The Federal Government’s History in Public Education: Massive Reform Efforts for Political and Corporate Enhancement

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INTRODUCTION

The federal government, while intentionally absent from the United States Constitution, has always maintained a subversive desire to influence the nation’s education system. Various programs have infused financial resources into the system with the attempt to ameliorate areas of greatest need. While the last dozen years have witnessed aggressive action by the federal government in the arena of elementary and secondary education, in terms of overall scope, the financial commitment is a subversive measure to modify programs to a national model and usurp local control. A massive amount of legislation and federal funding sources have been infused into the nation’s public (and in some cases parochial) systems to improve the quality of education for pre K – 12 students. The resources provided by the federal government do not support the change sought. In fiscal year 2013, the federal government appropriated only four percent of its entire budget to education, which for states averages to approximately eleven percent of the total amount allocated to public education. Superficially, improving the nation’s educational system should conjure a unifying sentiment coalescing all political factions. The apolitical culture of education has waned and is yielding to a landscape that is wrought with a pleonexia for the attractive financial resources allocated from the public treasury to educate the citizenry. Political actors implore for educational permutations that increase accountability for teachers, administrators, and local boards of education to construct more proficient students that are prepared for global competition. Many of these legislators, bureaucrats, and lobbyists have endorsed the concept of private

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education or charter school organizations, which accrue public allocations for profit, and fail to yield substantial improvement in student achievement.

The change in culture is an anathema for traditionalists in the education profession. Developing punitive measures and providing financial resources to incentivize states to endorse federal mandates and abnegate duties detailed in their respective constitutions is the recent mantra of the federal government. Many of the details regarding these new programs are met with the occasional consternation of those required to implement these progressive modifications. No Child Left Behind (2002), Race to the Top (2009), and the reauthorization of No Child Left Behind (2012) are the impetus for the massive educational debate permeating throughout the nation. Policy adjustments never before seen in education combined with a massive infusion of federal monetary resources has put the nation’s educational system in a position to substantially reform or stay at the precipice of complete disaster. This treatise will analyze the federal government’s role in education and examine the recent explosion of federal regulations, infusion of money, and intrusion into state and local control.

Part I is a compendium of the history of the federal government’s role in educating its citizenry. A review of the Colonial structure for educating its members and the paradigm employed by the founding fathers for education as they developed the U.S. Constitution will be undertaken. Part II analyzes the first significant encroachments by the federal government into the education arena. President Lyndon Johnson and his quest to improve the status of people living in poverty initiated the quest of the federal government’s involvement in state and local education. Part III discusses the regressive tendencies of the federal government during the late 1970s through the mid-1980s. Excluding a significant report on the status of education and elevating the Department of Education to cabinet-level status, little was enacted to increase the federal government’s role. Part IV describes the late 1980s and Bill Clinton’s presidency as the nation saw a renewed effort to address the ills of education and seek the improvement of standardized testing as a method to evaluate students’ learning. An aggressive agenda was formulated with increased federal assistance, yet the goals described at the inception did not come to fruition. Part IV describes the most extensive modification to K-12 education in the nation’s history. No Child Left Behind (NCLB) added many new terms to the
The nomenclature of education that created consternation by the educational community. NCLB’s intention to improve the educational system and free local school districts of federal requirements summarily did the opposite, and was viewed as a punitive system that did not impact students as conceived. Part V provides a significant overview of the federal program known as Race to the Top (RTT). RTT is without quodlibet the most far-reaching set of parameters to irrupt into K-12 education. The requirements set forth in RTT laid the foundation for philosophical tenets that once seemed improbable to even enter state legislative committees to become legal reality. No Child Left Behind and Race to the Top stimulated alternative methods of managing school systems. Even though charter schools were not created from the programs, the new paradigm did enhance the environment and fostered more opportunities for their creation. Part VI of this thesis will amplify some of the Promethean regulations guiding charter schools, raising the argument of secular resources supporting parochial education and the contention that charter schools are not required to meet the same standards as traditional public schools. No Child Left Behind is expiring and with specific deadlines embedded in the law for student achievement, experts annunciated that schools would never attain the mandates. The Obama Administration determined that schools would need relief from the adynaton of attaining the mandates. Part VII is a compendium of the requirements by the Department of Education for states to secure these waivers. Part VIII is an analysis of the current state of education; the effect current legislation and edicts have on the impact on student achievement; and what the future may yield for the students of the United States.

**The History of American Education Begins in the Colonies**

The United States is one of the few prominent nations in the world that does not directly oversee a national system of education. The creation of a decentralized education system did not occur by simple happenstance. The Framers of the Constitution were extremely paranoid of the power usurped by the British monarchy prior to independence and went to great lengths to attenuate the powers of the national government. Separating the major branches of the national government into the executive, legislative and judicial branches, as well as sharing power among the national, state and local authorities,
demonstrates the concern the Framers had for ensuring a collection of power at the center was improbable.¹

Local control of education had its inception in the colonial and early federal periods. American schools began as local entities that were largely private and religious. As in England, the education of the country’s youth rested primarily with parochial authority. America’s founding fathers yearned to continue this tradition, and combined with primitive communication and transportation means, it made a unified system arduous to construct; the foundation for local control of education was entrenched. As the Framers drafted the Constitution, they continued the tenets of the social contract theory by purposefully excluding education, delegating the responsibility to the states. The Tenth Amendment was drafted in large part to ensure a decentralized national government, yielding many powers directly to the states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.²

All fifty states have constructed a clause in their respective constitution to delineate their authority to prescribe public education. State legislatures develop policy based on their respective constitutional edicts and implementation resides with the local boards of education; national influence in education was restrained. The federal government did establish the Office of Education in 1867, yet its primary function was limited to collecting data on the status of education in the nation. The political culture and societal mores in the post-Civil War era created a foundational capacity for educational change in spite of the fact it would come decades later. Post-Civil War American courts adjudicated multiple cases that continued de jure segregation. The essence of most of the litigation centered upon higher education equality.

Plessey v. Ferguson (1896)³, while not a specific education contest, directly impacted the environment for which students attended school. Allowing “separate but equal” facilities between black and white students entrenched de jure segregated schools

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¹ See JAMES W. GUTHRIE, ET AL., MODERN EDUCATION FINANCE AND POLICY, 36, (2007) (noting the founders of the United States took seriously the separation of powers at the national government and division of authority among the national, state and local governments).
² U.S. CONST. amend. X.
³ 163 U.S. 537 (1896).
for almost fifty years. The decision laid down by *Plessey* thrived in the United States, sustaining those wishing to maintain segregated facilities. Amelioration started to permeate the judicial culture, first changing the higher education acceptance of blacks. In 1938, the Supreme Court declared the University of Missouri’s racial policies for entrance into the law school a violation of the Equal Protection Clause.\(^4\) Twelve years later, the University of Texas was not fulfilling the requirements of separate but equal by establishing a law school exclusively for blacks.\(^5\) In the same year, the Court found that the University of Oklahoma’s separate facilities for a graduate student “handicapped…[him] …in his pursuit of effective graduate instruction.”\(^6\) The National Association for the Advancement of Colored People (NAACP) was the primary force in bringing forward these cases but the impetus was to force the upgrading of underfinanced segregated facilities.\(^7\) The NAACP shifted its focus to K-12 education by attacking the “separate but equal” facilities after these victories culminating in 1954.

The year 1954 brought a decision that changed society, culture and politics in the United States to which the effects are still permeating the nation. Arguably, the most analyzed case decided by the Supreme Court in modern American history, *Brown v. Board of Education* (1954)\(^8\) reversed the tenets of *Plessey* and required the desegregation of all public schools at the utmost speed. Several cases that challenged the separate-but-equal doctrine began to matriculate through the court system. Five cases from Kansas, South Carolina, Virginia, Delaware, and Washington D.C. would eventually coalesce to

\(^4\) *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S. Ct. 232 (1938) (plaintiff challenged a policy of the University of Missouri Law School denying admission to blacks. Missouri had no separate law school for blacks, but the state offered to pay for out-of-state tuition. The Court declared Missouri’s policy of providing law school for whites and not blacks violated the Equal Protection Clause under the separate but equal doctrine).


\(^8\) 347 U.S. 483, 74 S. Ct. 686 (1954). (the plaintiffs, black children from Topeka Kansas, brought action to enjoin a state statute that permitted but did not require cities in Kansas of more than 15,000 in population to maintain separate facilities for black and white students. The Topeka Board of Education elected to segregate elementary schools. The lower federal courts held that there was a detrimental effect on the black students but because the facilities were essentially equal, the plaintiffs were not provided relief. In South Carolina and Virginia, the lower federal courts determined that schools for black children were not equal to schools for white students, yet the courts refrained from requiring black students to be admitted to white schools. In Washington D.C., black students brought suit under the 5th Amendment instead of the 14th Amendment claiming segregated schools impeded due process rights).
form the core of *Brown*. The move to eliminate de jure segregation in public schools substantially changed the core of race relations for the United States. President Johnson’s fortune was that the most influential case of the twentieth century had been adjudicated. School desegregation was now causing suspicion by those not in-favor of the negation of de jure segregation.

