

Control, Persuasion, and Educational Accountability

Implementing the No Child Left Behind Act

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This article examines early implementation of the No Child Left Behind Act's (NCLB) accountability provisions. Theoretically, the author explains how executing education policy in the United States requires federal officials to employ tactics designed to assert control over state implementers while persuading them to adopt federal priorities as their own. Empirically, the main objective is to reveal how control and persuasion have been integral to early federal efforts to keep NCLB on track. The data come from several sources describing state implementation of NCLB and federal efforts to influence state actions during 2002 to 2004. Overall, the author argues that understanding NCLB implementation as a series of control and persuasion challenges confronting federal officials will enable observers to better assess the law's performance.

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During the legislative process that produced the No Child Left Behind Act of 2001 (NCLB), President George W. Bush's top education adviser, Sandy Kress, captured the key policy challenge facing federal leaders. Reflecting on the task before them, Kress noted, "What makes this tough is designing something that will work in 50 very different states, and then figuring out how you can leverage change when you're only paying

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7 percent of the bill” (Broder, 2001, p. B7). From Bush’s perspective, real accountability and aggressive enforcement of this latest round of the Elementary and Secondary Education Act (ESEA) were critical components of the leveraging that Kress had identified. On the campaign trail in 2000 and during 2001, Bush and others criticized past federal officials for their unwillingness to hold state and local governments to the ESEA’s requirements.

On signing NCLB into law in January 2002, Bush emphasized the federal government’s new commitment to real educational accountability. At Hamilton (Ohio) High School, Bush described NCLB’s driving principle: The “first principle is accountability. . . . So in return for federal dollars, we are asking states to design accountability systems to show parents and teachers whether or not children can read and write and add and subtract in grades three through eight.” In closing, the president reminded listeners that “There are no more excuses, as far as I’m concerned, about not teaching children how to read” (White House Office of the Press Secretary, 2002).¹ The fundamental logic of the president’s speech, grounded in “high-stakes” as opposed to “suggestive” accountability (Hess, 2003, pp. 57-58), attempted to make clear his get-tough approach. Put simply, accountability through standards and annual testing would become the centerpiece of the nation’s education reform efforts. The president and others envisioned NCLB as providing federal officials with a powerful stick to force needed state reforms, something that previous versions of the ESEA lacked.

Wielding statutory and budgetary power to enforce federal law is only one way to gain leverage though. Often, it is not even the best approach for federal policy makers to pursue, as many program implementers will attest. Especially in education, assertive enforcement can actually hamstring federal officials as they attempt to achieve their policy objectives because Washington’s leaders typically rely on state cooperation for their initiatives to work. Of course, simply because enforcement is not a panacea for producing success does not mean it is unimportant. Rather, the combination of careful enforcement and creative persuasion from Washington’s leaders typically is needed to produce desirable outcomes (Milward & Provan, 2000; O’Toole, 2000).

My main objective in this article is to reveal how control and persuasion have been integral to early federal efforts to keep NCLB on track. Overall, I argue that understanding NCLB implementation as a series of control and persuasion challenges confronting federal officials will enable observers to better assess the law’s performance. I develop that argument in three sections.

The first section introduces two perspectives on implementation, one focusing on control and the other on persuasion. Those perspectives generate several hypotheses about policy implementation. If NCLB is primarily about federal officials battling their state counterparts for control, what federal actions would one likely observe? Conversely, if persuasion and compromise are guiding Washington's approach, what federal actions would those strategies generate? The answers to those questions provide the organizing frame for the second section. There, I draw on data from a variety of primary and secondary sources that document federal responses to state implementation of NCLB's accountability provisions. The evidence shows how control and persuasion have been relatively coequal strategies that federal officials have mustered since NCLB became law. In the third section I return to broad themes to stress why considering both control and persuasion allows one to better account for the range of policy dynamics that NCLB has unleashed.

Two Perspectives on Intergovernmental Policy Implementation

In any policy system where actors at one level of government depend on other levels to help them accomplish their objectives, a careful combination of enforcement and persuasion is required for policy success. These combinations produce a diverse set of dynamics in the American federal system. Scholars from several disciplines have studied the enforcement angle by applying principal-agent models to policy implementation (Bendor, 1988; Bendor, Glazer, & Hammond, 2001; Miller, 1992). Working from a different but not completely separate perspective, public management scholars have engaged the persuasion issue, in part, by framing policy implementation as a challenge of coordinating loosely coupled policy networks (O'Toole, 2000; Salamon, 2002). Both the control and persuasion perspectives are valuable for understanding education policy outputs in the American federal system.

Implementation as Control

The logic of standards and test-based accountability in education suggests a compelling logic of control. Why have standards and tests at all? One reason is so that leaders at upper levels of the policy system can compel actors at lower levels to produce desired results. Lacking confidence in

state governments to guarantee high student achievement, federal officials have attempted to seize more control with NCLB's prescriptive accountability components. This is a generic feature of policy systems that involve actors at multiple levels. For example, Moe (2003) has argued that there is nothing unusual about the logic of standards and tests to secure accountability in education; essentially "all organizations need to engage in top-down control, because the people at the top have goals they want the people at the bottom to pursue, and something has to be done to bring about the desired behaviors" (p. 81).

