

Are All Schools Getting Fair Treatment Under New York State Education Law?

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Abstract

This article examines the needs in New York State for public policy to address disparities in educational outcomes, opportunities to learn and appropriate evaluations that assess student readiness to advance in their education or work opportunities. Several proposals for educational public policy changes and practices are offered in the conclusion of this article.

Federal education law under Every Student Succeeds Act (ESSA) requires state education systems to include high-stakes accountability policies and multiple indicators of success, such as growth scores from standardized tests, English Language Proficiency, and absenteeism, to determine the accountability status of schools and districts for rewards or sanctions. In New York State, high-stakes accountability policies do not hold schools accountable for student progress related to learning standards. Instead, they use comparative measures to rank schools against each other to determine their proficiency levels, annual yearly progress, and accountability status. Critics argued against using comparative measures, stating that it would make the accountability system inherently unfair (Koretz et al., 1992; NYSED, 2018; Williams, 2021). Research has shown that these policies promote uniform learning outcomes, control of educator behaviors, and test-driven learning cultures that do not align with the reality of instruction and learning in public schools with predominantly minoritized student populations. Instruction and learning are dynamic because educators and students have diverse sets of skills, talents, cognitive processes, and various levels of access to resources within the learning environment. This makes uniform learning conditions challenging to establish as school leaders and teachers work under restrictive policies to prepare students for the high-stakes exams and diploma requirements (Williams, 2021).

Historical Overview of NYS Education Assessment Policy and Accountability

The New York Board of Regents has been at the forefront in the design of policies to influence the direction of schooling using assessments as they sought to institute

statewide uniform learning standards to expand educational opportunities for its diverse student population. For example, in November 1865, the New York State Board of Regents created a uniform high school entrance examination to determine the most qualified elementary school students to continue their education. Students were awarded a certificate at graduation, and this influenced educators to prepare students for the test (Bishop et al., 2000). During the 1870s, there was a strong national movement for uniform high school graduation standards and college admissions requirements that was led by the National Educational Association (NEA), whose members were primarily college presidents and state superintendents (Williams, 2021). In June 1878, New York took the lead and administered its first curriculum-based assessment for high school Regent's credit (Bishop et al., 2000; The University of the State of New York, 1965). These exams were deliberately designed to be a strong supervisory and instructional tool that influenced educators towards the state's version of effective pedagogical practices, not just to measure student achievement. For example, New York State Assistant Commissioner for Examinations and Scholarship, Sherman Tinkelman, was successful in getting foreign language teachers to emphasize conversational and reading comprehension skills by including these components on the Regents exams (Bishop et al., 2000; The University of the State of New York, 1965).

This push for common standards and uniform testing at the state and national level has been in progress for over a century and the same methods are still in existence. One of the consequences of the Regents tests was that it created two educational tracks for students-Regents diploma and local diploma. There were more students in low income and underfunded schools that received local diplomas as opposed to Regents diplomas and some attributed this to low expectations. However, NYS did not provide any incentives for students to pursue a Regents diploma. For instance, New York State-sponsored scholarships required an aptitude test, and Regents scores were not used for in-state or out of state college admissions or employment, so students avoided them (Bishop et al., 2000). In 1984, Commissioner Gordon Ambach wanted to address low expectations and

established a policy which required schools to demonstrate universal competency in all academic subjects and remediation for students that failed the new Regents Competency Tests. But this policy revealed another factor that the state was not addressing. "By demanding the same set of tests from all schools, administrators documented the gap between performance in the poorer New York City and up-state schools" and other public schools (Johnson, 2009, p. 8). This factor continued to be ignored.

During 1991, the U.S. Congress created the National Council on Education Standards and Testing (NCEST) to determine the feasibility of national standards and assessments, and they recommended states increase their learning standards, use high stakes standardized tests for students and school system accountability. NCEST wanted assessments "used for such high-stakes purposes as high school graduation, college admission, continuing education, and certification for employment," and to have a mechanism in place for their alignment to NAEP (Vinovskis, 1998, p. 37; Williams, 2021). New York State began to implement these recommendations.

