officials that Mark C. Christie (2003), the president of the Virginia Board of Education, included a letter of protest when the state submitted its final accountability plan in June 2003.

Let me state for the record that we are 'agreeing' to these amendments only because U.S. Department of Education has mandated them, and we agree only under strong protest. We do not believe these amendments represent sound or rational policies, especially the intention of U.S. Department of Education to apply future testing policies . . . to this past academic year on a retroactive basis. . . . The manner in which the federal government is imposing the policies . . . violates the principles of balanced and cooperative federalism. (Christie)

8 NCLB Meets School Realities

Christie's (2003) letter also said the formula for determining adequate yearly progress (AYP) lacked "common sense" and that it "would be unfair in the extreme . . . to impose sanctions on clearly high-performing Virginia schools." He noted that some schools with the highest ranking under the state's system would be viewed as failing schools under the federal requirements (Christie).

On the other hand, provisions of the law that were a low priority to the administration received very little attention. For example, the administration devoted very little attention in public forums or in the regulations to the high school graduation requirements, a topic that is discussed in greater detail in Chapter 6.

The final regulations on NCLB, released in November 2002, did not ease the burden of implementation for states or districts and left states with little of the flexibility they had hoped for. In particular, state officials wanted more flexibility in determining AYP and to be allowed to continue using indices that measured the extent to which schools and districts were making progress toward improving student achievement. District officials wanted more flexibility in identifying schools for improvement and implementing the student choice options. They were concerned that the regulations would limit their flexibility to assign paraprofessionals to schools and programs and that the teacher-qualification requirements would exacerbate teacher shortages in critical areas, including special education, bilingual education, mathematics, and science. To a large extent, the concerns of state and district officials were ignored by the federal government. It was not until February 2004, after the law had been in effect for over two years and there was growing resistance among the states, that federal officials began to ease some of the regulations.³

In writing the regulations, ED was constrained by the specific requirements of the statute itself in some areas, but in other areas, the administration's policy priorities shaped the regulations. Most notably, ED narrowly interpreted the issues of capacity and public school choice, mandating that lack of capacity did not preclude a district from offering public school choice to eligible students in schools identified for improvement. The administration also ignored district concerns about the impact of NCLB requirements on administrative functions. Districts argued that the choice regulations would require them to alter the timelines for the administration of tests, analysis of the data to determine AYP, and the identification of schools in need of improvement. They also argued that the choice requirement conflicted with district choice processes already in place. In addition, the NCLB choice regulations had none of the civil rights protections that were typical in the earlier federal magnet-school requirements or in the 1964 Civil Rights Act. The regulations also exempted the supplemental educational service providers from the "highly qualified teacher" requirements.

Nonetheless, under NCLB some areas were easier to enforce than others. According to the director of policy in the Office of the Under Secretary,

We recognize that we are limited by the statute in some respects and we can't go after states that don't make adequate yearly progress on that front. But, in terms of actually doing what the law requires—providing choice and not playing games—there is a serious commitment to seeing the law implemented well. (C. Wolfe, personal communication, December 10, 2002)

State Fiscal Constraints

When Congress passed NCLB, there had been significant growth in public school expenditures. Federal spending for elementary and secondary education had increased by 50% and by almost 20% for Title I between 1998 and 2001. There was also the expectation, written into the law, that appropriations for Title I would continue to grow by significant amounts to offset the increased requirements placed on states. The increase in appropriations for Title I was viewed as a condition under which the goals of the legislation could be realized. Yet NCLB was implemented at a time when state governments faced the biggest decline in state revenues in at least 20 years (Boyd, 2003). As the real costs to the states of implementing NCLB became apparent and the administration balked at helping states weather the fiscal crisis, the debate on NCLB centered around funding issues.

The constraints posed by the state fiscal crisis further contributed to conflict with federal officials, eroded state commitment to the law, and complicated implementation efforts. For nearly every state, FY 2003 was the second consecutive year of budget problems, with 39 states reporting budget shortfalls at some point during the fiscal year (National Conference of State Legislatures, 2003b). To balance their budgets, 37 states cut their budgets by nearly \$12.6 billion in FY 2002 and another \$14.5 billion in FY 2003 (National Governors Association & National Association of State Budget Officers, 2003). States used a variety of other methods to help bring budgets into balance, including across-the-board cuts to state programs (28 states) and laying off employees (17 states), areas that would include cuts to education. States continued to face significant budget challenges for FY 2004, which the National Conference of State Legislatures (2003b) forecast could be even more difficult than FY 2003.

