

# Federalizing education

*States struggle with decreased autonomy and increased costs as they try to implement No Child Left Behind*

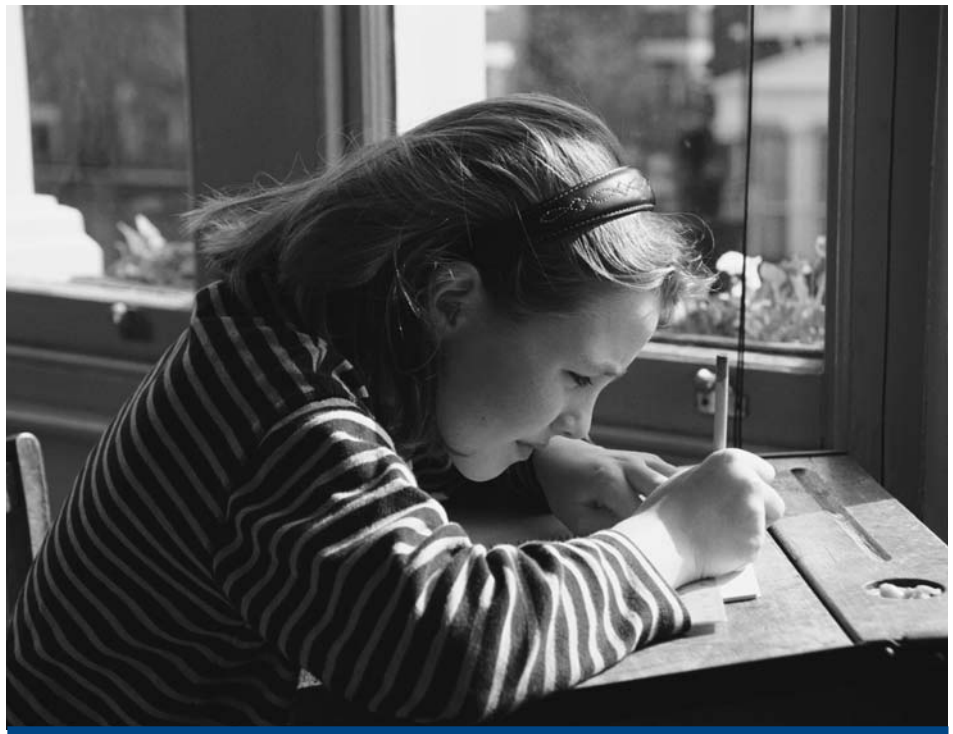
BY CHARLOTTE CORNELL POSTLEWAITE

**W**hen federal legislators approved the No Child Left Behind Act in late 2001, they may not have realized the far-reaching effects that the re-tooled Elementary and Secondary Education Act of 1965 would have upon local education agencies and state policy-makers back home.

The act marks a major federalization of American education policy, affecting every aspect of how states educate their citizens, from teacher training, testing and curriculum to, ultimately, a school's very existence. Federalization both complicates and dilutes state autonomy, some state education and policy leaders say.

First embraced by states for its goals of raising achievement for all subgroups of students and enhancing the quality of the teaching force, No Child Left Behind later revealed gaps of its own that threaten to derail the nation's ambitious goal of improving the academic performance of every student and every school, according to a report by the Center on Education Policy released in early January.

The report warned that for No Child Left Behind to fully succeed, the federal government needs to "tone down its rhetoric about the law, increase its flexibility about how states implement the law, fully fund the law, and carry out its requirements as far as possible but also be ready to make necessary changes in



the law." CEP Director Jack Jennings added, "We may see states and the federal government wage a bureaucratic battle over technical requirements rather than work together to dramatically improve public education."

## Testing

As spring testing approaches for most states, education leaders worry about NCLB requirements that racial and demographic subgroups in a school must show annual improvement on standardized tests. Failure to show adequate yearly progress among any of the "disaggregated" or separately reported groups can cause an entire school to be labeled failing or in need of improvement.

In rural schools and smaller communities, the appearance of progress can be skewed when class size is small.

Disaggregated data for a class of 10 could categorize a school as failing because of one student. Technical requirements for reporting data also worry officials in many states that did not have a report card system in place prior to NCLB. Just the sheer cost of additional testing places immense financial burdens on states, given the current economy and state fiscal crises.

