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Sanctions in Performance-Based Accountability Systems

Judith K. Mathers

During the decade of the 1990s, state educational accountability systems shifted from “procedural accountability” to “educational accountability.”¹ No longer evaluated by such arbitrary measures as the number of new books added to the school library, schools and districts became accountable for student performance through performance-based accountability systems. These systems held school and districts accountable through state assessments that incorporated incentives or rewards for high or improved student performance and sanctions or interventions for low performance. The focus of this article is the range of sanctions that states and, more recently, the federal government, has enacted, with a special emphasis on the most controversial of these—fiscal sanctions.

To understand the part that sanctions play in performance-based accountability, I first look at the design of performance-based accountability systems, identifying and defining the separate accountability components. The specific types of sanction used in state systems, as well as the federal sanctions delineated in the No Child Left Behind Act of 2001,² are then presented with their definitions. The discussion concludes with a brief analysis of the fiscal sanction of withholding state funds used in four states, followed by conclusions and questions for future research.

Design of Performance-Based Accountability Systems

Performance-based accountability systems are currently characterized by the presence of five major components. Originally, they were conceived as a general, three-part framework consisting of standards and assessments; multiple indicators; and incentives. Over time, performance-based accountability systems have grown into well-defined structures with the following components:

- Standards- statements of what students should know and be able to do.
- Assessments- instruments designed to measure how successful students are in meeting the standards. In addition, assessments must be aligned to the standards.
- Multiple indicators- measures that either directly or indirectly gauge the effect of a particular education element on student achievement.

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Indicators may be considered primary or secondary. Primary indicators activate the rewards and sanctions components of a performance-based system. Secondary indicators are collected and publicly reported but do not activate other system components.

- Rewards- awards granted to a school, district, or other entity defined in statute or regulation when student achievement exceeds either the established standard or previously reported outcomes. They are usually monetary in nature.
- Sanctions- consequences applied to districts or schools when student assessment scores fail to meet set performance standards or when scores continually fail to show gains.³

Once states have identified the performance standards or levels of student achievement that must be met, data from assessments and other indicators can be used to measure high, adequate, and low performance. Sanctions can then be applied to low-performing schools or districts.

Sanctions: The Performance-Based Accountability System Workhorse

The sanctions component of state performance-based accountability systems is primarily created in one of two ways. It may have been formulated as part of a completely new system as occurred in the Kentucky Education Reform Act (KERA) or rewritten from an existing school accreditation system, as was the case in Colorado. Whichever method is used, sanctions components have specific types or levels that are held in common across states though not all levels are present in every state system. They range in severity from a simple written warning to state takeover. The desire to avoid sanctions can be a powerful motivator for change.⁴ The fear of being labeled as a school “in decline,” “failing,” or a “priority school” may offer the sense of urgency required to advance reform in low-performing schools and districts.

Over the past decade, policymakers have begun to understand that neither the desire to improve education for students nor the fear of sanctions for failure to do so is sufficient to bring about reform. They realized that if sufficient resources, whether physical, human, or monetary, do not exist, then the existing capacity within the school or district is insufficient to facilitate the necessary reform. Support in the form of planning assistance, professional development, and additional funding are critical. As a result, the concept of capacity building became a part of performance-based accountability systems sanctions for low-performance schools. Capacity building can take many forms. For example, technical assistance might be provided in the form of professional development for principals and teachers. Additional funding, either in loans or grants, can help with building repairs and the purchase of additional textbooks and supplies for students. In many states, department of education personnel provide direct assistance in the development of district or school improvement plans.

In an analysis of state accountability policies, Ziebarth listed eleven types of sanctions present within state performance-based accountability systems.⁵ The sanction type is present for schools or districts in the number of states indicated in parentheses.

- Written warning (9 states) - A written warning is supplied when a school or district is identified as low-performing.
- Technical assistance (29 states) - In 15 of the 29 states, the state is mandated to supply technical assistance to low-performing school districts. In the other 14, assistance may be provided, but the state is not required to do so.

