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Implementation of LEAD—Part I: Legislative Analysis and Regulations Development

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A vision of improved school leadership inspired Congress, professional associations, and many others to work for passage of the Leadership in Educational Administration Development (LEAD) Act. Their vision now finds daily fulfillment in fifty-seven LEAD centers across the country. The new leadership training, expanded assessment opportunities, support for women and minorities aspiring to administrator positions, business and education exchanges, and many other activities written into law are now realities affecting thousands of prospective and practicing administrators, their schools, and students.

This article traces the initial stages of LEAD's implementation within the U.S. Department of Education (ED). A particular perspective on the implementation process is provided, followed by an examination of the LEAD Act's policy specifications, after which the development of the program regulation is discussed. (The stage of implementation involving interaction between the agency and the public is described elsewhere in this issue.)

An Implementation Perspective

The perspective taken here is that *implementation is authorized work done over time to complete public policy*. It occurs in recursive stages. Actors responsible for work at each stage *interpret and refine* policy in light of their understanding of pertinent circumstances (e.g., resources, opportunity, constituent expectations, etc.). The scope, detail, and precise issues they attend to depend upon who they are, their stage in the process, the complexity of the policy, and the nature of the field the policy is intended to change.

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Passage of the Act completed the first stage in a journey toward realization of significant public values through governmental processes. Thereafter, according to a longstanding and in some quarters still cherished formula, "politics done, administration begun." This policy-administration dichotomy, however, constitutes only the "classical" view of implementation. Alexander (in Palumbo, 1987) discerns two others: (1) implementation as an adaptive, evolutionary, and interorganizational process, and (2) implementation as one stage in an overall policy process. At least in the educational arena, implementation can no longer be seen as a separate stage in a linear process from policy to end effect.

It is nowadays understood as an adaptive, interactive process (Berman and McLaughlin, 1977), contingent upon local values, beliefs, and interests, (McDonnell, 1987; McLaughlin, 1987) as well as local means such as knowledge of the policy, capacity to respond, and adequacy of resources and technology (CPRE, 1988; Orland and Goettal, 1982). Organizational ambiguity (Nakamura, 1987) and systems inertia (Weick, 1976; 1979) intervene, and divergent "assumptive worlds" and systems of meaning block, slow, or distort the process of change (Marshall, 1988). "Successful" implementation calls for matching policy tools to intended outcomes (Elmore, 1987; McDonnell and Elmore, 1987), bargaining and adaptation over time (Berman and McLaughlin, 1977), development of shared meaning or understandings (Marshall, 1988), expanded ancillary resources and support systems (CLTES and NCRTE, 1988), and the energies of entrepreneurial local agents (Fuhrman, Clune, and Elmore, 1988).

The course of implementation depends, then, upon characteristics of both policy and field of change, and upon the interaction between them. At the local level, notes Marshall (1988), "[p]olicies are distorted during the implementation process by the loose-coupling of schooling, the actions of street-level bureaucrats, and the processes of mutual adaptation and meaning-making" (p. 101). And at the other end, policies can be more or less likely to result in desired outcomes depending upon how control is exerted (Elmore, 1980), the appropriateness of policy instruments (Elmore, 1987; McDonnell and Elmore, 1987), and the complexity and ambiguity inherent in the policy itself.

Overall, the more complex the policy, the greater the number of intervening organizational layers, the more heterogeneous and ambiguous the field environment, and the greater the gap between vision and reality, the more idiosyncratic the policy outcomes.

ED's part in the recursive, interactive implementation of LEAD can be understood in terms of the interaction of *policy specifications* and *administrative routine* (involving regulations, program announcements, competition, and monitoring) and the processes of *policy interpretation and refinement* they entailed.

Policy Specifications

The LEAD Act is a condensed statement about a problem and its solution that directs action. The problem is expressed in the law's statement of purpose:

to improve the level of student achievement in elementary and secondary schools through the enhancement of the leadership skills of school administrators . . . (U.S. Congress, 1984).

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Subsequent provisions of the law communicate a set of *policy specifications* in a series of means-ends relationships that constitute both an argument and a prescription for change: Improved student output results from better school leadership. Leadership in schools consists of the application of skills. These skills are known and can be taught (or developed). A body of knowledge (derived primarily from the literature on effective schools, effective principals, and private sector managerial excellence) is available for the job. Financial support (grants) and organizational capacity (training and technical assistance centers) provide the requisite inducements and resources to apply knowledge and bring about change. It can be expected that centers' internal capacity will have been developed to the point that capacity is self-sustaining within a period of six years at most.

