

## The Expansion of Federal Power and the Politics of Implementing the No Child Left Behind Act

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*The federal No Child Left Behind Act of 2001 (NCLB) expanded the federal role in American education, and by doing so altered the distribution of power among the federal government, states, and local districts. When the law was enacted, it was unclear how this change in the distribution of power would play itself out. This study examines the developing set of relationships between federal, state, and local officials under the new law and the factors that have contributed to a growing conflict over implementation. To fully understand the implications of NCLB requires examining these interactions as well as understanding the substantive educational issues it raises. We identify three factors that contributed to the growing dissatisfaction with the law, namely, the Bush administration's approach to federalism, the states' limited capacity to meet the new requirements, and the fiscal constraints facing state governments. We argue that these factors have contributed to the conflict with federal officials, eroded state commitment to the law, and complicated implementation efforts.*

### INTRODUCTION

The No Child Left Behind Act (NCLB), enacted by Congress in 2001, departs from the traditional role the federal government played in education, both in terms of the law's requirements and its sponsors. By requiring specific changes in the basic assessment and accountability systems of states, establishing timelines for improving student achievement, outlining specific sanctions for low-performing schools, and commanding many other forms of specific state action, NCLB has expanded federal power to regulate education. Bipartisan support for the bill meant that both parties agreed to continue along the path of standards-based reform and accountability for student achievement. While both Republicans and Democrats had reservations about the legislation and the changed definition of federalism it entailed, both saw an opportunity to achieve their goals. For the Republicans, the risk of increasing the role of the federal government in education, an area traditionally considered the prerogative of states, was particularly delicate since they advocated limited government and states' rights. But it did offer them a chance to use federal power to increase test-based accountability and to insert market accountability principles into education. The Democrats anticipated that the expanded federal role could be used to increase access to a quality education.

When Congress enacted NCLB, it was unclear how the change in the distribution of power within the federal system might play itself out, or the extent to which top-down reform could influence the educational change process. To be successful, such reforms needed to develop strong political constituencies, professional support among those responsible for implementation, and widespread agreement by the American public on the need for reform. To achieve the goals of either the Democrats or Republicans would require cooperation among federal, state, and district officials within a system where traditionally the federal role was limited, and influencing education and enticing local cooperation required strong incentives or extensive federal oversight.<sup>1</sup> Yet early indications suggest that the complexity of the new law as well as political and ideological conflicts may preclude a predictable and cooperative implementation process.

Within two years after this legislation was enacted, conflict over the law greatly increased as more and more states passed resolutions to opt out of the law or otherwise expressed their dissatisfaction with elements of the law. By early 2004, a number of states had passed or introduced resolutions seeking relief from the law's requirements or limiting the state role in implementing the new mandates. This "state rebellion" extended across the political spectrum, with Utah and Virginia passing some of the strongest and most widely supported resolutions.<sup>2</sup> While this put both Democrats and Republicans on the spot since both had supported passage of the law, the Administration was particularly defensive since it had made education reform a centerpiece of its domestic agenda. In an effort to soften some of the requirements and avoid a major overhaul of the legislation during an election year, the U.S. Department of Education (ED) revised some of the regulations.

This study examines the developing set of relationships between federal, state, and local officials under the new law and the factors that have contributed to the growing conflict. To fully understand the implications of NCLB requires examining these interactions as well as understanding the substantive educational issues it raises. Our focus is on the status of federal-state relationships during the first year of implementing NCLB. In the following section we examine NCLB within the context of federalism, beginning with a discussion of the literature on federal-state relations and the role of the federal government in educational reform. We then trace dissatisfaction with the law and its requirements among state and district officials and local educators. The next section examines three factors contributing to the growing dissatisfaction with the law, including the Bush administration's approach to federalism, the limited capacity of state departments of education to meet the new requirements combined with short implementation timelines, and the fiscal constraints facing state governments. We argue that these factors have contributed to the conflict with federal officials, eroded state commitment to the law, and complicated implementation efforts. We conclude with a discussion of the implications of our findings for the future of NCLB and suggestions for the direction of future research.

Our analysis of federal-state relations is based on multiple sources of information. Similar to previous research on federal policy implementation, we conducted semi-structured interviews with federal policymakers and administrators in the U.S. Department of Education, including the Office of Elementary and Secondary Education, the Office of the Under Secretary, and the Office of Innovation and Improvement. In Congress, we interviewed staff for Senator Edward Kennedy (D-MA), Senator Judd Greg (R-NH), and Representative George Miller (D-CA), three lawmakers who were instrumental in drafting NCLB. We also interviewed legislative policy directors of several national advocacy organizations with an interest in education and state government (Council of Chief State School Officers, Council of Great City

Schools, National Conference of State Legislatures, National Governors Association). In addition to the interview data, we examined the NCLB regulations and guidance, policy letters issued by the Secretary of Education, and speeches by the President and Secretary that were obtained from the U.S. Department of Education web site. We also reviewed reports issued by the U.S. General Accounting Office on NCLB and newspaper articles from across the country.

