

# Federalism Revised: The Promise and Challenge of the No Child Left Behind Act

## The Quest for High-Performance Federalism

*Federalism in education has undergone significant changes since the Winter Commission. During the early 1990s, federal policy makers faced the challenge of organizational fragmentation and policy incoherence in public education. In the last 15 years, the intergovernmental system has evolved from one that is predominantly compliance-driven to one that is performance based, as suggested by the congressional adoption of the No Child Left Behind Act in 2001. While the former is often characterized by images of "picket fence" federalism and administrative silos, the latter remains very much a work in progress, with the promise of raising academic proficiency. This paper first examines the paradigm shift and then considers emerging politics in intergovernmental relations. The author explores the ways in which state and local policy makers are altering the rules governing education service provision in response to performance-based federal expectations.*

In the 15 years since the Winter Commission issued its report, federalism in education has undergone significant changes. During the early 1990s, federal policy makers faced the challenge of organizational fragmentation and policy incoherence in public education. As the 1992 report of the Commission on Chapter 1 concluded, the federally funded program for the disadvantaged (then referred to as Chapter 1, but more often known as Title I), policy makers needed to develop a new accountability framework that aimed at "producing good schools not simply good programs." Instead of directing schools to meet auditing and regulatory standards, the commission recommended that schools be held accountable for student progress in learning.

Nine years after the Chapter 1 Commission issued its recommendation, the federal-state-local system of education policy began to make serious efforts to address policy fragmentation with the congressional adoption of the 2001 No Child Left Behind Act. In the last 15 years, the intergovernmental system has evolved from one that was predominantly compliance-driven to one that is beginning to focus on performance-

based accountability. While the former is often characterized by images of "picket fence" federalism and administrative silos, the latter remains very much a work in progress, with the promise of raising academic proficiency. This article will first examine the paradigm shift and then consider emerging politics in intergovernmental relations.<sup>6</sup> The article also examines the ways in which state and local policy makers are altering the rules that govern education service provision in response to performance-based federal expectations.

### Categorical Federalism: A Targeted but Limited Federal Role

Public education is often seen as an example of "marble cake" federalism, in which the federal government and states share responsibilities in addressing common policy concerns. While state government assumes the primary funding and constitutional functions, the federal government has focused on the disadvantaged since the passage of Title I of the Elementary and Secondary Education Act (ESEA) of 1965. Despite several revisions and extensions, ESEA Title I, for example, continues to adhere to its original intent "to provide financial assistance . . . to local educational agencies serving areas with high concentrations of children from low-income families to expand and improve their educational programs . . . which contribute particularly to meeting the special educational needs of educationally deprived children." To avoid the centralization of administrative power at the national level, ESEA marked the beginning of major intergovernmental transfers to finance state and local education services. These transfers are single-purpose programs with well-defined eligibility criteria for the intended beneficiaries. To make sure that the federal dollars are used solely for the targeted populations, the federal government has developed a plethora of regulations on how federal funds can and cannot be used. This intergovernmental system of categorical programs has continued to define much of federalism even today.

The political economy of federalism accounts for the antipoverty role of the federal government. When

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compared with state and local governments, the federal government enjoys a broader revenue base, in which taxes are primarily based on the more progressive “ability-to-pay” principle (such as corporate income tax). Federal political institutions, particularly the legislative branch, represent a constituency with diverse demands and accommodate preferences that are not always supported by the majority rule (Oates 1972; Peterson 1995; Wong 1999). In other words, the federal government has both the fiscal capacity and the political justification to focus on redistributive issues.

Federal engagement in programs for disadvantaged students is indicated by appropriations. Federal contributions accounted for 8.5 percent of the total revenues for public elementary and secondary education during 2002–3, a noticeable increase from 6.6 percent in 1995–96. This increase occurred at a time when per pupil spending rose from \$7,600 to \$9,000 in real dollar terms between 1996 and 2003 (see table 1).

More importantly, growth in federal aid continues to be associated with the policy focus on disadvantaged populations. Federal aid to programs for special-needs students showed persistent growth in real dollar terms. Between 1996 and 2005, these programs amounted to more than 60 percent of the total federal spending in elementary and secondary schools (see table 2). The Title I program for education for the disadvantaged increased from \$8.9 billion to \$14.6 billion in 2005 constant dollars. Federal aid in special education grew more than twofold, while the school lunch program increased its funding from \$9.8 billion in 1996 to \$12.2 billion in 2005. Head Start also jumped by 50 percent in real dollar terms during this period. This trend of growing federal involvement in programs for the disadvantaged did not slow down during the George W. Bush administration.