These *policy specifications* set the directions and boundaries for program implementation; they also created a set of decision choices that ED had to make in the implementation process. The most important specifications were *policy instruments, program content and criteria, and institutional choice*.

According to Elmore (1987), "[a] *policy instrument* is an authoritative choice of means to accomplish a purpose" (p. 175, emphasis added). The policy instruments available to legislatures are mandates, inducements, capacity-building, and system-changing. Lacking authority to mandate or directly to change the system for administrator preparation and development, Congress combined in LEAD both *inducements and capacity-building*. The law provided for *grant funds* to be made on a competitive basis, and that awardees should establish or operate *training and technical assistance centers* capable of continuing on after discontinuance of federal funding.

The objectives or substance of policy often also dictate an "*institutional choice*," the selection of an institutional decision maker to further the desired policy aims (Clune, 1987). A given policy might well be served by any of several choices, with significant consequences for the way the policy is pursued. In this case, Congress made two kinds of institutional choice. First, it directed policy through an executive agency of the federal government (i.e., ED); second, it directed funds neither to state governments nor to individuals but to organizations serving state population—and not exclusively to organizations with one or another particular mission or expertise, but to any and all sorts. In tandem with the program content and criteria, these choices opened the way for greater collaboration and innovation but also for more conflict and institutional confusion.

The LEAD Act's *program content and criteria* read almost like a program prospectus. The Act called for programs to upgrade skills in five areas (enhancing the learning environment, evaluating school curriculum, instructional analysis, evaluating teacher performance, and a catch-all communication, problem solving, student discipline, time management, and budgeting). Nine requirements defined an extremely broad scope for center operations, ranging from conduct of training programs for new and practicing administrators, to public-private sector internships and exchanges, to establishing model administrator projects, all of which were to be made "available to school administrators from any of the local education agencies located within the State . . ." (U.S. Congress, 1984, Sec. 903(b)(1), emphasis added). A section on "general criteria" reiterated the emphasis on private sector involvement, set forth numerous provisions to secure long-term impact and self-sufficiency, imposed several conditions to ensure development of "human relations skills," and mandated project evaluations.

At the operational level, the provisions posed a variety of conflicts and contradictions. These called for decision makers at each level of implementation to make choices. At a simple financial level, the appropriated funds (and even the slightly higher authorization target) were inadequate to support the extensive programs called for: applicants could not realistically conduct the required activities within the limits of available funds. The skills list drew from ideas of effective schools/principals and instructional leadership; obligatory input from business schools, private industry, the government, and the military implied possibly quite different notions of leadership. The concept of center-based change—with centralized services, model programs, and uniform training materials—collided with the canons of school-based change, adult learning and development theory, and the latest findings concerning quality and innovation in the private sector. The call to support such practices as labor-intensive, costly assessment centers coexisted uneasily with the call for "particular emphasis upon increasing access for minorities and women to administrative positions" (U.S. Congress, 1984, Sec. 901b). The point is not that this packaging of divergent values and elements in legislative policy is unusual; it is not. The point is that implicit contradictions would call upon the LEAD program office and eventual grantees to make interpretations, choices, and refinements to the statutory ideal in the course of implementing the program.

Developing Program Regulations

Publication of regulations was the first and in some ways most important step in an overall implementation sequence that led next to promulgation of a program announcement, conduct of a grants competition, and making of awards, to monitoring and supporting the funded projects. The development and negotiation of regulations can significantly influence the course of public policy. It is at least as much a political as an administrative process, and it can be maddening, amusing, and intriguing.

Regulations are required by the Administrative Procedure Act (and other subsequent legislation) where any procedures more narrowly prescribed than the law itself are called for to implement a program. Legal awards cannot be made before publication of final regulations. Regulations for the LEAD program were published in draft for public comment September 18, 1986 (OERI, 1986a) and in final form March 24, 1987 (OERI, 1987a).

Two rather unusual, intertwined circumstances affected the implementation process at this stage: limited constituency consultation, and ED's reluctance to support the program.

