

**AN IMPLEMENTATION PERSPECTIVE:
RELEVANT LESSONS FROM NO CHILD LEFT BEHIND (NCLB) FOR THE
IMPLEMENTATION OF THE EVERY STUDENT SUCCEEDS ACT (ESSA)**

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Abstract

The newest iteration of the Elementary and Secondary Education Act (ESEA), dubbed the “Every Student Succeeds Act” (ESSA), was signed by President Barack Obama on December 10, 2015. The latest reauthorization of ESEA overhauls key components of the previous version of the Act known as No Child Left Behind (NCLB). Though many champions of education reform assert that ESSA offers an improvement over the rigidity of NCLB by pushing more authority and accountability to local and state actors and thereby increasing the likelihood that every child will, in fact, succeed, it is important to consider the specific implementation problems that plagued NCLB and to consider the ways in which ESSA, if at all, offers hope for improvement. NCLB was intended to merge the best qualities of a traditional top-down implementation structure that ensures federal accountability and a bottom-up structure that provides states with flexibility in implementation. Unfortunately, instead of creating a new ideal hybrid implementation structure, the policy combined the worst elements of both structures. NCLB possessed the oppressive nature of a top-down structure and the extensive flexibility of a bottom-up structure that stimulated the type of inter-state variation the policy was designed to eliminate. First, this paper looks at the NCLB implementation obstacles that engendered the variation among states and analyzes the effect the broader implementation framework has had on policy outcomes. Then, we identify the areas where ESSA offers hope for improvement, as well as gaps that still remain which could lead to implementation failure. Finally, the paper concludes with a discussion of the importance of considering critical implementation elements when constructing education policy.

INTRODUCTION

The Every Student Succeeds Act (ESSA), which is the latest reauthorization of the Elementary and Secondary Education Act, and a purported overhaul of the last version, known as the No Child Left Behind Act (NCLB) was signed into law on December 10, 2015. While the new legislation is rightfully addressing issues like exemptions and the amount of testing, there is an important, yet often overlooked, component of federal education policy that needs more attention: implementation. Since its inception in 2002, the No Child Left Behind Act (NCLB) was plagued with implementation issues across the United States. This paper explores why the implementation of a policy that was supposed to create more standardization in outcomes between states ironically created significant inter-state variation. In addition to examining the implementation variables that were responsible for variation among the states in implementing NCLB, it discusses how more consideration of the implementation process *during policymaking* is imperative for improving outcomes as we move forward.

This paper also examines the ways in which the implementation structure itself affected the outcomes of NCLB, which will help us understand how the implementation structure of ESSA may or may not improve the outcome. Implementation structures are generally thought of as either “top-down,” a traditional hierarchical process with policies passed downwards for implementation, or “bottom-up,” a structure that resembles an inverted pyramid with groups directly involved in implementation taking a more active role in the implementation and policy creation processes. NCLB was, in theory, a new hybrid type of model, which incorporated elements from both the top-down and bottom-up structures. Unfortunately, instead of creating a new ideal type of implementation structure, the policy merged the worst elements of both general structures; it had the oppressive nature of the top-down approach and the extensive flexibility of the bottom up approach that lead to the variation among states the policy’s authors intended to reduce.

NCLB was largely written by a bipartisan coalition of congressmen, with limited input from the people who would ultimately implement the policy. They intended to write a policy that allowed for both a top-down implementation structure, in the form of federal mandates, and for a bottom up structure, in the form of flexibility for the states in implementation practices. However their success in crafting a successful hybrid structure has been widely called into question. For example, the National Conference of State Legislators (NCSL) lamented to Congress that NCLB was, “an egregious example of a top-down, one-size-fits-all federal reform” (Cochran-Smith & Lytle, 2006). While others (Rudalevige, 2003; Ryan, 2004; McDermott & Jensen, 2005) have found that inter-state variation in the implementation of NCLB overwhelmed the national mandate. This is a significant dispute and this paper will seek to understand and explain the impact that the implementation structure had on the states’ ability to implement the law as we compare it to ESSA and explore the areas in which this new legislation may be more successful and the areas which may encounter the same pitfalls as NCLB.

This paper also examines the extent to which NCLB affected prior implementation structures for federal education policy and how ESSA is modifying those implementation structures. Although the federal government has long been involved in education policy, NCLB dramatically extended the role that the federal government played in the implementation process, in terms of both authority and accountability (Cochran-Smith & Lytle, 2006). This policy was not developed in a political vacuum; politics played a significant role in how the

policy was formed and how the law was then implemented. The political dimension is important and undeniable and had important ramifications for the type of implementation structure that ultimately took shape for NCLB (Rudalevige, 2003). Similarly, ESSA was heavily influenced by politics and its differences from the previous legislation are at least partially due to the outcry from teachers, schools, states, lobbyists and other relevant education actors who demanded that politicians create something substantively different. This time around, politicians were more concerned with addressing what has been largely considered a failed policy so they were more willing to make changes that were more positive than punitive such as giving more authority to states and providing ways to develop school leadership (Herman et. al., 2016).

