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# Overpromising and Underperforming?

*Understanding and Evaluating  
New Intergovernmental  
Accountability Regimes*

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## 10 The No Child Left Behind Act and Educational Accountability in the United States<sup>1</sup>

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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 chapter examines those relationships, focusing in particular on the No Child Left Behind Act (NCLB), the most ambitious federal effort to hold schools accountable for academic performance. Passed by the United States Congress in December 2001 and signed into law on 8 January 2002 by President George W. Bush, NCLB was the latest reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA), the federal government's primary law addressing American schools.<sup>2</sup> Since 2001, the country's experience with NCLB has revealed how federal efforts to promote educational accountability are fundamentally limited by the intergovernmental actors that craft, interpret, and implement education policy in the United States. Examining NCLB's performance requires one to consider federal actions, but equally important has been behaviour in state and local venues.

Even as state education officials and local decision-makers took their procedural cues from NCLB, a federal law, their own policy choices imputed specific meaning to the law's core concepts such as educational equity, excellence, and accountability. As such, NCLB did not amount to a federal takeover of the nation's system of elementary and secondary education. Rather, although NCLB demanded greater quality in American schools, its accountability framework afforded state governments with much leeway to define the substantive meaning of quality. Further, as with all federal education laws, NCLB relied heavily on states and local school districts to make the law's provisions work. As a result, NCLB really led to the creation of fifty different systems of educational

accountability, one for each state, along with local adaptations, rather than one coherent federal system that many people wrongfully believe now exists in the United States.

The four sections in this chapter analyse 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 chapter also reflects on NCLB alongside policy changes in Canada that have influenced the politics and practice of intergovernmental accountability. The first section briefly describes the landscape upon which American education policy is made and implemented. The second summarizes the principal accountability mechanisms of NCLB, which connected governments across federal, state, and local levels. The third considers some of NCLB's effects on policy conflict, policy development, and policy legitimacy. The final section concludes.

Overall, the chapter shows that despite producing some positive impacts that are worth recognizing, given the highly fragmented nature of educational governance and administration in the United States, NCLB fell short of achieving its primary goal of promoting accountability for educational results. Two particular lessons emerge that speak to Canada's experiences and its own accountability reforms that have unfolded since the mid-1990s. NCLB reveals how central governments can be challenged to impose more uniform accountability expectations when policies are multidimensional and serve numerous diverse communities. It also shows how transparency is only one of several elements required of leaders who aim to craft systems that promote greater public involvement in holding governments to account.

### Institutions and Finance

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 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 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 labour for funding education across levels of government.

The American intergovernmental system contains institutions at all levels that influence the design and implementation of education policy.

When considering accountability for educational results, three points about these institutions are worth elaborating. First, consider local factors. As in Canada, implementation of education policy in the United States occurs in diverse local settings including large urban centres, upper-class and working-class suburbs, small quiet towns, and isolated rural communities. Those locales educate children with myriad ethnic, linguistic, and socioeconomic backgrounds ranging from the most to least economically advantaged.

In contrast to its Canadian neighbours, though, the United States maintains many more local institutions to govern and implement education policy. Such differences exist even when one accounts for the overall population differences between the two countries. The United States maintains almost 14,000 local school districts – each, typically, with its own governing board and education bureaucracies – and nearly 100,000 public schools. Such a fragmented administrative environment creates significant challenges for any accountability regime aiming 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 in education tended to focus on one or two activities, and sometimes both. Federal actions promoted greater access to educational opportunities for previously disenfranchised or marginalized groups, especially students of racial, ethnic, or linguistic minorities and students with disabilities. Also, the federal government redistributed financial resources to assist communities with large numbers of economically disadvantaged children (Cross 2004; Kaestle and Smith 1982). Those activities still persist and remain major centres of federal attention. But the idea that federal officials would promulgate laws, regulations, or decisions designed to hold schools accountable for academic performance began to emerge seriously only 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 the U.S. Constitution does not mention education explicitly.

