

The National Schoolmarm: No Child Left Behind and the New Educational Federalism

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The 2002 No Child Left Behind (NCLB) law dramatically reshaped the federal role in K-12 education in the United States. The implementation of NCLB has been difficult and contentious, but much of the journalistic and scholarly coverage has underestimated the source, strength, and stability of the political coalition that originally pushed for passage of the law and appears likely to sustain federal activism in education for the long term. For much of American history, the principle of federalism exerted a powerful restraining influence on the size and character of the federal role in education—but that time appears to have passed. Regardless of whether NCLB ultimately improves schools or student achievement, the law has created a new educational federalism in the United States.

A bureaucrat came to our town.
At first we thought he jested.
He said, "When I get through with you folks,
They'll be no child left untested."

From a protest song about NCLB written by NEA Secretary-Treasurer
Lily Eskelsen¹

The No Child Left Behind (NCLB) law of 2002 represents the most significant overhaul and expansion of the federal role in education since the Elementary and Secondary Education Act of 1965 (ESEA).² The centerpiece of the new law is the requirement that states, as a condition of accepting federal funds, establish academic standards to guide their curricula and adopt a testing regime that is aligned with those standards.³ States will have to test all students in math and reading in grades 3–8 every year (as well as once in high school), beginning with the 2005–6 school year.⁴

¹As quoted in Greg Toppo, "No Child Left Behind Has Teachers Singing Protest Songs," *USA Today*, 6 July 2004.

²For the full text of NCLB, see Department of Education, "No Child Left Behind Act"; www.ed.gov/nclb. For a detailed analysis of the provisions of the Act, see Learning First Alliance, "Major Changes to ESEA in the No Child Left Behind Act"; www.learningfirst.org.

³For detailed analyses of the NCLB from the viewpoint of state implementers, see Education Commission of the States, "State Requirements under NCLB", January 2003; www.ccs.org, and National Governors Association, "NGA Summary of the Timeline Requirements of NCLB"; www.nga.org.

⁴Thirty-five states did not have such testing at the time of passage. Crucially, however, after much debate, the final bill did not require states to adopt nationally designed tests, allowing them instead to design their own as well as to set their own levels for student proficiency.

Since 2002–3, states have been required to test annually the English proficiency of students for whom English is not their first language, and by the 2007–8 school year, states must also test all students in science at certain grade levels. States are free to develop and use their own standards and tests, but every school, school district, and state will have to make student test results publicly available and disaggregated for certain groups of students, including major racial and ethnic groups, major income groups, students with a disability, students with limited English proficiency, and migrant students. States also have to administer the math and reading portions of a national test, the National Assessment of Educational Progress (NAEP), every other year to a sample of their students in grades 4 and 8 to check the effectiveness of state standards and to provide a measure of comparability of student performance across states.

NCLB also requires states to have a “highly qualified teacher” in every classroom where core academic subjects are taught by 2005–6. States must establish a timetable of intermediate steps to reach this goal and all new teachers hired with Title I funds were to be highly qualified by 2002–3.⁵ “Highly qualified” is specified as meaning that a teacher must be fully certified or licensed, have a bachelor’s degree, and show competence in subject knowledge and teaching skills. NCLB mandates that every state and school district issue report cards that detail student test scores and identify those schools that have failed to meet proficiency targets and are in need of “program improvement.” The law also gives parents, for the first time, the right to request information from schools about teacher qualifications. This wealth of school information has never before been made widely available on a consistent basis, and it is certain to provide parents and education reformers alike with a large amount of new data from which to make judgments about the progress of school improvement efforts. NCLB explicitly requires that states use this information to track their efforts to close the achievement gaps in reading and math between different racial, ethnic, and income groups. States are required to establish a timeline (with regular benchmarks) for making “adequate yearly progress” toward eliminating these gaps and moving all students to state proficiency levels within twelve years (by 2014).

The law’s accountability provisions require states to take a number of escalating actions with Title I schools that do not reach state performance objectives. A school that fails to meet state performance targets for two consecutive years must be given technical assistance from the district to help it improve, and students in that school must be given the option to transfer to another public school in the district. The local school board

⁵Title I was the centerpiece of the 1965 Elementary and Secondary Education Act and remains its single largest program. It provides federal funds to communities (many of which are located in urban areas) with a high concentration of low-income families.

must pay some of the cost of transporting to their new schools students who use the choice option. If a school does not improve in the third year, students will also be given the option of using their share of Title I funds to pay for tutoring or other supplemental educational services (which can be provided by private companies). Schools that fail for four consecutive years must implement corrective actions such as replacing staff or adopting a new curriculum, and in the fifth year the failing school must be reconstituted with a new governance structure (e.g., reopening as a charter school).

In exchange for meeting these new federal demands, NCLB provided a significant increase (approximately 49 percent in its first year) in federal education spending and new flexibility in how states can spend it. School districts can shift up to 50 percent of the federal funds they receive for teaching improvement, innovation, technology, and safe and drug-free schools among the different programs or into Title I. The law also permits some Title I schools to use federal funds for schoolwide projects rather than for low-achieving students and authorizes a number of demonstration projects that relax even more federal regulations in some states and school districts. Up to 150 districts may take part in flexibility demonstration projects under which they can pool all of their federal funding in exchange for meeting certain performance goals. The law consolidates a number of federal programs and creates a number of new ones such as Reading First and Mathematics and Science Partnerships. NCLB encourages states to use “scientific, research-based” approaches with documented evidence of effectiveness in these and other programs. Finally, the bill also includes expanded federal support for public charter schools.

The new federal focus on accountability and the extension of federal policy to cover every student and every school in the country marks a major shift in the governance of elementary and secondary education in the United States. Richard Elmore calls NCLB “the single largest expansion of federal power over the nation’s education system in history,” and Andy Rotherham, a former Clinton education advisor, says that it “represents the high water mark of federal intrusion in education.”⁶ The breadth and depth of the new federal involvement in schools is a remarkable development, and the impact of the legislation on state and local educational leaders and public schools has been and will continue to be substantial, whether or not it ultimately succeeds in improving school performance.

The development of such a sizable and reform-oriented federal role in education is remarkable when placed in the context of the nation’s history of decentralized school governance. It is also extraordinary given the longstanding opposition of conservatives and states’ rights advocates to

⁶Richard Elmore, “Unwarranted Intrusion,” *Education Next* (Spring 2002): 31–35; Andy Rotherham, interview with the author, 22 August 2002.

federal influence over schools, the desire of most liberals to keep the federal role narrowly focused on providing funds for disadvantaged students, and the widespread push for deregulation and privatization that dominated the national policymaking climate in the 1980s and 1990s. To understand how No Child Left Behind and the expanded federal role in education came to pass and the political dynamics that continue to shape federal education policy, this article places the evolution of the federal role in schools within the context of broader institutional, ideational, and political changes in American politics between 1965 and 2002.

THE ORIGINS OF NO CHILD LEFT BEHIND

As befits such a monumental shift in policy, NCLB has received an enormous amount of coverage by journalists and academics. Many of the media and scholarly interpretations of the politics of NCLB, however, have painted an incomplete—and in some cases inaccurate—picture of the evolution of federal education policy, which has important consequences for our understanding of the law's origins and future. Journalistic coverage of NCLB, for example, has generally implied that support for the law at the national level is tentative and emphasized the growing opposition to its mandates at the state level. In this view, Democratic and Republican agreement on NCLB was largely a result of the convergence of a variety of short-term and contingent factors.⁷ Rather than resulting from any major shift in the position of the parties on school reform or educational federalism, NCLB's passage reflected such things as the pressure on Republicans to support their new president on his first legislative proposal and the desire of Democrats to secure additional federal money for schools. Although such issues were not insignificant, the focus on short-term factors ignores important longer-term developments in electoral politics and the partisan positions on federal education policy, which by 2000 had produced a strong bipartisan consensus about the need for an active, reformed federal role in education centered on standards, accountability, and choice.

