

## **The No Child Left Behind Act and educational accountability in the United States**

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**Abstract:** Since the 1960s in the United States, developments in education policy have altered relationships between federal, state, and local overseers of the nation's elementary and secondary schools. This paper examines the current state of those relationships, focusing in particular on the No Child Left Behind Act, which was passed in 2001 as the most ambitious federal effort to hold schools accountable for academic performance. The paper's first section briefly introduces the institutional landscape upon which American education policy is made and implemented. The second section describes the principal accountability mechanisms of NCLB, which connected governments across federal, state, and local levels. The third section considers some of NCLB's impacts, in particular its effects on policy conflict, policy development, and policy legitimacy. The final section concludes. Overall, the paper argues that although NCLB had some positive impacts that are worth recognizing, given the highly fragmented nature of educational administration in the United States, it fell short in achieving its primary goal of promoting accountability for educational results.

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On January 8, 2002, President George W. Bush signed into law the No Child Left Behind Act (NCLB). Passed by the United States Congress in December 2001, NCLB was the latest reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), the federal government's primary law addressing the nation's schools.<sup>1</sup> The president's signature ended a year-long legislative process—punctuated by the 9/11 attacks—that produced much debate, but eventually large bipartisan congressional majorities supporting the final bill. At Bush's NCLB signing ceremony, held at a public high school in Hamilton, Ohio, the president noted that “There's no greater challenge than to make sure that every child—and all of us on this stage mean every child, not just a few children—every single child, regardless of where they live, how they're raised, the income level of their family, every child receive a first-class education in America.” He reassured the students, teachers, politicians, and other listeners that NCLB's approach to accountability and its other provisions would help the United States begin “a new era, a new time in public education in our country. As of this hour, America's schools will be on a new path of reform and a new path of results.”<sup>2</sup>

Nearly a decade after Bush's speech, disagreements abound about whether NCLB produced accountability and improved results, as the president promised it would, or whether it unleashed perverse incentives that hindered the country from achieving its educational goals. Occurring alongside the debate about NCLB's effectiveness was the fracturing of the political

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<sup>1</sup> Use of the term “federal government” in this paper refers to the national government based in Washington, DC (the president, Congress, Supreme Court, and the federal bureaucracy), as well as federal agencies and federal courts that operate regional and local offices across the country.

<sup>2</sup> Bush's remarks are quoted from the *Public Papers of the Presidents, Book I*, 2002 edition. Available on-line at <http://www.gpoaccess.gov/pubpapers/index.html>. Last accessed on October 12, 2009.

coalition that passed the law in 2001. Many Democrats remain upset with the Bush administration's handling of NCLB, and many Republicans, including some who voted for it, feel freer to criticize it now that Barack Obama has become president. The overall political atmosphere has left doubts about whether NCLB's key accountability levers will survive its scheduled revision, which has been overdue since 2007.

The track record of NCLB has revealed how federal efforts to hold American schools accountable for results are fundamentally limited by the intergovernmental arrangements that craft, interpret, and implement education policy in the United States. Evaluating the law's performance requires one to consider federal decisions but also the behavior of decisionmakers in state and local venues. Their influence was crucial. Even as they took their procedural cues from NCLB, a federal law, their own policy choices imputed specific meaning to concepts such as educational equity and excellence. Importantly, even while demanding greater quality in American schools, NCLB's accountability framework afforded state governments with much leeway to define the substantive dimensions of what quality would entail. Further, it placed much responsibility in the hands of local school districts to make the law's provisions work on the ground. The result was the creation of fifty different systems of educational accountability, one for each state, along with local adaptations, rather than one coherent federal system of national expectations and standards that many people wrongfully believe now exists in the United States.

The four sections in this paper analyze some of NCLB's key goals, mechanisms, and results to illustrate how educational accountability and intergovernmental policy implementation operated in the United States after 2001. The first section provides background by briefly introducing the institutional landscape upon which American education policy is made and

implemented. The second section describes the principal accountability mechanisms of NCLB, which connected governments across federal, state, and local levels. The third section considers some of NCLB's impacts, in particular its effects on policy conflict, policy development, and policy legitimacy. The final section concludes. Overall, the paper shows that although NCLB had some positive impacts that are worth recognizing, given the highly fragmented nature of educational administration in the United States, it fell short of achieving its primary goal of promoting accountability for educational results.

### **Institutional Landscape of Education in the U.S.**

A popular saying in the United States maintains that elementary and secondary (K-12) education is a national concern, a state responsibility, and a local function.<sup>3</sup> That portrayal begins to suggest some of the ambiguities and divisions that have animated American educational debates in recent decades. It also foreshadows why the country has struggled to design and implement a coherent system of educational accountability. Befitting of the diversity of people and cultures that inhabit the United States, a view of K-12 education from 30,000 feet reveals a largely decentralized and highly variable system. Consider two important measures of this system-wide variation: the institutions responsible for designing and implementing education policy and the division of financial labor for education across levels of government.

The American intergovernmental system contains institutions at local, state, and federal levels that influence the design and implementation of educational accountability policies. Table 1 provides a broad overview of the major institutions involved. When considering the issue of

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<sup>3</sup> "K-12" refers to kindergarten through 12th grade. In most states in the United States, students begin kindergarten at age 5 and typically complete 12th grade and graduate from high school by the time they are 17 or 18 years old.

accountability for educational results, three points about Table 1 are worth elaborating. First, implementation of education policy occurs in an array of different settings including large urban centers, upper-class and working-class suburbs, small quiet towns, and isolated rural communities. Those communities educate children with myriad ethnic, linguistic, and socioeconomic backgrounds ranging from the most to least economically advantaged. The presence of nearly 100,000 public schools and almost 14,000 school districts creates significant challenges for any accountability regime that hopes to standardize practice or measurement of progress across the country.

