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### Benefits or Harms of No Child Left Behind

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## ACCEPTANCE

This dissertation, *BENEFITS OR HARMS OF NO CHILD LEFT BEHIND*, by JUDY BLOCK, was prepared under the direction of the candidate's Dissertation Advisory Committee. It is accepted by the committee members in partial fulfillment of the requirements for the degree Doctor of Philosophy in the College of Education, Georgia State University.

The Dissertation Advisory Committee and the student's Department Chair, as representatives of the faculty, certify that this dissertation has met all standards of excellence and scholarship as determined by the faculty. The Dean of the College of Education concurs.

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## ABSTRACT

### BENEFITS OR HARMS OF *NO CHILD LEFT BEHIND*

by  
Judy Block

The No Child Left Behind Act of 2001 reauthorizes and extensively amends the Elementary and Secondary Education Act of 1965 and establishes control over the majority of federal programs and spending that affect public education. Embedded in the Act are various requirements that states and schools must adhere to as a condition of receiving federal education funds as well as harsh sanctions for failing to meet the requirements. *No Child Left Behind* notably shifts federal education policy by expanding its role into the areas of standards and assessment, accountability, curricula, discipline and administration, and providership. The Act also exacerbates tensions and blurs the line between competing ideologies of the role and nature of public education. NCLB's dominant reliance on proven research methods and statistical data, and its provisions regarding student assessment, failing schools, and parental choice open the schoolhouse door to commercial marketeers, further transforming public education into a consumer good, classrooms into marketplaces, and students and teachers into immaterial byproducts.

*No Child Left Behind's* requirements often have more than one result, with some results doing more harm than the Act's stated good. The principle of double effect (PDE) provides a lens to evaluate instances where there are two effects of a single act; that is,

PDE can explain the permissibility of an action that causes an undesired or harmful effect secondary to promoting some good end. By using philosophical analysis generally, and the principle of double effect specifically, this dissertation examines *No Child Left Behind*'s implementation requirements, specific programs, and their effects to determine the Act's benefits or harms.

The dissertation proceeds with a review of NCLB's historical context and key features, an introduction to the principle of double effect, and a discussion of democratic and market ideologies and their relationship with education. This dissertation recognizes the various populations affected by the Act, but focuses specifically on students with disabilities and the relationship of the principle of double effect to the implications of NCLB. Chapter Four extends the principle of double effect to NCLB's implementation requirements and specific programs to identify their consequences or effects. The dissertation concludes with a synthesis of the questions and problems presented by NCLB and the implications for students, teachers, public education, and our communities.

BENEFITS OR HARMS OF *NO CHILD LEFT BEHIND*  
by  
Judy Block

A Dissertation

Presented in Partial Fulfillment of Requirements for the  
Degree of  
Doctor of Philosophy  
in  
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in  
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in  
the College of Education  
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2006



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## ABBREVIATIONS

ADA	Americans with Disabilities Act
AYP	Adequate yearly progress
CEP	Center on Education Policy
CSA	Consolidated State Application Accountability Workbook
ED	Department of Education
ELL	English language learner
ESEA	Elementary and Secondary Education Act
FAPE	Free appropriate public education
IASA	Improving America's Schools Act
IDEA	Individuals with Disabilities Education Act
LEA	Local education agency
NAEP	National Assessment of Educational Progress
NCLB	No Child Left Behind
NDEA	National Defense Education Act
PDE	Principle of double effect
SEA	State education agency
SREB	Southern Regional Education Board
STWOA	School-to-Work Opportunities Act
TTT	Troops to Teachers

## INTRODUCTION

*No Child Left Behind* (NCLB) is the bipartisan education reform law designed to "change the culture of American schools by closing the achievement gap among groups of students, offering more flexibility to states, and giving parents more options and teaching students based on what works."<sup>1</sup> George W. Bush signed H.R. 1, the No Child Left Behind Act of 2001 (NCLB), into law on January 8, 2002, ending Congress's year-long effort to put his federal education reform package into place. At the Act's signing Bush declared, "[T]oday begins a new era, a new time in public education in our country. As of this hour, America's schools will be on a new path of reform, and a new path of results."<sup>2</sup> Ron Paige, then U.S. Secretary of Education, remarked, "A year ago, President Bush set out to improve every public school in this country—to ensure that students of all races, all abilities and all ages receive the education they need and deserve. Today, with the stroke of his pen, President Bush changed the culture of education in America and kept his promise to leave no child behind."<sup>3</sup> The Act bears Bush's presidential campaign

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<sup>1</sup> U.S. Department of Education, Press Release, "Spellings Announces New Special Education Guidelines, Details Workable, 'Common-Sense' Policy to Help States Implement *No Child Left Behind*" (May 10, 2006), 2.

<sup>2</sup> George W. Bush, *No Child Left Behind*. (Speech, January 8, 2002, Hamilton, Ohio) Available: <http://www.whitehouse.gov/news/releases/2002/01/20020108-1.html>. (October 17, 2005).

<sup>3</sup> U.S. Department of Education, Press Release, "Paige joins President Bush for signing of historic No Child Left Behind Act of 2001" (January 8, 2002), 1.

slogan and his belief in "our public schools and their mission to build the mind and character of every child, from every background, in every part of America."<sup>4</sup> *No Child Left Behind* echoes this sentiment in its title—Improving the Academic Achievement of the Disadvantaged—and stated purpose to "ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments."<sup>5</sup>

*No Child Left Behind* reauthorizes and extensively amends the Elementary and Secondary Education Act of 1965 (ESEA) and establishes control over the majority of federal programs and spending that affect K-12 public education. The most significant changes require states, as a condition of receiving federal education funds, to establish challenging standards and assessments in English and mathematics for all schools; to test nearly every student in nearly every grade on a regular basis for purposes of school accountability; to employ teachers who are "highly qualified," meaning demonstrated competence in subjects they teach; and to promote "informed parental choice" programs. Other provisions address, but are not limited to, programs for English language learners and immigrants, students with disabilities, school safety, technology in the classroom, school dropouts, Native American students, and charter and magnet schools.

George W. Bush enjoined Congress in his plan for education reform that, while seemingly noble in its end, may be even less so in its means. Embedded in *No Child Left*

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<sup>4</sup> George W. Bush, *No Child Left Behind* (January 2001), i. Forward to No Child Left Behind, President Bush's blueprint for education reform. Available: <http://www.whitehouse.gov/news/reports/no-child-left-behind.html>. (October 17, 2005).

<sup>5</sup> No Child Left Behind Act of 2001 (PL 107-110) §1001. Statement of Purpose.

*Behind* are sanctions for states and schools failing to meet specific achievement requirements as determined by Adequate Yearly Progress (AYP). Secretary of Education Margaret Spellings relies on and promotes using statistical research data as the foundation for guiding decisions on school reform and as the primary tool to manage public education. The Act requires an increasing percentage of students in every school to demonstrate an absolute level of achievement on tests within a given period of time, however achievement goals are not established with reference to past achievement levels or rates of achievement growth. This dissertation will argue that many schools, including some considered effective, will find themselves statistically unable to meet their achievement targets and potentially face being labeled as needing improvement, corrective actions, or possible restructuring. Teachers will face test-aligned curricula and dumbing down courses, resulting in lowering rather than raising academic standards. Students, expecting to receive an education according to the promised higher standards, may actually find themselves facing a new type of segregation as members of a class created by states and schools unwilling to face failure-by-the-number. Under NCLB, many students with disabilities and low-performing, poor, and minority students will find themselves disaggregated to the extent that their scores, like their achievements, will not be in the count. This dissertation recognizes the various populations affected by the Act, but will focus specifically on students with disabilities and the relationship of the principle of double effect to the implications of NCLB.

The dissertation proceeds in five parts. Chapter One reviews the historical context and key features of *No Child Left Behind*, with specific sections of the Act and regulatory requirements presented throughout the paper. Embedded in this overview is

the emergence of legislative shifts from being activist-oriented (making public education available and accessible to students with disabilities, low-income, rural, and minority students) to market-oriented (opening public education to private enterprise) and the companion shift from considering education as a public good to being an individual investment. Chapter Two introduces the historical development and usage of the principle of double effect (PDE) and argues its appropriateness for analyzing *No Child Left Behind*. That PDE is rooted in the moral absolutes of the Catholic Church necessarily brings to the discussion the infusion of moral language and thinking into the secular arena and, more particularly, its infusion into NCLB. Chapter Three specifically addresses the federal government's treatment of public education's changes from being student-centered to statistics-centered, shifts that, over time, have called to question the role of public and consideration of education as a public good or private investment, changes that have reinforced and legitimized the role of free market enterprise in American education. The ideological change from democratic equality to market ideology has and continues to transform education into "a consumer good, knowledge into a commodity, and schools and classrooms into marketplaces."<sup>6</sup> Chapter Four extends the principle of double effect to NCLB's specific programs and implementation requirements in an effort to identify the effects of the Act. Chapter Five synthesizes the questions and problems raised by the federal government's shift in educational ideology and the consequential implications of *No Child Left Behind* for students, teachers, public education, and our communities.

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<sup>6</sup> Patrick Shannon, *iShop, You Shop: Raising Questions About Reading Commodities* (Portsmouth, NH: Heinemann, 2001), ix.

## CHAPTER ONE – *NO CHILD LEFT BEHIND*

### **The rite of passage**

Congressional approval and Presidential signature moved George W. Bush's blueprint for education reform into action. *No Child Left Behind* reauthorizes the Elementary and Secondary Education Act of 1965 and establishes control over the majority of federal programs and spending that affect K-12 public education.<sup>7</sup> The Act, according to Stephen Metcalf, "is regarded as the most ambitious federal overhaul of public school since the 1960s."<sup>8</sup> The most significant changes require states, as a condition of receiving federal education funds, to establish challenging standards and assessments in English and mathematics for all schools; to test nearly every student in nearly every grade on a regular basis for purposes of school accountability; to employ teachers who are highly qualified, meaning demonstrated competence in subjects they teach; and to promote informed parental choice programs. Other provisions address, but are not limited to, programs for English language learners and immigrants, students with disabilities, school safety, technology in the classroom, school dropouts, Native American students, and charter and magnet schools.

The House passed the legislation 381-41 to which Rep. Major R. Owens (NY) remarked, "It is a landmark event. It is a history-making event." According to Rep. Ron

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<sup>7</sup> Elementary and Secondary Education Act of 1965 (PL 89-10).

<sup>8</sup> Stephen Metcalf, "Reading Between the Lines," *The Nation* (January 28, 2002): 1.



Wilson (WI), it was not a perfect bill, "[b]ut a bill that [was] the product of a good process...a product of much compromise and much negotiation." Rep. Marge Roukema (NJ) also acknowledged the bipartisanship and compromise that went into the legislation, noting that it had not been an easy process. However, "no one on either side ever lost sight of the goal: to ensure that every child, in every public school in America receive a quality education. This process has not been about politics. This process has been about the children who are the future of our great democracy in the foundation of our global economic leadership."<sup>9</sup> The Senate passed *No Child Left Behind* by a vote of 87-10 with Sen. John Edwards (NC) claiming, "The bill is a strong one and I commend my colleagues for recognizing that a quality public education is not a conservative or liberal goal.... We've struck the right balance by both giving more to our schools and expecting more in return." Sen. John Warner (VA) also commended the nature of Congress' work, "to forge legislation that will substantively reform elementary and secondary education in this country."<sup>10</sup>

*No Child Left Behind* follows a long list of federal legislation dedicated to offering opportunity for and access to public school education, legislation that shaped current education reform. An overview of earlier education legislation underscores its significance in understanding the shifts that moved public education from being activist-oriented and providing access to students with disabilities, low income, rural, and

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<sup>9</sup> The tallies of final passage in the House were Republican 183-33 and Democrat 198-6. Rep. Owens' remarks are in the *Congressional Record*, daily ed., December 12, 2001, H9764; Reps. Wilson's and Roukema's remarks are in *Congressional Record*, daily ed., December 13, 2001, H10085-10086.

<sup>10</sup> The tallies of the vote in the Senate were Republican 44-3 and Democrat 43-6. Sen. Edward's and Warner's remarks are found in the *Congressional Record*, daily ed., December 18, 2001, S13374-13377.

minority students to being market-oriented and opening public education to private enterprise. The legislative history also establishes the background for Chapter Three and discussion of the ideological shifts that altered consideration of education as a public good to being an individual investment and the accompanying tension between democratic ideals and market ideology.

### **History behind the Act**

Early education policy followed the concept that the federal government would play a minor regulatory and financial role and that the control and operation of public schools fell to the individual states. Allan Ornstein notes, "From the framing of the Constitution in 1788 to the mid-20<sup>th</sup>-century, the federal government was cautious in lending assistance to the states or local schools for education—in line with the majority belief that the federal government should have little to do with education, and that education was a state responsibility. Federal programs and activities touching education were passive and uncoordinated during that period."<sup>11</sup> The original Department of Education (est. 1867) focused on "collecting information on schools and teachings that would help the states establish effective school systems."<sup>12</sup>

The federal government's hands-off approach to elementary and secondary education began shifting when President Wilson signed the Smith-Hughes Act of 1917 on February 23, 1917, establishing the beginning of federal funding for public schools. In

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<sup>11</sup> Allan C. Ornstein, "The changing federal role in education," *American Education* (December 1984), 1. Available: [http://www.findarticles.com/p/articles/mi\\_m1011/is\\_v20/ai\\_3535942](http://www.findarticles.com/p/articles/mi_m1011/is_v20/ai_3535942). (October 27, 2005).

<sup>12</sup> U.S. Department of Education, "The federal role in education." Available: <http://www.ed.gov/print/about/overview/fed/role.html>. (October 24, 2005).

return for states submitting and having approved vocational education plans, the federal government provided money for agricultural, industrial, and home economics training for high school students, vocational teacher training, and teacher salaries.<sup>13</sup> The federal government's involvement in education remained limited to vocational programs until Congress passed the Servicemen's Readjustment Act of 1944. The GI Bill, as it was better known, demonstrated the federal government's first major financial commitment to education and assisted veterans returning from World War II readjust to civilian life by providing money for their education and training at educational institutions, including high schools or preparatory schools, colleges and universities, and vocational and industrial schools.<sup>14</sup> By 1956, the federal government had disbursed \$14.5 billion to more than eight million veterans related solely to the education and training portion of the GI Bill.<sup>15</sup> The next major funding from the federal government came after 1957 when the Soviet's *Sputnik* beat America's *Vanguard* into space, giving the Soviets scientific credibility and adding a new dimension to the Cold War. Congress responded to the perceived national threat by passing the National Defense Education Act of 1958 (NDEA) and enjoining America's educational system and schoolchildren in its concerns about the Nation's security and competitiveness:

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<sup>13</sup> Smith-Hughes Act of 1917 (PL 64-347) and George-Barden Act of 1946 (PL 79-586) for federal involvement in vocational training in public education.

<sup>14</sup> U.S. Veteran's Administration, "Your Answers about Education and Training—Pamphlet 7-1" (Washington, D.C., Veterans Administration, amended October 8, 1946), 3.

<sup>15</sup> U.S. Government, "Servicemen's Readjustment Act of 1944" (Washington, D.C., U.S. National Archives and Records Administration), 1. Available: <http://www.ourdocuments.gov/doc.php?=76>. (July 13, 2006).

## Title I—General Provisions

The Congress hereby finds and declares that the security of the Nation require the fullest development of the mental resources and technical skills of its young man and women. The present emergency demands that additional and more adequate educational opportunities be available. The defense of this Nation depends upon the mastery of modern techniques developed from complex scientific principles. It depends as well upon the discovery and development of new principles, new techniques, and new knowledge....[W]e will correct as rapidly as possible the existing imbalances in our educational programs which have led to an insufficient proportion of our population educated in science, mathematics, and modern foreign languages, and trained in technology.<sup>16</sup>

States, wishing to take advantage of the federal money, had to submit an educational plan for public secondary schools that included "(1) a program for testing students to identify students with outstanding aptitudes and ability, and the means of testing utilized in carrying out such program....[and] (2) a program of guidance and counseling to advise students of courses of study best suited to their ability, aptitudes, and skills."<sup>17</sup> This is the first time that, according to Joseph Newman, "America's elementary and secondary school students have marched off as the federal government has drafted them to fight a variety of enemies."<sup>18</sup> It also is the first time where standardized testing became part of the federal educational funding equation. According to Lee Anderson, "NDEA breached the ramparts of strong and effective opposition to increased federal assistance to schools,"

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<sup>16</sup> National Defense Education Act of 1958, Title I §101 (PL 85-864).

<sup>17</sup> NDEA, Title V §503.(a)(1)(2).

<sup>18</sup> Joseph W. Newman, "Politics of Education," in *America's Teachers—An Introduction to Education*, fourth edition (Boston MA: Allyn and Bacon, 2002), 334.

and paved the way for Congressional allocations of categorical aid to elementary and secondary schools for specified purposes.<sup>19</sup>

President Lyndon B. Johnson declared an "unconditional war on poverty in America," during his State of the Union address January 8, 1964, and, building on the NDEA's precedent for education funding, recommended a major assistance program for public elementary and secondary schools serving children of low income families. To that end, Johnson suggested that Congress include, "special school aid funds as part of their education program, improve the quality of teaching, training, and counseling in [the] hardest hit areas."<sup>20</sup> Congress responded by passing the Economic Opportunity Act in August 1964 that included various programs to provide job training, adult education, neighborhood youth and seniors' centers, and economic programs to attack the roots of unemployment and poverty.<sup>21</sup> EOA also established Project Head Start to assist preschool children compensate for being poor and break the cycle of poverty by providing preschool children of low-income families with a comprehensive program aimed to meet their emotional, social, health, nutritional, and psychological needs. The Civil Rights Act of 1964 stepped in to fill the legislative void following the Supreme Court's 1954 decision in *Brown v. Board of Education* and, through Title VI of the Act, opened public school doors to children previously shut out of the classroom because of

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<sup>19</sup> Lee W. Anderson, "The No Child Left behind Act and the legacy of federal aid to education," *Education Policy Analysis Archives* 13, no. 24 (April 2005): 7.

<sup>20</sup> Lyndon B. Johnson, *Annual Message to the Congress on the State of the Union*, January 8, 1964. Available: <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/640108.asp>. (October 27, 2005).

<sup>21</sup> Economic Opportunity Act of 1964 (PL 88-452).

racial discrimination.<sup>22</sup> Chief Justice Warren, writing for the Court in *Brown*, offers a glimpse of the role education plays in American society:

[E]ducation is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.<sup>23</sup>

*Brown* and the Civil Rights Act of 1964 also spearheaded other federal access legislation including the Elementary and Secondary Education Act (ESEA) of 1965 and its later amendments, the Education of Handicapped Children Act (Title VI) in 1966, and the Bilingual Education Act (Title VII) in 1968.<sup>24</sup> ESEA included a number of programs, most notably the Title I program for federal aid to disadvantaged children, to address the problems of poor urban and rural areas. President Johnson said at the Bill's signing, "By passing this bill, we bridge the gap between helplessness and hope for more than 5 million educationally deprived children."<sup>25</sup> ESEA provided states with funds to purchase

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<sup>22</sup> Civil Rights Act of 1964 (PL 88-352); Title VI §601(PL 88-352).

<sup>23</sup> *U.S. Supreme Court, Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954), 493.

<sup>24</sup> Elementary and Secondary Education Act of 1965 (PL 89-10); Education of Handicapped Children Act (Title VI) ESEA Amendments of 1966 (PL 89-750); Bilingual Education Act (Title VII) ESEA Amendments of 1967 (PL 90-247).

<sup>25</sup> Lyndon B. Johnson, "Remarks in Johnson City, Texas, upon signing the Elementary and Secondary Education Bill." April 11, 1965. Available: <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650411.asp>. (October 27, 2005).

educational materials for distribution to both public and private schools; established special supplementary educational centers and services; provided money for research and educational innovation; and offered assistance to state education departments to help them become more effective. State education systems had to comply with the provisions of ESEA in order to receive federal education dollars; however, the Act served more as a money conduit with few requirements to analyze the results of dollars spent. Congress also passed the Handicapped Children's Early Education Assistance Act in 1968 that authorized experimental programs for pre-school children with handicaps.<sup>26</sup>

From the early 1970s onward, Congress authorized and reauthorized legislation regarding individuals with disabilities and continued its commitment to providing quality education to children living in poverty. Section 504a of the Rehabilitation Act of 1973 prohibited exclusion of an individual with a disability from any program or activity receiving federal financial assistance including those pertaining to elementary and secondary education, vocational education, and postsecondary education.<sup>27</sup> The Americans with Disabilities Act (ADA) of 1990 extended the prohibition of discrimination under Section 504 to all activities of state and local governments including those that did not receive federal financial assistance.<sup>28</sup> The Individuals with Disabilities Education Act (IDEA) of 1997 extended the Education of All Handicapped Children Act of 1975 to ensure that all children with disabilities have access to "a free appropriate public education that emphasizes special education and related service designed to meet

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<sup>26</sup> Handicapped Children's Early Education Assistance Act of 1968 (PL 90-538).

<sup>27</sup> Rehabilitation Act of 1973, §504 (PL 93-112).

<sup>28</sup> Americans with Disabilities Act of 1990 (PL 101-336).

their unique needs and prepare them for employment and independent living."<sup>29</sup> IDEA provided criteria to improve the early intervention, educational, and transitional services for children with disabilities and focuses on specific teaching and learning methods for children with disabilities. The Act specified that the "federal government [has] a role in assisting state and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law."<sup>30</sup> Congress also passed the Education Amendments of 1972 that included \$149 million in categorical funding for desegregation assistance under the Emergency School Aid Act; ethnic studies under the Ethnic Heritage Act; improved education for Native American children under the Indian Education Act; and Title IX that prohibited sex discrimination in all educational institutions receiving federal funds.<sup>31</sup>

From the mid-1960s to the early 1980s, the federal government took a more active role in its commitment to and concentrated its efforts on providing all children access to public education, a process that included dramatically increasing funding for K-12 education. In 1983, the Reagan administration released *A Nation at Risk*, its educational report that, based on statistical data, purportedly detailed the failings of America's education system and the impact of those failings on the Nation's children. The report

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<sup>29</sup> The Individuals with Disabilities Education Act, Title II (d)(1)(A) (PL 105-17); Education for All Handicapped Children Act of 1975 (PL 94-142).

<sup>30</sup> IDEA, Title II (c)(6) (PL 105-17).

<sup>31</sup> Education Amendments of 1972 (PL 92-318). In 1981, Congress converted the Emergency School Aid Act (§ 701-720) into a general block grant program, effectively cutting off the only substantial source of federal funding for desegregation remedies. Congress replaced portions of ESAA with the Magnet School Assistance Program of 1984 (PL 98-377) to address school desegregation but did not fund the measure as heavily as ESAA.



recommended greater emphasis on basic subjects such as math and English, more rigorous and measurable standards, higher expectations for student performance and conduct, a longer school year, and improving teacher quality. Reagan's personal concerns—parental responsibility in education; school choice, including tax credits and vouchers; rigorous academic content focused on basics such as reading, writing, arithmetic, and history; high standards of conduct and discipline; character education; and federal responsibility in helping disadvantaged students—became the basis of the education reform movement during the 1990s, including George W. Bush's original education blueprint for NCLB.<sup>32</sup> Reagan's priorities also changed how the government measures educational success; since the mid-1980s there has been a move away from considering educational inputs, such as spending amounts and numbers of programs, to considering quantifiable test-based results to determine effectiveness. The emphasis on quantifiable success shifted the Nation into examining public education according to the market-driven standards of excellence and quality rather than Johnson's standards of equity and equality.

Congress echoed Reagan's rhetoric in the Carl D. Perkins Vocational Educational Act of 1984 that would "strengthen and expand the economic base of the Nation, develop human resources, reduce structural unemployment, increase productivity, and strengthen the Nation's defense capabilities by assisting the States to expand, improve, and update

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<sup>32</sup> The National Commission on Excellence in Education, *A Nation at Risk: The Imperative for Education Reform* (Washington, D.C.: U.S. Department of Education, 1983); George W. Bush, *No Child Left Behind* (January 2001), i. Forward to No Child Left Behind, President Bush's blueprint for education reform. Available: <http://www.whitehouse.gov/news/reports/no-child-left-behind.html>. (October 17, 2005).

high-quality programs of vocational-technical education."<sup>33</sup> Perkins required participating states to develop evaluation measures for determining the effectiveness of vocational training programs; these measures were tied to the labor market needs of the state, particularly the level of skills and basic employment competencies necessary to meet employer needs.<sup>34</sup> The 1990 reauthorization integrated vocational and academic education "to make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population."<sup>35</sup> Congress charged the states with developing measurable criteria that would

raise the quality of vocational education programs in schools with high concentrations of poor and low-achieving students; increase student work skill attainment and job placement; [match] the relevance of programs to the workplace and to the occupations for which students are to be trained, including needs in areas of emerging technologies; [and] increase linkages between secondary and postsecondary educational institutions.<sup>36</sup>

The 1998 reauthorization departed from the earlier legislation by requiring a greater commitment to accountability, performance standards, and local flexibility. This version of Perkins (Perkins III) emphasized the use of objective, quantifiable and measurable performance indicators, required states to demonstrate continuous improvement relevant to these measures, and provided sanctions for states that do not reach projected

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<sup>33</sup> Carl D. Perkins Vocational Educational Act of 1984 (PL 98-524) §1.Title.

<sup>34</sup> Ibid., Title I (B) State Organizational and Planning Responsibilities.

<sup>35</sup> Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (PL 101-392) §2. Statement of Purpose.

<sup>36</sup> Ibid., §116. State Assessment.

performance levels. It also required states to submit an annual report on how special populations involved in vocational education are faring with regard to the states' performance goals.<sup>37</sup> Perkins legislation originally served economically disadvantaged families but, over time, has expanded to include individuals with disabilities, displaced homemakers, limited English proficiency, single parents, and pregnant women. Perkins III's mandate to serve special populations challenged states since the legislation eliminated more than ten percent funding previously set aside for these individuals as well as the previously required gender equity coordinator. The legislation also added a collaboration component requiring states to "actively involve parents, teachers, and local business and labor organizations in the planning, development, implementation and evaluation of vocational and technical education programs," and mandated that Perkins services be coordinated with other federally funded workforce development services through the Workforce Investment Board.<sup>38</sup>

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<sup>37</sup> Carl D. Perkins Vocational and Technical Education Act of 1998 (PL 105-332), Title I (B) State Provisions §§122,123.

<sup>38</sup> Ibid., §122.(c)(3), (c)(6). See also Workforce Alliance, "The Workforce Alliance's Comments on Perkins Reauthorization." Available: <http://www.workforcealliance.org/policy/perkins>. (December 10, 2005). Note: President Bush released his budget request for 2006 that includes a recommendation to eliminate funding for 48 programs, including the Perkins program. Bush requested \$1.5 billion for a new High School Initiative where states could choose to continue vocational education. The Initiative also expands testing and accountability provisions under *No Child Left Behind* to improve the quality of secondary education and ensure that every student not only graduates from high school, but graduates prepared to enter college or the workforce with the skills to succeed. To this end, Bush recommends investing \$1.24 billion in competitive formula grants for states and school districts to use for vocational education, Tech-prep programs, and other purposes/ interventions, depending on state and local needs and priorities. (U.S. Department of Education, *No Child Left Behind: Expanding the Promise*, Guide to President Bush's FY 2006 Education Agenda. (February 2005, rev. March 2005)).

In September 1989, George H.W. Bush convened the Nation's governors for an educational summit during which they established six educational goals to be attained by the year 2000 that would provide federal support to state and local reform measures already underway. Bush created the National Education Goals Panel to monitor and report the progress made under "America 2000." The six goals became the basis for President Clinton's eight-point education reform package, *Goals 2000: Educate America Act*. Congress passed *Goals 2000* and the reauthorization of EASA under the new name of Improving America's Schools Act (IASA) in March 1994, sending the message that there was a national commitment "to improving education and ensuring that *all* children reach high academic standards....[b]y initiating, supporting, and sustaining coordinated school reform planning and implementation."<sup>39</sup> Congress declared "it to be the policy of the United States that a high-quality education for all individuals and a fair and equal opportunity to obtain that education are a societal good, are a moral imperative, and improve the life of every individual, because the quality of our individual lives ultimately depends on the quality of the lives of others."<sup>40</sup> *Goals 2000* and IASA began to shift the federal government's role in education from focusing on narrow categorical programs to taking a comprehensive approach to help all students succeed academically. The stated goal was to "ensure that all students learn to use their minds well, so students may be prepared for responsible citizenship, further learning, and productive employment in our

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<sup>39</sup> Goals 2000: Educate America Act (PL 103-227); Improving America's Schools Act (PL 103-882); U.S. Department of Education, "Goals 2000: Reforming Education to Improve Student Achievement, " (April 30, 1998), 1. Emphasis in original.

<sup>40</sup> IASA, Title I §1001.(a)(1).

Nation's economy."<sup>41</sup> Working from the standpoint that "all children can learn to high standards," that school-based leadership "leads to lasting improvements in student performance," that reform must be "simultaneously top-down and bottom-up," and that reform "strategies had to be locally developed by communities and States," the legislative thrust concentrated on comprehensive school reform, upgraded instructional and professional development to align with high standards, strengthened accountability, and promoted the coordination of resources to improve education for all children.<sup>42</sup> To that end, the Act established the National Education Standards and Improvement Council to examine and certify national content standards, student performance, opportunity-to-learn standards, and approve or reject states' standards.<sup>43</sup> It also created the National Skills Standards Board to develop occupational standards, assessment tools, and certification requirements for students enrolled in programs under the School-to-Work Opportunities Act of 1994 (STWOA).<sup>44</sup> STWOA established a national framework within which states could create their own school-to-work programs as part of comprehensive educational

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<sup>41</sup> Goals 2000, Title I §201.(3)(A).

<sup>42</sup> Goals 2000, Title III §301.(1), (3), (4), (5).

<sup>43</sup> Goals 2000, Title II Part B §213.(a)(1)(B); §213.(a)(2)(C); §213.(c)(1); §213.(b); §213.(e). Congress repealed the National Education Standards and Improvement Council and opportunity-to-learn standards in 1996 as part of the Omnibus Consolidated Rescissions and Appropriations Act (PL 104-134 Title VII) and during 1996-1997 sessions eliminated any remaining funding for Goals 2000's federal programs, choosing instead to fund individual State reform grants.

<sup>44</sup> Goals 2000, Title V §502.(1), (2), (3); School-to-Work Opportunities Act of 1994 (PL103-239).

reform under *Goals 2000* and aimed at providing "students portable, industry-recognized credentials...indicating mastery of skills in specific occupational areas."<sup>45</sup>

*Goals 2000*, IASA, STWOA and related legislation shifted education reform to the forefront of standards-based improvements in "teaching and learning and high student performance by connecting otherwise fragmented systems."<sup>46</sup> The legislation also shifted federal education policy from regulatory compliance to emphasis on greater flexibility for state and local education agency (SEA and LEA) involvement in exchange for greater accountability in student performance. Partnerships between families, communities, and schools became an important component of plans for student academic success and Adequate Yearly Progress (AYP) applied to school and LEA evaluations rather than individual students. The then seated mid-term Republican-controlled Congress opposed the new role that the federal government was taking in education, eliminating the National Education Standards and Improvement Council and failing to fund the remaining reform programs.

### **Provisions of the Act**

Congress' focus on standards and accountability remained after *Goals 2000* died and the more money that the federal government channeled into state educational programs, the more powerful leverage over state and local school systems it gained. *No Child Left Behind* is "the most visible incarnation of federal education policy" that, according to Lee W. Anderson, "builds on a tradition of gradually increasing federal

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<sup>45</sup> School-to-Work Opportunities Act of 1994, §3.(a)(1)(C)(i); §4.(22).