Other interpretations of NCLB have acknowledged that the law was made possible by longer-term developments but claimed that it largely represents a continuation of earlier state and federal reform efforts. Some scholars have argued that NCLB does not represent a major shift in federal education policy but rather is simply an extension of the 1994 reforms contained in Goals 2000 and the Improving America's Schools Act. Kathryn McDermott, for example, has written that "NCLB is more accurately seen as a continuation, rather than a departure from, ongoing trends in federal education policy and in intergovernmental relations more

⁷See, for example, David Broder, "Long Road to Reform: Negotiators Forge Education Legislation," *The Washington Post*, 7 December 2001, p. A1.

generally. . . . Comparing NCLB with the most recent prior reauthorization of ESEA in 1994 shows that NCLB does not take federal education policy in a new direction.”⁸ Whereas McDermott sees NCLB largely as a continuation of earlier federal education reforms, Paul Manna has emphasized its derivation from earlier *state* education reform efforts. He has advanced what he calls a “bottom up agenda setting” model to explain the passage of NCLB and argues that state activity on education reform put pressure on the federal government to embrace standards, accountability, and choice.⁹

Although McDermott is certainly correct that NCLB has roots in the national standards-based reforms begun in 1994, the addition of tough federal timetables and mandatory outcome-based accountability in NCLB are so different and significant as to constitute a revolution in federal education policy. Put another way, the 1994 reforms to ESEA marked an important shift in ideas, but those reforms were largely toothless and unenforced. As a result, by the spring of 2002, shortly after the passage of NCLB, only sixteen states had fully met the requirements of the 1994 law. In essence, then, Goals 2000 *encouraged* states to create standards, testing, and accountability systems, but NCLB *requires* it. The Education Commission of the States summarizes the difference between the 1994 and 2002 reforms in this way:

NCLB differs from past [state and federal] initiatives in two important ways. First, it represents a more systemic approach to achieving reform and improvement, tying together a variety of requirements and incentives in areas ranging from student testing, school safety and reading instruction, to professional development for teachers to technical assistance for low-performing schools. Second, it significantly raises the stakes—for states, districts, and schools—for failure to make steady, demonstrable progress toward improving student achievement.¹⁰

Further, although Manna’s theory illuminates one of the factors influencing education’s rise to the top of the federal agenda, it is less useful in understanding the particular policy outcomes that emerged once the issue pierced the federal agenda. NCLB contained a number of elements that were strongly opposed by states, factions of the Republican and Democratic parties, and powerful interest groups. Democrats and Republicans had long opposed a reform-oriented federal role in education—and in particular the kind of federally mandated testing, accountability, and choice contained in NCLB—though for very different reasons. In addition,

⁸Kathryn McDermott, “Changing Conceptions of Federalism and Education Policy Implementation: Where Did the No Child Left Behind Act Come from and Where Is It Going?” (paper presented at the American Political Science Association, August 2003), p. 2.

⁹See Paul Manna, “Federalism, Agenda Setting, and the Dynamics of Federal Education Policy” (Ph.D. diss., University of Wisconsin, 2003).

¹⁰Education Commission of the States, *ECS Report to the Nation: State Implementation of the No Child Left Behind Act* (Denver: ECS, July 2004), p. iv.

states have always welcomed federal education funding, but they have fought vigorously to protect their policymaking autonomy over schools. Yet NCLB forces states to change their education policies in a number of major ways. For example, although forty-eight states had standards and tests in place in 2000, only thirteen states were testing students every year in reading and math between the third and eighth grades as NCLB now requires, and even fewer had strong accountability systems of the sort mandated by the new law. Thus, before to NCLB, even in the states that had standards and tests in place, there were few consequences for schools that failed to perform well. NCLB's significance is in mandating that *all* states adopt a standards and testing regime, that they conform to federal timetables for achieving student proficiency, and that they suffer real consequences for failing to do so. The numerous policy mandates contained in NCLB were far from the preferred type of federal education policy at the time of passage, and opposition to the law has been most pronounced among those states (such as Virginia) that had most aggressively adopted standards-based reforms.

The interpretations of NCLB as merely a continuation or incremental expansion of previous federal or state education reforms are consequential because they underestimate the impact that the requirements of the new law are having on schools across the nation as well as the magnitude of the shifts in national education politics that occurred between 1994 and 2002. McDermott is certainly correct that Clinton's 1994 education reforms created an important ideational foundation upon which NCLB was later built. However, her emphasis on the continuity between the 1994 and 2002 reforms underestimates the extent to which NCLB marks a major break with past federal education legislation and implementation efforts and the extent to which Republicans and Democrats have embraced a different—and more intrusive—kind of federal activism in education reform. If NCLB is essentially a continuation of Democratic education reforms embraced strategically by a Republican presidential candidate to appeal to swing voters, it is reasonable to presume that the GOP's long-term commitment to supporting and implementing the law is weak. Similarly, if Democrats remain wedded to an equity approach and merely agreed to support NCLB in exchange for greater federal funding for schools, then we should not expect the party to be particularly devoted to the law's principles and mandates.

In addition, a focus on state education politics and reform efforts can lead to the mistaken impression that it will be state policymakers alone who ultimately determine the fate of NCLB. It is important to recognize, however, that the law's future rests in equal measure on political developments at the national level and that these developments are only partly related to state preferences and pressures. In a 1994 analysis of Goals 2000, Michael Mintrom and Sandra Vergari concluded that "state and local

education interests have the political capacity to shape federal programs to their liking.”¹¹ Although this may have been true in the mid-1990s, when the national Republican Party was engaged in a vigorous defense of state rights and decentralization in education, it seems much less true today given changes in the politics of educational federalism.

Many commentators expressed shock at the GOP’s support of NCLB because of the party’s perceived abandonment of its longstanding support for states’ rights. Some have even predicted that these principles will inevitably resurface and the party will back away from NCLB and federal activism in education. This analysis ignores the fact that congressional Republicans embraced federal activism in education *before* George W. Bush and for political and policy reasons that are deeper—and less mutable—than is often supposed. That Republicans abandoned their longstanding defense of states’ rights in education when the political costs became too high should not surprise scholars of federalism. Timothy Conlan surveyed federalism in the Nixon and Reagan administrations and in the 104th Congress and found that “(t)hose holding power in Washington will naturally seek to use it . . . conservative Republicans are often tempted to use and even expand federal authority when they have the opportunity to do so.”¹² Overall, he concluded that “(n)either party it would seem, is willing to sacrifice the opportunity for federal involvement in state and local activities that hold political appeal.”¹³ This fundamental political dynamic of federalism remains in place today. As a result, state implementation challenges and protestations about NCLB—although important—will not by themselves be determinative in debates over the future of the federal role in education.

In sum, all three of these interpretations of the origins of NCLB underestimate the cause and extent of the political shifts in the Democratic and Republican parties that enabled the law to be passed and are likely to sustain federal activism in education over the long term. If NCLB was really just a response to short-term political factors, did not reflect a new bipartisan consensus on federal education policy, or is dependent on state preferences, then the law’s political future—and its ability to survive what will be a long and painful implementation process—would clearly be suspect. But *No Child Left Behind* represents a transformative shift in federal education policy—not merely a new policy but a new policy regime as it embodies a different set of ideas, interests, and institutions for federal education policy.¹⁴ The origins and future prospects of this new policy

¹¹Michael Mintrom and Sandra Vergari, “Education Reform and Accountability Issues in an Intergovernmental Context,” *Publius: The Journal of Federalism* 27 (Spring 1997): 14.

¹²Timothy Conlan, *From New Federalism to Devolution: Twenty-Five Years of Intergovernmental Reform* (Washington, D.C.: Brookings Institution Press, 1998), p. 313.

¹³*Ibid.*, 303.

¹⁴For more on the concept of “policy regimes,” see Carter Wilson, “Policy Regimes and Policy Change,” *Journal of Public Policy* 20, no. 3 (2000): 247–274.

regime can be fully understood only in the context of a variety of developments in education, electoral politics, and federalism that have unfolded over time and in a way that makes it unlikely that this new regime will be replaced in the near future.

THE EVOLUTION OF FEDERAL EDUCATION POLICY

For most of the nation's history the federal government had little role in elementary and secondary education and confined itself to supporting state efforts to create public schools and to collecting statistical information about them. The policy regime in education during the eighteenth and nineteenth centuries and the first half of the twentieth was based on a view of public schools as performing adequately and as best controlled by state and local governments. The civil rights movement and the war on poverty, however, shattered this policy image during the 1950s and 1960s. The Supreme Court's *Brown v. Board of Education* decision in 1954 engaged the federal government directly in schools for the first time and the busing mandated by federal courts engendered vitriolic opposition in many parts of the country. The Elementary and Secondary Education Act of 1965 was a central component of the Great Society and committed the national government to the defense of civil rights and the promotion of equal opportunity in education.¹⁵ The policy image at the heart of the ESEA regime continued to view public education as the appropriate domain of states and localities and to accept that public schools, on the whole, were functioning well. But it saw these lower levels of government as unable or unwilling to provide the equality of access and resources essential to promoting success in education for disadvantaged students.