Second, until the early 1990s, the federal government had been a minor player in the promotion of educational accountability. Before then, federal policies or major federal court decisions tended to focus on one of two activities, and sometimes both: promoting greater access to public schools and educational opportunities for previously disenfranchised or marginalized groups, especially students of racial, ethnic, or linguistic minorities, as well as students with disabilities; and redistributing financial resources to assist communities with large numbers of economically disadvantaged children (Kaestle and Smith 1982; Cross 2004). Those activities still persist to this day, and remain major centers of federal attention. But the idea that elected federal officials, agency bureaucrats at the U.S. Department of Education, or federal judges would promulgate laws, regulations, or decisions designed to hold schools accountable for academic performance only seriously began to emerge with the ESEA reauthorization of 1994, called the Improving America's Schools Act (IASA), which NCLB extended in 2001 (Jennings 1998; Manna 2006). The main reasons for that historically light federal footprint on accountability matters were the country's tradition of state and local control of education and the fact that education receives no explicit mention in the U.S. Constitution.

Third, and finally, is the crucial role of state governments, which has become increasingly important since the 1970s. Several forces have promoted that surge of state interest and involvement, including shifts in economic conditions that led state governors and legislators—prompted by the business community—to become more interested in educational quality; state court decisions and legislative enactments that gave states more power over school funding vis-à-vis local communities; and finally, the rise of the educational standards movement (Murphy 1990; Timpane and McNeill 1991; Evans, Murray, and Schwab 1997). The latter development, which began in earnest during the 1980s and accelerated during the 1990s after a major summit of governors and President George H.W. Bush in 1989, helped establish the idea that schools would enjoy greater success if they assisted students in meeting challenging standards in key academic subjects (Vinovskis 1999). Out of the state standards movement emerged several governors who eventually exercised substantial power on the national stage, helping to propel the standards movement forward.

\*Table 1 about here\*

One reason why states wield substantial power in K-12 education is because of the important pivot point they inhabit in the American intergovernmental system. Education receives explicit and often detailed attention in state constitutions, which empowers state officials to craft laws establishing systems that govern teaching and learning in local communities. School districts are essentially administrative agents of the states that can be created, dissolved, or merged by state-level decisions. At the same time, however, states serve as crucial conduits for major federal policies that are designed to affect educational opportunities and practices in schools (Epstein 2004). For most federal education policies, administrators in the U.S. Department of Education rarely deal directly with local school districts or schools.

Instead, federal officials rely upon the states, who themselves rely on school district personnel, to administer federal education policy in local communities. Those links between federal, state, and local institutions create challenging administrative realities that have implications for how accountability policies unfold in practice.

Further complicating the picture is that many state agency employees administer federal programs while other different employees focus on state-developed programs and initiatives (General Accounting Office 1994). Often these federal and state programs operate on parallel but rarely intersecting tracks, sometimes called “program silos,” that create fragmented regulatory and administrative environments (Hill 2000). Those dual roles that state agencies play can complicate the efforts of staff or elected officials in governors’ offices, legislatures, and state boards of education as they attempt to oversee the daily workings of state education departments. It also can be challenging for local school district officials, who must manage relationships with states while adhering to federal and state requirements that state agency officials interpret and enforce.

Examining the sources of revenue for K-12 education reveals additional insights about the relationships between federal, state, and local governments, which have further implications for how educational accountability systems work in practice. Figure 1 examines revenues across four decades, contrasting contributions from each level of government to the finance of American schools. The figure suggests three main conclusions. First, federal contributions have remained quite low compared to state and local ones. Second, as a percentage of all K-12 revenues, federal contributions have remained quite steady during the last thirty years, typically hovering between 7 and 10 percent. Third, on average across the states, revenues from state

sources now noticeably exceed those from local communities, a trend that has only recently emerged since the mid-1990s.

\*Figure 1 about here\*

Breaking down those broad revenue patterns by individual states shows an additional layer of diversity. Figure 2 considers the most recent school year for which data are available, 2006-07, and examines federal, state, and local sources of revenues by state. Recall Figure 1, which showed that on average states contributed about 50 percent, local communities 41 percent, and the federal government 9 percent of revenues for K-12 education in 2006-07. Part A of Figure 2 plots state versus local revenues and shows tremendous variation across the country. State contributions range from a high of 90 percent in Hawaii to a low of 27 percent in Nevada. Many points cluster between state contributions of 25 and 55 percent. Part B of Figure 2 plots an analogous picture, this time state contributions versus federal ones. Here federal contributions vary from under 5 percent in New Jersey and Connecticut to a little more than 17 percent in Louisiana and Mississippi.

\*Figure 2 about here\*

Examining education finance at an even finer grained level reveals added variation in two more ways. Within individual states, spending varies across school district boundaries. Where local communities are well-resourced, per pupil expenditures can be quite high. Further, spending within individual school districts can also vary greatly by school. In fact, studies have shown that there is as much variation in spending per pupil within American school districts as there is across them within any given state. A main variable driving those within-district differences are teacher salaries. In many relatively larger school districts, more experienced teachers tend to cluster in certain schools. Because veteran teachers command higher salaries,



the effect is to increase per pupil spending in those schools compared to others that have more novice teaching staffs (Roza and Hill 2004).

