

## No Child Left Behind Evolutionary Implementation

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### Abstract

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*Studies assume that No Child Left Behind's failure (NCLB) to bridge the achievement gaps in schools results from its design, as if the implementation faithfully reflected the law. This assumption overlooks administrative changes made to NCLB throughout the implementation process. This paper discusses those changes using the evolutionary theory holding that policy evolves during the implementation process through innovation, expansion, or delay made through flexibility and interaction and due to constraints, changing circumstances, feedback, learning, and adaptation (Hyder, 1983; Majone & Wildavsky, 1984; Goggin et al., 1990). The paper hypothesizes that NCLB's implementation was evolutionary and answers one primary and two secondary questions written in the respective order: 1) How did NCLB evolve? 2) What were the factors explaining NCLB's evolution? 3) How did implementers make decisions? The paper uses qualitative methods based on data from the U.S. Department of Education (ED) and the literature about NCLB.*

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### Introduction

The No Child Left behind (NCLB) legislation (PL 107-110. 107th Congress) aims to bridge the achievement gaps between disadvantaged and advantaged students in the elementary and secondary education system. States have to develop academic programs that meet the needs of disadvantaged students and establish common standards for all of students in the system. States must to establish annual measurable objectives (AMOs) to measure student proficiency and help all children become proficient by 2014. During the 2002-2004 double academic year, students should begin to show proficiency which should occur on an annual basis from 2005. The policy establishes the adequate yearly progress (AYP) measured as the participation in tests of 95% of students in each subgroup created based on socioeconomic conditions, race-ethnicity, English language proficiency, and disability; reaching the graduation rates in public secondary schools, achievement of AMOs; meeting standards for a discretionary state academic indicator. Students are to be annually tested in mathematics and English language or reading and the AYP results have to be reported to the U.S. Department of Education (ED).

NCLB establishes other requirements for states, school districts, and schools. If after two consecutive years a school fails to its state's AYP standards, the local education agency (LEA) has to identify the school for improvement or corrective action. The LEA will label it as failing, and require it to develop new academic plans and supplemental services (SES) to assist failing students and offer parents the choice to transfer their children to better-performing schools. The LEA can also replace staff members blamed for the failure. After one year of the implementation of these measures, if a school fails to make AYP, the LEA can adopt other sanctions, including the change of its staff or most of them, its conversion to a charter school, turning its administration to a private sector of the state education agency (SEA) or the SEA. LEAs that fail to meet standards for two consecutive years will be as well subject to similar administrative actions taken by their SEAs, as done by LEAs for failing schools. States have to ensure that they have highly qualified teachers (HQT) to teach core academic subjects, including mathematics and English language or reading in the first year of NCLB's implementation, and by the 2005-2006, all subjects should be taught by HQT. SEA, LEAs, and schools have to manage federal funds received under different programs according to NCLB's specific requirements. In order to receive federal funding under NCLB, states have to change their academic programs and standards to adapt them to the law.

Research reported that NCLB failed to meet its goals and objectives (Donlevy, 2003; Botzakis, 2004; Education Week, 2004; Guilfoyle, 2006; Cawelti, 2006; Jennings & Rentner, 2006; Heine & Emesiochl 2007; Sanders, 2008; Gabriel, 2010; Guisbond, Neil, & Schaeffer, 2012). The law failed because it does not take into account the conditions of students with disabilities (Moores, 2004; Herbert, 2006), language limitations of Limited English Proficiency (LEP) students (Rossell, 2005; Solórzano, 2008; Pappamihel & Walser, 2009; Menken, 2010), and social and economic differences among communities and student groups (Evans, 2004; Jimerson, 2005; Kim & Sunderman, 2005; Guisbond et al., 2012). The failure was also due to increased testing (Guisbond et al., 2012), the AYP requirements which caused schools to spend too much time in order to meet standards rather than working to improve student performance (Lewis, 2006; Musoleno & White, 2010), the lack of validity and reliability of the AYP's measures (Abedi, 2004; Smith, 2005; Porter, Linn, & Trimble, 2005; West, 2005; Maleyko & Gawlik, 2011), different standards leading to dissimilarities in the school system (Linn 2007; Linn et al., 2002; Maleyko & Gawlik, 2011), and the lack of funding (Newbold, 2004; Kohl, 2006; Herbert, 2006; Sanders, 2008).

These implementation studies are based on the NCLB's design to explain the failure and are useful to explain how the law's design affected the implementation. However, a serious concern with these studies is that they assumed the failure to reach NCLB's goals and objectives resulted from its original design as if the implementation faithfully reflected the law. This assumption overlooks continued administrative changes made to the law during the course of the implementation to address problems pointed out as statutory and non-statutory obstacles to meeting requirements (see Fletcher, 2010; McNeil, 2011; Jennings, 2011; Kober & Riddle, 2012; Guisbond et al., 2012; House, 2013).

This paper discusses administrative changes to NCLB since its early implementation in 2002 until 2012. The theoretical basis used for the discussion is the evolutionary approach to implementation holding that policy evolves during the implementation process through innovation, expansion, or delay made through flexibility and interaction and due to constraints, changing circumstances, feedback, learning, and adaptation (Hyder, 1983; Majone & Wildavsky, 1984; Goggin et al., 1990). The paper hypothesizes that NCLB's implementation was evolutionary and answers one primary and two secondary questions written in the respective order: 1) How did NCLB evolve? 2) What were the factors explaining NCLB's evolution? 3) How did implementers make decisions?