Implementation Variables

To understand the framework for future implementation success or failure, it is imperative to examine some of the key variables that affected the implementation of NCLB. These variables include individual state authority to determine the definition of proficiency and administer exams, each state's initial academic achievement level before NCLB, practical and attitudinal obstacles, resources, and political leadership in each state. This section discusses these variables and their impact on the implementation of the law across states and then compares the way those variables have changed or remained the same for the implementation of ESSA.

Proficiency

Perhaps the most significant variable contributing to the variance among states in the implementation of NCLB was the latitude given to each state to determine the meaning of the “proficient” standard that is required of all students, in addition to their autonomy in implementing the necessary testing processes. This bottom-up structure introduces significant potential implementation variance because, “the text of the law left the states to set their own definition of proficiency and to use their own assessments to measure it, leaving open the possibility that states will lower their expectations” (Rudalevige, 2003). This is not simply a theoretical proposition; empirical evidence shows that Louisiana, Colorado, Connecticut, and Texas all adjusted their scoring systems for NCLB so that a greater number of students could be considered proficient (Ryan, 2004). Lowering their standards for proficiency was in fact a likely scenario for states with struggling schools that faced harsh sanctions without additional measures of support. States that are faced with a “politically unacceptable and administratively unworkable number of failing schools and districts” are perversely incentivized to lower their standards to meet the mandates for proficiency (McDermott & Jensen, 2005). While it may be in the state’s purview to lower their standards, such implementation behaviors were misaligned with the spirit of the law, which seeks to increase performance among traditionally underperforming subgroups of students, not lower standards so that all students appear to have reached a high level of achievement. Given the latitude afforded to states to determine proficiency standards and the content in standardized exams, it was not properly structured to reduce achievement gaps between states, and, in many cases, to reduce achievement gaps

between high performing and low performing student subgroups as sought by the legislation (McDermott & Jensen, 2005).

ESSA has, in many ways, loosened the federal reigns on states for determining proficiency; giving them more discretion than they had under NCLB for goal setting, determining what to hold schools and districts accountable for, and figuring out the best approach for intervention in low-performing schools. Although it is true that tempering some of the overreach from federal policy can be helpful for schools that are ultimately serving different student populations with sometimes wildly different needs, giving states more flexibility does reduce the likelihood that students in every state will be expected to reach the same bar. We cannot expect that the goals set in Washington are going to meet the needs of students thousands of miles away in rural one room school houses and impoverished urban areas, but the principle behind this federal policy is to ensure that all students, regardless of geographic location or socio-economic status are able to reach the same level of achievement. Giving states more flexibility opens the door for states to lower their standards in order to show progress and success.

Testing Pool

Another implementation behavior undermining the goals of NCLB involved schools altering the structure of their testing pool to improve their proficiency rates. Schools with more high-poverty and racially diverse students are traditionally at a disadvantage, because those populations of students tend to score lower on standardized tests and NCLB required all subgroups to meet the same proficiency rates as the general population (Kim & Sunderman, 2005). Unsurprisingly then, there is evidence that schools tried to control the test pool by limiting the number of transfer students who make up a “subgroup” based on race and socioeconomic status (Neal & Schanzenbach, 2010). There was a strong incentive for this type of behavior, as an entire school can fail to meet their proficiency rate if even a single subgroup does not meet their respective proficiency requirement (Kim & Sunderman, 2005). While this was clearly not a practice authorized by the legislation (and many argue directly counters the intent of the policy), it was a strategy used by those who implemented the policy to limit potential sanctions. Alternatively, some states sought to create super sub-groups which merges the individual subgroups together which statistically makes it easier to increase the overall proficiency rate (McNeill, 2011). There is also evidence that struggling schools faced pressure to “push out low-performing students, either to another school (if one can be found that will accept them) or out of the school system entirely (Ryan, 2004). While this behavior may have led to more schools reaching the mandated proficiency standards, it hurt the very group of students that the law was designed to support.

