
Failing Our Children

• How “No Child Left Behind”
Undermines Quality and Equity in Education

• An Accountability Model That
Supports School Improvement

Summary Report



by Monty Neill, Lisa Guisbond and Bob Schaeffer
with James Madden and Life Legeros
May 2004

FairTest

The National Center for Fair and Open Testing

Failing Our Children

• How “No Child Left Behind”
Undermines Quality and Equity in Education

• An Accountability Model That
Supports School Improvement

Summary Report

by Monty Neill, Ed.D., Lisa Guisbond and Bob Schaeffer
with James Madden and Life Legeros
May 2004
\$10

FairTest

The National Center for Fair and Open Testing

FairTest: The National Center for Fair & Open Testing
342 Broadway
Cambridge, MA 02139
(617) 864-4810; fax (617) 497-2224
www.fairtest.org
email: info@fairtest.org

Thank you to the Joyce Foundation for grant support in the preparation of this report, and to FairTest's many friends and donors who make our work possible. None are responsible for the contents of this report.

© 2004 FairTest.

Permission is given to reproduce this document, or portions of it, except that permission must be sought for commercial use of content from this publication, when the material quoted is used in advertising, or when charges for copies beyond the cost of reproduction are made.

Failing Our Children: Summary Report

- How “No Child Left Behind” Undermines Quality and Equity in Education
- An Accountability Model That Supports School Improvement

Executive Summary

“No Child Left Behind” (NCLB), the title of the federal Elementary and Secondary Education Act, describes a worthy goal for our nation. Tragically, NCLB is aggravating, not solving, the real problems that cause many children to be left behind. NCLB must be overhauled if the federal government is to make a useful contribution to enhancing the quality of education received by low-income and minority group students.

Prior reports and articles on NCLB have exposed a host of problems. Most of these studies have focused on the effects of NCLB. A few have sought to expose the law’s conceptual and structural flaws. Some have proposed modest changes, but only minor regulatory revisions have been adopted. None of these studies have proposed a comprehensive, alternative approach to the federal role in improving public schools for students in poverty.

This report details the fundamental errors in the conception and execution of NCLB. Beyond that, it proposes a better system of accountability to serve as the basis for a comprehensive overhaul of NCLB.

Two false assumptions undergird NCLB:

1) *Boosting standardized test scores should be the primary goal of schools.* This assumption leads to one-size-fits-all teaching aimed primarily at test preparation, and it works against efforts to give all children a high-quality education.

2) *Schools can best be improved by threatening educators with harsh*

This report details the fundamental errors in the conception and execution of NCLB. Beyond that, it proposes a better system of accountability to serve as the basis for a comprehensive overhaul of NCLB.

sanctions, since poor teaching is the primary cause of unsatisfactory student performance. Threats may get teachers to focus narrowly on boosting test scores. They fail, however, to address the underlying problems of family poverty and inadequate school funding that are major reasons why many students start off far behind and never catch up.

A new accountability system must start from accurate assumptions, which will lead to a fundamentally different approach than NCLB's test-and-punish methodology. This alternative approach assumes educators want to do their jobs but often need assistance to do better. Rather than threaten educators with sanctions based on limited information provided by test scores, this alternative approach focuses on gathering multiple forms of evidence about schools and then using that evidence to support comprehensive improvements in teaching and learning. All levels of government must help schools build the capacity to ensure all children receive a high-quality education that meets their individual needs. Governments, therefore, must fulfill their responsibilities to provide adequate and equitable resources. This alternative approach also encourages parents and the community to be core participants in keeping local schools accountable, rather than excluding them through incomprehensible statistical procedures dictated by remote bureaucrats.

What makes NCLB so dangerous is the way it links standardized testing with heavy sanctions through the rigid "adequate yearly progress" (AYP) formula. Thus, the weaknesses of standardized exams – their cultural biases and their failure to measure higher order thinking – are reinforced by strict penalties. The consequence of narrow exams and strong sanctions is intensive teaching to the test. This response undermines decent education as well as efforts to ensure genuine improvements in educational quality.

The lack of adequate funding for schools and for the well-being of children intensifies these problems for low-income and minority-group students. Overcrowded classrooms make it more likely that teachers focus on little more than the content of mandatory tests. The convergence of testing, sanctions and 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. This goal will be out of reach as long as there is

A new accountability system must start from accurate assumptions, which will lead to a fundamentally different approach than NCLB's test-and-punish methodology.

What makes NCLB so dangerous is the way it links standardized testing with heavy sanctions through the rigid "adequate yearly progress" (AYP) formula.

worsening poverty and inadequate funding that denies too many students access to a rich and comprehensive curriculum to prepare them to be lifelong learners, active participants in our democracy and successful in further education and employment.

Despite some potentially helpful provisions, the deep flaws in NCLB end up undermining both educational quality and equity. For example:

- NCLB calls for multiple measures that assess higher order thinking and are diagnostically useful. However, these provisions are not enforced by the U.S. Department of Education and are not embedded in most state practices. The push for standardization and the requirements for quickly imposing “in need of improvement” judgments and sanctions make it nearly impossible for states to implement an assessment system that fosters high-quality learning.
- The law mandates school (or district) improvement plans. In practical terms, however, “improvement” means no more than boosting test scores. Quick sanctions based on unrealistic rates of “adequate yearly progress” deny schools the opportunity to see if their improvement efforts will work.
- The law also requires schools “in need of improvement” to use some of their federal money for professional development. This is reasonable, and the law allows many varieties of professional development to be pursued. But funding is inadequate, and the power of testing will tend to reduce professional development to training teachers to be better standardized exam coaches.