The federal government sometimes provides revenue sharing or special grants to help states through economic downturns. This time that did not happen. At the winter 2003 meeting of the National Governors Association, President Bush confirmed his intention not to provide fiscal relief for the states, citing the federal budget deficit and the costs of war as

10 NCLB Meets School Realities

constraints on the federal budget. Instead, he promised more flexibility for states on spending and asserted that his plan to eliminate taxes on corporate dividends would boost the economy.⁴ This finally changed late in the 108th Congress as state budgets worsened and several lawmakers made a commitment to seek state fiscal relief. The federal Jobs and Growth Tax Relief Reconciliation Act signed by President Bush on May 28, 2003, provided states with modest, short-term fiscal relief. This act authorized and funded \$20 billion in fiscal relief to the states spread across two years (FY 2004 and FY 2005), with half devoted to flexible grants to states and half to help support Medicaid. While this aid was welcomed by states, it was temporary and relatively small.

Since education makes up a major portion of state budgets, education budgets were threatened by the state budget problems.⁵ A number of states made cuts to their elementary and secondary education programs to help balance the budget in FY 2003 and FY 2004. In California, a state with one of the largest budget shortfalls, the governor made some across-the-board spending reductions, asked state agencies to trim 20% from their budgets, and sought wage reductions (National Conference of State Legislatures, 2003a). The governor of Ohio signed an executive order in March 2003 that cut funding for the Ohio Department of Education by \$9.3 million and state aid to schools by \$90.6 million (Ohlemacher & Okoben, 2003). The governor, a Republican, was battling a Republican-controlled legislature's refusal to approve a budget that included increases in taxes. The budget cuts affected districts, which were forced to make painful decisions to lay off teachers, shorten the school year, or reduce class size (Gewertz & Reid, 2003).

In light of state budget problems, questions over NCLB funding levels became political ones. As part of the compromise to pass the bill, NCLB promised large increases in spending for Title I, and indeed, in the first fiscal year (FY 2002), there was an 18% increase from the prior year in Title I grants to local educational agencies and a 17% increase overall for elementary and secondary education (Table 1.3). However, this level of increase was not sustained, with the size of the increase declining in subsequent years. By FY 2004, appropriations for Title I were increased 5.6% from the prior year and appropriations for elementary and secondary education were increased by 5.1%. In contrast, the president's 2004 proposed budget, if adopted, would have decreased appropriations for elementary and secondary education by 2.6%.⁶ The Democrats argued that the administration's budget proposals broke the promises made when NCLB was enacted to provide adequate resources for reform (Miller & Kennedy, 2003). When the bill passed, there was a bipartisan agreement to significantly increase financial resources in exchange for enacting the tough accountability provisions. This agreement was reflected in the appropriation levels contained in the bill.⁷ The Republicans countered that "the federal government is now spending far more money for elementary and secondary education than at any time in our nation's history" (Boehner,

Table 1.3 Title I Grants to Local Education Agencies (LEAs) and Total Elementary and Secondary Education Appropriations, FY 1998–2004

<i>Fiscal Year</i>	<i>ESEA Title I Grants to LEAs</i>	<i>% of Increase From Prior Year</i>	<i>Total Elem. and Secondary Appropriation</i>	<i>% of Increase From Prior Year</i>
1998	\$7,375,232	1.09	\$18,530,936	10.16
1999	7,732,397	4.84	21,348,939	15.21
2000	7,941,397	2.70	23,086,299	8.14
2001	8,762,721	10.34	27,897,393	20.84
2002	10,350,000	18.11	32,692,494	17.19
2003	11,688,664	12.93	35,723,818	9.27
2004	12,342,309	5.59	37,556,817	5.13

SOURCE: "Education Department Budget History Table: FY 1980–Present," U.S. Department of Education. Retrieved on October 4, 2004, from www.ed.gov/about/overview/budget/history/

2003). This claim was true in absolute amounts but it was not true in terms of the federal share of total educational expenditures, which remained at about 7% of total educational spending.⁸