To gain the states' perspective on federal-state relations and the implementation of NCLB, we interviewed state officials in six states (Arizona, California, Georgia, Illinois, New York, and Virginia) that were selected as part of a larger study on NCLB.<sup>3</sup> These included interviews with state superintendents, key state department of education administrators responsible for interpreting and implementing the NCLB requirements, and members of state boards of education. We also reviewed state-consolidated applications for federal funding under NCLB and state accountability plans submitted to the U.S. Department of Education to comply with NCLB. Finally, we monitored state web sites for information on state efforts to implement NCLB and for state policy documents developed to meet the NCLB requirements.

## FEDERAL-STATE RELATIONSHIPS IN EDUCATIONAL REFORM

### *Literature Review*

One facet of American federalism is the relationship between the federal government and the states, and how the federal system operates to achieve particular policy objectives. In education, the federal government has played a limited role by providing additional resources targeted towards particular types of students, such as disadvantaged children or those with disabilities. Still, within this limited framework, implementation of federal education programs requires the cooperation of local officials and the development of a professional cadre of people committed to the policy and the program. Intergovernmental conflict has arisen when the administration of programs was politicized, when there were serious economic or fiscal difficulties, or when administrative officials lacked autonomy vis-à-vis their elected officials .

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

To develop this professional expertise and the political support structure required to implement federal education programs, a process of mutual accommodation evolved where policies from above were shaped to fit local circumstances, while at the same time, local conditions changed in response to reform . Clearly, local context shaped local implementation. Still, while collaboration between federal and state officials and federal deference to local priorities exemplified the operation of federalism, federal education policy has become more regulatory over time , with the national government increasingly determining policy priorities and giving state and local governments the responsibility for implementation . Under regulatory federalism, the state role changes from collaborative distribution of federal resources to regulating the implementation of the federal requirements in local school districts.

### *Defining the Policy and Governance Challenges under NCLB*

NCLB has some continuity with the ideas in the Clinton administration's 1994 Improving America's Schools Act (IASA).<sup>4</sup> IASA was notable for mandating that challenging standards apply to all students, including those receiving Title I services. States were required to develop content and performance standards, adopt annual assessments that measured student progress against those standards, and hold schools accountable for the achievement of all students. Schools and districts receiving Title I funding were required to demonstrate adequate yearly progress that was "continuous and substantial" and that linked progress to performance on assessments (P. L. 107-110, Sec. 1111(b) (2)(B)). It was up to the states to define adequate yearly progress goals. State educational agencies were required to provide support to districts and schools and to help them develop the capacity to comply with the law. Districts were required to identify schools in need of improvement that had not made adequate progress as defined by the states, and were given the authority to take corrective action against a school. There was very little enforcement of these ideas under the Clinton administration, and few states had made substantial progress in meeting the IASA requirements.

While many of the NCLB concepts were present in a less developed way in IASA, NCLB departs from its predecessor in major ways (see Table 1 for a summary of policy changes). NCLB raises the expectations and goals of Title I policy by emphasizing equal educational outcomes. Indeed, an important goal of NCLB is to close "the achievement gap between high- and low-performing children, especially gaps between minority and non-minority students, and between disadvantaged children and their more advantaged peers" (P. L. 107-110, Sec. 1001, (3)). To narrow the achievement gap, NCLB imposes strict timelines for improving the achievement of disadvantaged students and mandates specific sanctions for schools not performing well. In contrast to IASA, states have to adhere to federally determined timelines for identifying failing schools and improving student achievement, establish adequate yearly progress goals, and ensure teacher quality.<sup>5</sup>

Table 1. Summary of policy changes in the 2001 ESEA reauthorization of Title I

#### **Policy Changes**

- Emphasizes equal educational outcomes
- Imposes timelines for improving student achievement
- Adds subgroup accountability

- Mandates specific sanctions for schools not performing well that relies on exit strategies or the transfer of money away from public schools
- Expands the testing requirements to all students in public schools and establishes a timeline for implementing the new tests
- Defines proficiency as test scores in reading and mathematics

While IASA required states to disaggregate assessment results, NCLB adds subgroup accountability for economically disadvantaged and limited English proficient students, students with disabilities, and students from major racial and ethnic groups. Schools failing to make adequate yearly progress targets for any subgroup for two consecutive years are identified as “in need of improvement” and, thus, are subject to a series of sanctions, ranging from public school choice to school reconstitution. Sanctions are no longer at the discretion of local districts but are specified in the law. Moreover, through the use of sanctions, NCLB introduces the idea of exit from the public schools and the transfer of money away from poorly performing schools as strategies for school improvement. This contrasts sharply with the idea of reform under previous federal education policy, where low-performing schools were given additional resources and flexibility to coordinate Title I programming.