Third, and finally, is the crucial role of state governments, which have become increasingly important since the 1970s. Several forces have promoted a surge of state interest and involvement in education, including shifts in economic conditions that led governors and state legislators – prompted by the business community – to become more interested in

educational quality; state court decisions and subsequent legislative enactments that gave states more power over school funding vis-à-vis local communities; and finally, the rise of the educational standards movement (Evans, Murray, and Schwab 1997; Murphy 1990; Vinovskis 2008). The last 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. From the state standards movement emerged several governors who eventually exercised substantial power on the national stage, helping to propel the standards movement forward.

One reason why states wield tremendous power in education is the 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 governing teaching and learning in local communities. The 14,000 school districts mentioned earlier, although governed by locally elected boards, are essentially administrative agents of the states that can be created, dissolved, or merged by state-level decisions. At the same time, states are 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 districts or schools. Instead, federal officials rely upon the states, who themselves rely on school district personnel to administer federal initiatives 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 education department employees administer federal programs while other different state department staff 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 of state agencies 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 challenge 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.<sup>4</sup> Overall revenue patterns across the last four decades suggest two main conclusions that are relevant for discussions of accountability. First, as a percentage of all K-12 education revenues, federal contributions have remained quite steady, typically hovering between 7 and 10 per cent. Second, of the remaining 90 per cent or so, revenues from state sources now exceed those from local communities – a trend that emerged in the mid-1990s. During the 2008–9 school year, the most recent for which data are available, states contributed 49 per cent and local governments 41 per cent of the funds that finance American schools, while the remaining 10 per cent came from the federal government. This division of financial labour contrasts with Canada's arrangement, where provincial governments wield near absolute authority over the finance of public education.<sup>5</sup>

Breaking down the patterns of revenue by states shows an additional layer of diversity. State and local contributions can vary widely. Within individual states, additional data from 2008–9 show that state contributions range from a high of 86 per cent in Vermont to a low of 28 per cent in Illinois. The vast majority of states shoulder between 35 and 65 per cent of the funding burden. There is also variation in the amount of federal money flowing into each state. Although all states receive federal education funds, federal contributions as a percentage of all revenues for K-12 education vary from 4 per cent in New Jersey and Connecticut to 16 per cent in Mississippi, Louisiana, and South Dakota. A main factor driving these differences is state-level poverty rates, which large federal education programs rely upon heavily to determine state allocations.

### The No Child Left Behind Act

Over time, federal, state, and local governments have produced numerous 'educational accountability' policies in the United States. Sometimes, local school districts have promulgated such policies to hold their own 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. In general, the vast majority of intergovernmental policies promoting

accountability have prioritized adherence to bureaucratic rules 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, have existed primarily as large grant-making machines dispensing federal and state dollars and then monitoring how and where the money was spent.<sup>6</sup> Until relatively recently, 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 limited consequences for results. High or low performance rarely would trigger rewards or tough interventions, especially when the distribution of federal education aid to states and local districts was involved. So although these systems were oriented around ‘command and control,’ as Graefe, Simmons, and White describe in their accountability framework in the opening chapter, enforcement of grant program requirements often was weak and rarely triggered the recapturing of funds.

The passage of NCLB, which extended the accountability elements of its predecessor law, the IASA, nevertheless represented a new venture in educational accountability for federal policymakers. Although not altering the balance of financial power discussed earlier (the federal contribution still amounts to pennies on the dollar), NCLB was the first major federal 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 traditions of state and local control of American schools (McGuinn 2005). Subsequent sections of this chapter 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 practices across the country. In all, the law contained more than 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.<sup>7</sup> Formulas in Title I direct federal dollars to states and then school districts (states have no control over district allocations of Title I funds), using poverty rate and population as the key variables to distribute money. Still, given the need to develop broad legislative coalitions of support, Title I dollars typically flow to over 90 per cent of American school districts. Changes in NCLB attempted to increase targeting of funds to the nation’s most impoverished communities, but to some degree Title I dollars still benefit nearly all corners of the country (Manna 2008).