This report details other failures of NCLB:

- The gauge of student progress in most states is being reduced to reading and math scores. Many schools already are narrowing instruction to what is tested.
- Most schools will fail to meet the unrealistic demands imposed by the law’s “adequate yearly progress” provision. Virtually no schools serving low-income children will clear the arbitrary hurdles. Many successful schools are being set up to fail and will be forced to drop policies and programs that work.

The gauge of student progress in most states is being reduced to reading and math scores.

Most schools will fail to meet the unrealistic demands imposed by the law’s “adequate yearly progress” provision.

- Sanctions intended to force school improvement will do the opposite. Because the sanctions merely shuffle inadequate resources, they will pit 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. The law's ultimate sanctions – privatizing school management, firing staff, state takeovers, and similar measures – have no proven record of success.
- The federal government has failed to adequately fund the law. Education resources are dwindling in most states just as they are hit with the demands of the current law. Worse, neither federal nor state governments are addressing either the resources required to bring all children to educational proficiency or the deepening poverty that makes it difficult for so many children to learn.

These problems have catalyzed a growing movement seeking to overhaul NCLB. From state officials to local parents and teachers, people across the nation are mobilizing against the law. The sources of the anger vary, as do the proposed solutions, but a critical mass for change is building. Unfortunately, some efforts to minimize the damage caused by NCLB would perpetuate educational inequality. Others address only peripheral issues, not the law's faulty assumptions.

Effective opposition to NCLB must embrace genuine accountability, stronger equity, and steps to really improve schools. What is needed is a law founded on a more realistic understanding of the problems facing schools and the processes of school change. A new NCLB must propose solutions that improve, not undermine, the quality of education.

Core elements of a better accountability system include:

- 1) Federal, state and local governments must work together to provide a fair opportunity for all children to learn a rich curriculum in a supportive yet challenging environment. Governments have generally failed to meet this fundamental accountability requirement because they have not ensured

Sanctions intended to force school improvement will do the opposite.

The federal government has failed to adequately fund the law.

These problems have catalyzed a growing movement seeking to overhaul NCLB.

Effective opposition to NCLB must embrace genuine accountability, stronger equity, and steps to really improve schools.

adequate, equitable funding and because they have primarily emphasized test scores.

- 2) Accountability systems must use multiple forms of evidence of student learning. If we want to know how well students are doing, we need to look at a range of real student work. If we want students to learn more or better, we have to provide teachers and students with useful feedback based on high-quality classroom assessments that encompass a variety of ways to demonstrate knowledge and that fit with how children really learn.
- 3) Accountability systems must focus on helping teachers and schools ensure educational success for all students. They must also ensure that schools are safe, healthy, supportive and challenging environments. This means providing data that can be used for improvement and making certain that schools are well equipped to use it. It also requires ample time and resources to enable teachers to learn more, share knowledge and get better at what they do.
- 4) Accountability systems must involve those most directly affected and closest to the classroom. Therefore, the primary accountability mechanisms must be local. They must involve educators, parents, students and the local community; and they must use participatory processes such as local school councils, annual reports and meetings to review school progress.
- 5) The primary responsibility of state governments is to provide tools and support for schools and teachers to improve while ensuring that equity and civil rights are maintained. Intervention should take place only when localities have been given resources and support and still fail to improve, or when there are uncorrected civil rights violations.

In the short term, NCLB should be amended to stop the destructive inflexibility of the “adequate yearly progress” provisions and eliminate the draconian penalties. The requirement for states to annually test all students in grades 3 to 8 in reading and math should be removed and the amount of required testing reduced. Additional

Accountability systems must use multiple forms of evidence of student learning.

Intervention should take place only when localities have been given resources and support and still fail to improve, or when there are uncorrected civil rights violations.

measures of school and student learning should be included in progress evaluations. Congress also must appropriate the full amount authorized under NCLB.

More fundamentally, policy-makers must consider the damage NCLB has wrought and take seriously the problem of inadequate educational funding around the nation. They should begin by listening to the rising voices of educators, parents and community people who know that their children cannot be reduced to test scores. Children deserve a high-quality education, not test preparation.

In its current form, NCLB is a punitive law that uses flawed standardized tests to falsely label many schools as failures, then punish them with harmful sanctions. NCLB must be transformed into a supportive law that promotes lasting educational improvement and makes good on the promise, in the words of the Children's Defense Fund, to "leave no child behind."

NCLB must be transformed into a supportive law that promotes lasting educational improvement and makes good on the promise, in the words of the Children's Defense Fund, to "leave no child behind."

Introduction: No Child Left Behind Testing and Sanctions Provisions

No Child Left Behind (NCLB), the 2001 reauthorization of the federal Elementary and Secondary Education Act (ESEA), includes requirements for state-level testing, mandates for schools and districts to demonstrate “adequate yearly progress” (AYP), and sanctions to be imposed for failure to make AYP. The provisions are in Title I, the section of the law intended to improve education for “disadvantaged” children.

Testing

Under NCLB, each state is required to immediately adopt content and performance standards in both reading and math, with assessments based on these standards. Science requirements will be added later this decade. Standards and tests must establish three levels of academic performance -- advanced, proficient, and basic.