In 1994, New York City Chancellor, Ramon Cortines, blamed school failure on the low expectations of students and teachers and declared that all students entering ninth grade must pass three Regents level science and math courses to graduate. This was supposed to abolish the bottom local diploma track. Two years later, the New York State Board of Regents established a new policy that mandated all students take Regents courses and pass five Regents exams. The Regents believed "that requiring all students to take and pass five Regents examinations will significantly improve student achievement" (Bishop et al., 2000, p. 335).

This policy of blame and raising standards continued with the Federal government's 2001 No Child Left Behind Act (NCLB) and the 2015 Every Student Succeeds Act (ESSA). Federal education policies made high-stakes tests, learning standards, school supervision, and systems of punishment the dominant education agenda in each state. ESSA policies were implemented through state and local education agencies to regulate schooling using business principles. This resulted in a reduction of local control over curriculum, instruction, and learning, while power to influence schooling shifted towards policymakers and business markets (Madaus, 1999; Rossides, 2004; Williams, 2021). Policies requiring a mandatory, rigorous curriculum did not always result in improved student achievement or graduation rates and may be discouraging for some groups of students (Comprehensive Center Network Region 2, 2022).

Beneficiaries of the Current Paradigm

High-stakes tests have greater consequences for minority and poor children than they do for majority and more affluent students, albeit non-diverse students are also impacted by the power of these tests (Madaus & Clarke, 2001). Resulting from high-stakes testing, low-income children of color are subjected to a qualitatively different educational

experience than that of their Whiter, more affluent counterparts who have a much higher likelihood to access a more engaging, content-rich education (Au, 2015). The empirical test results provided by presumptively "objective" standardized tests, could mask school structural advantages, the existence of systemic racism, justify racial hierarchies, and promote bias towards specific racial groups as less intelligent and inferior (Au, 2009b, 2013) within a seemingly meritocratic framework (Au & Ferrare, 2015).

Racial Disparities Reinforced by the Current Paradigm

As stated by Ford (2005), psychological and psychoeducational assessment is an area that has been heavily subjected to complaints about the differential treatment of diverse groups. Korchin (1980), and others contend that standardized tests have contributed to the perpetuation of social, economic, and political barriers confronting diverse groups (Padilla & Medina, 1996; Suzuki, Meller, & Ponterotto, 1996).

Research suggests that many diverse communities have suffered from the application of high-stakes testing. Decades of research demonstrate that Black, Latinx, and Native students, as well as students from some Asian groups, experience bias from standardized tests administered from early childhood through college (Rosales, 2021).

Children of color have experienced sharper curricular and pedagogic squeeze, resulting in a disparate education than affluent, primarily White, counterparts (Nichols & Berliner, 2007; Nichols et al., 2005; von Zastrow, 2004). The resulting outcome portrays low-income students of color as failures through high-stakes, standardized testing. This allows unequal opportunities to be imposed on low-income, children of color (Melamed, 2011).

What is the Solution?

Performance-Based Assessments

New York is one of twelve states who require an exit exam to graduate from high school. Of those 12, NY is one of five that do not allow for the ACT or SAT to be one of the options of an exit exam. Performance-based assessments offer an alternative to the high stakes standardized testing that is being utilized in NY. These assessments are meant to measure the skills that are developed after a unit of study and can vary greatly depending on the subject/grade/unit. Although the tasks can all differ, they should all be complex and rigorous in design, and have an extensive rubric that measures mastery of the skill.