NCLB also expands testing requirements, requiring students to be tested annually in Grades 3-8 in reading and mathematics and limited English proficient students to be tested in English after three years in the educational system. States are responsible for developing and adopting these tests, but they must implement the new tests according to a schedule established by the federal government.<sup>6</sup> These requirements extend to all students in public schools and not just those receiving Title I funding, as in the past. More so than IASA, NCLB narrowly defines proficiency as tests scores in reading and mathematics.

By expanding the federal role in education, NCLB affects the politics of education and raises fundamental issues about who controls education. First, it alters federal-state relationships by expanding the role of the federal government further into a primary function of state and local governments. NCLB now decides what constitutes a failing school and what should be done about it. It dictates the pace of change by setting timelines for implementation and school improvement and requires participation in the National Assessment of Educational Progress (NAEP) as one measure of student performance. By requiring “highly qualified teachers” in every classroom, it infringes on a basic state function to regulate the teaching profession. Second, it affects governance arrangements within states by favoring state education agencies and chief state school officers over the governor, legislature, and state and local boards. By directing federal funds to state education agencies, it gives them the authority to administer the federally funded programs without necessarily consulting with elected officials, and enables them to make commitments with the federal government without considering how their decisions might affect state policy and state budgets. By placing additional accountability responsibilities on state educational agencies, it expands state authority over local boards to define what counts for proficiency on reading and mathematics tests. Finally, NCLB introduces the market principle that competition will create incentives for under-performing schools to improve. Within this framework of competition, it also shifts the focus of Title I from programs designed to improve schools to programs aimed at individual students by requiring under-performing schools to offer transfers and supplemental educational services to eligible students.

#### *Growing Political Opposition Within the States*

When federal power is expanded, state and local opposition is to be expected until professional and political support for new reforms is built and institutions are developed to sustain a new policy direction. In the case of NCLB, there was growing ambivalence towards the legislation among Republican as well as Democratic leaders and increasingly vocal opposition among state and local policymakers and educators. As implementation proceeded at the state and local levels, many of the issues that had not been adequately addressed in the bill became apparent as political leaders began to understand how the law’s provisions affected state and local priorities. At the same time, the Administration’s approach to implementation and federal-state relationships did little to quell the growing opposition to the law.

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

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

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

As sanctions went into effect, particularly the requirement that districts offer students the option to transfer to another public school, dissatisfaction with the law and its effects on local schools spread. New York City Public Schools, under Chancellor Joel I. Klein, approved

8,000 transfer requests in fall 2003, contributing to the worst overcrowding of schools in years . This angered principals and parents who had to put up with the overcrowding, as well as the teachers' union and state assembly representatives. Representative Anthony Weiner (D-Brooklyn, Queens) introduced the School Capacity Relief Act (H.R. 947) that intended to “authorize local education agencies to prohibit the transfer of students under section 1116 of the Elementary and Secondary Schools Act of 1965 to schools that are at or above capacity, and for other purposes.” In Chicago, district officials limited the number of transfers based on school capacity. Still, receiving schools were openly opposed to accepting transfers, fearing the new students would pull down their test scores. In some cases, the transfer policy undermined local goals. For example, the transfer plan went against a policy adopted by the local school council at one Chicago high school, which aimed to reduce enrollment while limiting the number of students from outside the community .

As implementation proceeded, dissatisfaction with the law reverberated within states where policymakers voiced concerns about local control and the costs of implementing NCLB. These issues cut across political and ideological lines. Lawmakers, including many who initially had supported the goals of NCLB, now saw the law as overly punitive and lacking adequate funding. In Virginia, the House passed a resolution calling on Congress to exempt states such as Virginia, which had a well-developed accountability plan in place, from the NCLB requirements. The resolution called NCLB “the most sweeping federal intrusion into state and local control of education in the history of the United States, which egregiously violates the time-honored American principles of balanced federalism and respect for state and local prerogatives” (House Joint Resolution No. 192, passed January 23, 2004). Legislators believed the state had an accountability system that set high standards and a demonstrated track record of school accountability and improved student achievement. They were concerned that the changes required by NCLB would undermine the success of their program. The resolution passed 98 to 1, with the lone dissenter a Democrat.

After extensive lobbying by the Bush administration, the Republican-controlled Utah House modified a law that would have prohibited the state from participating in NCLB. Instead, the law was amended to prohibit the state and local districts from implementing NCLB unless there was adequate federal funding (H.B. 43 1<sup>st</sup> Sub, passed February 10, 2004.). Other states, including Vermont, Hawaii, Connecticut, North Dakota, Oklahoma, and New Hampshire passed similar resolutions. Tracking by the National Conference of State Legislators identified 31 states that considered resolutions or bills during the 2004 legislative session requesting waivers, more flexibility and/or money, or that would prohibit the state from spending state funds to comply with NCLB or even participating in the NCLB program . Moreover, in March 2004, the chief state school officers from 15 states sent Secretary of Education, Rod Paige a letter asking for more flexibility in determining which schools were making adequate yearly progress.<sup>7</sup>

The extent of the opposition to the NCLB legislation is unprecedented in its scope and depth.<sup>8</sup> While many of these resolutions were symbolic, the number of states passing or introducing them as well as the number of Republican states opposing the legislation sent a powerful political message to Washington. To understand how we arrived at the point where so many states were actively rebelling against the law, we turn now to an examination of the Bush administration’s approach to federal-state relations, the state fiscal crisis, and the limited capacity of the state departments of education to implement the requirements.