ESEA programs were framed as temporary measures designed to address an extraordinary crisis for a specific group of disadvantaged students. Both the ends and the means of federal policy were clearly circumscribed; the national government would limit its efforts to improving educational equity by providing small categorical programs and supplemental funding for poor schools and children. Strong institutional and ideological obstacles to an expansion of the federal role in education persisted long after the passage of ESEA in 1965 and a bipartisan consensus of sorts developed around these limits on the federal role. Liberals fought to keep the federal role redistributive in nature and focused on disadvantaged students. In addition, because of their alliance with teachers unions and their belief that inadequate school resources were the primary problem facing schools, Democrats also sought to keep the federal role centered on school inputs rather than on school outputs or governance issues. Conservatives,

¹⁵For more on the passage, provisions, and implementation of ESEA, see Patrick McGuinn and Frederick Hess, "Freedom from Ignorance? The Great Society and the Evolution of the Elementary and Secondary Education Act," in *The Great Society and the Rights Revolution*, eds. Sidney Milkis and Jerome Mileur (Amherst: University of Massachusetts Press), 2005.

meanwhile, saw any increase in federal involvement as a threat to local control of schools and sought to minimize the intrusiveness of federal directives and enforcement efforts. Although they supported standards, testing, and accountability reforms, they believed that these should be established at the state rather than federal level.

Democrats used their control of Congress during most of the 1960s, 1970s and 1980s to gradually expand existing federal education programs for the poor and to create small new targeted initiatives. Crucially, federal mandates and administrative capacity in education also increased as liberal Democrats sought to force recalcitrant state and local school officials to embrace congressional goals and methods. The period 1966–80, then, was one of expansion for federal education policy—but expansion within the context of a limited focus on ensuring procedural compliance with equity programs for a small group of disadvantaged students. Signs of strain in the ESEA policy regime began to show during the 1970s as the federal role in education expanded in size, scope, and intrusiveness (symbolized by the creation of a U.S. Department of Education in 1979). Evidence also began to mount that federal spending and programs had failed to result in improved achievement among disadvantaged students and that the performance of mainstream students had deteriorated.

Beginning with the Nixon administration, the GOP stance on education came to be defined by opposition to federal involvement and criticism of many public school practices. Meanwhile, the activism of Presidents Johnson and Carter and Democrats in Congress had by the 1970s successfully established the Democratic Party as the party of education. Democrats embraced the nation's public school teachers and the public education establishment as core constituent groups of their evolving coalition and pushed for increased federal spending and mandates in education. The opposition of the Democratic party to education *reform* (as opposed to education *spending*) would become increasingly problematic politically, however, when federal activism across the board came under fire and when evidence of the continuing decline in public education mounted during the 1980s.

Republican President Ronald Reagan made tax cuts, devolution, and privatization the centerpieces of his administration. Social welfare programs generally, and federal education programs specifically, were attacked as being expensive, overly bureaucratic, and ineffective, and they were targeted for reduction or elimination. The release of the *A Nation at Risk* report in 1983 was a crucial focusing event as it fueled increasing public concern about the decline of public education and, in particular, its impact on the nation's economic competitiveness.¹⁶ Both Democrats

¹⁶The National Commission on Excellence in Education, *A Nation at Risk: The Imperative for Educational Reform* (Washington, D.C.: Government Printing Office, 1983).

and Republicans seized on the report to argue for major changes in federal education policies, but they advocated very different approaches. Democrats argued that the country's educational problems demanded greatly expanded federal funding and influence over schools. Republicans argued that *A Nation at Risk* was an indictment of past federal programs and mandates and the public education system generally and called for eliminating federal mandates and converting federal education funding into block grants or vouchers. The 1980s largely resulted in a stalemate as conservative proposals to abolish the Department of Education and to create private school choice programs were defeated and Democratic proposals for a significantly enlarged federal role were also blocked.¹⁷

FROM DEVOLUTION TO NATIONAL GOALS IN EDUCATION

In the wake of *A Nation at Risk*, education gained greater national visibility, and an alternative reform vision, which called for national leadership and reforms centered on academic standards and assessments, began to develop.¹⁸ This vision was embraced by moderates from both parties as well as many governors and business leaders—particularly in the South—who saw improving the quality of schools as essential for assimilating the country's many new immigrants and as the best way to bring about state economic development. Responding to these developments, Reagan's Republican successor George H. W. Bush made a pledge to be an education president a prominent part of his 1988 presidential campaign and the issue became the centerpiece of his domestic agenda and of his claim to be a kinder, gentler Republican. In contrast to Reagan, Bush embraced a federal role in education reform and helped to legitimize the idea that the country's historically decentralized public schools needed national leadership to help them improve. Whereas Reagan had pushed for states to be allowed to govern their schools without federal interference, Bush gathered the nation's governors together to discuss education reform under national leadership for the first time in a 1989 education summit.¹⁹ Bush's subsequent America 2000 education reform plan called for the development of detailed national standards in the core academic subjects

¹⁷Though Reagan was not successful in eliminating the federal role in education or public support for federal leadership in education reform, he was very successful in challenging the effectiveness of the equity regime at the heart of ESEA and in discrediting the New Deal/Great Society welfare state more generally.

¹⁸For more on education reform at the state level during this period and its impact on federal deliberations, see Manna, "Federalism."

¹⁹For more on the evolving role of the federal government in education in the 1980s, see Richard Elmore and Susan Fuhrman, "The National Interest and the Federal Role in Education," *Publius: The Journal of Federalism* 20 (Summer 1990): 149–162.

and asked governors to adopt voluntary national testing for fourth, eighth, and twelfth graders.²⁰

Congressional Republicans, however, continued to believe such measures would inevitably lead to federal control of education. Democrats feared that they would lead to the imposition of tough school accountability measures and a deemphasis on the importance of increasing federal funding. As a result of this bipartisan opposition, Bush's America 2000 bill ultimately died in Congress. Nonetheless, the George H. W. Bush administration's efforts were significant because they represented the first concerted attempt to fundamentally shift the Republican Party's approach to federal education policy and to create a new policy regime based on federal support for standards-based school reform. Vic Klatt, the Deputy Assistant Secretary for Congressional Affairs at the Department of Education in the Bush administration, noted that:

Republicans began more and more to engage the issue under Bush—public opinion shifts beginning in the early 1990s showing that the issue is more and more important played a big role in this. The Reagan administration really looked at education only through a federalism perspective; Bush I began to change this. He wanted to be the education president and you began to see more proactive initiatives on education beyond school choice coming out of the Republican Party.²¹

During the 1992 presidential campaign Democrats used the end of the cold war and the economic recession to reemphasize their party's commitment to using the federal government to promote federal leadership on a number of pressing domestic issues, including education. In 1992, Bill Clinton, the Democratic presidential nominee and a self-proclaimed New Democrat, called for a strong federal role in education, and the legislative enactments of the first two years of his administration helped to further nationalize politics and policymaking in education and to advance the cause of standards-based reform.²² Clinton capitalized on the increased salience of education and Democratic control of Congress to gain passage of two major school reform bills—Goals 2000 and the Improving America's Schools Act. States were required under Goals 2000 to develop targets for the attainment of factual information and intellectual abilities that students should master at specified grade levels. Many of

²⁰For more on the development of the standards movement and the national education goals, see Diane Ravitch, *National Standards in American Education* (Washington, D.C.: Brookings Institution Press, 1995).

²¹Interview with the author, 10 March 2003.