Currently, states must assess every student in reading and math at least once in grades 3-5, 6-9 and 10-12. By the 2005-06 academic year, states must assess each child every year in grades 3-8 and once in grades 10-12 in math and reading. By 2007-08, states must add an annual science assessment in the three grade spans.

NCLB permits state assessment systems that are a mix of state-mandated exams and local assessments, but almost every state is relying solely on state tests. While tests are supposed to be based on state-approved standards, U.S. Department of Education regulations allow the use of commercial norm-referenced tests, which may not be standards-based.

The law requires all assessments to be valid and reliable for the purposes for which they are used and “involve multiple, up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills.” The assessments also must “produce individual student interpretive, descriptive, and diagnostic reports...that allow parents, teachers and principals to understand and address the specific needs of students.”

By the 2005-06 academic year, states must assess each child every year in grades 3-8 and once in grades 10-12 in math and reading.

While tests are supposed to be based on state-approved standards, U.S. Department of Education regulations allow the use of commercial norm-referenced tests, which may not be standards-based.

Testing accommodations and alternative assessments must be available for students with disabilities. Limited English proficient students are to be assessed “where possible” in “language and form most likely to yield accurate data” on student achievement, until they reach proficiency in English; and to be assessed annually for English proficiency if not yet proficient.

Accountability and “Adequate Yearly Progress” (AYP)

States must have a “single statewide accountability system” to ensure that districts and schools make “adequate yearly progress” (AYP). The accountability process began with data from the 2001-02 school year, except for schools that were already under improvement or correction status. Within 12 years (by 2014), all students are supposed to attain the proficient level on the state assessments in reading and math. “All students” is defined to exclude those with severe special needs and those who have not been in U.S. schools for three years and who have limited English proficient status.

A school or district can fail to make AYP if a sufficient percentage of all its students or its students in a defined group – low-income, limited English proficient, racial/ethnic minority (African American, Hispanic, Asian, Native American Indian), or students with disabilities – do not reach the proficient level in either math or reading, or if it does not test 95 percent of its students in any category. To be separately counted as a group, there must be enough students to measure reliably. States have set those minimum “cell” levels as low as five students, but most are around 30.

States determine their starting points based on formulas in the law. The gap between the percentage of students who are at the starting point and 100 percent proficient must be closed by an average of 1/12 per year. For example, if the state’s starting point is 40 percent, then the number of students at the proficient level must increase by an average of 5 percentage points per year.

A state can use multiyear averages to set AYP goals. If it does, the first proficiency target must be in two years, and subsequent targets must be set at intervals of no more than three years. States can start with a slow rate of increase and speed up toward the end; some states expect to make about half their required progress in the last few years

Within 12 years (by 2014), all students are supposed to attain the proficient level on the state assessments in reading and math.

Schools that don’t make AYP but reduce the percentage of students not reaching proficient by at least 10 percent can avoid sanctions under this provision.

leading up to 2014. States also can apply more complex formulas to define rates of progress.

Some schools will start out at a lower level than the overall state starting point. Those schools must catch up and make AYP. However, there is a “safe harbor” provision in the law. Schools that don’t make AYP but reduce the percentage of students not reaching proficient by at least 10 percent can avoid sanctions under this provision.

Sanctions

While all schools in a state must report test results, only schools receiving NCLB Title I funds are subject to sanctions. (Nationally, 95 percent of school districts and 50 percent of schools get Title I funds.) Districts will “identify for school improvement” any school receiving federal Title I funds that fails for two consecutive years to make AYP, and states will similarly identify districts. An identified school (or district) must craft an improvement plan listing “specific, measurable objectives” for ensuring all students in each group make AYP.

Students at schools so identified will be eligible to transfer to another public school in the district that is not “in need of improvement” (INOI). This can be another school with similar scores that does not receive Title I money.

If a school does not make AYP after one year under its improvement plan, the district is required to make tutoring available. This can include parent choice among district-approved private companies or public schools that are not INOI. Districts are required to spend up to 20 percent of their Title I funds for transportation or tutoring programs.

If after the second year of the improvement plan the school or district is not making AYP, it will be identified for “corrective action.” The identified school or district must implement options from a list specified in the law. If after one full year of corrective action a school or district still does not make AYP, it must undergo “restructuring.”

At the school level, “restructuring” is to include at least one of the following changes in governance:

- Reopen the school as a “public charter school”
- Replace “all or most of the school staff”

If a school does not make AYP after one year under its improvement plan, the district must make tutoring available.

If after the second year of the improvement plan the school or district is not making AYP, it will be identified for “corrective action.” If after one full year of corrective action a school or district still does not make AYP, it must undergo “restructuring.”

- Enter into a contract “with an entity, such as a private management company...to operate the school”
- Turn “the operation of the school over to the state” or
- “Any other major restructuring of the school’s governance arrangement that makes fundamental reform.”

States are to apply a similar list of sanctions to failing districts.

If a school (or district) identified for improvement, corrective action, or restructuring makes AYP for two consecutive school years, requirements for improvement are suspended.

References

NCLB law, regulations, guidance and promotional materials are online at <http://www.ed.gov/policy/landing.jhtml?src=ln>.

FairTest fact sheets, articles and links to reports on NCLB are at <http://www.fairtest.org/natest/bushtest.html>.