I focus on Title I of NCLB, *Improving the Academic Achievement of the Disadvantaged*, and NCLB's implementation at the federal level. The answer to the primary question is categorized into three main parts and subparts; while the answers to the secondary questions are found in the narratives developed in each of the categories, as well as in another separate section that follows the latter. This paper is relevant for presenting a different picture of NCLB's implementation. It discusses weaknesses of the evolution implementation framework and strives to contribute to the improvement of the framework by integrating different types of change into effective categories of change, coming up with new types of change, finding new explanations for policy evolution, and redirecting the focus relative to the means for decision making.

While the study demonstrates that NCLB evolved during the implementation, it does not provide evidence about how the implementation results were impacted by the reported changes. Since this is not a focus of the study, the relevance of this paper is not affected. Further, being the result of a qualitative study, my categorization of implementation facts or how I apply facts to categories can be different with another researcher. The important point regarding this aspect is that the categories in my study are valid.

The paper is outlined as follows. It describes the conceptual framework guiding the analysis, the methodology, the evolution of the NCLB policy, and the relations between the law's evolution and the politics of stakeholders. The last section summarizes the findings and discusses some of them as well as the implications of the study.

### **Evolutionary Implementation**

The evolutionary view of implementation was originally developed by Majone and Wildavsky (1984). The approach considers implementation as policy in action and that policy evolves during the course of implementation because the latter is made in unknown environments which constantly change, and that in view of new situations, implementation is constantly changing the policy.

Also, as we implement policies, we fix errors based on our learning from experiences, and, therefore, policies should be considered as hypotheses that can be worked out during implementation based on the environment until new changes are required (Majone & Wildavsky, 1984). Majone and Wildavsky (1984) played down policy design, arguing that changes in policy create a new policy different from the initial one and changes in resources and objectives lead to changes in outputs. They also argued that when anticipated favorable conditions change, problems become worse; and as we try to solve those problems through, new ones appear. They considered invention as useful and adaptation as the most important element of the evolutionary implementation where policy is implemented according to local conditions.

Other scholars reinforced and somehow expanded the evolutionary approach. They focused on correction and continued alteration or expansion of policy (Hyder, 1983) and experience, innovation, feedback from internal and external actors to implementation, adaptation to conditions of the implementation environment, and learning in evolutionary implementation (Hyder, 1983; Goggin et al., 1990). Hyder (1983) argued that evolution assumes that implementation is based on flexibility, evaluation, continued adjustments, interaction and negotiation. Based on these premises, Hyder (1983) argued that implementation is an ever-ending process. Goggin et al. (1990) stated that policy change occurred through delaying policy segments or the policy and changing the policy instruments; therefore, they argued that the dualism success-failure is inaccurate. This view implies that a policy which was not implemented should not be said a success or failure.

Commenting the evolutionary approach, Linders and Peters (1987) said it excludes hierarchy, design, and planning and involves interaction among policy implementers and elected officials. They further stated that policy is what was actually implemented. They criticized the approach for making policy evaluation impossible. However, Majone and Wildavsky (1984) did not completely ignore the role of design in implementation, since they acknowledged there should be some policy to start with, in order for evolution to happen. Majone and Wildavsky (1984) also argued that the original statute somehow shapes the implementation, but policy is reformulated during the process. In fact, maybe most changes made in policy implementation are argued by agencies to be made in order to meet policy goals and objectives. Hyder (1983) also considered that the evolutionary approach seeks to bring closer the incremental and rational views of the policy process.

Scholars warned about the assumption of automatic evolution. Dunsire (1980) guarded from seeing the evolutionary process as isolated from financial, organizational, standards, and enforcement factors. He argued for evolutionary process to work in organizations, political support is needed. I would add that legislative authority of discretionary power to administrators can make rooms for evolution to occur in smoother ways.

Based on the premises of the evolutionary framework, I have developed three research questions. The first and the primary question is this: 1) How did NCLB evolve? And the two secondary questions are: 2) What were the factors explaining NCLB's evolution? 3) How did implementers make decisions?

## **Methods**

The methodology is qualitative and developed to gather and analyze information about the implementation of Title I of NCLB, Improving the Academic Achievements of the Disadvantaged, as the essential part of the law. However, I also used data regarding other Titles as they relate to the implementation of Title I. I narrowed down the study to NCLB's implementation at the federal level. This choice was made because the burden would be too high to include in a paper the research of the law's implementation at the federal, state, and local levels. The burden would be in terms of too much time to get information for all SEAs and LEAs, as well as in too much information which would require a book. The study covers the implementation period of the law from 2002 to 2012. The first year is one at which the implementation began, and the end year is the year at which the last change to the law was made. The methodology consists of three steps. Part of section 1, subsection 2.1, and section 3 are borrowed from Yin's (1980) proposal to study public policy programs.

### *Data Collection*

This paper used documents written by the U.S. Department of Education (ED) containing implementation facts posted on its websites. The literature about NCLB was also used to gather data about implementation facts and the behavior and role of implementing and non-implementing actors having a stake in the policy. This mode of data collection is based on Yin's proposal, but data related to participating parties in the implementation process is my input in regard to the study's purpose.

### *Data Analysis*

1. *Pre-analysis*: I used this approach as one step of Yin's proposal. This process took place at the same time as the data collection phase and consisted of sorting and combining data. Since there was much evidence regarding many aspects of NCLB's implementation process, I chose evidence that relates to the changes in the law and aspects that are connected to those changes and ignored aspects that do not fit this schema.