In the NCLB context, specifically, Moe (2003) frames the policy space as a battle for control with federal and state leaders on one side and local school officials, most prominently teacher unions, on the other. However, because NCLB relies on state legislation for it to succeed, it is not unreasonable to consider the lines that could separate federal principals who created NCLB and state agents who have important responsibilities for carrying it out. In short, a full accounting of the control issues that NCLB raises should also consider potential battles between federal and state officials. These groups are not necessarily always on the same side.

After NCLB's passage, for example, some state officials reacted to the federal emphasis on accountability like card players at a poker table, calling what they perceived to be a bluff from the Bush administration. Given the weak track record of past federal enforcement of the ESEA (Ravitch, 2001; Taylor & Piché, 2002), some state education officials believed that policy realities would overwhelm the administration's rhetoric. Speaking of NCLB's teaching requirements, for example, Colorado commissioner of education William J. Maloney stated bluntly, "Will we have a qualified teacher in every classroom by 2005? No, of course not." California's state schools superintendent, Delaine Eastin, agreed: "You can't just wave a magic wand and say we need to have more teachers. . . . It's a resource issue" (Olson, 2002a, p. 1).

The literature on principal-agent relationships provides a compelling framework to elaborate some of the federal-state control issues that NCLB raises. Several works have described the principal-agent perspective and its various nuances (Bendor, 1988; Bendor et al., 2001; Miller, 1992). At its core, this approach posits a relationship between a principal, known colloquially as the boss, and an agent, the boss' subordinate, who is assigned the task of carrying out the boss' commands. The relationship between the principal and agent is strategic. That means both bosses and subordinates possess goals that may or may not coincide; and even though they may communicate regularly with each other, their thinking and planning are not

necessarily transparent, which can create information asymmetries in the relationship.

Working in a policy context, principals confront a major challenge as they develop a law, regulation, or some other formal order. Bosses must consider how to control their agents while offering agents needed discretion so they can act effectively. Balancing commands, which aim to control agent behavior but may prove stifling, with formal discretion, which provides needed flexibility but also may facilitate agent shirking, is the key policy design problem that confronts principals.

Scholars have used different versions of the principal-agent lens to explore examples of policy implementation in the American federal system, including in the field of education (Chubb, 1985). Regardless of the topic, this work typically begins by defining the explicit roles of principals and agents in terms of hierarchy and control, a common understanding of the principal-agent approach that political scientists frequently employ. However, these works are not simplistic portrayals of implementation. Control and hierarchy are central to their arguments, but still, nearly all attempt to incorporate the interactive forces that characterize the strategic relationships between principals and agents.

Among other things, a perspective based on control would predict two types of behavior from federal principals trying to implement NCLB. First, rhetorically, administration officials would be clear to their state agents about their expectations. To be persuaded that federal leaders were serious about ESEA enforcement, state-level implementers would need to hear consistent messages from federal policy makers about their strong commitment to the law.

Furthermore, state agents would be more likely to take their principals seriously when the latter back their words with strong, consistent actions. Talk alone can be cheap, and principals can actually undermine their authority if they just offer tough words. The second expectation, then, is that federal officials would back up their tough talk with actions, such as resisting state requests to alter timelines or requirements outlined in NCLB and its accompanying regulations. Accommodating these requests could dilute NCLB's potency and foster beliefs that it was primarily about suggestive accountability alone (Hess, 2003) in which federal officials issue commands but intend them to only serve as loose guidelines. In seeking control, federal leaders would also act swiftly to issue real sanctions, even financial penalties, when states violate the law. Simply turning back waiver requests is one thing; actually issuing punishments is quite another.

Implementation as Persuasion

Conceptualizing intergovernmental policy implementation primarily in terms of control is incomplete, however, as classic works have documented (Pressman & Wildavsky, 1984; Wilson, 1989) and current scholars of public management and administration have increasingly recognized (Brudney, O'Toole, & Rainey, 2000; Heinrich & Lynn, 2000; Salamon, 2002). Today, because actors from several separate chains of command contribute to policy implementation, success depends as much or more on rallying a constellation of key stakeholders as it does on leaders issuing orders to subordinates. This is especially true when intergovernmental grants, a common tool policy makers employ in education, are involved (Beam & Conlan, 2002). Several works have elaborated these themes both theoretically and empirically. Consider these following examples from leading scholars of political science, public administration, and public management.

For example, Wilson (1989) motivates the overall argument in his classic work by discussing administration in armies, prisons, and schools. He notes that even though these organizations contain elements of hierarchy within and across the policy areas they address, performance can vary significantly depending on leadership and the particular context. Based on their own skills and the institutional constraints confronting them, leaders in some situations are simply more able to mobilize the resources and allies necessary to produce success. In a parallel argument, O'Toole (2000) summarizes some of the key challenges facing public managers in networked, rather than purely hierarchical, environments. He argues that "network contexts increase the range of potentially manipulable variables subject to managerial influence. At the same time, however, networks also increase uncertainty and decrease institutional fixedness for *all* actors in the setting. Managers have more levers available, but so do others" (p. 20).

Certainly, it is true that federal grant programs, such as those in Title I of the ESEA, create a formal hierarchical relationship between the federal government and the states. States accept federal dollars under conditions specified in the grant, which suggests lines of authority and responsibility should be clear. However, that theoretical clarity does not necessarily exist in practice because in education policy there are no simple answers to the question Who is the state?