Chapter-by-Chapter Summary

I. Set Up to Fail

Many expert analyses have concluded that the “adequate yearly progress” (AYP) mechanism, the heart of the No Child Left Behind (NCLB) “accountability” provisions, guarantees failure for a substantial majority of the nation’s schools. For example, the National Conference of State Legislatures estimated that some 70 percent of all schools will fail. (Note that all references are found in the full report.)

The reason for the high failure rate is that the pace of progress envisioned in the law – all students reaching the “proficient” level within 14 years – is impossible. Only about three in 10 U.S. students now score at the proficient level on National Assessment of Educational Progress (NAEP) reading and math tests. Thus, within little more than a decade, all students are supposed to perform as well as less than one third of students now do.

Based on trends over the past decade on NAEP tests, prominent measurement expert Robert Linn has calculated that it will take 166 years for all twelfth graders to attain proficiency in both reading and math. In addition, due to requirements that all demographic groups make AYP, schools with integrated student bodies are far more likely to fail than schools that lack diversity. These problems are compounded by the effects of measurement error in tests.

The AYP provisions reflect the flawed reasoning behind NCLB. AYP assumes that schools have adequate resources to get all students to “proficient” if they would only use those resources better. This means that administrators and teachers must not be working hard enough or not working well — or both. Thus, with willpower and effort, schools can bootstrap their way to unprecedented results.

Adequate Yearly Progress: There is a growing consensus among researchers, educators and parents about the mechanics of AYP:

- Widespread failure was an inevitable outcome of its design.
- There are so many different ways to be tripped up on AYP that most schools will be identified as failing at least once.
- High-poverty schools and districts are likely to fail first. Failure affects many well-off suburbs as well.

The “adequate yearly progress” (AYP) mechanism guarantees failure for a substantial majority of the nation’s schools.

AYP assumes that schools have adequate resources to get all students to “proficient” if they would only use those resources better.

- Diversity itself is punished. Because more integrated schools have more population groups, they have more opportunities to fail.
- School officials feel frustrated by AYP rigidity rather than empowered to initiate or continue efforts toward effective education reforms.

Proficient: “Proficiency” would be a reasonable and desirable goal if it meant solid academic achievement. However:

- The term “proficiency” in NCLB comes from its use in NAEP testing, where it has been widely criticized for being an unrealistic and inaccurate standard. By borrowing from NAEP terminology and using the NAEP proficiency levels to double-check state progress, the nation begins with a false assumption about the academic performance of most U.S. students.
- States vary wildly in how they define “proficiency,” making it difficult if not impossible to make meaningful state-to-state comparisons.
- As a result, states are beginning the race to 100 percent proficiency from many different starting points, which do not necessarily reflect the relative academic health of their schools and students.
- Some states have resorted to lowering their standards in hopes of complying with arbitrary AYP requirements, and more will be pressured to do so if NCLB is not changed. Some states may simply allow most schools to “fail” and do little about the problem due to lack of resources.

Testing: For NCLB proponents, the law’s near-total reliance on test scores to determine the progress of students, teachers and schools reflects a desire for “objective” assessments of educational outcomes. For example, President Bush has said, “Without yearly testing, we don’t know who is falling behind and who needs help. Without yearly testing, too often we don’t find failure until it is too late to fix.” But standardized test scores offer nothing more than a snapshot of student achievement at one moment in time. Because of their technical limitations, standardized tests are weak measures for use as the sole basis in determining school progress.

The national obsession with standardized test scores to drive school improvement and reform is not new. Researchers have examined

Diversity itself is punished. Because more integrated schools have more population groups, they have more opportunities to fail.

Some states have resorted to lowering their standards in hopes of complying with arbitrary AYP requirements.

the record and come up with a series of findings that cast serious doubts about test-based reform. Among their conclusions:

- Test scores do not necessarily indicate real progress when they rise or deterioration when they fall. Annual fluctuations should not be used to reward or sanction schools, teachers or school officials.
- Many of the tests that are being used to judge students, teachers and schools are specifically designed to ensure a certain proportion of failures.
- Errors in question design, scoring and reporting have always been a part of standardized testing and are likely to increase substantially with the increase in testing mandated by NCLB.

Thus, the accountability provisions in NCLB mandate impossible rates of progress and rely on inadequate techniques to measure student learning.

II. Testing: What's the Problem with 'No Child Left Untested'?

As one seventh-grade Kentucky student explained, "The test is taking away the real meaning of school. Instead of learning new things and getting tools for life, the mission of the schools is becoming to do well on the test."

Even before NCLB became law, there was ample evidence that many of its assumptions and the model on which it was based had fundamental flaws and damaged the quality of education:

- There is a lack of evidence that the model of standards, testing, and rewards/punishments for achievement is the cure for what ails public schooling. On the contrary, several studies show a decline in achievement in states with high-stakes testing programs relative to those with low stakes.
- Surveys of educators and other studies confirm that the model promotes teaching to the test and narrowed curricula, particularly in schools that serve low-income and minority students.
- Independent analysts have found that tests often fail to measure the objectives deemed most important by those who

The accountability provisions in NCLB mandate impossible rates of progress and rely on inadequate techniques to measure student learning.

Surveys of educators and other studies confirm that the model promotes teaching to the test and narrowed curricula, particularly in schools that serve low-income and minority students.

have set academic standards. This means that students taught to such tests will not be exposed to high-quality curricula, and that the public will not be informed about student achievement relative to the standards.