## **Accountability and the No Child Left Behind Act**

Over time, the institutions listed in Table 1 have produced numerous policies to promote different degrees of educational accountability in the United States. Sometimes, local school districts have promulgated such policies to hold their schools accountable; in other cases, state governments have enacted laws to hold districts and schools accountable; and several federal policies have emerged to hold states and local districts accountable. The vast majority of intergovernmental policies promoting accountability have prioritized adherence to specified bureaucratic procedures, and typically have been part of auditing requirements associated with the receipt of government grants. In fact, for most of their histories, state education agencies and the U.S. Department of Education, which opened in 1980, existed primarily as large grant-making machines that dispensed federal and state dollars and then monitored how and where the money was spent. Little if any of that monitoring involved holding recipients accountable for whether substantive educational outcomes—such as higher student achievement or improved high school graduation rates—had resulted. In instances where substantive, rather than simply process-oriented, performance was measured, typically the accountability system attached no consequences for results. High or low performance would not trigger rewards or tough consequences, especially when the distribution of federal education aid to states and local districts was involved.

The passage of NCLB, which was built upon its predecessor law the IASA, represented a new venture in educational accountability for federal policymakers. Although not altering the balance of financial power that Figure 1 described, NCLB was the federal government's first

major attempt to foster accountability in education for both process requirements and the production of substantive outcomes. Some authors have dubbed it a federal takeover, representing a fundamental shift away from the nation's traditions of state and local control of American schools (Elmore 2002; McGuinn 2005). Subsequent sections of this paper will challenge that interpretation, but before discussing NCLB's implementation and impacts, the rest of this section describes the law's key elements and anticipated outcomes.

Overall, NCLB was indeed a massive statute that influenced educational policy and practice across the country after 2001. In all, the law contained over four dozen individual program authorizations, the vast majority being quite small, that touched on several different dimensions of American education. Most crucial were the law's accountability and funding provisions contained in Title I. Since the ESEA's original passage in 1965, Title I has been the principal vehicle by which the federal government has distributed funds to eliminate educational inequity across the country. Formulas in Title I direct federal dollars to states and then school districts, using state and local poverty levels as the key variables in the law's distribution scheme. Still, given the need to develop broad legislative coalitions of support, Title I dollars typically flow to over 90 percent of school districts in the United States. Changes in NCLB attempted to increase targeting of funds to the nation's most impoverished communities, but by and large Title I dollars to this day still benefit nearly all corners of the United States (Manna 2008; Center on Education Policy 2004).

As a condition of receiving Title I dollars, NCLB directed states to develop educational accountability systems involving three main activities: student testing, measurement of adequate yearly progress (AYP) for individual schools, and the implementation of consequences for

schools that failed to make AYP each year.<sup>4</sup> Consider those three elements in turn. First, regarding testing, NCLB required states to develop rigorous content and performance standards in reading and math for grades 3 through 8 and for at least one of grades 10 through 12, and then to assess students using those standards each and every year.<sup>5</sup> In other words, states were charged with defining what students should know and be able to do in those subjects and grade levels and then determining how well students needed to know the material to reach proficiency. The law also required states to develop a school-level reporting system containing certain elements in order to guarantee that achievement gaps between advantaged and disadvantaged students were closing. Most crucial was that the percentage of students achieving at proficient levels or better needed to be reported by student subgroups, which was intended to prevent overall school averages from obscuring the fact that some groups were falling behind. The subgroups were defined by race, ethnicity, whether the students had a disability or were still learning English, and whether they were in poverty. If certain subgroups in a school contained only a small number of students, then the percentage of the subgroup achieving at least at proficient levels was not separately reported, but those students' scores counted toward overall school performance in an "all students" subgroup. The law set an eventual deadline that by the

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<sup>4</sup> Due to limited space, the ensuing discussion omits two other areas in which NCLB tried to promote accountability. First, individual school districts are also required to make AYP. This paper focuses on AYP as it applies to individual schools. Second, NCLB also established requirements that schools hire what the law defined as "highly qualified teachers" in core subjects.

<sup>5</sup> NCLB also required the administration of science tests in these grades. However, the law's accountability mechanism, to be discussed next, did not incorporate the use of these science test results.

end of the 2013-14 school year, students in all subgroups would be proficient in reading and math.

Second, NCLB required states to establish a system for judging schools, based primarily on student test scores, known as AYP. Although one could imagine several possible arrangements to hold schools accountable for academic performance, the AYP system of NCLB was rather specific. Leading up to the 2013-14 goal of universal proficiency in reading and math, states were required to set intermediate achievement goals. Each year schools had to have a specified percentage of students in each subgroup make proficient scores or better. For example, a state might have required that 55 percent of students across subgroups be proficient in reading and math by the end of 2007-08. In subsequent years, that percentage would have to increase, although not necessarily in equal increments, so that by 2013-14 the goal of universal reading and math proficiency—100 percent of students across all subgroups—was achieved. If any one of a school's subgroups did not have the required percentage of students scoring at proficient levels or better on either reading or math, then the school failed to make AYP.<sup>6</sup> The AYP judgment was based on an all or nothing approach. In other words, the possibility existed that a very diverse school could have all but one of its subgroups with sufficient percentages of students proficient, and the school would nevertheless miss AYP. That school would be classified the same as another diverse school that missed AYP due to poor performance among several subgroups.

Third, NCLB required a series of consequences for schools receiving Title I dollars that consistently failed to make AYP. Although the law mandated that states rate all of their schools

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<sup>6</sup> A somewhat technical provision in the law, known as “safe harbor,” allowed for some rare exceptions to this rule. See Hess and Petrilli (2006) for a brief summary of safe harbor.

for AYP, only schools that received funding from NCLB's Title I program, the law's primary funding stream that was briefly discussed earlier, were subject to its escalating cascade of consequences. Schools missing AYP for two consecutive years became schools "in need of improvement," which was sometimes referred to as being "in improvement status" or just simply "in improvement." Those schools were required to allow their students to transfer to another public school that was making AYP, a policy known as NCLB school choice. Schools in improvement for another year were required to continue providing NCLB school choice, but also to offer after-school tutoring or other assistance, known as supplemental educational services that were provided by the school district itself or for-profit and non-profit tutoring providers that the state had certified.