Many observers forget that individual states do not govern K-12 education as unitary actors. Leaving aside the thousands of school districts that dot the nation's landscape and considering only state-level institutions still leaves complicated lines of authority. At the state level, multiple actors

develop, produce, and implement K-12 education policy. Major players include a state's governor and legislature, the state board of education, and the state education agency, which is typically headed by the chief state school officer (sometimes called the state superintendent). Depending on the state, different actors wield varying levels of influence and may even operate independently of one another. This variation is partly a function of the paths to power for leaders occupying education policy making positions in the states. Those arrangements have significant implications for state implementation of NCLB because board members, education chiefs, legislatures, and governors are all potential state agents involved in making federal policy work.²

These networks of shared authority can wreak havoc on federal leaders who seek control to enforce federal requirements. For example, Michael Cohen (2002), a former assistant secretary of education under President Clinton, described the limits confronting federal officials who may crave control but rely heavily on the states. Cohen noted how after the adoption of Goals 2000 legislation and the reauthorization of the ESEA in 1994 "many states delayed the development of assessments for several years" (p. 44), which put them behind on work federal law required them to complete by 2000. Subsequent discussion will show how President Bush and others have identified those delays as evidence that past federal officials have been weak-kneed enforcers. Cohen recognized the potential criticism, however, by noting, "Once that delay occurred and once a state began good-faith efforts to develop the assessments, there was little either the state or the federal government could do. . . . No sanctions could speed up the process at that point. Some view these decisions as evidence of lax enforcement, but I see it as evidence of the *limits* of the department's enforcement ability" (pp. 44-45).

On rhetoric and policy actions, an implementation perspective grounded in persuasion would generate different expectations than the control perspective I described earlier. Consider two hypotheses, in particular, again organized around rhetoric and policy actions. First, rhetorically, federal officials would certainly express strong preferences that state leaders should obey the law; but one would also expect federal officials to offer more conciliatory language conveying support and encouragement. If NCLB is indeed the significant substantive break from past federal policy that its advocates have described, then surely it must represent a commensurate shift for states, too. Words of support that recognize those changes would figure prominently into a strategy that sought to persuade, not simply command, states to join in.

Second, on the policy side, an approach grounded in persuasion would begin by assuming that policy makers working in complex, information-rich arenas are inevitably hamstrung by their own cognitive limitations (Jones, 2003). In short, the federal lawmakers and administrators who crafted NCLB and its regulations are imperfect, but well-meaning, actors. Recognizing these human limits would likely move federal officials to consider the law itself, and in particular its supporting regulations, to be starting points that will inevitably require future adjustment. Tyack and Cuban (1995) have described a parallel view, which considers laws as “hypotheses” that guide rather than dictate action. Serious state concerns about the need to change rules that govern NCLB, and perhaps the overall law itself, would likely move federal officials frequently, but not always, to adjust policy to accommodate these state interests. That would help persuade states to continue supporting the law and its overall goals. Furthermore, working in a persuasive mode, federal officials would sanction states only rarely and only as a last resort after extensive consultation with state leaders about their particular situations.

These two perspectives based on control and persuasion provide important organizing frames for understanding NCLB’s relatively short history and its likely future. Collectively, they allow observers to account for a wide range of rhetorical strategies and policy actions that federal officials have employed. The next section uses these two perspectives to organize and explain implementation of the law’s accountability provisions, which arguably represent NCLB’s substantive core.

Control, Persuasion, and NCLB Implementation

The NCLB Act is a complicated law. In part, it requires states to develop educational accountability systems organized around annual testing and standards. Creating those systems involves several things. Most generally, states are charged with developing a set of examinations aligned with state content standards in reading and math for Grades 3 through 8. States must complete this work by the 2005-2006 school year.³ Policy makers will use these tests and additional measures of student success, known as “other academic indicators,” to hold schools and school districts accountable for the performance of all students regardless of the students’ race, economic status, and other characteristics. In developing their accountability systems, states need to show how they will measure yearly gains, known as Adequate Yearly Progress (AYP), so that in all schools and districts, all students are proficient in the core subjects of reading and math by 2014.

Focusing on the law's testing and accountability provisions provides a good opportunity to see how federal leaders have asserted control and used persuasion to accomplish their objectives. President Bush has described these provisions as the cornerstone of his educational reform approach (Blum, 2001), and states have experienced difficulty implementing these parts of the ESEA (Olson, 2002c, 2003b; Schemo, 2004a). How have federal officials responded to the relatively long list of policy challenges that states have identified? Have they asserted control and broken with past styles of ESEA enforcement? Or have they continued, like their predecessors, to take a more conciliatory approach aimed at persuading states to keep making steady, if not rapid, progress? This second major section of the article draws on diverse data sources to address those issues. In the process, the evidence shows why analysts and scholars should continue to ask these questions as they monitor NCLB in the coming years.

Federal Control

Federal principals' attempts to assert control over state agents have emerged primarily in two forms during NCLB's implementation. First, administration officials have used the bully pulpit to warn, scold, and threaten state leaders with punishment should they not faithfully implement the law. Second, since President Bush signed NCLB, the policy choices of administration officials have frequently backed up that rhetoric. Here, I consider these rhetorical and policy strategies in turn.