#### FEDERAL-STATE RELATIONS: CONFLICT OR COOPERATION?

##### *The Bush Administration and Federalism: An Activist Administration*

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

With NCLB, the objectives of Republican reformers have changed from limiting the federal bureaucracy and decentralizing decision-making to the states towards an activist bureaucracy that assertively promotes particular political and policy goals. However, the rationale of the Bush administration for reversing long-held Republican doctrines and expanding the role of the federal bureaucracy in education has not been fully stated. The administration has dodged the issue of local control by asserting that the law gives local school districts greater flexibility in the use of federal funds and by arguing that the new testing requirements do not dictate what is taught or how it is taught .

In other words, the Bush administration’s approach to federal-state relationships has been to ignore the traditional protocol of federalism and the role of state and local governments in policymaking and implementation. Early on, the Bush administration indicated that it would strictly enforce the new requirements, particularly the implementation timelines. The presumption of this administration was that unless the administration took a firm stand, states would “game the system.” However, the administration’s rhetoric alienated the very groups whose cooperation was necessary to facilitate implementation. When states began to re-define what it meant to be proficient in reading and mathematics, Secretary Paige sent a sharply worded letter to the chief state school officers. In this letter, he accused some states of “trying to “game” the system for short-term benefits” and of lowering “the bar of expectations to hide the low performance of their schools.” He went on to say: “Thus, it is nothing less than shameful that some defenders of the status quo are trying to hide the performance of underachieving schools in order to shield parents from reality” (Paige, 2002). In a similar vein, when an article in the *New York Times* criticized the NCLB transfer provisions, Nina Rees, Deputy Under Secretary in the U.S. Department of Education responded in a letter to the editor , stating:

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

than it does with flaws in the federal law.

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

Let me state for the record that we are "agreeing" to these amendments only because USED has mandated them, and we agree only under strong protest. We do not believe these amendments represent sound or rational policies, especially the intention of USED to apply future testing policies, to which we have already agreed, to this past academic year on a retroactive basis for the purpose of determining AYP for Virginia schools. We also object for the record to the mandate regarding the testing participation of children with disabilities in possible violation of the child's Individualized Education Program and another federal law, the Individuals with Disabilities Education Act.

The final regulations on NCLB, released in November 2002, did not ease the burden of implementation for states or districts and left states with little of the flexibility they had hoped for. In particular, states wanted more flexibility in determining adequate yearly progress (AYP), and to be allowed to continue to use indices that measured the extent to which schools and districts were making progress towards improving student achievement. Districts wanted more flexibility in identifying schools for improvement and implementing the student choice options. Districts were also concerned that the regulations would limit their flexibility to assign paraprofessionals to schools and programs, and that the teacher qualification requirements would exacerbate teacher shortages in critical areas, including special education, bilingual education, mathematics, and science. To a large extent, the concerns of state and district officials were ignored. It was not until February 2004, after the law had been in effect for over two years and there was growing resistance among the states, that federal officials began to ease some of the regulations.<sup>9</sup>

In writing the regulations, ED was constrained by the specific requirements of the statute itself in some areas, but in other areas, the administration's policy priorities shaped the regulations. Most notably, ED narrowly interpreted the issues of capacity and public school choice, mandating that lack of capacity did not preclude a district from offering public school choice to eligible students in schools identified for improvement. The regulations required that if a district identified a school for improvement after the beginning of the school year, that school must immediately begin offering public school choice (*Federal Register*, Vol. 67, No. 231, Sec. 200.32(f), 2002). Those with alternative interpretations argued that since the statute provides that public school choice be implemented "no later than the first day of the school year following such identification," that this could mean the following year and not immediately. Districts argued that these regulations would require them to alter the timelines for the administration of tests, analysis of the data to determine adequate yearly progress, and the identification of schools in need of improvement. They also argued that the choice requirement conflicted with district choice processes already in place. Additionally, the NCLB choice regulations had none of the civil rights protections that were typical in the earlier federal magnet school requirements or in the 1964 civil rights acts.