2. *Analysis*: Let me discuss some problems that I found in the evolutionary framework and address them. The framework integrates a lot of ideas that can make appear to some as confusing, for using terms that are synonyms or holding almost same meanings. The approach explains that policy change consists of alteration, adjustment, correction, delay, innovation, and expansion. Alteration, adjustment, and correction are general terms that do not explain a particular type of change and can include any of the other types of change in the list; therefore, I consider them as change. I keep the original formulation of the other types of changes, including delay, innovation, or expansion. Delay is measured as the postponement of policy requirements. Innovation is defined as new policy ideas to the law in order to address problems (Hyder, 1983) and expansion is defined as new policy views added to the original policy without changing original policy parts. Therefore, I consider expansion as a subcategory for innovation rather than separate from it.

I now consider factors which are assumed to explain policy changes in evolutionary implementation. They are errors or experiences, evaluation, adaptation, learning, feedback, local conditions, constraints, and new circumstances. These categories are not mutually exclusive. For instance, if administrators modify laws based on errors or experience, they inevitably learn something from their implementation. Therefore, I ignore errors and experiences to consider only learning. Evaluation and feedback can go along with learning but they are different; therefore, I keep them as separate categories. Adaptation relates to local conditions, therefore, I consider adaptation. Constraints can include new circumstances; but, constraints may exist before new circumstances. Therefore, they remain separate in this analysis.

Last, the framework assumes flexibility and interaction, including negotiation and bargaining, are facilitating factors in policy evolution. Interaction implies flexibility. Since flexibility can be granted by the implemented policy and can be exercised without interaction, I consider the two as separate categories.

The change categories are presented separately, but explanatory and facilitating factors are reported as narratives accompanying the changes. The choice of not reporting the two latter kinds of data for each category of change helps avoid the repeat of common information to changes and keeps narratives as closer as possible to reported changes. A special section is also created to analyze the relationship between the reported changes to the broader environment of the law's implementation consisting of political behavior of different stakeholders. A final discussion of explanatory and facilitating variables is conducted in the last section of the paper.

### *Internal and External Credibility*

1. *Internal Credibility*: This regards the evidence used in the study. It resides in the use of key implementation facts publicly known and that can be verified in newspapers and official records to confirm my narratives. Facts can be refuted, but their main strength lays in the overall pattern of events.

2. *External Credibility*: This regards the inferences about the study and how it is conducted. These criteria are satisfied by the breadth and depth of the study coverage.

### **NCLB's Implementation and Evolution**

The analysis of NCLB's evolution finds the two types of change that the paper deals with and that are based on the evolutionary framework, including delay and innovation. Other kinds of change not discussed by the framework are also found, such as curtailment and extension of due periods for requirements. The latter is arranged along with delay under rescheduling as a new category.

#### *Rescheduling: Delaying and Extending Due Periods for Requirements*

Rescheduling is a new category that I create based findings. Therefore, delay becomes a subcategory rather than a category, as planned in the method section. Rescheduling is measured through extending due dates for and delaying requirements. The ED rescheduled changes for several requirements due to different problems that states were facing, by extending and delaying expectations. The 2002 regulation deferred annual assessments in reading and math for grades 3-8 beginning until 2005-2006 rather than in 2002 and science assessments until 2007-2008 in lieu of the original requirement for the 2005-06 school year (ED, 2002a).

In 2010, Texas was allowed to extend the deadline to meet the requirement of paraprofessional qualifications for receiving Title I funds for the first time in the 2009-2010 school year until the first day of the spring semester of the school year (ED, 2013a). A 2004 extension of the time period for meeting the HQT requirement benefited rural LEAs receiving grant funds for achievements (ED, 2004a). HQTs in one subject can receive more time to become highly qualified in all other subjects they teach until 2006-2007 rather than 2005-2006 as required by NCLB. New teachers have up to three years to become highly qualified. One requirement is that rural schools having those teachers had to daily serve less than 600 students. This flexibility is given to schools that have their teachers highly qualified in at least one subject and provide professional development to teachers as well as mentoring and supervision to help teachers become qualified in the core subjects the teach. Others waivers regarding schedule changes are reported in Table 1.

**Table 1. NCLB's Schedule Changes by State/ Number of States, District, Year, and Content**

<b>State or # of States, District, Year</b>	<b>Content</b>
Louisiana (2005)	-Waive of the ESEA's limit of 18 months as the maximum period for an education department to receive grants for opening charter schools by granting 36 full-period months to enroll displaced students (ED, 2013b).
Louisiana and Mississippi (2005, 2006, 2007, 2008)  Texas (2008) Other states and districts (24 extensions) (2006) Louisiana, California, New York, and other states (2009) 27 states (2009 for 2 years) 6 states (2010 for 2 years)	Waivers allowing states to spend remaining Title I or Title II funds received for a school year in a subsequent school year. Under NCLB, a state has to spend its grants in the fiscal year the grant is provided (ED, 2013a, 2013b).
Pinellas County Schools, Florida (2006)	Waivers to allow a school district not to offer public school choice to parents in the 2007-2008 school year, as a result of a court order (ED, 2013b).
17 states (2009) Arizona, Florida, Nebraska, New York, Tennessee, Washington (2010)	Waiver of 14-day notice requirement allowing states to extend the deadline was applied to schools newly identified in the 2008-2009 school year for improvement in the 2009-2010 school year or that made its 2008-2009 AYP (ED, 2013b).
2 states (2010)	Waivers allowing delays for reporting AYP assessment results after the beginning of the school rather than before (ED, 2013a).

These are explanations for some of the waivers in Table 1. The waivers to the states of Louisiana, Mississippi, Arkansas, Alabama, Texas, and Tennessee were granted to distortions and delays in school activities caused by Hurricanes Katrina, Rita, and/or Ike (ED, 2013a, 2013b). The waiver granted to Pinellas County Schools was the result of a court order maintaining the school district under a previous segregation court order following a motion filed by the district against the NCLB's requirement to offer public choice to parents when a school is identified for improvement (ED, 2013b).