Tough talk. Shortly after President Bush signed NCLB into law, Secretary of Education Rod Paige met with state education chiefs at George Washington's Mount Vernon home. In hoping to set a strong tone as NCLB was emerging from the starting gate, Paige stressed that the administration was seriously committed to the law's provisions. He drew on his previous experience as a teacher and district administrator to note how his department would not tolerate shirking, excuses, or delays. In part, he said,

No Child Left Behind is now the law of the land. I took an oath to enforce the law, and I intend to do that. I will help states and districts and schools comply—in fact I will do everything in my power to help—but I will not let deadlines slip or see requirements forgotten. When students beg their teachers to extend deadlines, the choice between discipline and compassion can be very difficult. But if states ask me to extend deadlines, they will be asking me to make a choice between the needs of children and the flaws of

the system. Having been a teacher, a coach, and a superintendent, I know my heart, and I can tell you that this will be an easy choice for me. When choosing between kids and the system, I choose the kids. (Paige, 2002)

The allusion to extended deadlines was no doubt a reference to the large number of waivers the department had granted during implementation of the 1994 ESEA, which Paige implied would not be forthcoming with NCLB.⁴

In October 2002, Paige continued this theme of serious enforcement with a letter to state school chiefs. In praising some for their support, he chastised others “who play semantic games or try to tinker with state numbers to lock out parents and the public.” In asserting federal prerogatives, Paige accused those state leaders of “stand[ing] in the way of progress and reform,” before adding, “They are the enemies of equal justice and equal opportunity. They are apologists for failure” (CNN, 2002). One publication called the secretary’s remarks a “blistering warning” that showed the administration would not hesitate to “strike back” against those who would undermine the law (Schemo, 2002b).

Other administration officials also pushed this hard-nosed line of argument as the implementation process moved forward. One point man during 2002 to 2004 was Eugene Hickok, Bush’s Undersecretary of Education, who eventually became Acting Deputy Secretary. Before joining the administration, Hickok was an activist and a sometimes controversial figure as Pennsylvania’s Secretary of Education, helping to form the Education Leaders Council, a group of reform-minded (and mainly Republican) state officials who sought to distinguish themselves from the so-called “education establishment.” In Pennsylvania, Hickok was a strong advocate for educational accountability and parental choice, making him a confident Bush spokesman.

In October 2002, Hickok characterized state critics of NCLB as the “guardians of mediocrity.” Rather than revealing the law’s weaknesses or poor communication from U.S. Department of Education officials, he shot back that the states’ complaints illustrated “the need for a change of culture in American education” (Schemo, 2002a). That tone continued in 2003 after President Bush presented his budget plan for fiscal year 2004. Speaking in February 2003, Hickok dismissed state complaints that the law and other education initiatives were underfunded. “The color of change is not always green,” he said (Schemo, 2003). In April 2003, Hickok kept the pressure on when evidence suggested that some states had not taken NCLB’s school district—as opposed to individual school—accountability provisions seriously enough. He reminded states that district-level accountability was also an NCLB requirement. If states behaved otherwise, in a clear reference

to enforcement, Hickok noted that they would “be hearing from us very, very soon” (Robelen, 2003, p. 1).

As evidence of the administration’s serious enforcement mind-set, even strong state allies of President Bush were not immune from Hickok’s blunt judgments. In January 2004, for example, the Virginia House of Delegates passed a stiffly worded resolution lambasting NCLB for its “sweeping intrusions” on state and local prerogatives (Becker & Helderman, 2004). Specific leaders in this Republican legislative stronghold backed that criticism with tough words of their own. The House Education Committee Chairman, Republican James H. Dillard, expressed his own and others’ frustrations by claiming “the damn law is ludicrous” (Becker & Helderman, 2004, p. 1). Hickok responded in kind by first claiming that Virginia’s funding criticisms were unwarranted because the state possessed \$170 million in federal education aid that it had not spent. He then brushed off these remarks and the House of Delegates’ resolution as predictable state posturing.

The resolution essentially says that if states feel like they have been doing a good job, we should give them the money and leave them alone. What state wouldn’t say that? . . . This law is perhaps a challenge for us to implement, but it is the first comprehensive attempt to make sure that every child everywhere counts. To say no to that is a typical thing for the states to do. (Becker & Helderman, 2004, p. 1)

Policy control. Overall, much evidence supports the basic claim that Bush administration officials have used strong rhetoric in attempting to hold states accountable for their responsibilities under NCLB. But has this talk been cheap, or have federal officials taken concrete actions consistent with their words? In many instances, the answer has been a clear yes, as the following key examples illustrate.

Since signing NCLB, President Bush has enjoyed a perfect record in controlling one specific aspect of the law’s implementation. Despite mounting criticism of NCLB across the political spectrum from state leaders and members of the U.S. Congress, the president and his allies have stifled all attempts to legislate changes to the law. A search of bill proposals in the 108th Congress (2003 to 2004) reveals nearly 20 bills (and a handful of amendments) that would have altered or recalibrated NCLB in the midstream.⁵ Examples include proposals that would have fully funded the law or exempted states from its provisions if federal dollars were not forthcoming (HR1564, HR2107, HR2366, HR2394, HR4957, and S1189). Other proposals addressed specific components, including NCLB requirements

covering highly qualified paraprofessional teachers (HR2348) and AYP and testing (HR3049, HR3315, HR4605, HR5200, S2582). Still, others addressed the law more generally (HR4434, HR4464, S2345, S2794). Among these measures, one was withdrawn and all others died in committee.

Perhaps these legislative failures to change NCLB are not surprising given that Democrats were the primary sponsors of these bills. With the GOP controlling Congress, it would have been hard for the minority party to press its priorities. Still, given the bipartisan spirit with which the law passed in 2001, and because state Democrats and Republicans had criticized NCLB, one should not discount the administration's ability to block these proposals. In so doing, Bush and his allies bolstered the credibility of their rhetorical claims that promised no policy backsliding.