- The quality of instruction tends to suffer under such a model because it is often assumed that all students who fail need the same type of remediation. On the contrary, researchers have found students fail for different reasons and need different instructional approaches to get on track.
- Research refutes the assumption that low-achieving students are motivated to work harder and learn more in a high-stakes context. On the contrary, low-achieving students are most likely to become discouraged and give up.
- There is a pattern of falling graduation rates in high-stakes states as well as evidence that schools are retaining more students in hopes of boosting test scores in key grades. Decades of research demonstrate that retention in grade does not boost achievement, and retained students are more likely to drop out of school.
- The demand that limited English proficient students score “proficient” on English exams is oxymoronic and puts these students and their teachers in an untenable situation, not conducive to eventual school success.
- Special educators and administrators are pleading for more flexibility to recognize the progress of students who by definition do not learn at the same pace and in the same way as typical students.
- NCLB is fueling a trend toward use of standardized tests on younger and younger children, down to the preschool level. Early childhood experts have long cautioned against testing the youngest students this way.

Increased testing. The major impact of the federal No Child Left Behind (NCLB) law upon state assessment programs can be summed up in two words: more tests. Counting each subject and grade as a separate exam, states mandated 546 exams in the year prior to adoption of NCLB. By the time states have fully implemented current plans for compliance, 1,262 statewide exams will be included in state accountability systems.

There is a pattern of falling graduation rates in high-stakes states as well as evidence that schools are retaining more students in hopes of boosting test scores in key grades.

The major impact of the federal No Child Left Behind (NCLB) law upon state assessment programs can be summed up in two words: more tests.

By 2005-06, states must assess each child every year in grades 3-8 and once in grades 10-12 in math and reading. By 2007-08, states must add an annual science assessment in three grade spans. The testing mandates of NCLB as well as the AYP requirements encourage such heavy reliance on tests in education that the law's impact goes far beyond its actual statutory mandates. States are expanding testing in additional subjects, such as writing and history/social studies.

Over-testing imposes a separate and unequal education, reduced to test preparation, for the nation's most vulnerable children.

III. False Promises and Flawed Policies: Navigating the NCLB Maze

The impact of NCLB's transfer and tutoring policies parallel the consequences of increased high-stakes testing in reducing schooling to test preparation and teachers to technicians on the test-prep assembly line.

Transfers: Transfers are supposed to enable students and parents to "escape" low-performing schools. No doubt, they will eventually help a very limited number of students. But as a means to improve educational opportunities for all children, two years of evidence and the structure of the law show that transfers will not succeed:

- For a variety of reasons, relatively few students are choosing to transfer out of schools labeled "in need of improvement" (INOI).
- Where significant numbers have transferred, there are more reports of chaos, confusion, and dislocation for both sending and receiving schools than of successful outcomes.
- In districts with many low-income children, there are or soon will be too few schools to which students can transfer.
- Schools that are not required to accept transfers have no incentive and many disincentives to do so.
- Many higher-scoring schools and programs are "off limits" to transfer students, often to preserve enclaves of relative privilege.
- Suggested options such as allowing overcrowding or using portable classrooms will only diminish the quality of education at schools that do accept transfers.
- Students who transfer may go from a school that has programs for limited English proficient students or for students with other

Over-testing imposes a separate and unequal education, reduced to test preparation, for the nation's most vulnerable children.

Two years of evidence and the structure of the law show that transfers will not succeed.

In districts with many low-income children, there are or soon will be too few schools to which students can transfer.

- specific needs to a school that has no specialized programs.
- Local officials say they have insufficient time and resources to comply with NCLB provisions and are sometimes embroiled in disagreements with federal officials over which schools belong on the lists of INOI schools.
 - Transportation and other costs associated with school transfers are high and borne in many cases by already struggling schools and districts, making it more difficult for them to improve.
 - As AYP demands increase and more schools land on INOI lists, it will become increasingly difficult for districts to comply with these provisions.

Tutoring: High-quality tutoring is educationally beneficial and could be worthy of federal financial support. However, the NCLB tutoring provision starts from mistaken assumptions, with frequently counter-productive consequences:

- Tutoring focused primarily on raising test scores, as called for by the law, does not constitute the kind of quality instruction that struggling students need and deserve.
- The diversion of public funds to costly private firms is not cost-effective and means that fewer students overall can have access to tutoring services. Some schools are cutting back on after-school tutoring to pay for fewer students to be tutored by outside firms.
- There is a scarcity of supplemental service providers that are prepared and/or willing to accommodate special needs and limited English proficient students.

Restructuring. The law specifies a set of “alternative governance arrangements” for persistently failing schools and districts. The focus on overhauling “governance” reveals again the flawed logic of NCLB, which focuses on blaming educators and changing structures rather than focusing on providing means to help educators and schools strengthen their capacities to work well with all children.

Under the restructuring provision, districts may choose to:

- Reopen the school as a public charter school.
- Replace all or most of the school staff, including the principal.
- Enter into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness to operate the school.
- Have the state directly manage the school.

The NCLB tutoring provision starts from mistaken assumptions, with frequently counter-productive consequences.