From an implementation perspective, federal support for categorical funding has defined the intergovernmental policy system in several ways. First, in providing supplemental federal grants to state and local education agencies, the federal government sets programmatic objectives. Categorical or single-purpose grants stipu-

late the targeted use of supplementary services aimed at eligible, at-risk students. The personnel and other operational details, however, are handled by state and local agencies (Peterson, Rabe, and Wong 1986). Second, grants-in-aid in education have received bipartisan support, in part because of their “distributive” character, using Lewis’s typology (1964). Categorical funds are often connected to tangible benefits for well-entrenched political and organizational interests. For example, the child nutrition program (free lunch program) was initiated by the agricultural business as a form of farm subsidy. Congressional formulas that allocate Title I dollars are designed to cover the largest possible number of congressional districts in the nation. More than 20 percent of federal Title I aid goes to districts with fewer than 2,500 students. Districts with enrollments between 2,500 and 25,000 receive almost 45 percent of the funds. Because there are Title I programs in almost every congressional district, partisan conflict has generally been limited during the appropriations process. Finally, federal transfers have evolved into a fairly stable administrative process. While local and state noncompliance remains an issue in some programs and in some settings, state and local agencies seem more ready to meet programmatic standards as the federal government increasingly clarifies its antipoverty intent and accommodates local circumstances (Wong 1990).

In short, categorical federalism tends to focus on the level of resources, regulatory safeguards, and other “inputs” to meet the learning challenges of special-needs students. In providing the supplemental funds to state and local government, the federal government has not pressed for accountability in student achievement. However, with the No Child Left Behind Act (NCLB) of 2001, the federal government aims at shifting federalism toward outcome-based accountability. In this regard, NCLB signals the latest evolution of our intergovernmental system in education.

The first major sign of the federal effort to move away from a compliance or categorically oriented policy paradigm occurred shortly after the publication of the Winter Commission’s report, *Hard Truths/Tough*

**Table 1** Per Pupil Spending in Public Schools by Sources of Revenue, 1996–2003

	Per Pupil Current Expenditure			Source of Revenue (percent)		
	Unadjusted Dollars	Constant 2005 Dollars	Increase over Previous Period (percent)	Federal	State	Local
1995–1996	6,147	7,627	—	6.6	47.5	45.9
1996–1997	6,393	7,712	1.11	6.6	48.0	45.4
1997–1998	6,676	7,912	2.59	6.8	48.4	44.8
1998–1999	7,013	8,170	3.26	7.1	48.7	44.2
1999–2000	7,394	8,372	2.47	7.3	49.5	43.2
2000–2001	7,904	8,653	3.36	7.3	49.7	43.0
2001–2002	8,259	8,884	2.67	7.9	49.2	42.9
2002–2003	8,600	9,053	1.90	8.5	48.7	42.8

Source: U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics* (2005), tables 152, 162.

**Table 2** Federal Expenditures for Elementary and Secondary Education

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Special-Needs Programs (in millions of 2005 dollars)										
Education for the Disadvantaged	8,853.9	8,763.1	9,367.0	7,839.4	9,673.1	9,541.2	10,039.3	11,944.1	12,909.3	14,638.2
Special education	4,010.8	4,022.2	4,383.4	5,209.7	5,612.9	6,416.0	7,599.3	9,012.1	10,079.7	10,226.5
Head Start	4,443.7	4,843.6	5,208.9	5,460.4	5,973.6	6,841.0	7,096.6	7,076.2	7,003.9	6,843.2
Child nutrition programs	9,802.3	10,099.6	10,262.1	10,407.3	10,835.6	10,528.00	11,131.7	11,493.3	11,586.1	12,163.9
Bilingual education	229.7	220.6	247.9	634.9	563.0	494.4	n.a.	n.a.	n.a.	n.a.
Native American education	96.3	68.1	63.1	76.0	74.1	93.2	112.8	123.1	118.28	129.9
Subtotal	27,436.7	28,017.2	29,532.4	29,627.7	32,732.3	33,913.8	35,979.7	39,648.8	41,697.3	44,001.7
Percent changes in special-needs programs over previous period	—	2.1	5.4	0.32	10.5	3.6	6.1	10.2	5.2	5.5
Federal Spending for Elementary and Secondary Education										
Total (millions of 2005 dollars)	43,818.4	43,171.5	44,914.5	46,818.0	49,685.8	53,842.0	57,270.0	62,914.4	64,775.9	67,959.2
Percent change over previous period	—	-1.5	4.0	4.2	6.1	8.4	6.4	9.9	3.0	4.9
Special-needs programs as percent of federal spending (millions of 2005 dollars)	62.61	64.90	65.75	62.71	65.88	63.10	62.82	63.02	64.37	64.75

Sources: U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics* (2004), table 366; *Digest of Education Statistics* (2005), table 358.  
NA = Data are not available.