Work Based Learning

According to the NYS Education Department, Work-Based Learning (WBL) is the umbrella term used to identify activities which collaboratively engage employers and schools in providing structured learning experiences for students. These experiences focus on assisting students develop broad, transferable skills for postsecondary education

and the workplace. A quality WBL program can make school-based learning more relevant by providing students with the opportunity to apply knowledge and skills learned in the classroom to real world situations. (2022). Students are able to earn credits for their jobs and internships, which can replace several credits towards graduation, with a focus on career development and outside learning. Work Based Learning programs have allowed students to earn credits for their work and outside experiences. The programs have not yet been able to have students use these credits toward their learning unless they are participating in the New York State (NYS) Career Development and Occupational Studies (CDOS) Commencement Credential, which requires a connection to a Career and Technical Education (CTE) course load.

Alternative Settings: Big Picture Learning and New York Performance Consortium Schools

Big Picture Learning Schools are a network of schools, who use mentorship and internship to educate students, which has a different structure when compared to traditional schooling. Students at Big Picture schools spend half of their time outside of schools on internships and experiences, where their learning of numeracy and literacy occurs through real life experiences. Students in Big Picture Learning Schools can choose to participate in the NYS Regents, or they can apply to be a part of the Consortium, and only participate in the NYS English Language Arts Exam (Big Picture Learning, 2023).

New York Performance Consortium Schools have a similar model to the Big Picture Schools, where the focus is about learning through experiences outside of the classroom. Schools who are a part of the consortium only have to participate in the NYS English Language Arts Exam. As opposed to a focus on internship, there is a focus on project-based learning.

Both Big Picture Schools and Consortium schools need to go through an application and acceptance process in order to create a shift to this way of evaluation and participation. To make a shift into one of these programs would take a tremendous amount of time, money, resources, restructuring and community buy-in, which is not accounted for in policy recommendations.

Policy Recommendations

New York State has mechanisms that appear to maintain the failing status of marginalized students by setting different performance expectations for Regents accountability. For instance, the NYS Education Commissioner established higher proficiency benchmark scores for Title 1 schools than for non-Title 1 schools. On the Algebra 1 test, Level 3 proficiency cut scores ranged from 65% to 84% for non-Title 1 schools, but only from 79% to 84% for Title 1 schools. By increasing the benchmark to 79% and reducing the performance range, this policy increased the chances of accountability failure and sanctions against Title 1 schools (Williams, 2021). The New York State Board of Regents defined equity as

the "guarantee of fair treatment, access, opportunity, and advancement for all while striving to identify and eliminate barriers that have prevented the full participation of all groups" (Young Jr., 2021, p. 6). Performance Level Score Ranges represents one barrier for Title 1 school advancement. One recommendation to help our most vulnerable students is to level the playing field by holding all students and schools in New York State under the same Performance Level Score Ranges for Regents Accountability and a benchmark cut score that is equitable, reachable and does not fluctuate annually. This will be one measure to guarantee fair treatment for Title 1 schools under state education policy.

A second would be supporting schools through Diversity, Equity, and Inclusion (D.E.I.) implementation. School districts and practitioners are expected to institute DEI strategies and mechanisms to create effective learning environments for students, while the state education policy undermines this mandate. The Board of Regents sets requirement levels for achievement and expects every school to meet them in a uniform manner without considering the local learning conditions of school instructional environments, such as the lack of appropriate funding to purchase instructional resources, equipment for schools, repair and upgrade of building facilities, and the hiring of high quality and experienced educators. Local taxes vary throughout the state and determine the amount of funding to school districts. This affects their ability to meet New York State education requirements to provide all students with a significant opportunity for a high-quality education. These are some areas the state should consider when evaluating policies related to the success measures of schools and educators.