Although most of the subgroups and their respective proficiency requirements are specified by the legislation, the individual states determined the criteria for the limited English proficiency and students with disabilities subgroups (Kim & Sunderman, 2005). Not unexpectedly, there is also considerable variance between these states about how the classifications for the subgroups were determined (Kim & Sunderman, 2005). This type of state autonomy created variance in classification, since states with lower proficiency rates were incentivized to create liberal classifications for these subgroups because students in these groups received extra time and help with the exams (Ryan, 2004). In these cases, all of the states were theoretically implementing the same law, but because the challenges they faced

varied, their implementation behaviors also varied. In effect, they were permitted to manipulate the implementation of this law in ways that best advantaged them.

States also varied in their view on how performance should be measured (Baker & Betebenner, 2002). States chose between open-ended and closed-ended questions on standardized exams, and some states advocated including other measures to determine proficiency (Baker & Betebenner, 2002). It is true that all states had to participate in the National Assessment of Educational Progress (NAEP) every other year, which is supposed to serve as a check on a state's autonomy to regulate testing and proficiency, but ultimately the states determined the makeup of the test that is used to measure proficiency for NCLB (Baker & Betebenner, 2002). Again, as the evidence shows, states were likely to implement the law in a way that will result in the fewest sanctions.

This is another area in which ESSA has largely reduced accountability at the federal level. Under NCLB, schools who did not reach the participatory threshold of 95% for each group received an automatic fail, but now it is up to the states to "decide what low participation rates mean," (Klein, 2015) which could mean that states have significant variation in the percentage of students that actually participate in the testing pool. In addition to schools potentially being concerned with the passing rates of a lower percentage of students (depending on where their state sets the bar), the variation in these mandatory participation rates makes assessing progress over time very difficult. States may look like they are making real progress when in reality that progress is due more to lower participation rates than anything else.

The one area of improvement over NCLB is in the elimination of the so-called "super sub-groups." Instead of merging sub-groups to improve the statistical odds of passing, states are now required to measure each of these groups individually, which is a significant improvement for those concerned with the success of these individual sub-groups. Overall, ESSA offers some hope and some concern for this variable. While ensuring that schools do not merge subgroups to ensure a statistical advantage is certainly an improvement, the increase in state flexibility lends itself to the same types of pernicious behavior that occurred during NCLB. If states have the opportunity to "create" a more positive outcome by lowering the participation percentage rates than that is certainly a possible, if not likely outcome which is problematic in and of itself, but as discussed, is also problematic for longitudinal assessments. While it is a step forward for the new legislation to recognize that it is statistically impossible for 100% of students to be above average as NCLB suggested, the new flexibility allowed to states could engender problematic variation.

Starting Line Variation

The authors of NCLB argued that the policy was necessary because of the disparity between student's academic performances in different geographic locations (an argument that continues today), yet the policy gave little consideration to the very different challenges that high-achieving and low-achieving schools face to reach the same goal based on their original academic position. It is clear that "some states have farther to go than others to meet the mandated target of 100% proficient within 12 years" but the policy did not consider what extraordinary resources it would require, if it is possible at all, for students in schools that currently have 20% proficiency rates to reach 100% (Baker & Betebenner, 2002).

In addition to different starting lines based on current achievement levels, the difference between the content of tests and the rigor of tests varied significantly state to state, so that all states were not in equal positions (Linn et. al, 2002). Some states had to set much more demanding goals for proficiency rates, also known as average yearly passing rates (AYP) “not necessarily because their students are achieving less, but because of the greater stringency of their definitions of proficient performance” (Linn et. al, 2002). Thus, the considerable difference between each state’s starting line, based on both current academic proficiency and the difficulty of the exam, was an important factor in the way the policy was implemented to reach the mandated outcome. For some, the goal was much farther away than for others.

This is one of the areas that has the greatest disparity between NCLB and ESSA. ESSA removes the federal mandate so the starting line variation essentially becomes a moot point. Although it is true the states will still have different starting points based on their student populations and some states with loftier goals will essentially be starting farther behind (since states will be setting their own short term and long term goals), schools that currently have lower performing student populations will not be inherently penalized as they were under NCLB. This is of course not to suggest that states will still not work to make progress; under the new legislation they are required to set expectations that those who are furthest behind close the gaps in achievement and graduation rates.

While it is a step forward for the new legislation to focus on measuring growth, recognizing that it is statistically impossible for 100% of students to be above average as NCLB suggested, the new flexibility allowed to states could engender problematic variation. States may set small, quickly achievable goals that are not lofty enough to bring low performing students up to the standard set in other states so their starting line will perpetually stay behind. The intent of federal legislation is to reduce the disparity among states and although some schools were unfairly burdened in prior legislation, the new flexibility in goal setting will likely result in even more significant differences in outcomes among states.