²²New Democrats laid out a comprehensive vision for federal education reform in a 1992 book by the Progressive Policy Institute of the DLC that was seen as a blueprint for the administration. *Mandate for Change* emphasized that increased funding alone would not solve schools' problems and called for the president to "marshal public support for a radical redesign of U.S. education." Will Marshall, ed., *Mandate for Change* (Berkeley: Berkeley Pub. Group, 1992).

the reform ideas that would later form the core of the 2002 No Child Left Behind Act—such as standards, assessments, adequate yearly progress, school report cards, and corrective action—found their first expression in the 1994 ESEA reauthorization. Though the new laws did not include many mandates for states, they nonetheless signified a sea change in federal education policy and codified the shift from the historical focus on ensuring equity for disadvantaged students and impoverished schools to a new commitment to improve the academic performance of all students and schools.²³

Lingering conservative opposition to a strong federal role in education and the continuing liberal reservations about testing and accountability ensured that the 1994 reforms were relatively weak and weakly enforced.²⁴ As a result, as Clinton education advisor Andy Rotherham added, “Clinton got as far as he could in 1994 but there was a lot of resistance. He had to rely on a strange alliance of moderate Republicans and Democrats to get the bills passed.”²⁵ The shift in ends and means of the federal role in elementary and secondary education was of great import, but tougher reforms paired with federal sanctions would have to wait. Clinton made such reforms more likely by establishing a strong and publicly accessible rationale for broader federal involvement in school reform efforts that linked education to economic growth. His emphasis on the need for increased education *reform*—including choice, high standards, and accountability for results—as opposed to merely increased *spending*, was also crucial and helped identify the Democratic Party as the party of school reform.

THE CONSERVATIVE BACKLASH

Republicans struggled during the 1990s to answer the challenge on education posed by Clinton and the New Democrats without abandoning the party’s historical states rights and small government principles. The GOP was divided on how best to respond to the Democrats’ education initiatives, with some calling for more aggressively advocating devolution or market reforms such as public school choice, charter schooling, and school vouchers, and others endorsing curricular and governance reforms such as national standards and stronger accountability measures. During the early 1990s, as Clinton led the Democrats to assume a more centrist, reform-oriented position on schools, political developments were pushing the Republican Party position on federal education policy even further to the right.

Under the leadership of conservative Newt Gingrich (R-GA), Republicans declared a “Contract with America” and launched an ambitious effort

²³Mintrom and Vergari, “Education Reform,” 15.

²⁴For more on the political divisions and policy debates in Congress during the Clinton administration, see Jack Jennings, *Why National Standards and Tests?* (Thousand Oaks: Sage Publications, 1998).

²⁵Interview with the author, 22 August 2002.

to roll back the federal government after assuming control of Congress in 1995. Extending Reagan's argument that government was the problem rather than the solution, Republicans also tried to reduce federal involvement in education by cutting federal spending, by converting it into block grants or vouchers, and by eliminating the Department of Education entirely. These proposals made progress in the House but were ultimately defeated by a coalition of Democrats and Republican moderates in the Senate backed by the threat of presidential vetoes. Education also came to play an important symbolic role in the budget showdowns and the Democratic defense of activist government more generally. As Ed Kealy, the Executive Director of the Committee for Education Funding, noted, "Democrats realized that education was an issue they could champion effectively . . . [and] it was placed at the center of the White House's strategy for fighting back against Gingrich and the conservatives. Democrats recognized how vulnerable Republicans would be politically on the issue if they were identified with cutting aid for poor kids."²⁶

In addition to the intense policy fights in Congress, this period also saw a very public battle over ideas as Republicans devoted considerable time and energy to convincing the public that federal involvement in education was harmful, that funding was not the key element in improving schools, and that vouchers were not a radical idea. They largely failed on all three counts. The conservative positions on education, although popular with the party's base, remained extremely unpopular with the general public and particularly with moderate swing voters. In explaining why this was the case, Jay Diskey, the Communications Director for the House Education and Workforce Committee for much of the 1990s, noted that:

not too many soccer moms out there really understand block grants—it's a Washington term. If you go out there and ask soccer moms (or dads) whether they would rather have block grants or school computers, they're going to say school computers. Republican proposals were remarkably hard to push, and it led by the late 1990s to a Republican Party that wanted to be very engaged in education but was still having trouble doing it because of these debates over governance and federalism. We weren't providing the types of things that Clinton and the Democrats were pushing, like reading programs and education technology. As a result, the Democrats were able to command the education issue from 1994 right up to the 2000 election.²⁷

Polls showed that the public rejected Republican proposals to cut spending for the Department of Education and to eliminate the department altogether by wide margins, and these proposals permitted Democrats to depict the Republicans as hostile to education.

²⁶Interview with the author, 27 March 2003.

²⁷Interview with the author, 5 May 2003.

The extent of public displeasure with the conservative agenda on education was revealed forcefully in the 1996 presidential election, when voters ranked education at the top of their agendas and favored Clinton over Dole on the issue by more than a two to one margin. (Between 1984 and 1996, polls showed that Democrats maintained a double-digit advantage over Republicans in the percentage of the public who felt the party best addressed education.) Between 1994 and 1996 education became a decisive electoral issue and the liberal focus on regulation and resources and the conservative focus on privatization and decentralization were each discredited. This confluence of political developments ended the debate over whether there should be a federal role in education and created an opening—a “policy window” in John Kingdon’s terms²⁸—for bipartisan discussions about a centrist compromise that would establish a new reform-oriented federal education policy regime.

THE PARTIES CONVERGE

Bob Sweet, the Senior Republican Staff Member on the House Committee on Education and the Workforce, observed that by 1996:

all of the polls showed that the public saw Republicans as anti-education even as education was becoming a more important national political issue. Things changed from that point on. The public equated the decline of the quality of public education with a lack of federal funding for education because it was successfully portrayed this way by Democrats.²⁹

As a result, in the late 1990s, congressional Republicans dropped their proposals to eliminate the Department of Education and to cut federal education spending, and put forward their own vision for federal educational leadership.³⁰ In an effort to appear more pro-education to voters, Republicans also appropriated more money for education than Clinton even requested and the 1996–2001 period witnessed the most dramatic increases in federal K-12 education spending since the 1960s.³¹ The increased spending went to support existing federal education programs but also to fund a wide variety of new initiatives that brought the national government into many areas of school policy where it had never before ventured.

²⁸John Kingdon, *Agendas, Alternatives, and Public Policies* (New York: Longman Publishing, 2002).

²⁹Interview with the author, 30 April 2003.

³⁰The Republican “Straight A’s” plan called for giving states greater discretion in the use of federal education funds in exchange for states’ annual public reporting of student achievement data and their agreement to meet certain student performance targets.

³¹The large increases in the late 1990s contributed to a 69 percent increase in Federal on-budget funds for elementary and secondary education in constant dollars between Fiscal Year 1990 and FY 2001. National Center for Education Statistics, *Federal Support for Education: 1980–2001* (Washington, D.C.: U.S. Department of Education, Office of Educational Research and Improvement, NCES 2002–129), p. 3.

Republican activism on education during the late 1990s represented a major political and policy challenge for Democrats, who were forced to respond to a comprehensive alternative national reform plan for the first time. The Democrats' response to this challenge was shaped by a growing recognition that money was a necessary but not sufficient condition for improving educational opportunity and increasing pressure from minority groups and voters generally for more meaningful reform. These factors, along with Clinton's leadership and his centrist New Democratic philosophy, led the Democratic Party during the 1990s to move away from its traditional focus on inputs and equity and to embrace standards, accountability, and (public) choice. As a result, the positions of both the Democratic and Republican parties moved toward the center on education over the course of the decade as support grew for tying expanded federal investment in education to state accountability for school improvement efforts.³² In a question and answer session with education reporters in April 2000, for example, Clinton emphasized that "the fundamental lesson of the last seven years, it seems to me, is that education investment without accountability can be a real waste of money. But accountability without investment can be a real waste of effort. Neither will work without the other. If we want our students to learn more we should do both."³³ By the end of the decade, both the liberal and conservative approaches to federal education policy had been discredited and there was growing consensus around a grand bargain of greater federal investment in education in exchange for increased accountability.

If congressional Republicans and Democrats had softened their opposition to a new reform-oriented federal role in education by the late 1990s, it would take the election of a former Republican governor, George W. Bush, as president to cement the foundation of a new policy regime. Bush became convinced of the efficacy of accountability reforms in education while observing the effect of TASS (Texas Assessment of Academic Skills) tests as governor.³⁴ However, a "federalist dilemma" on education emerged because "achieving Republican objectives involves more federal intervention into core areas of traditional local control, such as curriculum, testing, and teacher qualifications . . ." ³⁵ This federalist dilemma was ultimately subsumed by political considerations because by

³²This was apparent in the overlap of parts of the different ESEA reauthorization proposals—Clinton's "Educational Excellence for All Children" plan, the Republican "Straight A's" plan, and the New Democrats' "Three R's" proposal—debated in Congress in 1999 and 2000.