As for the conditions of the 14-day-notice waiver, state would ensure that the LEAs used the waiver positively, encourage public school choice notices as early as possible in no more than 30 days before the start of the new academic year and supervise LEA contracts with choice vendors while ensuring that they provide timely notices no later than 14 days before the start of the academic year and all future academic years (ED, 2013b). States would also ensure that LEAs offer public choice earlier in some of their schools and have spots available in schools for those students receiving late offers, report to the ED by 30th of September the number of school that could get out or get in improvement status, the number of LEAs taking advantage of the waiver providing school choice notice 14 days before the new school year starts (ED, 2013b).

## *Innovation*

This section finds innovation related to expansion as a subcategory. Based on findings, I also create two other subcategories for innovation that are based on Hyde's definition of innovation as new policy ideas. Now, innovation is also defined as the elimination of policy views from a policy item to integrate new views and as the complete substitution of old policy views constituting a policy item with new policy views. A policy item is a part of the policy developing a specific requirement and being autonomous from other policy parts.

*1. Expansion of Policy or Addition of New Policy Views to the Original Policy:* The ED expanded NCLB or added new elements to the law. In 2002, it made available "State-Flex" and "Local-Flex" as new policy instruments to provide waiver authority to SEAs and LEAs in order for them to consolidate NCLB's funds, plans, and schoolwide programs (ED, 2002b). In 2003, the state departments of Maryland and North Carolina were granted the Education Flexibility (Ed-Flex) allowing them to waive statutory and regulatory burdening administrative requirements (ED, 2012a). Especially, the flexibility waived the requirement of having all teachers newly hired for teaching core academic subjects to be highly qualified by 2005-2006 (ED, 2012a). Receiving agencies had to grant this flexibility on a case-by-case basis, require their LEAs to determine conditions under which they would ensure having all teachers would be highly qualified, and the SEAs' and LEAs' goals should not undermine the latter goals and the goals of increasing achievement for all students by 2005-2006 (ED, 2012a). In 2004, the state of Florida was also granted high flexibility under State-Flexibility Authority Program (State-Flex) to use federal funds in exchange for increased accountability for improving performance and closing performance gaps. The state would consolidate its funds granted for Teacher and Principal Training and Recruitment, Community Learning Centers, and Innovative Programs (ED, 2004b). It would be accountable for meeting its goals and objectives defined in the State-Flex application and would enter into local agreements with 8 districts (ED, 2004b). In the 2007-2008 school year, ten Ed-Flex States were granted this flexibility, including Colorado, Delaware, Kansas, Maryland, Massachusetts, North Carolina, Pennsylvania, Oregon, Texas, and Vermont (ED, 2013b). In 2009, Berkeley County, West Virginia was granted a waiver Local-Flex waiver for a school elementary eligibility to Title I funds to implement a school wide program though its poverty rate is less than 40% (ED, 2013b). This flexibility was offered to states in 2012 as "within districts flexibility" (ED, 2012b).

In addition, the ED and Seattle public school district agreed to establish a "Local-Flex Demonstration" policy in order to help the district in its definition of specific goals regarding AYP and developing ways to improve and measure improvement (ED, 2004b). Based on its Local-Flex, Seattle was allowed to consolidate ESEA grant funds under Teacher and Principal Training and Recruitment, Enhancing Educational Technology, Safe and Drug-Free Schools and Communities, and Innovative Programs. The state of Seattle would take action to improve teacher competency to teach rigorous academic standards and beef up their quality and preparation to serve underserved student of different backgrounds, create and reinforce services to boost academic performance of target groups, and integrate technology in classrooms to support student learning and teacher productivity. The state was accountable for the goals and objectives defined in its plan to achieve the 100% proficiency goal by 2014 for all students. The state would inform the ED on the implementation of its Local-Flex programs. This agreement would expire in August 31, 2008, and could be amended, limited, terminated or extended (ED, 2004b). This waiver was expected to be effective until 2008 (ED, 2013b).

*2. NCLB's Revision of Policy or Policy Views to Integrate New Views:* A number of procedural and technical policies revised several policy items. Based on the 2008 regulation, LEAs no longer needed SEAs' approval to spend less than 20% of their grants for transportation of students (ED, 2008a). Rather, LEAs that wished to use unspent choice-related transportation, supplemental education service (SES), and parent outreach and assistance could do that, record their qualification criteria to do so, and inform their SEAs of their qualification criteria and intention and the remainder of the 20% obligation (ED, 2008a). Also, the ED alternated the procedural requirements for school improvement, loosened the requirements for creating student groups and determining schools qualified for receiving Title I funding. Table 2 presents some of these changes and others.