Evidence of federal principals asserting control over state agents also emerged as U.S. Department of Education officials crafted NCLB's accompanying regulations. As a concession to states during the legislative process, Section 1901(b) of NCLB (No Child Left Behind Act, 2001) did require the Secretary of Education to develop regulations in a process called negotiated rulemaking, which involved state officials and others. At a bare minimum, that process needed to cover the standards and assessment portions of NCLB. After federal education officials initially suggested that they would also incorporate AYP decisions into negotiated rulemaking, they eventually changed their minds to maintain more explicit control over this highly controversial and key portion of the law. That decision pleased members of Congress, including Democrats, who feared that too much negotiating would undermine NCLB's main purpose. A top aide to Democrat George Miller of California, one of NCLB's principal architects, praised the decision in this way: "It's encouraging that they [the Department of Education] decided not to renegotiate adequate yearly progress. That signals an intent, we hope, to take the statute at face value and not water it down" (Olson, 2002b, p. 1).

Assertions of federal control also continued as the department produced regulations. Two issues here are most important. First, states were required to begin implementing NCLB even before the department completed the regulation-writing process. In other words, the law contained what one review called an "unusual provision" that had it "[take] effect immediately upon signature of the President—a transition period was not authorized" (Erpenbach, Fast, & Potts, 2003, p. 1). Eliminating this transition period reflected federal frustration with results from the 1994 ESEA. The statute's demands for an immediate start conveyed the strong message that federal officials would not tolerate further state delays.

Second, as Secretary Paige and his assistants began to issue regulations and letters of guidance during 2002 and 2003, many states responded with waiver requests. These requests asked the department to exempt states from particular portions of the law or to allow them to veer from the letter of the statute and the department's rules. The two most complete summaries to date of these waiver requests and the department's responses found that Paige and his team frequently remained resolute by consistently denying requests in several key areas (Erpenbach et al., 2003; Fast & Erpenbach, 2004). For example, with only rare exceptions, states may not use tests designed for one grade level and subject to count for AYP calculations for other grades.⁶ The department also consistently refused to allow states to reverse the order of NCLB's provisions regarding schools in need of improvement. In some instances, states had proposed allowing public school choice to begin during the second year a school was in improvement and beginning supplemental services in the first, rather than the other way around as the law required. The department refused to grant this request. That suggested federal officials would remain steadfast even amid significant criticism of one of the law's most high-profile elements. Other state requests consistently remained nonstarters as well (Fast & Erpenbach, 2004).

What of actual enforcement? Again, it is one thing to talk tough and deny waivers, but what of issuing penalties for noncompliance? Even though Secretary Paige did not wield his enforcement stick often during 2002 to 2004, evidence during this period did suggest an important break with past enforcement practices.

Paige's decision in the early summer of 2003 to withhold nearly \$800,000 in ESEA funds from Georgia, which had failed to complete work on state assessments that a previous federal waiver had defined, represented the first time in the department's history it had taken such action (Salzer, 2003). A similar, but smaller, sanction against Minnesota withheld \$120,000 from that state over shortcomings on its NCLB accountability plan (Walsh, 2003). In both cases, the penalties were limited to ESEA administrative funds and essentially amounted to a cut of an increase given that NCLB had increased funding for Title I administrative activities. Nevertheless, the symbolic nature of these federal acts, especially because they broke with the past tradition of little or no ESEA enforcement at all, were important and suggested a new federal mind-set that state officials had not experienced after past ESEA reauthorizations.

Threats of enforcement and perhaps these actual examples moved some state officials to back down from stiff criticism of the law. Consider, for example, state legislators from Utah, who are typically strong supporters of President Bush. After passing legislation that criticized NCLB, they quickly

backtracked when “federal officials turned up in Salt Lake, reminding Republicans that the state stood to lose \$100 million in federal education aid if they followed through” (Schemo, 2004b).

Federal Persuasion

In many ways, federal officials’ tough rhetoric and unwillingness to bend on important policy matters suggest that members of the Bush administration have kept their promise to demand nothing less than diligent, good-faith implementation from their state agents. Still, this assertion of federal control has occurred alongside other words and actions that reveal a willingness to compromise and reward states for good effort that falls short of full compliance with NCLB. Even though President Bush and his team have more boldly asserted control over state policy makers, federal efforts at persuasion through rhetoric and policy choices parallel those from previous administrations.

Rhetorical support. Even though Bush administration officials have promised they would not tolerate state excuses and delays, individuals including the president, Paige, and Hickok have recognized that offering states rhetorical support is also a necessary condition for NCLB’s success.

Recall first Secretary Paige’s meeting at Mount Vernon that I described earlier. In essentially the same breath that he warned state officials not to expect his department to grant exceptions and waivers to accommodate state requests, the secretary made parallel appeals that suggested a strong willingness to cooperate. Before issuing his stern warning about enforcement, he framed his initial remarks in more collaborative terms by observing the following:

This meeting is not a lecture, but a discussion. If Rembrandt Peale’s magnificent portrait of Washington could speak, the general would remind us that the federal government is an invention of the sovereign states and that I am not your superior. I am your partner. I invited you here tonight not to give orders, but to offer my help in a bold mission. (Paige, 2002)

Rather than exclusively using the language of principals and agents to stress the commanding role that NCLB had created for federal officials, the secretary was mindful to include this olive branch to help persuade state leaders to make the president’s vision of education reform their own.