The administration continued to maintain that the money was sufficient to cover the costs of implementing NCLB. One Republican Congressional aide said it was difficult to tell how the state shortfall would affect implementation of NCLB, adding that "if the state budgets are under pressure, certainly the federal budget is as much, if not more so, because of the defense and homeland security commitments that state budgets don't have" (Congressional aide, personal communication, February 21, 2003). This aide believed that the funding for NCLB was enough to offset the costs of implementing the bill, especially if "you actually ask people to make better decisions with the money that they are getting." Echoing similar comments made by President Bush,⁹ the aide said,

It's not just a matter of how many resources you have. It's a matter of how you spend your resources. And if you are a failing school or a failing school district, you don't necessarily need a huge infusion of funds. . . . It's also a matter of deciding how to better use those funds—be it on the curriculum, be it on better teachers, or . . . preparing your paraprofessionals. It may be not focusing on a music program and instead using your music dollars for a reading

12 NCLB Meets School Realities

program. There are just so many decisions—minute decisions that can be made at both the district level and actually at the school level. So that it's a matter again not just of level of resources but how you use the resources. (Congressional aide, personal communication, February 21, 2003)

During the 108th Congress, support for additional funding for NCLB broke down along party lines. Democratic attempts to raise the funding levels for NCLB for FY 2004 were defeated by the Republicans. In June 2003, Senator Dick Durbin (D-IL) introduced the Federal Fair Accountability Includes Resources Act in an effort to protect states from unfunded mandates. The bill, which was defeated along partisan lines, would have given states the option of deferring the mandated corrective actions required by NCLB in years when the promised federal funding was not appropriated.

When Congress enacted NCLB, there was little attention devoted to what it would cost states to implement the requirements. There was some attention to the costs of meeting the additional testing requirements but none in terms of meeting additional staffing requirements. As implementation proceeded, states began to examine how the costs of implementing NCLB balanced out against the additional resources provided by the law. Several studies suggested that NCLB would cost states considerably more than the funds appropriated by the federal government (Driscoll & Fleeter, 2003; General Accounting Office, 2003; Mathis, 2003; New Hampshire School Administrators Association, 2002; Office of the Legislative Auditor, 2004; Vermont Society for the Study of Education, 2002). These studies broke down the costs across different program areas and figured in the additional administrative costs of implementing the new requirements. They indicated that, while the added costs of assessments and data collection systems were substantial, the costs of providing administrative support and remedial instructional services to poorly performing districts and schools were even greater, especially as the number of schools and districts identified as "in need of improvement" would grow in future years. As this information became available, many states passed legislation preventing districts from spending additional money to implement NCLB.

Increasing Political Opposition Within the States

This expansion of federal power into education was met by growing ambivalence toward the legislation among Republican as well as Democratic leaders and increasingly vocal opposition among state and local policymakers and educators. As implementation proceeded at the state and local level, many of the issues that had not been adequately addressed in the bill became apparent as political leaders began to understand how the law's provisions affected state and local priorities. At the same time, the administration's approach to implementation and federal-state relationships did little to quell the growing opposition to the law.

State Level

Among state elected officials, NCLB did not garner the sustained political support necessary to insure implementation. Early on, the National Conference of State Legislatures opposed the legislation as an unwarranted intrusion on state power, and the nation's governors raised concerns about the cost of NCLB. In February 2003, the National Governors Association released a policy statement, agreed to by both Republican and Democratic governors, that labeled NCLB an unfunded mandate and called for greater flexibility and additional funding to support NCLB. The governors, who generally supported the intent of NCLB, approved a policy statement requesting that "in fiscal year 2004, the federal government provide funding for federal mandates and programs." They made it clear that they considered NCLB a federal mandate and called for a more "responsive federal-state partnership." With NCLB, the governors supported "maximum flexibility for states and school districts to combine federal program dollars and pursue our own strategies for raising student achievement" (National Governors Association, 2003).