<sup>46</sup> U.S. Department of Education, "Goals 2000: Reforming Education to Improve Student Achievement, " (April 30, 1998), 1.

involvement in the Nation's public school systems [that] both resembles and differs from earlier federal education laws."<sup>47</sup> NCLB reauthorizes and renames the Elementary and Secondary Education Act originally enacted in 1965. "Although the new law retains ESEA's longstanding emphasis on improving the academic performance of disadvantaged ( i.e., poor) students, it adds significant accountability requirements for all schools and school districts that receive federal funds, not just those schools with high concentrations of poor children."<sup>48</sup> More specifically, NCLB seeks to

ensure that high-quality academic assessments, accountability systems, teacher preparation and training, curriculum, and instructional materials are aligned with challenging State academic standards so that students, teachers, parents, and administrators can measure progress against common expectations for student academic achievement [thereby] closing the achievement gap between high- and low-performing children, especially the achievement gaps between minority and non-minority students, and between disadvantaged children and their more advantaged peers.<sup>49</sup>

The most significant changes in NCLB appear in Title I that requires every state, as a condition of receiving federal funds, to establish standards and assessments in reading, mathematics, and science for grades 3-8 (annual testing in reading and math begins in 2005-2006 school year and in science during 2007).<sup>50</sup> While these requirements are consistent with earlier standards-based assessment legislation, NCLB "has turned them into a nationwide high-stakes accountability system" by "holding schools, local educational agencies, and States accountable for improving the academic achievement of

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<sup>47</sup> Anderson, *Ibid.*, 1-2.

<sup>48</sup> *Ibid.*, 3.

<sup>49</sup> NCLB (PL 107-110) Title 1 §1001.(1)(3).

<sup>50</sup> NCLB, §1111.(b)(1)(A); (1)(C).

all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education."<sup>51</sup> Schools must demonstrate, according to state-established criteria, adequate yearly progress (AYP) for all elementary and secondary students including the disaggregation of subgroups of students from major racial and ethnic groups, students with disabilities and students with limited English proficiency.<sup>52</sup> Schools failing to demonstrate AYP in improved student proficiency and narrowed achievement gaps face a series of escalating consequences: after failing AYP for two consecutive years, schools are placed in school improvement status and must develop a school improvement plan and provide the option for students to transfer to another public school within the district; after three years, schools remain in improvement status and must provide supplemental education, i.e., tutoring, services for students; after four years, schools are placed in corrective action status and may replace staff, hire outside experts, and/or implement a new curriculum; after five years, schools are placed in restructuring status and must plan for reorganization; after six years of failing to meet AYP, schools are placed in alternative governance status.<sup>53</sup> The federal government, for the first time, links education funding

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<sup>51</sup> Anderson, 3; NCLB, §1001.(1)(4).

<sup>52</sup> NCLB, §1111.(2)(A-C, E-F). AYP applies to schools and school districts, not to individual students. Schools and school districts must report their overall progress and progress regarding specific groups of students often left behind including low-income students, students with disabilities, limited English proficiency learners, and students from racial and ethnic groups. Using achievement scores from the 2001-2002 school year as a baseline, all students are expected to reach proficiency on state assessments by the 2013-2014 school year.

<sup>53</sup> NCLB, §1116.(b)(1)(D); (b)(1)(E)(i); (b)(5, 7, 8).



with sanctions for schools failing to make corrective action by authorizing the local educational agency (LEA) to arrange for alternative governance of the school. The law requires an LEA to implement one of the following:

- (i) Reopening the school as a public charter school.
- (ii) Replacing all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress.
- (iii) Entering into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school.
- (iv) Turning the operation of the school over to the State educational agency, if permitted under State law and agreed to by the State.
- (v) Any other major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance, to improve student academic achievement in the school and that has substantial promise of enabling the school to make adequate yearly progress as defined in the State plan.<sup>54</sup>

School districts and LEAs also can be considered as needing improvement based on aggregate scores and face corrective action including deferment or reduction of programmatic and administrative funding, instituting a new curriculum as determined by the state, replacing personnel, removing schools under its jurisdiction, having the state appoint a receiver or trustee to administer the functions of the school district or LEA, abolishing or restructuring the school district or LEA, or authorizing students to transfer from the failing school district or LEA to a higher-performing school in another district or LEA.<sup>55</sup>

Title I establishes two early reading programs, Reading First and Early Reading First to provide early identification and intervention of reading problems. The former program focuses on K-3 students to "ensure that every student can read at grade level or

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<sup>54</sup> NCLB, §1116.(b)(8)(B)(i-v).

<sup>55</sup> NCLB, §1116.(b)(8)(C)(i-vii).

above not later than the end of grade 3" while the latter program focuses on "early language literacy, and prereading development of preschool age children, particularly from low-income families... [t]o provide [them] with cognitive opportunities in high-quality language and literature-rich environments and skills necessary for optimal reading development in kindergarten and beyond."<sup>56</sup> The Act goes so far as defining reading and its essential components that include "phonemic awareness, phonics, vocabulary development, reading fluency, and reading comprehension."<sup>57</sup> To assure that public school students are taught by educational professionals with sound academic backgrounds, NCLB requires that Title I schools employ only teachers who are highly qualified and can demonstrate competence in the particular subjects they teach.<sup>58</sup> The Act reaches beyond Title I schools by requiring that all teachers in core academic subjects in non-Title I schools must be "highly qualified no later than the end of the 2005-2006 school year."<sup>59</sup> As defined by NCLB, teachers are considered highly qualified if they obtain a full state certification, including certification through an alternative route, and demonstrate a high level of competency in the particular subjects they teach. Competence is assumed if the teacher majored in the subject in college or demonstrated it by passing a state test, or, for existing teachers, by convincing evaluators that they know their subject areas.<sup>60</sup> Paraprofessionals hired after 2001 must have an associate's degree

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<sup>56</sup> NCLB, §1201.(1); §1221.(a)(1-2).

<sup>57</sup> NCLB, §1208.(3), (5).

<sup>58</sup> NCLB, §1119.(a)(1).

<sup>59</sup> NCLB, §1119.(a)(2).

<sup>60</sup> NCLB, §9101.(23).

or higher and must demonstrate "knowledge of and the ability to assist in instructing, reading, writing, and mathematics as appropriate."<sup>61</sup>

Title II particularly attends to preparing and training the high quality teachers mandated for under Title I by providing grants to SEAs, LEAs, and state higher education agencies to "increase student academic achievement through strategies such as improving teacher and principal quality and increasing the number of highly qualified teachers in the classroom and highly qualified principals and assistant principals in schools; and hold local educational agencies and schools accountable for improvements in student academic achievement."<sup>62</sup> To that end, states and SEAs may provide grants or contracts to for-profit or non-profit entities for "reforming teacher and principal certification or licensing requirements to ensure that teachers have the necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach; principals have the instructional leadership skills to help teachers teach and students learn; teacher certification or licensing requirements are aligned with challenging State academic content standards; and teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students meet challenging State student academic achievement standards."<sup>63</sup> Furthermore NCLB encourages states to develop programs that

establish, expand, or improve alternative routes for State certification of teachers and principals, especially in the areas of mathematics and science, for highly qualified individuals with a baccalaureate or master's

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<sup>61</sup> NCLB, §1119.(c)(1)(B); (c)(1)(C)(ii).

<sup>62</sup> NCLB, Title II §2101.(1), (2).

<sup>63</sup> NCLB, §2113.(c)(1).

degree, including mid-career professionals from other occupations, paraprofessionals, former military personnel, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective teachers or principals.<sup>64</sup>

Two of the Act's innovations to attract and retain quality teachers are Troops-to-Teachers and Transition to Teacher programs. Troops-to-Teachers is administered by the Secretary of Defense through funding transferred by the Secretary of Education, to assist former military personnel "obtain certification or licensing as elementary, secondary, vocational or technical teachers, and to [help them] become highly qualified teachers," as well as assist in their placement in Title I schools.<sup>65</sup> The Transition to Teaching program is designed "to recruit and retain highly qualified mid-career professionals and recent graduates of an institution of higher education, as teachers in high-need schools, including recruiting teachers through alternative routes to certification."<sup>66</sup> Furthermore, NCLB encourages states to develop and expand "alternative routes to certification that enable individuals to be eligible for teacher certification within a reduced period of time relying on the experience, expertise, and academic qualifications of an individual, or other factors in lieu of traditional course work in the field of education."<sup>67</sup>

Title II also establishes a number of programs to enhance student academic achievement as well as specialized curriculum programs. The Education for Democracy Act program seeks "to improve the quality of civics and government education by

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<sup>64</sup> NCLB, §2113.(c)(3).

<sup>65</sup> NCLB, §2302.(b)(1-2); (c).

<sup>66</sup> NCLB, §2311.(1).

<sup>67</sup> NCLB, §2311.(2).

educating students about the history and principles of the Constitution of the United States and to foster civic competence and responsibility."<sup>68</sup> The Act specifically provides for the We the People program "to carry out activities to enhance student attainment of challenging academic content standards in civics and government and to provide a course of instruction on the basic principles of the Nation's constitutional democracy and history of the Constitution," and the Teaching American History program "to promote the teaching of traditional American history in elementary and secondary schools as a separate academic subject (not as a component of social studies)."<sup>69</sup> Congress addressed the digital divide to ensure "that every student is technologically literate by the time the student finishes the eighth grade, regardless of the student's race, ethnicity, gender, family income, geographic location, or disability."<sup>70</sup> The Enhancing Education Through Technology Act provides "assistance to States and localities for implementation and support of a comprehensive system that effectively uses technology in elementary and secondary schools to improve student academic achievement, encourages public-private partnerships to increase access to technology, integrates technology effectively into curricula and instruction aligned with State academic content and student academic achievement standards, and supports the development and utilization of distance learning."<sup>71</sup> NCLB authorizes the Read-to-Learn Television program to

facilitate the development, directly or through contracts with producers

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<sup>68</sup> NCLB, §2341; §2342.(1-2).

<sup>69</sup> NCLB, §2344.(a)(1)(A)(ii, iii); §2351.(a)(1).

<sup>70</sup> NCLB, §2401.(b)(2)(A).

<sup>71</sup> NCLB, §2401.(a)(1,2,4,6).

of children and family educational television programming, of educational programming for preschool and elementary school children, and the accompanying support materials and services that promote the effective use of such programming...that is specifically designed for nationwide distribution over public television stations' digital broadcasting channels and the Internet.<sup>72</sup>

Title III focuses on language instruction for limited English proficient and immigrant students to ensure that they can "meet the same academic content and achievement standards as all children are expected to meet."<sup>73</sup> Title IV, entitled 21<sup>st</sup> Century Schools, authorizes or reauthorizes several programs including Safe and Drug Free Schools "to support programs that prevent violence in and around schools; that prevent the illegal use of alcohol, tobacco, and drugs; [and that] foster a safe and drug-free learning environment that supports student academic achievement."<sup>74</sup> LEAs applying for funding under this section must, as part of a comprehensive plan

for keeping schools safe and drug-free [include] effective school discipline policies; security procedures; prevention activities; a crisis management plan; [and] a code of conduct policy for all students that clearly states the responsibilities of students, teachers, and administrators in maintaining a classroom environment that allows a teacher to communicate effectively with all students in the class, allows all students in the class to learn, has consequences that are fair, and developmentally appropriate, and considers the student and the circumstances of the situation, and is enforced accordingly.<sup>75</sup>

NCLB also provides for education and training programs to reduce and prevent hate crimes and improve the conflict resolution skills of students, teachers, and administrators,

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<sup>72</sup> NCLB, §2431.(a)(1)(B,C)

<sup>73</sup> NCLB, Title III §3102.(1).

<sup>74</sup> NCLB, Title IV §4002.

<sup>75</sup> NCLB, §4114.(7)(A-E).

and mentoring programs for children at risk of failing or dropping out of school, or involved in criminal or delinquent activities, or who lack strong positive role models.<sup>76</sup>

Title IV's Gun-Free School's Act requires schools to expel a student for at least one year if he or she brings to or possess' a firearm at school and to report the student to the state, and components of the 21<sup>st</sup> Century Community Learning Centers provides before-and-after-school services to students and their families that include academic enrichment activities to help students in low-performing schools meet standards in core academic subjects, counseling programs, art/music/recreation programs, etc., to reinforce and complement the regular academic program.<sup>77</sup>

Title V provides funding for Innovative Programs implemented by SEAs and LEAs that support education reform and school improvement; meet the needs of at-risk students; and improve school, student, and teacher performance development activities and reduce class size.<sup>78</sup> Parental Choice is preserved through provisions for

expanding the number of high-quality charter schools across the Nation and offering grants to private, non-profit organizations and governmental entities for innovative credit initiatives to help charter schools acquire, construct, or renovate facilities; voluntary public school choice programs to fund transportation services or costs of students traveling to and from the school they choose to attend, and tuition transfer costs; and magnet schools assistance in an effort to continue to voluntarily desegregate and diversify schools, to foster meaningful interaction among students of different racial and ethnic backgrounds, and to ensure that all students have equitable access to a high quality education.<sup>79</sup>

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<sup>76</sup> NCLB, §4123.(b)(1); §4130.

<sup>77</sup> NCLB, §4141.(b)(1), (d)(2); §4201.(a)(1-2).

<sup>78</sup> NCLB, Title V §5101.(a)(2,4,5).

<sup>79</sup> NCLB, §5201.(3); §5242.(a); §5301.(a)(4)(A-C).

Congress' concern for character education led it to include provisions for programs that integrate "secular character education into the curricula and teaching methods [that] may include caring; civic virtue and citizenship; justice and fairness; respect; responsibility; trustworthiness; giving; [and] any other elements deemed appropriate."<sup>80</sup> The concern for class size developed into authorization for creating Smaller Learning Communities in "collaboration [with] community agencies, organizations, and businesses."<sup>81</sup> These learning communities may be freestanding or "exist as a school-within-a-school....[and] students are not placed according to ability or any other measure, but are placed at random or by their own choice, and not pursuant to testing or other judgments."<sup>82</sup> "To help prepare young children for reading and to motivate older children to read," the Act establishes and implements a "model partnership between a governmental entity and a private entity [Reading is Fundamental (RIF)] that includes the distribution of inexpensive books to young and school-age children."<sup>83</sup> Targeted populations for RIF are "low-income children, particularly in high-poverty areas; children with disabilities; foster children; homeless children; migrant children; children without access to libraries; institutionalized or incarcerated children; and children whose parents are institutionalized or incarcerated."<sup>84</sup> Congress addressed the "special education needs of gifted and talented students" by authorizing funds for

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<sup>80</sup> NCLB, §5431.(b)(2)(B); (c)(2)(A-H).

<sup>81</sup> NCLB, §5441.(a); (b)(5).

<sup>82</sup> NCLB, §5441.(b)(9,13).

<sup>83</sup> NCLB, §5451.(a)(b).

<sup>84</sup> NCLB, §5451.(c)(3)(A-I).



Establishing and operating model projects and exemplary programs for serving gifted and talented students, including innovative methods for identifying and educating students who may not be served by traditional gifted and talented programs (such as summer programs, mentoring programs, service learning programs, and cooperative programs involving business, industry, and education); [i]mplementing innovative strategies, such as cooperative learning, peer tutoring, and service learning; [and] [p]roviding funds for challenging, high-level course work, disseminated through technologies (including distance learning), for individual students or groups of students in schools and local educational agencies that would not otherwise have the resources to provide such course work.<sup>85</sup>

The Act also authorizes that "provision is made for the equitable participation of students and teachers in private nonprofit elementary and secondary schools."<sup>86</sup> Title V authorizes other programs, many of them provided by private or nonprofit entities, designed to assist elementary and secondary students and teachers. These include Elementary and Secondary School Counseling Programs, Star Schools, Ready to Teach, Foreign Language Assistance Program, Carol White Physical Education Program, Community Technology Centers, Excellence in Economic Education, Arts in Education, Healthy High-Performance Schools, and programs related to the Women's Educational Equality Act.<sup>87</sup>

Title VI provides for several programs under the guise of flexibility and accountability to develop state academic assessments and standards, statewide reporting systems, and means to obtain and report student and school achievement.<sup>88</sup> This section establishes controls and assistance measures to ensure that states are making adequate

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<sup>85</sup> NCLB, §5462; §5464.(b)(3,4,7).

<sup>86</sup> NCLB, §5466.

<sup>87</sup> NCLB, §5421; §5471; §5481; §5491; §5501; §5511; §5531; §5551; §5581; §5611.

<sup>88</sup> NCLB, Title VI §6111.(1-2).

yearly progress and to inform Congress of those states not making AYP or not meeting annual measurable achievement objectives.<sup>89</sup> Part B focuses on the needs of small rural school districts, especially those with a large population of low-income students. Funds under this section can be used for teacher recruitment and retention, teaching professional development, educational technology (software and hardware), parental involvement activities, and other activities authorized by earlier sections of the Act.<sup>90</sup> Part C defines the roles of the federal government and amends the National Education Statistics Act of 1994 (20 U.S.C. 9010) regarding curricula and assessments under National Assessment of Education Progress (NAEP). Regarding the federal government's role, it will not "mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction to receive funds under this Act."<sup>91</sup> The NAEP will

conduct a national assessment and collect and report assessment data on student academic achievement in public and private elementary and secondary schools at least once every 2 years in grades 4 and 8 in reading and mathematics; in reading in mathematics in grade 12 in regularly scheduled intervals; [and] in grades 4, 8, and 12 in public and private schools in regularly scheduled intervals in writing, science, history, geography, civics, economics, foreign languages, and arts.<sup>92</sup>

Furthermore, the NAEP will provide information on the academic progress of special groups of students by "race, ethnicity, socioeconomic status, gender, disability, and limited English proficiency."<sup>93</sup>

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<sup>89</sup> NCLB, §6161; §6163; §6164.

<sup>90</sup> NCLB, §6222.(a).

<sup>91</sup> NCLB, §6301.

<sup>92</sup> NCLB, §411.(a); (b)(2)(B-D).

Title VII organizes programs for Indian, Native Hawaiian, and Alaska Native education; Title VIII addresses the impact aid program regarding funds for LEAs affected by federal property acquisition or parents living/working on a non-taxpaying federal installation.<sup>94</sup> Title IX addresses additional statutory and administrative issues, including definitions, flexibility provisions for specific funds, and waivers. This title also provides for diverse issues such as average daily attendance; equitable services and benefits for private school students and teachers; school prayer; prohibition for using funds to develop or distribute materials or operate programs or courses that promote homosexual or heterosexual activity or contraceptive distribution; military recruiters' access to secondary school students names, addresses, and telephone listings; prohibitions against federally sponsored national tests for students and teacher certification; and policies governing the transfer of students attending a "persistently dangerous public elementary of secondary school" to a safe school within the LEA, including a public charter school.<sup>95</sup> Title X repeals, redesignates, and amends other related statutes; provides for the education of homeless children, including preschool children; and

declares that the Federal Government has the sole responsibility for the operation and financial support of the Bureau of Indian Affairs funded school system that it has established on or near Indian reservations and Indian trust lands throughout the Nation for Indian children...for meeting the unique educational and cultural needs of those children...[and] [t]o ensure that Indian students are provided with educational opportunities that equal or exceed those for all students in the United States.<sup>96</sup>

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<sup>93</sup> NCLB, §411.(G).

<sup>94</sup> NCLB, Title VII §7101; Title VIII §801, §802.

<sup>95</sup> NCLB, Title IX §9101; §9501; §9524; §9526.(a)(1,4); §9528.(a)(1); §§ 9529.(a), 9530.(a); §9522.

<sup>96</sup> NCLB, Title X §§1011, 1021, 1025; §1031; §§1120, 1121.(a)(1).

Part F provides for Preparing Tomorrow's Teachers to Use Technology and authorizes funds to "assist consortia of public and private entities to carry out programs that prepare prospective teachers to use advanced technology [and] to improve the ability of institutions of higher education to carry out such programs."<sup>97</sup> Congress also addressed the concerns of student privacy and parental rights, giving parents the right to inspect any instructional material used in the educational curriculum "regardless of its format, including printed or representational materials, audio-visual materials, and materials in electronic or digital formats (such as materials accessible through the Internet). The term does not include academic tests or academic assessments."<sup>98</sup>

*No Child Left Behind* addresses many previously legislated aspects of public elementary and secondary education while markedly departing from the earlier concept of limited federal involvement through numerous additions pertaining to assessment, accountability, teacher qualification, and funding for private enterprise in public education. NCLB seemingly abandons the traditional opposition to the expansion of federal involvement in schools and its ideological and practical impact will be developed in more detail in later chapters of this dissertation.

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<sup>97</sup> NCLB, §221(a), amends Title II of the Higher Education Act of 1965.

<sup>98</sup> NCLB, §1061.(c)(1)(C)(i); (c)(6)(A).

## CHAPTER TWO—PRINCIPLE OF DOUBLE EFFECT

Making decisions and resolving conflicts are part of our everyday lives and social relationships. Sometimes the choices are clear, sometimes ambiguous, and sometimes conflicting in that they seem to bring about both something good and some sort of evil or harm. Anyone who has felt the temporary ill-effects of a flu shot or pain after having a tooth pulled understands that the physician or dentist did not intend to cause harm but acted only to produce good results, i.e., alleviate future illness and suffering. The physician's and dentist's intended actions resulted in two effects, one good and one harmful that can be discussed and evaluated in terms of the principle of double effect (PDE). PDE serves as a guideline for determining when it is morally permitted to engage in an action that causes harm as a result of promoting or pursuing something that is otherwise good. Alison McIntyre notes,

The doctrine (or principle) of double effect is often invoked to explain the permissibility of an action that causes a serious harm as a side effect of promoting some good end. It is claimed that sometimes it is permissible to cause such a harm as a side effect (or "double effect") of bringing about a good result even though it would not be permissible to cause such a harm as a means to bringing about the same good end.<sup>99</sup>

The principle of double effect is rooted in the moral absolutes of the Catholic Church and natural law thinking of Thomas Aquinas. In the *Summa Theologica*, Aquinas

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<sup>99</sup> Alison McIntyre, "Doctrine of Double Effect," *The Stanford Encyclopedia of Philosophy* (Summer 2005 edition), Edward N. Zalta, ed. Available: <http://plato.stanford.edu/archives/sum2005/entries/double-effect>. (December 12, 2005).

presents PDE within the dilemma of violating the moral absolute "do not kill" in cases of self-defense:

Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention. Accordingly, the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful, seeing that it is natural to everything to keep itself in "being", as far as possible.<sup>100</sup>

Killing in self-defense produces two effects, the first being the intended good effect of saving one's own life and the second effect being the incidental or unintended harm or evil effect of killing the attacker. In cases of self-defense or any situation where an individual's action may result in two effects, a good effect and an evil effect, the question arises whether or not an act is permitted. Following Aquinas, certain conditions must be met before proceeding with such an action. First, the action must be a good action, or at least morally neutral and independent of the act's consequences, and cannot itself be an evil act as doing evil to achieve good is morally unjustified. Even though an individual sees that he is about to perform a good action that also will result in an evil effect, it has to be the good action, the good moral logic that individual is choosing and not the bad or evil effect. Second, an individual cannot intend the evil effect. She sees that the action is going to have two effects but the act itself must be good and the only thing she intends is the good effect. Third, the good effect must proceed directly from the action and not from the evil effect as this would involve doing evil to achieve good. This condition relates back to the second condition that an individual never intend an evil effect. In Aquinas' account, the individual only acted in self-defense to stop the attacker. Had the

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<sup>100</sup> Thomas Aquinas, *Summa Theologica* II-II, q.64, art. 7.

individual intended to kill the attacker, killing the attacker would be unethical. That the attacker's death was not the means by which the individual saved his own life, but the secondary effect of a good act, renders the act morally permissible.

Aquinas attaches a fourth provision to an otherwise legitimate act having met the first three conditions; the act itself must be proportionate. Aquinas writes:

And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end. Wherefore if a man, in self-defense, uses more than necessary violence, it will be unlawful: whereas if he repel force with moderation his defense will be lawful because it is lawful to repel force by force, provided one does not exceed the limits of blameless defense.<sup>101</sup>

Although Aquinas considers self-defense as presenting two effects, the first a good effect of saving one's life and the second evil effect of exacting violence against an aggressor, he also asserts that, for an act to be morally justifiable, an individual cannot intend the evil effect and, the act itself must be proportionate. Proportionality embodies the moral obligation to minimize evil and charity becomes a key element of considerations under PDE. Timothy Renick explains, "If one is to be true to the exaction of charity, [proportionality] can entail nothing less. Infused charity demands the perfection of all human acts. If one faces two options, both of which create more good than evil, one must choose that option which creates the most good. To act otherwise is to choose (and hence to intend) the commission of some degree of avoidable evil."<sup>102</sup> Proportionality requires an individual to make a decision in instances where an act produces both good and evil effects by weighing the greater good or lesser evil of all other effects the act produces.

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<sup>101</sup> Ibid.

<sup>102</sup> Timothy Renick, "Charity Lost: The Secularization of the Principle of Double Effect in the Just-war Tradition," *Thomist* 58, no.3 (July 1994): 449.

Paul Ramsey describes this weighing of effects as "a prudential estimate of the consequences to see whether there is in the good effect sufficiently grave reason for also indirectly producing the evil effect. . . . While an effect cannot justify any means, one effect can justify another effect because of the greater good or lesser evil in one than in the other."<sup>103</sup> Proportionality arises in situations where the single intent results in two effects (ends), one intended and the other unintended, and when the intent is singularly good and the resulting good outweighs any resulting evil. From this the "moral obligation to minimize evil emerges as implicit in the very use of the term proportionate," and using a means greater than necessary to resolve a situation is always wrong.<sup>104</sup> The emphasis here is on charity and the attached expectation that individuals "will always seek the least evil effects in any of their actions."<sup>105</sup>

The use of PDE is not limited to theories of moral absolutism or Catholic theologians and plays a significant role in many situations involving difficult decisions. It "provides a strategy for resolving a certain kind of moral conflict [when] our choices result in harm to us or others even as, at the same time, they benefit us or others."<sup>106</sup> According to Joseph Boyle, "double effect has come to play an important role in non-Catholic applied ethics in several areas, notably thinking about the morality of warfare and about medical ethics—in virtually every area of bioethics from abortion and other

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<sup>103</sup> Paul Ramsey, *The Just War* (Savage, MD: Littlefield Adams Quality Paperbacks, 1968, 1983), 155.

<sup>104</sup> Ibid.

<sup>105</sup> John Berkman, "How Important is the Doctrine of Double Effect for Moral Theology? Contextualizing the Controversy," *Christian Bioethics* 4, no.2 (1997): 96.

<sup>106</sup> Gary Chartier, "The Role of Double Effect: a Valuable Contemporary Resource," *Update* 16, no.4 (December 2000): 1.



'Catholic' issues to euthanasia, withholding treatment, and concealing information."<sup>107</sup> Its

most familiar application is in the field of medical ethics where PDE is used to distinguish between permissible and impermissible procedures.<sup>108</sup> Gene therapy, palliative care, pharmaceutical research, separating conjoined twins, and embryonic stem cell research are only a few biomedical areas utilizing PDE as ethical guidelines. "In clinical situations in which a proposed intervention is known to have both negative and positive consequences, clinicians often appeal to the principle of double effect as justification for their choice."<sup>109</sup> Two familiar scenarios where PDE is the baseline of ethical consideration concern the case of a pregnant woman diagnosed with uterine cancer and the care of terminally ill patients. In the first scenario, the pregnant woman with uterine cancer considers terminating the pregnancy in order to save her own life. The principle of double effect allows the woman to undergo a hysterectomy to remove the life-threatening cancerous uterus, even though the procedure results in the death of the fetus, because the death of the fetus is not directly intended. Conversely, PDE prohibits physicians from performing a therapeutic abortion to save the woman's life

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<sup>107</sup> Joseph Boyle, "Intentions, Christian Morality, and Bioethics: Puzzles of Double Effect," *Christian Bioethics* 3, no.2 (1997): 87.

<sup>108</sup> See Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 5<sup>th</sup> ed. (New York: Oxford University Press, 2001), particularly their discussion of double effect at 128-133; Timothy Quill, Rebecca Dresser, and Dan Brook, "The Rule of Double Effect—A Critique of Its Role in End-of -Life Decision Making," *New England Journal of Medicine* 337, no. 24 (Dec. 11, 1997): 1768-1771; AB Shaw, "Two Challenges to the Double Effect Doctrine: Euthanasia and Abortion," *Journal of Medical Ethics* 28 (2002): 102-104; Brynjulv Norheim, Jr., "Genetics: Can Moral Theology Help," *Studia Theologica* 57 (2003): 36-48; James F. Keenan, "The Function of the Principle of Double Effect," *Theological Studies* 54 (1993): 294-315; Susan Anderson Fohr, "The Double Effect of Pain Medication," *Journal of Palliative Medicine* 1 (1998): 315-328.

<sup>109</sup> Judith Kennedy Schwarz, "The Rule of Double Effect and Its Role in Facilitating Good End-of-Life Palliative Care," *Journal of Hospice and Palliative Nursing* 6, no.2 (April-June 2004): 125.

because the death of the fetus is directly intended and is morally impermissible. That PDE allows the fetus' death via the hysterectomy but disallows it via an abortion arises from the principle's conditions that saving the woman's life is a good act, the only intention is the act of saving the woman's life, and the good effect of saving her life proceeds directly from removing the cancerous uterus and not from the harmful effect of the fetus' death, as this would involve doing harm to achieve good and that is morally unjustified.

The second medical situation involves treating profound pain experienced by many terminally ill patients. Euthanasia is still prohibited in most states and physicians are barred from actively participating in a patient's death.<sup>110</sup> Euthanasia also is an illegitimate act according to PDE as the intent and end of a physician's action is the patient's death. However, PDE does not preclude a physician from administering high doses of pain-killing drugs to relieve the individual's intense pain, even if doing so hastens death. Such conduct is permissible under PDE because death occurs as the unintended effect of the physician administering drugs solely to relieve suffering. As in the case of the pregnant woman with uterine cancer, PDE does not justify using the evil or harmful effect as the means to the good effect which, in this case, would be giving the

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<sup>110</sup> Oregon is the only U.S. state allowing doctor-assisted suicide. Voters approved the Death with Dignity Act in 1994 (it survived a repeal referendum in 1997) that permits a terminally ill patient to obtain a prescription for lethal drugs for self-administration after being certified by two doctors that he only has six months to live and is of sound mind. See Oregon Rev. Stat. §§127.800-995. The U.S. Supreme Court upheld Oregon's right to determine medical practices within its borders on January 17, 2006, noting that "the structure and limitations of federalism allow the States 'great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.'" *Gonzalez v. Oregon*, 546 U.S. \_\_ (2006) 23, citing *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 756 (1985).

patient large enough doses of pain-killing drugs to bring about death as a means to end suffering.

Soldiers, police officers, and firefighters also apply PDE in the course of doing their jobs yet may be unaware that the choices they make are consistent with the principle's conditions. Police and firefighters routinely find themselves in situations where there is potential for themselves dying (evil effect) as the result of protecting the public (good effect). The police officer who is killed while attempting to capture an armed drug dealer or the firefighter who responds to a two-alarm blaze and falls through the floor while fighting the fire both demonstrate situations where the individuals do not intend their own deaths, i.e., to commit suicide which would be evil, but only the intended good of stopping the criminal or saving the building. Soldiers are in a similar position when they place themselves on a live grenade or detonate a land-mine to protect others from the devastating effects of the munitions; they too are not committing suicide but rather intending to save the lives of others with the loss of their own lives being the secondary, unintended evil effect. The security guard who shoots and kills an armed bank robber who has taken a hostage presents another situation involving double effect. The guard intends to save the life of the hostage but, in doing so, kills the armed robber. The guard does not intend the evil effect nor does he even accept the proposal that includes the gunman's death as that would mean committing an illegitimate bad or evil act to obtain the hostage's safety. His sole intent is the good result of removing the hostage from harm's way with the unintended death of the gunman. That the good effect of saving the hostage's life does not proceed from the evil effect of the gunman dying

renders the act of killing the gunman morally permissible according to the conditions of PDE.