That sort of rhetorical support powerfully revealed itself roughly 18 months later on the arrival of an important NCLB deadline. At a June 10, 2003, press conference, President Bush and Secretary Paige described the progress states had made in developing their accountability plans. The president noted,

In the past five months, we have approved the accountability plans of 33 states. . . . And today we mark an historic milestone of accountability—this morning, Secretary Paige has approved the plans of 17 more states, bringing us to a total of 100 percent of the accountability plans in place. (White House Office of the Press Secretary, 2003)

To emphasize the great success this result represented, Bush reminded listeners that “in January of 2001, only 11 states were in compliance with a 1994 education law [the previous ESEA reauthorization]. Every state, plus Puerto Rico and the District [of Columbia], are now complying with the NCLB Act after one year” (White House Office of the Press Secretary, 2003).

An inference one might draw from Bush’s speech is that the strong rhetoric and tough policy choices of federal officials, which conveyed clear signals about their willingness to enforce the law, had produced this result. No doubt, the administration’s commitment to NCLB had some impacts. However, actual state progress as of June 2003 was not quite the “historic milestone” that the president noted. That suggests that Bush’s remarks served, in large part, to persuade state officials to keep making progress. Consider the following two reasons why.

First, even though the president and secretary affirmed that all state accountability plans had been approved, the truth was that for most (but not necessarily all) states, these approvals were conditional on subsequent state actions. Thus, the passing grades states received were really provisional assessments of their accountability plans at that time. States did receive letters from Secretary Paige noting that the department had approved the basic elements of their plans. Later in those same letters, though, Paige typically noted that “Under Secretary Hickok will provide you a corresponding letter detailing the conditions of your approval,” a practice paralleling previous ESEA implementation (Erpenbach et al., 2003, p. 3).

The second reason why Bush’s remarks represented an important persuasive appeal, not simply affirmation of federal control, was that many states still had a great distance to travel to fully complete their accountability plans. Evidence for this comes from documents known as the Consolidated State Application Accountability Workbooks. In those workbooks, each state summarized for Secretary Paige its progress across the 31 different accountability elements that NCLB required (Fast & Erpenbach, 2004). States could report one of three different levels of progress for each element: a final state policy existed, the state had a proposed policy but was waiting for relevant actors in the network of state education governance to approve it, or these state actors were still working to formulate policy. Thus, of the three possible assessments for each element, two designated situations in which state work remained.

Table 1
State Work Remaining on No Child Left Behind's (NCLB)
Accountability Elements, June 2003

Number of NCLB Accountability Elements Lacking Final Policy	Number of States
0	18
1 to 5	12
6 to 10	1
11 to 15	3
16 to 20	4
21 to 25	5
26 to 31	7

Source: U.S. Department of Education (2003).

Note: All state accountability workbooks submitted to the U.S. Department of Education, with the exception of those from New York, New Hampshire, and Arkansas, indicated for each of 31 separate elements whether the state was still working to develop a policy for that element, had proposed a policy that still needed approval from various state institutions (i.e., state board or legislature), or had developed and approved a final policy. To code results for New York, New Hampshire, and Arkansas, I read the narratives in these states' workbooks in which the status of each element was described in words.

Using these workbooks, I calculated the rate of state progress across all 31 elements as of June 2003, when President Bush spoke at his NCLB press conference. Table 1 briefly summarizes the workload that remained for individual states at that time. Each row in this table lists the number of states that lacked final policies on a specified range of elements, grouped in increments of five (i.e., states where 1 to 5 elements lacked final policies, states where 6 to 10 elements lacked final policies, and so on). Beyond the 18 states that had completed final policies on all elements, the next largest clumping is of 12 states needing to complete final policies in the 1 to 5 element range. The bottom of the table shows that 5 states had yet to develop final policies for 21 to 25 elements, whereas 7 additional states did not have final policies on 26 to 31 elements. Put in another way, the last two rows of Table 1 reveal that 12 states still had work to complete on at least two thirds of the required elements.

Scanning the individual elements themselves shows that states had consistent difficulty producing final policies on the five elements associated with their method of determining AYP.⁷ On those elements, 20 states lacked final policies to determine whether student subgroups, public schools, and local school districts had made AYP; 19 states had not yet established

statewide annual measurable objectives; 19 had failed to establish intermediate AYP goals; 18 states had not established a starting point for AYP calculations; and 16 had not finalized policies to guarantee that all student subgroups, public schools, and school districts would hit their proficiency targets by 2013 and 2014.

Considering these results illustrates why federal officials have used persuasion, not just control, to move NCLB forward. If top federal policy makers declare that states had fulfilled their obligations even though work still remained, then persuasion, through rhetorical support that provides state leaders with political cover (amid mounting criticism from their own constituents), appears to be equally important as well. Bush's supportive comments also suggest a recognition that state policies in education emerge from complicated networks of state institutions that must align to produce final accountability plans. State education chiefs, boards, legislators, and governors sometimes collaborate well, and other times they clash, especially on such a politically touchy subject as educational accountability. Strong efforts to build consensus among these state actors to produce accountability plans, which uphold NCLB's spirit, may merit praise even if they do not meet the letter of the law.⁸

In fact, as NCLB has moved deeper into the implementation phase, state officials have sensed greater willingness from federal policy makers to be more accommodating. For example, in a March 2004 meeting between President Bush and more than two thirds of the nation's state education chiefs, one report noted this shift:

The amount of time the president spent with them . . . and the tenor of the conversation were dramatically different from previous encounters. Mr. Bush and his advisers appeared receptive to exploring new ways to give states leeway in implementing the administration's K-12 agenda and promised to tone down some of the political rhetoric that has crept into the debate over the No Child Left Behind Act. (Hoff, 2004a, p. 24)

Reflecting on the difference between this meeting and earlier encounters, Delaware Secretary of Education Valerie Woodruff noted optimistically, "It was a dialogue, as opposed to a one-way message"; her colleague from Iowa and president of the Council of Chief State School Officers, Ted Stilwill, agreed by saying, "It was a give-and-take situation. . . . We were having a real impact on that conversation" (Hoff, 2004a, p. 24).