Nebraska Deputy Education Commissioner Polly Feis said, "Nobody disagrees with the principles of No Child Left Behind. It's just that some of the requirements are coming down hard and fast, and you don't turn education around on a dime." With an accountability plan that existed long before NCLB, Nebraska has every intention of complying with federal requirements, she said. "But it's wrong to assume that all states have student data available right now. We agree with the original principles and still think

we can work together, but somewhere down the line, there's going to be some rubs." Feis added that her state would try to fit NCLB into Nebraska's plan without compromising well-established state goals and objectives.

## Curriculum

In addition to testing, states are also looking at how NCLB requirements may affect their curricula. For example, 25 states had received Reading First grants for 2002-2003 as of early March. Although U.S. Department of Education officials have repeatedly denied endorsing specific reading instruction or assessment programs, the states that had been funded shared similar strategies in their grant proposals, reflecting NCLB preferences for direct instruction and assessment backed by scientifically based research. Other states that had not followed prescribed reading suggestions made by federal review panels during technical assistance had not received funding.

Meanwhile, 25 states continue operating Title I reading programs without Reading First funds. Although Congress appropriated \$900 million for 2002 Reading First programs, only \$482.5 million had reached state education agencies by March.

Math and science programs may soon face similar federal scrutiny, as debate over which instructional practices work best continues. Billions of dollars in federal grants to state education agencies are riding on the debate's outcome.

## Teacher and paraprofessional requirements

Despite NCLB guidelines for fast-track, alternative certification programs designed to ease the teacher shortage and make candidates "highly qualified," progress toward placing highly qualified teachers in every classroom and providing professional development for educators has been slow, according to the Education Commission of the States.

NCLB legislation also requires states to hire highly qualified teachers' aides in Title I schools. All new paraprofessionals hired after January 8, 2002 in a Title I program must meet stricter requirements that include at least two years of postsecondary

study, an associate's degree (or higher), and passing formal state or local academic tests to demonstrate knowledge and ability in reading, writing and mathematics instruction – lofty requirements for many school districts that pay aides about the same as fast food restaurants.

Federal requirements have actually thwarted teacher recruitment in some states. North Carolina, for example, which has 1,100 Title I schools and recruits heavily from out of state to fill those positions, finds the process more difficult since NCLB became law. Fifteen percent of the state's 85,000 teachers do not meet the new requirements for Title I schools. Candidates must pass the state certification exam, the Praxis, before they are hired. Previously, new teachers had two years to pass the test. Within three years they also must complete their education courses. By 2005-2006, all teachers, including those not at Title I schools, must complete the same requirements. Rural schools, already facing a lack of resources, will have to compete with wealthier urban and suburban centers to recruit "highly qualified" teachers, said Marty Strange, policy director at The Rural School and Community Trust.

## Charters and vouchers

Charter schools and vouchers continue to reshape the education skyline amid the federalization of the nation's schools. Proponents claim charter schools give parents and kids choices, while critics complain that they drain states of much needed funds and escape the accountability standards that other public schools face. The proposed fiscal year 2004 federal education budget contains \$756 million for expanding school choice programs, including a school voucher program for the District of Columbia, despite opposition from several local officials.

In Louisiana, the state Board of Education recently rejected Gov. Mike Foster's support for a pilot program that pushes private-school vouchers and proposes a state school board takeover of failing schools. During its February meeting, the state school board voted to oppose any legislative effort allotting state money for students in failing public schools to trans-

fer to private schools, saying private-school vouchers would undermine the state's high-stakes accountability program and hurt public education.

Since 1991, 39 states have enacted charter legislation. (Alabama, Kentucky, Maryland, Maine, Montana, North Dakota, Nebraska, South Dakota, Vermont, Washington and West Virginia are the exceptions.) Charter schools are nonsectarian public schools of choice that by law operate with freedom from the many regulations that apply to traditional public schools.

Many charter states must remove local district control to enact their charters. In New Hampshire, Gov. Craig Benson hopes to move charter schools forward after years of stalled legislation. He supports a state House bill and a similar Senate bill that would allow two new charter schools a year with the approval of the State Board of Education, circumventing the need for voter approval in a state where property taxes pay the state's share of education funding.

Maine lawmakers will seek to repeal a 1981 law that prohibits parents from using taxpayer money to send their children to religious schools, following religious discrimination lawsuits filed against the state by eight families last fall – just a few of several lawsuits emerging from NCLB.

## Funding

The proposed FY 2004 Bush education budget unleashed a floodgate of disappointment among educators, who quickly noted zero dollars for state and local government fiscal relief. Other concerns for states include frozen funding in 51 programs, 47 programs eliminated entirely, including Regional Educational Labs and Rural Education programs, and 19 programs cut below FY 2002 appropriations, including Even Start, 21st Century Community Learning Centers, and Vocational Education State Grants. Also reduced was funding for the National Assessment for Education Progress, a federally mandated test for all states.