As implementation proceeded, dissatisfaction with the law reverberated within the statehouse where policymakers voiced concerns about local control and the costs of implementing NCLB. These issues cut across political and ideological lines. Lawmakers, including many who initially had supported the goals of NCLB, now saw the law as overly punitive and lacking adequate funding. In Virginia, the House passed a resolution calling on Congress to exempt states such as Virginia, which had a well-developed accountability plan in place, from the NCLB requirements. The resolution called NCLB "the most sweeping federal intrusion into state and local control of education in the history of the United States, which egregiously violates the time-honored American principles of balanced federalism and respect for state and local prerogatives" (Virginia HJR 192, 2004). Legislators believed the state had an accountability system that set high standards and a demonstrated track record of school accountability and improved student achievement. They were concerned that the changes required by NCLB would undermine the success of their program. The resolution passed 98 to 1, with the lone dissenter a Democrat.

After extensive lobbying by the Bush administration, the Republican-controlled Utah House modified a law that would have prohibited the state from participating in NCLB. Instead, the law was amended to prohibit the state and local districts from participating in NCLB except when there was adequate federal funding (No Child Left Behind Options Bill, 2004). Other states, including Vermont, Hawaii, Connecticut, North Dakota, Oklahoma, and New Hampshire passed similar resolutions in the 2004 legislative session. Moreover, in March 2004, the chief state school officers from 15 states sent Secretary Paige a letter asking for more flexibility in determining which schools were making AYP.¹⁰

14 NCLB Meets School Realities

The extent of the opposition to the NCLB legislation is unprecedented in its scope and depth. For example, only two states vigorously objected to the federal Goals 2000 legislation. While many of the resolutions protesting NCLB were symbolic, the number of states passing or introducing them as well as the number of Republican states that opposed the legislation sent a powerful political message to Washington. The Bush administration's approach to federal-state relations combined with implementation that coincided with the state fiscal crisis and the emerging realization of the law's intrusiveness into local control of education contributed to the political opposition to NCLB.

District Level

Dissatisfaction with the law and its requirements among district officials and local educators increased as they began to see its effects on schools and local priorities. Arne Duncan (2003), the CEO of the Chicago Public Schools, criticized the act as creating enormous bureaucratic burdens and called it "a complex and impractical new mandate that sets overly ambitious yearly improvement standards." He was particularly critical of the AYP provisions that identified 365 out of 600 schools (61%) in Chicago as needing improvement in 2003–04, and he questioned whether the NCLB transfer options would help improve student learning. "Only in Washington would they devise a system to punish schools that improve, instead of rewarding them for making gains. It sends the wrong message" (Duncan).

Some school districts voiced their dissatisfaction with the law either by rejecting Title I or by reallocating Title I funds away from certain schools so they are not subjected to NCLB sanctions for failing to make adequate progress. School administrators in at least 14 states developed position papers on NCLB. In Pennsylvania, over two-thirds of the state's 501 school superintendents signed a position paper outlining the unintended consequences and contradictions in the law and how these affected district capacity to meet the NCLB goals. The Reading School District (Pennsylvania) filed suit against the Pennsylvania Department of Education for not providing adequate resources to allow the district to meet the AYP goals.

Educators questioned the legitimacy of the NCLB school improvement designations, particularly when they conflicted with the state accountability system. A school could be labeled as needing improvement under the federal system but be considered performing adequately under the state system. As one principal in a northern Virginia suburban district observed, NCLB is "not a meaningful way to judge schools. The state has a far better plan in terms of looking at accreditation—that's still our focus" (Helderman, 2003).

As sanctions went into effect, particularly the requirement that districts offer students the option to transfer to another public school, dissatisfaction with the law and its effects on local schools spread. In the New York

City Public Schools, under Chancellor Joel I. Klein, over 7,000 students transferred in fall 2003, "contributing to the worst overcrowding of schools in years" (Winerip, 2003). This angered the principals and parents who had to put up with the overcrowding, as well as the teachers union and state assembly representatives. Representative Anthony Weiner (D-Brooklyn) introduced the School Capacity Relief Act (2003) that intended to "authorize local education agencies to prohibit the transfer of students under section 1116 of the Elementary and Secondary Education Act of 1965 to schools that are at or above capacity, and for other purposes." In Chicago, district officials limited the number of transfers based on school capacity. Still, receiving schools were openly opposed to accepting transfers, fearing the new students would pull down their test scores. In some cases, the transfer policy undermined local goals. For example, the transfer plan went against a policy adopted by the local school council at one Chicago high school, which aimed to reduce enrollment while limiting the number of students from outside the community (Adkins, 2003).