³³Remarks and a Question and Answer Session with the Education Writers association in Atlanta, Georgia, vol. 1, *Public Papers of the President: William J. Clinton—2000* (Washington: Government Printing Office, 2000).

³⁴Kenneth Godwin and Wenda Sheard, "Education Reform and the Politics of 2000," *Publius: The Journal of Federalism* 31 (Summer 2001).

³⁵John Kincaid, "The State of U.S. Federalism, 2000–2001: Continuity in Crisis," *Publius: The Journal of Federalism* 31 (Summer 2001): 32.

2000 education had moved from an important but secondary national issue to the very top of the public agenda.³⁶

Where earlier Republican presidential candidates had either ignored the issue of education or run in opposition to a federal role, Bush made education the number one issue of his campaign and a crucial part of his compassionate conservative philosophy.³⁷ In an effort to close the gap on education and appeal to swing voters—for whom education was a top issue—Bush adopted a pragmatic and centrist education agenda that called for an active but reformed federal role in promoting school improvement. Bush's success on the education issue was widely viewed by both Democratic and Republican strategists as key to his election victory. Republican pollster David Winston noted, for example, that "education was THE deciding issue in 2000. The groups that were most interested in education were the key swing voters—independents, Catholics, married women with children. It was an issue that you clearly saw a dramatic shift on. Going from minus 62 to minus 8 [on education] and you barely win the election, you have to assume that's the gap that closed."³⁸

Though there were several important differences, Bush's and Gore's education proposals during the 2000 campaign were remarkably similar. Both advocated a stronger federal role in education and school improvement through higher academic standards, increased federal funding, expanded support for charter schools, and tests to allow the federal government to hold schools accountable for student achievement. Gore and Bush also embraced a remarkably ambitious scope for the federal role in education reform. Both candidates repeatedly argued that the federal government had a responsibility to ensure a quality education not just for those disadvantaged groups (racial minorities, disabled children) that the federal government had long assisted, but for *all* students. This convergence set the stage for a historic compromise between the parties on the pending ESEA reauthorization following the election.

Bush entered office declaring that education reform would be his first priority and used his success on the issue in the election to forge a bipartisan coalition behind his No Child Left Behind Act. At the heart of the legislation was the grand bargain that had developed during the late 1990s—increased federal spending and activism on education in exchange for expanded flexibility, accountability, and choice. After years of debate

³⁶See Melissa Marshall and Robert McKee, "From Campaign Promises to Presidential Policy: Education Reform in the 2000 Election," *Educational Policy* 14, no. 1, (January–March 2002): 101.

³⁷As Bush advisor Sandy Kress noted, "There is no question that education was central to Bush's 2000 campaign strategy, to his compassionate conservative philosophy—it was a big issue to him and to the campaign ... clearly the president was mindful, as were Karl Rove and others, that the Bush approach to education was a more popular and more generally supportable position than some of the earlier Republican positions in the past." Interview with the author, 23 May 2003.

³⁸Interview with the author, 9 May 2003.

over whether there should even be a federal role in education, there was now general agreement not only on the need for federal leadership to improve public schools but also on the broad direction that such leadership should take. As Amy Wilkins of the Education Trust noted,

It ended up being an unusually bi-partisan bill. . . . NCLB was a defeat for liberals on the left and conservatives on the right—it was a bill that was always designed to run right down the middle so neither extreme won the day. NCLB passes because it is right down the middle. . . . It was about New Democrats and Compassionate conservatives working together. Public opinion polling in the 1990s showed education moving higher and higher on people’s agendas and staying there—there was huge dissatisfaction with what was going on in public schools and this emboldened Congress to act and to pass NCLB.³⁹

As a result, despite often contentious negotiations, the final vote on the conference report of NCLB was overwhelming and bipartisan in both the House (381–41) and Senate (87–10). President Bush signed NCLB into law on 8 January 2002.

The passage of No Child Left Behind fundamentally changed the ends and means of federal education policy from those put forward in the original ESEA legislation, and in so doing created a new policy regime. The old federal education policy regime was based on a policy paradigm that saw the central purpose of school reform as promoting equity and access for disadvantaged students. With NCLB, federal education policy has embraced the much broader goal of improving education for all students by significantly increasing accountability for school performance. The broad bipartisan consensus behind NCLB stands in sharp contrast to the partisan struggles over national school policy in the 1980s and 1990s and reflects the rise of a new policy regime that will govern the expanded federal role in elementary and secondary education for years to come.

2003–5: A RISING TIDE OF OPPOSITION TO NCLB

The past three years have been eventful ones for federalism and education as states have worked to implement No Child Left Behind and strong opposition to the law has been voiced from many different quarters. Some of this opposition can be attributed to what Dale Krane calls the “normal ‘implementation pains’ associated with all new public programs.”⁴⁰ Many educators and administrators have gone so far as to call for the law’s repeal, but this is not surprising given NCLB’s focus on accountability and its challenge to the established operating practices of schools, districts, and states. As Phyllis McClure, a longtime member of the Title I Independent

³⁹Interview with the author, 13 March 2003.

⁴⁰Dale Krane, “The State of American Federalism, 2002–2003,” *Publius: The Journal of Federalism* 33 (Summer 2003): 13.

Review Panel has noted, “NCLB has grabbed the education community’s attention like no previous ESEA reauthorization. It has really upset the status quo in state and local offices. . . . For the first time, district and school officials are actually being required to take serious and urgent action in return for federal dollars.”⁴¹ In stark contrast to the implementation of previous federal education legislation, the Bush Department of Education has also developed tough, detailed regulations in support of NCLB and has threatened to withhold federal funds from states that do not comply with its mandates.

With NCLB now in its third year, there is growing concern over the capacity of states to comply with the law’s programmatic mandates and meet its timetables for moving students to academic proficiency. A July 2004 report by the Education Commission of the States, for example, found that although states had made considerable progress over the preceding year they continued to struggle with several different NCLB requirements. None of the fifty states, for example, was on track to meet the law’s requirement of a highly qualified teacher in every classroom or for providing high-quality professional development for teachers. Only nineteen states were on schedule to release annual state report cards on school performance as required and fewer than half were meeting goals of making scientifically based technical assistance available to low-performing schools.⁴²

In addition, a large number of schools across the country have been identified as “in need of improvement” for failing to meet Adequate Yearly Progress (AYP) targets. A report on state implementation of NCLB released by the Center on Education Policy (CEP) in March 2005 concluded that although student test scores are rising and achievement gaps narrowing in a majority of states and districts, large numbers of schools remain in “in need of improvement” status and state and district officials have a number of concerns about the law going forward.⁴³ Its analysis of state education data found that the number of non–Title I schools identified as in need of improvement (for which states are not required to undertake corrective actions) was 2,370 in 2004–5.⁴⁴ The total number of Title I schools identified as in need of improvement declined slightly in 2004 but has remained basically stable for the past three years at about 6,000

⁴¹Phyllis McClure, “Grassroots Resistance to NCLB,” *The Education Gadfly* 4(11) (18 March 2004) <http://www.edexcellence.net/foundation/gadfly/index.cfm#1723>.

⁴²Education Commission of the States, *ECS Report to the Nation*, pp. B2–B6.

⁴³Center on Education Policy, *From the Capital to the Classroom: Year 3 of the No Child Left Behind Act* (Washington D.C.: Center on Education Policy, 2005); http://www.ctredpol.org/pubs/nclby3/press/cepclby3_21Mar2005.pdf.

⁴⁴“Title I schools” are high poverty schools that receive funds from Title I of the Elementary and Secondary Education Act. The distinction between Title I and non–Title I schools is very important because the mandatory corrective actions spelled out in the new law for failing schools apply only to Title I schools. The other provisions of the law (such as those regarding standards, testing, and school report cards) apply to Title I and non–Title I schools alike.