Nonetheless, under NCLB some areas will be easier to enforce than others. According to the Director of Policy in the Office of the Under Secretary (C. Wolfe, personal communication, December 10, 2002):

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

#### *Professional Compliance and State Capacity to Meet the New Requirements*

Enforcement of NCLB during the first year focused on compliance monitoring, adhering to implementation timelines, and meeting technical requirements of the law. Intergovernmental coordination and cooperation between state educational officials and ED administrators facilitated implementation at the state level and helped states meet some of the initial timeline requirements. In January 2003, ED granted early approval of the state accountability plans in five states. Apart from the public relations benefits this early approval bestowed on the Administration, these plans provided states with a measure of what ED approved, what was rejected, and a model that states could refer to as they developed their own plans. The Council of Chief State School Officers used these plans to provide technical workshops and to help state assessment directors develop their own accountability workbooks (P. Sullivan, personal communication, January 22, 2003).

State education officials met the deadlines for submitting the Consolidated State Application to ED.<sup>10</sup> All fifty plans were submitted on time, a remarkable accomplishment given that states vary in the degree to which their state accountability plans aligned with the NCLB requirements and the differences in their political structures and governance arrangements in education. Even more remarkable was the President's announcement in June 2003 that all fifty state plans were "approved," even though ED was still reviewing many of them. Secretary Paige sent each state a letter stating that ED had approved the basic elements of their accountability plan.<sup>11</sup> Underscoring the tentative nature of this approval was another letter from Under Secretary Hickok. This second letter, sent to all the states shortly after Secretary Paige's letter, outlined aspects of the plans that needed further action or were not fully approved.<sup>12</sup>

In reality, only 11 states (21.6%) had state plans that were fully approved by ED in June 2003 (Table 2). States that had complied with the 1994 Improving America's Schools Act (IASA) requirements were only slightly more likely than states with timeline waivers to have a completed accountability plan (28.6% of states with approved 1994 plan versus 20% of states with timeline waivers).<sup>13</sup> None of the states that had entered into compliance agreements with ED had fully approved plans. Clearly, meeting the deadlines and gaining ED approval of the plans reflected a compliance orientation by the states and ED rather than real progress in implementing NCLB.

Table 2. Number and percentage of states with fully approved NCLB accountability plans based on compliance with 1994 IASA, June 2003

State Status	Approved June 2003		Incomplete June 2003	
	Number	Percent	Number	Percent
IASA Compliant (N=21)	6	28.6	15	71.4
IASA Timeline Waiver (N=25)	5	20.0	20	80.0
IASA Compliance Agreement (N=5)	0	0	5	100
Total (N=51)*	11	21.6	40	78.4

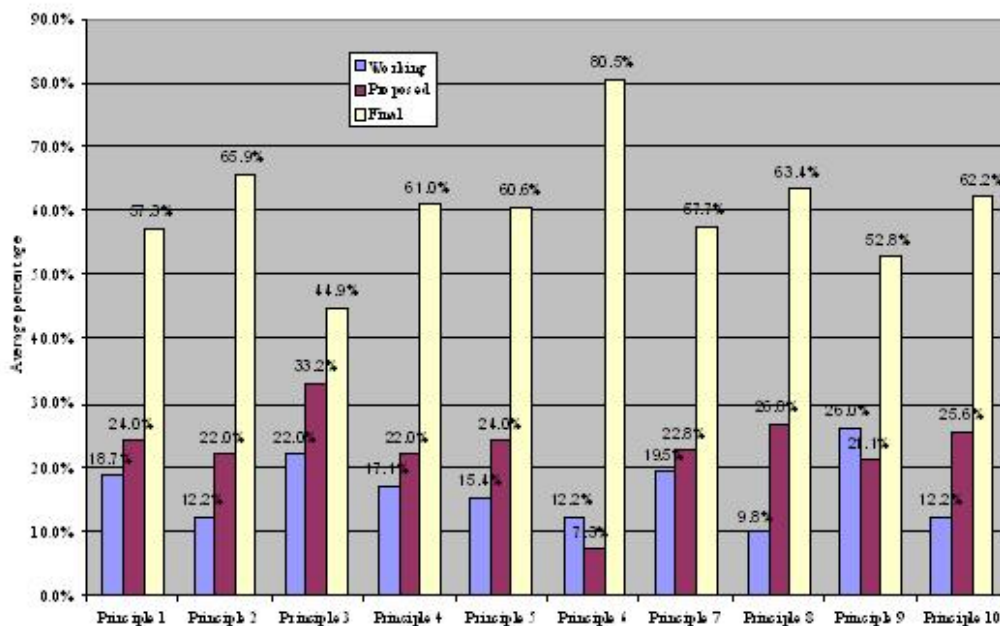
Source: Education Week, August 6, 2003. Retrieved on 8-1-03 from [www.edweek.org/ew/vol-22/43account.pdf](http://www.edweek.org/ew/vol-22/43account.pdf)

\*Includes District of Columbia.

To understand state capacity to meet the requirements of the law, we analyzed the status of the consolidated accountability applications submitted in January 2003.<sup>14</sup> We conducted this analysis midway through the process because it showed where states were in the process of completing their state accountability plans and offered a way to determine which elements of the plans were easy to meet and which were more difficult. We conducted this analysis using the consolidated applications from 41 states.<sup>15</sup> The application included a worksheet, which summarized the status of ten principles required by the application. Each principle contained between one and six elements (see the appendix for a summary of the principles and elements). For each element, states indicated if they were working to formulate a policy, had a proposed policy and were waiting for state approval, or had a final state policy. For our analysis, we summarized the status of each element that was reported by the state on their application.