State Capacity to Implement NCLB

NCLB requires state departments of education to perform many functions that they were not traditionally designed to do. Prior to NCLB, most state departments of education monitored districts for compliance with federal and state requirements, granted teacher certification and school accreditation, served as a flow-through for federal and state education monies, and tested students on standardized achievement tests. Under NCLB, states are required to intervene in poorly performing schools on a larger scale than they have ever done before, expand their testing requirements regardless of their capacity to do so with reliable and valid tests, and expand their data collection and reporting mechanisms. State departments of education were expected to make these changes without adequate consideration of the resources—both financial and human—they would need.

To understand state capacity to meet the requirements of the law, we analyzed the status of the consolidated accountability applications submitted in January 2003. We conducted this analysis midway through the process because it showed where states were in the process of completing their state accountability plan and offered a way to determine which elements of the plans were easy to meet and which were more difficult. To conduct this analysis, we used the consolidated applications from 41 states that had submitted accountability applications by March 2003. The application included a worksheet, which summarized the status of 10 principles required by the application. Each principle contained between one and six elements (see the Resource section for a summary of the principles and elements). For each element, states indicated if they were working to formulate a policy, had a proposed policy and were waiting for state approval, or had a final state policy. For our analysis, we summarized the status of each element that was reported by the state on its application.

16 NCLB Meets School Realities

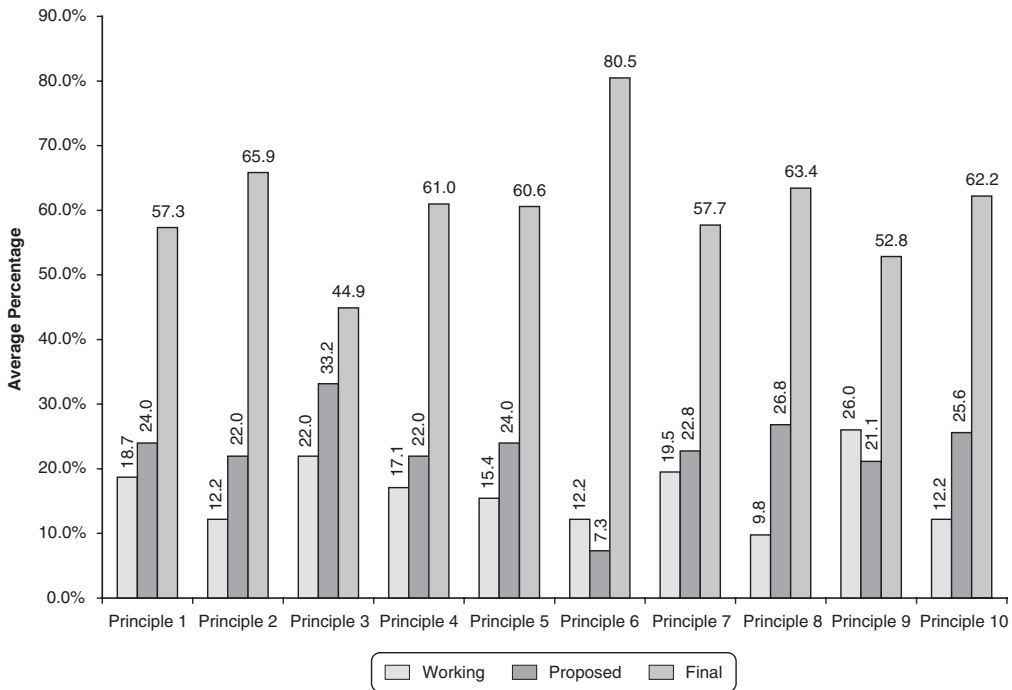
A summary of the status of the required principles is presented in Figure 1.1. This summary shows the average percentage of states that were working to formulate a policy (W), had a proposed policy (P), or had a final policy (F) for each principle. States were most likely to have a final policy on Principle 6 (accountability system is based primarily on academic assessments). This is not surprising since states were required to develop assessments in three grades under the 1994 law. They were least likely to have a final policy on Principles 3 and 9, which pertain to developing a method to determine AYP and building a reliable and valid accountability system. Both of these principles require a number of difficult psychometric decisions, such as the use of consistency rules, test linking, or equating one test to another as states added new grades to their assessment system.