As a condition of receiving Title I funds, 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>8</sup> Let’s consider these 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 each year using exams aligned with those standards.<sup>9</sup> In other words, states were charged with defining what students should know and be able to do in those subjects and grade levels (content standards) and then determining how well students needed to know the material to reach proficiency (performance standards). These standards could vary from state to state and still be consistent with NCLB’s requirements.

Using those test results, the law also required states to develop a school-level reporting system 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. That requirement was intended to prevent overall school averages from hiding 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. The law set an eventual deadline that by the 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 per cent of students across subgroups be proficient in reading and math by the end of 2007–8. (Other states might have different intermediate targets.) 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 per cent of students across all subgroups – was achieved. If any of a school's subgroups failed to 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>10</sup>

The judgments rendered by the AYP metric were based on an all-or-nothing approach. In other words, 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 as the result of poor performance among several subgroups. In short, the law made no distinctions between schools that missed AYP by a lot and those that came up just short.

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 schools for AYP, only schools receiving 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. Thus, unlike changes in Canada during the 1990s, which downplayed government-to-government reporting and attempted to engage citizens more directly in holding governments to account, NCLB's reporting requirements provided some of both approaches. Any interested citizen could access accountability reports for any school, which were generated by state governments and distributed by the state education agency and local school districts. In Title I schools, those reports guided state and local interventions in schools that failed to make AYP. School-level reporting thus created the potential for public naming and shaming as well as prompting additional required measures in schools that received federal aid.

Title I 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.' (In colloquial discussions, people often used the moniker *failing*, although federal officials resisted that term.) 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. Typically, those services were provided by the school district itself or by for-profit and non-profit organizations that the state had approved.

Title I schools that continued to miss AYP 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. Potential 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.

Canadian readers accustomed to provincial sovereignty over education will likely find NCLB's requirements an astounding exercise of federal power, especially given that states and local governments provide the vast majority of funds for education in the United States. Even though, by constitutional design, state governments and not the federal government are the main stewards of American elementary and secondary education, the federal requirements in NCLB are constitutionally permissible. The primary reason is that when states voluntarily accept federal funds under NCLB they are bound to follow its requirements.

The federal courts have consistently upheld that proposition, and as a result, federal policymakers have used their spending power to force state action in several areas, not just education.<sup>11</sup>

### Accountability in Theory and Practice

Despite NCLB's accountability demands, rather than fundamentally unifying the nation's intergovernmental system, the law essentially underscored and made more salient the pre-existing division of labour. 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 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. In fact, federal education officials expected that state education agencies and local school districts would work with their schools to do so.

Such patterns of interaction meant that intergovernmental agreements and understandings governing NCLB's implementation tended to be worked out along two lines of communication – an approach that had governed prior versions of the ESEA as well. A federal-state line of communication led to the development of fifty different state accountability plans, which the states developed and federal education officials vetted to determine whether they met NCLB's requirements. Even after plans were approved, states could request changes, which federal education department officials would evaluate. A state-local line of communication also facilitated implementation of those state accountability plans in local schools and districts. Echoing an earlier, more general point, these government-to-government relationships illustrate how states inhabit an important pivot point in the intergovernmental system. State institutions and policy were crucial for NCLB's implementation because they bridged the gap between federal mandates and local implementation.

In terms of the accountability typology that Graefe, Simmons, and White offer in this volume's introduction, a sort of 'command-and-control' approach is apparent, given that federal laws and regulations created a framework that states needed to follow as they developed

their accountability plans and held schools accountable. The amount of leeway that states had to negotiate the particulars of their plans also suggests a sort of process characteristic of the 'incentive-compatible instruments' approach that the editors also outline. Still, NCLB does depart from both of these accountability types in two ways. For one thing, the courts' role was quite small. Regarding the development of state accountability plans, specifically, enforcement (or non-enforcement) from the federal education department was much more consequential. Also, the performance elements that often characterize incentive-compatible instruments did not exist with NCLB. For example, states, school districts, or schools that made large academic gains did not earn exemptions from reporting or other NCLB requirements, as sometimes occurs when overseers reward high-performers by lessening their administrative burdens.