**President Johnson Seeks To Reform Public Education**

In 1963, the ascension of Lyndon B. Johnson to the presidency of the United States was a catalyst for major societal reform. The Civil Rights Act of 1964 required previously de jure segregated schools to submit plans to desegregate or risk forfeiting federal funding. President Johnson had a sincere avidity to ameliorate the status of all those in poverty, especially elementary and secondary students. He strongly contended improving education for all students as a path to prosperity. Speaking to his cabinet in 1964, Johnson was emphatic in his yearning to improve education by profoundly declaring, “I want – and I intend – education to be the cornerstone on which we build this administration’s program and record…I consider your first priority of responsibility to support education – not merely the legislation, but the cause itself.” Johnson was growing increasingly concerned with the lack of federal monetary support for education by articulating a national travesty if federal aid was not infused.

Increased high school dropout rates, overcrowding in classrooms, underpaid teachers, and a decline in the quality of instruction led Johnson to succinctly declare, “The kids is where the money ain’t.” The United States had been trying since the days of Andrew Jackson to improve education, yet three tenets and political obstacles persisted in preventing change: (1) segregation; (2) fear of government control; and (3) the separation of church and state. De jure segregation, while deemed unconstitutional by the *Brown* ruling, did not simply dissipate into the annals of American history. For many, de jure segregation was not resolved. It was simply overridden.

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President Johnson was now able to focus his nisus toward mitigating the effect of the remaining obstacles. The federal control issue was a significant dichotomous conundrum as Republicans tended to support block grants, whereas Democrats, at least non-Southern Democrats, approved of federal appropriations based upon congressionally determined categories. As James Gutherie amplifies, “Because the Civil Rights Act interposes the federal government between citizens and their state legislatures and local school boards, it periodically has the effect of transforming the racial controversy into a federal control issue. In the minds of some anti-desegregation congressmen, the federal government, by requiring racial desegregation, has usurped local and state decision-making prerogatives.” President Johnson’s overwhelming victory in 1964 combined with his unwavering record to eliminate poverty created an enormous accumulation of political capital to expend on this societal conjuncture. At uncharacteristic swiftness, the bill, which became famously known in education nomenclature as the Elementary and Secondary Education Act (ESEA) was passed by Congress three months after its introduction.

Conquering the divisiveness of the separation of church and state remained the last obstacle for Johnson toward fulfilling his ambition. Combatants on both sides of the church-state issue were firmly entrenched in their philosophical tenets. Thus, if legislation was not permissive enough, the parochial constituents would exercise their collective authority to negate it. Likewise, separatists were as emphatic to ensure that monies from the public treasury were not appropriated for religious aspirations. Advocates on either side of the issue were too influential, and the only viable solution was to reach a compromise.

The religious issue is noteworthy because of the federal support that other legislation and programs were provided. The maintenance of separation between church and state is a cardinal diremption that should never be breeched. Despite the fact that thirty-seven states prohibited the use of public funds for sectarian purposes,

approximately three-quarters of them allocated some public funds for parochial use.\textsuperscript{12} Items such as transportation, loaning of textbooks, counseling services, and support for students with special education services are examples of public funds supporting private education endeavors. In 1980, the Supreme Court upheld government support for state-mandated testing,\textsuperscript{13} in spite of the fact that a few years earlier it ruled that aid to develop state-required and teacher-created tests violated the Establishment Clause because such examinations had the potential to advance sectarian motives. Supreme Court decisions continued to aggrandize the burgeoning separation in the proverbial “wall” separating church and state. This permeation ensured federal resources would continue to benefit students that are in need of remedial or specialized services. Thus, ESEA’s future of supporting public and parochial students in need of specialized services is jurisprudentially solidified.

The Catholic Church’s influence during ESEA’s formation was the most prominent source of parochial support for funding students in private schools. John Gardner, President of the Carnegie Corporation commissioned a report that stressed the urgent need for taking action. The report advocated to not send aid to elementary and secondary schools on a general basis, but send it based on a formula related to poverty of an area. In order to alleviate Constitutional encroachment by violating the Establishment Clause of the First Amendment, ESEA was crafted in such a manner that it employed the “child benefit theory” enumerated in the courts. The child benefit theory distinguished aid provided to students and aid directed to schools or institutions. Jurisprudence established a compromising position for the Johnson Administration, in spite of the displeasure of the Catholic lobby arguing the measures fell short of their expectations. A tenuous coalition was constructed that was imperative for ESEA’s passage, and if either side withdrew their support and gave any signs of opposition, its fate would have been sealed. The Catholic bloc had indeed endorsed the measure, yet their support was fragile and could be quickly withdrawn.


Support for ESEA by all factions was completed, in large part, due to its reliance on poverty as the primary element for allocating funds directly to students as espoused by the child benefit theory. The business rules for ESEA articulated a fairly simplistic formula for distribution:

\[ \frac{A}{2} \times B = P^{14} \]

In 1965, the initial appropriation was one billion, which was doubled the following year, and by the end of the decade it reached three billion dollars. The legislation that appropriated funding directly to the communities in need read in part:

In recognition of the special education needs of children of low income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide…to local educational agencies serving areas with concentrations of children from low income families…\(^{15}\)

Johnson’s legislative success earned him the title of “Education President.” Sadly, for Johnson, the coalition he so tirelessly forged would soon start to fray with the actors going in divergent paths, retreating to the comfort of their dogmatic positions. Even more disturbing was the release of a study in 1977, which concluded that over fifty percent of the funds allocated to poor students had, indeed, gone to students above the poverty line. Joseph Viteritti articulated the notions that Title I funds emanating from ESEA were being used for general fund appropriations and administrators did not want to use these funds exclusively for economically disadvantaged students.\(^{16}\) Thus, as time progressed, the federal support was declining for the original purpose. Certainly, this was a position that Johnson would have been most displeased with had he ever viewed such analyses.

ESEA was, in large part, legislation engineered to supplement the decision of Brown and the 1964 Civil Rights Act. The nation was transforming a divided society into one that recognized minority issues, not only of color but of poverty as well. The pawky president’s intention was to incentivize local and state communities to accept these

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\(^{14}\) A = The state’s average expenditure per pupil; B = The number of poor school children in a local district; P=The payment to the school district.


federal monies, which would allow the federal government to affect policy it was purposefully excluded from years before. Future presidents would continue the tradition of manipulating policy through financial machinations. State and local governments would be viewed as inept should they decline such extensive resources.

While ESEA was a massive infusion of federal influence in public education, the political climate of the 1970s and 1980s retracted the federal government’s involvement in education, as the achievement of cabinet-level status for the Department of Education in 1980 was the only significant accomplishment. This anointing was extremely controversial as illustrated by the future campaign promises of Ronald Reagan in 1980 and Bob Dole in 1996 to abolish the Department of Education. The Department of Education weathered its tumultuous inception and insipid history to become a vehicle of reform and national policy transformation. The following statement articulates the consternation of local control advocates regarding the Department of Education’s influence, furthering the theory of increasing intrusion of local control by the federal government, and continued ineptness at making significant improvements:

Federal involvement in education and spending of taxpayer’s dollars would not necessarily be such a bad concept if the DOE had shown progress or improvement in the quality of education. According to the National Center for Education Statistics, the original budget in 1980 was $13.1 billion. The budget in 2011 is $77.8 billion. However, while spending has risen, the improvement in education has shown little increase.17

The relatively inactive federal government began permeating into a political segment that had been historically reserved to the states. As financial resources continued to be infused into the educational system, states and local districts found it difficult to deny such scarce and needed funds, thus aligning many of their policies with tenets espoused by national policymakers.

The Nation’s Educational System is Defined as ‘At-Risk’

In 1983, President Reagan’s National Commission on Educational Excellence delivered an ominous and disconcerting analysis on public education in the United States.

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17 Catherine R. Barnes, Race To The Top Only Benefits Big Government, 40, J.L. & EDUC, 393, 398 (2011) (discussing the overall encroachment of the federal government into the arena of education, which is explicitly a state duty).
A Nation at Risk is a seminal report in educational history commissioned in 1981 by President Reagan’s Secretary of Education, Terrell H. Bell and chaired by David P. Gardner, then president of the University of Utah. The eighteen-member blue-ribbon panel articulated the hypothesis that America’s schools were failing in comparison to the remainder of the industrialized world. The report analyzed the quality of elementary and secondary education in the United States and found a “rising tide of mediocrity.” This sentiment touched off a tremendous upsurge in reform efforts at the local, state and national level. With the nation in the midst of a recession, business and government leaders used the report as an opportunity to lay blame for a depressed economy. The United States was shaken to its very educational foundation with the release of this report and all factions of the school and government communities viewed this as a method for change. However, the report served more as symbolism rather than quality empirical research.