Even earlier that same year, in February 2004, Hickok had also struck a more conciliatory pose. Responding to a question about state challenges to NCLB rather than brushing aside this criticism as unjust complaining, he

noted how “A lot of the agitation is based on misinformation on what the law requires.” He continued by explaining that many “actors at the state level are acting with good faith on bad information” (Hoff, 2004b, p. 11). That admission was instructive not only because it praised states for wanting to do the right thing—they were “acting in good faith”—but also because one could read it as a tacit admission that the department could have done a better job supplying states with regulatory guidance.⁹

Policy concessions. During 2002 to 2004, the policy choices of federal education officials often revealed a willingness to resist state demands that would have altered NCLB and its accompanying regulations. Simultaneously though, federal policy did accommodate state requests for important policy adjustments, and federal officials did not always keep their promise to strictly enforce the law.

Consider first the matter of state accountability plans and waiver requests. Even though federal education officials consistently turned back waivers on some matters, in several other areas, the department was more willing to bend. Across 2003 and 2004 especially, waiver requests and decisions changed as federal officials talked more with their state agents.

For example, in early peer reviews of state accountability plans, states that tested students in language arts—a broad combination of reading and writing—requested permission to count only reading strands of these exams for AYP calculations. Initial waiver requests of this sort, from Delaware, for example, were rejected, but subsequent ones from Florida and Wisconsin were allowed. As federal education officials fielded more of these requests, their attitudes shifted. A comprehensive study of waivers noted this evolution:

As the Peer Reviews progressed, it became clear that more and more States with language arts standards including reading and writing components appeared to be opting to use only reading for AYP determinations, and ED [the U.S. Department of Education] began to accept these proposals without mention of a need for a follow-up review. . . . Although ED has emphasized this is a State-by-State decision hinging on how reading and writing are represented in States’ content standards, this did not seem consistent with the pattern of approvals as they evolved over time. (Erpenbach et al., 2003, pp. 8-9)

Other waiver requests received approval even though early indications suggested that they would not. This category of “unanticipated approvals” included acceptance of state proposals to allow more forgiving measures of school progress across years, the use of more generous rounding rules for

AYP calculations (i.e., a school that had 94.1% of students participating in testing could round that number to 95% and thus hit the required participation target for AYP), and the use of confidence intervals to calculate graduation rates (Fast & Erpenbach, 2004, pp. 11, 26).

In addition to individual state waivers, between December 2003 and March 2004, Secretary Paige made three broad regulatory changes that affected the direction of state accountability plans (and one change regarding teacher quality). These changes emerged in response to a growing chorus of state requests and complaints. The regulatory changes created more leeway for testing students with the most severe cognitive disabilities, adjusted the way schools may define student subgroups of English-language learners, and enabled states to allow their schools to calculate test participation rates by averaging participation during 2-year or 3-year periods ("Changing the Rules," 2004; Robelen, 2004).

The adjustments to rules governing participation rates are especially instructive in light of the results from the Consolidated State Application Accountability Workbooks, which I discussed earlier. As states attempted to refine and develop the accountability plans that had received provisional approval in June 2003, they found the participation rate issue to be particularly nettlesome. Because this issue "received far and away the greatest attention" across all states, state leaders were especially grateful when the secretary adopted this "welcome change" (Fast & Erpenbach, 2004, p. 12).

It is important to remember that even though federal officials did become more responsive to state requests in several areas, they remained steadfast in their resistance to change the content of NCLB itself. Amid an increasing number of state requests for waivers and exceptions, which President Bush's more accommodating stance at his March 2004 meeting with state education chiefs perhaps encouraged, in May 2004, Raymond J. Simon, Assistant Secretary for Elementary and Secondary Education, clarified how far federal officials were willing to go: "Our goal is to wring every ounce of flexibility out of the law, but not to change the law," he said. "That's where we draw the line" (Olson, 2004, p. 1).

Finally, consider the enforcement issue and one last illustration of federal policy actions suggesting a mind-set of persuasion as opposed to control. As I noted earlier, federal education officials have wielded their enforcement stick by denying state resources in ways that, albeit small in terms of actual dollars, represent major shifts from previous enforcement efforts. Still, evidence persists that enforcement involving monetary penalties remains a delicate tool. Federal officials continue to eschew its use when states operate in ways that appear consistent with the spirit of the law if not its letter. A final

vivid example involving the state of Kentucky illustrates how federal officials sometimes attempt to assert rhetorical control to stifle state misdeeds while agreeing to forgive this same behavior amid evidence of overall progress.