**Table 2. Procedural and Technical Changes by State, District, or School, Year, and Content**

<b>State/ # states/ School/District &amp; Year</b>	<b>Waiver Content</b>
San Diego City Schools (2002, 2003)	Waiver allowing schools to not consider the “comparability procedure” requiring the use of state and district funds to provide educational services to Title I schools (higher-poverty schools) that are comparable to services in non-Title I schools (lower poverty schools (ED, 2013b).
Illinois (2003, 2009) New York (2004 to 2006) Two schools in Keene, New Hampshire (2007) County School District, Georgia (2008) ? states (2011) A middle school in Bismarck, North Dakota (2007)	States were granted waivers from the requirement of ranking schools according to their poverty levels in order to determine the eligibility of schools to receive funds (ED, 2012b, 2013b).
Louisiana, Mississippi Alabama, Arkansas, Georgia, Tennessee, and Texas (2006)	Waivers were granted to create an additional student subgroup for students displaced due to Katrina, Rita, and/or Ike for AYP purpose based on assessment data of the 2005-2006 school year (ED, 2013b).
1 state (2005, 2006) 4 states (2006, 2007) 7 states (2008)	Waivers allowing school districts to implement a supplemental education service (SES) pilot program or SES by providing SES instead of public school choice in the first year of school improvement as mandated by NCLB (ED, 2013b).
Bureau of Indian Education (2002-2008) Mississippi (2005) ? state (2011)	Waivers that provided flexibility in managing single funds. (ED, 2012b, 2013b).
Jefferson County Public Schools, Kentucky (2007) New York (2008) ? states 2010, 2011	Waivers that permitted states or school districts to transfer funds from one Title to another one beyond the required percentages. Beginning in 2011, grantees can transfer funds up to 100% (ED, 2012b, 2013a).
20 states or District (2009) 10 states (2010)	Waivers allowing school districts to implement a supplemental education service (SES) and public school choice in the first year of school improvement rather than school choice first as mandated by NCLB (ED, 2013a, 2013b).
32 states (2009) 6 states (2010)	Waivers allowing LEAs or schools to exclude parts or all their Title I funds received through American Recovery and Reinvestment Act of 2009 (ARRA) when calculating the cost of SES for each student (ED, 2013a, 2013b).
34 states (2009) 6 states (2010)	Waivers allowing LEAs or schools to exclude their Title I, Part A allocation received under ARRA requiring states to spend at least 20 percent for public school choice-related transportation and SES, 10 percent for LEA’s professional development, and 10 percent for School’s professional development (ED, 2013a, 2013b).
? 19 states (2010)	Waivers redefining “persistently lowest-achieving schools” to allow SEAs to increase or decrease the number of lowest-achieving schools to identify for improvement by including or excluding a number of schools identified as needing improvement (ED, 2013a).
? 1 state (2010)	One waiver allowing states to keep using a number of students with disabilities equal with two percent of the total students tested in the same grade throughout the state to calculate AYP for the former (ED, 2013a).
? states (2011)	-States and LEAs do not need to review their progress of LEAs receiving funds for school improvement regarding making AYP, but must now report their cards performance based on their AMOs and use their performance results to support their continued improvement (ED, 2012b).
? state (2011)	SEAs can allow community learning centers to assist students in improving their performance during the school day beyond the time when schools are not in session and during non-school hours, as opposed to NCLB’s requirements (ED, 2012b).

The following are conditions for some of these waivers to be granted. States receiving waivers to create new student subgroups agreed to include those subgroups in the 2004-2005 school year AYP at the school, district, and state levels; report on their achievements; assist students who failed to meet the 2005-2006 standards (Congressional Research Service [CRS] 2007). Grantees receiving funds from the Bureau of Indian Education had to show that they would enhance the quality of the instruction and improve the performance of the Indian students (ED, 2013b). The SES pilot program was created in 2005 to allow states or districts to provide SES rather than public school choice in the first of school improvement, because a very low percentage of eligible students attended the SES program (ED, 2013b). The ED replaced the SES pilot program in 2009 with a statewide program available to all states that were eligible (ED, 2013b). This waiver was granted even to schools in need of improvement, which is prohibited by federal regulations (ED, 2013b). From 2005 to 2010, the yearly number of states or districts being granted this waiver was 2, 4, 4, 1, 25, and 18, respectively (ED, 2013a, 2013b). Initially, states benefiting from the SES pilot program waiver would increase student participation in SES, raise awareness about the program, encourage external organizations to participate, and disclose information about the impacts of the SES on student performance, and the LEAs would show to the Department how they would make their effective strategies and practices work and explain what make them work (ED, 2013b). When the program was generalized, states would also submit by the 30th of September a report about the number of LEAs to be improved or subject to corrective action (ED, 2013b). As for the provision of SES and public school choice in the first year of school improvement, the ED (2013b) required that states hold LEAs accountable to benefit from the waiver, comply with related regulations, and provide a report with the names of the participating in the waiver and their NCES identification number.

As for waivers regarding the 10% obligation regarding school's professional development, the determination of the 20% requirement for public school choice-related transportation and SES and LEAs' professional development, and the calculation of per-pupil amount for SES, states had to respect these conditions. States would ensure that LEAs would comply with statutory and regulatory requirements, provide their required supplementary funds for schoolwide programs and other programs serving the neediest students through programs based on scientific research, report by the 30th of September the names of the LEAs implementing the waiver with their NCES identification number and the LEAs' names that applied for this waiver but were denied (ED, 2013b). In the two latter cases, states would post on their websites information regarding the regarding 20% obligation and accurate data provided by the LEAs regarding the waiver implementation, authorize waiver implementation only upon the approval of the application, and post information regarding the per-pupil amount for SES, respectively (ED, 2013b).

The ED also modified methods relating to testing requirements to alleviate NCLB's implementation in favor of disadvantaged student groups. In 2003, the ED created for students with the most significant cognitive disabilities alternate assessments called Modified Academic Standards based on alternate standards to be developed by states to measure the AYP of those students to represent one percent of all students assessed in a state within the grades for which those standards are established (ED, 2003). These standards had to be challenging but less rigorous than those developed for students without disabilities. With this policy, the ED relaxed the testing requirements which prevented these students from participating in state assessments, even though they received other required accommodations (ED, 2003). The regulation was revised in 2007 to create alternate assessments based on Modified Academic Achievement Standards for students with certain disabilities less severe than most cognitive disabilities, as a result of the observation that the latter students were kept from meeting rigorous statewide standards (ED, 2007). The number of those students could represent up to two percent of the total students tested in the same grades across states rather than the previous rate of one percent. According to the (ED, 2007), this new regulation helped fill the gap observed and raised through feedback since the adoption in December 2003 of the regulations on alternate academic achievement standards. Further, in 2006, states were allowed to exempt from testing all LEP students in reading or language arts, if they have frequented a U.S. school for less than 12 months, while the policy demands that all students be annually tested by the beginning of the 2003-2004 academic year (ED, 2006).