It would not have been unusual for constituency organizations or Congressional committees to have solicited input or support from the Department in the development of the legislation. A modicum of communication in the initial stages of developing policy can strengthen a bill and smooth the course of its later implementation. At times, the level of communication is quite high. In this instance, consultation was limited. There is no evidence to indicate any with ED during the development of LEAD, and there certainly was none then with the eventual program office. When the program office and Hill sponsors and professional associations did begin to consult, it was not until quite late in the game because responsibility for LEAD and the signal to implement the program were not given to OERI for more than a year after the bill's enactment.

The Department did not at first support LEAD. The Department did not request funds for LEAD in its FY85 budget, and Congress did not appropriate funds for the program that year. There was a Congressional appropriation for

FY86, although again ED had asked for no funds. The Department instead requested a rescission of funds appropriated for LEAD in both FY86 and FY87. It argued that the LEAD legislation was flawed and that its objectives could be accomplished more effectively and more cheaply under the Administration's proposed Teacher Training and Improvement Act (OERI, 1987). (Congress disregarded both rescission requests.) When finally called upon to implement the program, the Department acted in good faith and energetically to do so.

It seems likely, however, that a combination of circumstances—the delay in initial implementation of the program, the Department's initial opposition to the program, and the general lack of consultation—affected the program implementation in some fashion. It surely contributed to a legacy of suspicion about ED's commitment to LEAD that nagged it all through the implementation process, and it created a certain amount of pressure to get the program going that reduced both time and options that might have been used in thinking the program through.

The final publication of regulations occurred almost two and one-half years after enactment of the law and almost one and one-half years after the initial appropriation of funds for LEAD. Three factors accounted for the passage of time. Debate within the Department over whether *new* regulations were needed or the Department's EDGAR would suffice—behind which was the omnipresent desire to conserve staff effort if possible—delayed the start of eventual drafting for several months. Then, when the actual appropriation of funds brought new urgency to this issue, closer scrutiny of the law indicated that LEAD belonged not under the Office of Postsecondary Education, where it had been assigned on paper, but under either the Office of Elementary and Secondary Education or the Office of Educational Research and Improvement (where it eventually landed). And finally, the regulations document meandered through several drafts, review and clearance of each through as many as 13 ED offices, review and response—including revision where necessary—to a long list of public comments, and clearance through the Office of Management and Budget.

OERI's task was to develop regulations that (1) reflected Congressional intent, (2) interpreted or reconciled problematic issues likely to surface during implementation, (3) referenced or incorporated appropriate provisions from other applicable ED or federal regulations, and (4) included any additional provisions necessary for implementing the program (e.g., application review criteria).

Agencies customarily interpret Congressional intent from the bill itself, from clarification provided by Members of Congress responsible for the legislation, and from the record of legislative deliberations contained in committee reports appended to the bill. In LEAD's case there was no committee report. The bill was enacted without hearings, committee discussion, or substantial floor debate. OERI established intent via legal interpretations of the statutory language provided by the Department's Office of the General Counsel, from the *Congressional Record* inset upon the introduction of an earlier, somewhat obsolete version of the bill, and through discussions with Congressional staff.

The instances where it was necessary to inquire into Congressional intent and clarify statutory provisions were few, and entailed technical, legalistic issues—hardly exalted policy matters, but the stuff of much regulatory development. In one instance, the law specified *contracts* as the funding instrument. After consultation and legal analysis the regulations were written to call for *grants*. In federal regulatory practice, a contract calls for procurement of some-

thing for the government, and government control over the contractor is strict; whereas Congress had intended to provide assistance to accomplish some purpose of the awardee, for which the less controlling and more supportive government posture afforded by a grant would be more appropriate.

In another seemingly minor but consequential instance, OERI's draft regulations changed the word "and" to "or." This was accomplished after suitable consultation and endorsement from Congress and the associations, and with a firm legal opinion that "and" can in fact mean "or." The choice of words did matter. The "and" at issue came in Sec. 903(b)(8) near the end of the list of eight services centers were to provide. Use of the word "and" made the list inclusive; "or" permitted some choice among the list of services. With less than the authorized dollar amount actually available to fund each project, centers could not reasonably be expected to carry out all eight services.

"And" lived a tranquil existence as "or" until the final draft regulation arrived for OMB clearance. OMB authorities, while readily acknowledging the perverse effects on prospective grantees of the use of "and," could not accept the legal justification for the proposed change. In the course of several telephone calls, exchanges of documents, and meetings on this and other subjects, it was finally decided to omit either word and to add a felicitously phrased condition inviting applicants to describe their proposed allocation of resources across the required services and to justify "reasons for seeking minimal or no Federal funding for any service . . ." (OERI, 1987a, Sec. 761.11(B)).