David Berliner and Bruce Biddle provided a stern rebuttal to the report and the external negative perception created. The primary thesis of the supporters of the report was that the inadequate educational system was responsible for the downturn in the economy and the quality of education relates directly to the nation’s successes or failures. If this presumption were accurate, then there should not have been the economic upsurge in the 1990s. In addition, they justified their contention by analyzing SAT, ACT and NAEP scores longitudinally, which showed steady achievement – not the cataclysmic status of education as described in A Nation At Risk. Consensus by opponents to A Nation At Risk was that the articulations used by politicians and business stressed the

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19 See James E. Adams Jr. & Rick Ginsberg, Education Reform – Overview, Reports of Historical Significance (1993), http://education.stateuniversity.com/pages/1944/Education-Reform.html"教育改革–历史意义报告” (Last viewed on March 6, 2013) (the commissioners reported that the United States had engaged in unthinking, unilateral educational disarmament, asserting that if an unfriendly foreign power had attempted to impose on America the mediocre educational performance the commissioners found, the nation might well have viewed it as an “act of war.” Its recommendations included strengthening the curriculum, lengthening the school day and the school year, paying teachers based on performance and increasing homework).
20 DAVID BERLINER AND BRUCE BIDDLE, THE MANUFACTURED CRISIS, 13 – 64 (1995) (this seminal contradiction to the report A Nation At Risk relied upon multiple data analyses that showed data in the report was misleading. Blame for the education crisis was originally assigned to educators. However, The Manufactured Crisis did a lot to scientifically show much of the blame lay with societal and economic factors that are out of educators’ control).
need for more private control of education including the concepts of vouchers and charter schools. Pontificating the concept that the nation’s schools were failing resonated across the country. Providing quality schools strikes a chord with parents, seeking to provide the greatest opportunity for their children, and the nation as a whole yearning for an improved economy and increased security. Yet, if “experts” espouse bombastic tenets and the details are illustrating a dire condition where one does not exist, speculation of nefarious motives may be a logical conclusion.

The aegis for modern-day educational reform originated in the late 1980s when the National Governor’s Association (NGA), convened under the administration of George H. W. Bush, made standards-based reforms, including accountability measures, a priority. Setting expectations for what students should know and be able to do drives standards-based education. In contrast to norm-referenced assessment, standards-based reform assesses students on clear, measurable standards for all. Curriculum, assessments, and professional development are aligned to these standards. Some states had implemented standards-based reforms prior to the NGA and became models for other states.21 Standards-based education became the educational paradigm reformers would embrace in the 1990s and continuing into the twenty-first century.

Goals 2000 – An Initiative for the 21st Century

On March 31, 1994, President Bill Clinton signed into law P.L. 103-227, titled, The Goals 2000: Educate America Act, which became known in the nomenclature more simply as “Goals 2000.” The premise was that outcomes-based education required more students attain certain standards and this increased expectation would yield higher levels of achievement. The final product of Goals 2000 was the work of all state governors initiated under the auspice of President George H. W. Bush in 1989. Goals 2000 can be summarized in the following eight points:

- All children in America will start school ready to learn;
- The high school graduation rate will increase to at least 90 percent;
- All students will leave grades 4, 8, 12 having demonstrated competency over challenging subject matter including English, mathematics, science, foreign languages, civics and government, economics, the arts, history, and geography,

and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our nation’s modern economy;

- United States students will be first in the world in mathematics and science achievement;

- Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship;

- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning;

- The nation’s teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century;

- Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

Congress appropriated $105 million for fiscal year 1994 alone to support Goals 2000. States were required to submit applications to develop school improvement plans, and make available sub-grants to local schools and awards for pre-service and professional development. Goals 2000 had multiple aspirations constructed upon the principles of outcomes-based education. Predictably, all of the goals were not attained by the year 2000. Many of the goals were commendable, but just not practical in the six-year timeline. In 1999 the program was summarized as not meeting the intended expectations:

The nation has not met any of the eight educational goals for the year 2000 set a decade ago by President Bush and the governors of all 50 states, although measurable progress has been made toward the goals pertaining to preschoolers and student achievement in math and reading…

The National Education Goals Panel’s final report before the 2000 deadline showed that more children were “ready to learn” – healthier and better prepared through preschool or parental reading – when they entered kindergarten. Students also demonstrated higher math proficiency, particularly in elementary and middle school, and a slight improvement in reading proficiency in middle school.

In the case of two goals, teacher quality and school safety, the panel reported the
nation has actually gone backward. The percentage of teachers holding a college degree in the main subject they teach dropped from 66 percent to 63 percent, and there was a significant increase in student use of illicit drugs, from 24 percent to 37 percent in 10th grade.\textsuperscript{22}

It became apparent, as the nation approached the year 2000, the anticipated effect by the federal government was falling woefully short as illustrated by important statistics like student achievement gaps in ethnicity and decreasing high school graduation rates.

There were three other large pieces of legislation enacted in the 1990s. Improving America’s Schools Act in 1994, the Individuals with Disabilities Act in 1997 and the reauthorization of the Perkins Vocational-Technical Education Act in 1998. In spite of their broad goals, these pieces of legislation had a common theme amongst them: to assess all students at least once at the elementary, middle and high school level. Uniformly assessing students based upon common standards and holding institutions accountable for the results was a new paradigm for some states, and for others it reinforced the policies already enacted.\textsuperscript{23} The 1990s shifted the educational world from policy innovation at the state level to the federal government. While intentions by the federal government were to improve student achievement, holding states and schools accountable for the adjustments was an almost insurmountable obstacle.

The leverage needed to force states to enact accountability measures seemed to be an elusive proposition prior to 2001. In the same year, the accountability conundrum in the United States was observed as having many different combinations of assessment and accountability procedures. Thirty-five states identified underperforming schools and fifteen did not. Eighteen states had the legal authority to takeover or reconstitute a school. Sixteen states had the power, to replace staff in a failing school and only five states that had the authority to reconstitute, take over, or replace staff had actually done so.\textsuperscript{24} The nation was in a prime political condition to entertain educational reform legislation because of the accountability vacuum and a weak educational outlook. The enthusiasm would be short-lived as sentiment for the law quickly digressed to descriptors such as

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“draconian” or “Machiavellian.” As No Child Left Behind became the standard for educational reform, supporters, excluding the executive administration, recognized the many faults imbedded in the legislation.

Public Law 107-110 – No Child Left Behind Act of 2001

In 2002, the administration of President George W. Bush, along with bipartisan cooperation from Congress passed the most comprehensive educational reform legislation in American history to that point. ESEA was expiring and required renewal. Many practitioners in concert with politicians viewed this authorization as an opportunity to federally reform assessment and accountability measures throughout the nation. No Child Left Behind (NCLB) was signed into law on January 8, 2002. NCLB entered the nomenclature of education with a thunderous cacophony. Some hailed the legislation as a savior-like innovation that would rescue all failing schools. Others saw it as a punitive attack on public education that would open the door to private education and charter schools usurping public funds. The legislation is significantly nebulous, yet the four primary objectives of NCLB can be consolidated thusly: (1) accountability for results; (2) an emphasis on doing what works based upon best practice and research; (3) expanded parental options, and; (4) expanded local control and flexibility.

Accountability for results required states to develop accountability systems covering all public schools and students. NCLB mandated the states implement a challenging set of standards in mathematics and reading; annual testing in grades 3-8; assessment results and state progress disaggregated by poverty, race, ethnicity, disability, limited English proficiency, and annual measurement objectives that reached 100 percent in math and reading by the 2013 – 2014 school year. Individual schools and school districts faced increasing sanctions over a seven-year period as delineated in the statute. This punitive moiety of NCLB requires schools failing to meet adequate yearly progress (AYP) to provide students with multiple options and programs for remediation. Students residing in these schools must be provided a transfer option to a school making AYP in the district with the financial burden borne by the school; supplemental education provided from an approved list of providers; and lastly a mandated change in governance should the school not meet the annual yearly progress standard. NCLB and the graduated sanctions placed an enormous amount of institutional and individual stress to meet these
standards. Frustration is rampant among educators regarding this system in large part due to unattainable goals and differences among states related to proficiency standards on examinations.

The methods employed by NCLB may actually have hindered the attainment of the goals of the law. The “Statement of Purpose” in the legislation articulates its intent to ensure that all children reach “challenging” standards in reading and mathematics, and close the academic achievement gap that exists by race and class.25 Soon after the implementation of the law, scholars, practitioners and some policymakers were quick to flay its perceived flaws. Researchers concluded that NCLB set unrealistic demands through the AYP provision, most notably the requirement that all schools be one-hundred percent proficient in reading and mathematics by the year 2014. Further, it was noted that virtually no schools serving large populations of low socio-economic students would clear the arbitrary hurdles set by NCLB.26 The more diverse the school population, the more likely the school is to fail to make AYP, logically concluding that schools will be punished disproportionately for being more integrated, which is antithetical to the original intent of closing the achievement gap among subgroup populations.27 This postulate of NCLB can be summarized thusly, “Sanctions intended to force gains in test scores, such as, in-district transfers, tutoring, and school restructuring, will do the opposite. They will pit parent against teacher, parent against parent, and school against school.”28 The ends do not justify the means. Creating conflict is in direct contrast to the intended goal of perpetuating unification of educational missions. However, if there resides, even at a minimal level, a political impetus to reduce local, public control and matriculate to a more private control of education, then conflict and division will be a welcome paradigm by those seeking the change.

28 Monty Neill, Leaving Children Behind: How No Child Left Behind Will Fail Our Children, 85 PHI DELTA KAPPAN INT’L. (2003) 225, 226 (discussing the major flaws of the No Child Left Behind Act and how the measures intended to increase student achievement, especially for low-income and minority children, may have the opposite effect.).
A final conundrum of the NCLB law is the lack of financial support necessary for modifications for schools identified as not meeting the benchmarks in NCLB. “Compounding the flaws of the law, the federal government has failed to provide adequate funding to implement its provisions.” A growing number of studies conclude that for all students to attain proficiency, the per-capita spending per low-income student would have required it to double. One theory behind this machination is the desire that the law would have forced upon states the moral obligation to fulfill the resource needs of the schools to meet the requirements. Sadly, this was misguided, as most states were required to constrict their budgets as the “Great Recession” loomed on the horizon.