Further, policies changed requirements for making AYP. The NCLB's 2008 regulation integrated in the AYP determination process a five-year cohort graduation was offered to states as an alternative for schools that could not meet the requirement of the four-year graduation of students from high school. Are included in that cohort all students attending a school at the end of the year of graduation.



This flexibility had to be implemented by 2009-2010 school year. If a state chose to use it beginning in the 2011-2012 academic year results, it had to use the four-year adjusted cohort graduation rate in the calculation of its AYP. A state that could not meet the four-year adjusted cohort graduation rate could request an extension from the ED Secretary, provided that it showed the impossibility to meet the deadline and submitted a plan demonstrating how it would address the difficulties encountered in implementing the flexibility and a schedule to meet the requirement. States were further allowed to use the scores of former LEP students in their next year reports toward making AYP (ED, 2006) rather than the scores of the actual academic year required by the law. In 2010, the ED allowed high school students to choose their own type-mathematics assessment rather than statewide mathematics assessments in regard to the AYP requirement (ED, 2013a).

Toward calculating AYP in school with small sizes, the ED allowed educational officials to test the whole school, so the students could take the statewide assessments; if the number of participants for all the grades tested was inferior to the minimum group size to calculate the participation (ED, 2004c). Another option was that if those schools were achieving AYP for all their student groups and had high graduation rates and that a subgroup failed to reach 95% participation requirement, the schools could still make AYP if their last three-year participation rates combined allowed them to meet the 95% participation requirement (ED, 2004c).

Another new means was offered to states as part of the process toward determining AYP, while other requirements such as the graduation rate at the completion of high school education were maintained. Upon request from several states, the ED adopted, in 2005, the growth model pilot program (GMPP) to allow states to track student achievement over time as one element of the AYP process as a basis for accountability rather than NCLB's status model-based assessment (ED, 2008b). The status model requires schools to assess achievement based on increases made by a student group from a last-year test score in a subject to the next-year test score in that subject, but the former measures each student's progress from one year to another (Hoff, 2007). The Growth model encourages the use of multiple measures of growth to assess student achievement rather than a single test under the original NCLB policy. During the 2006-2007 school year, eight states participated in the pilot program (ED, 2013b). As conditions to be granted the waiver to use GMPP, states had to indicate schools making AYP under both the NCLB's original model and the new growth model, and collect and share that information to other states and the public (ED, 2013b). The evaluation of the GMPP program showed significant progress was made by the pilot states, which motivated the ED to open the program to all states in 2007 and regulate it in 2008 (ED, 2013b). By the 2008-09 school year, 11 states were using GMPP (ED, 2008b). The growth models were granted to states on the condition that ED approved their assessment systems (ED, 2013b). However, Missouri and Ohio that were part of the grantees had to adopt an equal group size for its students population, including the LEP students and students with disabilities (ED, 2013b) when calculating AYP. In 2012, the ED offered the growth to state that implemented common core standards discussed in the subsection below (ED, 2012b).

Other policies were aimed at changing AYP requirements for particular states. In order to determine AYP, the ED allowed states to extend AYP results from a previous year to the next one due to various problems (ED, 2013a). Under this policy, the state of California was allowed to use its year 2008-2009 school year AYP for that of the 2009-2010 school year, due to earthquake distortions. Georgia was allowed to use its 2009-2010 AYP for the 2010-2011 school year, because of lack of financial resources to carry out alternate assessment for the students with disabilities for the latter school year. Maryland, New Mexico, and South Carolina were granted flexibility to allow schools or LEAs to use 2008-2009 participation rates for student subgroups to calculate AYP while using their 2009-2010 assessments. This flexibility was due to the failure of those schools or LEAs to have some of their student subgroups to meet the requirement of 95% participation and having at least 50% of their students absent on at least two days due to H1N1 flu virus during the 2009-2010 test period. In 2007 and 2008, the states of Maryland and Virginia were granted waivers allowing them to calculate their AYP based on the "Advanced Placement (AP) and International Baccalaureate assessments (BA) as substitute for high school end-of-year course assessments" until the 2009-2010 school year for students who were sick or entered school after the administration of the state test (ED, 2013b). These waivers were conditioned by evidence provided by states that AP and BA courses and assessments met and were more rigorous than those they were regularly implementing (ED, 2013b). Also, for the 2009-2010 school year, Wyoming was allowed to calculate its AYP for LEP students using the percent annual increase of students attaining English proficiency (AMO 2) and achievement of AYP as described in the law (AMO 3) (ED, 2013a). This policy excludes the percent annual increase of LEP students making progress in learning English (AMO 1), because the new English proficiency program concerning this AMO did not provide consistent data (ED, 2013a).