The focus on overhauling “governance” reveals again the flawed logic of NCLB

In addition to these specific alternatives, the law allows for “Any other major restructuring of the school’s governance arrangement.” This option may have been added as an implicit acknowledgment that there is little evidence any of the other remedies are consistently successful:

- Some charter schools have done well; some have not. There is increasing evidence that charters are less likely to enroll students with disabilities or limited English proficiency than are public schools. They generally can select their students in ways public schools cannot. Few have been created out of stressful circumstances similar to those likely to prevail when NCLB dictates restructuring of an existing school.
- Replacing staff, often termed “reconstitution,” has almost always failed. In the cases where it has apparently succeeded, reconstitution typically involves changing the composition of the student body and bringing in higher-scoring students.
- Private school management companies such as Edison are highly controversial and have a dubious record. Often districts have canceled contracts with these companies because of inadequate performance.
- While some state management interventions have solved problems of corruption, they have no record of academic turnarounds.

In addition, states do not now have the resources and capacity to intervene in the large numbers of schools that soon will require restructuring under NCLB.

Chapter IV. Money, Education and Accountability

Initially, funding for NCLB emerged as its most contentious problem. States have argued that NCLB constitutes an “unfunded mandate.” Vermont school superintendent William Mathis, relying on a series of independent studies, estimated an additional \$84 billion nationally would be required to enable all children to reach the “proficient level,” a 20 percent boost in funding for schooling.

Even if Congress were to appropriate all the funds it has authorized under NCLB, states would be left to raise \$60 billion more. That is increasingly unrealistic as state budgets constrict.

In addition, states do not now have the resources and capacity to intervene in the large numbers of schools that soon will require restructuring under NCLB.

Even if Congress were to appropriate all the funds it has authorized under NCLB, states would be left to raise \$60 billion more.

From its inception, NCLB has failed to grapple with needed funding for schools. In large part this reflects one of its central misconceptions: that schools are not doing well because they waste money. If schools for low-income children simply focused on test preparation in a few subjects, they might be able to get by with less money. But few believe this would “leave no child behind.” Indeed, such policies will decrease, not increase, educational opportunity and equity.

Perhaps most perniciously, NCLB is based on the pretense that the nation can “leave no child behind” simply by focusing on schools. Failing to address the social issues that undergird school inequality shifts the blame to teachers for the consequences of deep-seated social ills, including poverty and racism. It enables the federal government to ignore housing, nutrition, health care and other basic needs that are unmet for millions of American children.

This is not to say that schools cannot improve. Even with too-limited resources, many can do a better job. NCLB, however, compounds the inclinations to narrow curriculum, limit instruction to test coaching, and push low-scoring children out, rather than provide support for helping schools truly improve teaching and learning. A law then that scapegoats educators for social failings does not deserve to be named “No Child Left Behind.”

V. Educating and Organizing for Change Amidst Growing Opposition to NCLB

While this report has focused on how NCLB damages public education, it offers an opportunity as well. The hope is that NCLB energizes those who believe public schools are a pillar of a vibrant democracy and who know that most schools do not deserve and will not be improved by NCLB’s labels and sanctions.

For that to happen, groups of educators, civil rights advocates, parents and other community members must work together to sharpen and popularize a critique of NCLB, develop a model for a new version of the law, and build a grass roots campaign to persuade Congress to overhaul NCLB.

Perhaps most perniciously, NCLB is based on the pretense that the nation can “leave no child behind” simply by focusing on schools.

Groups of educators, civil rights advocates, parents and other community members must build a grass roots campaign to persuade Congress to overhaul NCLB.

Already, bills or resolutions has been filed in 27 states calling for changes in NCLB, requiring full funding, authorizing studies of its costs, prohibiting additional state funds to be spent on implementation, or opting out of NCLB altogether. Dozens of newspapers have editorialized against some or many aspects of the law. Public opinion surveys show that once people are exposed to a sufficient level of detail about NCLB, support for its general principles turns to extreme concern and opposition to many of its particulars. As one pollster put it, “The more you know about NCLB, the less likely you are to be in favor of it.”

This opposition has focused primarily on NCLB’s underfunding and its bureaucratic intrusiveness. While these are legitimate complaints, it would be a mistake for critics to simply demand that the federal government leave states to their own devices, particularly if that means continued neglect of needy districts and students. Such an approach allows the law’s defenders to paint its opponents as either simply against accountability or as defenders of a form of “state’s rights” that echoes anti-desegregation themes.

In order to support genuine school reform, it is essential to demand adequate and equitable funding for all students. Arbitrary intrusiveness should not be confused with proper concern for equity, civil rights, and educational improvement. Criticism of the law and calls for change also must more thoroughly address NCLB’s harmful impact on teaching and learning.

Educating and Organizing for Change

A grass-roots movement of educators, parents and civil rights groups must work together on three fronts. First, such a movement can help articulate the law’s harsh effects on classrooms, teachers and students. Second, it can contribute ideas to the development of systems that hold public schools accountable to parents and students rather than to distant government bureaucrats. Third, it can demand that policymakers put the focus on improving teaching and learning rather than on testing and punishing.

There are signs of the beginnings of grass roots awareness and mobilization. For example, organizations with staff who monitor Congress report that when senators and representatives return home, they are deluged with criticisms of NCLB.

“The more you know about NCLB, the less likely you are to be in favor of it.”

It would be a mistake for critics to simply demand that the federal government leave states to their own devices, particularly if that means continued neglect of needy districts and students.