- Additional funding (11 states) - In five states, additional funding must be given to low-performing districts. In the other six, the state may grant additional funds, but is not mandated to do so. Funding is generally in the form of a grant or a loan.
- District/school improvement plan (36 states) - Plans are created for a school or district by the district; or as in the case of 13 states, the plan is written by another entity, such as the state department of education.

- Probation (14 states) - This designation generally refers to probationary status for a school or district as part of the accreditation system.
- Removal of accreditation (18 states) - A school or district may have its state accreditation revoked. This action may be followed by a variety of other sanction procedures.

Table 1
States with each type of sanction

Sanction Type	For Districts	For Schools
Written Warning	Alaska, Colorado, New Mexico, Pennsylvania, West Virginia	Arkansas, Kansas, New Mexico, Nevada, New York
Technical Assistance	Arkansas, Colorado, Delaware, Florida, Mississippi, Missouri, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, West Virginia, Wyoming	Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Wyoming
Additional Funding	Colorado, Mississippi, New Jersey, Pennsylvania, Rhode Island	California, Indiana, Kentucky, Maryland, Missouri, Rhode Island, South Carolina
Improvement Plan	Alabama, Arkansas, Colorado, Delaware, Florida, Iowa, Illinois, Massachusetts, Mississippi, Missouri, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, West Virginia, Wyoming	Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, Nevada, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wyoming
Probation	Colorado, Indiana, Mississippi, Missouri, New Mexico, Pennsylvania, Rhode Island, South Carolina, Tennessee	Colorado, Indiana, Maryland, Massachusetts, Missouri, Nevada, New Mexico, New York, Rhode Island, Tennessee, Vermont
Removal of Accreditation	Colorado, Delaware, Iowa, Mississippi, Missouri, New Mexico, North Carolina, Oklahoma, Rhode Island, South Carolina, West Virginia, Wyoming	Colorado, Delaware, Kansas, Louisiana, Michigan, New Mexico, New York, Oklahoma, Rhode Island, Vermont, Virginia, West Virginia, Wyoming
Funding Withheld	Florida, Illinois, Kansas, Mississippi, Rhode Island	Florida, Kansas, Louisiana, Rhode Island
Reconstitution	<i>(not applicable)</i>	Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Missouri, New York, North Carolina, Oklahoma, Rhode Island, South Carolina, Texas, Vermont
Reorganization of School District	Arkansas, Colorado, Illinois, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Rhode Island, Texas	<i>(not applicable)</i>
School Closure	<i>(not applicable)</i>	Arkansas, California, Connecticut, Maryland, Michigan, New York, Oklahoma, Rhode Island, Texas, Vermont
Takeover	Alabama, Arkansas, California, Connecticut, Illinois, Iowa, Kentucky, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, West Virginia	Alabama, Arkansas, California, Colorado, Georgia, Illinois, Maryland, Michigan, Nevada, North Carolina, Rhode Island, South Carolina, Texas, Vermont

- Withholding of state funding (6 states) - Generally this is a sanction of last resort. An analysis of four of the six states is presented in a later section.
- Reconstitution of school (19 states) - Reasons for reconstitution may include one or more of the following: low performance on state assessments; deteriorating buildings; low attendance or graduation rates; or high dropout rates. Use of this sanction usually involves creating a new school or district philosophy; development of a new curriculum; and the hiring of new staff.
- Reorganization of district (10 states) - Districts may be dissolved with schools incorporated into neighboring districts.
- Takeover of district (24 states) - Reasons for takeover may include fiscal mismanagement, inept administration, corrupt governance, or crumbling infrastructure.
- Takeover or closure of school (14 and 10 states, respectively) - The reason for takeover or closure is generally based upon academic problems identified within the school.⁶

Table 1 presents each of the types of sanction defined above, identifying the states that include each of the sanctions for schools or districts.

Sanctions Within Federal Law

On January 8, 2002, President George W. Bush signed into law the No Child Left Behind Act of 2001.⁷ Within this massive education bill is the mandate for performance-based accountability, including the requisite standards, assessments, multiple indicators, rewards, and sanctions.