(or 13 percent of all Title I schools).⁴⁵ As a result, however, even as states struggle to continue developing the standards and testing frameworks mandated by NCLB, they are also being forced to apply corrective measures to failing Title I schools (such as providing technical assistance and allowing students to choose a better school). In some states this was particularly difficult owing to the large number of schools that had failed to meet AYP targets repeatedly and therefore qualified for more intensive corrective actions such as reconstitution.⁴⁶

During 2004 a number of state legislatures around the country debated resolutions that declared that NCLB was a violation of states' rights, was inadequately funded, and/or was being administered in an inflexible and unworkable manner. In January, the Republican-controlled Virginia House of Delegates passed a resolution ninety-eight to one calling on Congress to exempt states like Virginia—which have “successfully increased student achievement through their own standards and accountability reforms”—from NCLB's accountability provisions. The resolution declared that NCLB “represents the most sweeping intrusions into state and local control of education in the history of the United States” and will cost “literally millions of dollars that Virginia does not have.”⁴⁷ Fourteen other states petitioned the Department in March for permission to use alternative methods for calculating student academic progress.⁴⁸

State legislatures in Utah, Vermont, New Hampshire, Hawaii, and Maine passed bans prohibiting their states from spending any of their own funds to implement the NCLB. All together, legislators in thirty-one states introduced bills in 2004 seeking greater flexibility or more funding under the law or to limit state participation in it.⁴⁹ The Ohio Department of Education released a study estimating that the state would spend about \$1.5 billion a year to meet the administrative costs and achievement goals of NCLB, an amount that was more than twice what the state received in ESEA funds. Wisconsin's Attorney General suggested in May that the state had no legal obligation to follow NCLB because the costs of the program exceeded the money provided for it by the federal government.⁵⁰ The

⁴⁵Center on Education Policy, *From the Capital to the Classroom: Year 3 of the No Child Left Behind Act* (Washington D.C.: Center on Education Policy, 2005); http://www.credpol.org/pubs/nclby3/press/cpeclby3_21Mar2005.pdf, 68–73.

⁴⁶See, for example, Bess Keller, “Michigan May Feel Full Force of Federal Law,” *Education Week*, 11 February 2004.

⁴⁷Jo Becker and Rosalind Helderman, “Va. Seeks to Leave Bush Law Behind,” *The Washington Post*, 24 January 2004, p. A1.

⁴⁸For more on this, see Diana Jean Schemo, “14 States Ask U.S. to Revise Some Education Law Rules,” *Education Week*, 25 March 2004.

⁴⁹Lynn Olson, “States Revive Efforts to Coax NCLB Changes,” *Education Week*, 2 February 2005.

⁵⁰Attorney General Peg Lautenschlager stated that “the states are entitled to take Congress at its word that it did not intend to require states to implement programs that will cost more than the federal government is providing” and that it was a “stark reality” that NCLB was underfunded. As quoted in Alan Borsuk, “No Child Left Behind May Not Be Enforceable, Lautenschlager Says,” *Milwaukee Journal Sentinel Online*, 13 May 2004.

National Conference of State Legislatures released a report on NCLB in February 2005 that called on the federal government to give states more flexibility across the board regarding NCLB, as well as to “reevaluate” the goal of 100 percent academic proficiency and to “reexamine” the policy of withdrawing federal funds from states that do not comply with NCLB.⁵¹ Adding to what appeared to be an already combustible political mix, several media reports in 2004 also declared that public opinion was turning against NCLB.⁵²

These political and policy developments received a great deal of coverage in the media and from scholars in 2004.⁵³ But although NCLB clearly has some very loud and visible critics—particularly in the education community—it appears that predictions of its imminent demise have been overstated. Despite all of the activity in state legislatures, for example, in the end governors in only three states (Maine, Utah, and Vermont) signed bills critical of NCLB and only Utah has declared (in April 2005) that it will not follow NCLB provisions that conflict with state education goals. The U.S. Department of Education responded to the growing opposition to NCLB from state legislatures and education officials in 2004 by sending representatives scurrying around the country to deliver a two-pronged message: (1) NCLB is here to stay so stop complaining and start complying and (2) if you do not comply with the law you will forfeit your state’s share of federal education funds. Commentators are quick to point out that the federal government’s share of total education spending is “only” 7–10 percent and to suggest that states may decide to simply end their participation in ESEA if federal mandates are not relaxed.⁵⁴ States are hard-pressed, however, to turn down the millions (and often hundreds of millions) of dollars in federal funds that they each receive annually, particularly—as was the case in 2004—when they were faced with budget cuts at home. In addition, because most state and local funds are consumed with fixed costs such as textbooks, building maintenance, and teacher salaries and benefits, federal monies are used by states to fund important supplemental programs and reform efforts. As Patty Sullivan, the Deputy

⁵¹The report is available at http://www.ncsl.org/programs/educ/nclb_report.htm.

⁵²See, for example Erik Robelen, “Opposition to School Law Growing, Poll Says,” *Education Week*, 7 April 2004.

⁵³Lisa Dotterweich and Ramona McNeal, for example, argued that state resistance to NCLB is increasing because the federal government is not perceived as having a “credible” message in the policy. They write that: “the act is being perceived as under-funded, having unrealistic goals, and represents an unwanted invasion of the federal government into a policy area that is the domain of the state and local government.” Dotterweich and McNeal, “State Compliance and the No Child Left Behind Act” (paper presented at the Annual meeting of the American Political Science Association, September 2004), p. 26.

⁵⁴Kathryn McDermott, for example, has argued that “given that federal funds are still less than 10% of total education spending, it is unclear how long the federal ‘tail’ can go on using mandates to wag the state and local ‘dog’.” If the financial and political costs of compliance with federal mandates get high enough, some states may decide that it is no longer worth their while to receive ESEA funds.” McDermott, “Changing Conceptions of Federalism,” 31.

Executive Director of the Council of Chief State School Officers, noted, “Maintaining a good relationship with the federal government that oversees your programs and suing them at the same time is a very difficult proposition.”⁵⁵

Much of the opposition to NCLB in 2004–5 was centered on the perceived unfairness of certain rules governing the calculation of school AYP measures and claims that the U.S. Department of Education had been inflexible in its enforcement of the law and unresponsive to state concerns. In March, the chief school officers of thirty-five states had a two-hour meeting with President G. W. Bush and his advisors in which they expressed the difficulties that they were having in complying with NCLB and secured a promise that the administration would use greater flexibility in the implementation of the law.⁵⁶ A few days later the department relaxed the rules for calculating student participation rates in NCLB’s testing program. This change—along with several others issued by the Department of Education in 2003–4⁵⁷—made it easier for states to comply with the law’s mandates and for more schools to meet annual AYP goals.⁵⁸ Through a combination of state improvement efforts and federal rules changes, the percentage of schools that met all of their AYP targets generally held steady or increased from 2003 to 2004. Among the twenty-four states for which preliminary reports were available in September 2004, for example, thirteen increased the number of schools making AYP by at least 10 percent and four had increases of more than 20 points.⁵⁹

Growing state opposition to the Bush administration’s central domestic policy initiative, however, clearly had an effect. In early 2005, at the start of his second term, President Bush replaced Secretary of Education Roderick Paige—who was widely criticized for his lack of flexibility over state implementation of NCLB and for calling the National Education Association a “terrorist organization”—with Margaret Spellings, a former Bush domestic policy advisor. Secretary Spellings indicated immediately

⁵⁵As quoted in Alan Borsuk, “Law’s Foes Unable to Stir Change,” *Milwaukee Journal Sentinel Online*, 12 July 2004.

⁵⁶David Hoff, “Chiefs Sense a New Attitude in Meeting with Bush,” *Education Week*, 31 March 2004.

⁵⁷In December 2003, testing rules for students with disabilities were relaxed and in February 2004 the rules governing limited English proficiency students were made more flexible. In March, extra flexibility was provided for teachers in rural communities and for science teachers in meeting the highly qualified mandate and streamlined alternative means were permitted for current teachers seeking to demonstrate subject-matter mastery in multiple subjects. Also in March, the department allowed states to modify the way they calculate student test-participation rates by averaging participation over a two- or three- year period and by omitting students who miss the tests because of a medical emergency. “Changing the Rules,” *Education Week*, 7 April 2004.

⁵⁸For a detailed list of amendments to state accountability plans under NCLB submitted to the U.S. Department of Education, see “Rule Changes Could Help More Schools Meet Test Score Targets for the No Child Left Behind Act,” *Center on Education Policy*, 22 October 2004; <http://www.ctredpol.org/nclb/StateAccountabilityPlanAmendmentsReportOct2004.pdf>.