The Implementors

The people who are implementing a law and the environment they operate in can have a significant impact on implementation. In particular, the attitudes of the group most affected by the legislation can have a substantive impact on the way a policy is implemented (Montjoy & O’Toole, 1979). As Cohn notes, “It is one thing to assert rules and another to ensure compliance. States and localities retain a great deal of power in policy areas such as education because they are the levels of government that actually deliver programs and services” (Cohn, 2005).

Many superintendents noted that instead of being positive and inspiring, the law seemed threatening and punitive, ignoring much of the research on how to motivate people in organizations (Cohn, 2005). While the financial realities associated with ignoring the law required basic participation, this attitude was problematic because ultimately the success of NCLB depended “on the willingness and capacity of states and localities to enact policies and practices that reflect both the spirit and the letter of the law” (Goertz, 2005). Ultimately, “having a goal that is unobtainable no matter how hard teachers try can do more to demoralize than to motivate greater effort” (Linn et. al, 2001). The effect of assigning consequences to test results can also make teachers even less motivated to teach in the failing schools that need good

teachers the most because they will not want to have their name attributed to the very public black mark of a failing school (Ryan, 2004).

Although these attitudes can create significant variation in implementation, it is important and ironic to note that education policies like NCLB, and now the Every Child Achieves Act, exist to reduce that variance. Both state and federal policymakers “realized that their influence over what was taught in individual classrooms was limited by the great variability in local educators’ willingness to act consistently with state policy” (McDonnell, 2005). This realization drove both the states and the federal government to utilize the types of standardized tests emphasized in NCLB, which research shows can change school and classroom practices (McDonnell, 2005). While enforcing standardized testing does not eradicate that attitudinal variance, it is an important tool to increase standardization. Additionally, “the mere existence of national educational requirements such as those in NCLB forces the states and localities to look beyond their borders and acknowledge new sources of authority (Cohn, 2005). Thus, the existence of a policy can induce at least a minimal level of compliance--though. Nevertheless, compliance often isn’t enough to drive improvement--systemic change requires commitment.

The mandates set forth in NCLB were largely unfunded and often contrary to the practices of the so-called “dominant group” the group that is linked by attitudinal beliefs and practices and tasked with implementing the policy (Montjoy & O’Toole, 1979). In this case, that dominant group included district leaders, school leaders, and teachers, who often are resistant to mandates that are at odds with their own perceptions of what interventions will best serve the students they know, teach, and support. Because NCLB mandates were largely unfunded, but specific, administrators were faced with more requirements than they could fulfill (in this case because of resources or obstacles) and had to “consciously or unconsciously choose among them” (Montjoy & O’Toole, 1979). Thus, because school districts had to fulfill so many mandates simultaneously, the beliefs of the dominant group likely played a role in decisions about prioritizing mandates.

Opposition of the implementers could have been reduced, and thus the risk of policy failure decreased, by involving them in the policy-making process itself. Hill and Hupe note, “If policies are formulated in the absence of active participation of those whose cooperation is essential at the implementation stage, then implementation failure is much more likely” (Hill & Hupe, 2003). Although governors were minimally involved in the initial NCLB policy formation, the policy was formed largely without input from the teachers and school superintendents whose cooperation was essential for implementation, which very likely contributed to some of the issues raised in the implementation process.

This time around it appears that legislators did pay some attention to what teachers, superintendents, and other relevant groups like educational lobbyists had to say about improvements for the future and the new legislation is generally being presented in a positive light by relevant educational actors like The School Superintendents Association (AASA) . Given the change in tone from one that was more authoritarian and punitive under NCLB to one that is more accommodating and supportive in ESSA, we would anticipate a more positive response from the people who will ultimately be implementing the possibility. It is also important to note that many teachers, principals, and superintendents do not have time to read through the full legislation so they take their cues from groups like the AASA and respond

accordingly. Therefor, the role that lobbying organizations and member organizations play on influencing perceptions and support for a policy should not be ignored.

Implementation Obstacles

While it is generally acknowledged that NCLB requirements were well intentioned, in practice some of them caused serious implementation obstacles. The requirements concerning teacher quality, for example, were particularly problematic for schools in the West. The legislation required that all teachers of core academic subjects be “highly qualified,” but in the west, where 42% of schools are located in rural areas with one or two teachers teaching multiple subject areas, it is not realistic for a teacher to have met those qualifications in each area (Fusarelli, 2005). Another mandate that can prove problematic in practice is the so-called choice provision, which requires that parents have the option to enroll their children in other schools if they currently attend a school that is failing to meet the compulsory proficiency standards (Graner et. al, 2004). The requirements for public school choice have little meaning for rural areas in which the closest public school could be too far away to be an option for students to attend (Fusarelli, 2005). In these cases, it is simply not possible for schools to implement all of NCLB’s provisions.