Overall, NCLB followed prior versions of the ESEA in establishing bureaucratic process requirements while letting states define substantive goals (e.g., definition of content and performance standards). Key reasons for that arrangement were the lack of capacity in the federal education department to do much more and, most important, the nation's tradition of state and local control of education. That strong tradition had rebuked prior federal efforts that might have moved toward the establishment of national standards (Jennings 1998; Ravitch 1995). 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 offers illustrative examples to address 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.<sup>12</sup>

### Policy Conflict

Given the assumptions of NCLB's primary authors and advocates, it was unsurprising that the law produced intergovernmental conflict. A main criticism of earlier federal education initiatives was that the federal government tended to offer money to states and localities without demanding substantive results in return. NCLB broke with the past by increasing pressure on states and local school districts to design accountability systems and enforce specific consequences if schools missed state-determined standards. 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 poorly performing schools. Rather, it left states to define those remedies. Thus, the consequences for failing to make AYP were a new addition with NCLB, as were the increased number of tests required. At least three dimensions of conflict emerged.

First, NCLB's prescriptive approach to accountability, based on annual testing and the AYP system, clashed with many states' own accountability systems that existed before NCLB became law. In prior years, state governments had developed a diverse array of systems to hold schools accountable for results. Some of those systems were a response to the less prescriptive IASA, others were not. Predictably, given the diverse institutional and cultural terrain on which K-12 education operates, there was tremendous variation in the quality and comprehensiveness of these state systems prior to NCLB. Further, states with quite different systems often produced similar results. Therefore, there was no clear consensus or research base to show that educational accountability as NCLB defined it – in particular the law's annual testing requirements and AYP system of school ratings and possible consequences – 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 did not test students each year and possessed other systems based on different accountability 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 note finer gradations in the progress of individual schools, rather than the all-or-nothing approach that the AYP system required. NCLB's defenders responded by noting that one flaw in systems such as Florida's was that they ignored the 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 by different criteria, often fostered local confusion and sometimes anger. In some instances, schools learned that they received high marks from their state, which sometimes came with honours and cash awards for teachers. Not long thereafter the same schools would learn that they had missed AYP, entered improvement status, and were required to begin implementing NCLB's remedies for schools in improvement (Winerip 2003b). Because NCLB's accountability system did not always replace state systems, such results were possible and challenged local officials, community members, and parents to understand how to evaluate school performance, given the different conclusions that each accountability system reached.

Second, local situations fostered additional conflicts with NCLB's requirements, especially its remedies for schools that were in improvement. Local school districts were often unable to faithfully fulfil their obligations when states experienced delays in scoring student tests and rating schools for AYP. An ideal implementation situation was for schools to learn well in advance of the coming school year if they had made AYP. 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 slow to notify local districts of school AYP rankings (Hess and Finn 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 centred on the diverse conditions in local school districts, which complicated efforts to implement the law's accountability requirements. In urban communities, 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. It was hard to offer NCLB choice when the closest school might be several hours away and alternative school providers had little incentive to start new schools in these communities. Some rural communities

also failed to attract 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 2005).

Third, in addition to clashing with state and local policies and conditions, NCLB sometimes created conflicts as state and local officials implemented it alongside other federal programs. One example involved teachers attempting to serve students who were not competent in English, known as English-language learners (Government Accountability Office 2006). For these students, NCLB's internal tensions fostered implementation problems across the intergovernmental system.

Recall that Title I of NCLB included requirements for testing and AYP, but among its many other titles, the law also addressed the 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 languages, thus further delaying their ability to master English.