PDE also plays a part in military action as part of the two-pronged conditions of the Just War theory. Just War theory, originally formulated by Augustine and Aquinas and refined by various other theorists, focuses on the theoretical concepts of doing war; *jus ad bellum* establishes the justifiable recourse to war while *jus in bello* establishes the conduct and means used in war.<sup>111</sup> The theory's conditions not only help those involved planning wartime actions to determine if an act is morally permitted, that is, doing war justly, but also opens these actions up for moral scrutiny by individuals not directly involved. "The tradition has been appealed to by journalists and politicians as if it were common knowledge as a basis for making (denying) the claim that the war should go on."<sup>112</sup> Public familiarity with Just War language and its *jus in bello* conditions pertaining to double effect has grown since World War II through analyses of military action, particularly the carpet bombings of Dresden, the use of atomic bombs against Hiroshima and Nagasaki, and the obliteration bombing of civilian areas in Vietnam. The

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<sup>111</sup> For early formulations of Just War theory see, Augustine, *De Libero Arbitrio Voluntatis*, (Charlottesville, VA: University of Virginia, 1947) and *The City of God*, XIX (London: Dent, 1940); Thomas Aquinas, *Summa Theologiae*, II-II q.40, q.64. For modern formulations see, G. E. M. Anscombe, "War and Murder" and "Mr. Truman's Degree" in *The Collected Philosophical Papers of G. E. M. Anscombe*, vol. 3, *Ethics, Religion and Politics* (Oxford: Basil Blackwell, 1981), 51-71; James T. Johnson and George Weigel, *Just War and the Gulf War* (Lanham, MD: Ethics and Public Policy Center, 1991); James T. Johnson, *Just War Tradition and the Restraint of War* (Princeton, NJ: Princeton University Press, 1981); Paul Ramsey, *War and the Christian Conscience* (Durham, NC: Duke University Press, 1961) and *The Just War* (Savage, MD: Littlefield Adams Quality Paperbacks, 1968, 1983); Michael Walzer, *Just and Unjust Wars*, second ed. (New York: Basic Books, 1992).

<sup>112</sup> John Howard Yoder, "The 'Just War' Tradition: Is It Credible?" *The Christian Century* (March 1991): 295.

Gulf War, ongoing Israeli-Palestinian conflict, and the present military action in Iraq keep PDE at the center of discussions concerning what are just and unjust actions in modern warfare. Doing war justly, *jus in bello*, requires consideration of PDE's conditions of discrimination and proportionality with all considerations needing to be satisfied for a given act to be acceptable. Discrimination pertains to the killing of noncombatants and establishes a clear distinction between killing that is directly intended and directly done and killing that is permitted only if it is directly done by the same action intended for legitimate targets. This condition requires that an evil never be an end or means to an end and that evil can never be intended as either a means or an end. Proportionality allows for situations where killing of noncombatants may be permitted through justification of one good or evil effect by weighing the greater good or lesser evil from all other effects the act produces. John Langan notes:

The teaching of just-war principles in the U.S. military has focused on the *jus-in-bello* principle of noncombatant immunity or discrimination. According to this principle, appropriate targets for fire are combat soldiers, military installations, communications and transportation facilities that can be used for military purposes, arms factories and storage facilities; inappropriate targets are chaplains and medical personnel, Red Cross vehicles, hospitals, and civilians generally. The focus is on categories of persons who should not be targeted and who are not to be killed directly.<sup>113</sup>

Strategic and carpet bombing are familiar examples of military application of PDE. The classic case of strategic bombing involves targeting a major chemical or weapons factory located near a school or other high-civilian area. The intended end of the action is the destruction of the factory and stopping the enemy from producing more weapons; the destruction of the school and deaths of noncombatants are not part of the

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<sup>113</sup> John P. Langan, "The Just-War Theory After the Gulf War," *Theological Studies* 53, no.1 (1992): 110.

intended end and occur as a secondary effect of the action. That the action does not aim at intentionally harming the noncombatants or civilian property as its end, the harm to the noncombatants is neither a means nor proximate means of achieving the end, and the secondary destruction is proportionate to the end, strategically bombing the chemical or weapons factory is permissible according to PDE. During the Gulf War, Saddam Hussein hid weapons factories in schools and hospitals to deter U.S. forces from destroying them. The bombing of these facilities was permissible under PDE because the intention of the bombing was to destroy the weapons factories and not the killing of students, teachers, doctors, nurses, or patients; the killing of the noncombatants was not the means to achieve the end of destroying the factories; and destroying the weapons factories was proportional to the deaths of the noncombatants given the strategic importance of defeating Saddam's forces. Carpet, or terror, bombing involves directly attacking civilian areas, with massive destruction to buildings and infrastructure and the indiscriminate killing of noncombatants, to decrease citizen moral. Terror bombing is morally impermissible according to PDE because attacking nonmilitary targets is not a good act, the action intentionally aims at harming noncombatants and civilian property as an end, the death and destruction from terror bombing is both a means and an end, and the result is not proportionate because killing the noncombatants and destroying the infrastructure necessary to maintain a quality of life is disproportionate to the decrease in citizen moral. The destruction of Dresden, Hiroshima, and Nagasaki does not meet the conditions of PDE because, despite the intention to instill fear (good effect) in the general population, allied forces also intended to kill thousands of noncombatants (bad effect). Killing noncombatants and destroying the cities' infrastructure was the means to the

military's end of instilling fear and demoralizing the populations of those cities, hence the evil was intended and violated PDE's second condition.

When the norms of doing good and avoiding evil clash as in the previous examples, the question arises as to whether the obligation to avoid evil requires an individual to refrain from doing good in order to prevent the resulting secondary evil. The principle of double effect provides a formula for resolving the conflict in such a way that requires us to redress a situation through morally good (or neutral) action, that we do not intend the act to result in a harmful consequence, and that we do not use a harmful result to attain the good result. Concurrently, the condition of proportionality binds decision-makers to an inherent standard of fairness in considering options that will impact individuals affected by their actions. PDE does not assume nor require absolutism, that is, the belief in the existence of positive prescriptions and "exceptionless negative prohibitions."<sup>114</sup> According to Boyle, "The first three conditions, if met, are sufficient to characterize the act in question as a good type of act. Likewise, these conditions require that the 'evil effect' would be a bad kind of act if any of the first three is not met."<sup>115</sup> PDE "does not depend on a set of intuited or commanded absolutes, or a set of absolutes based on generalizations from particular cases, but on moral rules which direct one to respect basic human goods or values. Specifically, moral precepts mandate that these basic goods be promoted whenever possible and that they not be attacked or

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<sup>114</sup> John Berkman, "How Important is the Doctrine of Double Effect for Moral Theology? Contextualizing the Controversy," *Christian Bioethics* 4, no.2 (1997): 102.

<sup>115</sup> Joseph M. Boyle, "Toward Understanding the Principle of Double Effect," *Ethics* 90, no. 4 (July 1980): 537.

acted against."<sup>116</sup> The precept that human life is a basic human good is foundational to the U.S. Bill of Rights, Constitution, and system of jurisprudence that carries with it general protections and proscriptions to protect that good. We consider certain acts, such as homicide, physical and mental torture, and slavery as being bad acts because they diminish human good and are violative of human integrity and well-being and so protect that good by transforming general moral principles into law. Democracy and, more particularly, American jurisprudence rests on a theory of justice that accommodates a diversity of goods and evils, benefits and harms, and rights and duties. It is not a tradition established merely to justify a particular conclusion based on a set of mechanical criteria that automatically yields a simple answer but rather a way of moral reasoning to discern ethical limits of an action according to deep-seated moral norms.

The principle of double effect is consistent with normative principles of law and commonly is used to address questions in secular, non-absolutist arenas, supports its extension to determining the moral legitimacy of governmental legislation and regulations. PDE particularly attaches to actions such as *No Child Left Behind* that, while intending to good, cause both beneficial and harmful effects; therefore PDE is an appropriate lens by which to examine NCLB's implementation requirements and specific programs, and their effects to determine the Act's moral standing.

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<sup>116</sup> Ibid.



### CHAPTER THREE— IDEOLOGICAL TENSION

*No Child Left Behind* is more than a federal overhaul of elementary and secondary education and departure from earlier access-oriented legislation; the Act also exacerbates tension and blurs the lines between competing, yet concurrent, notions of the role and nature of public education. Education generally is considered "the means by which societies transmit acquired knowledge, attitudes, values, skills, sensibilities, and symbols from one generation to the next."<sup>117</sup> Benjamin Barber describes education as "the means by which a public is forged. It is how individuals are transformed into responsible participants in the communities of the classroom, the neighborhood, the town, the Nation's and (in schools recognize the new interdependence of our times) the world to which they belong."<sup>118</sup> This understanding of education's role appeared early in American history as being necessary to the success of the country under the new constitutional democracy and public education became key to the quality and competence of its citizens. Urban and Wagoner note,

Education emerged as an essential consideration in the minds of those who

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<sup>117</sup> John H. Gibbons, "The Provision of Education in the United States" in *Informational Technology and Its impact on American Education* (Washington, D.C.: Office of Technology Assessment, U.S. Government Printing Office, November 1982), 67.

<sup>118</sup> Benjamin R. Barber, "Taking the Public Out Of Education; the Perverse Notion That American Democracy Can Survive without Its Public Schools," *School Administrator* 61 (May 2004): 1.

faced the momentous task of establishing the new Nation. As various spokesmen articulated their political goals, some of the most thoughtful also set forth educational "reform" proposals. In so doing, [they] clearly and deliberately fused educational theory with political theory.<sup>119</sup>

Questions of who would be educated and the type of education that students would receive soon arose. Benjamin Franklin's academy addressed the education of middling male students that

involved grafting a program of practical studies that had been outside the province of 'formal' secondary students onto the conventional classical curriculum. The heart of Franklin's new school, however, was clearly to be studies that were useful rather than ornamental...Franklin emphasized that the purpose of his modernized program of studies was not designed to turn out scholars, but rather men of practical affairs.<sup>120</sup>

Franklin's concern for an education useful to Americans set the stage for later "attempts to design arrangements that would serve political ends and the *social good* [along with determining] the type of education most appropriate for the *individual good* of the enterprising American people."<sup>121</sup> John Adams insisted on public education for all boys in Massachusetts to prepare them as citizens of that Commonwealth and, in his inaugural address of 1797, he expressed "a wish to patronize every rational effort to encourage schools, colleges, universities, academies, and every institution for propagating knowledge not only for [its] benign influence on the happiness of life in all its stages and classes, and of society in all its forms, but as the only means of preserving our

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<sup>119</sup> Wayne Urban and Jennings Wagoner, Jr., *American Education, A History* (New York: McGraw-Hill, 1996), 70.

<sup>120</sup> *Ibid.*, 59-60.

<sup>121</sup> *Ibid.*, 70.

Constitution."<sup>122</sup> Thomas Jefferson also considered public education important to developing the type of citizenry capable of sustaining the young democracy when he drafted *A Bill for the More General Diffusion of Knowledge* in 1778. Local citizens would build schools for "all free children, male and female...[to attend] tuition gratis for three years."<sup>123</sup> Jefferson recommended that these schools provide studies in the basics of reading, writing, and arithmetic and acquaint students with ancient Greco/Roman, English, and American histories. Students who could afford the tuition could remain in school for as long as their parents or guardians considered proper. The *Bill* also established grammar schools for boys chosen from among the brightest students attending the primary schools throughout the Commonwealth; public funds paid for the students' tuition and board for another two years at which time the numbers were reduced to only one boy from each school who would continue, on scholarship, for another four years of secondary education.<sup>124</sup> Thirty years later, while forging the University of Virginia, Jefferson ensured that the Virginia legislature provided for the primary instruction of the Commonwealth's poor children and to "give every citizen the information he needs...to understand his duties to his neighbors and country, and to

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<sup>122</sup> John Adams, Inaugural Address in the City of Philadelphia, March 4, 1797. Available: <http://www.yale.edu/lawweb/avalon/presiden/inaug/adams.htm>. (February 21, 2006).

<sup>123</sup> Thomas Jefferson, *A Bill for the More General Diffusion of Knowledge* (1779) in *Thomas Jefferson 1743-1826*. Public Papers (Charlottesville, VA: University of Virginia Electronic Text Center), 367. Available: <http://etext.lib.virginia.edu/toc/modeng/public/JefPapr.html>. (July 19, 2006).

<sup>124</sup> *Ibid.*, 370-373.

discharge with competence the functions confided to him by either."<sup>125</sup> Primary schools were "to instruct the mass of our Citizens in their rights, interests and duties as men and as citizens [by teaching them] reading, writing, and numerical Arithmetic, the elements of measurement, and the outlines of geography and history."<sup>126</sup> Urban and Wagoner describe Jefferson's conception of public education as "basic education for citizenship; it was to be a public investment in the possibility of self-government and human happiness, at both the individual and social levels."<sup>127</sup> Jefferson's vision "embodied both democratic and meritocratic principles" by providing educational opportunities to children of the "natural aristocracy" as well as "children from undistinguished backgrounds [who] if their talents warranted, [would] have them take their place in the winner's circle."<sup>128</sup> Early education provided students with the knowledge necessary to preserve their liberties and, therefore, served the public interest; however, this period of education, for the most part, was limited to white males. Prior to Andrew Jackson's election in 1828, previous presidents had been aristocrats with the advantages of wealth, education, and social training. Jackson's presidency demonstrated that the country's democratic tendency was growing and his image as and identification with the common man began shifting America's reliance on family background or class to define itself toward finding new standards that included education by which all individuals would have the opportunity to make their

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<sup>125</sup> *The Rockfish Gap Report*, Report of the Commissioners Appointed to Fix the Site of the University of Virginia (Richmond, VA: John Warrock, Printer to the Senate, 1819), 4.

<sup>126</sup> *Ibid.*, 5.

<sup>127</sup> Urban and Wagoner, *Ibid.*, 72.

<sup>128</sup> *Ibid.*, 74.

marks. The new commitment to democratic ideology, citizen quality, and public education laid the foundation for the common schools under Horace Mann in the mid-1800s.<sup>129</sup> Barber claims that the common schools "embodied the idea of public education for democracy that under-girded the American experiment in multicultural liberty."<sup>130</sup>

The common school, according to Paul Houston,

has been the vehicle that passed along our sense of common purpose and civic virtue to the next generation. The common schools have embodied that dream [the dream of making a better world for our children] through their very existence. The common schools have been, and should have been, the places where opportunity is offered, fairness exhibited, and equality exemplified.<sup>131</sup>

However, there was another side to the common school as noted by Urban and Wagoner; Mann "stressed that if the wealthy did not support common schooling, they would be threatened and possibly overrun by an ignorant rabble. Schooled workers were not ignorant rabble, but rather, men and women infused with respect for property, for the work ethic, and for the wisdom of the property owners."<sup>132</sup> Public schools, in addition to producing students with a common set of social and educational experiences supportive of a democratic society, began preparing students to serve the needs of the industry and private business. TheodorSizer reminds us that "free public schooling has long been the primary engine for social and economic health and for individual social mobility.

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<sup>129</sup> Although Mann spoke of education as being "the great equalizer of the condition of men" common schools were not universally open to nonwhite students and children of certain religions, especially Catholics.

<sup>130</sup> Barber, *Ibid.*

<sup>131</sup> Paul D. Houston, "Promoting the Public Good Through Common Schools," *School Administrator* 54 (November 1997): 1.

<sup>132</sup> Urban and Wagoner, *Ibid.*, 102.

America's economic, social, and moral strength still depends on it," but lends a caution that "Americans, and especially their elected leaders, do well to ponder the principles of a truly public education in a free society."<sup>133</sup>

The role of education was changing from being focused on democratic equality that was considered essential for the Nation's survival and included the assimilation of large waves of new immigrants; reuniting and rebuilding a country divided by civil war; and addressing the "urbanization accomplished through domestic migration from farm to city."<sup>134</sup> By the early 1900s public education added a new layer to our understanding of its purpose; education began preparing children to participate in and respond to the country's needs as a modern, industrial society and "both educators and politicians began to view schools as instruments of social policy that could be used to solve the Nation's problems."<sup>135</sup> Schools grew from having one room with children of all ages learning together to having many rooms with students grouped by age. Public education began systematizing into kindergartens, elementary schools, and high schools; uniformity in subjects for each grade, the order in which they were taught, and expectations of how they would be taught became part of the education structure. "Egg-crate" schools divided students into classrooms and "[e]very teacher had a separate classroom for the one grade she taught, each scholar had a separate desk."<sup>136</sup> Assessments to determine a student's

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<sup>133</sup> Theodor R.Sizer, "Preamble: A Reminder for Americans," in *Many Children Left Behind*, ed. Deborah Meir and George Wood (Boston, MA: Beacon Press, 1992), xvii.

<sup>134</sup> Urban and Wagoner, *Ibid.*, 159.

<sup>135</sup> *Ibid.*, 160.

<sup>136</sup> David B. Tyack, *The One Best System—A History of American Urban Education* (Cambridge, MA: Harvard University Press, 1974), 44-45.

academic success or failure became commonplace and provided a clear view of what was occurring in the classroom. Joseph Newman writes:

Arguing schools should meet the needs of the increasingly heterogeneous student body, educators diversified the curriculum and broadened the schools' responsibilities. Increasingly, students took different programs depending on their abilities and "probable destinies" in life.<sup>137</sup>

The role of education tilted toward social efficiency where "the purpose of education is less to educate citizens than to train productive workers. The idea is that economic growth requires workers with skill that are matched to particular occupational roles."<sup>138</sup>

According to Newman, "Educators became job brokers and their goal was fitting students into vocational slots—very narrow slots, in some cases, and very early determined."<sup>139</sup>

Social efficiency led to ability grouping and tracking students, purportedly according to their academic talents and goals, and resulted in dividing students along social lines, gender, race, and disability. Democratic equality gave way to educational inequality: wealthy children, middle class children, working-class children, girls, boys, whites, non-whites, various ethnic groups all experienced public education differently and, for some, separately or not at all. "Schoolmen created special programs for retarded, deaf, blind, delinquent, gifted, anemic, and other groups of children, and specialized tracks and schools for vocational and other special training;" education, as fulfilling the goals associated with social efficiency, created inequalities based on race, class, gender, and

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<sup>137</sup> Newman, *Ibid.* 194.

<sup>138</sup> David Labaree, "Resisting Educational Standards," in *Kappan Professional Journal* 82, no. 1 (September 2000): 31.

<sup>139</sup> Newman, *Ibid.*

disability.<sup>140</sup> John Dewey responded to this phenomenon by criticizing education's move away from democratic education:

A democracy is more than a form of government; it is primarily a mode of associated living, of conjoint communicated experience [that leads] to breaking down of those barriers of class, race, and national territory which kept men from perceiving full import of their activity. [The ways] to measure the worth of a form of social life are the extent in which the interests of a group are shared by all its members, and the fullness and freedom with which it interacts with other groups. An undesirable society, in other words, is one which internally and externally sets up barriers to free intercourse and communication of experience.<sup>141</sup>

"The industrialization and urbanization that began in the nineteenth century continued to develop and give rise to numerous economic, political, and social problems. Called by historians the *progressive* era, these years produced a myriad of reforms in response to the social problems," including education reforms.<sup>142</sup> Federal legislation, education reform proposals and critique since the mid-1900s continued the discussion of the role of public education; many of these express various positions on how inequalities in education should be addressed and reflect particular perceptions of the nature of education. Responses to questions about the nature of public education also contain competing and concurrent notions of education as being a public and/or private good. America treats education as a public good because of its prominent role in the country's development and belief in it as a necessity for a free and democratic society.<sup>143</sup>

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<sup>140</sup> Tyack, *Ibid.*, 185.

<sup>141</sup> John Dewey, *Democracy and Education* (New York: The Free Press, 1966), 87, 99.

<sup>142</sup> Urban and Wagoner, *Ibid.*, 185.

<sup>143</sup> Public goods are goods whose benefits are available to everyone and can be distinguished by two sets of properties: 1) nonrivalry in consumption, meaning that one



Americans were able to treat education as a public good because, having similar needs and agreeing essentially on the rules by which they lived, they were able to agree upon the kind of education that they wanted to pass on from one generation to the next. Given this consensus, there was little conflict between what was a public or a private educational interest, or what was a local or national educational goal.<sup>144</sup>

This view parallels or, perhaps, is interwoven with the democratic equality role of education. As the role of education began changing in the late 1800s and early 1900s, so did public perception of its nature; again, change came in response to the increased level of education needed for individuals to effectively participate in society and an increased demand for a diversely educated society able to compete in the global economic arena (social efficiency). Education became considered, what for ease of discussion, as a quasi-public good in that schools continued to prepare students for participation in a democratic society *and* served to prepare students for industry's needs. While democracy's and industry's goals are different, their affects are similar in that "everyone gains if a public school system produces competent citizens and productive workers, and everyone loses if it fails to do so."<sup>145</sup> Education was becoming the "essential means for gaining access to

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person's consumption of the good does not diminish the availability of the good for additional consumers; and 2) nonexcludability of benefits or costs, meaning that the good's consumption cannot be withheld from those who may seek to avoid paying for it, i.e. who attempt to free-ride. Goods that possess both these properties are called pure public goods (i.e., national defense, street lights); and goods that have only one of these characteristics or possess both only partially are called impure public goods (i.e., education). See Inge Kaul, "Re-defining Public Goods: Why, How, and to What Effect." A paper prepared for the Conference on "Regional Integration and Public Goods" United Nations University/Comparative Regional Integration Studies, November 20-21, 2003, Brugge Belgium, 2; James M. Buchanan, *Collected Works of James M. Buchanan, vol.5, The Demand and Supply of Public Goods* (Indianapolis IN: Liberty Fund, Inc., 1999), 48, 64-69.

<sup>144</sup> Gibbons, 69.

<sup>145</sup> Labaree, Ibid.

socioeconomic rewards [and] individuals believe[d] that they ha[d] more of a stake than ever before in the decisions about it.... [A]n individual, if he [was] to compete successfully for socioeconomic rewards, [had to] gain an educational advantage."<sup>146</sup>

Increasingly, individuals considered themselves stakeholders in their success based on educational attainment and marketability and Larry Cuban addresses the emerging understanding of the nature of education:

[E]conomists and policy makers, educators, and taxpayers assumed two crucial causal links between education and the economy: that public investments in schooling produced both individual gains in lifetime earnings and collective benefits for the Nation in the form of greater worker productivity, prosperity, a larger share of world markets, and social stability. Economists christened this belief in individual and collective gains accruing from schooling "investment in human capital."<sup>147</sup>

David Labaree introduces a third notion of the role of education, *social mobility*, that negotiates the space between and adds a new dimension to our understanding of education as a public good or quasi-public good. "Social mobility construes education as a private good. From this angle, education exists because of what it can do for my children, not other people's children. This calls for an education system that focuses heavily on grading, sorting, and selecting students."<sup>148</sup> In considering education's role as being to promote social mobility, education must provide some people benefits that others do not receive; as a private good, education only benefits the owner and his or her individual future. Social mobility adds a competitive perspective to education that allows

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<sup>146</sup> Gibbons, *Ibid.*, 75.

<sup>147</sup> Larry Cuban, *The Blackboard and the Bottom Line, Why Schools Can't Be Businesses* (Cambridge, MA: Harvard University Press, 2004), 123.

<sup>148</sup> Labaree, *Ibid.*

for a hierarchical system that promotes opportunity for some by preserving disadvantages for others. "It also has a consumer dimension. As cautious consumers of education, we want to protect the value of the diplomas our children acquire and to preserve the social advantages that education currently brings them."<sup>149</sup> As a consumer-based approach to education, social mobility promotes improving the academic skills of some students while limiting the skills of others; focuses on sorting students by academic achievement, i.e., gifted or advanced placement programs versus remedial or vocational programs; uses school choice as a vehicle for maintaining separate educational environments for high- and low-achieving students; and relies heavily on standardized curricula and testing to distinguish between winners from losers.

Social mobility also opens the doors to private corporations and education marketeers to develop products that will help some students get ahead while keeping other students behind. This understanding of the nature of education supports market ideology's view that private investment is needed to maximize the public good and increase efficiency of the federal government's and individual investment in education. But, according to Henry Giroux, "there is more at stake in the privatization of public schooling than issues of public versus private ownership or public good versus private gain. There is also the issue of how individual achievement is weighed against issues of equity and the social good, how teaching and learning get defined, what sorts of identities are produced when the histories, experiences, values, and desires of students are defined

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<sup>149</sup> Labaree, *Ibid.*, 32.

through corporate rather than democratic ideals."<sup>150</sup> Carolyn VanderSchee claims that "privatization undermines democratic education because, as corporations invade school services, schools relinquish their potential to be places that foster democratic action."<sup>151</sup> "Educational privatization," according to Saltman, "results in a deterioration of democratic space. The spread of privatization leaves fewer spaces for democratic decision-making, deliberation, and consideration of bolstering the common good. The result of this erosion of public forums is a transfer of power to private interests."<sup>152</sup> Particularly since *A Nation at Risk* and its message that education is vital to our country's survival and prosperity, the federal government's education reform focus has shifted farther away from education's democratic goals toward its economic goals. Education reform measures have been "couched in terms of one great national purpose: business competition. According to these plans, the great goal and measure of national and educational progress is how effectively U.S. corporations compete with Japanese and German corporations in the international marketplace."<sup>153</sup> Malcolm Gladwell noted his observations of NCLB's likeness to the industrial-efficiency movement of the early twentieth century. Gladwell writes, "It is hard to look at the new legislation and not share

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<sup>150</sup> Henry A. Giroux, "The Business of Public Education," *ZMagazine*, July/August 1998: 2. Available: <http://www.zmag.org/ZMag/articles/girouxjulyaug98>. (February 13, 2006).

<sup>151</sup> Carolyn VanderSchee, "Privatization of Food Services in Schools," in *Schools or Markets? Commercialism, Privatization, and School-Business Partnerships*, ed. Deron Boyles (Mahwah, NJ: Lawrence Erlbaum Associates, 2005), 17.

<sup>152</sup> Kenneth J. Saltman, *Collateral Damage, Corporatizing Public Schools-A Threat to Democracy* (New York: Rowman & Littlefield Publishers, 2000), 14.

<sup>153</sup> David Stratman, "School Reform and the Attack on Public Education." Keynote address to the Massachusetts Association of School Superintendents Summer Institute, 1997, 7. Available: <http://www.newdemocracyworld.org/edspeech>. (February 15, 2006).

in its Fordist vision of the classroom as a brightly lit assembly line in which curriculum standards sail down from Washington through a chute, and fresh-scrubbed, defect-free students come bouncing out at the other end."<sup>154</sup> Rod Paige, former Secretary of Education, responded to Gladwell's observations with the reminder that "Henry Ford created a world-class company, a leader in its industry.... More important, Ford would not have survived the competition had it not been for an emphasis on results. We must view education the same way. Good schools do operate like a business."<sup>155</sup> Paige laments that "our public education system, for too long, has been a monopoly. Like all monopolies, it has been insulated from the changes that the market brings and hasn't had to respond to the needs of consumers."<sup>156</sup> Paige, like NCLB, assumes that industry's tenets and corporate environment are more appropriate for our children's education than government and community guidance. The assumption, according to Cuban, is that "public schools are like businesses—and therefore that time-tested market principles and practices can be applied to school operations to produce desired outcomes."<sup>157</sup> David Stratman adds, "The corporate education reformers tell us that the goal of human development is the success of Big Business. The education reform movement is trying to reassert the moral authority of business as the guiding light of human society and corporate profit as the

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<sup>154</sup> Malcolm Gladwell, "Making the Grade," letter to the editor, *The New Yorker*, 15 September 2003, 11.

<sup>155</sup> Rod Paige, "Left Behind," letter to the editor, *The New Yorker*, 6 October 2003, 12.

<sup>156</sup> Ibid.

<sup>157</sup> Cuban, 123.

measure of human achievement."<sup>158</sup> Admittedly, public education is a huge undertaking and takes the government, states, communities, teachers, and many other people to be successful. However, education is not a factory or some other form of big business and corporatizing education reform is destructive to our schools, our children, and our society.

The introduction of "private schools, voucher systems, charter school programs, and an emphasis on 'school choice' illustrate a changing notion of 'the public' in schooling," writes Suelllyn Henke.<sup>159</sup> Competition drives the idea that voucher and charter school programs, via parental choice, will help students and force public schools to improve as they compete with other public and private schools. More so, "The 'public' is becoming increasingly articulated through the lens of consumer identity."<sup>160</sup>

Introducing corporate gains and profit motives into education increases the opportunity and acceptability of considering public education as a product available to and through private development and delivery. NCLB furthers the notion of education as an investment by authorizing private enterprise's direct involvement in elementary and secondary education, encouraging parental choice, and introducing market assumptions that competition will lead underperforming schools to become better or close.

Exchanging public, i.e., government, responsibility as the education provider with private corporations risks abandoning the treatment of education as a public service, a non-

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<sup>158</sup> Stratman, 7.

<sup>159</sup> Suelllyn M. Henke, "Urban Education, Broadcast News, and Multicultural Spectatorship" in *Promises to Keep: Cultural Studies, Democratic Education, and Public Life*, ed. Dimitriadis and Carlson (New York: RoutledgeFalmer, 2003), 238.

<sup>160</sup> Ibid.

material good, for a corporate model that suggests education is a commodity, a product that can be readily measured and negotiated in dollar amounts. It renders education a business transaction between a private provider and individual student; this shift diminishes education as a public good benefiting the larger community to a private good benefiting a few students while excluding many. "Public schools have historically been at the center of neighborhood and community life in the United States," notes Stratman.<sup>161</sup> "In addition, the schools have been a public good which relies on the whole community for support and in which the whole community participates."<sup>162</sup> Transferring control of education from a public agency to the private sector breaks the connections between communities and neighborhoods. Arguably, there are community-oriented charter schools created prior to NCLB that respond to the particular social and educational needs of their children previously unmet in non-charter public schools. These charter schools generally require parental involvement in classroom and school activities in support of their child's learning and also encourage volunteering and outside involvement to address the needs of their immediate community. However, many of the schools concurrently break or strain connections between their communities and society-at-large as they may be racially and or socioeconomically segregated, and reflect particular parental religious, political, or philosophical preferences; this counters public education's concern for fairness in access and academic equality rather than private privilege, and unifying the Nation rather than isolating a community. "School vouchers, tuition tax credits, charter schools, and school choice...attack the idea of a public good

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<sup>161</sup> Stratman, 5.

<sup>162</sup> Ibid.

and replace it with the competition of isolated individuals competing to achieve their own private interests. In this way, privatizing education or establishing separate charter schools will dramatically undermine the power of the ordinary people to affect the direction of society."<sup>163</sup> Education within this corporate framework becomes what Giroux claims is "less a social investment than an individual investment, a vehicle for social mobility for those privileged to have the power to make their choices matter, and a form of social constraint for those who lack such resources."<sup>164</sup>

Proponents calling for an end to the federal government's education monopoly argue that privatization is necessary for the public good and will improve national economic productivity and competitiveness. "Underlying the call for privatization is a reform movement in which public education is seen as a 'local industry that over time will become a global business.'"<sup>165</sup> Many of NCLB's requirements and programs advance direct market activity in our schools including:

Title I: Funding for low-income students

- Requires annual assessments in reading and math for grades 3-8 beginning in 2005 with the addition of science assessments in 2007;
- Uses annual student academic assessments to review progress of each school in a district and major student subgroups;
- Test score results must be provided to parents and teachers as soon as possible after the test is taken;
- Provides supplemental services to children attending schools failing to make AYP for three consecutive years and provides privately-delivered interventions to schools failing to make AYP after four years;
- Provides for school restructuring and alternative school governance.<sup>166</sup>

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<sup>163</sup> Ibid.

<sup>164</sup> Henry A. Giroux, "The Business of Public Education," 2.

<sup>165</sup> Ibid., 1.

<sup>166</sup> NCLB, Title I §§1111, 1116.