These findings suggest that many states may not have the capacity needed to deal with technical assessment issues. Leading states, such as Virginia and New York, had technical advisory panels made up of psychometricians that assisted them with meeting the assessment requirements. However, since there is a limited supply of psychometricians, and many serve on several advisory panels, some states may have difficulty finding the expertise they need. Indeed, nationwide there is a shortage of specialized personnel, especially psychometricians who can devise tests, monitor their validity, and develop the infrastructure needed to support extensive testing (Henriques, 2003; Jorgensen, 2002). In short, the technical demands imposed by NCLB appear to exceed many states' capacity to handle complicated psychometric problems. This poses a serious risk that the tests created under the act may not meet the important requirements of the law mandating that the tests reflect what is taught and are valid indicators of student achievement. It also raises questions about whether the nation has the expertise necessary to justify investing huge sums of money in test development.

An analysis of the separate elements that make up each principle indicates that few states had a final policy for Elements 1.6 (accountability system includes rewards and sanctions) and 5.2 (the accountability system holds schools and local districts accountable for the progress of student subgroups). This is also not surprising, since the required interventions, particularly providing supplemental educational services, were not something states had done before. Moreover, the required interventions were highly unpopular with many educators, and there was no research basis for what was likely to work. A report by the General Accounting Office (2002) found compliance with subgroup accountability difficult for states to meet under the 1994 law so it is not surprising that few states had a final policy for this element.

As implementation of NCLB proceeds and states are required to intervene more extensively in poorly performing schools, state capacity issues are likely to intensify, especially as the number of schools failing to meet the AYP targets increases. For example, prior to NCLB, the Maryland State

Figure 1.1 State Accountability Plans, Average Percentage of States Working to Formulate a Policy (W), Proposed Policy (P), and Final Policy (F) for Each Principle (Based on Accountability Plans in 41 States)



Department of Education had taken over three schools since 2001. By 2004 under NCLB, there were 75 schools identified for improvement that were in “restructuring.” School restructuring is the most severe sanction and requires schools to implement alternative governance arrangements, which may include turning the operation of the school over to the state or to a private management company. The state must also provide technical assistance. To help schools and districts that have been identified for improvement, state officials will need to insure they have the basic financial and staff resources needed as well as the capacity to take on new roles and build the necessary relationships with local officials.

CONCLUSIONS AND IMPLICATIONS

NCLB represented a major change in federal-state relationships, where the federal government imposed one model of accountability based on mandated annual test-score gains across all states with the expectation that states would implement the federal priorities. However, the success

18 NCLB Meets School Realities

of NCLB will require coordination and cooperation across levels of government; the nurturing of a professional constituency that supports the goals of the legislation; and professional and technical expertise to interpret, administer, and manage the new programs and data systems. Yet both the professional support and expertise needed to carry out these requirements vary widely among the states, and in the first two years, there was limited effort by the federal administration to obtain the cooperation of the professionals who must implement the law. While NCLB is highly prescriptive, the legislative requirements may not be easily translated into programs that state and local officials can carry out. The lack of flexibility by federal officials on some of the requirements eroded public and political support for the law, and the financial requirements of the law and the effects of sanctions negatively impacted districts and schools. Without the support of professional administrators, the political visibility of the NCLB requirements has increased, focusing attention on the local effects of the program rather than its contributions to improving schooling (Peterson et al., 1986).

The Bush administration recognized the political significance of educational policy and moved aggressively to promote its education agenda with the American public. It seemed less aware of the institutional and organizational impediments to dramatically changing state accountability systems and educational practice and did not have a well-articulated implementation strategy to address these issues. Its strategy—to adhere strictly to implementation timelines and threaten to withhold Title I funds to states that had not complied—carried a number of risks for both states and the federal government. Only in the face of growing political opposition from the states did the administration begin to loosen some of the law's requirements, and then only slightly. States may choose to go their own way if the requirements become too burdensome or the federal government may be forced to carry out its threat of withholding funds, thereby further exacerbating a state's fiscal situation. It is also unclear what the political and policy fallout will be if NCLB fails or what will happen to the low-income students in Title I schools who will not be able to meet the AYP.