The strategy of offering native-language tests conflicted with the ambitions of other English-language learner provisions in NCLB. Another major section of the law provided funding and programs to serve these students. That section encouraged states and localities to help these students develop competency in English as quickly as possible, but native-language testing, which encouraged native-language instruction, undermined it. 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). Allowing these students to take tests in their native languages may have helped schools make AYP, but it also sowed frustrations among teachers in subsequent grades who expected these students to be more comfortable using English.

### Policy Development

Just as NCLB stoked intergovernmental conflict, it also produced new state and local 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 other 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 available 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 to promote educational 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 wasteful or even counterproductive policy responses from these levels of government. In considering policy development, NCLB's track record showed some positive signs, but at least one powerfully negative one as well.

One promising trend, which NCLB's emphasis on standardized testing and AYP ratings helped to advance, was the increased school-level use of student achievement data to make instructional decisions (Hoff 2007; Kanstoroom and Osberg 2008; Marsh, Pane, and Hamilton 2006). 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 typically occur in the spring, and results become available only at the school year's end or into the summer, schools cannot act upon the results until the fall. In response to those limits, schools and sometimes entire school districts 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 for 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 teachers to educate English-language learners and students with

disabilities. Given that the law incorporated test scores from these two subgroups into a school's AYP calculations, some schools made efforts to help traditional classroom teachers and teachers specially trained for these student populations to collaborate. 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 training these teachers to better address the unique challenges facing students with disabilities and students who were English-language learners (Cech 2009; National Center for Learning Disabilities 2007).

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 (Rothstein, Jacobsen, and Wilder 2008). 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). Although NCLB also promoted such negative local responses, it is worth recognizing that some communities used the law to improve the use of data and meet the needs of student subgroups whose academic progress received less serious attention before NCLB's enactment (Chenoweth 2007).

Positive adjustments to local policies notwithstanding, NCLB produced one overwhelmingly negative development that undermined its core goals of promoting academic excellence and reducing achievement gaps between students. In practice, NCLB's focus on process requirements rather than substantive outcomes produced state policies that were often consistent with the law yet undermined educational quality. This problem stemmed from a fundamental design issue at the heart of NCLB that flowed from the traditional allocations of responsibility for education in the American intergovernmental system. The law's authors imposed upon states and localities a prescriptive way to measure school progress (the AYP system) while simultaneously following tradition by allowing states to set academic standards and define how students would demonstrate proficiency in reading and math. That division of

labour involved in designing and implementing educational accountability created an implicit trade-off, which many states resolved in ways that undercut expectations for academic rigour.

The trade-off went as follows. On one hand, setting ambitious reading and math standards would mean that schools would have difficulty making AYP, especially as the 2014 deadline for 100 per cent proficiency approached. As a result, more and more schools, even some that were reasonably good or even strong, based on reasonable judgments, would be required to devote time and money to carrying out the law's remedies for schools in improvement. Undertaking those efforts would waste 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 having less rigorous 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 decided against ambitious expectations, 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 long-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 Barack Obama's secretary of education, Arne Duncan, advanced this view in very direct terms. While also praising the law's ambitions and its 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 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 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, accountability systems can achieve their objectives when they incorporate valid metrics that provide program overseers and implementers with useful information (Gormley and Weimer 1999; Moynihan 2008; Radin 2006). In the context of educational accountability, federal, state, and local education officials, in addition to parents and community members, must possess confidence in the measures used to evaluate schools. At the school level, principals and teachers must believe that the information the accountability system generated was accurate, fair, and likely to help them 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 rendered. That was a major shortcoming. Systems of accountability need to inspire confidence if they are to 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. As noted earlier, 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 discussions between federal and state officials about which elements of state plans were acceptable and