Schools that continued to miss AYP also were subject to organizational changes. Those entering a third year of improvement status needed to adopt at least one corrective action, while continuing to offer NCLB school choice and supplemental educational services. These corrective actions included making staff changes; decreasing some of the school's management authority over its operations; introducing outside consultants to help the school improve; extending the school day or year; altering the curriculum; or reorganizing some aspect of the school's operations. Finally, schools that continued in improvement status for a fourth year were required to continue implementing the prior consequences, while also planning for more major restructuring and then, if still in improvement, were required to implement that restructuring plan during their fifth consecutive year in improvement. Restructuring measures outlined in the law were essentially more aggressive forms of the corrective actions just described, as well as an open-ended option, which some reform advocates criticized as a loophole (Mead 2007), that allowed other state or locally designed approaches under the umbrella of restructuring.

## **Educational Accountability in Theory and Practice**

Despite NCLB's new demands and framework for accountability, state and local institutions, which varied in their administrative capabilities, funding authority, and reach remained the key institutions that largely determined the law's success. Rather than fundamentally unifying the nation's intergovernmental system, NCLB essentially underscored and made more salient the division of labor that had long existed. As the last section described, as a condition for receiving federal funds under NCLB, the federal government imposed upon states and local school districts a series of procedural requirements for annual testing, school evaluations based on the AYP system, and the implementation of consequences for schools in improvement. But, among other things, states retained the crucial power to define academic expectations in reading and math and to produce the tests that would determine whether students were proficient in these subjects. Further, states and local school districts possessed much discretion in implementing NCLB's consequences for schools that missed AYP. That was most true for the corrective action and restructuring consequences, which were generally prescriptive, but still left much room for interpretation.

The intergovernmental arrangement that NCLB created is interesting to consider given how it deviates from a popular administrative approach believed to promote accountability for results. Authors and practitioners concerned about agency performance frequently suggest arrangements that draw upon principles from the New Public Management. Under that broad umbrella, the notion of "performance management" is a popular variant (Moynihan 2008). Although the details of this view vary across substantive areas and countries, adherents generally embrace a relatively straightforward policy theory: the substantive results government agencies produce, not the bureaucratic procedures they follow, are most crucial. Leaders at the top of the

intergovernmental system can be most effective and steer administrative systems toward high performance, the theory maintains, when they set goals and then unleash lower levels of government to achieve them. The particular bureaucratic methods those lower levels of government use are unimportant, provided, of course, that they are legal. In theory, at least, such an approach that frees state and local implementers to craft policy will minimize the proliferation of bureaucratic process requirements that can distract officials at all levels of the system from substantive policy goals (Light 1997; Osborne and Gaebler 1992).

In contrast, NCLB's design reversed the roles that performance management advocates commonly suggest. The law's stated purpose, as this paper's opening quotes from President Bush illustrated, was to promote high achievement for all students and to narrow achievement gaps between student subgroups. But the actual law failed to define high achievement in reading and math. Although requiring that 100 percent of students be proficient in those subjects by 2014, it let states decide what students needed to know and be able to do (setting of content standards), and how well they needed to understand the material (setting of performance standards). Instead of meaningfully defining what proficiency in reading and math would look like, NCLB's authors created a series of process requirements that states and local districts were required to follow in constructing their educational accountability systems.

In short, NCLB followed prior versions of the ESEA in establishing bureaucratic process requirements while deferring to states on the definition of substantive goals. Key reasons for that arrangement were the lack of capacity in the federal education department and, most important, the nation's tradition of state and local control of education, as Table 1 and Figure 1 illustrated. That strong tradition had rebuked prior federal efforts that might have moved toward the establishment of national standards or expectations (Ravitch 1995; Jennings 1998). NCLB's

resulting design had important implications for how the law's implementation would play out in the nation's intergovernmental system. The rest of this section addresses three of the law's impacts: the nature of intergovernmental conflict that NCLB prompted; the opportunities the law provided for policy learning; and the extent to which the law fostered legitimate results that were consistent with the nation's broader democratic aspirations.

### ***Policy Conflict***

Based on the assumptions of NCLB's primary authors and advocates, it was unsurprising that the law's implementation produced intergovernmental conflict. A main criticism of earlier federal efforts in K-12 education, especially prior versions of the ESEA, was that the federal government tended to offer money to states and localities without demanding substantive results in return. NCLB's effort to increase the pressure on states and local school districts to design accountability systems and enforce consequences if schools missed state-determined standards was a break with prior federal laws. Although NCLB's predecessor law, the IASA, did require states to establish content and performance standards and implement testing in at least three grades, it did not contain federally-defined consequences for poor-performing schools. Thus, the consequences for failing to make AYP were a new addition with NCLB as were the increased number of tests required. Those changes were sure to prompt disagreements over what was the most effective way to teach children and improve the nation's schools. At least three dimensions of conflict emerged.

First, NCLB's prescriptive approach to accountability, based on annual testing and the law's AYP system, clashed with many states' own accountability systems that existed before NCLB became law. Remember, as the primary overseers of K-12 education, state governments had developed a diverse array of systems designed to hold schools accountable for results prior



to 2001. Some of those systems were a response to the IASA, others were not. Predictably, given the diverse institutional and cultural terrain on which K-12 education operates, tremendous variation existed in the quality and comprehensiveness of those systems. Further, states with quite different systems often produced similar results. Therefore, no clear consensus or research base existed to show that educational accountability as NCLB defined it—in particular the law’s annual testing requirements and AYP system of school ratings and consequences for poor performance—was necessarily the best way to improve school performance. As drafts of NCLB moved through the legislative process in 2001, for example, state critics argued against proposals for annual testing by noting that some of the highest performing states in the country possessed other systems based on different testing models (Manna 2006).