*Choices* (1993). In response to the recommendations of the 1992 Commission on Chapter 1, the Bill Clinton administration gained congressional approval for the Improving America's Schools Act (IASA) of 1994.

Among the most important features of the IASA was a provision that encouraged state and local education agencies to coordinate resources in schools with high percentages of children living below the poverty line.

The "schoolwide" initiative was designed to phase out local practices that isolated low-income students from their peers in order to comply with the federal auditing requirement to "supplement nor supplant." Further, the IASA enabled charter school reform by providing federal startup planning grants.

The IASA also aimed at monitoring schools that persistently failed to meet state proficiency standards. However, the legislation did not specify the consequences when schools repeatedly fell short of the federal expectations. The IASA required states to adopt standards aligned with state assessments, but it allowed states full autonomy to make instructional, governance, and fiscal policy decisions to support their academic performance standards. The political reality was that holding schools and districts accountable to high-stakes mandates was not feasible under

IASA. There was very little enforcement of the IASA provisions and few states made substantial progress in meeting its requirements.

### Performance-Based Federalism as Paradigm Shift

The passage of the No Child Left Behind Act signaled the beginning of a serious effort toward performance-based federalism. For some analysts, the NCLB has changed the terms of federal-state relations to such an extent as to signal a "regime change" (McGuinn 2005, 2006; Sunderman, Kim, and Orfield 2005). These analysts see the NCLB as a dramatic expansion of federal authority

over public schools and a departure from prior federal education policies, with implications for education policy and power distribution. While performance-based federalism is not likely to replace categorical federalism, given organizational inertia, the former now coexists legitimately with the latter in defining intergovernmental relations.

Under the NCLB, Title I students and schools are required to make "adequate yearly progress" (AYP), a set of standards that are established through state-specified academic proficiency plans. All schools, including Title I schools, must test all of their students

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and report their test scores by racial, income, and other special-needs categories. More specifically, the 2001 law requires annual testing of students at the elementary grades in core subject areas, mandates the hiring of “highly qualified teachers” in classrooms, and grants state and local agencies substantial authority over failing schools. By linking the progress of schools and teachers to achieving a nationally specified rate of progress on state tests, these federal requirements aim at shaping curriculum and instruction in the classroom. In other words, the federal role is no longer limited to only schools that serve predominantly disadvantaged students as defined under categorical federalism. Instead, federal NCLB performance-based expectations apply to all students in all schools.

Performance-based federalism is reinforced by federal threats and sanctions. The law calls for a set of “corrective actions” when districts and schools fail to make AYP in consecutive years. AYP applies not only to the overall performance of the school but also specific racial/ethnic and special needs subgroups within a school. Corrective actions and other sanctions, in other words, are aimed at closing the achievement gaps. These sanctions include state-driven interventions such as school or district takeovers, restructuring of personnel in poorly performing schools, options for families in schools not making adequate yearly progress to transfer to another public or charter school, and the implementation of supplemental educational or tutorial services. While the implementation of corrective actions varies among states, there is evidence that suggests these interventions are beginning to reshape public education. In Illinois, 27 percent of the districts that enrolled a substantial number of Title I students in 2004–5 were required to implement restructuring strategies, including personnel reassignment (Center on Innovation and Improvement 2006a). In New York State, the number of Title I students receiving supplemental tutorial services grew from 31,700 in 2002–3 to 70,600 in 2005–6, or an increase from 13 percent to 32 percent of Title I students who were eligible for these services (Center on Innovation and Improvement 2006b).

### Emerging Politics of Performance-Based Federalism

As Lowi (1964) observed, policy tends to define politics. The NCLB is no exception. The passage of the legislation has changed the terms of political engagement among key institutional actors. First, under categorical federalism, low-income, low-performing schools that were eligible for federal supplemental aid (namely, Title I schools) were treated at the margins and assessed with a different (often inferior) set of

standards. Under NCLB, Title I students and schools are required to meet adequate yearly progress. The NCLB signals a new policy regime in education accountability. Instead of focusing on fiscal accountability in the traditional categorical approach, the entire system of public schools now must be held accountable for results.