Reading First: provides grants for professional development in reading to teachers in grades K-3 in special education teachers in K-12.<sup>167</sup>

Title II: Enhancing Education Through Technology: provides grants to districts and states for creating or further developing an educational technology infrastructure.<sup>168</sup>

Title II: Teacher Quality Training and Recruiting: provides grants to districts for improving teacher competence, recruitment, and retention in core subject areas.<sup>169</sup>

21<sup>st</sup> Century Community Learning Centers: provides grants to rural and inner-city schools for new and expanded after school programs that benefit education, health, and social services.<sup>170</sup>

According to Patricia Burch, "[C]ompanies involved in the new educational privatization view the mandates of NCLB as driving industry growth and explicitly market their products as helping educators comply with NCLB mandates.... [U]nder the new educational privatization, vendors and districts share partial responsibility for critically important aspects of public school governance, including agenda setting, the monitoring and interpretation of reform outcomes, and professional development."<sup>171</sup> Whereas school districts have historically relied on outside vendors for preparing and scoring standardized tests, they now pay vendors

to assist them in the overall design and operation of accountability reforms.... The firms that once simply developed the tests now also play an important

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<sup>167</sup> NCLB, §1201.

<sup>168</sup> NCLB, Title II §2401.

<sup>169</sup> NCLB, §2113.

<sup>170</sup> NCLB, Title IV §4002.

<sup>171</sup> Patricia Ellen Burch, "The New Educational Privatization: Educational Contracting and High Stakes Accountability," *Teachers College Record* (December 15, 2005): 11. Available: <http://www.tcrecord.org/PrintContent.asp?ContentID=12259>. (December 29, 2005).

role in designing the interventions for failing students and schools [and] make decisions that shape how schools and districts will interpret the data.... Firms that once served students with severe emotional and behavioral needs now are responsible for educating students whose only "special need" is their poor performance on standardized tests.... Firms that once specialized in unique kinds of programming (e.g., driver education, foreign languages) have become a major source of professional development and instructional materials in critical subject areas such as reading and mathematics.<sup>172</sup>

Government-sanctioned corporatization of public schools through NCLB

reinforces and legitimizes the role of free market enterprise in American education such that the clash between commercial/corporate culture and democratic values spearheads current education reform. Two factors characterize the tension in the current plan for education reform: the differences between market ideology and democratic ideals and the pervasive high moral rhetoric and moral motivation accompanying the ideological struggle. Peter Cookson addresses the commodification of schools and evaluates economics-driven choice by contrasting market ideology and democratic ideals as follows:

At the heart of the democratic relationship is the implicit or explicit covenant: important human interactions are essentially communal. Democratic metaphors lead to a belief in the primacy and efficacy of citizenship as a way of life. The second metaphor is that of the market. At the heart of the market relationship is the implicit or explicit contract: human interactions are essentially exchanges. Market metaphors lead to a belief in the primacy and efficacy of consumership as a way of life.... For too long we have viewed education as a contractual relationship. The nature of this relationship is made most explicit by market advocates who speak of "educational products" as though education were something that could be manufactured and consumed. Learning is not something we can buy; it is something we must experience.<sup>173</sup>

Market ideology, according to Michael Engel, ascribes to four basic assumptions:

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<sup>172</sup> Ibid.

<sup>173</sup> Peter W. Cookson, *School Choice: The Struggle for the Soul of American Education* (New Haven, CT: Yale University Press, 1994), 99.

[H]uman nature is a more or less unchangeable assortment of basic character traits; society is best understood as an aggregation of individuals, and the social structure is best understood as the net result of their individual choices; self-interest is the primary motivator of these choices, and personal material reward is the primary goal; and protecting and maximizing the range of individual freedom of choice must be the primary purpose of any form of social organization.<sup>174</sup>

Subscribing to these assumptions or values requires individuals to turn over various tasks, such as education reform, to a market of

ongoing and unrestricted exchange of goods and services among producers and consumers in competition with each other. If individuals want a particular good or service, they should be prepared to pay its actual cost. It will be available to the extent that other individuals make a profit in producing it. . . . There will be no need for any external force to tell an individual what to produce, how to produce it, or what to buy.<sup>175</sup>

In a free market economy, educating children is treated as a service, a non-material good, a private investment to which educational marketteers promote their products to districts, schools, and teachers in the form of educational learning packets, technology, standardized curricula and academic testing, school management, and classroom reform. Free market proponents claim that their involvement in education promotes healthy competition for improved schools resulting in better education for children. In *Better Teachers, Better Schools*, Chester Finn, Jr., and Marci Kanstoroom applaud corporate involvement in education reform noting:

America is beginning to adopt a powerful, commonsensical strategy for school reform. It is the same approach that almost every successful modern enterprise has adopted to boost performance and productivity: set high standards for results to be achieved, identify clear indicators to measure progress towards those results. This strategy is sometimes called standards-and-accountability. It is a fundamental aspect of the charter school

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<sup>174</sup> Michael Engel, *The Struggle for Control of Public Education: Market Ideology vs. Democratic Values* (Philadelphia, PA: Temple University Press, 2000), 18-19.

<sup>175</sup> *Ibid.*, 9.

movement, and it undergirds many versions of systemic reform as well.<sup>176</sup>

Finn and Kanstoroom describe standards and accountability as measures key to charter schools; however, these measures reach beyond charter schools and into all public school classrooms and dictate what teachers teach, how they teach it, and how they test student knowledge in the form of standardized test-aligned curricula, teachers' manuals, and standardized tests. Teachers and schools are held accountable through student performance on these tests and, when necessary, corrected or replaced by individuals and/or remedies assumed to ensure children a quality education.

*No Child Left Behind* includes many of Finn and Kanstoroom's strategies and measures for charter schools and emphasizes core market concepts such as standards and accountability, competition, rewards, sanctions, and consumer choice. According to Pauline Lipman, there is "an explicit linkage of corporate interests with educational practices and goals. Business rhetoric of efficiency and performance standards and the redefinition of education to serve the labor market has become the common vocabulary of educational policies across the U.S."<sup>177</sup> In the context of free market ideology, education is regarded as a private good, knowledge becomes a commodity, and "schools and classrooms become marketplaces where commodities become available for students."<sup>178</sup> Giroux contrasts free market ideology with the role of market-free public education as follows:

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<sup>176</sup> Chester Finn, Jr. and Marci Kanstoroom, *Better Teachers, Better Schools* (Washington, D.C.: Thomas B. Fordham Foundation, 1999), 1.

<sup>177</sup> Pauline Lipman, "Bush's Education Plan, Globalization, and the Politics of Race." *Cultural Logic* 4, no.1 (Fall, 2000): 1.

<sup>178</sup> Shannon, ix.

[O]ne of the most important legacies of public education is to provide students with the critical capacities, the knowledge, and the values to become active citizens striving to realize a vibrant democratic society. [Schools] remind us of specific values that must be passed on to young people in order for them to think critically; to participate in policy decisions that affect their lives; and to transform the racial, social, and economic inequities that close down democratic social relations.<sup>179</sup>

Student-targeted advertising and marketing campaigns within public elementary and secondary schools "undermine the purposes for which schools exist."<sup>180</sup> Michael Sandel differentiates the roles of commercial advertising and education, noting, "Advertising encourages people to want things and to satisfy their desires: education encourages people to reflect on their desires, to restrain or to elevate them. The purpose of advertising is to recruit consumers; the purpose of public schools is to cultivate citizens."<sup>181</sup> Cultivating children for democratic citizenry is not easy and becomes even harder for teachers "to teach students to be citizens, capable of thinking critically about the world around them, when so much of childhood consists of basic training for a commercial society."<sup>182</sup> Democratic education promotes "[a] pedagogy that rewards openness, creativity, social awareness, and idealism [and can] flourish only when people are able to take control of their lives by controlling the direction of society, including the

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<sup>179</sup> Henry A. Giroux, "Education Incorporated?" *Educational Leadership* 56, no.2 (October 1998): 1.

<sup>180</sup> Michael J. Sandel, "Commercialism in Schools," *New Republic* 217, no.9 (September 1997): 24.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

schools."<sup>183</sup> Education, under NCLB standards, not only discourages those things familiar and desirable by democratic standards, but also

defaults on the legacy of schooling as a public good by undermining the power of teachers to provide students with the vocabulary and skills of responsible citizenship. Under the drive to impose national standards and standardized forms of testing, privatizing school advocates devalue teacher authority and deskill teachers by dictating not only what they should teach but also how they should teach.<sup>184</sup>

Engel condemns "the predominance of educational policies that literally devalue young people, or more precisely, see their value only in terms of return on investment."<sup>185</sup>

"Growing up corporate has become a way of life for youth in the United States," claims Giroux, and "that as commercial culture replaces public culture, the language of the market becomes a substitute for the language of democracy."<sup>186</sup> Market ideology frustrates democratic ideals and fails students by constructing an educational system that reduces them to commodities rather than developing human beings. Their value is measured in dollars, not in their humanity."<sup>187</sup>

The United States relies on a social contract between the government, taxpayers, and educational institutions that, in return for public investment, provides education for the public good through broad accessibility, social mobility, active citizenry, and a work force necessary for economic growth. Admittedly, this contract led to systematic

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<sup>183</sup> Engel, 2.

<sup>184</sup> Henry A. Giroux, "The Business of Public Education," 2.

<sup>185</sup> Engel, 41.

<sup>186</sup> Giroux, "Education Incorporated," 2.

<sup>187</sup> Engel, 35.

segregation, biases based on socioeconomic status, gender, and disability, and academic inefficiencies in our public schools; however, federal education legislation since the 1960s has attempted to ameliorate disparities in access and academic rigor for racial and ethnic minority students, students with disabilities, economically disadvantaged students, and girls. We generally understand a public good to mean something whose benefits are available to everyone and that individual consumption of the good does not diminish its availability to others nor is such a good restricted from individuals who avoid paying for its benefits. Education, as a type of good, serves as society's balance wheel and negotiates the space between public and private goods by helping individuals reach their potential concurrent with benefiting society. *No Child Left Behind* tilts this relationship and changes the nature and role of public education by outsourcing major educational responsibilities to private providers. "If education is increasingly treated as a private good, and decisions about education are made in the market instead of in the governmental arena, individuals and groups that can afford to buy educational services may be more satisfied with the kind of education that they receive, but fewer social resources may be made available to support what traditionally have been regarded as the public benefits of education."<sup>188</sup>

Schools fulfill a social purpose to prepare students for participation in society; this requires a degree of homogeneity in learning about the language, values, history, politics and economics basic to that society. Public education in a democratic society also rests on a foundation of fairness that promotes access and effort and talent rather than private privilege as determinants to economic and social mobility. These requirements argue for

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<sup>188</sup> Gibbons, 67.

a common educational experience rather than a differentiated one as determined by parental religious, political, or philosophical preferences. NCLB's reliance on private providers to develop educational teaching and testing materials and to operate schools introduces a market-based approach to education that includes competition for market niches and product differentiation. While this may serve to address varying values and particular parental preferences that promote the educational success of their own children, it undermines the social goals of providing a unifying educational experience built around common societal values and institutions. Barber notes:

Education is public, above all in a democracy. To think of it in any other way is to rob it of its essential meaning.... There is something deeply disturbing, even perverse, about current political rhetoric that has seized on privatizing (de-publicizing) America's schools. For to take the public out of education is to take the common out of commonwealth. It is to undermine the function of schooling.<sup>189</sup>

The legislative and ideological shifts embedded in *No Child Left Behind* not only heighten tension over the role of public education, they also blur the line between competing notions of the nature of public education. NCLB leads to the transformation of public education into a business and the classroom into a marketplace where marketteers with the best products win and many children get excluded or left behind.

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<sup>189</sup> Barber, 1.



## CHAPTER FOUR—BENEFITS OR HARMS

*No Child Left Behind* notably shifts federal education policy by expanding its role into the areas of standards and assessment, accountability, curricula, discipline and administration, and providership. Previous chapters offer an overview of the Act's provisions and the ideological tensions surrounding NCLB. This chapter extends the principle of double effect (PDE) introduced in Chapter Two to NCLB's specific programs and implementation requirements in an effort to identify specific effects of the Act. PDE requires that we identify a problem and redress the situation through a morally good (neutral) action, that there is no intent for this action to result in a harmful consequence, and that a harmful result is not used to attain the good result. Furthermore, the action taken must be proportionate and follow an inherent standard of fairness in considering how any action will impact those affected by the action.

NCLB identifies the problem as particular children—disadvantaged children, children with disabilities, children with limited English proficiency, minority and migratory children, and other neglected groups of children—failing to receive an adequate education in our public schools such that there is a gap between high- and low-performing students. The Act's intent is to redress these failures, claiming that it is "An Act to close the achievement gap with accountability, flexibility, and choice so that no

child is left behind."<sup>190</sup>

NCLB extends a morally laudable argument to help children attain academic success and to become proficient in reading, math, and science by the time they leave high school. However, many provisions seem to lead to effects countering the Act's stated goals, effects that unfairly burden teachers and schools, pit one student subgroup against another, foster militaresque learning environments, and weaken democratic education. These effects become more evident by using provisions established by the principle of double effect to examine NCLB's implementation requirements and specific programs regarding AYP and the disaggregation of students, high-stakes testing, the use of pre-packaged curricula, the militarization of schools, and parental choice.

### **Adequate Yearly Progress and Disaggregation of Students**

*No Child Left Behind* intends to close the gap between high-and-low-achieving students by holding schools accountable for the academic performance of all students. In particular, the Act attends to specific students (disadvantaged students, students with disabilities, English language learners, racial and ethnic minority students) who, historically, have received less than adequate educational opportunities and whose academic achievement levels have been omitted from school performance data. NCLB uses Adequate Yearly Progress (AYP) as the means to determine if schools are responding to the academic needs of their students and establishes 2014 as the date for all

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<sup>190</sup> NCLB, Title page.

students to demonstrate measurable achievement levels in specific subjects and as the date by which states must bring all students to proficiency.<sup>191</sup> This section examines three areas of the Act pertaining to AYP that respond to the question, "What effect does AYP have on students and schools?" The first area examines the key features of AYP and its reliance on statistical data; the second examines the effects AYP has on students and, more particularly, the disaggregated subgroups, i.e., students with disabilities; and the third area examines the penalty provisions for schools not achieving AYP.

NCLB establishes that:

Each State plan shall demonstrate what constitutes adequate yearly progress of the State, and of all public elementary schools, secondary schools, and local educational agencies in the State, toward enabling all public elementary school and secondary school students to meet the State's student academic achievement standards, while working toward the goal of narrowing the achievement gaps in the State, local educational agencies, and schools.<sup>192</sup>

Furthermore, the Act requires states to define AYP in a manner that will enable them to meet the 2014 deadline and

that applies the same high standards of academic achievement to all students in the State; is statistically valid and reliable; results in continuous and substantial academic improvement for all students; measures the progress of public schools; includes separate measurable annual objectives for continuous and substantial improvement for all public school students including economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.<sup>193</sup>

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<sup>191</sup> IASA only required student testing in math and reading three times between K-12; NCLB requires annual testing in these subjects between grades three through eight and at least one more test in reading and math between grades ten and twelve. Beginning in 2007-2008, students must also be tested in science three times between grades three through twelve. (NCLB, §1111.(b)(3)(C)(v)(I, II)).

<sup>192</sup> NCLB, §1111.(b)(2)(B).

<sup>193</sup> NCLB, §1111.(b)(2)(C, F).

For a school to make AYP, each subgroup of students identified in the previous section must meet or exceed state-established objectives and not less than 95 percent of each group of students is required to take the assessment tests.<sup>194</sup> NCLB is quite clear in defining AYP and state requirements regarding establishing starting points and standards and tests to measure student proficiency; however, it is equally as loose with regard to the particular standards and tests themselves. States are, according to James Ryan, "free to determine their own standards, to create their own tests, and to determine for themselves the scores that individual students must receive in order to be deemed 'proficient'. The harder the tests or the higher the scores needed to be deemed proficient, the harder it will be for schools to meet the NCLBA's definition of adequate yearly progress."<sup>195</sup> Patrick Shannon calls AYP "the engine of NCLB's commitment to school improvement. It requires steady, annual improvement in students' test scores until the final goal is accomplished."<sup>196</sup> The states' "control of academic standards, test designs, and definitions of expected progress, offers some statistical wiggle room for schools which do not reach proficiency targets, but do make progress," notes Shannon.<sup>197</sup> This also means that there are fifty variations of standards, tests and definitions of progress, *and* fifty

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<sup>194</sup> NCLB, §1111.(2)(I). This section also creates a 'Safe Harbor' exception for subgroups that do not make AYP but demonstrate a 10 percent decrease in students failing to achieve proficiency from the preceding school year.

<sup>195</sup> James Ryan, "The Perverse Incentives of the No Child Left Behind Act," *New York City Law Review* 79 (July 2, 2004): 941-942.

<sup>196</sup> Patrick Shannon, "Adequate Yearly Progress?" in *Saving Our Schools*, ed. Ken Goodman, Patrick Shannon, Yetta Goodman, and Roger Rapoport (Berkeley CA: RDR Books, 2004), 35.

<sup>197</sup> Ibid.

different starting points from which states must move to achieve NCLB's goal of 100 percent proficiency. Using 2001-2002 test scores as a baseline, states determined the starting point for AYP by taking the higher of the following two values: "the percentage of students meeting or exceeding the State's proficient level of academic achievement in the State's lowest achieving group of students" or "the threshold percentage of students performing proficiently in the lowest performing quintile (20 percent) of the State's schools."<sup>198</sup> Each state then set an annual proficiency goal with a scheduled percentage rise so that by 2014 it reaches 100 percent, but the starting points vary across and within states. Some states even chose not to use the 2001-2002 test scores for their calculations, e.g., Alabama, South Dakota, Maryland, and Ohio waited until 2003 to establish starting points, New Mexico waited until 2004 to establish starting points on a rolling schedule, and West Virginia set its initial starting points for the 2003-2004 school year but will recalculate those numbers once they average the 2003-2004 and 2004-2005 test scores.<sup>199</sup> Starting point scores also vary and many are different for reading and math or may be grade-specific or school-level-specific. Connecticut established its elementary and middle school math score at 65 percent and reading at 57 percent; for high school students, the starting points were 59 percent math and 62 percent reading. Georgia's starting points for elementary students were 60 percent reading and 50 percent math and for high school students, 88 percent reading and 81 percent math. Georgia recalculated the high school starting points in 2004 at 81 percent reading and 62 percent math.

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<sup>198</sup> NCLB, §1111.(b)(2)(E).

<sup>199</sup> U.S. Department of Education, an approved Consolidated State Application Accountability Workbook (as revised) for each state is posted at ED website. Available: <http://www.ed.gov/admins/lead/account/stateplans03/index>. (April 2, 2006).

Minnesota split its elementary starting points into grades 3 and 5 with grade 3 starting at 63 percent reading and 67 percent math and grade 5 set at 72 percent reading and 68 percent math. The starting points for elementary school students in math are as low as 8 percent (MO) and 10 percent (HI) and as high as 79 percent (CO) with reading points as low as 13.6 percent (CA) and as high as 77 percent (CO). High school starting points also vary with many states' starting points significantly below their elementary starting points. Arkansas set its reading at 19 percent and math at 10 percent; California set reading at 11 percent and math at 10 percent; and Mississippi set reading at 16 percent and math at 5 percent.<sup>200</sup> These low scores are in stark contrast to many state and district plans and demonstrate the difficulty of having fifty-plus starting points in the equation to determine a clear picture of NCLB's overall effect on public school education. Bruce Buchanan writes, "All schools in all states must meet test score goals called AYP. But exactly what that means varies widely from state to state. Each state has its own expectation and its own means of testing, making it tough to get an accurate picture of how the Nation as a whole is performing."<sup>201</sup> Memphis City Schools Superintendent Carol Johnson worries, "If every state is going to create its own assessments and tools of what is proficient, then what's the point? We've got to figure out what is proficient as a

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<sup>200</sup> Information from each state application accountability workbook is as follows: CTCSA rev. 9/28/2005, 36; GACSA rev. 6/28/2005, 23; MNCSA rev 7/20/2005. 25; MOCSA rev.7/5/2005, 16; HICSA rev. 7/5/2005, 22; CACSA rev. 8/23/2005, elem. 30, HS Attachment H; COCSA 1/5/2003, 9; ARCSA rev. 7/2004, 25; MSCSA rev. 6/27/2005, reading 27, math 31.

<sup>201</sup> Bruce Buchanan, "Defining 'Adequate Yearly Progress,'" *Education Vital Signs—U.S. Schools in Facts and Figures*. American School Board Journal Special Report (February 2004), 1.

Nation."<sup>202</sup> NCLB charges states with setting target goals for students to reach 100 percent proficiency but, without a national standard or guidelines, proficiency has so many meanings varying from state-to-state and that change as often as a state amends its CSA, that proficiency has little real value in determining student academic progress.

The Department of Education, in issuing regulations and advising states on how to meet AYP requirements, strongly encourages states to establish intermediate goals requiring steady progress toward 100 percent proficiency by 2014; however, because the scheduled percentage increases vary from one state to the next, there is difficulty in determining the realistic effects of NCLB or nationwide student proficiency level. Thirteen states, including Arizona, Georgia, and Minnesota, require annual increases beginning in 2004-2005; three states require two-year increases beginning in 2004-2005; sixteen states, including Colorado, Hawaii, and Mississippi, require three-year increases beginning in 2004-2005; and fifteen states, including California and Missouri, provide for back-loaded increases that establish intermediate goals with equal increases over two or three years, followed by large annual increases over the final three years of the twelve year period ending in 2014; and five states have yet to establish their intermediate or incremental goals.<sup>203</sup> The variance in stepped student performance not only adds to the difficulty in assessing NCLB's effect, it also places some schools at greater risk of not making AYP. The fifteen states that chose to backload increases may be hedging their

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<sup>202</sup> Ruma Banerji Kumar and Hallmah Abdullah, "As Test Scores Rise, Standards Are Lowered," *The Commercial Appeal*, 5 March 2006, 4.

<sup>203</sup> Information from each state application accountability workbook is as follows: ARCSA rev. 7/5/2004, 25; GACSA rev. 6/28/2005, 23; MNCSEA rev. 7/20/2005, 25; COCSA 1/5/2003, 9; HICSA rev. 7/5/2005, 22; MSCSA rev. 6/27/2005, 27; CACSA rev. 8/23/2005, 29; MOCSA rev. 7/5/2005, 16.

bets that NCLB will just go away or be modified at ESEA's next reauthorization or, perhaps, be taking the extra time to improve student outcomes and ensure achieving AYP. More so, these states also may be slowing their students' academic progress and placing their schools in jeopardy of facing NCLB's penalty provisions if they cannot show 100 percent proficiency by 2014. The variances in percentage increases moving states to 100 percent proficiency by 2014 also leads to what James Popham calls a "seemingly contradictory situation...because most states have adopted a cunningly staggered timeline that does serious violence to our understanding of what the 'yearly' in adequate yearly progress means."<sup>204</sup> States requiring no test score improvement for three years followed by higher scores for one year and reversion to another no-improvement period, and states establishing backloaded plans with large annual increases during the last three years (2011-2014), may be setting up students, teachers, and their schools for potential failure if they cannot make the broad leaps toward proficiency in a shortened time-frame. NCLB established a broad timeline for states to establish academic plans for their schools and to increase student achievement. The effects of stop-and-go and broadjump timelines included in many state plans and approved by the federal government as acceptable for monitoring schools' adequate yearly progress, demonstrate that states failing to establish realistic and attainable goals for their students to reach academic proficiency by 2014, in fact, may be making no progress at all.

Accountability is a critical component in determining if a school makes AYP and NCLB requires the disaggregation of data to ensure that no major category of students is excluded from the accountability system. NCLB requires states to establish a minimum

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<sup>204</sup> W. James Popham, "AYP Wiggle Room Running Out," *Educational Leadership* 63, no.1 (September 2005): 85-86.



number (N) of students that will yield statistically reliable information about the performance of student subgroups in an effort to close the achievement gap between students identified as members of a subgroup and students who are not so identified. As with variances in state-established starting points and increases in student performance, the minimum sample sizes also vary; for some states, setting a minimum number of students works to their advantage but for others it is a challenge. The two most popular means for determining minimum subgroup size are: 1) fixing the number of students, e.g., N= 30, that all schools must use to determine the school's AYP status; and 2) applying a confidence interval that varies the size of subgroup for each school and yields statistically reliable data of whether the particular school meets AYP. States are fairly evenly split between those who use only the fixed number of students (ranging from 5-100) and those who use a combination of a fixed number and confidence level. Thirty-one states set their subgroup minimums between thirty and forty students, but Oklahoma increased its minimum from thirty for regular education students to fifty-two for students in all other subgroups on the rationale that because "multiple comparisons are made for each school, schools [would otherwise] be identified as failing if they fall below the standard for any one of the relevant subgroups of students."<sup>205</sup> Puerto Rico established its subgroup minimum at thirty for students without disabilities and forty-five for students with disabilities and Ohio set its minimum subgroup size at thirty, except for students with disabilities, the minimum is forty-five.<sup>206</sup> Ohio's Consolidated State Application Accountability Workbook (CSA) notes that proficiency rates for some subgroups are

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<sup>205</sup> OKCSA rev. 6/27/05, 37;

<sup>206</sup> PRCSA 5/1/03, 32; OHCSA rev. 7/8/4, 42.

substantially below the state's AYP starting point, i.e., "of 277 schools with at least 30 African-American students, more than 90 percent would have failed AYP in 2001-2002 on the basis of the African-American subgroup performance [and] of 101 schools with at least 50 students with disabilities, one, and only one, would have met AYP in 2001-2002 for the students with disabilities subgroup. The remaining 100 schools would have failed AYP on the basis of subgroup performance."<sup>207</sup> Fourteen states set their subgroup minimum numbers between five and twenty-five students and eleven states set their minimum sample between forty-five and fifty-plus students, including California that set its minimum as one hundred students with valid test scores or fifty students in cases of a subgroup being comprised of at least 15 percent of the students at the school with valid test scores. California justified its large sample size, explaining that the minimum-fits-all approach "does not fully address the diversity of California schools in enrollment, student demographics, and geography," and that the alternative approach would more accurately identify schools failing to make AYP.<sup>208</sup> Two states, Montana and New Hampshire, confronted unique demographic challenges that led them to establish small subgroup-size requirements. Montana set its minimum subgroup size at ten students claiming, "The State faces unique problems in the design and implementation of AYP [because it is] extremely rural and covers a very large geographical area. This results in the state having a large number of very small schools and districts."<sup>209</sup> New Hampshire established its subgroup minimum at eleven students, acknowledging that "the mismatch between a cell

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<sup>207</sup> OHCSA, 27.

<sup>208</sup> CACSA, 41.

<sup>209</sup> MTCSA, 41.

size of 11 for reporting and a cell size of 40 for the graduation and retention rate is necessary if subgroups are to be visible."<sup>210</sup>

Similar to the variances in state responses to previously-discussed requirements, NCLB's "statistically reliable" provision has been met with a broad range of responses to close the achievement gap between student subgroups. These responses appear, at best, to establish arbitrary minimums to satisfy the Act's requirements but do little for identifying and addressing the needs of particular students within the subgroups. The ability for states to tweak subgroup minimums to make it easier for schools to meet AYP targets also begs the question of statistically reliable data. "The smaller the definition of a subgroup, the more likely it is that a school will have to count that subgroup in its AYP report."<sup>211</sup> States with initially-set or amended larger minimum subgroup requirements make it easier for their schools to meet AYP targets because fewer schools have subgroups large enough to count. Buchanan notes, "States can remove stumbling blocks—and potentially have fewer schools that miss AYP—if they make their subgroup size large."<sup>212</sup> A study conducted by the Center on Education Policy (CEP) notes,

Alaska raised its minimum subgroups size from 20 to 40 for ELL and students with disabilities subgroups. One case study of the Kodiak Island Borough School District shows that of the five district schools that did not make AYP in 2003 because of the disabled and/or ELL subgroups, four made AYP in 2004, after the policy changes. This was also the case in the Boston Public Schools [after] Massachusetts received permission to raise its minimum subgroup size to 40 students or 5 percent whichever is greater.<sup>213</sup>

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<sup>210</sup> NHCSA, 25.

<sup>211</sup> Buchanan, 3.

<sup>212</sup> Ibid.

<sup>213</sup> Center on Education Policy, "From the Capital to the Classroom: Year 3 of the No Child Left Behind Act." (Washington, D.C.: March 2005), 83.

For Boston, the policy change reduced the number of schools with large enough students with disabilities included in AYP determination by 57 percent within one year (2003 = 65, 2004 = 28).<sup>214</sup> The use of confidence intervals and margins of error also raises questions of validity about student progress and academic proficiency. Confidence intervals (CI) provide an estimated range of values that is likely to include an unknown population parameter while margins of error express the amount of random variation underlying a survey's results. The larger the margin of error, the less confidence one has that a survey's reported percentages are close to the true percentages of the whole population. By using confidence intervals and margins of error, schools or school districts can adjust the percentage of students reaching proficiency so that schools still achieve AYP.<sup>215</sup> In Mississippi, the margin of error is five percentage points (CI 95 percent) meaning that, with the state's goal of 16 percent high school students being proficient in reading, a school can meet that goal by having as few as 11 percent of its students proficient. Minnesota also applies a 95 percent confidence interval to its elementary reading goal of 63 percent, meaning that schools with only 58 percent of its students achieving proficiency still can make AYP. Confidence intervals and margins of error obviously provide a school or district a better chance to make AYP and avoid NCLB's penalties; however, their usage, especially when combined with a state's creativity in establishing subgroup size, appears more to be about circumventing NCLB's sanctions than providing accurate information on the performance of *all* groups of students.

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<sup>214</sup> Ibid., 84.

<sup>215</sup> Kumar and Abdullah, 3.

*No Child Left Behind* recognizes the importance of disclosing academic achievement information for all students as a means of correcting the past exclusion of certain students in assessments of school performance. The Act's stated purpose is to close "the achievement gap between high-and-low-performing children, especially the achievement gaps between minority and non-minority students, and between disadvantaged children and their more advantaged peers," as well as students with disabilities, and to achieve AYP in any given year. The purpose of disaggregating students into subgroups is to ensure that all students are included in assessing the educational success or failure of public schools; however, disaggregation creates unintended challenges with regard to measuring the progress of some identified students groups including students with disabilities.<sup>216</sup> If state and district accountability systems do not reflect the particular needs of certain subgroups, there is an increased risk of inaccurately measuring student progress and determining how well or how poorly schools are serving particular populations of students. NCLB, in order to obtain a more accurate account of the Nation's schools, requires student populations as a whole, including each identified subgroup of students (e.g., disadvantaged students, students with disabilities, minority students, and students with limited English proficiency), to meet the *same* proficiency goal.<sup>217</sup> For example, if in the school year 2005-2006, a state determines that 70 percent of students must be proficient on its tests, 70 percent of all the students within the school *and* 70 percent of the students within each included subgroup must perform

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<sup>216</sup> Although AYP considers student proficiency in all subgroups, herein I primarily concentrate on NCLB's effects on students with disabilities as defined by federal law.

<sup>217</sup> NCLB, §1001.(3); §1111.(b)(2)(C).

proficiently for a school to make AYP. According to a National Conference of State Legislatures report, "The apparent intent of this provision is to ensure that schools are held accountable for all students and do not 'hide' the performance of some by only testing and reporting the results of the higher performing students."<sup>218</sup> However, the approved formula, instead of benefiting targeted students, may further disadvantage students within the included subgroups. If, for example, 25 percent of a state's students with disabilities scored at the proficient level in 2001-2002, but 60 percent of all students at the twentieth percentile of achievement scored at the proficient level, the AYP starting point must be at least 60 percent for all schools *and* all subgroups of students. NCLB's stipulation that the percentage of students performing proficiently must incrementally rise every two to three years until reaching 100 percent proficiency in 2014 also places students performing at a lower proficiency level than the starting point even farther behind.<sup>219</sup> The Act's intent to raise the academic achievement level of all students is good but its reliance on benchmark, e.g., static, starting points does not take into consideration or value the progress regarding subgroups or schools and districts starting significantly below proficiency or demonstrating improved student performance at other levels of achievement, such as the number of students who move from below basic to basic. Even when taking into consideration NCLB's "safe harbor" allowances, these allowances are so small and cover such a short time period, that final AYP

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<sup>218</sup> National Conference of State Legislatures, "Task Force on No Child Left Behind—Final Report." (Washington, D.C.: NCSL, February 2005), 14-15.