A consortium of school districts in three states, the NEA, and ten NEA affiliates sued the United States Department of Education arguing the Secretary of Education had violated the provision requiring states and school districts to comply with NCLB mandates even though states and school districts were not provided with sufficient funds to pay for the mandates. The district court dismissed the complaint on the grounds that even though the law prohibited a federal officer from imposing an unfunded mandate, the statute did not bar the Congress from doing so. On appeal, the Sixth Circuit Court reversed and remanded the case back to the district court. The Sixth Circuit determined that the question was whether NCLB clearly furnishes notice to the state that if it chooses to participate, it must pay for additional costs to implement the act. The court concluded that the provision was ambiguous, and one could not plausibly contend that a state officer would understand this requirement. Thus, a state need not comply with NCLB requirements for which federal funds fall short.

The No Child Left Behind Act of 2002 had a promising inception. It was passed with bipartisan support in Congress led by President George W. Bush. Contesting a law that was designed to dramatically improve the nation’s schools would be difficult for any policymaker or educator to reject. Yet, quite quickly, opponents of the law began to contest the reliability that it could deliver what it purported, and the sanctions seemed so

29 Id. at 226.
draconian that those in opposition conjectured that NCLB was a veiled attempt to declare public education a dismal failure and private school management was seen as the solution to the ills. NCLB continues to be an educational doctrine, which must be addressed. Yet the Obama Administration, elected in 2008, as well as much of the nation, recognized the serious flaws in the law. As ESEA approached its reauthorization deadline, it became quite clear that many of the tenets of NCLB were unattainable and the friction that it caused would be insurmountable. While NCLB faded somewhat in stature, it remains a relevant piece of legislation that causes consternation for many schools. With the deadline approaching for schools to reach one-hundred percent proficiency in mathematics and reading, it was plainly obvious this goal was unattainable. Its inefficiency would be dealt with, but not until another significant proposition was enacted by the federal government, which entangled the nation’s schools in confusion. Two major reform efforts that are not correlated for maximum efficiency and sustainability would be implemented simultaneously, forcing school districts to assimilate.

**American Recovery and Reinvestment Act - Race to the Top: Overview**

Anyone that has engaged in competition has always yearned for victory. Human nature promotes that a competitor seek to be the best at what he or she is striving to obtain. The Obama Administration engaged in a new mode of educational reform that enticed states to improve education through a massive competitive grant known as Race to the Top (RTT). The title conjures a vision of all schools in the nation scrambling, groping, and crawling to ensure they finish ahead of their competitors. In February 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA)\(^\text{33}\). ARRA’s primary foundation was couched in Keynesian theory for a national economic recovery.\(^\text{34}\) Public works projects and auto manufacturing restructuring are examples of the many components that ARRA sought to economically stabilize.


\(^\text{34}\) **JOHN M. KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST, AND MONEY** 129 (1936) (Keynes argued that employment is not determined by the price of labor as articulated by the neoclassic theory, but by the amount of money that is spent. He further states that cutting the cost labor and benefits is not only hard-hearted but futile. In a depression, the government needs to provide whatever is necessary to jumpstart the economy).
Education policy was not exempt from the federal government’s involvement, and it took the opportunity to initiate massive reforms. Since ARRA’s creation in 2009, “…education policy has not been the same since.”

Congress inserted these priorities into the legislation, but the United States Department of Education (USDOE) postured itself under the leadership of Secretary Arne Duncan to leverage the text into a national reform movement. The Obama Administration outlined four basic reform priorities in Race to the Top:

- Making improvements in teacher effectiveness and in the equitable distribution of qualified teachers for all students, particularly students who are most in need;
- Establish pre-K through college and career data systems that track progress and foster continuous improvement;
- Make progress toward rigorous college- and career-ready standards and high quality assessments and are valid and reliable for all students, including English language learners and students with disabilities;
- Provide intensive support and effective interventions for the lowest-performing schools.

The federal government appropriated $4.35 billion dollars to help incentivize the states to reform educational policies, which for many states, required massive and far-reaching legislative changes. A plethora of state legislators across the nation were seeking to implement many of the reforms delineated in RTT prior to its passage. However, there was significant resistance from various factions, and with a lack of political fortitude, states had to acquiesce to minimal and often insignificant improvements. Permitting the opportunity to acquire this amount of funding for school improvement is a position most legislators supported and educators reluctantly endorsed. President Obama became the centerpiece of this progressive agenda when he announced the it on July 24, 2009. His comments included the following:

This is one of the largest investments in education reform in American history. And rather than divvying it up and handing it out, we are letting states and school districts compete for it. That’s how we can incentivize

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36 Id.
excellence and spur reform and launch a race to the top in America’s public schools.\textsuperscript{38}

The President furthered his announcement by describing the criteria employed to assess the state proposals:

This competition will not be based on politics or ideology or the preferences of a particular interest group. Instead, it will be based on a simple principle – whether a state is ready to do what works. We will use the best evidence available to determine whether a state can meet a few key benchmarks for reform – and states that outperform the rest will be rewarded with a grant. Not every state will win and not every school district will be happy with the results.\textsuperscript{39}

RTT has had three rounds of award winners since the announcement in 2009. Using the broad objectives listed above as the guide for assessing state applications, forty states and the District of Columbia submitted applications in the first round. The initial applicant pool was reduced to sixteen. Much to the chagrin of many state governors, the U.S. Department of Education awarded only two winners in March 2010: Delaware and Tennessee.\textsuperscript{40} The competition continued in the summer when the second round winners were announced in August 2010. Combined with Round One, forty-six states and the District of Columbia submitted applications and 11 states and the District of Columbia were awarded RTT funds.\textsuperscript{41} Secretary of Education Arne Duncan was boastful in declaring the RTT a program for successful change: “As we look at the last eighteen months, it is absolutely stunning to see how much change has happened at the state and local levels, unleashed in part by these incentive programs.”\textsuperscript{42} Duncan continued his pontification, “These states show what is possible when adults come together to do the right thing for children…The creativity and innovation in each of these applications is


\textsuperscript{39} Id.


\textsuperscript{42} Id.
breathtaking…We set a high bar and these states met the challenge.” Duncan was ensconced in the tenet that the federal government made significant structural changes to the manner in which it involved itself in reform at the local level. In order for states and districts to posture themselves for awards, the changes that were required forced legislatures to crystalize them in legislation. Phase Three saw the Department of Education award seven more states RTT funds at the end of 2011. Viewing the program as successful, the federal government looked to make the next allocation more acute by targeting individual districts instead of states.

RTT–D modified its structure so that individual districts could seek grants from this program. The Department of Education wanted to attract single districts committed to the four core reform areas in RTT and that personalizes learning at the classroom level. The intent was to serve schools with a minimum of 2,500 students with at least a forty percent of students qualifying for either a free or reduced lunch. In the spirit of this paradigm, the Federal Department of Education received 372 applications and awarded sixteen winners at a range of ten to forty million dollars. RTT in all four phases has infused a significant amount of revenue into the K-12 education spectrum requesting significant change to the status quo. As this thesis briefly addresses the success of this program, should RTT not meet the anticipated expectations, consternation will build among policymakers for the increased spending and educators for the assumption of local control.

American Recovery and Reinvestment Act: Teacher Evaluations

The first goal of the Race to the Top Act was to address the quality of educators instructing students in K-12 schools. Some improvements to educational quality can be accomplished through quality pre-service training and appropriate professional development once employed by the school, but the standard that seemed to lack the most validity and reliability is teacher and administrator evaluation. NCLB was an input driven modification to improve teacher quality. Credentialing and certificating teachers to

43 Id.
ensure they are highly qualified was the major tenet of instructional support during this period. The problem with this approach is that methodologically, it does not predict student success. Philosophically, requiring teachers to have appropriate credentials to instruct a certain subject or grade level is logical. However, in many classes throughout the United States, instructors who lacked the appropriate content knowledge were teaching children in various classes. Options were afforded to these instructors to seek alternative methods to attain highly qualified status in lieu of state mandated certification requirements and retain their current assignment. Nonetheless, having highly qualified instructors in every classroom was a priority and NCLB sought to correct that deficiency.

In a comprehensive study completed in 2009, researchers assessed data relative to teacher evaluation and found that on a binary evaluation instrument (satisfactory or unsatisfactory), ninety-nine percent of educators were deemed to be at least satisfactory and for districts that use a more comprehensive spectrum to evaluate teachers, ninety-four percent were considered to be at the top two levels: either “great” or “good.” Accepting this high level of educator quality is certainly suspicious when analyzing student achievement data. The nation is seeing dismal productivity on the part of students whether the assessment is on summative assessments, standards-based assessments, graduation rates or international comparisons. The entire variance for low student achievement must not be placed with the quality of instruction. Socio-economic status and the education level of the parents are but a few input factors that predict how students will achieve. RTT forced the concept of evaluating instructors to new and in some cases very contentious levels.