A summary of the status of the required principles is presented in Figure 1.

**Figure 1: State Accountability Plans, Average Percentage of States Working to Formulate a Policy (W), Proposed Policy (P) and Final Policy (F) for Each Principle (Based on Accountability Plans in 41 States)**



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

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

An analysis of the separate elements that make up each principle indicates that few states had a final policy for elements 1.6 (accountability system includes rewards and sanctions) and 5.2 (the accountability system holds schools and local districts accountable for the progress of student subgroups) (Table 3). This is also not surprising, since the required interventions, particularly providing supplemental educational services, were not something states had done before. Moreover, the required interventions are highly unpopular

with many educators, and there is no research basis for what was likely to work. A report by the GAO found compliance with subgroup accountability difficult for states to meet under the 1994 law, so it is not surprising that few states had a final policy for this element.

Table 3. Summary of required elements for state accountability system (n=41): number and percentage of states working to formulate a policy; proposed policy; and final policy, 2003

Principle	# Working Policy	% Working Policy	# Proposed Policy	% Proposed Policy	# Final Policy	% Final Policy
<b>Principle 1</b>		<b>18.7</b>		<b>24.0</b>		<b>57.3</b>
1.1	7	17.1	10	24.4	24	58.5
1.2	5	12.2	12	29.3	24	58.5
1.3	4	9.8	7	17.1	30	73.2
1.4	9	22.0	12	29.3	20	48.8
1.5	9	22.0	7	17.1	25	61.0
1.6	12	29.3	11	26.8	18	43.9
<b>Principle 2</b>		<b>12.2</b>		<b>22.0</b>		<b>65.9</b>
2.1	4	9.8	5	12.2	32	78.0
2.2	6	14.6	12	29.3	23	56.1
2.3	5	12.2	10	24.4	26	63.4
<b>Principle 3</b>		<b>22.0</b>		<b>33.2</b>		<b>44.9</b>
3.1	6	14.6	13	31.7	22	53.7
3.2	10	24.4	13	31.7	18	43.9
3.2a	9	22.0	13	31.7	19	46.3
3.2b	10	24.4	14	34.1	17	41.5
3.2c	10	24.4	15	36.6	16	39.0
<b>Principle 4</b>		<b>17.1</b>		<b>22.0</b>		<b>61.0</b>
4.1	7	17.1	9	22.0	25	61.0
<b>Principle 5</b>		<b>15.4</b>		<b>24.0</b>		<b>60.6</b>
5.1	4	9.8	11	26.8	26	63.4
5.2	8	19.5	15	36.6	18	43.9
5.3	5	12.2	4	9.8	32	78.0
5.4	6	14.6	9	22.0	26	63.4
5.5	9	22.0	12	29.3	20	48.8
5.6	6	14.6	8	19.5	27	65.9
<b>Principle 6</b>		<b>12.2</b>		<b>7.3</b>		<b>80.5</b>
6.1	5	12.2	3	7.3	33	80.5
<b>Principle 7</b>		<b>19.5</b>		<b>22.8</b>		<b>57.7</b>
7.1	7	17.1	14	34.1	20	48.8
7.2	9	22.0	8	19.5	24	58.5
7.3	8	19.5	6	14.6	27	65.9
<b>Principle 8</b>		<b>9.8</b>		<b>26.8</b>		<b>63.4</b>
8.1	4	9.8	11	26.8	26	63.4
<b>Principle 9</b>		<b>26.0</b>		<b>21.1</b>		<b>52.8</b>
9.1	10	24.4	9	22.0	22	53.7
9.2	11	26.8	9	22.0	21	51.2
9.3	11	26.8	8	19.5	22	53.7
<b>Principle 10</b>		<b>12.2</b>		<b>25.6</b>		<b>62.2</b>
10.1	5	12.2	11	26.8	25	61.0
10.2	5	12.2	10	24.4	26	63.4
<b>Range</b>	4-12		3-15		16-33	

Note: The bold values represent an average of all of the elements that comprise each principle.

#### State Fiscal Constraints

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



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

The federal government typically provides revenue sharing to help states through economic downturns. This time that did not happen. At the winter 2003 meeting of the National Governor's Association, President Bush confirmed his intention not to provide fiscal relief for the states, citing the federal budget deficit and the costs of war as constraints on the federal budget. Instead he promised more flexibility for states on spending and asserted that his plan to eliminate taxes on corporate dividends would boost the economy.<sup>16</sup> This finally changed late in the 108<sup>th</sup> Congress as state budgets worsened and several lawmakers made a commitment to seek state fiscal relief. The federal Jobs and Growth Tax Relief Reconciliation Act, signed by President Bush on May 28, 2003, provided states some short-term fiscal relief. This act authorized and funded \$20 billion spread over two years (FY 2004 and FY 2005) in fiscal relief to the states, with half devoted to flexible grants to states and half to support Medicaid. While this aid was welcomed by states, it was temporary and relatively small.