The systemic scope of performance-based federalism tends to put pressure on state and local political leaders to react to the NCLB. Hochschild (2003) observed an increasingly visible role of governors, mayors, and state courts. The literature on intergovernmental relations further suggests that governors and mayors are keen on using their lobbying capacity to negotiate for federal grants in various policy domains, such as community development and subsidized housing. In the context of the NCLB, elected officials at the state and local levels stand ready to use their political stature and reputation to obtain additional intergovernmental resources. For example, former mayor Bill Purcell in Nashville, Tennessee, worked closely with his predecessor, the current governor Phil Bredeesen, in obtaining state and federal funding for early childhood education program. In Philadelphia, Mayor John Street, a Democrat, and U.S. Senator Arlen Specter, a Republican, worked on a bipartisan platform to support school chief Paul Vallas in bringing federal literacy funds to the city.

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Performance-based accountability is putting additional pressure on states and districts to improve “transparency” in public education, thereby further encouraging parental and community engagement. Under the NCLB, districts are now required to disseminate annual report cards on district and school performance in meeting or failing to meet AYP. The challenge is to make sure that parents, particularly in disenfranchised neighborhoods, receive the necessary information on educational options in a timely manner. Advocacy groups and political leaders use their many communications channels to connect parents to their schools. Many cities work with employers to enable parents to take their children to classes on the first day of the new school year. Other cities have gained corporate support to donate supplies and backpacks the weekend prior to the start of the school year. Civic and other nonprofit organizations often support inner-city parents to attend parent–teacher conferences and pick up their children’s report cards.

Second, the NCLB reflects the growing public support for accountability. Public attention to education comes at a time when public confidence in the institution of public education continues to decline over a 30-year period. In 1977, for example, 53 percent of

the public showed a high level of confidence in public education. By May 2005, the confidence level had fallen to only 37 percent (Public Agenda 2006). However, the public seemed not ready to give up reforming the existing system of public schools. According to a Gallup Poll conducted in the summer of 2003, 73 percent of respondents wanted to reform the existing public school system, while only 25 percent preferred alternative approaches (such as school vouchers). This pattern was found in a 2003 poll sponsored by the Pew Hispanic Center, in which only 37 percent were in favor of the government offering parents vouchers, but 40 percent did not know enough to offer an opinion (Public Agenda 2006). Finally, two-thirds of the respondents in a June 2002 Gallup Poll favored using annual tests to track student progress (Public Agenda 2006). In other words, the accountability focus in fixing existing schools seems to receive broad public support.

Further, performance-based federalism in education involves bipartisan support. While Democratic endorsement was led by Senator Edward Kennedy, Republican support seemed significant given the party's opposition to federal involvement in the 1990s. In an analysis of legislative votes, DeBray (2006) observed that congressional support for the NCLB signaled a return to a higher level of Republican support for federal involvement in education, prior to the era of the Newt Gingrich's Congress of the 1990s. Specifically, while less than 20 percent of House Republicans supported Bill Clinton's 1994 Improving America's Schools Act (a predecessor of the NCLB), 85 percent of House Republicans voted for President Bush's No Child Left Behind (Jennings 1998). Similarly, while 53 percent of Republican senators were in favor of the 1994 legislation, more than 90 percent of Republican senators voted for NCLB. As DeBray pointed out, "Bush's particular style of leadership, enhanced by the national mood following September 11, made it possible for his party to give overwhelming support to an education bill that was far more pervasive and coercive than the one it had opposed in 1994" (2006, 125–26).

To be sure, President Bush was able to capitalize on the one-party dominance at the time of the law's passage, the political rapport that was associated with the first months of a new administration, and the widespread public confidence with the federal government in the context of an unprecedented national tragedy. Clearly, Republican lawmakers were ready to abandon the Gingrich policy platform of dismantling federal involvement but instead chose to substantially broaden federal expectations on outcome-based accountability in public education. In supporting the NCLB, congressional Republicans gave their strong endorsement on a core concern of the Bush presidency, namely, raising student achievement.

From a broader perspective, performance-based federalism may challenge existing political coalitions. On one hand, the NCLB's goal of narrowing the achievement gap has galvanized the support of racial, ethnic, and other constituency groups that belong to the core of the Democratic Party. On the other hand, the core Democratic constituency was not satisfied with the level of federal funding to meet the seemingly unfunded mandate, including the extensive testing requirements. These disagreements may create new tensions within the traditional liberal coalition.

The politics of the NCLB further differentiate the demand side from the supply side. The federal legislation aims at addressing the demands of the educational "consumers," including parents, taxpayers, and employers. In contrast, the NCLB is putting pressure on service providers, including the education profession and teachers' unions. This focus on consumer-based coalition is partly facilitated by public opinion on issues associated with the NCLB and school reform. In a January 2006 survey sponsored by the Pew Research Center, respondents ranked "improving the educational system" as the second most important priority for the president and the Congress. It ranked behind the defense against terrorist attacks but ahead of such important issues as the nation's economy, jobs, social security, Medicare, and crime reduction (Public Agenda 2006).