Therefore, it is recommended that the NYS Board of Regents and the NYS Commissioner of Education create a DEI rubric to evaluate education policies, metrics, and regulations, whether under development or in existence, to ensure it equitably supports and meets the needs of students, educators, schools, and districts across the state. Those policies and regulations that do not meet proficiency levels on the DEI rubric are to be revised or eliminated, and schools and districts should not be penalized during the review and revision process. The Board can adapt their New York State Integration Project (NYSIP) tool kit for the purpose of evaluating state-level education policies. This kit is provided by the State to assist districts and schools in initiating, monitoring, and maintaining DEI integration efforts. As outlined in the tool kit, the Board can begin their review "with the crucial recognition that there is a system that by design (whether intentionally or accidentally or a combination of the two) creates the conditions that your integration initiative aims to change" (NYSESED, 2023, p. 16). The Board's primary responsibility is to comprehend the impact of their policies on schools and districts, and can begin by responding to these revised tool kit questions: What people, conditions, or forces within NYS are likely to be positively or negatively affected by the current state of education policies? What people, conditions, or forces inside or outside NYS exert considerable influence on the policies that are intended to be altered? (NYSESED, 2023). Schools and districts will benefit from this

process as the Board will collaborate with local education agencies in the collection of data. This may represent the first instance of state-level reforms being driven from a grassroots perspective, as all districts participate in DEI evaluation and integration.

Additionally, Funding for New York State schools varies greatly from community to community. Progressive calculations for Foundation Aid, the largest wealth-based aid category, and expense driven aid mitigate the inequities of local resources. The Foundation Aid formulas, which are a focus of future funding, are again under review. Changes in population and other factors need to be re-evaluated to capture changes in the communities served. Which constituencies will establish the future formulas, and then maintain the required wealth-based adjustments, is a current concern for equitable funding. Traditionally, wealthy districts which had the ability and will to increase local funding (local levy) were able to offset short falls in state funding, although that option is vastly reduced by the tax cap now codified into law. Low-wealth districts rely more heavily on State Aid for their revenue, therefore any reduction in State Aid will have a disparate impact on low-wealth districts.

In a Tax Cap environment there is no viable option for low-wealth communities to mitigate this substantial impact. The Campaign For Fiscal Equity settlement was implemented by Governor Hochul and has been phased in to achieve full funding of the Foundation Aid formula. Reliance on Foundation Aid impacts low-wealth districts far more than higher-wealth districts. During our current funding paradigm, inequities have been mitigated, but not eliminated, by the full funding of Foundation Aid. Federal pandemic aid funds are expiring for districts, which are known locally. But, despite the assurances from New York State, federal aid will be reduced for the state as well. This reduction, which has occurred periodically over the last several decades (GAP Elimination/ DRA), will occur again, and then will have a greater impact on low-wealth areas.

Cross System Impacts

The basis for any funding mechanism must be consistency of the flow of resources. Effective planning for schools, and really any organization, includes long-term plans based on an understating of the future resources to be allocated. Historic fluctuation in resources had a more severe effect on low-wealth districts, which impedes potential student progress for our most vulnerable students.

Low-wealth, and often diverse, districts who are most affected by non-local resources (state/federal) need fiscal certainty to implement, support, and evaluate programmatic changes based on promised resources. New programs need support which may include additional staff, staff training, and infrastructure related alterations. The financial impact of these changes will occur during multiple years and be impacted by increases related to contractual settlements and general inflationary pressures. Implementing any new program is a long-term commitment.

Effectively implementing and supporting, via policy and fiscal resources, new programs is key for success. Any program initiated without a multi-year commitment and an effective plan of support will ultimately fail. Programs must be implemented after proper planning to ensure an academic benefit for students and a consistent funding stream to support the changes long-term. Variations to programs must only be after a consistent application over a pre-prescribed period of time and proper support for professional development for staff throughout the process. If long-term changes are required, they must be validated by data, and a component of a comprehensive plan.

New York State establishes long-term progress goals for schools and districts over a 5-year period and collects annual data on various aspects of education, including school achievement, learning environments, educator quality, and demographics. We propose this data be used to develop an algorithm that predicts the necessary level of foundation and federal funding to provide consistent support and resources to schools. It would benefit the NYS Board of Regents to incorporate this funding element into their DEI rubric, along with a review of educational regulations, policies, school models, and accountability metrics to ensure that the process promotes equity of opportunity for all students.

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