The issue here involves Kentucky officials' decision to make AYP calculations for 2002-2003 that were at variance with NCLB and its regulations, which the state only later submitted to the U.S. Department of Education for approval. In short, Kentucky officials essentially asked for forgiveness rather than permission to make the AYP calculation they had made. That action prompted a stern letter from Assistant Secretary Simon, which is worth quoting at length. Simon noted the following:

[Kentucky's] unacceptable action impedes the Secretary's duty to ensure that States are implementing accountability plans that meet the requirements of Title I, Part A of NCLB. The Secretary takes this duty seriously and is inclined to withhold Title I funds from any State that does not fulfill its assurance of implementing its approved plan. By not using its approved plan to make AYP determinations for school year 2002-2003, Kentucky is subject to the loss of federal funding. (Fast & Erpenbach, 2004, p. 10)

But in the very next line Simon backed away from this threat and revealed a more accommodating approach by explaining,

In this one instance, however, the Secretary will not withhold Kentucky's federal funds only because the criteria it used to make AYP determinations are compliant with NCLB. In the future, do not deviate from your amended plan as approved by the Department, lest you be subject to financial consequences. (Fast & Erpenbach, 2004, p. 10)

In short, even though Kentucky's action merited financial penalties, federal officials decided not to wield their enforcement stick because the substantive result produced policy consistent with NCLB.

Control, Persuasion, and the Future of NCLB

Steeped in the logic of principal-agent theory and high-stakes accountability, federal officials have attempted to use NCLB to assert themselves in state policy making venues. This effort has been difficult, though, because of the federal government's historically weak record of enforcement and because state officials have much license to claim leadership over the nation's schools. But whether states obey the directives from Washington policy makers is simply one issue among many that analysts should consider as they continue to monitor NCLB's progress.

Punishments or reprimands from Washington may be appropriate responses if states consistently fail to meet requirements under the law. Such federal actions, however, may not always effectively produce desired results. As everyone involved in the development and implementation of NCLB realizes, the law is demanding, complicated, and represents a bold federal attempt to influence K-12 education in the United States. Because federal policy makers are trying to tackle so much, they will inevitably make mistakes and see their judgments shift as new evidence emerges along the implementation path. Apparent state resistance, then, may sometimes suggest real problems that require adjustments to the law rather than federal assertions of enforcement power or rhetorical scolding.

Similarly, federal accommodations may not suggest lax enforcement but a realization that some changes may facilitate the law's implementation. Acting that way recognizes the reality Sandy Kress noted during the legislative process that produced NCLB. Gaining leverage to produce change in the nation's schools is a complex task for federal policy makers, which Kress's remarks at the outset of this article illustrated. Recognizing when to assert control, as Washington has done in refusing to accept some state waivers, and when to bend, which can help persuade state governments to keep making steady progress while bolstering their ability to fend off state-level critics of NCLB, requires great political skill and policy insights.

Focusing on the challenges policy makers confront as they attempt to wield power but simultaneously build support for their initiatives through persuasion provides a compelling implementation perspective on the NCLB Act. Distilling NCLB's implementation to mere matters of control misses this important fact. In short, NCLB will succeed or fail not only because federal bureaucrats and national elected officials have wielded their enforcement sticks. Leverage to create change will emerge in part from savvy enforcement to be sure. But perhaps more important, success will depend on public officials in Washington and state capitals being able to persuade each other and the law's skeptics that NCLB is a viable framework for improving education in the United States.

Notes

1. Running for office in 2000, Bush echoed this sentiment in what would become the most aired advertisement during the election season. With images of small children of varying racial groups in the background the Texas governor hit the airwaves 9,400 times telling viewers that "if we really want to make sure no child gets left behind in America, we need the courage to raise standards on our schools." Rather than simply spending more money, Bush said, it would benefit the nation's children to "start by expecting more" (Campaign Media Analysis Group, 2001, p. 48).

2. One former state legislator and state board member from Pennsylvania captured the implication for accountability that these multiple agents create: "As states continue to implement important and complicated standards-based reforms, a collaborative partnership among governor, legislature, state board, and chief state school officer in each state is critical" (Cowell, 2002, p. 29).

3. Eventually, the law's provisions also require testing in other grades and other subjects, but initial implementation of these other provisions begins after the 2005 and 2006 school year.

4. Under Secretary of Education Eugene Hickok echoed this idea during the second year of NCLB's implementation. As Robelen (2003, p. 1) describes: "Part of the problem, Mr. Hickok argued, is the troubled history of compliance with the ESEA before its most recent reauthorization. 'As with a lot of the previous law,' he said, 'the provision on identifying low-performing districts was either ignored, or poorly or sloppily reported.'"

5. I identified these bills from the Thomas Web site, <http://thomas.loc.gov/>, by searching for "No Child Left Behind" with the "Summary and Status Information about Bills and Resolutions" option for the 108th Congress.

6. In other words, a fifth grader testing proficient on a state's fourth grade math test could not count toward meeting a school's Adequate Yearly Progress goal for fifth grade math.

7. In the interest of space, I omit from this article results from all 31 individual elements. Those items are available in a separate paper of mine (Manna, 2003), which I have posted to my personal Web site. See also Olson (2003a).

8. The potential interpretation that states had obfuscated their progress to mislead their federal masters, which is an agent tactic scholars commonly note (Bendor, 1988), is not relevant here. The workbooks the states submitted to the department declared explicitly where work was incomplete, which meant federal officials were not fooled into thinking the plans were actually done.

9. Whether these more accommodating stances from Bush and Hickok reflected the political imperatives of an election year is debatable and certainly worth considering. If election-year politics were truly at work, one would have expected state schools chiefs to emerge from their meeting with President Bush with comments more split along party lines. That did not appear to happen, however, in this case.

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