<sup>219</sup> NCLB, §1111.(b)(2)(H).

determinations may not be statistically reliable or representative of the actual progress made.<sup>220</sup>

NCLB brings visibility to students previously ignored or academically marginalized by our public schools, especially students with disabilities. In reading the regulations pertaining to these students, there now appears to be two classes of students with disabilities affected by AYP; students with severe cognitive disabilities and the "gap kids" or "gray area kids" who have significant disabilities but for whom alternative achievement standards and alternate assessments are unavailable. The Department of Education (ED) issued new regulations in December, 2003, permitting states and school districts to develop alternate assessments for students with the "most significant cognitive disabilities" noting:

Too often in the past, students with disabilities were excluded from assessments and accountability systems, and the consequence was that they did not receive the academic attention they deserved. Access and exposure to the general curriculum for students with disabilities often did not occur, and there was no system wide measure to indicate whether or what they were learning.<sup>221</sup>

ED specifically designed the regulations to "ensure that schools are held accountable for the educational progress of *students with the most significant* cognitive disabilities, just as

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<sup>220</sup> NCLB, §1111.(2)(I). To qualify for safe harbor, a subgroup must demonstrate that it reduced the number of students performing below proficiency from the previous year by 10 percent. The increased annual performance of a single student in a small subgroup could represent the allowed 10 percent change thus excluding others students who may have shown progress during the same time period.

<sup>221</sup> 34 C.F.R. §200.1(d); §200.13(c)(1)(ii). ED refuted concerns that "most significant cognitive disabilities" creates a new category of disability, noting their intent to identify "that small number of students who are (1) within one or more of the 13 existing categories of disability (e.g., autism, multiple disabilities, traumatic brain injury, etc.) and (2) whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the best instruction." 68 Federal Register 68698 (December 9, 2003), 68704.

schools are held accountable for the educational results of all other students with disabilities and students without disabilities."<sup>222</sup> These regulations were meant to address the past exclusionary experiences of many students with severe cognitive abilities; however, the use of alternate assessments is limited to a very small number of students with disabilities, "must be aligned with the state's content standards, must yield results separately in both reading/language arts and mathematics, and must be designed and implemented in a manner that supports use of the results as an indicator of AYP."<sup>223</sup> ED expects less than ten percent of students with disabilities to participate in assessments based on alternate achievement standards but narrows the field further by placing a one percent cap on students scoring proficient or advanced that can be included in AYP calculations. The Department of Education claims that this "does not restrict the number of students who may participate in an alternate assessment. A limit is required to ensure a thoughtful application of alternate achievement standards and to protect IEP teams from pressure to assign low-performing students to assessments and curricula that are inappropriately restricted in scope, thus limiting education opportunity for these students."<sup>224</sup> Any proficient or advanced score above the one percent cap must be counted as *not proficient* for each subgroup that the student is in. For example: the one percent cap would require an LEA with 10,000 students enrolled in the grades assessed to count no more than 100 students scoring proficient or advanced on an alternate

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<sup>222</sup> Ibid.

<sup>223</sup> Ibid., 68699.

<sup>224</sup> U.S. Department of Education, "Alternate Achievement Standards for Students with the Most Significant Cognitive Disabilities—Non-Regulatory Guidance," (August 2005), 28.



assessment based on alternate achievement standards toward AYP calculations. If the LEA has 150 students scoring proficient or advanced on the alternate assessments, the LEA must determine which of the additional 50 scores will be considered *not proficient* and redistribute the scores to the subgroup (s) the students are included in, i.e., all students, racial and ethnic groups, ELLs, and students with disabilities. In short, 50 students, who otherwise passed the required assessments, *fail* for being over the governmentally-established limit of scores included in the AYP count. Consider too, that the approximate number of students falling into this sub-subgroup accounts for less than ten percent of all students with disabilities. This means that the remaining ninety percent of students with disabilities must achieve academic proficiency by 2014 or more schools and districts will face NCLB penalty provisions for not reaching the mandated goal. The composition of the ninety percent includes a larger and harder to define group of students with significant disabilities, the "gap kids" or "gray area kids", who have mild mental retardation, autism, and severe emotional disabilities. These students may be in a general classroom setting or in a pull-out program and perform at a higher level than those students with severe cognitive disabilities, but are learning well below grade level. "Under NCLB, these students must take tests geared to standards for their grade level rather than their learning level—an approach that is at odds with the individualized education plans and learning goals of the Individuals with Disabilities Education Act."<sup>225</sup> Nancy Reder from The National Association of State Directors of Special Education reports that in a NASDSE 2004 poll, "members estimated that approximately 20-30 percent of students with significant disabilities, even with all possible supports available

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<sup>225</sup> Center on Education Policy, viii.

to them, will not make AYP. We have called these students the 'gap' students—those students who are being appropriately taught but whose disabilities are so significant that they cannot make AYP. Neither NCLB nor the Department of Education acknowledge this issue."<sup>226</sup> Rebecca Cort, New York State's Deputy Commissioner, Office of Vocational and Educational Services for Individuals with Disabilities, describes an additional "10 percent to 20 percent of students with disabilities who cannot be expected to meet state standards at the same rate and chronological age as their non-disabled peers." These include students with moderate cognitive disabilities (mild mental retardation, severe language disorders, some autism) who may reach an upper elementary or middle school level by the time they leave school and a group of students with normal cognitive potential (severe learning disability, moderate language disorder, mild traumatic brain disorder) but whose disability slows their learning or whose learning is at an uneven rate from their chronological peers.<sup>227</sup> NCLB requires that these students' scores be included in AYP calculations to ameliorate past exclusions, but penalizes schools and districts by not permitting students in high school programs that exceed four years to count. Cort believes that "Schools and districts should be rewarded, not penalized, for adjusting instructional time frames, expanding course hours, designing six-

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<sup>226</sup> Nancy D. Reder, "The Intersection of the No Child Left Behind Act and the Individuals with Disabilities Act or Can You Fit a Round Peg into a Square Hole?" Forum on Ideas to Improve the NCLB Accountability Provision for Students with Disabilities, in the Center on Education Policy "Capital to the Classroom" study, September 14, 2004, 3.

<sup>227</sup> Rebecca H. Cort, Deputy Commissioner, Office of Vocational and Educational Services for Individuals with Disabilities, New York State Education Department. Reaction to Proposals presented at the Forum on Ideas to Improve the NCLB Accountability Provision for Students with Disabilities, in the Center on Education Policy "Capital to the Classroom" study, September 14, 2004, 2.

year high school programs, etc., to meet the needs of these students."<sup>228</sup> Compounding the problem of who is included and who is excluded in AYP, is the fact that the highest performing students with disabilities are discharged from special education but not released from inclusion in AYP data. States and districts can remove ELL students from AYP calculations two years after they become English proficient, but cannot do the same for students with disabilities after they achieve academic proficiency and are discharged from special education. Cort reminds us, "One of the major purposes of special education is to provide specialized services that result in proficient performance. There are many students who achieve this level only because of those services and who may require ongoing special education services throughout their school career if they are to continue to meet rigorous state standards."<sup>229</sup> Reder notes, "Most students with disabilities, with the appropriate accommodations, can and should be able to take and pass the regular state assessment. But the system needs to acknowledge the individual needs of all students with disabilities."<sup>230</sup> "Several states," according to the CEP report, "said that NCLB's goal of raising the achievement of students with disabilities to 100 percent proficiency was unreasonable...quite high and unrealistic."<sup>231</sup> NCLB creates a catch-22 situation for many students with disabilities because, by definition, they are receiving special services to account for and address their academic needs and generally are unable to reach academic proficiency because of their disabilities without these

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<sup>228</sup> Ibid.

<sup>229</sup> Ibid.

<sup>230</sup> Reder, 4.

<sup>231</sup> Center on Education Policy, 10.

services; yet, students able to pass the assessments are no longer considered eligible for special education services but are required by NCLB to remain in the student with disabilities subgroup for purposes of AYP determination. NCLB's inflexibility and concern for statistical reliability keeps many students with disabilities in the count rather than acknowledging their academic achievements and unfairly punishes schools and districts that have high numbers of students within the disability-related subgroups.

The principle of double effect requires that we examine an otherwise good or morally neutral action that produces both beneficial and harmful effects to determine if the effects are proportionate such that the benefits outweigh any harm. *No Child Left Behind* addresses the problem of children being left behind in our public schools and uses AYP as the means to bring all children up to proficient levels of academic attainment. The Act particularly attends to and requires the disaggregation of data for subgroups of students previously unaccounted for or underrepresented. However, by focusing on absolute achievement levels rather than annual gains, NCLB penalizes schools with large numbers of students within certain subgroups who historically tend to do worse on standardized tests than more affluent students or students not within a subgroup. The Act specifically establishes an accountability system that all schools must adhere to in order to demonstrate that all students are receiving a high level of instruction and none are being ignored or pushed behind. However, NCLB also rewards and punishes schools based on absolute achievement levels that leads to affluent schools being rewarded and poorer ones punished, especially those schools that are racially and economically diverse or have a higher proportion of students with disabilities and limited English proficient students. It also leads to greater racial and socioeconomic isolation rather than

integration and lessens the incentive to attract good teachers to these schools. According to Nancy Kober, "More diverse schools and districts have a tougher time making AYP than less diverse ones because they have more subgroups large enough to count for AYP."<sup>232</sup> The Center on Education Policy (CEP) released its findings of a comprehensive national study of federal, local, and state implementation of NCLB reporting that urban and large district schools are failing AYP, not because of poor academics, but because they tend to have more subgroups counted towards AYP than smaller districts and suburban and rural schools.<sup>233</sup> Even schools that are making progress with students in subgroups may not be making enough progress to meet AYP levels. According to CEP, "Overwhelmingly, states and districts reported that the AYP requirements presented the greatest difficulties. The largest number of states and districts voiced concerns about the difficulty of achieving AYP for the students with disabilities and ELL subgroups....State and district officials frequently commented that holding all students, including those with disabilities, to the same standards is not realistic or fair."<sup>234</sup> Massachusetts reported that "Special education subgroups (large enough to count in 46 percent of schools) were associated with 65 percent school AYP failure in math," and New Hampshire reported that "special education subgroups, found in 52.2 percent of schools, were associated with a 56.8 percent school AYP failure rate, even though the average proficiency in those schools was only less than 2 or 3 percentage points lower

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<sup>232</sup> Nancy Kober, "The 'AYP' Blues," *American Educator* (Spring 2005): 2.

<sup>233</sup> Center on Education Policy, 71, 91.

<sup>234</sup> Ibid.

than the state average proficiency in both subjects."<sup>235</sup> New Hampshire calls this "the dramatic effect of the number of subgroups," and its 2002-2003 results clearly demonstrate that, as the number of subgroups increased so did the number of schools failing AYP.<sup>236</sup> The unintended consequences of NCLB's requiring most students with disabilities (ninety percent) to make AYP is that many schools and districts that otherwise achieved AYP, failed because of the students in the disabilities subgroup.

*No Child Left Behind* intends to close the achievement gap between certain groups of students and have all public school students academically proficient by 2014. The Act notably brings to light the past exclusion or academic neglect of disadvantaged students, students with disabilities, English language learners, and racial and ethnic minority students as a means of providing all students with a high level of education and holds schools accountable to that end. However, NCLB's reliance on benchmarks rather than individual demonstrated progress, limited use of alternative curricula and assessments for students with disabilities and English language learners, locking students with disabilities into that subgroup after attaining academic proficiency and being discharged from special services, and penalizing schools with large numbers of student subgroups, further widens rather than narrows the achievement gap and disproportionately harms many students

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<sup>235</sup> F. Howard Nelson and Bella Rosenberg, "AYP Status and School Proficiency Ratings in Massachusetts 2002-2003." American Federation of Teachers (Washington, D.C.: August 2004) 2; F. Howard Nelson, Bella Rosenberg, and Julie Eisenband, "AYP Status and School Proficiency Ratings in New Hampshire 2002-2003." American Federation of Teachers (Washington, D.C.: October 2004), 14.

<sup>236</sup> *Ibid.*, 12. For New Hampshire schools, 1.3 percent (34.4 percent of schools) failed AYP if they had only one subgroup; this increased to 29 percent (32 percent of schools) for two subgroups, 61.2 percent (27 percent of schools) for 3 subgroups, and 100 percent if schools had six subgroups. Approximately one-third of New Hampshire's schools had three or more subgroups leading to an overall AYP failure rate exceeding 60 percent.

within the disaggregated subgroups, especially students with disabilities. The overarching effect is that AYP provides more benefits to affluent, non-disabled, English-proficient students while concurrently harming a large number of disadvantaged and minority students, English language learners, and students with disabilities, and unfairly penalizes schools with a large number of subgroups included in their AYP data.

### **High-stakes Testing**

*No Child Left Behind* addresses the wide disparity in academic achievement among students by holding all students accountable for meeting the same standards. NCLB identifies specific student groups (racial/ethnic minorities, students with disabilities, English language learners, and economically disadvantaged students) that "are among those who are most often educated poorly, and who therefore have the most to gain from a movement whose central objective is to hold *all* schools, teachers, and students to high standards of teaching and learning."<sup>237</sup> NCLB's commitment to raising the academic achievement level of all students, particularly subgroups of students, and its focus on standardized assessments as a means to hold districts and schools accountable, originally drew support from

advocates for minority children and low-SES children [who] hope that high standards will provide political and legal leverage needed to improve resources and school effectiveness so that all children receive the high-quality instruction they need to be able to meet demanding academic standards. Disability-rights groups likewise hope that state standards and tests will drive teachers to upgrade the individualized education programs (IEPs) of students with disabilities, so that IEPs reflect more of

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<sup>237</sup> Jay P. Heubert, *High-Stakes Testing: Opportunities and Risks for Students of Color, English-Language Learners, and Students with Disabilities* (Wakefield, MA: National Center on Accessing the General Curriculum, 2002): 3. Available: [http://www.cast.org/publications/ncac/ncac\\_highstakes.html](http://www.cast.org/publications/ncac/ncac_highstakes.html). (May 15, 2006)

the knowledge and skills that nondisabled students are expected to acquire.<sup>238</sup>

Critics suggest that NCLB's emphasis on limited-purpose and narrowly-defined assessments to quantifiably measure and determine the quality of education students are receiving attends more to the excellence in test taking rather than a commitment to excellence in learning. Alfie Kohn refers to NCLB as a "current accountability fad" that

insists on mandates that are not only overly detailed but chosen according to whether they lend themselves to easy measurement. The phrase *specific, measurable standards* suggests a commitment not to excellence but to behaviorism....We are talking about a worldview in which any aspect of learning, or life, that resists being reduced to numbers is regarded as vaguely suspicious [and] anything that appears in numerical form seems reassuringly scientific; if the numbers are getting larger over time, we must be making progress.<sup>239</sup>

"Test scores are the fuel that makes the NCLBA run," writes James Ryan.<sup>240</sup> NCLB, as a means of ensuring that states provide students with a high level of education and regularly assess student achievement, not only establishes that states must develop academic standards and assessments, it also sets the specific subjects and acceptable scoring methods to gain data on student academic proficiency that determines schools' and districts' AYP.<sup>241</sup> However, by relying on standardized testing as the only acceptable means for determining the success or failure of public school education, the Act narrows

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<sup>238</sup> Ibid., 5.

<sup>239</sup> Alfie Kohn, *What Does It Mean to be Well Educated?* (Boston, MA: Beacon Press, 2004), 49.

<sup>240</sup> Ryan, 940.

<sup>241</sup> NCLB, §1111.(b)(1)(C) subjects,(D) challenging academic standards; (b)(2)(G) measurable objectives, (J) uniform averaging; (b)(3) academic assessments.



the ability to assess what is going on in a particular district, school, or classroom and sets many students up for failure. Kohn reminds us,

The use of a high-stakes strategy only underscores the preoccupation with these tests and, as a result, accelerates a reliance on direct-instruction techniques and endless practice tests....The movement driven by "tougher standard," "accountability," and similar slogans arguable lowers meaningful expectations insofar as it relies on standardized testing as the primary measure of achievement.<sup>242</sup>

In *The Book of Learning and Forgetting*, Frank Smith claims, "Testing, which has become a mania in education, disregards the classic view that you can see whether people are learning by observing what they are doing. Instead, it is based on the odd idea that learning can only be uncovered by *probing* with *test instruments*, scientifically designed and rigorously wielded."<sup>243</sup> Students, teachers, administrators, parents, and politicians have come to rely on standardized testing as central and indubitable aspects of public schooling. These tests focus on how well students perform regarding often arbitrarily selected information rather than looking at "*what* tasks the learners have opportunities to engage in and the degree of their interest and comprehension."<sup>244</sup> Standardized tests tend to measure "the temporary acquisition of facts and skills, including the skill of test-taking itself, more than genuine understanding."<sup>245</sup> Critics charge that the negative effects

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<sup>242</sup> Kohn, 58-59. See Kohn's *The Case Against Standardized Testing* (Portsmouth, NH: Heinemann, 2000) for his earlier discussion on standardized testing's effects on students and schools.

<sup>243</sup> Frank Smith, *The Book of Learning and Forgetting* (New York: Teachers College Press, 1998), 61. Emphasis in the original.

<sup>244</sup> *Ibid.*, 64.

<sup>245</sup> Alfie Kohn, "Standardized Testing and Its Victims," *Education Week* 20, no.4 (27 September 2000): 46-60. Available:

attached to high-stakes testing run counter to education's role to promote democratic equality in the classroom. Differences in high or low test scores also effect how teachers treat students; students who score high on standardized tests receive awards for their performance, while low scores result in discrimination in the classroom. Smith notes,

Low scorers are frequently segregated, given relatively more difficult tasks to perform and less time to perform them, receive less help from the teacher, and, naturally, have more and repeated experience of 'failure'. Teachers treat them differently, other students treat them differently, and they treat themselves differently. Low scorers are identified as being 'learning disabled' (or impaired, underprivileged, deprived, challenged, or 'at risk') and regarded as educational 'problems.' They are labeled and discussed in terms that would be regarded as socially reprehensible and politically unacceptable if applied to any group outside the classroom.<sup>246</sup>

2005 SAT test results bear this out, revealing that high-stakes tests continue to discriminate against a disproportionate number of nonwhite students, economically disadvantaged students, inner city and rural students, and students with disabilities. The 2005 national average SAT scores for approximately 1.5 million high school juniors and seniors revealed that the gap remained between white and nonwhite and suburban and non-suburban students. The average scores for specific ethnic and racial groups were as follows: White, 1068; African American, 864; Native American, 982; Hispanic and Latino, 932; Mexican American, 916; Puerto Rican, 917; and Asian American, 1091. Suburban students scored far better than those living in other areas, with average scores of 530 for verbal and 541 for math; students in large city schools averaged the lowest, scoring 495 for verbal and 507 for math; rural students were next to the bottom, scoring

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<http://www.edweek.org/ew/articles/2000/09/27/04kohn.h20.html?qs=standardized+testing+and+its+victims>.  
(September 10, 2002)

<sup>246</sup> Smith, *Ibid*.

505 for verbal and 510 for math.<sup>247</sup> Students with disabilities comprise approximately 10 percent of the public school population, yet less than one-half took the SAT and only 2 percent took the exam under non-standard conditions, i.e., received extra time or alternative format. These students averaged a combined score of 973, almost 100 points below the top reported averages.<sup>248</sup> Georgia tied with South Carolina as the worst-performing states with a total average score of 993; suburban students scored highest with 514 for verbal and 518 for math, followed by students in large city schools who scored 509 for verbal and 508 for math. Georgia's rural students received the lowest scores at 480 for verbal and 477 for math, and students attending small city schools did little better, scoring 485 for verbal and 483 for math.<sup>249</sup> Georgia reported almost 6 percent of its students with disabilities taking the 2005 SAT exam that yielded an average score of 970, even lower than the national average for students with disabilities and almost 75 points lower than the top-scoring students in the state. Low SAT scores continue nationwide despite education reform measures and NCLB that are intended to bolster student performance on such tests. Another consideration is the number of students taking SAT—in many states, only a small percentage of students take the exam, e.g., nine of the ten top scoring states have less than 10 percent of its students sitting for the SAT. Georgia reported 75 percent of its students taking the exam with only five states reporting larger percentages.

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<sup>247</sup> College Board, *2005 College-Bound Seniors, Total Group Profile Report* (New York, NY: 2005), 6, 15.

<sup>248</sup> *Ibid.*, 11.

<sup>249</sup> *Ibid.*, 1, 6, 15.

SAT results demonstrate that many of the Nation's students performed poorly on this particular high-stakes test, most notably students comprising subgroups identified under NCLB; however, interpretation of these results does not account for variances in demographics and percentages of students taking the SAT. This raises questions concerning the validity of any state-to-state comparisons of test results and its predictive value, and the test, by design and purpose, does not reveal anything about or that the quality of education received by the students attributed to the low scores. Proponents of democratic equality argue that biases in the tests themselves account for a high percentage of students within targeted subgroups fail because the tests presume a type or level of knowledge of things outside the purview of the classroom that favors affluent children but not many economically disadvantaged, racial and ethnic minority children, or English language learners. From the standpoint of social efficiency, these test results indicate that public education is failing to adequately prepare students for the jobs necessary to support America's economy and position in the global market. Social mobility adherents consider the SAT and other high-stakes tests as doing their job to sort students into ability groups and, by so doing, distinguish their children as winners and others as losers.

For many states, using high-stakes testing creates a problem with curriculum. In particular, NCLB's reliance on standardized assessments leads to a "curriculum [that] is wide but shallow, with teachers expected to cover many subjects but few in-depth."<sup>250</sup>

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<sup>250</sup> Ibid. Georgia replaced its outdated Quality Core Curriculum when the State found that the curriculum lacked depth, could not be covered in a reasonable amount of time (it would take twenty-three years rather than twelve to cover the required topics), and did not meet national standards. The new Georgia Performance Standards provide for a "revised and strengthened curriculum [that] will drive both instruction and assessment of

The greater the use of standardized tests, the less control teachers have to determine curriculum content and to assess what their students are learning. A.J. Duffy, president of United Teachers Los Angeles, complains, "Right now, teachers are held accountable for the success or failure of their students, yet we have no meaningful say over curriculum. We want to give teachers an equal say to administrators when it comes to deciding what happens in the classroom."<sup>251</sup> Limiting teachers in matters of curricula and assessment creates problems beyond in-classroom decisions. McNeil found that, "test scores generated by centralized, standardized tests and by the test-prep materials which prepare [students] for those tests, are not reliable indicators of learning. It is here where the effects on low-performing students, particular minority students, begin to skew the possibilities for their access to a richer education."<sup>252</sup> Problems also arise for teachers who question the use of test-prep materials. These teachers often are portrayed as not supporting but actually working against their minority students as well as "not being team players."<sup>253</sup> The relationship between classroom curricula and standardized tests has grown more tightly knit with increased reliance on tests as Smith explains: "The official theory of learning and the prejudiced practice of achievement testing have advanced in

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Georgia schools, provide guidelines for teachers, students, and test makers...and the standards will be based on best practices that have proven to be effective in high-performing states and nations." See information at Georgia Department of Education <http://www.georgiastandards.org>. (June 13, 2004).

<sup>251</sup> A.J. Duffy, quoted in Lesli M. Maxwell, "Power Over Curriculum at Heart of L.A. Deal," *Education Week* 25, no.43 (26 July 2006): 5. Available: <http://edweek.org/ew/articles/20006/07/26/431a.h25.html>. (July 28, 2006)

<sup>252</sup> Linda M. McNeil, *Contradictions of School Reform: Educational Costs of Standardized Testing* (New York: Routledge, 2000), 237.

<sup>253</sup> Ibid.

influence together, both in education and in popular understanding. They have not done this because they have produced any discernible improvement in schools, but because they support each other."<sup>254</sup> Referring to the relationship between official learning and achievement testing as "totally circular," Smith goes on to note that "testing is good because it follows the precepts of the official theory of learning, and the official theory of learning must be right because it is the basis of all the testing."<sup>255</sup> Good testing and right learning reflect the biases of social efficiency and social mobility and translate into teachers devoting class time to skill-and-drill practices for analogies and prepping students for questions that may appear on high-stakes standardized tests. As testing dominates the classroom, teachers and students become puppets of the marketeers, "manipulated by authorities outside the classroom, who prepare and impose the learning materials and tests to which those in the classroom must adapt."<sup>256</sup>

Adaptation means that when "the fate of individual students, whole schools, teachers, and principals is tied to the results on a single, high-stakes test, that test becomes the center of teaching and learning."<sup>257</sup> Standardized reforms, including standardized curricula and tests, hurt teachers by forcing them to dumb down course material and present it in such a way that testing on the material is computer gradable. Dumbing down material to meet proficiency requirements may mean deleting courses or units not covered by standardized testing, or teaching information required for high-

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<sup>254</sup> Smith, 65.

<sup>255</sup> Ibid.

<sup>256</sup> Ibid.

<sup>257</sup> Lipman, 6.

stakes tests that is disjointed, non-contextual, or in other ways, fragmented. "Because most tests focus on isolated language skills—or, at best, analysis of short fragments of text—many children are finding less opportunity to read real books," reports Kohn.<sup>258</sup> Linda McNeil found teachers in Houston schools teaching two different lessons in order to comply with the required standards. "This 'double-entry' approach," notes McNeil, "included presenting the official proficiency-based material and then doing lessons around the 'real' curriculum."<sup>259</sup> Teachers intentionally compromised higher academic quality to meet standardization requirements. Some Houston teachers reported "unteaching" their students some previously taught information and offering them proficiency drills prior to high-stakes tests. One history teacher in McNeil's study mixed proficiency questions with his own so that students would learn the difference between the types of questions. He told students, "If you see a question that cannot be discussed, that does not invite higher level questioning, then you know that's 'their question', not mine."<sup>260</sup>

Pauline Lipman comments, "While education geared to standardized tests degrades the work of the best teachers, it is little help to the weakest teachers, because it does not increase their knowledge, skill, or commitment to richer teaching and learning. Nor do high-stakes tests address the huge inequalities between affluent schools and low-income and urban schools."<sup>261</sup> As test-prep drills replace the curriculum in many low-

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<sup>258</sup> Kohn, 63.

<sup>259</sup> McNeil, 211.

<sup>260</sup> Ibid., 215.

<sup>261</sup> Lipman, 6.

income and minority schools, teachers report, "Many more students are passing TAAS 'reading', [however] few of their students are actually readers. Few of them can use reading for assignments in literature, science, or history classes; few of them choose to read; few of them can make meaning of literature or connect writing and discussing to reading."<sup>262</sup> Testing proponents point to rising test scores to support their position of skill-n-drill learning, thereby justifying continued and increased replacement of regular curricula with test-prep materials. According to McNeil,

[S]tudents in these urban schools are doubly penalized, first for losing out on the [curricula] that their peers in suburban high schools are learning. Second, they are penalized by having to spend extra periods on low-level, disjointed drills—[material] divorced from both the applications and the conceptual understandings they will need if they are to hold their own later in upper-level classes with middle-class students. It is unlikely that the middle-class students have been doing "math" from commercial test-prep booklets, rather than from math books, manipulatives, calculators, computers, and peer study groups. The TAAS, then, lowers the quality and quantity of even subjects not been tested in those schools where students have traditionally not tested well, the students who are poor and the minority.<sup>263</sup>

Kohn notes, "The more that poor children fill in worksheets on command (in an effort to raise their test scores), the further they fall behind affluent kids who are more likely to get lessons that help them understand ideas."<sup>264</sup> Duffy claims, "It makes no sense to follow a script if your students are behind and you need to spend more time helping them review something....We want less testing, and we want teachers to be able to adjust the pace and slow it down if their students need it. A lot of children are being left behind at the

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<sup>262</sup> McNeil, 237; TAAS is the acronym for Texas Assessment of Academic Skills.

<sup>263</sup> Ibid., 243.

<sup>264</sup> Kohn, 59.



district's insistence that every teacher in every classroom be teaching the same lesson on February 1<sup>st</sup>.<sup>265</sup>

NCLB has made standardized student testing the focal point of accountability for students and teachers to ensure that all students receive a high quality education and to identify schools and academic areas needing improvement. The tests, to some extent, accomplish this goal; the gaps between various student subgroups, demographics, and geographical location, as demonstrated by 2005 SAT results, are gross reminders of the differences between school systems in various parts of the Nation and also within individual states, differences that lead to many students falling well below the national average and leaving many children behind. How these failing test results are interpreted and applied depends on the ideology of the interpreter and have led to other, not so beneficial, effects. Relying on a high-stakes test drives much of the Nation's classroom activity and teachers find themselves deleting courses or units not covered by the test, or teaching scripted information required by the test that is disjointed, non-contextual, or in other ways, fragmented. Class time is taken up by skill-and-drill practices for analogies and prepping students for questions that may appear on high-stakes standardized tests rather than on reading works in literature, science, or history. Students skim 1-3 paragraphs at a time and then fill in worksheets with the one best answer without learning or being allowed time to make meaning of what they read or connect through writing and discussion any questions or opinions about the material. Skill-and-drill and test preparation unfairly hurts economically disadvantaged, ethnic and racial minority, and limited English students more than their affluent counterparts who have outside resources

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<sup>265</sup> Duffy, as quoted in Maxwell, *Ibid.*, 20.

and experiences available to them for filling the knowledge gaps and augmenting classroom lessons. NCLB's reliance on high-stakes standardized tests, while well-meaning to demonstrate academic weaknesses and potentially serve to improve instruction for all students, instead disproportionately harms the very students it was enacted to serve.

### **Curricula Re-formed**

NCLB's standardization requirements "spring from the belief that [standards] contribute to improving and equalizing student achievement. Academic standards are intended to create more intellectually demanding content and pedagogy, thereby improving the quality of education for all students, and to establish uniform goals for schools, thus producing greater equality in students' academic achievement."<sup>266</sup> This consideration of standards appears to blend the perspectives of democratic equality and social efficiency; from the democratic equality standpoint, standards would "raise the average cultural competence of [students] and reduce the radical cultural differences that now exist between the advantaged and disadvantaged....Standards for democratic equality focus on higher levels of shared knowledge and skill."<sup>267</sup> From social efficiency's view, standards "prepare workers for the full array of jobs that make up the American economy by giving them the skills they need in order to carry these jobs productively...[In short,] standards for social efficiency focus on specialized training for particular jobs. This

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<sup>266</sup> Judith Haymore Sandholtz, Rodney T. Ogawa, and Samantha Paredes Scribner, "Standards Gaps: Unintended Consequences of Local Standards-Based Reform," *Teachers College Record* 106, no. 6 (2004): 1177.

<sup>267</sup> Labaree, *Ibid.*, 34.

means radically different standards for the workers who assemble cars, for the engineers who design them, and for the executives who manage the process."<sup>268</sup> Standards for social mobility advocates "preserve the advantages and increase the distinctions" for their children....You can tell this kind of approach from the others because it tends to put special emphasis not on improving skills but on distinguishing winners from losers."<sup>269</sup>

Recognizing the need for districts, schools, and teachers to meet the required achievement standards, private corporations offer assistance through their educational products and classroom material. Alex Molnar notes, "Commercial activities in schools can be seen as taking three basic forms: Selling *to* schools (vending), selling *in* schools (advertising and public relations), and selling *of* schools (privatization)....Selling *in* schools encompasses the use of schools by corporations to sell products or services, promote their points of view, or address public relations or political problems."<sup>270</sup> Commercially prepared and distributed pre-packaged curricula readily respond to school and district needs for standardized course material and enter the classroom in hermetically sealed lab packets that appear as teacher-proof education-enhancing supplies and equipment. The Act's standardization requirements provide private corporations and curricula marketeers classroom open access to "hock their wares" and influence what is learned and how it is taught. Corporate-sponsored curricula often present information in a biased manner; although some of the information may be beneficial to students, corporate intent to market their products and image is ever present. "By specifying what

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<sup>268</sup> Ibid.