3. *Substitution of the Views of Original Policy Items with New Views:* The ED developed policy alternatives which replaced statutory requirements for policy items. In 2002, the ED established some flexibility offering teachers an alternative means to become high qualified before and while teaching by attending a supervised intensive program or a teacher mentoring program for a period not exceeding three years (ED, 2002a). Teachers using this means had to show increase improvement toward meeting the certification of the HQT requirement. In 2004, Flexibility was also given for schools having experienced veteran teachers of multiple subjects in middle and secondary schools teaching more than one core academic subjects (ED, 2004a). Without a bachelor's degree, advanced degree, or certificate for new hired as required by NCLB, veteran teachers could be hired if the LEA deemed that they had skills, experience, and professional preparation. Teachers had to show high standards required by the law and could be evaluated to show they met those standards through integrated evaluation for the subjects they taught. A third flexibility concerned science consisting of biology, chemistry, and physics. A state could define its own criteria for HQT by requiring teachers to be qualified in each subject or be qualified as generalists and assess their skills. Based on the 2011 waiver policy, states are not required to follow the steps defined in NCLB to assist LEAs in meeting the HQT requirement; they can develop both support systems to train them principals and teachers and a teacher and principal evaluation, instead (ED, 2012b).

Also, a new alternative was also created regarding school improvement requirements. The ED launched a "differentiability accountability pilot" program in 2008 under which states were granted waivers to develop their own interventions for school improvement and determine the magnitude of their improvement activities (ED, 2013b). This policy allowed them to categorize schools identified for improvement as substitute for failing schools labeling based on the duration and causes of their missing AYP, and states had to outline their approaches to improve performance in each of their school categories (ED, 2013b). Schools are to be categorized as award schools, focus schools, and priority schools; that is, from the highest performing schools to the less performing schools. The focus on sanctions to restructure failing schools has radically changed for the first time. In 2008, differentiability accountability waivers were granted to Florida, Georgia, Illinois, Indiana, Maryland, and Ohio, and in 2009, to Arkansas, Louisiana, and New York in January 2009 (ED, 2013b). With the waiver policy of the Obama administration adopted in 2011, the differentiability accountability pilot program was transformed into a waiver available to all states (ED, 2012b).

The more radical alternative to NCLB resulted from innovation regarded academic standards. In 2011, the ED has adopted national standards through Common Core State Standards (CCSS) focusing on more rigorous academic standards than those required by the original law that prepare students for college and career (ED, 2012b). The CCSS policy has established for the first time national standards in the American education system. Under G. W. Bush and Bill Clinton administrations, the ED sought to integrate national educational standards, but it failed. This policy has created the new goal of having all students ready for career and college. All states desiring to obtain waivers need to adopt the CCSS or CCSS-based standards; so far, 43 states have been using CCSS (ED, 2012b).

#### *Curtailment*

Curtailment is another new category that I create based on the study's findings. It is defined as the permission granted to states by the ED to escape the implementation of requirements without developing substitute policy requirements. The ED also granted a waiver to Florida that allowed the state to exclude from its 2009-2010 AYP determinations new students coming from Haiti after the January 12, 2010 earthquake; while Wyoming was allowed to exclude the 2009-2010 assessment results to make AYP, because the failure of the state's online system impeding the gathering of statewide data (ED, 2013a). In 2009, Kentucky and West Virginia were granted waivers exempting some schools from assessing their entire student populations in reading/language arts and mathematics because of flooding taking place during the examinations (ED, 2013b). In 2010, two waivers allowing a SEA to reduce regulatory requirements with respect to a LEA receiving school improvement grant (SIG) program funds for some schools (ED, 2013b).

#### **Relations between NCLB's Evolution and the Political Environment**

NCLB's changes were also explained by politics. I am discussing first the political environment and then connect it with the changes to the policy. From the very beginning, the law faced opposition which grew over time. School districts filed motions to U.S. Federal District Courts against the implementation of required mandates in the law. Those motions pertained to the requirement of public school choice and the requirements for standardized tests and standards, and the lack of federal funding (Pinder, 2010).

In *School District of Pontiac v. Spellings*, the district contended that the law was unfunded and it should not have been required to comply with its unfunded mandates (Pinder, 2010). A motion filed by the Richmond County school district to request a one-year delay of the choice mandate to analyze the consequence of this requirement on the school system (DeBray, 2004). The Court approved the request arguing the segregation policy of school choice violated a 1972 court order that required school desegregation in the County, and declared that the district needed sufficient time to examine the effect of the school choice implementation on the students and desegregation and the transportation cost for the district whose most students belonged to low-income families (DeBray, 2004). Following the decision, the ED asked the district to get the court modify the order and still attempted to force the district leaders to implement the school choice, without success, and it was in the following year that the district offered transfer to the poorest students and ways that did not disturb the racial balance in agreement with the ED (DeBray, 2004). The 2004 suit of the Pinellas County School District was somehow similar. The district leaders asked a federal Court to turn down the requirement of school choice due to a court order establishing a racial balance in the school system in a previous desegregation case, and the judge responded positively, ordering that the then actual balance remain unchanged (DeBray, 2005). The ED had the same reaction as in Richmond's case; but, after it failed to convince the district's leaders to ask the court to revise the order, it tacitly accepted the district controlled choice plan already in place without explanations (DeBray, 2005). However, in 2006, the ED officially granted waiver to Pinellas District for one year, as a result of the court order requirement (Table 1).

States also resisted the law. Connecticut was the first that undertook an action against the law, suing the ED on the basis that the law is unfunded (Pinder, 2010). The suit was brought in 2005 by the Connecticut Attorney General on behalf of the state executive and legislature power (Ward, 2005). The state complained about burdensome federal requirements, the cost of NCLB, and the arbitrary rejection by the ED of its waiver requests regarding the exemption to the requirement of testing grades 3-8 annually and changes to the requirement of testing special education and LEP students, without being granted enough funding (Ward, 2005). In 38 state legislatures, the resistance to the law was expressed through resolutions, bills, or laws against parts of the law to ask their state education department to opt out of the law, ask for more funding, and criticize the federal intrusion in state education policy (Shelly, 2008, p. 444). Several states have lacked capacities to meet the requirement of HQT and academic standards and assessment requirements to make AYP (Pinder, 2010). The lack of human resources and financial capacity as well the loss of state authority in education policy to the ED mainly explained states' opposition to the law.