School boards, one of the most localized forms of democracy, are beginning to raise concerns. For example, the Nashville School Board unanimously adopted a resolution stating its “serious concerns” about some provisions of NCLB and suggesting seven potential changes.

Activity in Massachusetts provides an example and some useful lessons for activism on this issue. The Brookline School Committee adopted a resolution strongly critical of NCLB and then helped to ensure passage of a similar resolution by the Massachusetts Association of School Committees. The Brookline Coalition for Authentic Reform in Education, a local advocacy group, collaborated with other community organizations to organize a public forum which attracted 200 people, including staff from Senators Kerry, the presumptive Democrat presidential candidate, and Kennedy, minority leader of the Senate education committee.

Public education around NCLB needs to be coupled with grassroots resistance that is, in turn, linked to the growing network of organizations seeking fundamental changes in the law. Actions local activists can take include:

- 1. Hold a forum with parents and teachers about the law — and invite policymakers to listen, not eat up all the time lecturing.*
- 2. Circulate information about the law and its consequences.* FairTest regularly posts and updates fact sheets and other materials on its website, www.fairtest.org, for use by parents, teachers and local organizations.
- 3. Persuade your local school board and the state association of school boards to pass an anti-NCLB resolution; get the resolution endorsed by a variety of other groups.* If your local board has taken such action on its own initiative, help them work with parents, educators, and community activists to educate and influence state and federal policymakers. This can also be a good time to raise other concerns about state use of tests and sanctions.
- 4. Circulate a petition.* FairTest is collaborating with other groups to launch a national petition; visit FairTest’s national testing page for updates at www.fairtest.org/nattest/bushtest.html.

School boards, one of the most localized forms of democracy, are beginning to raise concerns.

Public education around NCLB needs to be coupled with grassroots resistance.

5. *Use NCLB's requirement for parent involvement to challenge the worst aspects of the law.* The law mandates that districts create parent advisory councils to provide for parent involvement in school improvement plans and other aspects of the law.
6. *Develop capacity and prepare for an extended struggle.* It is vitally important to use many vehicles, from personal communications to local mass media. Stronger actions also can have powerful effects. These include refusing to participate in the test; sponsoring rallies, demonstrations, and public picketing; and promoting ballot resolutions.

Use NCLB's requirement for parent involvement to challenge the worst aspects of the law.

VI. Authentic Accountability

FairTest has been collaborating with education, civil rights, parent and community organizations and researchers to develop alternative models of accountability that can be used as a template for overhauling NCLB and restructuring state systems. Important, creative work has also been done by a few states, particularly Nebraska and Maine, some districts and many schools. Experience with high-quality assessments at many levels coupled with research showing how their use can powerfully assist teaching and learning should inform any effort to craft legislation.

FairTest has been collaborating with education, civil rights, parent and community organizations and researchers to develop alternative models of accountability.

This chapter presents several approaches to designing an accountability system that focuses on improving teaching and learning.

- First, a set of principles that should guide development and implementation of an improvement and accountability system.
- Second, the summary of a model proposed for Massachusetts by the Coalition for Authentic Reform in Education (CARE).
- Third, a discussion of Nebraska's state assessment and accountability program.

Principles

FairTest has worked with other education, civil rights, parent and community organizations, and with researchers, to develop new approaches to accountability. One part of this work has been to develop the following set of principles:

1. **Accountable to What Ends?**

The key purposes of accountability are to inform the public – to give an accounting – of the status of the school or system; to provide information that can be used to improve education; to promote equity; and to ensure that participants in the system carry out their responsibilities well.

1. Improvement. Schools and districts must be accountable for implementing procedures for using information to improve the quality of schools and learning. Teacher professional development is central to improvement efforts.

2. Equity. Education systems must contribute to closing race and class learning gaps and to helping overcome the consequences of poverty and racism.

3. Democracy. Educational accountability systems that involve the community can strengthen civic engagement and broaden the base of support for school improvement.

4. Informing the public. The public deserves rich, accurate information about the functioning, successes and problems of public education.

2. **Accountable for What?**

Accountability must be based on a shared vision and goals for public education:

1. Priorities. The shared vision should prioritize what is most important in student learning, the school's social and physical environment, and how well schools prepare students to be lifelong learners and active participants in a democracy.

2. Resources. Government must be held accountable for providing all education systems with adequate resources to meet agreed-upon priorities.

3. Student learning. Assessments must promote, measure and provide useful feedback and report on meaningful learning rather than primarily procedural, factual or surface learning.

Teacher professional development is central to improvement efforts.

Education systems must contribute to closing race and class learning gaps and to helping overcome the consequences of poverty and racism.

4. Student well-being and the school environment. Accountability systems need to include school environments since students achieve more in settings that are hospitable and welcoming and where they feel empowered, challenged, motivated and supported.

5. Inclusion. The progress and well being of all students must be accounted for.

3. Accountable to Whom?

An accountability system must define appropriate expectations for participants in the system.

1. Higher levels of government authority are responsible for ensuring adequate provision and fair use of resources in order to provide equitable opportunities for all students, safeguarding civil and human rights to ensure fair treatment, monitoring local systems, and intervening in localities when necessary.

2. Local schools, districts and their communities must play the primary role in accountability because they are closest to the classrooms where learning takes place.

4. Accountable by What Means?

The tools used to implement accountability can either support or undermine educational goals and school quality.