An amplification of this frustration was the eight-day teacher strike in the Chicago Public Schools that occurred in the fall of 2012 in response to multiple issues; but the main point of contention was the method and procedure in which new teacher evaluation models were enacted. Many educators were apoplectic due to at least fifty percent of a teacher’s overall evaluation being calculated for student achievement results on state summative examinations. Various statistical formulae are used to predict the outcome of student achievement with actual results. This computation then describes the “value” a

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45 DANIEL WEISBERG ET AL., THE WIDGET EFFECT: OUR NATIONAL FAILURE TO ACKNOWLEDGE ON DIFFERENCES IN TEACHER EFFECTIVENESS 6 (2 ed. 2009).
teacher adds to the learning of the student, which is defined as the Value-Added Model or “VAM.” This system is under immense pressure.46 The current inquietude emanating from the educational community is a prolepsis to the most recent diktats sponsored by the federal government.

Traditionally, teacher evaluations were subjective administrator observations that were superficial in nature. If an individual exhibited appropriate professional characteristics, had good rapport with students and parents, effectively managed a classroom, and participated in the general mission of the school, he or she was generally found to be a “good” to “outstanding” educator. Merging student achievement data to predict the value a teacher adds to a student’s success in an instructor’s evaluation was the exception rather than the norm. RTT required states to enact legislation that included a significant amount of student achievement data to the teachers’ evaluation. RTT provided specific language regarding teacher evaluation instruments by declaring that states, “…design and implement rigorous, transparent, and fair evaluation systems for teachers and principals that take…into account data on student growth…as a significant factor.” While the Department Of Education did not specifically articulate the weight student growth should have in the evaluation instrument, there was a subtle encouragement that it should be, minimally, fifty percent of the process. In 2010, thirteen state legislatures passed laws related to the teacher evaluation instrument in the hopes of prevailing in the RTT competition. Several states incorporated the threshold of fifty percent of the evaluation be reliant upon student achievement. States like Colorado, Louisiana and Michigan took this path, while New York required forty percent and Oklahoma thirty-five percent. In 2011, five more states passed laws affecting teacher evaluation.47 The momentum for change was strong and appears to be stronger for the future.

47 See De Schryver, supra note 35, at 5.
The Federal Government Defines Persistently Lowest Achieving Schools

The Obama Administration, through the United States Department of Education, set a precise vision on improving the performance of the nation’s lowest schools. The mantra that was voiced for this program was, “tight about ends and loose about means.” RTT sought to improve only the absolute worst schools in each state and allowed them to prescribe the necessary interventions. However, the goal of turning these schools around was unwavering. While the sanctions imposed by NCLB were somewhat ambiguous, the federal government’s role within RTT was identified as, “…prescriptive, muscular and set on turning those schools around.” Each school has unique circumstances, traits, and demographics, yet NCLB viewed them equally, and sanctions were imposed based upon this unyielding paradigm. The U.S. Department of Education established a term for these failing schools and operationalized it in RTT. Persistently Lowest-Achieving Schools (PLAS) are identified by each state and specific prescriptive federal intervention is required of these schools. A PLAS school is defined as:

(a) Any Title I school in improvement, corrective action, or restructuring that –

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 C.F.R. § 200.19(b) that is less than 60 percent over a number of years;

and

(b) Any secondary school that is eligible for, but does not receive, Title I funds that –

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title funds, whichever number of schools is greater; or

48 Id. at 2.
49 Id. at 8.
Is a high school that has had a graduation rate as defined in 34 C.F.R. § 200.19(b) that is less than 60 percent over a number of years.\textsuperscript{50}

Those schools that met this definition of the bottom five percent of schools in a state were left in somewhat of a quandary because the RTT legislation did not specifically articulate what interventions were required. That issue was detailed shortly after in the School Improvement Grant (SIG).

\textbf{School Improvement Grants (SIG)}

Beginning in fiscal year 2008, the United States Congress appropriated over $500 million dollars for the School Improvement Grant program, and combined with the ARRA allocation of three billion dollars, made a serious commitment to education reform. The federal government undoubtedly required massive accountability with such an investment. Section 1003(g) of the ESEA thoroughly delineated the expectations of the SIG program:

- Transformation: Schools must replace the principal, strengthen staffing, implement a research –based instructional program, provide extended learning time, and implement new governance and flexibility

- Turnaround: Schools must replace the principal and rehire no more than 50 percent of the school staff, implement a research-based instructional program, provide extended learning time, and implement a new governance structure.

- Restart: Schools must convert or close and reopen under the management of an effective charter operator, charter management organization, or education management organization.

- School Closure: Schools must close and enroll their students in other, higher-performing schools in the district.\textsuperscript{51}

Out of the four possible restructuring paths, the transformation model presents the option that causes the least amount of change and disruption. It is not coincidental that the majority of PLAS identified schools have selected the transformation option.

Approximately seventy-four percent of SIG applicants selected the transformation model, twenty percent the turnaround model, four percent the restart model and only two percent sought the school closure option.\textsuperscript{52} A major concern for many schools is that the initial legislation passed by state legislatures to prepare for the RTT application was a calculated gamble. The states not selected as RTT winners were left with legislation enacted with no financial resources to make the required changes. In addition, schools that were identified as a persistently lowest-achieving school faced major changes that are expensive. The SIG program offers financial assistance, yet, like RTT, the award is competitive among the PLAS schools in the state. Schools not awarded SIG support face increased costs with decreasing general operating revenues.

Race to the Top did not follow past paradigms by simply requesting individual schools implement recommended changes and collect data in a disheveled manner. It mandated states change law and establish transparent accountability practices to be in place for the state to be eligible for the award, and held local school districts accountable for the modifications.\textsuperscript{53} An example of the intrusiveness is articulated by a summary produced by the Michigan Association of School Boards (MASB), which raised early warnings for the massive pieces of legislation enacted. MASB analyzed the legislation required by RTT and noted that many of the bills being proposed in the Michigan Legislature had direct and indirect effects on collective bargaining authority. Much of the legislation being introduced undoubtedly conflicted with union contracts and the laws crafted gave the school boards the authority to set aside many of those contractual restrictions.\textsuperscript{54} Timing seemed to be right for state legislatures to encroach upon some of the perceived traditional organizations and legislation that had been impediments for the right-wing educational agenda, specifically, union power to collectively bargain a number of issues. A number of reforms and issues collided at once. Andrew Rotherham, co-founder and partner at Bellweather Education, and former education advisor to President

\textsuperscript{52} See De Schryver, supra note 35, at 11.

\textsuperscript{53} BEN BOYCHUK, THE ‘PARENT TRIGGER’ IN CALIFORNIA: SOME LESSONS FROM THE EXPERIENCE SO FAR 1 (October 2011) (the Parent Trigger law was included in a series of legislation that was quickly passed in January 2010 to be in position to be awarded an RTT grant. California was not awarded a grant, but the Parent Trigger remained in place).

Clinton, answers the timing of all these changes by stating, “All of this came about as a result of fortuitous timing – a happy coincidence of events...It was a bad economy, states were in desperate financial need, these issues had a long history in the states and [there was] an administration willing to aggressively pursue this agenda.”

Periods of crisis often create a culture that is amenable to change. The renient education has been seen as a primary obstacle to the reform efforts by the state and federal government to this point. By forcing state legislatures to enact laws to be eligible for RTT funds, the federal government is requiring subversive change to happen with limited concern for the iconic methods of the past.

**SIG Implementation Yields Mixed Results**

In analyzing the data collected from the first year of SIG schools, the results of the program yield ambiguous findings. Multiple researchers have opined various conclusions to the preliminary results of the SIG program. Out of 731 schools awarded funds from SIG sixty-five percent saw increases in mathematics and sixty-four percent saw increases in reading. Therefore, thirty-five percent had a decline in mathematics and thirty-six percent declined in reading after funds were received. Paradoxically, twenty-six percent of these schools that were on a path to improvement in mathematics exhibited a declension after procuring SIG dollars combined with twenty-eight percent of the schools in reading doing the same. The majority of schools witnessing growth are elementary schools.

The results have caused consternation among researchers with many of them pontificating ambivalent results. Diane Stark Renter, the deputy director of the Center on Education Policy, commented the data looked better than she had expected. Her conjecture, prior to viewing the results, was that the program would yield stagnate results. Her conclusion was several schools focused on climate, and they are postponing achievement efforts until later in the grant period. Juxtaposing this perspective with Andrew Smarick at Bellweather Education provides an interesting antithesis. He terms

55 See De Schryver, supra note 35, at 5 (David De Schryver quoted Andrew Rotherham in a personal interview that was conducted on July 22, 2010).

the results as “heartbreaking” concluding that more than one-third of schools declined in growth in spite of the expenditure of several billion dollars. He furthers is contention stating that most schools typically see an increase in achievement at the beginning of a program and for those schools that did not even see an initial increase, that will yield little achievement in the future. Robin Lake, the director of the Center of Reinventing Public Education at the University of Washington amplifies the confounding results by articulating the notion that the program was never clearly defined in spite of the ambitious and bold change discussed by the Department of Education.\textsuperscript{57} Arne Duncan succinctly concludes the argument at this time by stating, “One year of gains isn’t success. One year of declines isn’t failure…it’s way too early to draw any conclusions.”\textsuperscript{58} The fact the federal government has infused so many resources into this program, and usurped an enormous amount of authority from the local governing bodies puts enormous stressors upon the federal organizers, yet change of this magnitude will take more time for appropriate evaluations to be completed.