Further, the broader public also expressed negative views regarding the law and its implementation. In 2005, the liberal Cato Institute accused the federal government of centralizing education policy the same way as the Soviet's planners and asked for freedom in the implementation (Hess & Petrilli, 2006). Public polls conducted in 2004 and 2005 showed NCLB lost broad public support for its policies regarding the testing requirements and school improvement (Hess & Petrilli, 2006). In the years of 2003 and 2004, major educational organizations, including the American Association of Teachers (AFT) and National Education Association (NEA), began to raise their voices against NCLB due to its one size-fit-all solutions, underfunded mandates, sanctions against failing schools, AYP provision being deemed unreliable and invalid, testing requirements, narrowing of instruction focusing on language art and mathematics, and unrealistic goals (Koppich, 2009; Hess & Petrilli, 2006). Those organizations called for change to the law and more funding for its implementation (Koppich, 2009). As the 2007 deadline to reauthorize the law approached, hundreds of education organizations joined their effort to enhance their criticisms of the law and advocated the elimination of its rigid requirements (The Forum on Educational Accountability [FEA], 2007). Educators also criticized the law for the lack of funding, negative effects on the moral of the school community, threat of punishment, encouragement of corruption in order to make AYP, sanctions against low-achieving schools, and standardized tests that are not scientifically proven effective in improving student achievement (Hess & Petrilli, 2006). Elmore (2002) argued that the law does not invest enough to reinforce the capacity of the educational institutions to make the expected change happen and that the school community should be at the center of the achievement effort and be accountable internally before being accountable to external actors.

Changes made to NCLB through flexibility or waiver policies reflected the criticisms and concerns. The most criticized parts of the law, including its AYP and school improvement requirements, insufficient funding, and standardized tests for high-stake decisions, as well as the federal intrusion in state and local education policy, were partially addressed through waiver and flexibility policies granted to schools and state and local education agencies to make decisions based on their realities and needs. ED's officials acknowledged NCLB's flaws raised by different sectors. In presenting the growth model to the states in 2005, Secretary Margaret Spellings stated that the model would help address criticisms that the law's inflexibility impeded its successful implementation (Hoff, 2007). In a 2011 work session with Congress, Secretary Arne Duncan stated that students and educators were suffering from NCLB effects (ED., n. d.). He added that the prescriptive approach of the law leads state to create low academic standards and encourages mislabeling of schools as failing institutions, teaching to the test, and one size-fit-all solutions, which impedes local education approaches and innovation (ED., n. d.).

### **Conclusion, Discussions, and Implications**

NCLB evolved through rescheduling of requirements, innovation, and curtailment of requirements. The narratives developed by the ED provide a wealth of information about explanations for these changes and how they occurred. States non-preparedness to implement new requirements, natural disasters, and diseases faced by individual states constituted constraints leading the ED to make several changes to the law's requirements. This aspect of the implementation also explains that the law evolved through adaptation. Changes are also explained by the lack of financial and human resources confronted by SEAs and LEAs, the need of social equity, especially with the accommodation policies made in favor of disadvantaged student groups, and state legal constraints during NCLB's early implementation. Innovation was made to address the failure of AYP and the school improvement program, and the problem of fragmented standards raised by stakeholders. From a general viewpoint, feedback from different groups that criticized the law, proposed, and asked for changes, learning from experiences, decisions of institutions external to the implementation explained major changes in the law. The major changes affecting the law were not those made to states facing particular problems, such as diseases or disasters, but those linked to problems associated with the law and from which all states could benefit. Also, flexibility and interaction were used as main means through which decision making was made.

Further, interaction played important role in the law's evolution. It occurred when implementing agencies sought ED waivers, due specific problems not linked to the law. Such cases led to bargaining reflecting states' situations. It also occurred when implementing agencies and the ED negotiated over implementation of changes made by the ED to alleviate the burden of states. In many cases, terms of the implementation of the changes were negotiated and bargains were set up. Therefore, different states implemented same changes under different conditions based on different situations they faced. However, flexibility or discretion was the primary administrative means used for decision making in several instances, though the framework heavily focuses on negotiation and bargaining as methods to make changes. Indeed, the ED established its own terms for the implementation of changes and all SEAs and LEAs that were granted same waivers executed them under common requirements. In such conditions, negotiation and bargaining did not take place, but just agreement of grantees.

Several aspects poorly or not discussed by the evolutionary framework are found in the implementation. The study has showed that NCLB also evolved through rescheduling of requirements. This category added extension of due periods for policy requirements to changes related to delay. But the framework mentions the latter as a form of change. Also, the study finds that the law evolved through reduction of policy requirements which I call curtailment.

Based on the law's evolution, I argue that several versions of the NCLB were implemented. Therefore, the argument that the failure of the ED to meet the law's goals and objectives resulted from NCLB's design is inaccurate and misleading. To repeat Hargrove (1975), we cannot dissociate the implementation process from the original policy when studying implementation. This paper has several implications. The fact that the ED did not implement the law as enacted, one should talk of NCLB's implementation failure rather than NCLB's failure. Also, the assumption that NCLB's implementation is a top-down approach should be moderated, for views of different interest groups, implementers, and court decisions affected the law's implementation. Since this study does not provide evidence regarding how NCLB's evolution affected the implementation outcomes, future research is encouraged to explore this area. This would contribute to reinforce the view that policy effectiveness cannot be understood without considering the implementation process.

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