Implementation research also indicates that in urban areas “choice requirements are without funding and rife with practical problems” (Cohn, 2005). In a review of 25 urban school districts, researchers found that “fewer than 3 percent of eligible students participated in the transfer option” (Cohn, 2005). Superintendents and others responsible for implementation cite insufficient funding, late notice of school eligibility, lack of parental cognizance, safety trepidations, and uncertainty about achievement at other schools as reasons for the low participation (Cohn, 2005). The superintendent of the Chicago Public Schools “called the choice provisions of NCLB an enormous bureaucratic burden” that did not contribute to the success of students (Cohn, 2005). The legislation also required that districts must set aside 20% of federal funding for both supplemental services and the choice provision, but superintendents asserted that with very few students using the supplemental services, it created another “bureaucratic burden” that had much more value in theory than in practice (Cohn, 2005).

Implementation, then, is a core issue, associated with broad federal legislation; the goals may be noble, but they may be impractical or impossible to effectively implement at the state and local level. States may even find themselves grappling with implementing a policy’s requirements that counter current state law. NCLB turned into a textbook case of federalism in Pinellas County, Florida when the school superintendents contested the federal statute on the grounds that it would violate the requirements for racial balance that were set forth in a state desegregation case (DeBray, 2005). The superintendents argued that the Equal Protection Clause of the Fourteenth Amendment superseded a federal law (DeBray, 2005).

In many ways, this issue highlights the nexus between federal education policy and local implementation of said policy. As DeBray notes, “The local-level implementation of federal policies depends on the capacity and will of local actors and institutions [so] implementation involves bargaining and negotiation among levels of government” (DeBray, 2005). Policies are not simply implemented as they are written; the people doing the implementing matter a great deal. In this case, the county argued that the choice provision triggered by potentially failing schools would upset the racial balance and, additionally, those transfer students could be entered into magnet schools ahead of waiting list students, creating a

sense of unfairness (DeBray, 2005). This may not have been a common implementation problem, but for the affected schools it was a very real problem and an example of how far the new law extended federal power into matters that had been traditionally left to the states. The balance then, was helping states achieve the intended goals in a way that was maximally beneficial to students, while holding schools accountable and remaining cognizant of the dynamic and varying environment in which schools operate.

In some ways ESSA will likely reduce some of the implementation obstacles that existed under NCLB because of the reduction in mandatory provisions. However, the general obstacles for providing high quality educational environments under strained budgets to students with wildly different aptitudes and backgrounds, remain. Nevertheless, by reducing the number of requirements, schools can focus their resources more on what they think will be most beneficial to their students instead of using their resources to fulfill what was a very lengthy federal checklist to avoid any punitive measures by the federal government. Legislators are often far removed from the obstacles that schools face every day and we purport that although the situation may be improved, schools will still struggle with a variety of traditional obstacles like funding, teacher availability, and parent involvement as they seek to meet the new goals set out by their respective states.

Resources

Resources are a commonly cited barrier implementation cited in the literature. States face significant implementation challenges under ideal circumstances, but their capacity to implement the requirements of NCLB was significantly hampered by limited fiscal and human resources (DeBray, 2005). Many schools faced a financial crisis prior to the passage of NCLB, and the policy's requirements only compounded the problem (DeBray, 2005). The National Governors Association reported that during the expensive implementation process of NCLB, states also faced a perfect storm of declining tax bases, increased health care costs, and a significant decrease in capital gains (Goertz, 2005). With so many other pressing financial issues, instituting a new, costly policy proved to be even more difficult than it normally would have been.

The cost of funding for all of the additional testing required by the legislation was particularly burdensome for the states (DeBray, 2005). National estimates of the cost of both developing and administering the type of exams required by NCLB spanned from 1.9 billion to 7 billion dollars, depending on the methodology of cost estimation and the type of assessments states chose to use (Goertz, 2005). The significant increase in cost was largely due to the sheer number of tests that had be administered; under NCLB, schools had to administer tests to all students in grades 3-8 and one high school grade, which is more than twice the number of grades tested prior to NCLB (McDermott, 2005). In addition to the cost of the testing, schools had to increase their data collection and analysis capabilities to be able to accurately track student performance (McDermott, 2005).