Sections 1116-1117 outline the sanctions of the system. After a school has been identified as low-performing, the following, and now familiar, sanctions may be applied:

- A school plan must be developed or, in the case of an existing plan, revised.
- Technical assistance must be provided, with specific assistance in the areas of data analysis (both assessment and fiscal), professional development, and instructional strategies.
- Corrective action (reconstitution) may be taken which includes replacement of school staff; implementation of a new curriculum; a decrease in authority for school administration; appointment of an outside advisor or expert; extension of the school year or day; or restructuring of the internal organization of the school.
- If the school does not make what is considered adequate yearly progress in first cycle of corrective action (one full year), alternative methods of governance may be implemented. They include:
 - Conversion of the school to a public charter school.
 - Replacement of all or part of the staff, which may include the principal.
 - Privatization of the school, using a management company. The company must have a demonstrated record of effectiveness.
 - Takeover by the state department of education. This action must be in accordance with existing state law and must be agreed to by the state.

If a district is identified for corrective action, other specific sanctions may be applied. Again, these are present in statute or regulation in one or more states:

- Funds may be withheld from the district. Program funds may be deferred and funds to support administration may be reduced.
- Parallel to the sanctions of reconstitution and takeover:
 - A new curriculum may be implemented, which is to include necessary professional development.

- Single schools may be removed from the jurisdiction of the district and placed under alternate forms of governance and supervision.
- A receiver or trustee may be appointed by the state to manage district affairs instead of the superintendent and school board.
- The district may be restructured or abolished.
- Students may be authorized to transfer to higher performing schools in other districts with transportation provided.

The details of the Act are quite specific concerning accountability and the description of the individual components. Also, it is obvious that the content of the accountability sections has been heavily influenced by existing state statute and regulation. Federal policymakers appear to have joined state policymakers in ascribing to the theory, "...that measuring performance and coupling it to rewards and sanctions will cause schools and the individuals who work in them to perform at higher levels..."⁸ Observing how federal involvement in educational accountability will play out over the next decade will indeed be worth continuing observation and study.

It is interesting to note that the least used sanction in the states—withholding of state funding—has been included at the federal level. How this particular type of sanction has played out in the states and how it will play out at the federal level are questions for future research. However, a brief analysis of existing statutes in four states is possible at this point, and is presented in the next section.

Fiscal Sanctions: Withholding of State Funding

The sanction that allows a state to withhold state funding from a district or school identified as low-performance is among the least known and the most controversial. In addition, as stated previously, it is the sanction least often included in a state performance-based accountability systems. Ziebarth identified six states that have the authority to withhold state funding as a type of sanction.⁹ (See Table 1.) Brief descriptions of the policies from four of the states are presented below, each offering a different model for this policy option.

Florida

In the Florida performance-based accountability system, withholding of state funds is used as a sanction only if all other recommended actions intended to improve performance within a school district have failed. Specifically, funds may be withheld if: (1) The school district has failed to comply with an ordered corrective action within the timeframe specified in the action; or (2) The school board in an identified low-performing district has failed to create and implement a required improvement plan.¹⁰

Illinois

Withholding of state funds in Illinois does not appear quite as formidable as in Florida. School districts that fail to: (1) submit or obtain approval of their school improvement plans; or (2) make what the state considers a reasonable effort to implement an approved improvement plan may be subject to the withholding of state funding.¹¹ The statutory language goes on to present what are considered far more serious sanctions of removal of the school board and permanent dissolution of the school district.

Kansas

The performance-based accountability system in Kansas is unique in that the general mandate for the system occurs in statute, but the specifics of the system are housed in regulation. Sanctions may be applied to any school that does not make progress on or maintain

acceptable levels of student performance, or achieve accredited status within the system.¹² The regulation states that state funding for a district may be reduced by an amount to be added to the local property tax imposed by the local school board if such action is recommended by the state board to the legislature. Not only is state funding withheld, but the district is mandated to replace the state funding with district tax revenues, an ominous prospect for districts that are already taxing at maximum levels.