<sup>269</sup> Ibid., 35.

<sup>270</sup> Alex Molnar, *School Commercialism* (New York: Routledge, 2005), 7.

knowledge or skills students must demonstrate, standards point toward the instructional practices that teachers *should* employ."<sup>271</sup> Consumers Union claims, "Schools' chronic shortage of funding for learning materials has led teachers to welcome free education materials. Teachers are continually looking for new and interesting materials to motivate students, but they have little money."<sup>272</sup> "The justification schools use for entering into marketing relationships with corporations is financial need," writes Molnar, "yet the monetary reward is often very modest."<sup>273</sup> The amount or lack of money raises equity issues among schools, often in the same district, and "exacerbates the resource divide between schools and school districts. In recent years, advertisers who offer free curriculum materials, as well as those who offer small amounts of money in exchange for student access, have been successfully pursuing lower-income communities that are the most desperate for school resources."<sup>274</sup> Molnar describes the monetary gains as "paltry" and calls "the damage done to educational integrity, worrisome."<sup>275</sup> According to Giroux, schools are "Seduced by the lure of free equipment and money, curricular materials designed to build brand loyalty among members of a captive school

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<sup>271</sup> Ibid. Emphasis mine.

<sup>272</sup> Consumers Union, *Selling America's Kids: Commercial Pressures on Kids of the '90s* (Washington, D.C.: Consumer's Union, 1998), 11.

<sup>273</sup> Molnar, 39.

<sup>274</sup> Arnold F. Fege and Andrew Hagelshaw, "Beware of 'Creeping Corporatization,'" *NAESP Principal Online* (November 2000): 2. Available: <http://www.naesp.org/comm/p1100d.htm>. (September 10, 2002).

<sup>275</sup> Molnar, 39.

audience."<sup>276</sup> Corporations take advantage of schools and students through indirect advertising by tying their product or name to school activities or educational material, claims Andrea Bell.

These include: corporate-sponsored educational materials, including lesson plans and curriculum, that typically correlate to the industry the corporation works in; teacher training (usually related to new software and computer programs); contests, activities, and scholarship programs; and corporate grants and gifts.<sup>277</sup>

Students are captive audiences and education-enhancing materials provide corporations opportunities to advertise their goods while supposedly offering students beneficial health and nutrition information or the latest environmentally-friendly technology. Regarding the latter, General Motors (GM) provides in-class material and posts a link on the *Weekly Reader* web site with a byline: "Let GM show you how pollution-free fuel cell vehicles work." The GM site has an animated explanation of how such vehicles work using GM's *HydroGen 1* fuel cell vehicle as the model. Although GM identifies the site as Advanced Technology Vehicles/Fuel Cell Animation/GM Technology Tour/For Kids, the site also provides links to GM's Owner Center/BuyPower/Dealer Locator/Vehicle Adviser/Careers. Colgate-Palmolive entertains children while offering "unique oral health education." Visitors to Colgate's children's oral health education site are welcomed by cartooned children and animals flying in a hot air balloon sporting the banner, "Welcome to Colgate: Bright Smiles, Bright Futures and a voice-over by Dr. Rabbit, the world's only rabbit dentist." Colgate's dental health

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<sup>276</sup> Giroux, "Education Incorporated," 3.

<sup>277</sup> Andrea Bell, "Putting Kids before School: Commercialism," *Education Digest* 67, no. 9 (May 2002): 32.

program also offers a poster, teaching guide, and info-packets for first and second graders each bearing the company's name. Dole Foods and the U.S. Rice Producers Association offer nutrition lessons while, at the same time, promoting their products. Dole Food Company provides "everything you need to get your students excited about eating fruits and vegetables," in its *5 A Day* classroom program conducted in Dole's virtual classroom September 23-28, 2002, including classroom nutrition charts, a Kids Cookbook, lesson plans, and online activities. Dole has everything—and everything bears Dole's logo and brand named products. The U.S. Rice Producers Association (USRPA) sponsors [www.RiceRomp](http://www.RiceRomp) with links for teachers and students that take visitors to lessons in math, social studies, science, and health, and a link for games, all having to do with rice. USRPA assembles lessons by grades 4-10 with questions regarding the history, sociology, geography, and economics of rice for each level. Even though many of the situations and questions USRPA suggest students consider lead to critical thinking and further exploration, the bottom line remains the industry's commodity, its product. BIC Corporation sponsors *Quality Comes in Writing*, a program created by Lifetime Learning Systems "to help students in grades four through six develop strong writing skills that will benefit them throughout their lives... Students will practice writing skills to decode and create stories, plan and write their own stories, study and write ballads and keep a hypothetical journal for a famous person."<sup>278</sup> The Activity Masters, Teachers Guide, full-color poster of writing hints for the classroom, take-home booklets, and teacher response cards all carry the BIC character and corporate logo. These indirect advertising examples

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<sup>278</sup> Katy Dobbs, *Quality Comes in Writing* (BIC Corp., 1997), cover letter to educators with BIC pen-man cartoon and logo written by the editorial director of Lifetime Learning Systems, Inc.

illustrate how corporations and industries gain access to a large market and how they are able to deliver their self-serving messages of consumerism directly to students. Perhaps a more insidious element of corporatization in the classroom is the adoption of commodification packets or pre-packaged courses. Fege and Hagelshaw claim that direct advertisement raises, "Education quality and integrity issues....By shifting the emphasis from teaching students how to think to teaching students what to think, company advertising often directly contradicts the schools' educational messages."<sup>279</sup> Kohn finds it "even more disturbing than expos[ing] children to advertisements [that] corporate propaganda is sometimes passed off as part of the curriculum."<sup>280</sup> He particularly cites the use of arithmetic problems that promote particular brands of sneakers or candy and environmental science materials developed by major chemical companies as examples of companies providing slanted curricular materials to our schools that serve corporate goals rather than student academic needs. Direct advertising on notebook covers, hallway posters, rooftop billboards, and stadium marquees, in addition to exclusive vending and cafeteria contracts, develop student loyalty in a corporation's product. In exchange for money for a new athletic field or outfitting classrooms with the latest computer technology, NCLB gives entrée to corporations and their priorities of developing future consumers of America.

NCLB's standards-based reform leads to the departure from a differentiated curriculum to a one-size-fits-all learning and teaching environment. Consumer oriented education encourages passive instruction and passive consumption with instant

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<sup>279</sup> Fege and Hagelshaw, 1.

<sup>280</sup> Kohn, 13.

gratification or disappointment determined by narrowly-focused standardized curricula and tests. "More worksheets won't help teachers get their students to read more. Novel kits won't help students read deeply," responds Patrick Shannon. Rather, "Good pedagogical choices require knowledgeable teachers who are free to act on their convictions. It might be wise for these teachers to look to pedagogy and not commodities to support students' reading more deeply."<sup>281</sup> Such examination requires us to assess the value of the commodified material and to determine its direct and indirect effects on teachers and students. The Southern Regional Education Board's (SREB) report, *Raising the Bar in the Middle Grades: Readiness for Success*, identifies various factors that contribute to or deter student preparedness for high school in its sixteen member states. Although, "Educators talk about the importance of aligning curriculum, construction and assessment [and] they say that they want to determine content topics, plan experiences necessary to learn the content, and check to see whether students know the content and how to use it, [e]ight very different middle schools in five states visited by SREB staff all have the same commercial reading program—a 'quick fix' to low reading scores."<sup>282</sup> The SREB staff also noticed a different pedagogy in place in quick fix classrooms; "teachers assign worksheets with vocabulary lists and drilled students on sample items from the state assessment test. [The] teacher emphasized isolated bits of information that may be forgotten quickly."<sup>283</sup> The report quotes one Texas middle school principal as saying

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<sup>281</sup> Peggy Albers, "Interview with Patrick Shannon," *Talking Points* 13, no. 2 (April/May 2002): 9.

<sup>282</sup> Sondra Cooney, *Raising the Bar in the Middle Grades: Readiness for Success* (Atlanta, GA: Southern Regional Education Board, June 1998), 9.

<sup>283</sup> Ibid.



"We have a whole quick-fix culture that says, 'Get your test scores up if you buy this program'." <sup>284</sup> Are these programs fixing anything or are they exploiting schools and turning them into markets? By commodifying and corporatizing public education, schools miss out on "the creativity and innovation of teachers" and are limited in the ways in which teachers respond to diverse needs and learning styles of students. <sup>285</sup>

Dewey's remarks over fifty years ago well describe the negative effects of commodified materials in today's classrooms:

That the schools have mostly been given to imparting information ready-made, along with teaching the tools of literacy, cannot be denied. The methods used in acquiring such information are not those which develop skill in inquiry and in test of opinions. On the contrary, they are positively hostile to it. They tend to dull native curiosity, and to load powers of observation and experimentation with such a mass of unrelated material that they do not operate as effectively as they do in many an illiterate person. <sup>286</sup>

Giroux addresses "the current assault on educators at all levels of schooling [encouraging educators to] struggle against the ongoing trend to reduce teachers to the role of technicians who simply implement pre-packaged curriculums and standardized tests as part of the efficiency-based relations of market democracy and consumer pedagogy." <sup>287</sup> Since pre-packaged course materials reduce teachers' "power and autonomy to function as intellectuals," Giroux recommends that teachers be given "time to produce

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<sup>284</sup> Ibid., 10.

<sup>285</sup> David Elkind, *The Hurried Child: Growing up Too Fast Too Soon* (Reading, MA: Perseus, 1988), 47.

<sup>286</sup> John Dewey, *The Moral Writings of John Dewey*, ed. James Gouinlock (Amherst, NY: Prometheus Books, 1994) 231.

<sup>287</sup> Giroux, "Education Incorporated," 5.

curriculum, engage in dialogues with students, use the resources of surrounding communities, and participate in the organizational decisions that affect their work."<sup>288</sup>

Linda McNeil's case study of four, primarily middle-class, high schools offers a glimpse of school structure, school knowledge, and school control from within the schools themselves. McNeil notes, "When the school's organization becomes centered on managing and controlling, teachers and students take school less seriously. They fall into a ritual of learning that tends toward minimal standards and minimum effort."<sup>289</sup> Teachers often alter classroom structure, materials, and teaching to accommodate mandates for standardization and order. "By reducing course content to its most manageable and measurable fragments," writes McNeil, "the teachers [are] splitting the learning process into means and ends and reinforcing a concern for extrinsic rewards (teacher pay and student credentials, for example)."<sup>290</sup> McNeil argues that, at the elementary school level,

external forces have more directly shaped curricula by de-skilling teachers through the adoption of 'teacher-proofed' materials. . . . Packaged materials, produced by commercial publishers, adopted by state and local school systems under the direction of experts such as child psychologists and reading specialists, have the purpose of reducing teacher discretion and variation. The "teacher-proof" materials contain pre-tests, instructional techniques, sets of content reduced to measurable items, and post-tests for mastery.<sup>291</sup>

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<sup>288</sup> Ibid.

<sup>289</sup> Linda M. McNeil, *Contradictions of Control: School Structure and School Knowledge* (New York: Routledge, 1988), xviii.

<sup>290</sup> Ibid., 185.

<sup>291</sup> Ibid., 186.

Saltman claims, "These prefab curricula take advantage of teachers who are hard-pressed by bureaucratic constraints and heavy workloads. Ultimately, the curricula take advantage of children by depriving them of meaningful education and by not only often promoting unhealthy products and misinformation but by also pushing crass consumerism."<sup>292</sup>

High school teachers in McNeil's study reported that

assessment of their effectiveness or even survival within the institution had led them to split their personal knowledge from their classroom teaching in much the same way as pre-packaged materials divorce elementary teachers' ideas from instruction and evaluation.... [W]ithin their classrooms they reinforced these goals of order with the justification that doing so was the only way they could protect themselves from institutional pressures. They got no reward for holding discussions, but felt sanctions for not "covering the material".<sup>293</sup>

Teachers are not alone in these de-skilling experiences. "The teachers' splitting of their personal knowledge from the institutional in attempts to gain minimal compliance may be seen as a kind of de-skilling of students as well."<sup>294</sup> McNeil found students alienated from teachers and from learning in those classrooms where pre-packaged materials and tight adherence to standards controlled the knowledge. De-skilling and the resulting alienation leave students unable to rely on decontextualized facts-in-the-box knowledge to explain or interpret their own experiences and concerns; de-skilling and alienation leave students without contextual cues that would assist them to critically evaluate the provided information or to find alternative information on their own. "[C]ontrolling

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<sup>292</sup> Saltman, 59.

<sup>293</sup> McNeil, 186.

<sup>294</sup> Ibid., 188.

teaching transforms the subject content from 'real world' knowledge into 'school knowledge', an artificial set of facts and generalizations whose credibility lies no longer in its authenticity as a cultural selection but in its instrumental value in meeting the obligations teachers and students have within the institution of schooling."<sup>295</sup> School knowledge becomes something to be "mastered, traded for a grade and, as some students have said, deliberately forgotten afterward."<sup>296</sup> Controlled, deliberate teaching treats students as empty vessels, a reference to John Locke's consideration of the mind as a blank slate (*tabula rasa*) or "white paper, void of all characters, without any ideas."<sup>297</sup> Rather than promoting mastery of content and understanding through critical thinking, controlled teaching promotes school knowledge as minimal information to fill in blanks on standardized test forms. "The nature of defensive [controlled] teaching," according to McNeil, "is to transform the role of student into client or consumer rather than an active learner."<sup>298</sup> Thus, students become clients and consumers where knowledge is simply of instrumental value and students its passive receivers. This sounds uncomfortably similar to Paulo Freire's description of the type of education used by a dominant group to control the masses:

Narration (with the teacher as narrator) leads to students to memorize the narrated content. Worse yet, it turns them into 'containers,' into 'receptacles' to be 'filled' by the teacher. The more completely she fills the receptacles, the better a teacher she is. The more meekly the receptacles permit themselves to be filled, the better students they are. Education thus

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<sup>295</sup> Ibid., 191.

<sup>296</sup> Ibid.

<sup>297</sup> John Locke, *An Essay on Human Understanding* (Amherst, NY: Prometheus Books, 1995), II.1.2, 59.

<sup>298</sup> McNeil, 192.

becomes an act of depositing, in which the students are repositories and the teacher the depositor.<sup>299</sup>

Freire's "banking" concept of education claims that a dominant group gains and maintains its control by 1) determining how and about what the populace learns and 2) limiting the scope of knowledge and student action such that the receiving, filing, and storing specified bits of information without student inquiry or invention.

Clients and consumers belong not in the classroom but in the corporate world where top-down controls coincide with uniformity and quality. Moreover, the corporatization of public schools is, as Molnar suggests,

a kind of immoral war on childhood, waged for the profit of adults who should be childhood's guardians. When advertising is conducted in schools, the immorality is compounded because the power of the state is twisted to the service of special interests, the ethical standing of educators is compromised, and the orientation of the school is shifted towards miseducative experiences.<sup>300</sup>

"When public education and the private interests become synonymous, a process has begun where the most important mediating influence on the school is not the public interest, but the negotiations between school officials and the businesses with which they contract."<sup>301</sup> Alfie Kohn warns,

When corporations can influence the nature of curriculum and the philosophy of education, then they have succeeded in doing something more profound, and possibly more enduring, than merely improving their results on this quarter's balance sheet. It can happen when the whole notion of education as a public good is systematically undermined—an ideological shift that paves the way for privatizing school. It can

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<sup>299</sup> Paulo Freire, *Pedagogy of the Oppressed* (New York: Continuum Publishing Company, 1997), 53.

<sup>300</sup> Molnar, 86.

<sup>301</sup> Fege and Hagelshaw, 2.

happen when a business ethos takes over education, with an emphasis on quantifiable results, on standardized procedures to improve performance, on order and discipline and obedience to authority.<sup>302</sup>

Furthermore, as corporations increase their control over educational information and corporate means become education's ends, there is a danger of reduced public discourse to address how corporatization of public schools undermines the democratic principles of justice and freedom, principles that should be at the center of any discussions regarding educational reform.

*No Child Left Behind* excites education experts and corporate marketteers to respond to the call for ending educational inequalities and closing achievement gaps by transforming classrooms into personal marketplaces and academic lessons into infomercials. The Act intended to standardize public school curricula to improve the quality of education for all students; instead, its implementation requirements and promotion of outside providers have led to curricula re-form and the narrowing and slanting of classroom materials by self-serving corporations concerned more with developing students as consumers than students as scholars.

### **Safe, Orderly Schools**

*No Child Left Behind* intends to provide safe learning environments for students and teachers and includes tough disciplinary measures for students breaking the rules. The Act also establishes the Gun-Free School Act and Safe and Drug-Free Schools to reduce student violence and use of drugs or alcohol, and creates Community Learning Centers to provide before and after school academic enrichment activities. While these provisions appear to benefit students, schools often take on a military atmosphere,

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<sup>302</sup> Kohn, 17.

including many schools being headed by retired military officers, to ensure safe and orderly schools.<sup>303</sup> Learning under military command assumes that rules will be followed and that all will be accountable. "The militarization of the public schools is both a material and a cultural project," claims Kenneth Saltman.<sup>304</sup>

As federal responsibility for such public goods as social service provisions and public schooling shifts to private corporations and state control, the federal government is increasingly rendered a disciplinary entity concerned primarily with military, policing, prisons, and courts. The new social logic can be seen clearly in the ways that youth become both casualties and commodities in the war on the public.<sup>305</sup>

This logic manifests itself through increased requirements for school uniforms; increased use of metal detectors, surveillance equipment, and armed and unarmed security personnel; and zero tolerance policies that posit schools as prisons or boot camps rather than places where educating children occurs. It also manifests itself through increased military presence through the Junior Reserve Officer Training Corps (JROTC), Troops to Teachers, and retired military personnel turning school CEOs.

Uniforms creep into schools under the guise of "foster[ing] greater equality by homogenizing students' appearance."<sup>306</sup> Solid colored shirts and pants/skirts erase students' class, race, and ethnic differences, replacing individual preferences and realities for one reality created by a school district and the low-bid uniform supplier. Adoption of uniforms happens because, according to Nadine Strossen, president of the American Civil Liberties Union, "Throughout society, there is popular support for any measure that

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<sup>303</sup> Saltman, 88-92.

<sup>304</sup> Ibid., 84.

<sup>305</sup> Ibid., xvii.

<sup>306</sup> Ibid., 95.

sounds like it supports greater law and order, even if there's no evidence that it actually has any effect."<sup>307</sup> Accepting the myth that non-uniform student clothing interferes with instruction and the educational process or threatens the health and safety of others, allows school officials to violate student expressions of free speech, to violate parents' rights to make decisions for/with their child, to violate certain religious/ethnic beliefs and practices, and to create an atmosphere that tolerates only conformity to sameness and rules. Strossen addresses how schools should treat students saying, "We do our best job by treating them [students] as autonomous individuals who deserve to express their own ideas, as long as they equally respect other people's ideas. We should not dress them like prison inmates any more than we should treat them like prison inmates."<sup>308</sup>

The fear of lack of order due to differences leads schools to adopt uniform policies under which many students face new challenges and potential harm from their institution. One example comes from a charter middle school near Atlanta and concerns students who do not wear the prescribed unembellished, solid-color golf shirt. On the second day of the school year, a young student wore a golf shirt with a small crest on the chest for which he found himself in the school's main office. The mistake cost him no money but, going about school the remainder of the day wearing the loaned bright red shirt with the word "Rental" printed in bold white letters on the back, caused him humiliation by the taunting of classmates and the unwanted attention that the shirt drew

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<sup>307</sup> Nadine Strossen, "Public Schools Adopting Dress Codes," *ACLU News Wire* (September 30, 1997), 1.

<sup>308</sup> CNN.com, *Nadine Strossen: Why the ACLU Opposes School Dress Codes* (CNN chat room interview August 8, 1991) Available: <http://www.cnn.com/2001/COMMUNITY/08/28/strossen.cnn/index>. (September 11, 2002).



to him. The poor fellow also received a warning that students who borrowed a rental shirt four times would no longer be able to attend this particular school.<sup>309</sup> Although this anecdote comes from a charter school with a high percentage of white, middle and upper middle class students, more public schools around the country are enforcing prescribed clothing requirements. Regarding violators, Strossen says, "as with so many disciplinary measures in schools, enforcement of dress codes fall disproportionately on minority students, raising equality violations as well."<sup>310</sup>

Uniforms are only part of a military-like presence in public school. Ron Scapp writes, "Schooling becomes a matter of strategies of social containment, rather than an effort toward social investment."<sup>311</sup> NCLB calls for tougher discipline and penalties for disruptive students. "These measures," claims Pauline Lipman, "are very serious institutionalized escalation of the demonization of use and the criminalization of African-

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<sup>309</sup> Personal conversation with the student and his parent, August, 2002. Families that cannot afford the required clothing can apply for clothing assistance from the school. Interestingly, the school strongly objects to the term "uniform," opting instead for "dress code," although the intent of enforced uniformity is apparent. The Violations section of the 2002-2003 Dress Code reads, in part: "Parents will be notified and a violation will be recorded. At the fourth violation, students will be assigned After-School Detention. If violations continue, the student and parent/guardian will be asked to appear before the Family and Student Accountability Action Team. Parents should be aware that continued non-compliance with the dress policy may result in immediate withdrawal from Peachtree Charter Middle School. Transportation to the alternate school will NOT be provided." One last note, a tag line under the sectional heading reads: "Help Peachtree earn money by purchasing your dress code clothing through Lands End. Click for more information."

<sup>310</sup> Strossen, "Public Schools Adopting Dress Codes," 2.

<sup>311</sup> Ron Scapp, "For Democracy: Why Corporatizing Public Schools Puts a Nation at Risk," *Educational Researcher* (December 2001): 34.

American and Latino use in particular."<sup>312</sup> In a letter dated May 17, 2001, Rod Paige, then U.S. Secretary of Education, informed Senator Robert Byrd,

*No Child Left Behind* would hold States accountable for school safety. It would require States, as a condition of receiving Federal Safe and Drug-free Schools funds, to: 1) develop a definition for a "persistently dangerous school" and to report on safety on a school-by-school basis; 2) provide victims of serious, school-based crimes and students trapped in persistently dangerous schools the option to transfer to a safe alternative; and 3) adopt a "zero-tolerance" policy that empowers teachers to remove violent or persistently disruptive students from the classroom.<sup>313</sup>

Of the numerous authorized activities, Title IV prescribes the use of "metal detectors and surveillance cameras; reporting criminal offenses on school property; using alternative education programs or services for violent or drug abusing students or students who have been suspended or expelled from regular educational settings; and testing students for illegal drug use or inspecting lockers for weapons or illegal drugs or drug paraphernalia."<sup>314</sup> NCLB also amends the Federal Education Rights and Privacy Act (FERPA) to allow public school districts and local law enforcement authorities to share information regarding disciplinary actions and misconduct by students with any public or private school the student is or seeks to enroll in.<sup>315</sup> Title IV requires schools to expel students who bring to or possess a firearm on school property and to have a "policy requiring referral to the criminal justice or juvenile delinquency system of any student

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<sup>312</sup> Lipman, 2.

<sup>313</sup> U.S. Department of Education, Rod Paige, May 17, 2001-Letter to Sen. Robert Byrd regarding the Administration's FY 2002 budget request for education. Available: <http://www.ed.gov/policy/elsec/guid/secletter/010517.html>. (February 27, 2006).

<sup>314</sup> NCLB, Title IV §4115.2(2)(E)(ii, iii, ix, xiv).

<sup>315</sup> NCLB, §4115.2(E)(xvi).

who brings a firearm or weapon to a school."<sup>316</sup> These amendments intend to protect and benefit schools and communities; however, they also call into question violation of a student's right to privacy and fairness as violations do not drop off a student's record once disciplinary actions are fulfilled.

Various software companies offer their expertise via school administrative software to aid states in their regulatory endeavors. Rediker Software offers *Discipline Plus*, a program that not only simplifies "the difficult and time-consuming task of tracking student discipline [but that also] helps improve student discipline by ensuring that students are held accountable for their actions."<sup>317</sup> The program permits administrators not only to analyze school disciplinary practices but also generates "customized letters following each incident to inform parents of the incident involving their child."<sup>318</sup> Harts Systems offers the Parent-WISE program that "gives parents timely information about their child's progress in school. With the click of a mouse parents have access to grades, attendance, assignments, discipline, and even their child's teacher."<sup>319</sup> Harts Systems also has an administrator's interface that monitors disciplinary incidents and integrates the information on an as-needed basis. Where security guards walk the hallways as visible code enforcers, computer programs are the silent sentries of America's public schools.

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<sup>316</sup> NCLB, §4141.(b)(1); (h)(1).

<sup>317</sup> Rediker Software, "School Administrative Software-For Educators by Educators." Available: <http://www.rediker.com/discipline.html>. (February 15, 2006).

<sup>318</sup> Ibid.

<sup>319</sup> Harts Systems, LTD, "School Administration Software, Parent-WISE." Available: <http://www.hart.com/PwiseIndex.htm>. (February 27, 2006).

Admittedly, schools should be safe places and the appropriate means taken to address school violence. "Our Nation's schools should be a safe haven for teaching and learning and be free of crime and violence....Any instance of crime or violence at school not only affects the individuals involved but also may disrupt the educational process and affect bystanders, the school itself, and the surrounding community."<sup>320</sup> In 2003, there were 2.6 million students ages 12-18 who reported 1.9 million nonfatal crimes at schools including 1.2 million thefts. There also were 740,000 violent crimes reported including rape, sexual assault, robbery, and aggravated assault.<sup>321</sup> According to the NCES/BJS study, *Indicators of School Crime and Safety: 2005*, national data reveal, "more serious victimizations happen away from school than at school. . .[and that] students were more than two times as likely to be victims of serious violent crime away from school as at school;" these included the violent deaths (17 homicides and 5 suicides) of children ages 5 through 19.<sup>322</sup> However, students ages 12-18 continued to report feeling unsafe while they were at school or traveling to and from school and more urban students said that they had missed school or avoided specific areas in their schools because they were fearful.<sup>323</sup> Twenty-one percent of high school students reported the presence of street gangs at school with more students in urban schools reporting gangs followed by

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<sup>320</sup> Jill F. DeVoe, Katharin Peter, Margaret Noonan, et al., *Indicators of School Crime and Safety: 2005* (Washington, D.C.: U.S. Department of Education, National Center for Education Statistics and U.S. Department of Justice, Bureau of Justice Statistics, November 2005), 1.

<sup>321</sup> *Ibid.*, 71-73.

<sup>322</sup> *Ibid.*, 1; 70

<sup>323</sup> *Ibid.*, 76, 77, 102-104.

suburban and then rural students.<sup>324</sup> Students reported that various hate-related words concerning race, ethnicity or gender, or religion/disability/sexual orientation were used against them; many students reported seeing hate-related graffiti (words or symbols) written in classrooms, bathrooms, hallways, or outside of the building); and some students reported being bullied or picked on while at school.<sup>325</sup> Middle schools were more likely than primary and secondary schools to report racial tension, bullying, verbal abuse of teachers, and classroom disruption and also were more likely than primary schools but less than secondary schools to report gang or extremist cult activities.<sup>326</sup> Almost one-third of high school students (grades 9-12) had been in a fight on or off school property during the previous year and one-half of those carrying a weapon while at or away from school.<sup>327</sup> There was a slight decrease in the number of students reporting having been offered, sold, or given an illegal drug on school property and both marijuana and alcohol use for ninth through twelfth graders dropped between 1999 and 2003.<sup>328</sup>

Teachers who reported being targets of violence and theft while at school shared concerns for safety and interference with their ability to teach. The possibility of violent crimes vary according to teachers work with more reported incidents in central city

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<sup>324</sup> Ibid., 88.

<sup>325</sup> Ibid., 91-93.

<sup>326</sup> Ibid., 86.

<sup>327</sup> Ibid., 94-97.

<sup>328</sup> Ibid., 89, 90, 98-101.

schools than urban or rural schools and secondary school teachers were more likely than elementary school teachers to be threatened with injury or attacked by a student.<sup>329</sup>

*School Crime and Safety: 2005* also highlights school practices and policies related to discipline, safety, and security measures. Over one-half of the public schools reported taking at least one serious disciplinary action against a student including suspensions for more than five days, expulsions, and transfers to specialized schools for incidents related to the possession or use of a firearm or explosive device; using or distributing illegal drugs or alcohol; fights or threats; and insubordination or other nonacademic infractions.<sup>330</sup> Schools reported employing various practices and procedures to promote safety of students and staff with the majority using controlled access and check-in procedures for visitors. Few schools required students or visitors to pass through metal detectors on a regular basis; however many primary, middle schools, and secondary schools reported using one or more security cameras to monitor the school. Other safety measures included identification badges, requiring clear book bags or banning book bags, performing random sweeps for drugs and other contraband (with and without sniff dogs), and random checks of students with metal detectors. Data revealed that secondary schools had more security measures in place than middle or primary schools and that security measures varied by school size and location with urban schools using more cameras but city schools employing the greatest number and most diverse set of measures, especially random metal detector checks on students.<sup>331</sup> Almost

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<sup>329</sup> Ibid., 20, 78-80.

<sup>330</sup> Ibid., 105.

<sup>331</sup> Ibid., 106.

all students reported their schools as having a student conduct code and observed one or more security measures including metal detectors, visitor check-ins, security guards and/or police officers, school staff hall monitors, locker checks, locked entrances during the day, and/or security cameras.<sup>332</sup>

Although the 2005 study reveals the continued reduction of violence in most of America's public schools, there remains a higher percentage of victims of violence at central city and urban schools reporting a greater number of lower SES and minority students. School practices and policies relating to safety and discipline also are more prevalent and more diverse in city schools with higher representations of minority students and poor students. These findings are important as they indicate that what we do on a daily basis regarding disciplinary and safety practices and policies may relate to school crime and violence. That victims of school violence, drug use, and gangs, and higher percentages of safety and discipline practices and policies are more prevalent in schools with more minority students and lower SES students, signals the importance not to ignore these students or their schools and to develop comprehensive programs to address both the in-school and out-of-school needs of these students.

How will schools respond to NCLB's zero tolerance requirements and who will lead public schools in their bid to decrease the violence and increase safe learning environments? According to Philip E. Geiger, "School boards around the country have been hiring a new breed of superintendent [including] military generals. . . .the reason, they say is that their skills are transferable between the private and public sectors and

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<sup>332</sup> Ibid., 108.

between the military and schools."<sup>333</sup> Seattle tapped U.S. Army (Ret.) Maj. Gen. John Stanford superintendent of its school system in 1995, Duval County Florida hired retired Air Force Maj. Gen. John C. Fryer Jr. in 1998, and New Orleans called up Marine Col. Alfonse Davis to save its schools in 1999. Both Davis and Fryer appear to be part of this new breed of leader. Davis taught young Marines when he ran the Officer Candidates School for 1995-1997; Fryer was an instructor pilot and an academic instructor at various military education sites and headed the National War College and National Defense University. Fryer "spent considerable time with John [Stanford] in his school system, meeting teachers and principles and assessing the 'culture' of public education."<sup>334</sup> He also served as vice president and general manager of a public company and built its educational technologies division. Prior to Hurricane Katrina, Col. Davis utilized Tiger Teams, "fast-strike crews that aim to get answers without the standard bureaucratic delay," in lieu of committees for finding ways to improve New Orleans schools.<sup>335</sup> Neither Fryer nor Davis came to their jobs with an education degree. Lack of pedagogy is acceptable, according to Geiger, since school boards hire "a No.2 person who has an educational background who can compensate for what the CEO lacks in pedagogical knowledge and institutional understanding."<sup>336</sup>

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<sup>333</sup> Philip E. Geiger, "When Superintendents Become the Generals," *The School Administrator*--Web edition, February 2002: 1. Available: <http://www.aasa.org/publications/saissuedetail.cfm?ItemNumber=1791&snItemNumber=950&tnItemNumber=951>. (July 26, 2006).