Despite disagreements about whether NCLB’s approach was best, all states agreed to accept funding under the law and therefore were obligated to construct accountability systems consistent with its mandates. But that requirement still allowed states to maintain their own separate systems to evaluate schools. State leaders in Florida, for example, were quite vocal in defending their approach, which rated schools on a sliding scale using the sort of “A” to “F” system that often appears on student report cards. Florida’s system allowed state officials to make finer gradations between the progress of individual schools, rather than the all or nothing approach that the AYP system required. NCLB’s defenders responded to such criticisms by noting that one flaw in systems such as Florida’s was that they did not assign grades based on performance of student subgroups, which federal lawmakers perceived as a threat to equity. Florida officials defended their plan by arguing that it rewarded schools for making strides among its lowest quartile of achievers, many of whom would overlap with the disadvantaged subgroups defined in NCLB (Matus 2006).

The existence of federal and state accountability systems, which judged schools based on different criteria, often fostered local confusion and sometimes anger. In some instances, schools learned that they received high marks from their states' system, which sometimes came with school honors and cash awards for teachers. Not long thereafter the same schools would receive additional notices that they had missed AYP, became a school in improvement, and were required to begin implementing NCLB's remedies for schools in improvement status (Winerip 2003b). Because NCLB's accountability system did not necessarily replace state systems, such results were possible, and made it difficult for local officials, community members, and parents to understand how to evaluate school performance given the different conclusions that each accountability system reached.

Second, local challenges fostered additional conflicts with NCLB's requirements, especially its remedies for schools that were in improvement status. Local school districts, which were the lead administrative agents in implementing NCLB school choice, supplemental educational services, corrective action, and restructuring were often unable to faithfully fulfill their obligations due to state delays in scoring student tests and rating schools for AYP. An ideal implementation situation was for schools to learn if they had made AYP well in advance of the coming school year. That would give school districts time to alert parents of their access to NCLB school choice or supplemental educational services. It would also enable schools to plan for corrective action or restructuring. But states were not always effective in notifying local districts of school AYP rankings in a timely manner (Manna 2007). Some schools would learn of their status only after the school year had begun, making swift, accurate, and faithful implementation of the law difficult, even in communities that otherwise embraced NCLB's assumptions and requirements.

Another set of local challenges prompting conflict centered on the diverse conditions and situations that local school districts faced, complicating efforts to implement the law's accountability requirements. In dense urban school districts, for example, frequently so many schools would miss AYP that it was physically impossible to accommodate all students who might be eligible to transfer under the NCLB choice provisions (Hess and Finn 2007; Winerip 2003a). In contrast, highly remote rural school districts also had difficulty implementing the law's remedies, but for different reasons. NCLB choice was difficult to offer when the closest school might be several hours away. Some rural communities also had difficulty attracting supplemental educational services providers to their locales, or they were unsuccessful in forging university or non-profit partnerships (a common strategy in urban or suburban settings) to help assist schools that had entered corrective action and restructuring (Government Accountability Office 2005a).

Third, in addition to clashing with state and local policies and conditions, NCLB sometimes created conflicts as state and local officials attempted to implement it alongside other federal expectations. The existence of multiple federal program silos, a problem noted earlier, created blind spots for federal legislators and education department officials that manifested themselves as problems for state and especially local officials to sort out. Sometimes those conflicts emerged when NCLB seemed to conflict with other federal laws, such as the Individuals with Disabilities Education Act (IDEA). That law required local schools to develop plans that tailored instruction and assessment for students who qualified for special education services due to some documented disability. Tailoring a student's individualized learning and assessment plan to what NCLB's testing provisions required for accountability purposes was not

always clear, and frequently federal and state guidance left local questions unresolved (Government Accountability Office 2005b).

Parallel problems existed for teachers attempting to serve students who were not fluent in English, known as English-language learners (Government Accountability Office 2006). For these students, NCLB appeared to contain internal contradictions that created tensions and implementation problems across the intergovernmental system. Recall, for example, that NCLB's requirements for testing and AYP were contained in Title I of the law. But the law had multiple titles, and Title III addressed some of the particular needs of English-language learners. In trying to facilitate state and local implementation of NCLB's AYP provisions and to serve this student subgroup, the federal government allowed states to administer tests to English-language learners in their native language for up to two years. States that chose this route essentially created incentives for local schools to prepare these students for state tests in their native language, thus further delaying their ability to master English. That created challenges and sowed frustrations among teachers in subsequent grades who expected the students to be more comfortable using English in the classroom. The strategy of offering native-language tests also conflicted with the ambitions of Title III of NCLB, which pushed states and localities to move these students to English-language fluency as quickly as possible. Interestingly, then, in trying to smooth conflict by offering states the option for native-language testing, federal policy choices heightened internal tensions within NCLB itself while simultaneously stoking conflicts between local educators who served English-language learners (Zehr 2006).