In addition to the monetary stresses, the human capacity of states and school districts that were helping schools and students meet the goals of the policy become quite strained (Goertz, 2005). Schools often lacked the human resources needed to meet the new requirement for "highly qualified" teachers and half the states stated that they did not have the necessary

human capital to assist schools that were identified for improvement (DeBray, 2005). These are not insignificant issues. They have substantive ramifications for a state's implementation of the policy. Thirty-six states reported that they were not able to fully implement the law because they simply lacked the necessary resources (DeBray, 2005). Estimates for the cost of funding the mandates were extraordinarily high, at 144 billion dollars, and the unfunded mandates have caused governors, school districts, and teachers alike to insist that without additional funding the goal of all children reaching the same standard of proficiency would be impossible (DeBray, 2005). The Center on Education Policy reports that 80% of school districts were absorbing the additional costs associated with the NCLB requirements, but they caution that "the lack of capacity of state departments of education could undercut the effective administration of NCLB" (Jennings & Rentner, 2006). With school districts being asked to perform additional tasks without additional support, it is likely that available resources played a critical role in the way that states implemented the policy.

Similarly to implementation obstacles, the reduction in individual requirements in the new legislation will likely reduce the resource strain for schools. However, there are still a number of accountability pressures associated with the legislation that resource-rich states may be better equipped to address than resource-poor states. Additionally, there are long-standing concerns about state funding formulas not adequately addressing resource inequities which will not be resolved with this legislation. Resource issues need to be more fully addressed since even less restrictive legislation places mandates on schools that cannot be met without resources. As ESSA is implemented, we also need to make sure that schools are not defunding things that research suggests will have a positive impact on students in the long-run in order to meet the shorter-term ESSA requirements. Additionally, this legislation, like previous legislation, does not give enough consideration to the tools that schools need to understand the most effective ways to utilize the federal dollars they receive. Many poorer areas are so accustomed to using money as band-aids to fix whatever is most critical at the time, that they lack the infrastructure to be able to make more strategic long term decisions. This legislation may be an improvement in resource requirements, but it fails to look at the larger picture and help schools understand how to make the decisions that will not just affect outcomes this year but in the years to come.

Political Leadership

Considering the discretion given to states, it is important to consider the role that the state political leadership in each state played in implementation. Although the state education agencies and chief state school officers had the responsibility for implementing the policy, governors could use their position to illuminate implementation issues and push for change that would have a substantive impact on the implementation of the policy (Fusarelli, 2005). Initially, most of the governors supported the goals of NCLB because it was often consistent with state-level education initiatives, it gave the governors leverage for educational reform, it was too new for the ramifications of the policy to be clear, and they feared retribution from the federal government (Fusarelli, 2005). However, over time, governors showed increased resistance to the policy's mandates, arguing that without more funding or state flexibility, the mandates were not feasible (Fusarelli, 2005). If a governor publicly admitted that some of the mandates were unattainable, it would seem possible, if not likely, that his or her sentiments influenced those charged with implementation. While the governors may not have been directly

charged with implementing the policy, the degree to which they “bought in” and supported the policy’s mandates, likely affected the implementation behavior of people within the state who were *actually* charged with conducting the implementation itself.

Although the National Governor’s Association (NGA) initially showed unprecedented support for ESSA, their support of the legislation appears to be already be taking a similar trajectory to NCLB and the legislation has not even been in effect for a year. Before the legislation passed, the NGA announced its full endorsement of the bill, which had not happened for two decades (NGA, 11/30/15) and just a few months later sent a letter to the U.S. Department of Education articulating their desire to make ESSA successful and to work together to ensure successful implementation of the legislation (NGA, 2/10/16). Yet by July, the cracks were already starting to show and the NGA sent a letter to the U.S. Department of Education articulating the areas in which the governors felt the federal government was overreaching and reducing state flexibility (7/19/2016). Although we do not yet know what the federal government’s full response will be to the state’s concerns, if these concerns are not addressed and mollified, than it would not be surprising if they showed less concern and interest in the implementation of NCLB and other key actors followed suit.

What Implementation Structure was NCLB & What Is ESSA?

Although there is a substantial contingent that argues that NCLB was simply a top-down policy, it does incorporate some of the flexibility emphasized by the bottom-up ideal. The states’ ability to establish their own standards for proficiency and develop their own assessments offered an enormous amount of flexibility and autonomy, and accounted for much of the variance in implementation that has been described in this paper, but ultimately the states had to accept the overarching goals and specific provisions of the policy that were dictated by the federal government and passed downwards to avoid losing badly needed education funding. While ESSA inevitably has to have some top-down elements given that it is federal legislation being passed down to states, it is decidedly more bottom-up in nature. The ASSA writes that the new legislation “makes clear that state and local education agencies are the drivers of standards, assessment, and accountability” (aasa.org).

This is in stark contrast to NCLB in which the federal government had become the arbiter for everything from individual state standards for improved performance to the sanctions and corrective actions for states and schools that do not meet the required proficiency standards (Graner et. al, 2004). In addition to the considerable increase in federal involvement, the expanded role under NCLB increased control of education policy implementation at the top and decreased flexibility at the bottom (Graner et. al, 2004).