1. Use multiple forms of evidence. Accountability requires the use of multiple forms of qualitative and quantitative evidence from both academic and non-academic areas. No important academic decision about a student, a teacher, an administrator, a school or a district should be made solely on one type of evidence, such as standardized test scores.

2. Assess a set of key factors that are known to predict school and system success. Education systems must assess and encourage things that contribute to the attainment of rich outcomes, including in-school factors such as strong classroom assessment, and out-of-school factors such as health care, housing and nutrition.

Government must be held accountable for providing all education systems with adequate resources to meet agreed-upon priorities.

Local schools, districts and their communities must play the primary role in accountability.

3. Use feedback to improve student outcomes. Research has strongly demonstrated that skilled use of feedback to students (formative assessment) is among the most powerful means teachers have for improving learning outcomes.

4) Intervene sparingly and with great care. Interventions from higher levels of government must focus on providing useful assistance and only as a last resort include harsher measures.

Massachusetts CARE: Call for an Authentic Statewide Assessment System

The Coalition for Authentic Reform in Education (CARE) has proposed an alternative assessment and accountability plan for Massachusetts to replace the state's reliance on the MCAS exams. It contains many features that should be included in a revised version of NCLB.

The key elements of the CARE proposal are:

1. *Local authentic assessments.* Each school and district will have an approved assessment and accountability plan that explains how it will assess students, how decisions such as graduation and grade promotion will be made, how it will use information about student work to improve teaching, and how accountability information will be reported to parents, students, teachers, the community and the state. Graduation will be decided by the school, not by the state.
2. *Limited standardized testing* in literacy and numeracy only. These tests will not be used to make decisions about students.
3. *School quality reviews.* Every four to five years, each school will do a detailed self-study. Then an independent, expert team will conduct a multi-day visit to the school. The team will present a detailed report to help guide the school in making further progress.
4. *Annual school reporting.* Each school will report on progress or lack thereof toward its goals and the state's core standards or competencies. The report will be based on the local assessments and include standardized test results. Outcomes by race and

Research has strongly demonstrated that skilled use of feedback to students (formative assessment) is among the most powerful means teachers have for improving learning outcomes.

Each school will report on progress or lack thereof toward its goals and the state's core standards or competencies.

ethnicity, gender, low-income status, special needs, and limited English proficiency will be included. So will other information such as attendance, promotion and dropout data; survey results (such as school climate surveys); teacher qualifications; and resource availability. Data will be reviewed by the local school council, parents and other community members, the district, and the state. When needed, the state or district can send in teams to verify the accuracy of a school's report.

Nebraska

Now four years into operation, Nebraska's Student-based, Teacher-led Assessment and Reporting System (STARS) requires school districts to develop local assessment plans that are aligned with learning standards. STARS uses multiple assessment measures rather than relying on a single test. Districts can develop their own instruments, which may include classroom assessments such as observations, portfolios, and rubrics, or they may purchase them from commercial publishers. The results from these assessments are used for the state assessment and accountability system. Nebraska thus has a system of local assessments.

Districts must follow six criteria in designing their assessment plans: assessments reflect state or local standards; students have an opportunity to learn the content; assessments are free from bias; the level is developmentally appropriate for students; there is a consistency in scoring; and mastery levels are appropriate.

Local assessment portfolios are submitted to the Nebraska Department of Education for review by an independent panel that rates their quality. District Assessment Portfolios that are not approved are modified and resubmitted the following year. All assessment systems are expected to be periodically updated and improved.

In essence, Nebraska has created standards for local assessments, a means to evaluate them in light of the standards, and a structure for ensuring that every district's assessments improve. If a district has strong standards and a high-quality assessment program, then it is reasonable to assume that local determinations of student learning levels are correct.

Nebraska requires school districts to develop local assessment plans that are aligned with learning standards.

Local assessment portfolios are submitted to the Nebraska Department of Education for review by an independent panel that rates their quality.

The Buros Center for Testing, a major academic think tank, has assisted the state and has reviewed district assessment portfolios. Buros staff found the districts generally produced strong assessments and are willing to improve.

Each year, the state reviews district results for student performance on criterion-referenced assessments in the required grades. These results may include classroom-based information. The state reviews the data to determine how well districts are enabling students to achieve to the standards.

From extensive discussions around the state, education leaders concluded that the process has enabled teachers to learn a great deal and to create systems for collaboration. Independent reviewers have found that the assessment systems are having a positive effect on teaching and learning.

There are “teeth” in Nebraska’s approach. As part of the accountability system, the state has given some districts one year to improve their assessments or three years to increase the percentage of students reaching proficiency. Districts that fail to meet their goals will have their accreditation put on probationary status. The state is offering intensive help to those districts. This process, however, is distinct from the AYP process mandated by NCLB.

Conclusion

The key to the success of this approach will be to persuade policymakers that working with teachers and schools to steadily improve educational quality is preferable to threatening punishments unless they boost scores on narrow tests. It is preferable because it will lead to substantial improvement – provided adequate resources – in ways the test-and-punish approach cannot.

Continuing on the path demanded by NCLB guarantees that many children will continue to be left behind.

Independent reviewers have found that the assessment systems are having a positive effect on teaching and learning in Nebraska.

The key to the success of this approach will be to persuade policymakers that working with teachers and schools to steadily improve educational quality is preferable to threatening punishments unless they boost scores on narrow tests.