### ***Policy Development***

Just as NCLB sowed intergovernmental conflict, it also led state and local governments to develop new policies to meet the law's mandates. That broad outcome was predictable given

the nature of educational governance in the United States and federal officials' need to rely upon state and local governments to implement federal initiatives. In another work, I describe that process as "borrowing strength," whereby actors at one level of government can attempt to advance their priorities by leveraging the justifications for action or capacities that exist at other levels (Manna 2006). When NCLB became law, the federal government had neither the budgetary power nor the administrative capability to initiate a system of performance-based accountability in American schools. Achieving their ambitions for greater accountability required federal policymakers to seek leverage from state and local capabilities. As the borrowing strength model predicts, effective leveraging can produce policy changes that advance federal goals. But poor assessments of state and local capabilities can generate policy responses from these levels of government that are wasteful or even counterproductive. In considering policy development, NCLB's implementation track record showed some positive signs, but at least one powerfully negative one as well.

Amidst some of the conflicting incentives that NCLB unleashed for school officials, principals, and teachers, the law also encouraged some positive policy developments at the local level. One important trend, which NCLB's emphasis on standardized testing and AYP ratings helped to advance, was the school-level use of student achievement data to make instructional decisions (Marsh, Pane, and Hamilton 2006; Hoff 2007; Kanstoroom and Osberg 2008). Interestingly, as state-level testing in reading and math proliferated in response to NCLB's mandates, local school districts and schools discovered that data from those exams were often the least helpful in guiding their daily work. Because exams for school accountability purposes typically occur in the spring, and results become available only at the end of the school year or into the summer, schools are unable to act upon the results until the next year begins. In

response to those limits, schools increasingly began to administer their own assessments at more frequent intervals. Those assessments were designed to measure students' progress and to adapt instructional methods when needed, with the overall goal being that students would master classroom material and be better prepared to succeed on state exams. Thus, decisions about lesson planning and student learning became more directly tied to empirical evidence rather than intuition or, even worse, stereotypes about which students were most capable of learning.

Responding to NCLB's mandate to test and report scores for student subgroups produced additional positive policy changes in some local communities. Two notable areas were in how schools worked with their teachers to educate students with disabilities and English-language learners. Given that the law required test scores from these two subgroups to figure into a school's AYP calculations, some schools made stronger efforts to help traditional classroom teachers and teachers specially trained for these student populations to work together. In other words, some traditional English or math teachers were likely to have more regular interactions with special education teachers and teachers who were language specialists. Further, school districts directed increasing numbers of professional development dollars toward helping these teachers work together to better address the unique challenges facing students with disabilities and students who were English-language learners (National Center for Learning Disabilities 2007; Cech 2009).

Certainly, adaptations in local policies on data use and teaching of student subgroups were not uniformly positive. As with all measurement tools that generate data, there are proper and improper ways to use them. Some local assessments were used simply to implement narrow strategies of "teaching to the test," which prepared students by drilling them on disconnected sets of facts or test-taking strategies. Additionally, in attempting to meet the accountability pressures

that AYP requirements created, some schools dramatically curtailed the exposure of vulnerable student subgroups to other courses and programs in the curriculum. A narrow focus on preparation in English and math, at the expense of science, social studies, and creative electives, sometimes dominated those students' schedules (Rothstein, Jacobsen, and Wilder 2008). So although NCLB also promoted such negative local responses, it is worth recognizing that some communities used the law to make positive policy changes designed to improve the use of data and meet the needs of student subgroups whose academic progress received less serious attention before NCLB's enactment.

Positive adjustments to local policies notwithstanding, NCLB produced one overwhelmingly negative policy development that undermined its overall goal of promoting academic excellence. In practice, NCLB's focus on process requirements rather than substantive outcomes produced state policies that were often consistent with the law but simultaneously undermined educational quality. This problem stemmed from the fundamental design issue that this paper discussed earlier. In crafting NCLB, the law's authors imposed upon states and localities a prescriptive way to measure school progress (the AYP system) while simultaneously allowing states to set academic expectations and define what students needed to demonstrate to be deemed proficient in reading and math. That division of labor involved in designing and implementing educational accountability created an implicit trade-off, which many states resolved in ways that undercut expectations for academic rigor.

The trade-off facing states suggested they had two undesirable options from which to choose. On one hand, setting ambitious reading and math standards would mean that schools would have an incredibly difficult time making AYP, especially as the 2014 deadline for 100 percent proficiency approached. As a result, more and more schools, even some that were

reasonably good or even strong based on a lay person's judgment, would be required to devote time and money to carrying out the law's remedies for schools in improvement. Undertaking those efforts would create wasted resources in some schools that perhaps needed marginal changes, not major improvements, and it would complicate state and district efforts to meet the needs of truly troubled schools. On the other hand, states could avoid having hundreds of schools miss AYP by lowering academic expectations, and thus making it easier for students to demonstrate proficiency. Of course, students would pay the ultimate price of such a decision.

Unfortunately, the evidence from NCLB's implementation strongly indicates that states chose to keep expectations relatively low, thus providing students with less than rigorous academic experiences (Carey 2006; Government Accountability Office 2009). Helping schools address the short-term goal of making AYP tended to win out over the longer-term goal of ensuring that students were prepared for their adult lives, including future training in college, employment, and the ability to participate in their communities as informed, active citizens. In one of his first major speeches on NCLB and its impacts, President Obama's secretary of education, Arne Duncan, advanced this view in very direct terms. While also praising the law's ambitions and its success in calling attention to the needs of disadvantaged students, Duncan criticized the movement to lower expectations. "The biggest problem with NCLB," he argued, "is that it doesn't encourage high learning standards. In fact, it inadvertently encourages states to lower them. The net effect is that we are lying to children and parents by telling kids they are succeeding when, in fact, they are not. We have to tell the truth, and we have to raise the bar" (Duncan 2009).