If the policy did not give states such considerable autonomy for standards and testing, NCLB would most assuredly have been an entirely top-down policy, but the considerable amount of independence given to states for some of the most substantive parts of the policy and the increase in the states’ decision-making authority for federal money supports the assertion that this was not simply a top-down policy (Goertz, 2005). In theory, this was a policy designed to fulfill a new ideal with the type of political accountability afforded by the top-down approach and the type of necessary flexibility emphasized in the bottom-up approach. Unfortunately, in this case, the attempt to please both Congress and the states resulted in a

policy that seemed to emphasize the inherent weaknesses in both the top-down and bottom-up approaches.

The top-down approach is often cited as inherently faulty because the federal government does not have the capacity to understand the needs and limitations of all of the individual school districts (Goertz, 2005). Policy established at the top may sound achievable in theory, but in practice, it is not surprising that when the federal government expects a rural school district in Wyoming and an urban school district in New York to meet the same mandates, without consideration for the different implementation realities they face, the result is some of the types of implementation obstacles identified in this paper. The top-down approach is rooted in the idea that if one policy is passed downward for implementation without substantial flexibility, then there will be a more standardized implementation, but as Franklin and Long found in their study of other federal policies, the top-down approach works much better in theory than in practice (Franklin & Long, 2004). The authors found that even in federal policies, which were supposed to induce uniform implementation and compliance, there is considerable variation because agencies (or in this case states and school districts) implement the policies based on their own capacities and their own particular interests. This is an important point to consider, not because we should dismiss the top-down approach entirely, but because it is important to understand the limitations of broad federal policies like NCLB, that are implemented within a top-down structure.

The bottom-up approach can also be problematic, especially for those who argue that giving those tasked with implementation too much independence violates the type of political accountability that is a founding principle of the United States (Linder & Peters, 1987). For this policy, the areas of the policy where the implementers were given the most autonomy (standards and testing) were also the areas that produced the greatest variance and some behaviors, such as lowering standards, seemed to run counter to the goals of the policy. The policy may have been designed to emphasize federal accountability and state flexibility, but based on the research, NCLB seems to have suffered from both impractical rigidity and ill-placed flexibility, producing a significant number of obstacles in the implementation process. Although we hope that the outcomes will be significantly better for ESSA, if the recent response from the AGA is any indication, it may suffer a slightly improved but similar fate to NCLB.

A new federal-based framework vs. A state-oriented framework

Prior to NCLB, state education agencies and school superintendents were the central actors for education policy, but the legislation shifted the federal government to a more central role. The policy is described as “an unprecedented extension of federal authority over state and local schools,” but the law was not without precedent (Rudalevige, 2003). The legislation expanded on the Elementary and Secondary Education Act (ESEA) that had been the federal government’s flagship education policy until NCLB (McDonnell, 2005). Although the new policy attached many more conditions for funding than prior education policy, some contend that the legislation is more an evolution of prior education policy, rather than a complete revolution (McDonnell, 2005). Regardless of this distinction, these conditions and the nature of the new policy created a much more vigorous role for the federal government in elementary and secondary education (McDonnell, 2005). This is in contrast to ESSA which as previously

discussed supposedly rolls back this “overreach” from the federal government and puts state and local educational actors back at the center of decision-making.

The ramifications for the shift in implementation structure for education policy under NCLB have been considerable, as the federal government has become a much more involved actor in the implementation process, dictating more of the “institutional core of local schools and classrooms” that had traditionally been left to the states (McDonnell, 2005). This limit on local autonomy has had important implications for the states, school districts, and teachers who are actually implementing education policy; the curtailment dramatically changed the educational accountability system. States and school districts had served as the authoritative entities holding schools accountable and while the NCLB did not remove them from this role entirely, the federal government became much more active in holding states, school districts, and individual schools accountable for their student’s academic progress (McDonnell, 2005).

The shift in the accountability system for education was perhaps the most dramatic departure in the implementation structure for education policy. Prior to NCLB, states had considerable latitude to determine how academic performance was measured, and while they still had the autonomy to determine proficiency and testing metrics, states had no flexibility to determine how subjects were reported (math and reading cannot be combined) and the percentage of students who ultimately must meet the proficiency standard (McDonnell, 2005). School districts and states were held directly accountable by the federal government and failing schools faced sanctions, such as school restructuring, that were dictated by the federal government, not the states. This framework then is being shifted back quite significantly with ESSA as states are now much more responsible for setting standards and holding schools accountable than the federal government. The federal government still has a role in the accountability system, but it appears to no longer be the central actor which is quite a dramatic departure from the stance they took upon creation of NCLB.