Clearly, the NCLB formally identified school choice as an option for school restructuring, an indication of using the demand side to drive school improvement. Consistent with the Republican Party's platform, Bush advocated for greater "consumer" choice during his 2000 presidential campaign. However, his administration was willing to compromise during the legislative process to make sure that the requirement of annual testing was adopted. Instead, a more limited set of choice arrangements was enacted as part of the corrective action provisions. When schools fail in consecutive years to meet the adequate yearly progress requirement, students in those schools are granted access to supplementary tutorial service and charter schools.

It should be noted that the Bush administration and the Republican Congress enacted a federally funded pilot voucher program in Washington, DC, that was not directly linked to the NCLB. In January 2004, Congress enacted the District of Columbia School Choice Incentive Act. The legislation provides as much as five years of federal funding to students in the District of Columbia to use for private school attendance (Wolf et al. 2005). Congressional approval of the scholarship program signaled the Republican Party's intention to support the use of vouchers as a school reform strategy. The controversy over school choice would have hindered the passage of this bill.

However, this particular initiative was facilitated by funding politics. The legislation specifically stated that the District of Columbia public schools would be “held harmless” and that departing students (i.e., voucher users) would not result in financial loss for the district (Greene and Winters 2006).

### The Challenge of Implementing the NCLB

The emergence of performance-based federalism has created implementation challenges in the intergovernmental policy system. First, the No Child Left Behind Act grants state and local agencies substantial authority in taking corrective actions to turn around failing schools. Consistent with the institutional practices in categorical federalism, the federal NCLB relies primarily on state and local capacity to implement the policy. On one hand, the NCLB expands federal influence. Building on the founding fathers’ notion of a “compound republic,” Manna (2006) has argued that “borrowing strength” from state governments can facilitate federal capacity in the education policy arena where the social license is historically weak. The emergence of performance-based accountability connects the concept of borrowing strength and the activities of policy reformers to license and capacity. On the other hand, tensions arise when many state and local systems have limited capacity to analyze large-scale data on student performance on an ongoing basis, provide alternative instructional services in failing schools, and make achievement and other schooling information more transparent to parents in a timely manner. Because adequate yearly progress is closely related to subgroup performance, districts with higher concentration of subgroups in their schools face greater odds in meeting the federal performance standards (Kim and Sunderman 2005).

Given the ambitious expectations of the NCLB, it is not surprising that federal–state conflicts occurred over federal funding support and other implementation issues. During the initial implementation phase, state efforts to meet federal expectations seemed incremental. With dozens of states suffering from budgetary shortfalls in the early 2000s, states delayed their response to seemingly costly federal mandates. According to a 50-state report card on the first anniversary of the federal legislation, only five states had received federal approval of their accountability plan (Education Commission of the States 2003). Further, only half of the states were prepared to monitor the performance of various subgroups and to undertake corrective actions in failing schools. More than 80 percent of the states were not ready to meet the federal expectation on placing highly qualified teachers in the classroom. It was only during the fourth year of the NCLB that all the states’ accountability plans were approved by the federal government. As table 3 shows, in 2004–5, only 27 states (or 52.9 percent of all the states) had at least 75 percent of

**Table 3** Number of States by Percentage of Schools Making Adequate Yearly Progress

Schools Meeting AYP in Each State	2002–2003	2003–2004	2004–2005
0%–25%	2	2	0
26%–50%	5	1	6
51%–74%	22	18	16
75%–100%	13	25	27
NA	9	5	2

Sources: Compiled from data accessed at Web site at each of the state education agencies.

N = 51, which includes 50 states and Washington, DC.

NA = Data are not available.

their schools meeting the federal AYP requirements. States’ capacity to meet AYP will be seriously challenged as the proficiency cutoff level continues to rise until it reaches 100 percent for all students (Wong and Nicotera 2007).

When lofty goals meet the operational reality of federalism, it is not surprising to see implementation tension and intergovernmental conflict (Peterson, Rabe, and Wong 1986; Pressman and Wildavsky 1973). Political opposition to the law arose in a number of states over the testing and accountability provisions (Wong and Sunderman 2007). In 2004, the Virginia House of Delegates passed a resolution calling on the U.S. Congress to exempt states such as Virginia, which had a well-developed accountability plan in place, from the NCLB requirements. The resolution called the 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). The resolution passed 98–1, with the lone dissenter a Democrat. Further, after extensive lobbying by the Bush administration, the Republican-controlled House of Representatives in Utah modified a law that would have prohibited the state from participating in the NCLB. Instead, the law was amended to prohibit the state and local districts from implementing the NCLB unless there was adequate federal funding (H.B. 43, 1st 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 Legislatures identified 28 states that considered resolutions or bills requesting waivers, more flexibility and/or money, or that would prohibit the state from spending state funds to comply with the NCLB or even participating in the NCLB program (personal communication, June 16, 2004). 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.