Since NCLB is by far the largest K–12 federal education program affecting disadvantaged students, it is imperative that the federal government brings state and local officials and educators into the process to work through the administrative and policy issues. When the implementation of federal grant programs works well, there is collaboration across levels of government and federal deference to local priorities, something that has not been evident so far in the process of implementing NCLB. Under the Bush administration, the federal government took a leadership role and assertively advanced its own political and policy goals while ignoring the role of state and local governments in the policy process. Given the fact that federal priorities are constantly subject to legislative

and appropriation decisions by a Congress that is generally far more responsive to state and local preferences than standards set in federal agencies, we expect serious conflict and significant changes in policy over time. As Kaestle and Smith observed in 1982, “local control, local initiative, and local variation constrain the number of educational issues the federal government can address and the degree of standardization it can or should impose.” This tradition of local control gives states considerable power to shape the future direction of NCLB.

The conclusion that the federal administration failed to establish a collaborative relationship with state and local officials should not be taken to mean that the status quo in state and local systems was adequate for minority students or that there were no legitimate reasons for the federal government to urgently work for more progress in improving student achievement and demanding greater accountability. Clearly, the federal role in requiring schools to provide greater access and opportunity for minorities—female and handicapped students, for example, was an important contribution to American education. Rather, it is an observation that the reliance on regulations and aggressive enforcement of the law were often ineffective and sometimes counterproductive in working toward the goals of NCLB. The record of Title I before NCLB was not adequate and surely the federal government should have a significant role in implementing reform. The later chapters discuss how that might be accomplished.

RESOURCE

Required Elements for State Accountability Systems

Principle 1: All Schools

- 1.1 Accountability system includes all schools and districts in the state.
- 1.2 Accountability system holds all schools to the same criteria.
- 1.3 Accountability system incorporates the academic achievement standards.
- 1.4 Accountability system provides information in a timely manner.
- 1.5 Accountability system includes report cards.
- 1.6 Accountability system includes rewards and sanctions.

Principle 2: All Students

- 2.1 Accountability system includes all students.
- 2.2 Accountability system has a consistent definition of full academic year.
- 2.3 Accountability system properly includes mobile students.

20 NCLB Meets School Realities

Principle 3: Method of AYP Determinations

- 3.1 Accountability system expects all student subgroups, public schools, and Local Education Agency (LEAs) to reach proficiency by 2013–14.
- 3.2 Accountability system has a method for determining whether student subgroups, public schools, and LEAs made AYP.
 - 3.2a Accountability system establishes a starting point.
 - 3.2b Accountability system establishes statewide annual measurable objectives.
 - 3.2c Accountability system establishes intermediate goals.

Principle 4: Annual Decisions

- 4.1 Accountability system determines annually the progress of schools and districts.

Principle 5: Subgroup Accountability

- 5.1 Accountability system includes all the required student subgroups.
- 5.2 Accountability system holds schools and LEAs accountable for the progress of student subgroups.
- 5.3 Accountability system includes students with disabilities.
- 5.4 Accountability system includes limited English proficient students.
- 5.5 State has determined the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data were used.
- 5.6 State has strategies to protect the privacy of individual students in reporting achievement results and in determining whether schools and LEAs are making AYP on the basis of disaggregated subgroups.

Principle 6: Based on Academic Assessments

- 6.1 Accountability system is based primarily on academic assessments.

Principle 7: Additional Indicators

- 7.1 Accountability system includes graduation rate for high schools.
- 7.2 Accountability system includes an additional academic indicator for elementary and middle schools.
- 7.3 Additional indicators are valid and reliable.

***Principle 8: Separate Decisions for
Reading/Language Arts and Mathematics***

- 8.1 Accountability system holds students, schools, and districts separately accountable for reading/language arts and mathematics.

Principle 9: System Validity and Reliability

- 9.1 Accountability system produces reliable decisions.
9.2 Accountability system produces valid decisions.
9.3 State has a plan for addressing changes in assessment and student population.

Principle 10: Participation Rate

- 10.1 Accountability system has a means for calculating the rate of participation in the statewide assessment.
10.2 Accountability system has a means for applying the 95% assessment criteria to student subgroups and small schools.

SOURCE: Office of Elementary and Secondary Education, U.S. Department of Education, at www.ed.gov