which required changes. Major conversations focused on the methods by which states would implement the various requirements for AYP. Those discussions included how many students a subgroup needed for it to count in a school's AYP calculation; the way that states would incorporate scores of students who received testing accommodations due to a disability; and how states would evaluate student subgroup 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 conversations 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, making 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. The style of school-level reporting that NCLB mandated gave all Americans more 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 their disadvantaged students struggled. As a result, NCLB increased 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 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 improve the experiences of underserved student groups (Wiener 2006). Also, rigorous analyses of NCLB's AYP system based on subgroup reporting revealed statistical limitations in what those scores could accomplish, further questioning the system's effectiveness at judging schools (Kane and Staiger 2002; Kane, Staiger, and Geppert 2002). Those limitations are important to note because they undermined NCLB's ability to produce valid measurements to promote intergovernmental accountability. Even so, despite the technical limitations, the embrace of greater transparency that the law favoured did embody a democratic principle worth advancing.

## Conclusion

Although NCLB made some valuable contributions and better highlighted the needs of disadvantaged students, in general it 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 outcome. 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.

Although many critics of NCLB reside across the political spectrum in the United States, the law's reauthorization, which was supposed to occur in 2007, remains undone nevertheless, as of 2012. Disagreements among members of Congress and the Obama administration about the proper lessons one should draw from NCLB's track record, combined with the nation's highly polarized political environment, have prevented a revision plan from emerging that federal legislators and the president would accept. This political deadlock at the federal level and persistent state anxiety, given that the law's 2013–4 deadline for 100 per cent proficiency fast approaching, have moved Secretary Duncan and President Obama to offer states waivers of certain NCLB provisions in

exchange for states advancing initiatives consistent with the administration's priorities, especially the priorities announced in their *Race to the Top* initiative – a competitive federal grant program designed to enhance state educational reforms (Manna and Ryan 2011). The administration's waiver proposal has sparked both support for the relief it promised and outrage from others who believed the proposal, despite its promise for flexibility, simply meant adherence to a new set of federal requirements. Further, some members of Congress were especially exercised because in their view the conditions states were forced to accept to receive a waiver went too far and amounted to the executive branch usurping the legislature's lawmaking function (Klein and McNeil 2011).

In all, given the evolution of federal-provincial relationships in Canada since the mid-1990s, the case of NCLB suggests at least two broad lessons for Canadian scholars and policymakers who are interested in improving Canada's own approach to accountability in education and other areas. First, the NCLB case provides a useful cautionary tale about the ability of the central government to shape the development of accountability systems at subnational levels. One reason federal officials attempted to assert themselves with NCLB's prescriptive system of testing and AYP was federal frustration at the pace of educational improvement in the states. While NCLB helped them to address those frustrations, importantly, the law showed how difficult it can be to advance otherwise noble goals in such a large and diverse society. It is interesting to contrast that result with the trajectory of Canadian education policy that Jennifer Wallner discusses in her chapter 11 in this volume. In Canada, a system driven by provincial leadership, not federal oversight, appears to have produced a reasonably consistent set of practices and expectations across the provinces. In the United States, a major federal effort in the form of NCLB was unable to foster a similar level of consistency in expectations or dissemination of best practices across the fifty states. These contrasting experiences suggest that the presence of an assertive federal government may not be a precondition for the development of a 'national' system of educational accountability. Scholars and policymakers in other areas beyond education would be well served to consider whether that same notion also applies to their particular sector of interest.

Second, NCLB shows that transparency is a necessary but insufficient condition for enabling citizens to play a greater role in holding governments to account. In the United States, NCLB did help make more information available to citizens, but it sometimes confused rather than

clarified matters. The presence of multiple systems of accountability – schools might look good on the basis of the state's own metrics but poor on the basis of NCLB's – was one problem. Also problematic was the blunt instrument of AYP, which labelled schools as making adequate progress or not, with no rating categories in between. Helping citizens to understand these intricacies requires much more than making results transparent. That lesson is important for Canada in light of reforms from the mid-1990s that valued and emphasized citizen oversight rather than government-to-government reporting to foster accountability. The myriad intergovernmental agreements that link Canada's federal government with its provinces, especially in the complex arena of social policy, have the potential to sow confusion unless transparency is accompanied by clear reporting of metrics that citizens can understand.