Since education makes up a major portion of state budgets, education budgets were threatened by the state budget problems.<sup>17</sup> A number of states made cuts to their elementary and secondary education program to help balance the budget in FY 2003 and FY 2004. In California, a state with one of the largest budget shortfalls, the governor made some across-the-board spending reductions, asked state agencies to trim 20% from their budgets, and sought wage reductions . The Governor of Ohio signed an executive order in March 2003 that cut funding for the Ohio Department of Education by \$9.3 million and state aid to schools by \$90.6 million . The governor, a Republican, was battling a Republican-controlled legislature's refusal to approve a budget that included increases in taxes. The budget cuts affected districts, which were forced to make painful decisions to lay off teachers, shorten the school year, or reduce class size .

In light of state budget problems, questions over NCLB funding levels became political. As part of the compromise to pass the bill, NCLB promised large increases in spending for Title I, and indeed, in the first year (fiscal year 2002) there was an 18% increase from the prior year in Title I grants to local educational agencies and a 17% increase overall for elementary and secondary education (Table 4). However, this level of increase was not sustained in subsequent years, with the size of the increase declining in subsequent years. By fiscal year 2004, appropriations for Title I were increased 5.6% from the prior year and appropriations for elementary and secondary education were increased by 5.1%. In contrast, the President's 2004 proposed budget would have decreased appropriations for elementary and secondary education by 2.6%.<sup>18</sup> The Democrats argued that the administration's budget proposals broke the promises made when NCLB was enacted to provide adequate resources for reform . When the bill passed, there was a bipartisan agreement to significantly increase financial resources in exchange for enacting the tough accountability provisions. This agreement was reflected in the appropriation levels contained in the bill.<sup>19</sup> The Republicans countered that, "the federal government is now spending far more money for elementary and secondary education than at any time in our nation's history" . This claim, which was true in absolute amounts, was not true in terms of the federal share of total educational expenditures.<sup>20</sup>

Table 4. Title I grants to local education agencies (LEAs) and total elementary and secondary education appropriations, FY 1998-2004

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

Source: US Department of Education, Budget History Table: FY 1980 - present. Retrieved on 4-24-04 from [www.ed.gov/about/overview/budget/history/edhistory.pdf](http://www.ed.gov/about/overview/budget/history/edhistory.pdf)

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

It's not just a matter of how many resources you have. It's a matter of how you spend your resources. And if you are a failing school or a failing school district, you don't necessarily need a huge infusion of funds. . . . It's also a matter of deciding how to better use those funds—be it on the curriculum, be it on better teachers, or you know, preparing your paraprofessionals. It may be not focusing on a music program and instead using your music dollars for a reading program. There are just so many decisions—minute decisions that can be made at both the district level and actually at the school level. So that it's a matter again not just of level of resources but how you use the resources.



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

When Congress enacted NCLB, there was little attention devoted to what it would cost states to implement the requirements. There was some attention to the costs of meeting the additional testing requirements, but none in terms of meeting additional staffing requirements. As implementation proceeded, states began to examine how the costs of implementing NCLB balanced out against the additional resources provided by the law. Several studies suggested that NCLB would cost states considerably more than the funds appropriated by the federal government. These studies began to break down the costs across different program areas and figured in the additional administrative costs of implementing the new requirements. They indicated that while the added costs of assessments and data collection systems were substantial, the costs of providing administrative support and remedial instructional services to poorly performing districts and schools would be even greater, especially if the number of schools and districts identified as “in need of improvement” increased in future years. As this information became available, many states passed legislation exempting districts from spending additional money to implement NCLB.

To meet the NCLB requirements, state educational agencies reallocated staff from other areas or added the NCLB responsibilities onto existing ones. This may work when the NCLB requirements mirror current state capabilities but may become more problematic as states have to develop ways to intervene in failing schools. Since states vary in their staffing levels, resources and sophistication of their databases and data collection capabilities, the ability of states to meet the added responsibilities will depend on the local context. Nonetheless, implementing the NCLB requirements has severely strained the capacity of most state education departments.

### CONCLUSIONS AND IMPLICATIONS

NCLB represents a major change in federal-state relationships where the federal government has imposed one model of accountability across all states with the expectation that states will implement its priorities. However, for NCLB to work well will require coordination and cooperation across levels of government, the nurturing of a professional constituency that supports the goals of the legislation, and professional and technical expertise to interpret, administer, and manage the new programs and data systems. Our research found that the professional support and expertise needed to carry out these requirements varied widely among the states and that there was limited effort by the federal administration to obtain the cooperation of the professionals who must implement the law. The lack of flexibility by federal officials on some of the requirements has eroded public and political support for the law as the financial requirements of the law and the effects of sanctions negatively impact districts and schools. Without the support of professional administrators, the political visibility of the NCLB requirements has increased, focusing attention on the political and financial effects of the program locally rather than its contributions to improving schooling.