### *Policy Legitimacy*

When read carefully, Secretary Duncan's primary criticism of NCLB implied much more than a judgment about the quality of state policy. It implied that a core assumption of the law's authors—that state-defined tests and expectation levels could serve as the primary basis for judging schools under AYP—was essentially flawed. In practice, state tests struck many observers, including Duncan, as invalid measures of school progress. People reached that judgment in part because of the lowered expectations that the secretary mentioned. But that conclusion surfaced, too, because some of the law's most vocal critics suggested that judging schools primarily on the basis of reading and math performance ignored the many other purposes for which American schools exist (Meier and Wood 2004; Rothstein, Jacobsen, and Wilder 2008). A more valid measure, then, would have required higher expectations for reading and math, and additionally the incorporation of other measures of valued outcomes such as the ability of students to participate in their communities as informed citizens and productive workers.

As scholars of performance management have argued, for accountability systems to achieve their objectives, they must incorporate valid metrics that provide program overseers and implementers with useful information (Gormley and Weimer 1999; Radin 2006; Moynihan 2008). For that to be true in the context of educational accountability, federal, state, and local education officials, in addition to parents and community members, would have to possess confidence in the measures used to evaluate schools. At the school-level, principals and teachers would have to believe that the information the accountability system generated was accurate, fair, and likely to help them act in ways to improve future school and student performance. Fundamentally, the middling or low expectations that NCLB allowed and the contradictory results that sometimes emerged from state accountability systems using different criteria hindered the law from fostering widespread confidence in the judgments it produced. That

represented a major shortcoming. Systems of accountability need to inspire confidence if their assessments are to be seen as legitimate and become the basis for organizational improvement.

Other aspects of NCLB's implementation appeared to undermine principles of transparency and democratic openness, which hampered legitimacy in other ways. A primary source of these problems was in the intergovernmental negotiations between the federal education department and state officials, especially those in state education agencies who had major day-to-day responsibilities for implementing the law. In fulfilling their process obligations under NCLB, states had to develop and present their accountability plans to the federal education department for approval. As in any intergovernmental grant program, those interactions generated back-and-forth discussions between federal and state officials about which elements of state plans were acceptable and which required changes. A major line of discussion involved the methods by which states would implement the various requirements for AYP. Those discussions included how many students needed to be in a subgroup for the group to count in a school's AYP calculation; the way that states would incorporate scores of students who received some sort of testing accommodation; and the way that states would evaluate student subgroups scores to determine whether a school had made AYP. Even after state plans were settled, subsequent discussions ensued when states proposed changes in what the federal education department had previously approved.

As discussions unfolded, the decision-making process in Washington made it difficult for outsiders to understand the basis for federal judgments. Federal officials would sometimes deny proposed changes to certain states, but then several months later accept similar requests from others (Erpenbach, Fast, and Potts 2003; Fast and Erpenbach 2004). These decisions were not consistently put in writing, which made systematic outside assessments of federal

acceptances and denials impossible to track. It also complicated the work of state agency officials who may have heard one message from the federal education department but then inferred something different when discussing matters with their colleagues in other states. Given that these dynamics were sometimes difficult for state officials to track, one can safely conclude that officials in local school districts and average citizens would have had a nearly impossible time doing the same.

Despite the validity problems and lack of transparency on process matters that plagued NCLB, the law did produce some results that were consistent with important democratic principles to which the nation has aspired. The style of school-level reporting that NCLB mandated gave all Americans greater access to information about school performance, especially the progress of student subgroups. No longer could schools rely upon their elite students to make overall school performances in reading and math seem acceptable, when in reality disadvantaged students may have been far behind. As a result, NCLB helped foster heightened attention to the needs of traditionally underserved students. Even Secretary Duncan, who otherwise criticized the law for encouraging states to lower expectations, credited it with forcing the nation to confront educational inequities unlike ever before (Duncan 2009). In some communities, that attention inspired and gave local reformers added credibility as they pushed for changes in schools that desperately needed them. In that way, NCLB provided them with valuable leverage to accomplish their local reform objectives, a form of borrowing strength (Hess and Finn 2007; Manna 2006).

Of course, the added attention to equity concerns did not mean that federal, state, or local policymakers always took steps to alleviate persistent inequities. People could properly credit NCLB for raising awareness while simultaneously criticize it for failing to promote actions that

would improve the experiences of underserved student groups (Wiener 2006). Also, rigorous analyses of NCLB's AYP system based on subgroup reporting showed crucial statistical limitations in what those scores could accomplish, further calling into question the system's effectiveness at judging schools (Kane and Staiger 2002; Kane, Staiger, and Geppert 2002). Those limitations are incredibly important to note because they challenged the ability of NCLB to serve as a valid instrument to promote intergovernmental accountability in education. Even so, despite the technical limitations, the greater transparency that the law favored did embody a democratic principle worth advancing.

## **Conclusions**

Despite making some valuable contributions and better highlighting the needs of disadvantaged students, in general, NCLB fell short of achieving its primary goal of promoting accountability for educational results. The constraints imposed by the American intergovernmental system, the tradition of state and local control of schools, and NCLB's policy levers combined to produce this result. As federal policymakers designed NCLB to accomplish grand and noble ambitions, they failed to consider deeply and realistically the incentive structures they were adopting and the implications for performance measurement and accountability that those structures would produce. In practice, the law generated results that undercut its ability to be a valid measurement instrument that would promote needed changes to help American students achieve at high levels.