\textbf{NCLB and ARRA Create a Culture for Other Change}

The educational reform that was a byproduct of the political culture over the past several years has enticed many state governments to approve legislation that for traditionalists is too progressive and outside the norms of the educational status quo. Parent-trigger bills and reconstituting failing schools are among the initiatives outlined in RTT and SIG as priorities among various legislative organs. Several of these programs increased the consternation between those that viewed these initiatives as attacking public educators and those that see this as necessary to improve education for an improved economy and prosperous nation.

Charter schools are at the center of the debate relative to reforming the nation’s traditional public education system. Two decades ago, the concept of charter schools was


\textsuperscript{58} Id.
created to improve upon traditional schools by creating small learning communities, empowering teachers and parents, developing and sharing innovative concepts and promoting competition. Charter schools are created with more opportunity for autonomy, which comes with greater expectations for student achievement. Should charter schools fail to meet that expectation, the autonomy is revoked in favor of non-renewal or closure. Currently, there are nearly 5,000 charter schools in the nation with three percent of all students enrolled in them.  

Even with restrictions removed, charter schools have encountered limited growth in student achievement. A comprehensive study completed by Stanford University in 2009 found that student achievement in most settings, excluding urban charter schools, actually witnessed small, but significant declines in reading and mathematics scores.

At this juncture it would be beneficial for the federal government to evaluate the goal of charter schools throughout the nation. After two decades of charter school innovation, the initial and benevolent mission is disintegrating. “Once dedicated to educational quality and innovation, today’s charter school movement is increasingly dominated by powerful advocates of market-based reform and privatization. These advocates typically call for the rapid growth and the expansion of private education management organizations that now manage more than 30% of all charter schools in the country.”

Charter schools were intended to provide diverse pedagogical methodologies instead they have continued the diversity based upon race and class. Charter schools must return to their original mission to be better than public schools and demonstrate better accountability. Arguably, the most controversial method creeping through state legislatures is that of “parent empowerment” legislation.

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60 See CENTER FOR RESEARCH ON EDUCATION OUTCOMES, MULTIPLE CHOICE: CHARTER SCHOOL PERFORMANCE IN 16 STATES 2 – 6 (June 2009) (CREDO reported a 0.1 standard deviation decrease in reading and a 0.3 decrease in mathematics. Of the charter schools analyzed 17% of the students were significantly higher than traditional public school students, 37% had significantly worse results and 46% had indistinguishable growth between their public school counterparts).
61 ALEX MOLNAR, GARY MIRON & JESSICA L. URSCHEL, PROFILES OF FOR-PROFIT EDUCATION MANAGEMENT ORGANIZATION (2010).
62 Miron, supra note 59, at 9 – 10.
In 2010, California bombastically departed on a new path into parental control over their local schools with the passage of what has become commonly known as “The Parent Trigger Law.”63 The referendum granted the majority of parents of a local school the authority to replace the staff and administration of the school; close the school; or transfer ownership of the school to a private entity and reconstitute it as a charter school if fifty-one percent of the parents sign a petition if it is underperforming. Over twenty-five states have considered this type of legislation and seven have approved at least parts of the philosophy.64 Those in favor of parent-trigger legislation advocate that it gives parents a voice where they have not had one before. Also, proponents argue it gives parents a choice for a better school like those parents that choose private education; a sense of social justice is prevalent in this argument. Opponents counter that parents do not have the expertise like local school boards and staff to make these decisions. They indicate that once the decision has been made, parents have little input thereafter.65

McKinley Elementary in Compton, California was the first school in the nation to enact the parent-trigger option with sixty-two percent of its parents signing a petition to transfer control of the school to a charter operation. The Compton Unified School District along with many unsatisfied parents challenged the petition arguing the organization supporting the petition, Parent Revolution, had not fully informed the parents of the options under the law. In addition, the Board questioned the validity of the signatures.66 The Board demanded photo identification to support the signatures on the petition to which Parent Revolution sued the district calling the request undemocratic. Murphy et. al. v. Compton Unified School District67 alleged the school district had violated the basic tenets of the parent trigger law and the California Constitution. Ultimately, the parent

trigger at McKinley was not enacted. A charter school was opened in a church a few blocks away. The prediction was the new charter school would undermine McKinley Elementary and draw a significant number of students away. Most of the students that attended the charter school came from schools other than McKinley Elementary.68

In Adelanto, California, seventy percent of the parents of the 666 students at Desert Trails Elementary requested the school be turned over to a charter operator in response to its poor achievement in math and reading.69 This was Parent Revolution’s second attempt at a school takeover in California. The local board invalidated 218 signatures, which dropped the percent of parents approving the takeover to thirty-seven percent. The parent organization resubmitted a list of signatures in the spring of 2012 but the school board stated it still fell short and rejected the application.70 The parent union filed suit against the school district arguing that many of the signatures should be reinstated and the petition granted. On July 18, 2012, the judge ruled that within thirty days, Adelanto School District must accept ninety-seven of the rescinded signatures and allow the plaintiffs to immediately begin the process of soliciting and selecting charter school proposals. On August 17, 2012 the Adelanto District Board of Trustees voted to accept the petition from the parents to enact the parent-trigger law. The oddity that developed was the Board of Trustees did not accept the “charter option” but rather the “alternative governance” option. This option allows for a longer school day, new technology and other items. The decision immediately drew the ire of the parents and they adamantly stated this decision runs afoul of the court’s decision.71

California has not been exclusive to enacting parent-trigger legislation as seven other states have passed laws and roughly twenty others are considering it. However, the momentum for overhauling schools in this manner has slowed due to political opposition and vexing questions about how these plans should be implemented at the local level. To highlight this contention consider the political battle that occurred in Florida in spring

2012. The Republican super-majority in the State Senate provided the perfect arena to approve legislation of this sort. In conjunction with the political culture established in this state, the Foundation for Excellence in Education sponsored by former Florida Governor Jeb Bush, which unequivocally supports charter schools, is a strong activist of parent-trigger legislation. Senate Bill 1718, which was approved by the Florida House of Representatives died in the Senate with eight Republicans joining twelve Democrats to give a final vote total of twenty to twenty.\(^72\) Interestingly, the Parent Teacher Association took a dim view of the legislation in part because they viewed this as an attempt to provide an increased opportunity for private charter schools to permeate Florida. The Florida Legislature in 2013 was reenergized to bring forward the same legislation with a change in the title to “Parent Empowerment.”\(^73\) Surprisingly, six Republicans aligned with fourteen Democrats tying the vote at twenty. This was a significant defeat for the “Trigger” supporters as multiple powerful organizations viewed the timing and stage appropriate to invade.

Parent-trigger legislation has an ambiguous future. There is little doubt that many of the organizations and legislatures that have supported this concept will continue their influence and desire to approve laws relating to this subject. Local school districts, teacher organizations and some parents will continue to view this reform movement as a veiled attack on public education and an attempt to promote corporate avarice for the public treasury. Oddly, some opponents of this legislation are concerned that teachers could promote it to arrogate the school if they oppose the leadership.\(^74\) The next few years will provide greater insight into the success the parent-trigger philosophy may have in the United States.

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Reconstitution of Schools

Another by-product of the national reform effort that has been enacted by a few states is the reauthorization of low-performing schools to a state school district. This was first experimented within the city of New Orleans. The assertion is that centralized management of public schools by local government is responsible for the economic and academic challenges faced by urban districts. Hurricane Katrina provided a power vacuum, which offered charter-oriented policymakers an unprecedented opportunity to restructure a large school district while addressing dismal student performance and a thirty million dollar debt.

The Recovery School District (RSD) is a special state school district administered by the Louisiana Department of Education. Created by legislation (Act 9) passed in 2003, the RSD is dedicated to turning underperforming schools into successful schools. Schools that do not meet minimum academic standards for at least four consecutive years are eligible for state intervention. These schools can be placed in the RSD or retained by the local school board with a Memorandum of Understanding (MOU) with the state. This MOU is a binding agreement between the local school district and the Louisiana Department of Education that outlines necessary actions that must be implemented at a failing school in order for it to avoid placement in the RSD. Five schools were placed in the RSD prior to calamity of August 2005.

Following the complete devastation of New Orleans by Hurricane Katrina on August 29, 2005, and the major impact it had on the actual physical school facilities, the Louisiana Legislature used the event to pass Act 35, which immediately placed 107 of the lowest-performing schools in the RSD. There are a total of 112 schools in the RSD and twenty more schools eligible for placement in the RSD are operating with an MOU. Most of the schools placed in the RSD are under the management of a charter school operator. The state government has become intimately involved in the process of education in Louisiana.

Louisiana has relied upon the state’s School Performance Score (SPS), which is based largely on standardized test scores. The summative assessment employed is the Louisiana Educational Assessment Program (LEAP), implemented in 1986. The LEAP test was revised in 1999 and deemed to be more difficult than the existing high school test.\textsuperscript{77} Most recently, the LEAP tests have been the instrument utilized to determine the success or failure of the RSD. However, the scores that define success or failure have been modified. “State standards of ‘success’ and ‘failure’ were manipulated to justify converting public schools into charter schools, and then to justify keeping them as charter schools.”\textsuperscript{78} An intriguing hypothesis regarding the actual success of the RSD program in New Orleans is as follows:

Most recently, LEAP tests have been used to establish the ‘success’ of the RSD. However, the shifting definition of academic ‘success’ and ‘failure’ suggests that the so-called successes may reflect a pattern of SPS cut-off changes rather than evidence of successful reform.