Beyond legal interpretations of statutory intent, the chief ingredient of interpretation and refinement at the agency implementation level was introduced by political conflict and negotiation. Politics enter of course with the separation of powers between legislative and executive branches. They arise as well from different interests *within* the executive branch—between ED and OMB, for example, across different offices within the Department, and between the federal and state levels of government. Three events illustrate this conflict:

(1) The LEAD Act called in two places for "particular emphasis upon increasing access for women and minorities to administrative positions" (U.S. Congress, 1984, Secs. 901(b) and 903(b)(4)). In one place the language appears merely precatory and in the other more instructive. Early drafts of the regulations implemented these provisions with several conditions that gave emphasis to women and minorities. The conditions were derived primarily from another set of ED regulations called EDGAR, which establish the general administrative provisions for the Department. While drafts of the LEAD regulations were still being revised and reviewed throughout the Department, however, the Department began to overhaul the EDGAR to bring it more into line with the current Administration's views. The revision would entail deleting some provisions relating to women and minorities. It was thereafter noted during the review and clearance process that the LEAD regulations exceeded the scope of EDGAR and should, since some of the LEAD Act's emphasis was merely precatory, be brought into correspondence with the intended changes to EDGAR. The final draft LEAD regulations retained a smaller emphasis, closer to the minimum called for by a strict reading of the law.

(2) The statute identified five skill areas for leadership development. These were listed verbatim, along with two more added by OERI, in the draft regulations sent over for OMB approval. OMB's review revealed that the inclusion of priorities contravened Administration policy, citing a recent domestic policy council memorandum, and requested that

the priorities be dropped. At issue was the Secretary's authority to identify priorities versus OMB's authority to apply policy across the entire Executive Office, each derived from a different legal basis. The confrontation might have had a different outcome had the urgency to publish regulations under pressure from Congress and constituency groups not been so great; but expediency dictated that the priorities be dropped and that the approval process proceed. (The statutory priorities were instead published as "invitational priorities" in the Department's Notice of Closing (OERI, 1986b).

(3) The Notice of Proposed Rulemaking (NPRM) (OERI, 1986a) published in September of 1986 permitted funding for centers serving only the 50 states but not the District of Columbia or any of the island commonwealths or territories. There was some logic and precedent for considering inclusion of these other entities as "states," but a careful and comprehensive legal ruling of the ED lawyers opined, in effect, that if Congress had meant to include these entities it would have said so. Publication of the NPRM unleashed a swell of protest and maneuvering by officials representing the excluded areas at home and in Congress. While the regulations were out for public comment, Congress was prevailed upon to use the Appropriations Act of 1987 (U.S. Congress, 1987) as the vehicle for amending the LEAD Act so that "the term 'State' includes the 50 States and the District of Columbia." The Department revised the final regulations accordingly. But it also determined that this amendment provided even more conclusive evidence that Congress had not originally intended to include the other entities. These areas were left in the cold pending later maneuverings described elsewhere in this issue.

Other public comment was of three sorts (described in detail in OERI, 1987a). Some commenters took exception to provisions of law (e.g., the grant period), which OERI was in no position to alter in regulations. Others challenged the Department's interpretation or approach to implementing statutory provision (e.g., insufficient emphasis to access for women and minorities). Some sought to gain endorsement for their own interpretations of certain regulatory provisions, ones presumably favorable to their cause. And some sought to place on the record objections to possible future ED deviations from Congressional intent, and thus no doubt to head them off at the pass. Some small changes were made in response, but on the whole no serious revision had been called for. The way was cleared for issuance of final regulations, and thereafter for the conduct of the grants competition, award of funds, and commencement of LEAD center operation across the country.

In ways largely hidden to the public, a piece of public policy had become law and taken a major step toward implementation as an operating program. Processes of policy interpretation and refinement engaging the Congress, constituent groups, a panoply of diverse interests in the Department of Education, the Office of Management and Budget, and interested members of the public had kneaded and massaged the policy for nearly two years. What resulted so closely resembled the original policy as to be identical, yet incorporated the subtle touches of the many human hands to work at it. Having reached its present form, this policy would be tested, confirmed, interpreted, and refined often again on its way to being made real through the stages of implementation and program operation ahead.

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