<sup>334</sup> Ellen R. Delisio, "Retired Air Force Officer Faces New Challenges as School Superintendent," *Education World*, 4 September 2001, 2.

<sup>335</sup> Janet McConnaughey, "New Orleans Led by Marine-CEO-Superintendent," AP wire service, August 7, 1999.

<sup>336</sup> Geiger, 1.



Among the ranks assisting the new education commanders are other retired military personnel serving as teachers in public schools under the Troops to Teachers (TTT) program. Congress established TTT in 1994 under the Department of Defense with program oversight transferred in 2000 to the Department of Education. *No Child Left Behind* continues TTT through fiscal year 2006 with its "primary objective to help qualify teachers for schools that serve low-income families throughout America...especially in math, science, special education and other critical subject areas."<sup>337</sup> First Lady Laura Bush allows the program to use her name and image in informational and media materials, and she seeks new recruits whenever she visits military bases. "The soldiers, who mostly have no teaching experience, are benefiting from the federal government's continued pouring of cash into military welfare programs."<sup>338</sup> The U.S. Departments of Defense and Education have an \$18 million budget to assist "eligible military personnel to transition to a new career as public school teachers."<sup>339</sup> The TTT program provides individuals up to \$5,000 for teacher certification costs and bonuses of \$10,000 to individuals agreeing to teach for three years in a school serving a high percentage of low-income students.

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<sup>337</sup> NCLB, §2302.(b)(1-2); U.S. Department of Defense, *Troops to Teachers, Program Overview* (Washington, D.C. U.S. Department of Defense/ Defense Activity for Non-traditional Education Support (DANTES)). Available: [http://dantes.doded.mil/dantes\\_web/troopstoteachers/overview](http://dantes.doded.mil/dantes_web/troopstoteachers/overview). (February 27, 2006).

<sup>338</sup> Saltman, 91.

<sup>339</sup> *Troops to Teachers, Program Overview*, Ibid., 1.

Troops to Teachers is "hailed as a vehicle for providing positive role models to America's youth."<sup>340</sup> However, critics of the program question military discipline and whether soldiers trained to obey orders without question, including orders to kill, are truly the role models that students in the public schools need. Titus Peachey, a director of peace education for Mennonite Central Committee U.S. wonders if TTT is simply "a way for the military to make itself look attractive to impressionable youth in very subtle ways."<sup>341</sup> More than the military's appearance, what about its view of war? Peachey has concerns about the military's mind-set and he wants to "be sure that in a high school history class that the teacher be open to presenting a variety of perspectives on America's wars [including the concept of non-violence] rather than simply the presumption that whenever there's a conflict that the correct response, or the response that ultimately will work, is using military force."<sup>342</sup> Saltman raises concerns about the bootstrap mentality concluding that, "Ultimately, the military narrative that comes with the installment of military personnel in the schools is that the responsibility for success lies with the individual—success or failure derives strictly from discipline and self-discipline. Such narrative covers over the extent to which social conditions such as inferior defunded schools impose limits on the range of individual agency."<sup>343</sup>

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<sup>340</sup> Michael L. Betsch, "Peaceniks Oppose Veterans as Teachers" (CNSNews.com, June 15, 2002). Available: <http://newsmax.com/archives/articles/2002/6/14/141028>. (February 27, 2006).

<sup>341</sup> Ibid., 2.

<sup>342</sup> Ibid.

<sup>343</sup> Saltman, 91.

Military instructors, principals, and superintendents are reputed to be tougher than civilian teachers and administrators in the amount of academic assignments and disciplinary rules. Col. Davis' plan "calls for students to write regular essays about books he chooses. It also proposes a Word of the Month program that involves essays and discussions about *values-based* words such as 'respect' or 'discipline'. [Davis] says he'll get rid of people who aren't committed to change, even if they have contracts."<sup>344</sup> Maj. Gen. Fryer describes his goal "to lead the finest school district in America.... Reaching that goal requires establishment of a curriculum that has rigor and coherence; alignment of curriculum, instruction, and assessment; incorporation of internationally benchmarked performance standards. . . ."<sup>345</sup> These are no-nonsense men, trained as leaders with high senses of discipline and loyalty, who expect their subordinates and trainees to dutifully follow their lead. Following them onto the battleground of tougher standards and discipline are students enrolled in the Junior Reserve Officer Training Corps (JROTC).

The U.S. Department of Defense started the JROTC program under the National Defense Act of 1916 to increase America's military readiness in the face of World War I. The program "brings retired military personnel into public classrooms, teaches a military curriculum, and puts students in uniform. According to a federal regulation, its goal is to 'create favorable attitudes and impressions toward the Services and toward careers in the Armed Forces.'<sup>346</sup> JROTC has programs in approximately 3,200 public schools serving

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<sup>344</sup> McConnaughey, 2.

<sup>345</sup> Delisio, 3.

<sup>346</sup> Catherine Lutz and Leslie Bartlett, *Making Soldiers in the Public Schools: An Analysis of the Army JROTC Curriculum* (Philadelphia, PA: American Friends Service Committee, 1995), 3.

more than 500,000 students and its Pentagon funding rose more than 50 percent, from \$215 million in 2000 to \$326 million in 2004.<sup>347</sup> Students enter JROTC at age 14 and the program covers three to four years of high school during which time students receive nonacademic elective credit for classroom work utilizing military-oriented textbooks, military drill or marching, and various optional activities such as rifle training. The purpose of JROTC is "to instill in students the values of citizenship, service to the United States, and personal responsibility and sense of accomplishment."<sup>348</sup> Students wear JROTC uniforms provided by the sponsoring military branch one day a week, "enhancing the visibility of the program and solidifying their own identity as soldiers."<sup>349</sup> In addition to the traditional JROTC programs, at least forty career and partnership academies will "combine a JROTC unit with an occupationally-focused curriculum. . . .The expansion of JROTC is meant to cultivate a public image for the military as efficacious, reliable, and concerned."<sup>350</sup> Many of NCLB's provisions attend to problems regarding school violence and discipline and support "schools and communities implementing preventive programs which strive to involve the whole school community in identifying solutions to school violence, to teach social skills to help resolve conflicts nonviolently, and to educate young people about the tremendous cost of gun and other violence;" in contrast, JROTC

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<sup>347</sup> Ron Stodghill, *Class Warfare* (TIME.com, February 24, 2002), 1. Available: <http://www.time.com/time/education/printout/0,8816,212638,00.html> (February 16, 2002); Avis Thomas-Lester, *Recruitment Pressures Draw Scrutiny to JROTC* (Washingtonpost.com, September 19, 2005), 2. Available: <http://www.washingtonpost.com/wp-dyn/content/article/2005/09>. (July 17, 2006).

<sup>348</sup> 10 U.S.C. 2031(a)(2).

<sup>349</sup> Lutz and Bartlett, 4.

<sup>350</sup> Ibid.

cadets carry real and dummy weapons during drill and Color Guard activities, participate in marksmanship training, and study from texts that emphasize violence as effective means of settling conflicts on a global scale.<sup>351</sup>

NCLB strives to provide a safe and orderly learning environment and to include all students in academic programs yet JROTC discriminates against individuals with disabilities, immigrants who do not have legal documentation of their status, and gay male, lesbian, and bisexual students. A JROTC fact sheet notes, "All high school students who are U.S. citizens, at least 14 years old, and who are physically fit are eligible to join the JROTC."<sup>352</sup> Although the military may be exempt from the Americans with Disabilities Act (ADA) and Individuals with Disabilities Education Act (IDEA), public schools are exempt from neither and JROTC's physical fitness requirements discriminate against students and instructors with disabilities, including disabled veterans seeking to become instructors.<sup>353</sup> JROTC, in keeping with the

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<sup>351</sup> American Friends Service Committee, "JROTC: Sending the Wrong Message about Weapons and Violence," *Y&M Magazine*, December 2000/January 2001, 1.

<sup>352</sup> U.S. Department of Defense, JROTC Fact Sheet (Washington, D.C.: U.S. Department of Defense, Public Affairs Office). JROTC recently instituted a new category of 'participating students' for individuals who do not meet the physical criteria to be cadets. These students can be placed in the program on a case-by-case basis, do not wear uniforms, and are not counted in the unit's opening enrollment report. Furthermore the number of participating students cannot exceed 2 percent of the cadet population. U.S. Army Cadet Command, *Organization, Administration, Operation, Training and Support*, Cadet Command Regulation 145-2 (Fort Monroe, VA: U.S. Army Cadet Command, 1 May 2006), Section III 8-17.b.

<sup>353</sup> Instructors must meet retention medical fitness standards. Personnel not meeting these standards such as individuals retired for medical reasons (10 U.S.C. 1201) are not eligible to teach in JROTC. Individuals with speech impediments "that would detract from the ability to be understood" also are ineligible to be JROTC instructors. U.S. Army Cadet Command, *Ibid.*, CCR 145-2 Section II 4.5(h); (j).

Department of Defense's position that homosexuality is incompatible with military service, also discriminates against gay male, lesbian, and bisexual students and instructors.<sup>354</sup> Because JROTC is an adjunct of the military, there is no legal protection for young gay male, lesbian, or bisexual students who wish to join the program and be open about their identities. JROTC's intentional exclusion of certain immigrant students and students with disabilities is violative of federal and state nondiscrimination laws, while excluding gay male, lesbian, or bisexual students violates many school district policies that prohibit discrimination based on sexual orientation; any exclusion from or limited participation in academic programs in public schools violates *No Child Left Behind's* spirit of offering all students, especially students in designated subgroups, full access to such programs.

NCLB attempts to equalize public education for all students and many of the Act's provisions attend to specific challenges facing urban and rural districts, schools, and students. JROTC programs "are not randomly distributed around the country's high schools, nor do they appeal to an arbitrary selection of students within selected schools.... Programs are heavily clustered in Southern high schools (65 percent of all JROTC units are in 14 Southern states) and in schools with a high proportion of minority students."<sup>355</sup> Colin Powell was a ROTC cadet at City College of New York and supports the Junior ROTC program, believing that it offers "the best prescription for saving lost inner-city

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<sup>354</sup> 10 U.S.C. 654 Policy concerning homosexuality in the armed forces; see also U.S. Department of Defense Directive 1332.30 Separation of Regular Commissioned Officers.

<sup>355</sup> Lutz and Bartlett, 6.

youths."<sup>356</sup> Throughout Powell's autobiography, *My American Journey*, there are references to the positive effects JROTC has on these youths including this oft-quoted statement, "JROTC is a social bargain. Students get a taste of discipline and the work ethic, and experience pride in membership."<sup>357</sup> In 1999, then Secretary of the Army Louis Caldera addressed an assembly celebrating JROTC's expansion plans stating, "This is an investment in our youth. It develops confidence, leadership and teamwork in our young people. Army JROTC contributes substantially to the fabric of our Nation by teaching citizenship and leadership to high school students."<sup>358</sup> JROTC is a big investment, an investment shared by the U.S. government and the school districts involved. While many "[p]oorer schools take on a JROTC unit in an attempt to gain resources not received through their tax base, the unit in fact drains resources from other educational programs in the district through its cost-sharing requirements."<sup>359</sup> JROTC units can cost school districts \$50,000 per school, per year to cover a portion of instructor salaries (JROTC programs require two military officers assigned to each class and the salary depends on the person's military rank and pension); salary supplements including housing allowances; and 100 percent of civilian benefits received by the instructors including health insurance, disability, retirement, prescription plans, and any other benefits provided to regular school district teaching staff. NCLB establishes strict

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<sup>356</sup> Stodghill, 1.

<sup>357</sup> Colin Powell, *My American Journey*, as cited in Sergeant 1<sup>st</sup> Class Connie E. Dickie, "Fifty High Schools Join Army's Junior Reserve Officers Training Corps," *ArmyLINK News* (Washington, D.C.: Army News Service, July 30, 1999), 2.

<sup>358</sup> *Ibid.*, 1.

<sup>359</sup> Lutz and Bartlett, 13.

requirements for teachers and paraprofessionals in public schools to ensure students receive a high level of academic instruction. JROTC does not have such stringent requirements; Instructors "must have at least an Associate's degree (by 2009)...have general knowledge in the course subject matter and demonstrated instructional ability... [and] have writing and verbal skills appropriate for the academic environment."<sup>360</sup> While JROTC encourages instructors to pursue a bachelor's degree and state licensure, only Senior Army Instructors (SAI) are required to hold a bachelor's degree.<sup>361</sup> School districts also are responsible for costly modifications to school facilities that may include the addition of a firing range and appropriate storage facilities, and the standard contracts schools sign with the military require schools to cover other costs such as field trips and insurance bonding.<sup>362</sup> School districts report facing additional costs to meet NCLB implementation requirements related to student transfers, tutoring, and increased testing; participating in the Pentagon's youth investment program leaves JROTC units draining badly needed resources from the schools. According to Lutz and Bennett, "public schools aim to provide safe, democratic schools to promote respect for others, critical thinking, and basic academic skills. [However,] JROTC does not provide safety, but rather introduces guns into the schools; that it promotes authoritarian values instead of democratic ones; and that it uses rote learning methods and drill in lieu of critical thinking and problem solving skills."<sup>363</sup> The JROTC program claims to provide students

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<sup>360</sup> U.S. Army Cadet Command, *Ibid.*, CCR 145-2 Section II 4.5 (d); (l); (o).

<sup>361</sup> *Ibid.*, Section II 4.9 (4).

<sup>362</sup> Lutz and Bartlett, 14.

<sup>363</sup> *Ibid.*, 3.



with discipline and leadership training, and that it is an investment in our youth. Left unchallenged, "the acceptance of JROTC in the public schools presumes that military institutions are superior in several respects to civilian ones; that military solutions are best suited to respond to contemporary social problems; and that the military's interests are synonymous with the interests of the American people."<sup>364</sup> However, the military's interests are its own interests, often maintained at the expense of the rest of society.

NCLB furthers the military's interests by requiring secondary schools and LEAs to provide "access to secondary school students' names, addresses, and telephone listings, [the] same access as is provided generally to post secondary educational institutions or to prospective employers of those students."<sup>365</sup> Secretary of Defense Donald Rumsfeld and former Secretary of Education Ron Paige issued a "Dear Colleague" letter specifically addressing the need for student information:

For more than 25 years, the Armed Forces have been staffed entirely by volunteers. The All-Volunteer Force has come to represent American resolve to defend freedom and protect liberty around the world. Sustaining that heritage requires the active support of public institutions in presenting military opportunities to our young people for their consideration.... Student directory information will be used specifically for armed services recruiting purposes and for informing young people of scholarship opportunities. For some of our students, this may be the best opportunity they have to get a college education. The support of our Nation's educational institutions on behalf of the U.S. Armed Forces is critical to the success of the All-Volunteer Force. It can be, and should be, a partnership that benefits everyone.<sup>366</sup>

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<sup>364</sup> Ibid.

<sup>365</sup> NCLB, Title IX §9528.(1, 3).

<sup>366</sup> U.S. Department of Education, "Joint Letter from Secretary Paige and Secretary Rumsfeld, October 9, 2002." Available: <http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht10-9-02c>. (April 24, 2006).

Diane Paul describes military recruiters as working overtime "to persuade young people to join a military desperate for soldiers."<sup>367</sup> Paul claims, "Poor children (often minorities) without money for college are recruiters' easiest targets. Far too many of our Nation's disadvantaged youth are forced to gamble with their lives for an opportunity other Americans take for granted."<sup>368</sup> Terry D'Italia, spokesman for Hartford Public Schools, addressed socioeconomic differences in his expectation that more affluent districts would resist recruiters and face potential loss of NCLB funds. D'Italia says of his schools, "We are a very poor school system and the military is a really nice option for our students who can not only get skills training but college tuition when they get out."<sup>369</sup> Kelly Vlahos spoke with parents and school officials in June 2005 to determine public awareness on NCLB's recruitment policy; according to one parent in New Jersey, "Parents are just becoming aware of the policy....Districts that don't comply could risk annual federal funding."<sup>370</sup> The military has had access to schools prior to NCLB but not all schools were in a position to receive penalties if they denied recruiters access. "Now, the No Child Left Behind Act emboldens efforts to gain 'access to the best and brightest this country has to offer.'"<sup>371</sup>

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<sup>367</sup> Diane Paul, "Reading, Writing, and Recruiting," *Washington Post*, 11 June 2005; A17.

<sup>368</sup> Ibid.

<sup>369</sup> Kelly Beaucar Vlahos, "Heavy Military Recruitment at High Schools Irks Some Parents," June 23, 2005; 2. Available: <http://www.foxnews.com>. (April 24, 2006).

<sup>370</sup> Ibid., 1.

<sup>371</sup> Ibid.

In examining *No Child Left Behind* according to PDE, we find that the Act intends to create safe learning environments, prevent student violence and drug and alcohol use, and offer before and after school academic enrichment activities for students. Programs relating to the latter two provisions not only benefit students and schools, but also benefit the communities in which students live; however, NCLB, in its attempt to provide a safe and orderly learning environment, places control mechanisms in place, specifically mandatory reporting and disciplinary provisions, that unfairly attach infractions and disciplinary measures to student records that remain for the duration of years in school and travels with the student if he or she moves schools. These provisions cause students harm disproportionate to any benefits schools gain by maintaining students in offender status once disciplinary requirements have been fulfilled, and the extremeness of these actions are disproportionately harsher than is necessary for sustaining safe learning environments. Schools need effective violence and drug prevention programs to support local communities and NCLB initiatives attempt to fulfill those needs; however, more harm than benefits for students arise from programs, such as the JROTC, that glorify violence as a means to justified ends and target some students for membership while discriminating against others. Furthermore, JROTC's exclusion of students with disabilities, homosexual and bisexual students, and non-nationalized students counters NCLB's commitment to including all students in its supported academic programs, harming rather than benefiting students barred from cadet status. Schools need, and NCLB requires, appropriately educated and certified teachers to develop students' problem-solving and critical thinking skills; however, in promoting JROTC as an accepted academic program for public high school students, the Act allows retired

sergeants with minimum college-level and teacher accreditation education to drill students into thinking and acting like soldiers who dutifully give and take orders.

*No Child Left Behind's* intends for all children to have a fair, equal, and significant opportunity to receive a high-quality education and the Act particularly attends to including students from specific subgroups previously underserved. However, many of the implementation requirements and specific programs approved and/or funded by the Act discriminate on the basis of disability, sexual preference, and national origin; unfairly target low-income and minority communities and students; permanently attach school infractions and disciplinary measures to student records; maintain and do not require personnel to meet the academic rigor necessary to increase the academic achievement level of all students. NCLB's anti-violence, anti-drug, and academic support programs benefit both students and communities but other measures to ensure safe and orderly learning environments and academic programs restricting enrollment unfairly and disproportionately harm many students.

### **Parental Choice**

A U.S. House of Representatives Committee on Education and the Workforce fact sheet claims, "America is not yet a land of equal educational opportunity. Wealthier parents can choose an alternative school for their children when public schools aren't getting the job done. But low-income parents often have no choice but to keep their children trapped in underachieving, even dangerous schools."<sup>372</sup> *No Child Left Behind*

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<sup>372</sup> U.S. House of Representatives Committee on Education and the Workforce, "Fact Sheet—Parental Choice in Education" (September 9, 2004), 1. Available: <http://www.edworkforce.house.gov/issues/108<sup>th</sup>/education/parentalchoice>. (April 22, 2006).

provides low-income parents, whose children attend these underachieving and dangerous schools, the right to transfer their children to a better public or charter school. According to EdWorkforce, "All parents, regardless of race or income, deserve the opportunity to choose the best education possible for their children."<sup>373</sup> Parental choice, under NCLB, not only gives low-income parents the chance to give their children the best education possible, it "also provides a powerful incentive for all schools to strive for high level of academic achievement."<sup>374</sup>

*No Child Left Behind* links parental choice and accountability in its drive for "continuous and substantial academic improvement for all students" by using penalty provisions for failing to meet certain of the Act's requirements to infuse market concepts into public school law.<sup>375</sup> "Schools that fail to make AYP are subject to increasingly severe penalties for each consecutive year they fail. One of the first penalties to kick in is the 'choice option'."<sup>376</sup> Under NCLB, if a school fails to attain AYP for two consecutive years, it will fall into the needs improvement category and parents may choose to send their children to better performing schools within the district, including a public charter school, with transportation provided by the school district. If all schools in a district fail, children may transfer to non-failing schools in other districts with transportation paid by the originating district. Parents can choose for their children to remain at the new school

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<sup>373</sup> Ibid.

<sup>374</sup> Ibid., 2.

<sup>375</sup> NCLB, §1111.(b)(2)(C)(ii).

<sup>376</sup> Gerald W. Bracey, *Setting the Record Straight—Responses to Misconceptions About Public Education in the U.S.* (Portsmouth, NH: Heinemann, 2004), 75.

until completion of the highest grade at that school, however transportation paid by the school district ends at the end of the school year that the originating school attains AYP.<sup>377</sup> The school choice provision of NCLBA is intended to provide a unique opportunity for students in schools not meeting state goals to attend schools that have had greater success meeting these goals.<sup>378</sup> The Department of Education's guidelines state,

The school improvement activities undertaken under Title I and public school choice can provide all students in low-performing Title I schools the opportunity to obtain a high-quality education. When all students—including students with disabilities and English language learners—are provided high-quality educational options, and when parents receive enough information to make intelligent choices among these options, public school choice can increase both equity and quality in education. In addition, expanded parental choice gives school a greater incentive to undertake reforms and make the changes that are needed to improve student learning and reach academic achievement goals.<sup>379</sup>

David Muhlhausen, a parental choice advocate and senior policy analyst for The Heritage Foundation, notes, "NCLB promised to make public schools more effective teaching institutions by holding schools accountable for student academic performance. Schools would face competition because students would have other options when their schools were not adequately helping them achieve."<sup>380</sup> In reality, school choice comes on the

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<sup>377</sup> NCLB, §1116.(b)(1)(A), (E); (b)(9); (b)(13).

<sup>378</sup> Marie S. Shaul, "Education Needs to Provide Additional Technical Assistance and Conduct Implementation Studies for School Choice Provision," Report to the Secretary of Education, GAO-05-07 (Washington, D.C.: U.S. General Accountability Office, December, 2004), 1.

<sup>379</sup> U.S. Department of Education, "Public School Choice, Non-Regulatory Guidance" (Washington, D.C.: ED, February 6, 2004), 2.

<sup>380</sup> David B. Muhlhausen, "School Choice and Supplemental Services: Administration Slow to Hold School Districts Accountable Under NCLB." *WebMemo* 1041, April 18, 2006 (Washington, D.C.: The Heritage Foundation), 1. Available: <http://www.heritage.org/Research/Education/wm1014>. (April 22, 2006).

back of NCLB's penalty provisions while promoting the position that choice facilitates accountability by fostering competition for correction and/or enrollment. Leslee Trammell reminds us that choice is in keeping with "the belief that the quality of education will *necessarily* be enhanced by preserving the rules of the free markets."<sup>381</sup> Charter schools, voucher programs, and contracts with outside education management providers are three popular choice initiatives supported by NCLB; all represent "the view that market ideology produces the optimal outcomes, in terms of both efficiency and social value, and are embraced as a means of rescuing students from failing school systems."<sup>382</sup> Parental choice advocates "promote the market axioms that wherever monopolies or cartels reign, the public seldom benefits and that competition and consumer choice improves products. Government-run schools (also known as public schools), according to these believers in choice and competition, are a public monopoly, and more parental choice will yield better schooling. Deregulating (or privatizing) public schools will lead to improved performance."<sup>383</sup> Simply stated, NCLB's market-based requirements will force schools to compete to improve their academic services and increase student achievement or risk losing badly-needed federal funding or closure.

Proponents also argue that parental choice permits funds to follow students to other schools and so keeps the money within the district and redistributing funds breaks down financial barriers for students from low-income families who wish to attend a

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<sup>381</sup> Leslee Trammell, "Measuring and Fixing, Filling and Drilling," in *Schools or Markets? Commercialism, Privatization, and School-Business Partnerships*, ed. Deron Boyles (Mahwah NJ: Lawrence Erlbaum Associates, 2005), 35.

<sup>382</sup> Ibid.

<sup>383</sup> Cuban, 140.

school in a higher-income neighborhood. This, according to choice advocates, promotes the idea of diversity in schools receiving transfer students and "so that students stuck in failing schools would have the chance to receive a better education."<sup>384</sup> According to Betebenner, Howe, and Foster, "Critics of market-driven school choice question whether it can improve achievement overall. They contend that the market may simply redistribute students as a result of 'skimming', where certain schools' mean achievement increases only because other schools' mean achievement decreases....A likely result is movement towards higher concentrations of high ability students at certain schools and a higher concentration of low-ability students at other schools—tracking-at-large so to speak."<sup>385</sup> Department of Education guidelines clarify NCLB requirements for determining the priority given to students for public school choice: A district might rank-order eligible students based on certain achievement levels, but not by family income level (this method does not give priority to the lowest-achieving educational students), or a district might allow all eligible students who receive less than a certain score on state assessments to change schools.<sup>386</sup> Bracey explains,

The choice option goes first to the neediest children, that is, those with the lowest test scores. If a group of these hardcore nonachievers departs, that automatically raises the test score average of the sending school, perhaps getting it off the failed-schools list. At the same time, the receiving school must take on these children who have proven more difficult than most to educate. This could well transform a successful school into a failing one

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<sup>384</sup> Muhlhausen, 1.

<sup>385</sup> Damian W. Betebenner, Kenneth R. Howe, and Samara S. Foster, "On School Choice and Test-based Accountability." (Boulder, CO: Education and the Public Interest Center, February, 2005), 2, 16.

<sup>386</sup> U.S. Department of Education, "Public School Choice, Non-Regulatory Guidance," C-7 (pp9-10).



through no fault of the schools.<sup>387</sup>

Achieving schools within a district must accept transferees from failing schools; receiving schools may have few subgroups to influence their AYP levels but once they accept students from within these subgroups and include their test scores in the school's overall AYP, the school is transformed from making AYP to a failing school.

Betebenner et.al., claim, "that schools with a high amount of choice do well. These schools may be equal in quality to other, less desirous schools in the district, but the pool of students from which they draw is highly able, leading some to strongly believe that it is the school that is responsible for these children's scores."<sup>388</sup>

Examining school demographics and patterns of students requesting transfers from failing schools to non-failing schools offers some explanation of why schools with a high amount of choice do well. The number of students participating in school choice doubled from 18,000 students in 2002-2003 to 45,000 students requesting transfers in 2004-2005. During the 2003-2004 school year, 3.9 million students were eligible under NCLB choice requirements to transfer to another school; however, only one percent (38,000) of students participated in the school choice option.<sup>389</sup> "Of the students who

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<sup>387</sup> Bracey, 76. Receiving schools cannot be on the AYP failing list and generally have fewer subgroups to negatively influence their AYP scores. Transferees considered members of disaggregated subgroups would be included in the new school's AYP data; because a number of these subgroups (including ELL and students with disabilities) are linked with failing schools, receiving schools could lose their "passing" status simply because of the additional students and not because of the quality of education offered at the schools.

<sup>388</sup> Betebenner, Howe, and Foster, 18.

<sup>389</sup> Stephanie Stullich, Elizabeth Eisner, Joseph McCrary, and Collette Roney, *National Assessment of Title I Interim Report—Volume I: Implementation of Title I* (Washington,

transferred, 53 percent were male, 62 percent were minorities representing all the major racial and ethnic groups, and 82 percent were from low-income families as measured by their eligibility for the free or reduced-price school lunch program. In addition, 10 percent of these transferring students were English language learners and 14 percent were enrolled in special education. In general, proportionately fewer minority and low-income students transferred, compared with students who were eligible but did not transfer."<sup>390</sup>

"About 62 percent of the transferring students were minorities, but about 52 percent of the students in receiving schools were minorities."<sup>391</sup> Transferring students performed lower on standardized tests than receiving school students; 33 percent of transferring students met state reading standards compared to 43 percent of receiving students and 20 percent of transferring students met state math standards compared to 34 percent of receiving students.<sup>392</sup>

Muhlhausen laments that only one percent of all students eligible for public school choice had transferred out of their failing schools: "Despite over \$46.6 billion in Title I, Part A grants to school districts from fiscal years 2002-2005, the U.S. Department of Education has had little success in getting school districts to comply with the choice and supplemental education provisions of NCLB."<sup>393</sup> He blames school districts for

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D.C.: Institute of Educational Sciences, National Center for Education Evaluation and Regional Assistance, U.S. Department of Education, February, 2006), 62, 64.

<sup>390</sup> Shaul, 17.

<sup>391</sup> Ibid., 18.

<sup>392</sup> Ibid.

<sup>393</sup> Muhlhausen, 1.

failing to implement NCLB's choice provisions claiming, "Parents deserve the parental choice options promised to them under federal law [and that if a district] fails to comply with these provisions, federal funding under NCLB should be withheld from the school district."<sup>394</sup> Muhlhausen suggests federal and state policymakers to "provide parents with real school choice options through additional student-centered reforms. Students trapped in persistently failing public schools deserve a real opportunity to transfer to better schools."<sup>395</sup> Muhlhausen does not mention that very few schools were able to accommodate all students requesting transfers.

More than one-third (39 percent) of districts required to offer the school choice option in 2004-2005 did not do so, but often districts had no non-identified schools in the district to which students could transfer. Among districts that were required to offer school choice in 2004-2005, 20 percent reported that having no non-identified schools within the district, either because there was only one school per grade level or because all schools in the district were identified for improvement, was a major challenge to implementing Title I school choice. Some districts pointed to a lack of space in non-identified schools (25 percent) or an inability to negotiate agreements with other districts to receive students who wished to transfer (16 percent) as major challenges.<sup>396</sup>

Stullich et.al., reported that "58 percent of districts with high schools identified for improvement were not offering the school choice option, as did 46 percent at the middle school level and 30 percent at the elementary level."<sup>397</sup> These figures seem to support choice advocates' accusations that districts were noncompliant and refused to offer better opportunities to their students; in reality, there were no schools in which to transfer

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<sup>394</sup> Ibid., 2.

<sup>395</sup> Ibid.

<sup>396</sup> Stullich, Eisner, McCrary, and Roney, 65.

<sup>397</sup> Ibid.

students—"77 percent of the Nation's school districts with high schools have only one high school, 67 percent of districts with middle schools have only one middle school, and 53 percent of districts with elementary schools have only one elementary school."<sup>398</sup>

Many districts reported support for NCLB's "focus on improved student performance and accountability; however, they had difficulties providing school choice, primarily because of tight timeframes and insufficient capacity."<sup>399</sup>

The issue of critical mass and what to do with the increased number of students requesting transfers frustrates districts even more when it comes to students with disabilities. The National Council on Disability reports:

School districts, with 28 years of experience in providing educational services and supports to students with disabilities, have acquired and maintain an infrastructure for this specialized support. This infrastructure may particularly reflect specialized administrative personnel, teachers, and highly specialized speech and other therapists, specialized adaptive equipment such as Braille writers, adapted computers, etc. Loss of the typical "caseload" of students with disabilities and the money provided by the state for their education could significantly impact the ability of these districts to maintain the infrastructure, and thus could negatively impact services to the students who remain in district schools.<sup>400</sup>

NCLB specifically addresses the need for schools to be accountable for the academic achievement of all students; however there is additional concern as to whether schools available for transfer either want to serve students with disabilities or, more importantly, are able to provide the specialized services and necessary supports that these students might require. The Act requires districts and schools to

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<sup>398</sup> Ibid.

<sup>399</sup> Shaul, 18.