As the future unfolds, it will be interesting for American and Canadian observers to track the development of a new and still-developing effort in the United States, known as the Common Core State Standards Initiative. Led by the National Governors' Association and the Council of Chief State School Officers, the latter an organization representing the leaders of state education departments, in 2009 forty-eight states joined to develop common standards in key academic subjects. Additional state-level collaborations have followed to write student exams that will accompany the standards.<sup>13</sup> Supporters of the initiative hope that it will provide states with a consistent framework that they can adopt to better serve their students and communicate more uniform expectations across the country to citizens and public officials alike. Importantly, supporters also hope that such coordination will occur without the heavy hand of the federal government intervening in the process. Such a view parallels the optimism in Wallner's chapter regarding how the Council of Ministers of Education, Canada (CMEC) has contributed to the effective and generally consistent accountability regimes in the provinces.

Whether Common Core will replicate CMEC's successes and, in practice, actually spur coordination and common expectations remains to be seen. Already some states that were involved in the initial development of Common Core standards have since decided to stick with their own state-developed standards instead. Additionally, the Obama administration has strongly endorsed the work of Common Core and even linked state participation to its own Race to the Top initiative.<sup>14</sup> It is unclear how well this added federal interest will accelerate the policy

development and implementation work of the Common Core states or, alternatively, whether it may poison the well of state enthusiasm. Either way, the unfolding of Common Core as well as future changes to NCLB, when the law finally is reauthorized, will nevertheless provide additional useful lessons for the people of Canada and the United States as they wrestle with intergovernmental accountability regimes in education and other policy areas.

## NOTES

- 1 I owe many thanks to Linda A. White, Julie M. Simmons, Peter Graefe, Thomas Hueglin, and Jennifer Wallner for offering valuable feedback on this chapter.
- 2 Use of the term *federal government* in this chapter refers to the national government based in Washington DC and includes the president, Congress, Supreme Court, and the federal bureaucracy.
- 3 K-12 refers to kindergarten through Grade 12. Students in the United States usually begin Kindergarten at age five and typically complete Grade 12 and graduate from high school by the time they are seventeen or eighteen years old.
- 4 The statistics discussed here are from the 2008-9 school year, as cited in the U.S. Department of Education's 'Digest of Education Statistics,' <http://nces.ed.gov/programs/digest/>.
- 5 See Wallner's chapter 11 in this volume for discussion of provincial power over education finance.
- 6 Before 1980, the main federal education programs were administered by the Department of Health, Education, and Welfare. A government reorganization separated the education function from the health and welfare function, producing the federal education department and the Department of Health and Human Services – both of which continue to operate today.
- 7 Title I, Part A, which provides funds to local school districts, is NCLB's primary funding stream. From fiscal year 2002 to 2008, federal appropriations for this part of the law increased from just over \$US10 billion to just under \$US15 billion.
- 8 Because space is limited, 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 chapter 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.
- 9 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.
  - 10 A somewhat technical provision in the law, known as 'safe harbour,' allowed for some exceptions to this rule. See Hess and Petrilli (2006) for a brief summary of safe harbour.
  - 11 See, for example, the U.S. Supreme Court decision in *South Dakota v. Dole* (1987), which upheld federal requirements that states raise their drinking ages to twenty-one years of age in order to receive certain federal highway funds.
  - 12 Many studies have examined the performance of No Child Left Behind. Interested readers should consult the large corpus of work published by the Center on Education Policy (<http://www.cep-dc.org>) and the U.S. Government Accountability Office (<http://www.gao.gov>) for a useful start. See also Gamoran (2007), Hess and Finn (2007), Kahlenberg (2008), and Manna (2011).
  - 13 Information on the initiative, and the standards it has developed, is available at <http://www.corestandards.org>. Alaska and Texas were the two states that did not participate.
  - 14 State applications for Race to the Top grants were judged on a 500-point scale. States could earn 40 points toward their total if they had adopted the Common Core standards.

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