In November 2005, Act 35 redefined what was considered to be a failing school in Louisiana, raising the bar from an SPS cut-off of 60 to just below the state average of 87.4. Under this new standard, 107 of 128 public schools in New Orleans were now called ‘failing schools’ and, thus, could be folded into the RSD, whereas only 13 schools could have been counted as ‘failing schools’ before Act 35. Under these terms, most of the public schools were taken over by the RSD and ultimately converted to charters. In 2009 the standard was shifted downward to SPS 75. In 2010 – the year that conditions for transferring RSD schools back to the locally elected Orleans Parish School Board were to be set by state board of education – a failing school was defined as having an SPS below 60; this enabled the RSD to justify control over a greater number of schools, which might lose their ‘autonomy’ under local governance. In 2011, the bar was set to SPS 65 and in 2012 was raised to SPS 75. Under these terms, RSD schools would still be defined by a ‘successful’ trajectory upward when compared to Act 35 standards.

In sum, state standards of ‘success’ and ‘failure’ were manipulated to justify converting public schools into charter schools, and then to justify keeping them as charter schools.


By the legal standard that was used to justify taking over ‘failing’ schools in New Orleans, however, all but a handful of schools continue to fail; this includes state-run schools as well as charter schools in the RSD. In fact, most schools in the RSD are failing based on the even lower standard of SPS 75. When this is brought to light the question clearly arises: Is the RSD model of reform actually generating academic success?... 

These types of machinations in educational reform seriously compromise the integrity of the effort. It does appear that with situations like the above and the motivation behind parent-trigger legislation that private interest and government officials will continue to strongly support these initiatives.

While committing failing schools to a specific state district is in its infancy as a national trend, this paradigm shift has been examined by other states. During the summer of 2012, South Carolina’s education superintendent, Mick Zais, made comments that he will support the 2013 General Assembly of South Carolina approving a “Recovery District” to turn around failing schools in South Carolina. He cited Louisiana and Tennessee law regarding reconstituting schools to a state district as evidence of a prosperous method of reform. The current three options allowed by South Carolina law of school principal replacement, assuming management of the entire district, and technical assistance have not worked. The primary advantage for creating this state-run district is the flexibility to innovate to meet the needs of students. Zais believes that it takes too long to replace leadership at the school board level and this option will create immediate and effective change.

No Child Left Behind Redux

As the nation continues its educational reform march, the deadline of the 2013 - 2014 school year looms for all schools to reach one-hundred percent proficiency in math and reading as defined by the NCLB law. The majority of educational professionals agree this goal is simply unattainable. In addition to these goals coming due, ESEA, which houses NCLB, required reauthorization in 2012. As Congress began to conduct meetings

79 Id., at 6.
and receive expert testimony on NCLB, it became painstakingly obvious that bipartisan
gridlock would impede reauthorization. With no approval imminent, the Obama
Administration sought to continue the reform efforts initiated in the Race to the Top
program without intrusion from NCLB. In order for states to receive a “NCLB waiver,”
they are required to submit an ESEA flexibility plan to the United States Department of
Education. States that have sought and are seeking NCLB flexibility must meet several
qualifications. Some of those characteristics are: 1). Propose their own accountability; 2.)
Set their own student-achievement goals; 3.) Identify struggling schools; and, 4.) Create
evaluation systems for teachers and building leaders. In addition, the USDOE required
states to identify “priority,” “focus,” and “reward” schools and make those lists public.
To support these identifications, the DOE is looking for states to implement turnaround
principles in the priority schools and interventions in the focus schools. The Obama
Administration is not seeking flexibility for business as usual. The intent is to give states
the freedom to set their own student-achievement goals, and design their own
interventions for failing schools. Currently, thirty-four states plus the District of
Columbia have secured a waiver and a total of forty-six have requested the flexibility
waiver. Iowa and California were rejected and North Dakota and Vermont have
withdrawn their requests.

The posture that several states have taken relative to NCLB is noteworthy. For
instance, Texas has historically espoused states’ rights and has often positioned itself
contrary to federal tenets. In this particular segment, Texas has shunned the Race to the
Top initiative and Common Core implementation. These two components are contrary to
the Obama Administration’s main educational goals. California’s waiver plan was
rejected, yet ten districts have organized to petition the DOE for a collective waiver.
These ten districts would set common goals replacing the one hundred percent
proficiency standard. In addition, they would plan to eliminate disparities in other areas
besides academic improvements.

81 See Michelle McNeil, Latest States in Hunt for NCLB Flexibility Include Rural Players: Fresh Batch of
Applications Hits Education Department, EDUC. WEEK, Sept. 26, 2012, at 20.
82 See Michelle McNeil, Waiver Machine Rolls on as Struggles Climb Abound, EDUC. WEEK, Mar. 13,
2013, at 18.
83 Leslie A. Maxwell, 9 California Districts Seek Own NCLB Waiver, EDUC. WEEK, March 6, 2013, at 22.
The states that have requested or have been granted a flexibility request have many similarities among them. Items such as accepting the Common Core Curriculum, improving upon student achievement gaps, increased flexibility for spending federal Title I revenue, elimination of the student transfer requirement and rigorous, fair and transparent teacher and administrator evaluations are some of the commonalities. Only four states, Alaska, Nebraska, Texas and Virginia have not adopted the Common Core Curriculum.\footnote{Alyson Klein, \textit{Rift Emerges in GOP on Common Core}, \textsc{Educ. Week}, Sept. 25, 2012, \url{http://www.edweek.org/ew/articles/2012/09/26/05standards-election_ep.h32.html?qs=klein,+2012} (last visited April 1, 2013).} Eliminating the rule mandating Title I funding be allocated to tutoring or restructuring a school for failure to meet AYP standards will provide about one billion dollars in funds to schools that would have otherwise been predetermined.\footnote{Alyson Klein, \textit{NCLB Waivers Roll On}, \textsc{Educ. Week}, August 3, 2012, \url{http://www.edweek.org/ew/articles/2012/08/08/37waivers.h31.html?qs=klein,+2012} (last visited April 1, 2013).} The common waivers being requested are not coincidental. It is a conscientious tenet of the Obama Administration to reduce the effect of NCLB on schools and to reform them in the manner as deemed appropriate by the Department of Education, which is implementing RTT.

The flexibility waiver and current educational reform climate has provided the opportunity for states to incorporate various new efforts outside the commonalities described above. Interestingly, several states either implemented or significantly revised comprehensive evaluation measures for teachers and principals incorporating student achievement as a major portion of the assessment.\footnote{See, e.g., Penn Hill Group, \textit{Overview of Arkansas ESEA Waiver As Approved By The U.S. Department of Education}, April 2012; \textit{Overview of Indiana ESEA Waiver As Approved By The U.S. Department of Education}, April 2012; \textit{Overview of Kentucky ESEA Waiver As Approved By The U.S. Department of Education}, April 2012; \textit{Overview of Missouri ESEA Waiver As Approved By The U.S. Department of Education}, July 2012; \textit{Overview of South Dakota ESEA Waiver As Approved By The U.S. Department of Education}, July 2012; \textit{Overview of Utah ESEA Waiver As Approved By The U.S. Department of Education}, July 2012.} As discussed previously, the evaluation modification has caused much consternation among those impacted by its implementation. This displeasure is probably best captured with the strike by the Chicago Teachers Union (CTU) in September 2012, which had not authorized a strike in twenty-five years. One of the main grievances of the CTU was the speed and depth of the evaluation system being proposed. In the tentative agreement Chicago district officials
lessened the immediate impact of the system.\textsuperscript{87} The CTU actually struck against Rahm Emanuel, a Democrat, who served as President Obama’s Chief of Staff. This highlights the fact that the Democratic Party, which in the past was seen as a firm supporter of teachers’ unions, supports many of the reform efforts being touted.

The NCLB Act of 2002 required states to evaluate students in grades 3-8 in mathematics and reading at least once per year. Multiple states have declared that assessing just these two subjects does a disservice to science, writing and social studies. A majority of states, therefore, are requesting flexibility that includes at least a science assessment, if not all three subject achievement measures. Assessing individual schools and school district remains a cornerstone of the waiver request. While each state is allowed to determine its accountability process, it can be stated that these processes are much more detailed and have multiple layers. States have taken the mandate of identifying reward, focus and priority schools and in many cases created several subcategories that provide more incentives for high-achieving schools and the potential for increased intervention the lower a school ranks on the achievement spectrum. A quality example of this is Colorado’s approved waiver request. Colorado identifies five levels of reward schools, three levels of focus schools and the SIG definition for priority schools.\textsuperscript{88} A major concern among school administrators when comparing schools are the number of individual factors that impact student achievement. Schools that have a higher socio-economic status often see correlations to higher student scores. However, schools are typically compared on an equal setting. New Jersey has placed into law a “peer school ranking” system comparing each school’s performance to schools with similar demographics.\textsuperscript{89} Lastly, Connecticut has included school climate into its accountability process\textsuperscript{90} and Georgia school districts will receive a rating for financial efficiency related


\textsuperscript{88} See Penn Hill Group, \textit{Overview of Colorado ESEA Waiver As Approved By The U.S. Department of Education}, April 2012.

\textsuperscript{89} See Penn Hill Group, \textit{Overview of New Jersey ESEA Waiver As Approved By The U.S. Department of Education}, April 2012.