How President Obama and his education team assimilate the lessons of NCLB's performance remains to be seen. Early indications suggest that Obama and Secretary Duncan favor following NCLB's current path of using federal policy to promote accountability for educational results (Klein 2010, 2009). Whether the authors of the next ESEA adapt NCLB's

mechanisms to create an approach to school accountability that becomes a powerful engine for substantive improvements, rather than focusing primarily on bureaucratic compliance with procedural rules, will depend on several factors. Crucially, those factors include the ability of the administration to work with its allies and adversaries in Congress, and the degree to which state and local officials make their own cases on Capitol Hill. Whatever outcome emerges, the next ESEA will operate on the same fragmented and diverse institutional terrain as NCLB. Reformers must account for the realities of that challenging intergovernmental environment if they are to craft the ESEA's next approach to accountability so that it does more than patch NCLB's shortcomings. Improvements should also inspire widespread confidence in the measures, judgments, and consequences that state and local officials will use to promote academic success in America's schools.

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## Tables and Figures

Table 1. Major public institutions governing K-12 education in the United States

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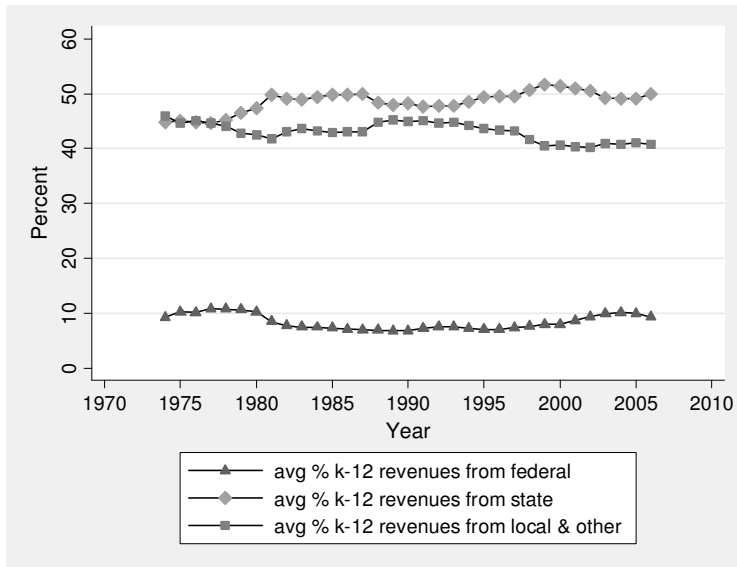
1 federal government
president, Congress, federal courts
U.S. Department of Education
50 state governments
governors, legislatures, state courts
state education boards
state education agencies
13,861 school districts (as of 2006-07)
local school boards
local education agencies
mayoral control in some cities
98,793 public schools (as of 2006-07)

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Note: This table covers the vast majority of K-12 education in the United States. Other specific and often parallel institutions exist that govern additional schools in places such as the District of Columbia, Puerto Rico, schools on Native American reservations, and those on U.S. military bases scattered around the world. The United States also contains approximately 35,054 private schools (as of 2005-06), which typically are subject to little oversight from public authorities.

Data source: The count of school districts, public schools, and private schools comes from the U.S. Department of Education, *Digest of Education Statistics*, 2008 edition, Table 87. Available on-line at <http://nces.ed.gov/programs/digest/d08/index.asp>. Last accessed on October 13, 2009.

Figure 1. Sources of revenue for K-12 education, 1974-75 to 2006-07

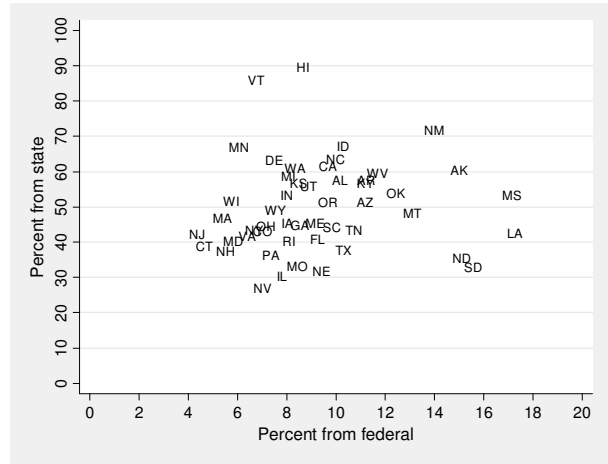
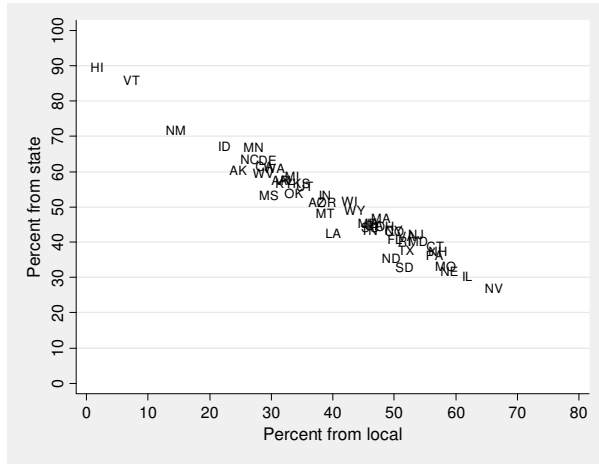


Data source: U.S. Department of Education, *Digest of Education Statistics* (various years) and the Common Core of Data. The latter is available on-line at <http://nces.ed.gov/ccd/> and was last accessed on June 1, 2009.

Figure 2. Variation in revenue source combinations for K-12 education by state, 2006-07

A. State versus local revenue sources

B. State versus federal revenue sources



Note: Each data point is an individual state, represented by the state’s two-letter abbreviation. For example, looking across both graphs one can see that for the 2006-07 school year, Vermont’s (VT) revenues for K-12 education came in this combination: 86 percent from the state, 7 percent from local sources, and 7 percent from federal sources.

Data source: U.S. Department of Education, Common Core of Data. Available on-line at <http://nces.ed.gov/ccd/>. Last accessed on June 1, 2009.