<sup>400</sup> National Council on Disability, "School Vouchers and Students with Disabilities—Policy Paper" (Washington, D.C.: NCD, April 15, 2003), 29.

ensure that students with disabilities are provided a free appropriate public education (FAPE) consistent with IDEA, Section 504 of the Rehabilitation Act of 1973, and ADA in their schools of choice. Students with disabilities have special and specific needs. While every student with a disability must be provided FAPE, the implementation and delivery of a free and appropriate education do not have to be identical at each school. When a parent chooses to transfer a child to a different school, the parent must recognize that there are different ways to address the needs of their child.<sup>401</sup>

Various federal laws require districts and schools to provide students with disabilities FAPE however, they "are not required to offer students with disabilities the same choices of schools as it offers to nondisabled students."<sup>402</sup> NCLB guidelines encourage districts to "match the abilities and needs of a student with disabilities with those schools that have the ability to provide FAPE," but remain eerily silent on assisting districts and schools with equipment, physical space, and specialized staff necessary to adequately address student needs.<sup>403</sup> Florida is addressing the issue of educating students with disabilities by providing vouchers for students to transfer to charter and privately operated schools specifically designed to serve this population. This not only offends the spirit of providing educational services to children with disabilities in the least restrictive and inclusive environment, it also places the burden on parents to locate an alternative environment from a child's failing school, a burden that may be unreasonable.

The Department of Education disagrees with districts that claim a lack of room as a way around NCLB's choice option: "An LEA may not use lack of capacity to deny

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<sup>401</sup> U.S. Department of Education, "Public School Choice, Non-Regulatory Guidance," F-1, F-2 (pp17-18).

<sup>402</sup> Ibid., F-3 (p18).

<sup>403</sup> Ibid.

students the option to transfer but may take capacity into consideration in deciding which choices to make available to eligible students."<sup>404</sup> ED even goes so far as suggesting means for school officials to meet NCLB choice provisions and to create the required additional capacity:

School officials will need to employ creativity and ingenuity in creating capacity in schools to receive additional students. The range of possible options might include:

- Reconfiguring, as new classrooms, space in receiving schools that is currently not being used for instruction;
- Expanding space in receiving schools, such as by reallocating portable classrooms within the district;
- Creating satellite divisions of receiving schools, that is, classrooms that are under the supervision of the receiving school principal and whose teachers are part of the school faculty but that exist in neighboring buildings;
- Creating new, distinct schools, with a separate faculty, within the physical sites of schools identified for improvement;
- Encouraging the creation of new charter schools within the district;
- Developing distance learning programs, or entering into cooperative agreements with "virtual schools";
- Modifying either the school calendar or the school day, such as through "shift" or "track" scheduling in order to expand capacity.<sup>405</sup>

These suggestions are in keeping with and embody the key principles that should form the foundation for a quality public school choice plan:

1. Choice is an important opportunity for parents and children.
2. Choice is an important component of the overall district improvement plan.
3. An overriding goal is to provide students with access to quality instruction.
4. Real choice means giving parents more than one option from which to choose.<sup>406</sup>

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<sup>404</sup> Ibid., E-7 (p14).

<sup>405</sup> Ibid., E-8 (pp15-16).

<sup>406</sup> Ibid., A-3 (pp2-3).

The suggestions and principles also are in keeping with choice objectives favored by corporations and free market enterprises. Employing the Department of Education's concept of creativity and ingenuity means that "the door would be open to privatizers and vouchers....It would establish a 'healthy business climate' in education and would send more money into the coffers of corporations as they take over schools. [Furthermore] it would advance the agenda of the Business Roundtable, the principal organization advancing the high-standards, one-size-fits-all education for docility agenda represented by NCLB."<sup>407</sup> Portable classrooms, charter schools, and virtual schools are already part of the elementary school scene although not always recognized—Christopher Whittle's Edison Schools with a questionable record; K12, former Secretary of Education William Bennett's online for-profit virtual school project; and Michael Milken's Knowledge Universe (KU) that promotes a privatized delivery system of educational services and produces LeapFrog, an interactive educational 'toy' for children. KU also maintains "16 percent control over Nobel Learning Communities, a publicly traded corporation that builds and operates private school for upwardly mobile families who can't yet afford the cost of the established, elite privates and owns outright about four hundred preschools."<sup>408</sup> Bracey reports, "KU owns a variety of business that offer various training and professional development services to people in the workforce and one, online, school-related operation starts with children and runs through grandparenthood, offering advice and activities for interacting with children."<sup>409</sup> Stullich et.al., report that, as of

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<sup>407</sup> Bracey, 77.

<sup>408</sup> Ibid., 95.

<sup>409</sup> Ibid.

May 2005, there were 2,734 supplemental service providers assisting districts and schools meet NCLB's choice requirements.

Private non-profit and for-profit organizations accounted for 76 percent of approved providers.... [And] a growing number and percentage of faith-based organizations have obtained state approval, rising from 18 providers (2 percent of all providers) in May 2003 to 249 (9 percent) in May 2005. School districts and public schools accounted for 17 percent of providers, down from 33 percent two years earlier.... Private organizations served a majority of participating students (59 percent) in 2003-04; about one-third of participants were served by national for-profit companies (34 percent); while 12 percent were served by other for-profit companies and 13 percent by community-based organizations.<sup>410</sup>

PDE requires that we examine parental choice in light of intended good actions and effects. *No Child Left Behind* promotes parental choice as a means to attain quality education for students in low-performing schools, especially disadvantaged students whose parents could not otherwise afford to transfer their children to better schools, including private schools; this is an intended good action resulting in presumably good results. The Act's Title I requirements, according to Department of Education guidelines, "supersede local laws and local school board policies that limit school choice and are inconsistent with the requirement to provide transfer [and choice options] to all students enrolled in schools identified for improvement, corrective action, or restructuring."<sup>411</sup> By stating that federal law holds precedent, ED guidelines prevent schools and districts from arbitrarily blocking transfers into their schools and make more non-failing schools available to students who wish to escape failing schools. However, the effect is that districts already struggling "to find practical and realistic ways to offer choice in building

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<sup>410</sup> Stullich, Eisner, McCrary, and Roney, 65.

<sup>411</sup> U.S. Department of Education, "Public School Choice, Non-Regulatory Guidance," E-10 (p16).



capacity, budgets, and timeframes," now face the possibility of breaking the law and receiving stiff penalties. In this way, NCLB's choice options put into place to strengthen public school education and to promote student academic achievement by offering students the ability to transfer from failing to non-failing schools, instead penalize districts and schools unable to meet the Act's unrealistic requirements.

NCLB's choice options also result in too few students being able to transfer from failing schools, especially English language learners and students with disabilities who have even fewer non-failing schools capable of providing the necessary services and academic programs appropriate to their needs. Many non-failing schools without diverse subgroups and private providers report being limited in staff, services and materials needed to ensure the academic achievement of these particular groups of students. States, including Florida, using vouchers to send students to private schools or establishing charter schools operated by private providers for the sole purpose of serving students with disabilities appear to be offering this student population opportunities and a specialized learning environment that will enable them to reach the high-level of academic achievement intended under NCLB. However, separate schools violate the spirit of the NCLB (and perhaps IDEA) by creating restrictive and segregated environments away from students without disabilities and schools accepting transferees are not bound by the Act to offer similar services or curricula that students had available at previous, albeit, failing schools. The effects are two-fold: first, separate schools do not offer students with disabilities the full social and academic experience of being in a least restrictive environment with non-disabled students; second, that the Act does not require separate schools to offer the same services and level of education necessary to ensure that

students with disabilities attain academic proficiency weakens its purported intent to close the achievement for *all* students, particularly those students historically neglected or underserved. The third effect is: when students with disabilities transfer to private or specialized charter schools they no longer are members of the subgroup specifically identified by NCLB as needing academic attention and could face receiving a lower level of education than the Act requires for students without disabilities; without having to meet NCLB's requirements regarding AYP private providers and disability-designated charter schools do not have the Act's legal pressures to ensure students with disabilities attain academic proficiency commensurate with students without disabilities.

*No Child Left Behind's* stated purpose is to close the achievement gap between various student subgroups so that no child is left behind. However, parental choice ala NCLB opens the doors to education marketteers to develop differentiated curricula as determined by parental religious, political, or philosophical preferences. The Act's reliance on private providers to develop educational teaching and testing materials and to operate schools introduces a market-based approach to education that favors competition and product differentiation. While this may serve to address varying values and particular parental preferences that promote the educational success of their own children, (social mobility) it undermines the goals of providing a unifying educational experience built around common societal values and institutions (democratic equality).

NCLB's parental choice provision transforms classrooms into open markets for private providers and gives corporations the louder voice and choice of educational wares and options available to districts, schools, teachers, parents, and students. It shifts our understanding of the nature of public education from being a public or quasi-public good

to being a private good and its role from promoting democratic equality and social efficiency to promoting individual mobility. The overall effects are that parental choice offers little choice to and disproportionately harms disadvantaged students, racial and ethnic minority students, English language learners, and students with disabilities; financially harms districts and schools struggling to meet the Act's burdens regarding transfers; and relinquishes public control of schools to private providers whose interests are profit margins rather than a child's academic achievements.

## CHAPTER FIVE—SYNTHESIS AND CONCLUSION

*No Child Left Behind* reauthorizes the Elementary and Secondary Education Act of 1965, promising to improve the academic achievement of all children, particularly disadvantaged children. Chapter One traced federal legislative history preceding the Act and demonstrated NCLB's differences from previous manifestations of ESEA, particularly its requirements for states, districts, and schools to establish challenging accountability standards and assessments in reading, math, and science and to mandatorily testing nearly every student on a regular basis as a condition of receiving federal education funds. NCLB's quest for accountability requires schools to demonstrate adequate yearly progress for all elementary and secondary students including the disaggregation of subgroups of students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency. The Act also shifts the role that the federal government played in public education from being a minor regulatory and financial, *sic* silent, partner until the 1960s to being a major and quite vocal stakeholder. Chapters Three and Fours explored this shift, disclosed how NCLB opens the door to corporate marketteers, and examined the tensions regarding the role and nature of public education according to ideologies founded on democratic equality, social efficiency, and social mobility. NCLB's allowances for mass-produced curricula

packages and programs, harsh penalties for failure to perform, parental choice, and the takeover or conversion of schools and services by outside companies inject free market notions of competition and private investment into federal education policy, such that public education as become a big business, promoting a one-size-fits-all style of education and competition for private gain.

*No Child Left Behind's* implementation requirements and specific programs reflect and exacerbate the ideological tensions regarding the role of public education as a means to promote democratic equality, social efficiency, or social mobility, as well as the debate over the nature of public education as a public or private good. Dewey reminds and, perhaps, warns us about the effects of these tensions:

The conception of community of good may be clarified by reference to attempts of those in fixed positions of superiority to confer upon others. History shows that there have been benevolent despots who wished to bestow blessings on others. They have not succeeded except when their actions have taken the indirect form of changing the conditions under which those lived who were disadvantageously placed. The same principle holds of reformers and philanthropists when they try to do good to others in ways which leave passive those to be benefited. There is a moral tragedy inherent in efforts to further the common good which prevent the result from being either good or common—not good, because it is at the expense of the active growth of those to be helped, and not common because these have no share in bringing the result about.<sup>412</sup>

Examining *No Child Left Behind* through a philosophical lens, particularly the conditions established by the principle of double effect (PD), provides a distinct view of the links among government, ideology, education reform, schools, and others involved in and effected by federal educational decisions. As introduced in Chapter Two, PDE is applicable to actions with both beneficial and harmful results and bids us to consider

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<sup>412</sup> Dewey, *The Moral Writings of John Dewey*, Ibid., 191.

whether an action causes a serious harm as a side effect of pursuing something that is otherwise good and to weigh the greater good or lesser evil of all effects that the action produces. PDE serves as an appropriate moral lens for examining NCLB's implementation requirements and specific programs, and their effects to identify the Act's benefits or harms. That *No Child Left Behind* makes a moral argument is laudable; schools should be responsible for the academic achievement of their students. However, the Act is flawed in many respects and the resulting harms far outweigh the intended good. NCLB's first and overarching flaw is its failure to provide a commitment to the success of all students while many of its implementation requirements and programs result in penalties affecting all students, not simply those disaggregated few. Linda Darling-Hammond notes, "As the evidence of NCLB's unintended consequences emerges, it seems increasingly clear that, despite its good intentions and admirable goals, NCLB is more likely to harm than to help most of the students who are the targets of its aspirations."<sup>413</sup>

NCLB professes four ideals to enhance student academic achievement in our public schools: stronger accountability for results; more freedom for states and communities; encouraging proven education methods; and more choices for parents.<sup>414</sup> These we can consider as PDE's required good ends or benefits. However, notes JoBeth Allen, "while the goals sound reasonable and even democratic, the way they are being

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<sup>413</sup> Linda Darling-Hammond, "From 'Separate but Equal' to 'No Child Left Behind': The Collision of New Standards and Old Inequalities, in *Many Children Left Behind*, ed. Deborah Meir and George Wood (Boston MA: Beacon Press, 1992), 4.

<sup>414</sup> U.S. Department of Education, *No Child Left Behind* website. Available: <http://www.ed.gov/nclb>. (April 21, 2006).

enacted is damaging children, teachers, families, and schools all over the country, at all grade levels, and in all kinds of schools."<sup>415</sup> Adequate Yearly Progress, Troops to Teachers, and Parental Choice are but a few of NCLB's programs resulting in unintended harmful consequences. The Act permits, and I argue, intentionally promotes corporations and outside providers to enter the reform arena to define and resolve what they consider the evils within public school education as a means for the Act's goals to be met. This allowance contradicts the federal government's traditional role in public education and NCLB's purported benefits of leaving no child behind. While these providers claim to possess a wide array of goods and services to eradicate poor student and teacher performance and to equip students with information necessary to keep the United States as the leader of world markets, their reliance on narrowly-defined and taught standardized curricula, high-stakes testing, and militarization of our schools does not translate into PDE's requirement for beneficial consequences to outweigh their harms.

*No Child Left Behind* attempts to correct past failures of schools to assess the academic achievement of all students, especially students who are members of the various enumerated subgroups. Adequate Yearly Progress is the Act's primary enforcement measure to ensure school compliance and assist them in their assessments. Under NCLB, schools face increasingly serious consequences if they fail to achieve AYP. A school failing to achieve proficiency goals for two consecutive years—whether due to overall student scores or because of any subgroup's scores—must submit a school improvement plan and offer its students the choice to transfer to a non-failing school

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<sup>415</sup> JoBeth Allen, "Real Stories of Children Left Behind," in *Saving Our Schools*, ed. Ken Goodman, Patrick Shannon, Yetta Goodman, and Roger Rapoport (Berkeley CA: RDR Books, 2004), 153.

within the district. A school failing AYP for three consecutive years must continue to transfer students to other non-failing schools within or outside the district and provide supplemental educational services for remaining students; low-income students are eligible for vouchers from the school for supplemental services, e.g., after-school tutoring programs. Four years of not attaining AYP leaves a school instituting various corrective measures that include implementing a new curriculum, and five years of failing AYP leads to a total restructuring that may include conversion to a charter school, being taken over by a private operator, or replacing most or all of the school's staff. One of NCLB's cornerstones is that all student subgroups must attain proficiency on state assessments in reading, math, and science by 2014. Schools must close the achievement gap according to specific annual academic performance benchmarks and failing to maintain continuous progress renders a school in need of improvement, e.g., ineffective. However, maintaining continuous progress from year to year at each grade level and for all subgroups can be elusive for many schools; fluctuations in test results, unreliability in test scores, and the number of students comprising subgroups all affect a school's success or failure to meet a particular annual benchmark and lead to schools being mislabeled as needing improvement. Subgroup size has and will continue to play a significant role in determining AYP for many of the Nation's schools, particularly those schools with a diverse student body or high percentage of students with disabilities or English language learners. As discussed in Chapter Four, many schools that otherwise would achieve AYP fail because of one or more student subgroups. According to Kane and Staiger, NCLB

aspires to leave no group behind, setting goals for subgroups defined by race/ethnicity, economic disadvantage, disability, and English language learner status. However, as in many other areas of policy design, that



which seems reasonable at first glance often has unintended consequences.... Although well-intentioned, subgroup rules result in fewer resources and more sanctions targeted on diverse schools simply because of their diversity.<sup>416</sup>

Racial and ethnic minority students are more likely than White students to be counted in multiple subgroup categories including race, ethnicity, economic disadvantage, and limited English proficiency; students with disabilities also are cross-counted in various subgroups. This translates into racially integrated schools or schools with high levels of students with disabilities and ELL having a more difficult time meeting AYP goals since they have more achievement targets to meet than racially or economically homogenous schools or schools with few subgroups. The obvious consequence is that the greater number of subgroup targets required to be met, the greater the increase in chances of a school failing to make AYP. Raising the academic achievement of students in various subgroups is NCLB's primary goal; however, the literature and anecdotal information suggest that using subgroups in determining AYP is not the answer and harms more than benefits those particular students. Moreover, over-testing suggests the imposition of a separate and unequal education focused on and reduced to test preparation for the subgroups of students named as the Act's intended beneficiaries. NCLB's accountability provisions "cause large numbers of schools to fail, arbitrarily single out schools with large minority subgroups, [low-income students, students with disabilities and ELL] for sanctions and exclude them from awards, or statistically disadvantage diverse schools that are more likely to be attended by minority students, [low-income students, students

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<sup>416</sup> Thomas J. Kane and Douglas O. Staiger, "Unintended Consequences of Racial Subgroup Rules," in *No Child Left Behind—The Politics and Practice of School Accountability*, ed. Paul E. Peterson and Martin W. West (Washington, D.C.: The Brookings Institution, 2003), 152.

with disabilities, and ELL].<sup>417</sup> Schools and districts should be accountable for improving the academic performance of students in the various subgroups, but using a mode of measurement that requires all students to reach proficiency without considering individual improvement, especially improvement of individual students with disabilities, unfairly punishes districts, schools, and ultimately, students. Schools should be protected from NCLB's mandatory penalties if subgroups demonstrate significant annual progress in the required assessment areas (currently reading, math, and science) regardless of whether these students attain the annual performance objective under AYP. Attending to individual progress is much more in keeping with the Act's spirit and intent of closing achievement gaps and focuses schools and districts on assisting students otherwise left behind attain the knowledge articulated in state standards. NCLB's benefits of focusing on the academic achievement of students who often are neglected or receive a "less than" education are self-evident, but the unintended harmful consequences of including these students' scores in determining the overall progress of a school are disproportionately too high and have little to do with the quality of instruction or real effectiveness of a school.

NCLB's parental choice provisions are intended to enable students to escape low-performing schools and to benefit students most in-need; however, evidence indicates that actual transfers benefit relatively few students and suggests that the Act's required transfer options simply do not work. In districts with many low-income children there are, and will continue to be, few schools into which eligible children can transfer. Furthermore, the Act does not require higher-scoring, non-Title I schools to accept transfers, so these schools remain free to reject transferees and maintain their insulated

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<sup>417</sup> Ibid., 174.

environments. The connection between standardized test performance and socioeconomic status, race and ethnicity, and disability also will exclude many students supposedly being helped by NCLB. James Ryan claims that NCLB will exacerbate the problem of student exclusion, calling it a

serious threat to disadvantaged students. Students who perform poorly on state tests obviously hurt schools looking to make AYP. This is why schools, to the extent they can, will work to avoid enrolling those students who are at risk of failing the exams. The same pressure could lead to schools to push low-performing students out, either to another school (if one can be found that will accept them) or out of the school system entirely.<sup>418</sup>

Students with disabilities face particular challenges in transferring to non-failing schools because of low academic performance and because many non-failing schools lack specialized staff and programs capable of addressing student needs that previously had been met at failing schools. The Department of Education's suggestions to alleviate overcrowding by using portable classrooms, swing-shifts, and converting any possible space for instruction further diminish the quality of education provided by the non-failing schools and place new financial burdens on already financially-strapped districts. Transferring schools and districts must bear the high cost of transportation and other costs associated with student transfers; the added costs, compounded with the loss of per child enrollment money, will make it even more difficult for many schools to improve. NCLB's supplemental tutoring provisions also appear beneficial for students, but many of the results are counter-productive. High-quality tutoring and supplemental instruction could lead to increased academic achievement; however, NCLB requires such services to focus on raising test scores rather than the kind of quality instruction struggling students

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<sup>418</sup> Ryan, 969.

need and deserve. Diverting public funds to private corporations results in far fewer students having access to tutoring or other supplemental instruction or services as many districts and schools cannot afford to offer these services to all children needing academic improvement so either limit their in-school programs to Title I students or close their programs and send students to outside providers. Students with disabilities experience problems similar to those faced when transferring schools; few supplemental service providers have the staff and materials or are willing and able to accommodate these students. NCLB's major areas of choice options simply fail to provide the intended beneficial outcomes, often resulting in less-than-desired consequences for students, districts, and schools.

NCLB purports to address the needs of disadvantaged children on the pretense that no child be left behind. However, by failing to acknowledge the social and economic issues undergirding educational inequalities, NCLB shifts the blame of failing schools to teachers. The Act enables the federal government to ignore poverty and racism, and the lack of quality nutrition, housing, and healthcare affecting many public school children. That we live in a multicultural society demands developing relationships with individuals "of various cultures, religions, and values. Respect for those differences is essential in a democratic society. Respect for differences—not simply toleration—needs to be cultivated in schools because no other institution, including the family, is better suited to inculcate values of civic responsibility for the public good and to nurture those crucial social values in the young."<sup>419</sup> NCLB proponents assume "that testing-and

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<sup>419</sup> Cuban, 185.

accountability-driven traditional school goals can advance the values of respect and civic engagement;" however, this view of education only reflects a market-based notion that schooling is about preparing students for the workplace rather than about learning.<sup>420</sup>

Paul Houston writes:

The forces of this marketplace, as evidenced by vouchers, charters, home schooling, and even the splendors of technology will not teach children how to set aside their differences and celebrate those things that can draw them together. In fact, they exacerbate the problem of separation.<sup>421</sup>

NCLB limits the academic achievement of disadvantaged children by narrowing the curriculum, focusing instruction on test preparation, and pushing low-scoring children even farther behind, rather than providing adequate support to assist schools in truly improving teaching and learning. "No Child Left Behind" is a misnomer that scapegoats teachers and the public education system and punishes schools for social failings; furthermore, NCLB maintains the educational inequalities it was intended to resolve.

The federal blame game goes even farther when it comes to restructuring schools failing to attain AYP after five years of increasing punitive corrective actions. NCLB specifies a set of alternative governance arrangements where districts can reopen the school as a public charter school; replace all or most of the school staff, including the principal; enter into a contract with a private management company; or turn school operations over to the state.<sup>422</sup> The Act's focus on overhauling school governance again reveals NCLB's flawed logic, this time blaming educators and changing infrastructures

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<sup>420</sup> Ibid.

<sup>421</sup> Paul D. Houston, "From Horace Mann to the Contrarians—Education in America; Perspectives for the Future, *School Administrator* 53 (May 1996): 2-3.

<sup>422</sup> NCLB, §1116.(b)(8)(B)(i-v).

rather than focusing on and providing tangible means to help schools strengthen their abilities to assist all students. Increasing evidence suggests that charter schools are less likely to enroll students with disabilities than their public school counterparts as charters can select their students in ways that other public schools cannot, and most charter schools do not have the experience of being founded under the circumstances similar to those prescribed for under NCLB. Few states have the resources to intervene in the growing number of schools requiring restructuring and evidence suggests that state or private takeovers may be less than successful and counter-productive in implementing NCLB requirements. Takeovers in California, New York, New Jersey, and Massachusetts provide no evidence of significant academic improvement under state control and private management companies, such as Edison, often are controversial and many districts cite cancelled contracts due to their inadequate performance. Pedro Noguera refers to the record of state takeovers of failing schools and districts as "abysmal," bringing to mind that "past failure should serve to remind us that state governments possess no expertise or special remedies for success that they have been withholding. Without a serious effort to address the underlying causes of school failure, even extreme measures will not produce the higher achievement and better schools that policymakers and the general public seek."<sup>423</sup> According to the National Center for Fair and Open Testing, NCLB's

sanctions intended to force school improvement will do the opposite.  
Because the sanctions merely shuffle inadequate resources, they will pit

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<sup>423</sup> Pedro Noguera, "It Takes More Than Pressure to Help Struggling Schools," *Teachers College Record* (May 16, 2005): 2. Available: <http://www.tcrecord.org/PrintContent.asp?ContentID=11872>. (December 29, 2005).

parents against teachers, parents against parents from other schools, and schools against schools. They divert funding from helping all children succeed to helping the relatively few whose parents want and can obtain transfers and tutoring, and to the businesses that provide these services.<sup>424</sup>

NCLB implies that schools fail because of teachers and that this can be remedied through pressure, threats, and public humiliation of having their schools labeled as failing, but the Act ignores or provides little support for recruiting experienced educators, reducing class size, and providing all students with adequate academic support through in-school and after-school tutoring, key measures that would enhance student achievement.

Raising student achievement is a goal worth pursuing; however simply raising standards and school accountability does little to meet that goal. While *No Child Left Behind* may draw attention to the educational inadequacies experienced by some students, its remedies for correcting these inadequacies fall short and, in most instances, harm more than benefit the intended recipients. Reducing teaching to test preparation as the means to meet NCLB's primary goal of raising standardized test scores instead works against providing students, all students, with a quality education and falsely assumes that the preferred one-size-fits-all approach to learning can and will close any achievement gaps. Threatening schools and districts with humiliating labels, severe penalties, and loss of funds bring pressure to bear on teachers to forego valuable learning experiences for their students and, instead, focus on a narrowly-defined curriculum (reading, math, and science) geared to boosting scores on tests shown to demonstrate cultural biases and the inability to measure higher-order thinking. "The convergence of testing, sanctions, and

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<sup>424</sup> Monty Neil, Lisa Guisbond, and Bob Schaeffer, "Failing Our Children—How 'No Child Left Behind' Undermines the Quality and Equity in Education." (Cambridge, MA: Fair Test: The National Center for Fair and Open Testing, May 2004), 4.

inadequate funding means too many children will continue to get a second-class education. A false accountability system based on testing and punishing will never bring about success for all children."<sup>425</sup> Teaching-to-the-test only diminishes our understanding of education as having to do with imparting and acquiring knowledge and works against any efforts teachers, schools, and districts could make to improve educational quality, close achievement gaps, and address the needs of all students.

NCLB, as the federal government's latest attempt to reform public school education, turns to mandating changes and authorizing sanctions as a means to its noble end of ensuring that children receive a quality education. The benefits are outweighed by the harms to public education itself, teachers, students, our communities, and to the democratic ideal of individual voice. There are alternatives. If, the greatest need for change is in the classroom, then let meaningful reform begin there. Let teachers move away from practices of test-aligning curricula and using pre-packaged materials; let teachers and principals be the arbiters of the subject matter and methods of teaching; let schools foster relationships with outside sources to enhance learning at the request of the principals and teachers, not at the whims of corporate marketeers; open the door for teachers, students, parents, and the community to become involved in classroom reform where reform comes from the bottom-up rather than top-down, and is more meaningful for learning and respects individual choice and voice. Stratman suggests that

the process of formulating positive reforms should begin with a far-reaching dialogue at the local and state levels, involving administrators, teachers, parents, and students about the goals of education. This dialogue should examine present educational policy and practice to find what things contribute to self-confidence and growth and healthy connections among young people,

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<sup>425</sup> Neil, Guisbond, and Schaeffer, 2.



and strengthen the relationships of schools to communities, and what things attack this self-confidence and growth and undermine these relationships.<sup>426</sup>

Cuban warns, "Without substantial participation by practitioners in the design and adoption of reforms, most plans for improvements in teaching and learning—and the effects of those plans on what occurs in the classrooms—will fall apart."<sup>427</sup>

"The NCLBA," according to Ryan, "is hoping for a miracle. Yet, it is simultaneously decreasing the odds that this miracle will happen."<sup>428</sup> This dissertation relies on the principle of double effect as the lens through which we can decide if, indeed, NCLB is the miracle worker for the children it promises to aide. PDE permits us to establish *No Child Left Behind's* moral goodness by considering: 1) if NCLB identifies a problem and redresses that problem through morally good action; 2) that an action does not intend to result in a harmful consequence; and 3) that a harmful result is not used to attain a good result. Furthermore, PDE directs us to determine if NCLB's implementation requirements and specific programs, and their effects are proportionate and follow an inherent standard of fairness regarding the impact on those affected by the action. *No Child Left Behind* identifies the problem as specific subgroups of children failing to receive an adequate public school education resulting in an achievement gap between high-and-low-performing students. The Act's stated purpose is to "ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education" and focuses on "meeting the educational needs of low-achieving children, limited English

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<sup>426</sup> Stratman, 9.

<sup>427</sup> Cuban, 183.

<sup>428</sup> Ryan, 984.

proficient children, children with disabilities," and other subgroups of children previously neglected by the educational system.<sup>429</sup> And, the Act's intent is to close "the achievement gap between high-and-low-performing children, especially the achievement gaps between minority and non-minority students, and between disadvantaged children and their more advantaged peers."<sup>430</sup> NCLB identifies the problem and establishes its purpose and intent that do not violate PDE; that is, NCLB proposes a morally good action that does not intend to result in a harmful consequence. Although it is arguable whether harmful results are being employed for someone's good end, i.e., reducing active learning to test preparation harms students and teachers while, at the same time, it benefits corporations developing pre-packaged curricula and test-prep materials, this dissertation yields that the Act itself does not sanction violation of condition three. Questions, however, arise regarding NCLB's inability to meet PDE's condition of proportionality. Examining NCLB according to PDE reveals that the Act's promised goals and benefits succumb to the harms effected by AYP, lack of realistic transfer and tutoring options, punitive damages to schools, districts, and students it was enacted to save, and inculcating classroom materials supplied by corporations and for-profit providers. The federal government set out on a mission to boost test scores and the academic achievement of specific subgroups of students but the disaggregation of these students and their treatment under NCLB only serve to exclude them from the quality education they deserve. While this dissertation primarily attends to NCLB's effects on students with disabilities, information garnered through literature, findings of preliminary studies, and anecdotal

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<sup>429</sup> NCLB, §1001.Statement of Purpose; (2).

<sup>430</sup> NCLB, §1001.(3).

reports suggest similar results and the need for further study regarding racial and ethnic minority students, limited English language learners, economically disadvantaged students, and Native American students. *No Child Left Behind* is not a miracle worker but rather rewrites the Elementary and Secondary Education Act in such a way that perversely reinforces the notion that poor and minority students, English language learners, and students with disabilities cannot achieve academic proficiency, that the majority of public schools and teachers educating these students are failures, and that private corporations will diagnose and fix the problems. To the extent that the federal government chooses to effect public education reform, it should be reform that promotes higher academic achievement for all students rather than promoting the isolation and segregation of students into subgroups as NCLB mandates.

The principle of double effect leads to determining the moral legitimacy of an action that causes a serious side effect while bringing about some good end and requires that we render an action morally impermissible, though proceeding from a good intention and meeting the principle's first three conditions, if it is out of proportion to the end. *No Child Left Behind* set out to do good for public school students previously unrecognized or underserved by the system, however its implementation requirements and specific programs, and their effects grossly fail PDE's proportionality condition and its attached obligation to promote benevolence and minimize evil. Accordingly, this dissertation finds that NCLB's disproportionate harm being done to the children Congress established it to protect and to the districts, schools, and teachers serving these students, renders *No Child Left Behind* morally impermissible. Meaningful and moral reform can benefit students and raise academic achievement levels but requires adequate funding and

support for districts and schools to develop curricula and standards beyond the currently prescribed test preparation and low-order skills in reading, math, and science. Such reform encourages educators to teach and assess student academic achievement without real or veiled threats and in ways that demand much more than narrowly construed tests. Unlike *No Child Left Behind*, meaningful and moral reform requires benefits to far outweigh any harm to children, teachers, schools, and communities and that there exists a genuine commitment to ensure all students succeed and none are pushed behind.

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