Mississippi

In Mississippi, the withholding of state funds is not tied to student performance, and therefore it may be considered a far less severe sanction than those of other states. Funds may only be withheld if a district fails to report student, school personnel or fiscal data in a timely manner necessary to fulfill state or federal requirements.¹³

A Brief Analysis of the Four Policy Models

Although all four states apply the sanction of withholding of state funds only at the district level, the level of severity of the sanction is quite different in each of the states. In Mississippi, because sanctions are not tied to student performance, complying with the law is simply a matter of getting reports in on time. Illinois sanctions appear to be tied to student performance insofar as an improvement plan must be created after the district is identified as low-performing. Drafting an improvement plan and making every effort to successfully implement it allow the district to avoid withholding of state funds; no actual improvement in student performance is required. Florida and Kansas present a much different picture. It would be easy to say that the Florida sanction appears the most severe since the statute specifically states that withholding of funds is only done after all other corrective actions have failed. Indeed, to have failed at every turn in reform and then to have funding withheld would likely erase the last shred of hope in a seemingly hopeless situation.

I would offer, however, that the situation a Kansas district might face could prove to be more difficult. Kansas has the only policy that outlines how the withheld funds are to be replaced; and because lost state funds must come from local taxes, the failure of the district would cause more than just bad publicity. It would impact the pocketbooks of the voting public. Not only would additional local funds have to be raised, but current school board members might find retaining their seat on the board more difficult in the next election cycle.

Conclusions

Performance-based accountability systems rapidly developed over the last decade and will continue to evolve during the beginning of the 21st Century. The five major components of standards, assessments, multiple indicators, rewards, and sanctions form the backbone of performance-based accountability systems design at the state level, and, with the enactment of the No Child Left Behind Act of 2001, are now present at the federal level.¹⁴ Identification of low-performing schools and districts and the desire to avoid attending sanctions serve as powerful motivators for education reform. The addition of capacity building as a part of sanctions during the last half of the past decade represents a positive step in state reform efforts to improve the achievement of all students.

The use of sanctions to motivate improvement is an integral part of both performance-based accountability systems structure and their philosophy; but if a sanction, such as the withholding of state funding, has little chance of positively impacting student performance, the

purpose of that sanction is called into question. If withholding funds is used as a motivator for schools and district to submit reports in a timely manner, as in Mississippi, the sanction would have minimal effect on students and might therefore be considered to have a positive effect. However, when funds are withheld as a severe level of sanction tied to low student performance, the effect on students may be immediate, negative, and considerable.

Further research is needed in the role of sanctions as a part of performance-based accountability systems. Of particular importance is the use of withholding of state or federal funding, as well as other fiscal sanctions not identified here. If performance-based accountability systems are to be successful in their stated purpose of improving student learning, all components of the system must contribute to that goal in a positive manner.

Endnotes

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2. U.S. Congress, No Child Left Behind Act of 2001, 107th Cong., H.R. 1 (enacted) <<http://thomas.loc.gov>>.
3. Judith K. Mathers, "Performance-Based Accountability Systems: A National Perspective," *School Business Affairs* 67:9:6-12. (September 2001).
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5. Todd Ziebarth, *Rewards and Sanctions for School Districts and Schools*, (Denver, Colorado: Education Commission of the States, 2001).
6. Ziebarth (2001); and Todd Ziebarth, *State Takeovers and Reconstitutions* (Denver, Colorado: Education Commission of the States, 2002).
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9. Ziebarth (2001).
10. Florida Statutes, Authority to Enforce School Improvement, § 229.0535(4).
11. Illinois Compiled Statutes Annotated, State Interventions, 105 5/2-3.25f.
12. Kansas Administrative Regulations, Accreditation, Article 31, § 91-31-28.
13. Mississippi Code Annotated, Establishment and Implementation of Permanent Performance-Based Accreditation System; Particular Accreditation Requirements; Accreditation Audits and Reviews; Development Program for Schools Failing to Meet Standards; Declaration of State of Emergency in School District, § 37-17-6(7).
14. U.S. Congress, No Child Left Behind Act of 2001.