⁵⁹Lynn Olson, “Data Show Schools Making Progress on Federal Goals,” *Education Week*, 8 September 2004.

that although she will hold states to the law's core requirements and timetables, she is willing to work with states to a greater extent than her predecessor.⁶⁰ In April, the Department of Education announced a major policy shift, "a new commonsense approach" to NCLB implementation, with "Raising Achievement: A New Path for NCLB."⁶¹ Spellings identified four "bright lines" in the law that must be met—annual testing, reporting disaggregated subgroup scores, improving teacher quality, and dissemination of school information and options to parents. States that meet these principles and demonstrate that student achievement is improving "will get credit for the work they have done to reform their education system as a whole" when seeking additional flexibility. "In other words," she remarked, "it is the results that truly matter, not the bureaucratic way that you get there." More specifically, Spellings announced that the department would introduce greater flexibility in the testing of students with learning disabilities as well as look into alternative methods of calculating AYP targets (such as through growth models).

These changes were not sufficient, however, to prevent the National Education Association and school districts in three states (Michigan, Texas, and Vermont) from filing suit against the federal government over NCLB later that month on the grounds that it is an unfunded mandate.⁶² The legal challenge is based on an NCLB provision—first inserted into ESEA in the 1990s—that forbids federal officials to require states to spend their own money to carry out the federal policies outlined in the law. The outcome of this suit is likely to be determined by how the court determines that state costs of complying with NCLB should be calculated and, in particular, whether they include only those costs associated with specific requirements such as testing or also the much larger cost of bringing all students in each state to academic proficiency.⁶³

These intergovernmental negotiations over NCLB will undoubtedly continue—and become even more contentious as the 2014 date for 100 percent student academic proficiency approaches. It remains to be seen, however, whether the changes recently announced by the U.S. Department

⁶⁰Signs of this new flexibility were displayed in early 2005 when the Department of Education approved North Dakota and Utah's requests to use their existing measure of veteran teacher quality to satisfy the NCLB requirement and indicated that transfers from failing schools might not have to be undertaken if they resulted in overcrowding. Sam Dillon, "New U.S. Secretary Showing Flexibility on 'No Child' Act," *New York Times*, 14 February 2005. At the same time, however, the department denied a request from Connecticut to test less frequently than NCLB demands and forced California to classify more struggling school districts as failing.

⁶¹The new plan is available online at <http://www.ed.gov/news/pressreleases/2005/04/04072005.html>.

⁶²It is interesting to note in this context that observers have detected a renewed commitment to federalism in the U.S. Supreme Court in recent years, beginning with the pro-states' rights decision in 1995's *U.S. v. Lopez*.

⁶³A 2004 GAO report concluded that NCLB was technically not an unfunded mandate since states and districts participated voluntarily as a condition of receiving federal aid. The General Accounting Office analysis of NCLB and other federal mandates was released in June 2004 and is available at <http://www.gao.gov/new.items/d04637.pdf>.

of Education signify a dramatic change in federal implementation and what impact they will have on state compliance and views of the law. As Frederick Hess noted in his study of state-level reforms, the politics of educational accountability is such that we should expect continued strong pressure to relax NCLB's rules and timetables for achieving AYP targets and moving all students to academic proficiency.⁶⁴ The ultimate impact of NCLB on students, schools, and state educational policies will be determined by the extent to which federal policymakers are able to resist these pressures and remain committed to enforcing the law's central mandates and timetables.

POLITICS AND THE FUTURE OF THE FEDERAL ROLE IN EDUCATION

The political future of NCLB and the new, more assertive federal role in education will likely be determined by the extent and pace of school improvement, whether the public continues to support federal activism in schools, and the degree to which the bipartisan consensus behind the law can continue to be sustained. As long as education reform remains high on the public agenda, the opportunity for elected national officeholders to score political points on the issue through federal activism is likely to prove irresistible. Democrats and Republicans alike are now publicly committed to active federal leadership in school reform and to holding states accountable for improved academic performance.

Crucially, the original bipartisan congressional coalition that passed NCLB remains largely intact. Bush administration officials and congressional Republican education leaders—including committee chairs Sen. Judd Gregg (R-NH) and Rep. John Boehner (R-OH)—have remained steadfastly supportive of the law and opposed to making any legislative changes before it comes up for reauthorization in 2007.⁶⁵ Although Democrats have criticized Bush for what they believe to be his inadequate funding of the law and called for more flexible enforcement, the Democratic Leadership Council and key liberals such as Rep. George Miller (D-CA) and Sen. Ted Kennedy (D-MA) have reiterated their support for the law's central principles and reforms. Miller, the ranking Democrat on the House Education Committee, remarked in 2004, "I think the act is actually doing

⁶⁴Frederick Hess, "Refining or Retreating? High Stakes Accountability in the States," *No Child Left Behind? The Politics and Practice of School Accountability*, eds. Paul Peterson and Martin West (Washington D.C.: Brookings Institution Press, 2003), pp. 55–79.

⁶⁵Boehner remarked in January 2004 that "overall, the law is working very much as envisioned. There has been predictable grumbling by the education establishment as it has gradually realized that the Bush administration has no intention of watering down the law through regulatory waivers, as the Clinton administration did with its own education plan. But virtually no one has suggested we should return to the days in which achievement gaps were subsidized and hidden from view. And most important of all, disadvantaged children are finally getting the attention they're due. This is a bipartisan achievement we should build on as a nation in 2004 and beyond." Press release from 7 January 2004; <http://johnboehner.house.gov>.

pretty well. I don't want to pretend for a moment that it's easy to implement . . . but it's making a positive change for a lot of children and families who weren't part of the education equation [before]."⁶⁶

Legislation to make minor changes to NCLB was introduced by Kennedy in September 2004, but he stated at the time, "It's important to acknowledge what this bill does not do. It does not make fundamental changes to the requirements under No Child Left Behind. Those reforms are essential to improving our public schools."⁶⁷ Perhaps the clearest sign of the continued strength of the bipartisan consensus behind NCLB was the joint statement by Boehner and Miller in response to Secretary Spellings's 2005 speech announcing new flexibility for states. They wrote that "the integrity of the law must be maintained . . . [although] every effort must be made to ensure smooth and effective implementation . . . we firmly believe that the effort must be based on the law as it is written, not on a smorgasbord of different waivers for different states and districts."⁶⁸ Far from being prepared to abandon the NCLB accountability system, there appears to be strong support in Congress for applying it to Head Start and the Higher Education Act.

Presidential politics will also continue to play a major role in the direction of federal education policy. Observers of education politics have remarked that the major story of the 2004 presidential election was that education was not a major story. In fact, however, the major story was that in the first presidential election following the passage of the most transformative national education law in forty years, there were remarkably few differences between the parties and candidates on NCLB and the federal role in schools. Bush's support for NCLB is widely credited—by Democrats and Republicans alike—with improving voters' views of the GOP's position on the education issue. Public opinion surveys from 2004 revealed that the education gap between the parties continues to close: although a plurality (42 percent) of respondents in 2004 believed that the Democratic party was more interested than Republicans (35 percent) in improving education, the GOP has narrowed that gap by 5 percent in each of the past two elections. When respondents were asked which of the presidential candidates they would support if they were voting solely on education issues, Kerry and Bush each drew the same level of support (41 percent).⁶⁹

President Bush repeatedly pointed to NCLB during the 2004 campaign as his major domestic accomplishment and as evidence of his compassion for the plight of the poor and minorities. He also announced that he would

⁶⁶As quoted in Erik Robelen, "Bush Marks School Law's 2nd Anniversary," *Education Week*, 14 January 2004.

⁶⁷As quoted in Erik Robelen, "Kennedy Bill Would Give States, Districts Leeway," *Education Week*, 22 September 2004.

⁶⁸House Committee on Education and the Workforce press release, 7 April 2005.

⁶⁹Lowell Rose and Alec Gallup, *The 36th Annual Phi Delta Kapp/Gallup Poll of the Public's Attitudes Toward the Public Schools 2004*, <http://www.pdkintl.org/kappan/k0309pol.pdf>.

seek to extend the NCLB framework to high schools during his second term. Both members of the Democratic ticket, Senators John Kerry (D-MA) and John Edwards (D-NC), meanwhile, voted for NCLB and reiterated their support for the law's central principles. Neither they—nor the Democratic party platform—called for repealing or substantially changing the law during the general election,⁷⁰ clear evidence that the political dynamic that brought about the bipartisan passage of NCLB in 2002 remains in place in 2004.