The effects of the NCLB on building state capacity to accomplish the policy objectives have been largely mixed during the initial period. The annual testing requirement has pushed states toward standardization of performance-based accountability. While this may have elevated the focus on accountability, it may undermine systems already in place in some states. For example, prior to the enactment of the NCLB, Virginia state policy makers and lawmakers had invested enormous political capital and fiscal resources to build its test-based accountability program based on the Standards of Learning assessment, which was first administered in 1998. The Virginia Board of Education has repeatedly expressed concerns with the NCLB testing provision. In other states, the NCLB may have the unintended consequences of lowering state standards on proficiency, weakening the overall NCLB objectives in raising student achievement for all (Hess and Petrilli 2006).

While the NCLB relied on state education agencies to implement the law's provisions, it did not pay adequate attention to their capacity to carry out the responsibility (Sunderman and Orfield 2006). When it comes to state intervention in low-performing schools, states' experience prior to the NCLB was limited and not very effective (Education Commission of the States 2004; Mintrop 2004; Mintrop and Trujillo 2005; Sunderman and Orfield 2006). As the reauthorization process moves forward, it is likely to clarify several state concerns, including the cost of annual testing, criteria for proficiency standards, and the capacity of states to provide technical assistance to improve school performance.

A dramatic example of the tensions encountered in implementation is the first legal challenge against implementing the NCLB. The plaintiffs consisted of districts in Michigan, Texas, and Vermont and the National Education Association, the nation's largest teachers' union. The plaintiffs argued that the NCLB imposed federal mandates without adequate financial support. In November 2004, a federal judge in the U.S. District Court for the Eastern District of Michigan rejected the challenge. The ruling stated that Congress had the authority to impose policy conditions on states (Janofsky 2005). A recent appellate court decision, however, allowed the suit to proceed to the next round. Another suit was filed by Connecticut against the U.S. Department of Education. The state not only seeks full financial support from the federal government to implement the

NCLB, it also claims that the U.S. agency acted in an "arbitrary and capricious manner" in deciding on state requests for waivers and exemption (Janofsky 2005). For example, Connecticut stated that the Department of Education rejected the state's request for testing the students every other year instead of annually. Intergovernmental conflicts over specific the NCLB provisions are likely to arise in specific settings.

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Facing local and state reluctance, the U.S. Department of Education has relaxed certain requirements on a case-by-case basis (Hess and Petrilli 2006; Sunderman 2006). Among the first policy changes the federal government made was a policy

revision governing the inclusion of students with disabilities and English-language learners in the state accountability system. The policy shift was in response to state and local objections to holding all students with disabilities to grade-level standards and the challenges of implementing the NCLB requirements for English-language learners. States with a higher concentration of these two subgroups were more likely to be identified for improvement than those without these subgroups, resulting in some of the best schools in a state being identified as needing improvement.

Additional policy accommodation came in response to parts of the law that were not working well and, if strictly enforced, would have meant the loss of Title I funds to many states. For example, as the deadline for having all teachers highly qualified approached in 2005–6, it became clear that states would not reach the 100 percent goal. In October 2005, Secretary Spellings announced a policy change that would allow states additional time to meet the highly qualified teacher requirements (Spellings 2005). With these changes, the NCLB shifted from being one national policy applied uniformly on all jurisdictions to one dependent on what each state could negotiate with the federal administration. Following the tradition of "marble cake" federalism in education, the federal government seems ready to address state concerns or risk further eroding political support for the law.

An example of intergovernmental accommodation in the urban context is Chicago's success in gaining federal approval to provide tutoring programs for students in schools that failed to make adequate yearly progress. Under the NCLB, districts that do not meet the AYP, including most large urban districts, are prohibited from providing supplemental instructional services after school to their students. The U.S. Department of Education required that Chicago replace its own services with outside vendors in January 2005. Mayor Daley stepped in and put his political capital behind the district chief executive's

decision to continue the district services. In a series of private meetings between the mayor and Secretary Spellings, a compromise was reached. In return for the district's continuation of its supplemental services, the city agreed to reduce barriers for private vendors to provide tutorial services. When the compromise was formally announced by Secretary Spellings in early September in Chicago, Mayor Daley hailed the efforts as the "beginning of a new era of cooperation" across levels of government in education (see Dillon 2005). Similar waivers were subsequently granted in such cities as New York City and Boston. Clearly, intergovernmental negotiation is likely to be intense over the implementation of the NCLB in complex urban systems.