Although some touted the flexibility given to states in NCLB, education policy scholars note that the specificity and prescriptive nature of the interventions listed in the act, such as a school’s mandated response to repeatedly failing to meet their proficiency goals, indicates that the level of flexibility under NCLB is significantly decreased in comparison to ESEA (Fusarelli, 2005). This is a particularly important point to consider, as many scholars in the “bottom-up” implementation faction contend that it is the people actually doing the implementing who are most qualified to analyze and deal with problems that exist in practice. But for schools that failed to meet the policy’s mandates, the course for improvement was *prescribed* for them by the legislation, with very little maneuverability. Additionally, school officials argued that “these provisions constituted an unprecedented federal intrusion in their authority to establish policies and programs appropriate for their respective communities” (Fusarelli, 2005). This contentious debate over authority continues to be an ongoing problem, as the Department of Education has strongly pushed for compliance, while states and school districts have resisted many of the law’s mandates (DeBray, 2005).

The shift in the role the federal government played in the implementation of education policy was not without political support, but it was also met with widespread hostility by a number of actors involved in education policy including local officials, teachers’ unions, and other interest groups who had a stake in the specific provisions of the legislation (most notably voucher-related provisions) (Rudalevige, 2003). While the so-called horse-trading that occurs

when different groups are involved in crafting legislation may seem to be a more appropriate discussion for policy design research than policy implementation; the need to appease a multitude of groups has had important implications for how the policy would ultimately be implemented (Rudalevige, 2003).

Accountability matters a great deal in practice, but far less in politics, because Congress needs to gather widespread support to pass a policy, which would have been difficult, if not impossible, with policy specifics (Rudalevige, 2003). Ultimately, this created an implementation structure, which at first glance would seem to appease advocates of both a top-down and bottom-up approach. The federal government was the clear authority dictating policy to the state and local level (an approach akin with those who agree with top-down implementation structures), but the states had some degree of flexibility in terms of their ability to determine proficiency (an approach more in line with those who support bottom-up implementation structures). While this approach may have been necessary for political feasibility, it created a complicated implementation structure, which as discussed earlier, played a significant role in the variation among states in the implementation of the policy.

This time around lawmakers have attempted to correct this by simplifying the federal government's role and pushing more of the decision-making down to the state and local levels. Although in some ways this is an improvement, it will likely face many of the complications that NCLB did because the ultimate goal is still to increase standardization of an extraordinarily difficult activity to standardize (education) in a country with millions of school children from every background imaginable. Furthermore, regardless of policy area (though we would contend that is particularly difficult in education), it is extraordinarily difficult to get one federal government to successfully work with 50 state governments, and thousands of local governments under the best of circumstances, much less when they are already resource-strained.

CONCLUSION

Although the Every Student Achieves Act seeks to rectify many of the most significant issues associated with NCLB, we ignore the implementation lessons of NCLB at our peril. NCLB was complicated, with an intricate implementation structure. Understanding how the law was implemented, what caused inter-state variance, and what obstacles have been observed in the implementation process is crucial, as decisions are made about implementation structures for the newest iteration of ESEA. However meritorious the goals of a policy might be, laws are not automatically implemented as written. As John Adams once observed, "the laws are a dead letter until an administration begins to carry them into execution (Rudalevige, 2003). The policymaking process *must* give more consideration to how the policy will be implemented. There will almost always be obstacles and some type of resistance to a new policy, but without giving more consideration to the overall implementation structures that lead to specific implementation obstacles and to the views of those who will be tasked with the implementation policies, education policies are not likely to see the success their authors envisioned. Education policy can be difficult, even in small geographic areas under the best conditions, so nation-wide educational reform requires much more consideration of just how diverse the teachers, student populations, and learning environments are across the United States. It is not enough to simply say something must be done and expect a result to follow; how that policy will be implemented is crucial to how successful that policy will be. It is both unwise and unfair to expect a small

rural school in Idaho to function like a resource-rich school in suburban California. Education has predominantly been a local issue for that very reason. The solution then is not to give up on some national standard entirely, but to design a policy with an implementation structure that gives consideration to the vastly diverse needs of public education in the United States.

Ultimately, it is the life trajectories of students in our schools today who will be impacted by the success or failure of ESEA, and other education policies that influence the ways that teachers teach and schools and school systems are organized and led. Policies can be fundamentally sound, but fail to have an impact because of barriers to effective implementation. As scholars, it is our responsibility to not only identify the policies that effectively improve schooling for all children, but to also illuminate the conditions that are most likely to lead to successful implementation of those policies.

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