\textsuperscript{90} See Penn Hill Group, \textit{Overview of Connecticut ESEA Waiver As Approved By The U.S. Department of Education}, July 2012.
to use of instructional funds from all sources.\textsuperscript{91} Multiple opportunities are occurring for states to implement atypical reform efforts that are being supported by the national government and many private organizations.

While the Obama Administration is seeking to reform schools through the RTT process, it has been more subversive in addressing the needs of NCLB. RTT requires states and local school districts to subscribe to specific postulates enacted by the federal government, yet it is willing to employ the argument of local control in providing NCLB waivers to states. Arne Duncan said, “These requests reflect the desire of the states to have more flexibility in implementing their locally developed ideas about how to improve education – and not be forced into a one-size-fits-all approach.”\textsuperscript{92} Duncan has articulated that he does not concur the waivers are an end run to the spirit of the NCLB law. Others contest this position highlighted by State Superintendent Tom Luna from Idaho. He contends the federal government is trying to intervene in an area that has been historically reserved for the states. Specifically, he noted, “It’s an affront to states’ rights.”\textsuperscript{93} Some lawmakers ponder if Duncan has overstepped his authority.\textsuperscript{94} A significant conundrum has merged with these two enormous education reform efforts. Some of the pieces blend and represent a seamless combination of programs. However, the majority of waivers entices major confusion for the practitioners and is beholden of political gamesmanship.

\textbf{Conclusion}

Education reform in the United States is ascending rapidly in terms of federal involvement. The ESEA Act of 1965 provided a legal vehicle by which the federal government can manipulate various components of public education, which it refrained

\textsuperscript{91} See Penn Hill Group, \textit{Overview of Georgia ESEA Waiver As Approved By The U.S. Department of Education}, April 2012.
\textsuperscript{93} Andrew Ujifusa, \textit{Arne Duncan Spars with State K-12 Chiefs Over District Waivers}, EDUC. WEEK, March 19, 2013, \url{http://blogs.edweek.org/edweek/state_edwatch/2013/03/arne_duncan_spars_with_state_k-12_chiefs_over_district_waivers.html?qs=arne+duncan+spars+with+state+k-12+chiefs+over+district+waivers} (last visited May 13, 2013).
\textsuperscript{94} Alyson Klein, \textit{As NCLB Waivers Take Hold, Revision Law Remains Up In Air}, EDUC. WEEK, February 20, 2013, at 25.
from doing in the past. Traditionally, the federal government delegated the authority to facilitate public educational systems to the states and local boards of education. The Johnson Administration made strong inroads into the sealed environment of local education by providing financial resources that perpetuated states and local boards to abdicate much of their legal obligations for the potential increase of federal revenue. Massive modifications were required by the federal government upon the local district and states to subscribe to federal government initiatives. Philosophies have differed over the decades as to the role the national government should have in an area that has traditionally been reserved to local governing bodies. Much of the frustration on the part of teachers and principals is that programs, rules, and regulations change at a mind-numbing pace. Change of this magnitude does not happen as quickly as some government officials and private organizations would prefer. The legislation and policy implementation that is intended to improve the educational system may actually be causing it to slow down.\textsuperscript{95} Those responsible for implementation are scurrying to continue to enact the goals handed down by the federal government and rules established by the states; private entities continue to support the declination of public education in anticipation that corporations can maneuver even further into public education.

The federal government has taken a pervasive role in public education at the local level through state legislatures. It is usurping control from local boards of education in the name of reform. As can be seen from this analysis, not all of these efforts have honorable intentions. There are in fact numerous private individuals that view public education funding as an untapped profit source. Attempts to characterize public education as failing are well established. Lawrence Fernberg from Keystone State Educational Coalition summarizes the attempt to degrade public education thusly, “I think people have gotten pretty accustomed to all of their schools being labeled failing by now. The law has lost all credibility.”\textsuperscript{96} As the federal government continues its encroachment on the public education sector, opposition continues to coalesce. In fact, legislation has been

\textsuperscript{95} See Peter Senge, The Fifth Discipline: The Art & Practice of the Learning Organization 62-63 (1990) (Peter Senge hypothesized that all organizations operate under congruent paradigms. Within systems thinking are eleven laws. The sixth law that is articulated is that “faster is slower.” This contention is important for this thesis as the federal government continues to make modifications to public education without appropriate time for previous changes to have an impact).

\textsuperscript{96} See McNeill, supra note 92, at 18.
introduced to mitigate the intrusion of the DOE. The National School Board Association (NSBA) is a strong proponent of this piece of legislation. This is illustrated by the comments of Thomas J. Gentzel, the executive director:

In recent years local school board members and educators have become increasingly concerned that the local governance of our nation’s school districts is being unnecessarily eroded through over reaching federal policies and requirements established by the U.S. Department of Education…Public education decisions made at the federal level must support the needs and goals of local school districts and the communities they serve. The U.S. Department of Education should not be imposing its rules and priorities to our nation’s more than 13,500 school districts by trying to by-pass Congress and input from the local level.

Most schools in the nation have been reacting to these arduous modifications for well over a decade. While the federal government has gone to great means to define and identify failing schools, resources to ameliorate these institutions has fallen woefully short. Politically, espousing hyperbole about the current state of public education and the methods needed to remediate it have become folly for bipartisan rancor.

Arguably, the George W. Bush and Obama Administrations have provided the most intrusive educational policies to date and are not that dissimilar in methods. Johnson’s ESEA program dedicated a large infusion of financial resources, but did not emphasize punitive actions based upon student achievement standards. No Child Left Behind (Bush) and Race to the Top (Obama) seek to operationalize a failing school and dictate measures to remediate these identified schools or ultimately transfer authority for the school away from public supervision. A paradox has developed with both of these initiatives in that they have detailed the mandate that reform must correlate with best practice and research. However, in several instances, the change mandated is not couched in best practice and research – a significant source of hypocrisy. For example, as part of Race to the Top, improving failing schools requires specific criteria to be addressed. One of the requirements imbedded in the reform policy is to provide teachers with merit pay

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97 H.R. Res. 1386, 113th Cong. (2013) (this piece of legislation seeks to curb the involvement by the federal government, specifically the Secretary of Education in implementing education policies at the local level).
for improving student achievement. Ironically, as schools grapple with constricting budgets, the federal government is requesting schools expend revenue into an area that has yet to be empirically proven to advance student achievement.99 Thus, irony permeates the reform culture, as the federal government seems to contradict itself.

In a bipartisan fashion, the phenomenon of charter schools seems to be the solution to remediate failing schools in deference to student achievement results and research conclusions for many policymakers. Those studying the effect of charter schools will need to continue to develop rigorous studies to accurately describe the overall benefit of these schools as currently results are ambiguous. Corporate greed will need to be abnegated in the public education arena as this will only serve to divide and not unite. The political lens of policymaking is to understand how conflict is resolved for finite financial resources. Contests for these funds will continue to be a source of conflict unless public funds find legal protection and are not permitted to be utilized by private interests. Because corporate oversight of charter schools has led to some malfeasance and significant misappropriation of funds,100 some legislators are requesting more oversight of these organizations.

The pontification from the federal government over the years has been to allocate additional financial resources to students who are in the most need. Ironically, there is consistent evidence that federal dollars are not directed at the students who need it the most. Designing a competition for those scarce resources may in fact entrench the recipients of these funds to schools that need it the least.101 Stanford University completed a study, which further supports this notion. The report found that the student achievement gap has widened between rich and poor students in the last three decades


100 Florida’s Shameful Situation On Charter Schools, BRADENTON HERALD, Oct. 30, 2012, http://www.bradenton.com/2012/10/30/4257940/florida-shameful-situation-on.html (after the majority of students at a Florida charter school failed the state’s achievement test, the decision was made to close the school. The principal of the school was provided a severance package of $519,000, in addition to the annual salary of $309,000).

101 See Vitteriti, supra note 16, at 2119.
and is even larger than the gap among racial categories. Policymakers in concert with researchers need to ensure that money earmarked for students in need is indeed reaching its intended target. Those responsible for managing the financial support for these programs must ensure efficiency.

Teacher and administrator evaluation will continue to be a source of consternation until a system that is empirically proven is implemented. The correlation of teacher value to the achievement of students is not without merit. However, because of the fast pace by which the concept was implemented, the percentage of the evaluation attributed to student achievement has varied among the states. In some instances, teachers were held accountable for students they never taught. Certainly, an imperfect system will not yield the results sought by the reforms. In conjunction with improved evaluative techniques is the concept of merit pay. Again, this is a corporate method based upon the creation of a product or a service. Typically, the inputs are relatively similar and efficiency is the variable that can be adjusted for maximum output. For educators, they are faced with human abnormalities and differences. Merit pay seems to provide an incentive for educators on the premise that they are not fulfilling their responsibilities and will produce increased student achievement scores based upon financial rewards.

More focus is being placed on public education than at any point in this nation’s history. Many progressive modifications are being suggested and implemented, and in many cases, this is being done in spite of local control. By close examination, it can be ascertained rather quickly, that motives for improvement are not exclusively reserved to student achievement. Private organizations are focused on improving profits and are seeking to secure funds that have been traditionally reserved for the private sector. Unfortunately, for educators and students, they are caught in the widening gyre of policymaking and accountability measures, done in the name of students but implemented in the spirit of greed.