Despite claims that public opposition to NCLB has been growing, a closer analysis of public opinion data leads to a more complex—and ultimately more supportive—public view of NCLB and federal activism. The 2004 Phi Delta Kappan poll revealed that, overall, NCLB continues to be viewed more favorably than unfavorably (24 to 20 percent), and that the favorability ratio has remained roughly constant from 2003, when 18 percent viewed it favorably and 13 percent unfavorably. Those claiming a “great deal or a fair amount” of knowledge about the law also view it more favorably than unfavorably. A majority (51 percent) of respondents believe that NCLB will help to improve student achievement in public schools in their community “a great deal or a fair amount,” whereas only 32 percent believe it will do so “not very much or not at all.” Perhaps the most interesting and important finding from the poll was that 53 percent of respondents said that knowing that a candidate for national office supports NCLB would make them more likely to vote for that candidate, while only 25 percent said less likely.⁷¹

Other 2004 polls also reported that more respondents tend to favor NCLB than not. The Educational Testing Service found that respondents were evenly split, with 39 percent approving of it and 38 percent disapproving. A large majority, 74 percent, said that the quality of public schools was a concern and only 14 percent of respondents felt that the public schools were performing well or pretty well.⁷² A poll conducted by the National Education Association—one of NCLB's biggest opponents—found that a plurality (37 percent) of respondents believe NCLB has had a

⁷⁰In a speech to the Democratic convention on 27 July, NEA president Reg Weaver called NCLB “a one-size-fits-all federal mandate that sets the wrong priorities—too much paperwork, bureaucracy, and testing.” But the Democratic party platform—as well as the speeches by Kerry and Edwards—were much less hostile towards the law. The platform stated that “we will use testing to advance real learning, not undermine it, by developing high-quality assessments that measure the complex skills students need to develop. We will make sure that federal law operates with high standards and common sense, not just bureaucratic rigidity.” Erik Robelen, “NEA President Goes Beyond Party Line in ‘No Child’ Critique,” *Education Week*, 29 July 2004.

⁷¹Rose and Gallup, *36th Annual Phi Delta Kapp/Gallup Poll*. The 2004 poll indicated, however, that the public continues to have only low levels of knowledge about NCLB, with 55 percent of respondents indicating that they “don’t know enough” to express an opinion about the law. There is also strong opposition (67 percent) to using students’ performance on a single test to judge whether a school is in need of improvement.

⁷²Educational Testing Service, *Equity and Adequacy: Americans Speak on Public School Funding*; <http://ftp.ets.org/pub/corp/2004summary.pdf>.

positive impact on schools, whereas 21 percent believe it has had a negative impact.⁷³ A Center on Education Policy survey of education officials from forty-seven states, meanwhile, found that officials from nineteen states felt the law will improve student learning “to a great extent,” fourteen states said “somewhat,” six states said “a little,” two state officials said “not at all,” and six did not know.⁷⁴ It is also significant to note that most of the mainstream national media remain supportive of NCLB. In a recent editorial, for example, *The New York Times*—a bulwark of liberal elite opinion—declared that “with No Child Left Behind, the federal government has set exactly the right goals. It cannot backtrack because the early progress has been rocky. If Washington wavers and begins to cut deals with recalcitrant states like Utah, the effort to remake the country’s public schools will fail.”⁷⁵

Public opinion and partisan electoral competition are crucial to understanding the original passage of NCLB as well as its likely political future. Democrats and Republicans moved to the center on education—and endorsed a reform-oriented federal role based on standards, accountability, and choice—for both policy and political reasons. Both sides became convinced that a new kind of federal activism was necessary to improve schools and that continued opposition to federal accountability reforms would exact an unacceptable political cost. Education emerged in the 1990s as a “swing issue” with vital electoral significance and played a central role in efforts by both Republican and Democratic leaders to construct governance philosophies that could attract support from swing voters—particularly women, minorities, and independents—in an era of partisan parity.⁷⁶ It is important to acknowledge that the kinds of political pressures that helped to bring about NCLB could also ultimately undo it: public opinion can be fickle and the broader political context can change. Nonetheless, education remains one of the most salient domestic policy issues on the local, state, and national political agendas, and the bipartisan political consensus on federal education policy appears to remain strong and has deeper roots than is often assumed.

CONCLUSION

The passage of the No Child Left Behind Act signaled the beginning of a new era of federal education policy and a significantly transformed and expanded national role in our country’s schools. The original federal role outlined in the 1965 Elementary and Secondary Education Act was narrowly targeted on disadvantaged students, focused on school inputs,

⁷³“Attitudes on No Child Left Behind Law,” *Education Week*, 21 January 2004, p. 29.

⁷⁴As cited in “State Views on No Child Left Behind Act,” *Education Week*, 4 February 2004.

⁷⁵“Fixing ‘No Child Left Behind,’” *The New York Times*, 5 April 2005.

⁷⁶See Margaret Weir, ed., *The Social Divide: Political Parties and the Future of Activist Government* (Washington, D.C.: Brookings Institution and the Russell Sage Foundation, 1998).

and contained few federal mandates. NCLB, on the other hand, applies to all schools and students, is focused on school outputs, and is remarkably prescriptive. NCLB was fundamentally a response to the perceived failure of lower levels of government—despite considerable expenditures and reform activity—to improve student performance, particularly in the nation’s urban schools and for its most disadvantaged students, since the release of *A Nation at Risk* in 1983. But NCLB and the new performance regime enshrined in it would not have been possible without major changes in the politics of education that encouraged liberals and conservatives to abandon their longstanding opposition to an active reform-oriented federal role in education. Although much of the debate over the new federal role has focused on the efficacy of the specific policies contained in NCLB and state efforts to implement them, the law’s long-term success depends in equal measure on political developments at the national level, and in particular on the sustainability of the new bipartisan consensus around standards and accountability.⁷⁷

Ultimately, as Timothy Conlan predicted, principles of federalism have taken and will continue to take a back seat to the strategic political calculations and substantive policy goals of party leaders in determining the direction of federal education policy. And as Paul Peterson has argued recently, Republicans no longer appear interested in defending federalism going forward: in education and elsewhere, he observed, “the party of local control has become the party of the federal mandate.”⁷⁸ The fundamental politics of federalism that Conlan identified in the 1990s thus seem to remain in place today, and despite the myriad implementation challenges and robust disagreements over the funding of the law, it seems unlikely that the federal role in education will ever recede to its pre-NCLB level. What John Kincaid has called “coercive federalism” has finally come to education and it appears to be here to stay.⁷⁹

The implementation of NCLB has been difficult and contentious but much of the media and scholarly coverage has overestimated the extent of the opposition to the new law and underestimated the source, strength, and stability of the political coalition that originally pushed for passage of NCLB and continues to support it. For much of American history, the principle of federalism exerted a powerful restraining influence on the size and character of the federal role in education—but that time appears to

⁷⁷The Civic Capacity and Urban Education project’s study of school reform efforts in American cities, for example, found that they have largely failed not because of a lack of knowledge, resources, or reform but because of insufficient attention to the importance of forming and sustaining reform political coalitions over time. Clarence Stone, Jeffrey Henig, Bryan Jones, and Carol Pieramunzi, *Building Civic Capacity: The Politics of Reforming Urban Schools* (Lawrence: University Press of Kansas, 2001).

⁷⁸Paul Peterson, “The Changing Politics of Federalism,” *Evoking Federalisms: The Intergovernmental Balance of Power in America and Europe* (Syracuse: Maxwell School of Syracuse University, 2003), p. 29.

⁷⁹John Kincaid, “From Cooperative to Coercive Federalism,” *Annals of the American Academy of Political and Social Science*, 509: *American Federalism: the Third Century* (May 1990): 139–152.

have passed. Regardless of whether NCLB ultimately improves schools or student achievement, the law has created a new educational federalism in the United States. The U.S. Department of Education now functions as a national schoolmarm, hovering over state school reform efforts and whacking those states that fail to record satisfactory and timely progress toward federal education goals with financial penalties and mandatory corrective actions. Future debates about school reform—whether at the local, state, or national level—will have to adapt to a new politics of federal education policy that is fundamentally different from earlier eras and that has produced an unprecedented level of federal involvement in the country's historically state and locally controlled schools.

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