States face losing millions of federal dollars if they don't yield to Washington's

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requirements, or they face giving up local autonomy. With budget shortfalls and fiscal uncertainty, they confront a tough choice.

Vermont school superintendent Bill Mathis' cost analysis of No Child Left Behind legislation last year concluded that for Vermont to accept \$51.6 million in federal money, it would need to spend \$158.2 million to carry out the federal mandates, "a proposition that Vermonters would hardly vote to accept if the question were taken to a town meeting," Mathis said. "We would have to pay three times what we are getting to meet our needs."

Mathis said other states, including Colorado, South Carolina, New York, Maryland, Indiana, Montana, Nebraska, Texas, Wisconsin and New Hampshire, also had been analyzing the cost of NCLB. "If talking strictly money and reasonably high standards, the equation would be the same for virtually all states. Demands far exceed the money the feds are putting in, and overcoming poverty is the big issue," he added. "If you take the money, you agree to take on a huge burden."

New Hampshire Rep. John Alger has written a bill that would prohibit his state from spending any state money on NCLB. "I'm sick and tired of federal programs that start with a bang, then disappear, leaving states to foot the bill," Alger said. "Our state, in a well-measured way, seeks to see what it will cost and what the federal government is will-

ing to pay. It's an issue and I want the feds to pay for it," he said.

New Hampshire's constitution prohibits lawmakers from passing unfunded mandates on to local governments. A New Hampshire School Administrators Association analysis of NCLB says local taxpayers would pay \$575 per student, while the federal government would contribute only \$77 per student in order for the state to comply with the law.

However, the Josiah Bartlett Center for Public Policy, a nonpartisan New Hampshire think tank, disagrees, saying the state will have an extra \$6 million in federal aid this school year after paying for the new teaching, technology, special education and testing requirements outlined in the law. It also says that New Hampshire will receive an additional \$13.7 million from Washington during the 2002-2003 school year and will spend about \$7.7 million.

Mark Joyce, who authored the school administrators' study, says the Bartlett Center study does not factor in all of the state's costs, such as money to help failing schools rebound. He contends that his state will spend over \$100 million to comply with the law.

### Future tests

U.S. Secretary of Education Rod Paige was spared a major showdown with the states when all 50 states complied with the

January 31 deadline for submitting preliminary accountability plans to the Department of Education.

Speculation leading up to the deadline had many people wondering if No Child Left Behind would begin to unravel without state support. Last fall, the Council of Chief State School Officers and the National Governors Association pleaded with Paige to extend the January 31 deadline. On February 3, after all states met the deadline, Paige said, "I applaud the unprecedented cooperation and can-do spirit that state education chiefs, governors and state boards of education have demonstrated in developing these plans, and I look forward to working with them to make those plans a reality."

Paige and the Department of Education still face one more test of states' compliance: In May, all states must turn in final drafts of their accountability plans. According to the Education Commission of the States, all 50 states are working steadily to meet that deadline. By June, peer review teams will complete meetings with states to iron out any compliance problems.

Whether states will comply, take the money and run – or not take the money but just run – remains to be seen. ★

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— Charlotte Cornell Postlewaite is the chief education policy analyst at The Council of State Governments.

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## Federalism in the 21st century

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process and onto the plane of international negotiations where state influence is far less. Similarly, Supreme Court pronouncements limiting the ability of the federal government to commandeer state government employees (as in *Printz v. United States*, 117 S.Ct. 2365 (1997)), may have the unintended effect of limiting the willingness of the federal government to devolve various administrative decision-making powers to the states, especially in a world in which state decisions can lead to challenges against the federal government

by our trading partners.

Third, globalization may impact federalism values in new ways. While states may have new opportunities to serve as laboratories of democracy in addressing the challenges of globalization, their ability to do so may be limited by international pressures for more conformity among state and local regulatory regimes.

In short, we should not assume that our constitutional structure of federalism will have the same public policy impacts or will be interpreted in the same way in the com-

ing century as it was in the previous one. And in that there truly is stability, for perhaps we can be safe in predicting that the meaning of federalism will continue to be in flux in the 21st century, as it has been in the nearly 215 years since the Constitution's ratification. ★

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—Mark C. Gordon is the dean of the University of Detroit Mercy School of Law and author of *Democracy's New Challenge: Globalization, Governance and the Future of American Federalism* (Demos, 2001).