### State and Local Innovation to Address Performance Challenge

The emerging performance-based federalism seems to create a policy window for state and local policy leaders to develop new strategies to raise student achievement. Innovative efforts tend to aim at changing the institutional rules that govern the supply side of public education. One strand of state and local reform relates to the way in which teachers are compensated. As a theory, performance-based compensation has been around for decades, when economist Milton Friedman first argued that the single-pay schedule be replaced with a differentiated compensation scheme for teachers based on their performance. While the former would reduce unpredictability and enhance cohesion within the teaching workforce, the latter would more closely match the changing supply and demand of the labor market, and it would enable the school system to be strategic in its use of financial resources. Policy discussions on these issues, however, were largely absent because of the opposition of teachers' unions until recently. In the late 1990s, the Milken Family Foundation started the Teacher Advancement Program, which tied financial incentives to the stages of teachers' career advancement. While the program was designed to support master or mentor teachers in working with less experienced teachers, the initiative was not primarily associated with measurable outcome-based performance.

With the widening use of corrective actions under the NCLB, the idea of holding schools and teachers accountable seems to have gained popular support. In several states, governors and state legislatures are beginning to experiment with differential compensation. Florida and Texas, for example, provide individual cash bonuses to teachers for standardized test results. Arizona, Minnesota, and North Carolina connect part of teachers' salaries to student achievement.

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Innovative efforts tend to aim at changing the institutional rules that govern the supply side of public education.

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In Minneapolis and Denver, union leadership actively participated in negotiating with management to redesign the teacher compensation package. Denver's ProComp Agreement did not eliminate collective bargaining. Instead, it gained voters' approval for new taxes to pay for the expanded salary schedule, which takes into account four factors: knowledge and skills, professional evaluation, market incentives, and student growth. As Denver superintendent Michael Bennett observed on the implications of ProComp, "Our current collective bargaining agreement is not much more than the accretion of 40 years worth of incremental decisions. It is not relevant to the work our teachers will have to do in the future" (quoted in Jupp 2006).

In the current climate of the NCLB, these initiatives on differentiated compensation are likely to provide useful lessons on redesigning work rules that are grounded in performance. In reviewing several state and district reforms, several design criteria seem to provide the basis for future policy choices. Among these choices are the following: Does the plan include the academic base salary or only the supplemental or bonus portion? Is outcome-performance measured in terms of student achievement or mixed in with additional staffing responsibilities, such as mentoring less experienced teachers? Does the new compensation take into consideration student needs and hard-to-fill positions? And is compensation awarded to individual teachers or in a collective fashion at the school level? These and other design issues will continue to be sources of divisiveness between teachers' unions and those who represent the interests of parents and the public.

A second strand of state and local innovation in altering the rule on the supply side is associated with diverse service providers. Unlike demonstration projects on alternative management, which were confined to professional development in a small number of schools in the 1990s, the diverse provider reform model aims at a systemwide shift to offer a broader mix of service providers as a strategy to raise student performance. Currently, Chicago and Philadelphia provide the most prominent examples (Wong and Wishnick 2007). In Chicago, the Renaissance 2010 reform agenda involves a wide range of charter schools and contract schools. In 2004, chief executive officer Arne Duncan announced that he wanted "to make Chicago the Mecca for people with an educational vision" to turn around chronically low-performing schools (Rossi 2004). Upon the mayor's announcement of the plan in 2004, Chicago's business community pledged to raise \$50 million to support the startup process of the 100 schools throughout the city.



Chicago's Renaissance 2010 consists of the creation of charter schools, contract schools, and performance schools. All three types of schools are public schools, in that they are funded on a per-pupil basis by the Chicago Public Schools. However, the three types of schools operate with significantly different degrees of autonomy. Only the charter and contract schools are operated by diverse service providers, as performance schools are small schools that operate under similar regulatory conditions as performance schools and are administered by the Chicago Public Schools. The charter and contract schools, on the other hand, are administered by their own autonomous school boards or by outside educational management organizations. Charter schools have autonomy in curriculum design (as long as they meet state standards), teacher and principal hiring, and performance-based compensation. Contract schools have autonomy in curriculum design, but they must hire certified teachers only. Contract school curricula must meet state and Chicago Public Schools standards, and they must be specified in the performance agreement signed with the school district. Importantly, collective bargaining agreements between the school district and the teachers' union explicitly do not apply to charter school teachers, whereas they do apply to performance school teachers.