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

Since NCLB is by far the largest K-12 federal education program affecting disadvantaged students, it is imperative that the federal government brings state and local officials and educators into the process to work through the administrative and policy issues. When federalism works well there is collaboration across levels of government and federal deference to state priorities, something that has not been evident so far in the process of implementing NCLB. Under the Bush administration, the federal government has taken a leadership role and assertively advanced its own political and policy goals while ignoring the role of state and local governments in the policy process. It has also ignored the fact that federal priorities are constantly subject to legislative and appropriation decisions by a Congress that is generally far more responsive to state and local preferences than standards set in federal agencies. As Kaestle and Smith observed in 1982, “...local control, local initiative, and local variation constrain the number of educational issues the federal government can address and the degree of standardization it can or should impose”.

The conclusion that the federal administration has failed to establish a collaborative relationship with state and local officials should not be taken to mean that the status quo in state and local systems was adequate, especially for minority students, or that there are no legitimate reasons for the federal government to urgently work for more progress in improving student achievement and demanding greater accountability. It is, rather, an observation that the reliance on regulations and aggressive enforcement of the law are often ineffective and sometimes counterproductive in working towards the goals of NCLB. That federal power is subject to state and local priorities underscores the utility of a collaborative approach toward implementing federal education policy.

### APPENDIX

#### REQUIRED ELEMENTS FOR STATE ACCOUNTABILITY SYSTEMS

##### Principle 1: All schools

1.1 Accountability system includes all schools and districts in the state.



year” (P.L. 107-110, Sec. 1119 (a)(2)). The statute defines “highly qualified” as a teacher who has obtained a full state certification, has a bachelor’s degree, and has demonstrated subject matter competency in core academic subjects (P.L. 107-110, Sec. 9101(11)). The law contains similar requirements for paraprofessionals who provide instructional support to students in Title I programs.

6 The timeline mandates assessment of English language learners starting in school year 2002-03 and administering annual statewide tests in mathematics and reading/language arts to all students in Grades 3 through 8 by school year 2005-06.

7 Officers signing the letter were from Alaska, Arizona, California, Connecticut, Hawaii, Idaho, Louisiana, Maine, Montana, Nebraska, Nevada, New Hampshire, Pennsylvania, Utah, and Washington.

8 For example, only two states vigorously objected to the federal Goals 2000 legislation.

9 These included new rules for counting students with limited English for determining adequate yearly progress, relaxing some of the rules for meeting the highly qualified teacher requirements for rural teachers and allowing some additional flexibility for multi-subject and science teachers, and allowing some additional flexibility for determining participation rates for adequate yearly progress.

10 State officials were required to submit a preliminary draft of the Consolidated State Application Workbook by January 31, 2003, and the completed application by May 1, 2003.

11 The initial approval letters were not posted on the ED web page.

12 These decision letters are available from <http://www.ed.gov/admins/lead/account/letters/index.html?exp=0> .Retrieved 1-21-04.

13 As of March 2003, 21 states were fully compliant with IASA requirements, 25 states had been granted timeline waivers, and 5 states had entered into compliance agreements with the US Department of Education.

14 The consolidated applications were retrieved from the U.S. Department of Education web site between January and March 2003. Since state consolidated applications are continuously updated, the ones we reviewed are no longer posted on the web site. We retained hard copies of the applications we used for our analysis.

15 As of March 2003, 41 states had submitted accountability applications.

16 It is worth noting that many of the Bush administration tax cuts resulted in lost revenue to states that tie their state income tax rate to the federal rate. Since states pass the cuts on to local governments, many were forced to raise property taxes.

17 Spending for elementary and secondary education is estimated at 22.2% of total state spending and 35.4% of state spending from the general fund . Elementary and secondary education expenditures as a percent of total state expenditures range from 13.7% in Connecticut to 34.3% in Wyoming .

18 The president proposed appropriating \$34,796,108 for FY2004, a 2.6% decrease over FY 2003 appropriations for elementary and secondary education.

19 Appropriations for Title I, Part A grants to local educational agencies were \$13.5 million in 2002, \$16.0 in 2003, \$18.5 in 2004, \$20.5 in 2005, \$22.75 in 2006, and \$25.0 in 2007 (P.L. 107-110, Sec. 1002 (a)).

20 The federal share of revenues for elementary and secondary education peaked at 9.8% in 1979-80 and was around 7% in 2004.

21 In a speech on January 8, 2003, President Bush said: “The issue is not just about money. We must spend money more wisely. We must spend money on what works. And we must make sure we continue to insist upon results for the money we spend.” . Retrieved 3-23-03 from <http://www.whitehouse.gov/news/releases/2003/01/20030108-4.html>.

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