By the 2007–8 school year, Renaissance 2010 had created a total of 54 schools, with an enrollment of over 27,000 students. Each of these schools received substantial startup funding of up to \$500,000 during its first two and a half years of operation. These new schools are operated by a wide range of organizations, including community-based nonprofits, groups of longtime Chicago Public Schools teachers, national educational management organizations, and the Chicago Teachers Union. While it is a work in progress, Renaissance 2010 has facilitated a new level of school development activities in Chicago.

The diverse provider model in Philadelphia was formalized by an agreement between the district and the state in July 2002. The agreement, which was preceded by two state legislative actions on state takeover of the district, identified 86 low-performing schools in Philadelphia (or approximately one out of four schools in the district) for special intervention under various management arrangements. These schools were given an additional \$37.5 million in state aid during 2002–3. In addition, 46 charter schools were permitted to operate outside district control.

The 86 schools were operated under different management types (Christman, Gold, and Herold 2006). First, 45 schools were operated under contract with educational management organizations (EMOs). Of these schools, 30 schools contracted with for-profit EMOs, including Edison Schools, Victory Schools,

and Chancellor Beacon Academies. The remaining 15 schools contracted with nonprofit organizations, including Temple University and the University of Pennsylvania, Foundations, Inc., and Universal Companies. Second, 21 schools were managed by the District Office of Restructured Schools (or referred to as “restructured schools”). Third, 16 schools were known as the “Sweet 16.” As these schools were showing some improvements in 2002, the agreement provided them with additional dollars without requiring any special intervention. Finally, four schools were given transitional charters under Philadelphia School District management.

By 2005–6, a few changes had occurred in the original group of 86 schools. Extra support for the Sweet 16 schools and the restructured schools was terminated during that year. During the last four years, the total number of schools under EMO management was reduced from 45 to 40. For example, the district terminated the five-school contract with Chancellor Beacon Academies.

The diverse provider model, though not intended to apply to the entire Philadelphia district, was commonly seen as a bold strategy. The 2002 agreement did allow providers outside the public sector to operate a sizable number of schools that were labeled as low performing. The Philadelphia model also preceded the full implementation of the federal No Child Left Behind Act, in which failing schools are required to implement corrective actions and restructuring. At the same time, the appointed board and the chief executive officer continued to shape the operation of the diverse providers. For example, EMO schools were not granted complete autonomy. During the startup phase, the district practiced “thin management,” in that EMO schools were subject to the terms of the districtwide collective bargaining provisions, including teacher pay, seniority clause, professional development days, and work rules, among others (Christman, Gold, and Herold 2006). The EMOs, however, were given the power to appoint their school principals. Further, districtwide accountability reshaped the academic and instructional priorities in EMO schools. Beginning in 2003–4, school chief Paul Vallas pushed forward a districtwide core curriculum that matched state standards and the Pennsylvania System of School Assessment, a quality review process, and a benchmark assessment system that was modeled after Edison's program.

### **Federalism as an Evolving Process**

Federalism has gone through several critical phases since the nation's founding. Historically, the federal government has taken a permissive role in education that is consistent with what political scientist Morton Grodzins characterized as “layer cake” federalism. Public education was primarily an obligation internal

to the state. The division of power within the federal system was so strong that it continued to preserve state control over its internal affairs, including the de jure segregation of schools, many decades following the Civil War.

“Layer cake” federalism, however, was replaced by “marble cake” federalism after World War II. Federal involvement in education sharply increased during the Great Society era of the 1960s and the 1970s. Several events converged to shift the federal role from permissiveness to engagement. During the immediate post-World War II period, Congress enacted the GI Bill to enable veterans to receive a college education of their choice. The Cold War competition saw the passage of the National Defense Education Act in 1958, shortly after the Soviet Union’s satellite, *Sputnik*, successfully orbited the earth. At the same time, the 1954 landmark Supreme Court ruling on *Brown v. Board of Education* and the congressional enactment of the 1964 Civil Rights Act sharpened federal attention to the needs of disadvantaged students. Consequently, the federal government adopted a major antipoverty education program in 1965, Title I of the 1965 Elementary and Secondary Education Act. As discussed earlier, categorical federalism remains a dominant institutional arrangement that shapes intergovernmental relations.

As we approach the end of the first decade of the twenty-first century, federalism in education seems ready to adopt its new focus on performance. It is too early to tell whether the performance-based paradigm will be fully institutionalized in our intergovernmental policy system. After all, categorical management remains highly routinized in the way government operates at all three levels. Nonetheless, given growing public concerns about school performance, the new politics of accountability has elevated the federal role in a policy domain in which states have always played a dominant role. Regardless of the future of the No Child Left Behind Act, federal presence in education accountability will remain a key feature in our intergovernmental system.

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